Agenda Item No. 8.

REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of October 13, 2020

Philip F. Sinco

Prepared by:
Philip F. Sinco, City Attorney

Approved by:
Todd Bodem, City Administrator

SUBJECT: Ratification of Amendment # 1 to Employment Agreement between the City of Guadalupe and Michael Cash.

RECOMMENDATION:

It is recommended that the City Council ratify Amendment #1 to the employment agreement between the City and Chief , which expired on October 8, 2020, to extend all of the terms of the existing agreement until January 9, 2021 to permit further negotiations on a new employment agreement.

BACKGROUND:

Michael Cash was appointed as the City's Director of Public Safety on October 9, 2018. The employment agreement he entered into with the City of Guadalupe was for a two year period ending on October 8, 2020. The City Council and Chief Cash have not yet concluded their negotiations concerning a new employment agreement, but the City Council previously authorized staff to offer Chief Cash an extension of his current employment agreement to allow negotiations on a new agreement to be concluded.

DISCUSSION:

Because the City Council and Chief Cash were unable to conclude negotiations concerning a new employment agreement prior to the expiration of his current two-year agreement on October 8, 2020, it is necessary to extend the terms of Chief Cash's current employment agreement until negotiations on a new agreement can be concluded. The City Attorney prepared Amendment #1 to the Employment Agreement between the City of Guadalupe and Michael Cash which extends all of the terms, conditions, and provisions of his original employment agreement until January 9, 2021. Chief Cash agreed to this three-month extension, but since Chief Cash's employment agreement was set to expire before the City Council could approve the extension, City Administrator Todd Bodem executed Amendment #1 on behalf of the City, subject to ratification by the City Council.

ATTACHMENTS:

1. Amendment #1 to the Employment Agreement between the City of Guadalupe and Michael Cash.

AMENDMENT #1 TO THE EMPLOYMENT AGREEMENT

BETWEEN THE CITY OF GUADALUPE AND MICHAEL CASH

Pursuant to Section 16(A) of the Employment Agreement ("Agreement") dated October 9, 2018, between the City of Guadalupe ("City") and Michael Cash ("Employee"), City and Employee hereby agree to amend the Agreement as follows:

1. The changes set forth in this Amendment #1 shall become effective at 12:01 a.m. on October 9, 2020.

2. Section 1 of the Agreement is revised to read as follows:

The term of this agreement shall be extended for an additional period of three (3) months from October 9, 2020, until January 9, 2021. Notwithstanding the term set forth in this Amendment #1, this Amendment #1 shall be automatically terminated if the City and Employee enter into a new employment agreement before the end of the term of this Amendment #1.

All other provisions of the Agreement shall remain in full force and effect. To the extent there is a conflict between this Amendment #1 and the Agreement, this Amendment #1 shall prevail.

CITY OF GUADALUPE

By: _____
Todd Bodem
City Administrator

Dated: October 6, 2020

MICHAEL CASH

By: _____
Michael Cash

Dated: October 6, 2020.

APPROVED AS TO FORM:

CITY ATTORNEY

By: _____
Philip F. Sinco

Agenda Item No. 9.

REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of October 13, 2020

Prepared by:
Emiko Gerber, Human Resources Manager

Approved by:
Todd Bodem, City Administrator

SUBJECT: Facility Lease Agreement with the Boys & Girls Club of Mid Central Coast for the After School Education and Safety (ASES) Program

RECOMMENDATION:

It is recommended that the City Council adopt Resolution No. 2020-82 approving the final facility lease agreement allowing the usage of the City's Auditorium as an extension to a Boys & Girls campus for the ASES Program. The program is currently operating under a temporary lease agreement.

DISCUSSION:

The Boys & Girls Clubs of Mid Central Coast is comprised of the participating cities of Atascadero, Guadalupe, Paso Robles, Santa Maria, and Shandon. Its mission is to enable all young people, especially those who need us most, to realize their full potential as productive, caring and responsible citizens. The After School Education and Safety (ASES) Expanded Learning Program provides a safe, nurturing environment for youth, ages 6 through 14, in partnership with the Guadalupe Union School District. Funded by a state grant that goes to the District and is redistributed to the Boys & Girls Club, the ASES program provides a robust academic, healthy lifestyles and character and civic development program during school hours during the Coronavirus pandemic, guided by the California Department of Education's Quality Program Standards.

ASES staff work closely with the school administrators and teachers and help students with homework, participate in P.E. activities, receive a free snack and have opportunities to participate in enrichment activities. Enrichment activities include STEM Challenges, Buddy Reading, Art projects, and more. The ASES program operates on school days, providing distance learning support from 8:30 am to 1:30 pm, homework support and enrichment activities from 2:00 pm to 5:30 pm.

The Boys and Girls Club requested that the City provide the use of the City Auditorium to operate this program because the Guadalupe Union School District does not have the physical space on its property to operate this program.

The beginning date for the ASES program was October 5, 2020, and it will end on December 31, 2020. The facility will be closed on Christmas Day and New Year's Eve. Because it was not possible to have the City Council approve a lease agreement with the Boys & Girls' Club before the starting date for the program, staff entered into a temporary lease agreement upon the condition that a permanent and more detailed lease agreement would be entered into. The proposed lease agreement attached hereto is that permanent lease agreement.

The City of Guadalupe Auditorium site for this program operates at a 14 to 1 student to staff ratio and serves approximately 75 students each day. The layout for the auditorium allows for 50 students sitting at safe social distances. The children are rotated on and off the Mary Buren Elementary School property. ASES staff begin morning setup in the Guadalupe Auditorium at 7:30 am and are on-site until 6:00 pm.

The proposed rent for the use of the City Auditorium for the ASES program from October 5, 2020 through December 31, 2020 is $9,300.00 (plus a refundable one-time cleaning deposit of $500), calculated as follows:

Rental Facility Expense		
Reservation Lock-In Fees:	62 days x $100.00	= $6,200.00
Non-Profit Flat Fee rate:	62 days x $ 50.00	= $3,100.00
Total Non-Refundable Fees		= $9,300.00

Refundable Fees- One-Time Cleaning Deposit = $ 500.00

The proposed lease agreement states that no rental fee is required up-front. The City will attempt to recoup monies through the FEMA program for its costs incurred in providing the Auditorium for this purpose, and it will apply whatever amounts it might obtain as a credit to the ASES Program and Boys & Girls Club of Mid Central Coast. The Boys & Girls Club are responsible for any Non-Refundable and qualifying for Refundable Fees in excess of the amounts, if any, the City is able to obtain through FEMA.

ATTACHMENTS:

1. Final Lease Agreement
2. Re-Opening Boys & Girls Clubs of Mid Central Coast
3. Guadalupe Union School District Letter
4. Resolution No. 2020-82

Attachment 1.

LEASE BETWEEN
THE CITY OF GUADALUPE AND
THE BOYS & GIRLS CLUB OF MID CENTRAL COAST

RECITALS

WHEREAS, the Boys & Girls Clubs of Mid Central Coast is a private non-profit youth service agency organized pursuant to the laws of the State of California; and

WHEREAS, the Boys & Girls Clubs of Mid Central Coast wishes to provide enrichment and recreation programs in connection with the After School Education and Safety (ASES) program under its and the Guadalupe Union School District's operation and control; and

WHEREAS, the Boys & Girls Clubs of Mid Central Coast has requested that the City of Guadalupe allow it to use the City Auditorium for this purpose because the Guadalupe Union School District lacks the physical space to operate this program.

NOW, THEREFORE, the parties hereby agree as follows:

1. PARTIES AND PREMISES

CITY OF GUADALUPE, a municipal corporation (hereinafter referred to as "Lessor" or "City") hereby leases to BOYS & GIRLS CLUB OF MID CENTRAL COAST, INC., a California nonprofit public benefit corporation (hereinafter referred to as "Lessee") those certain premises known as the "City Auditorium" so that Lessee may provide enrichment and recreation programs in connection with the ASES program.

2. TERM OF LEASE

The term of this Lease shall commence on October 5, 2020 and will end on December 31, 2020. The Lessee will return all space, facilities, and school equipment to the school in the same condition in which the Lessee found them; reasonable wear and tear expected. If the Lessee fails to return the space, facilities, and school equipment in such condition as determined by the City, the Lessee may be responsible for extra custodial costs or other costs that may be involved in restoring the space, facilities, and city equipment to that condition.

3. TERMINATION

This Lease may be terminated without further liability by either party upon three (3) days' written notice upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within four (4) days of receipt of written notice of default.

4. RENT

Rent for the use of the City Auditorium during the term of this Lease will be $9,300.00 (plus a one-time refundable cleaning deposit of $500) calculated as follows:

Rental Facility Expense

Reservation Lock-In Fees:	62 days x $100.00	= $6,200.00
Non-Profit Flat Fee rate:	62 days x $ 50.00	= $3,100.00
Total Non-Refundable Fees		= $9,300.00

Refundable Fees- One-Time Cleaning Deposit = $ 500.00

No rent is to be charged up front, prior to the commencement of this Lease. The City will apply to FEMA to recover its costs associated with providing the Auditorium for the ASES program and Lessee shall be required to pay the difference between the total rent due less whatever funds the City is able to recover from FEMA.

5. USE

Lessee shall use the Leased Premises solely and exclusively for Lessee's operation of enrichment and recreation programs in connection with the ASES program and for no other purpose without the prior written consent of Lessor. Because the ASES program involves supervision of minor children, Lessee has represented to Lessor the following concerning its operation of the ASES program at the City Auditorium:

In connection with the ASES program, Lessee shall provide services and activities to include homework and academic assistance; art programs; character and leadership development; drama instruction; organized sports; health and life skills; and community service projects.

Lessee shall hire and supervise staff members as determined necessary to provide the services described above. Staff members must obtain a criminal background clearance before commencing work. Any such criminal background clearance obtained by the contractor satisfies this requirement. Staff members must wear clothing that clearly identify them as Boys & Girls Club staff.

Lessee shall meet the COVID-19 training requirements by successfully passing the HSA (Healthy School Act) Basic Pest Management in the school and Child Care Settings and COVID School-based Guidelines. Lessee's staff shall only use approved and provided disinfection chemicals for the location. Lessee will provide gloves to be worn for activities requiring them (using disinfection wipes). Lessee's staff shall provide their own general use masks. Personal chemicals for personal use only are permitted.

All rules and regulations of the Santa Barbara County Health Department Board of Education and all federal, State and local laws, ordinances, and regulations will be observed strictly by Lessee and all those using the City Auditorium.

Lessee shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code Section 45125.1. Lessee's responsibility shall extend to all Program staff and subcontractors, regardless of whether such individuals are paid or unpaid, and/or acting as independent contractors of the Lessee. Verification of compliance with this section shall be provided in

writing to the City prior to each individual's commencement of employment or participation in the Program and prior to permitting contact with students participating in the Program.

Lessee assures Lessor that all staff members, including volunteers, are familiar with and agree to adhere to child abuse and/or missing children reporting obligations and procedures under California law, including but not limited to, California Education Code S 49370 and California Penal Code Section 11166, *et seq*. Lessee agrees to provide training to all its employees regarding mandated reporting of child abuse and missing children. Lessee agrees that all staff members will abide by such laws in a timely manner.

Lessee shall submit within twenty-four (24) hours, an accident or incident report to the City when it becomes aware of circumstances including, but not limited to: allegations of molestation, child abuse, missing children under Lessee's supervision.

6. COORDINATION WITH CITY STAFF

Lessee shall communicate with the City regarding any issues or conflicts that might arise concerning the use of space, equipment, student safety and security, or other items covered by this Lease. City shall communicate with the Lessee regarding any issues or conflicts that might arise concerning the use of space, equipment, student safety and security, or other items covered by this Lease.

7. CUSTODIAL SERVICES AND MAINTENANCE

Lessee will provide custodial services limited to minimal cleaning. Lessor will provide maintenance for heating, ventilating, and other mechanical or electrical as required.

8. NO JOINT VENTURE

This Agreement is between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

9. INSURANCE AND INDEMNITY

Lessee shall indemnify, defend, and hold harmless City against and from any and all claims or suits for death, damages, or injury arising from Lessee's use of the City Auditorium, and shall further indemnify, defend, and hold harmless City against and from all claims or suits arising from any breach or default of any performance of any obligation of Lessee hereunder, and against and from all costs, attorney's fees, expenses, and liabilities, related to any claim, action, or proceeding brought within the scope of this indemnification, except where such claims or suits arise out of the willful misconduct or negligent acts or omissions of City in connection with the use of the City Auditorium.

Lessee will provide proof of insurance with levels of acceptable coverage as determined by the City. During the entire term of this agreement and any extension or modification thereof, Lessee shall keep in effect a policy or policies of liability insurance. The City can request continued proof of insurance through the duration of this contract. Specifically, Lessee will provide workman's compensation coverage for all of its employees. Lessee represents it has, and will maintain

during the term of this Lease, a combined, single limit liability insurance policy in the amount of not less than One Million Dollars ($1,000,000.00) and, if transportation is provided as part of the Program, a vehicle insurance policy, with City, its employees and agents, named as additional insured under such policies, at Lessee's expense, with respect to the hold harmless provisions of this section.

10. WAIVER OF DEFAULT

The failure of any party to enforce against another a provision of this Lease shall not constitute a waiver of that party's right to enforce such provision at a later time, and shall not serve to vary the terms of this Lease.

11. NOTICES

All notices relative to this Lease shall be given in writing and shall be sent by certified or registered mail and shall be effective upon deposit in the United States mail, addressed as follows:

LESSEE:
Roberto Rodriguez
Chief Operations Officer
Boys & Girls Clubs of Mid Central Coast
901 N. Railroad Ave.
Santa Maria, CA 93458

LESSOR
Todd Bodem
City Administrator
City of Guadalupe
918 Obispo St.
Guadalupe, CA 93434

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the date and year hereinafter written.

Executed on October __, 2020, at Guadalupe, California.

LESSOR:

CITY OF GUADALUPE

By: _____
Todd Bodem, City Administrator

LESSEE:

BOY'S & GIRLS CLUB OF MID CENTRAL COAST

By: _____
Roberto Rodriguez, Chief Operations Officer

Re-opening the Boys & Girls Club of Mid Central Coast

BOYS & GIRLS CLUBS
OF MID CENTRAL COAST

Table of Contents

Phase 1: Opening 2 sites in the summer of 2020.

Phase 1: Opening 1 clubsite for fall programming

Communications to staff:

- Opening Date: September 14, 2020

Location of Clubs:

Mary Buren / City Auditorium

1050 Peralta St. Guadalupe Ca, 93434

Evans Park Club

Return Date:

Selected site-specific staff are planned to begin training on June 16, 2020. Staff will begin training regarding implementation of new COVID-19 procedures for operating club programs and services.

Operation Dates:

20-week program

Sept 1, 2020 - August 7, 2020

Monday – Friday 7:30 a.m. – 5:30 p.m.

Staffing Structure/ Membership Ratio:

Mary Buren Hours of Operations: Monday – Friday 7:30 am – 5:30 pm

- **Youth** (grades 1st - 8th): **75 members** (8 groups)/ 20 staff total

    - Site Directors
        - Monday – Friday (2) Am & PM Site Director
            - 9:00 a.m. - 5:30 p.m. (1 hr. lunch)
                - Total Weekly Hours: 40
    - Youth Development Staff 18 total (2 per social pod working opposite shifts)
        - Monday- Friday (morning & afternoon shifts)
            - 7:15 a.m. - 12:45 p.m. = 5.5 hours
            - 12:30 p.m. - 5:30 p.m. = 5 hours
                - Total Weekly Hours: 272.5

Employees:

- HR Director to provide "return to work packets" for furloughed employees
- If a staff member's temperature is higher than 99.9 or if they are exhibiting any symptoms, they need to stay home and inform their immediate supervisor.

- Upon entering the facility:
    - Employees will have their temperature checked twice. Once upon entry and again at the mid-point of their shifts. Anyone with fever of 99.9 degrees or higher may not enter the facility or must leave the facility upon unacceptable temperature reading.
    - Each employee will acknowledge before starting their shift that they are symptom free and to the best of their knowledge have not been exposed to anyone testing positive or showing symptoms for COVID-19.
        - See *"What to do if someone tests positive or has been exposed to COVID-19"* section for more details.
- Site Director institute a method to safely store staff temperature readings. This data cannot be made a part of the employee's personnel file.
- Staff will have set schedules at specific sites that will not change during 2020 programming.
- Uniform
    - Staff will wear BGCMCC shirt, mask, mini sanitizer and lanyard at all times
    - Mask provided by BGCMCC unless you want to bring one from home that meets requirements
    - Wear freshly laundered clothing each day.
- Handwashing
    - Employees must follow rigorous handwashing procedures:
        - Upon arrival for the day, after breaks and after each program rotation. After contact with bodily fluids, cleaning up spills or touching potentially contaminated objects/surfaces.
- Daily Staff Communication
    - Site Directors will host a 5-10 minute daily 6 ft. apart huddle at the end of shifts with staff.
    - Leadership team will host a weekly call to discuss what went well, what needs improvement, program plans, etc.
    - Site Directors will send a daily written update to their Area Director at the end of each day.

Parent Communication:

- Clubs will continue to use phone calls, emails & Trax Talks
- We will utilize a communication worksheet for families to track correspondence by family groups.
    - Information with current COVID-19 policies and procedures will be outlined and distributed with each completed membership application.
- Waiver - For Parents/Guardians: Assumption of the Risk and Waiver of Liability Relating to Coronavirus/COVID-19 Operations

Membership:

COVID -19 PREVENTION POLICIES HAVE FORCED A NON-TYPICAL FALL PROGRAM

- Clubs will operate at a 1:14 staff/child ratio.
- Members should be picked up no later than 5:30 p.m.
- Penalty: Club members must attend a minimum of 3 days per week. If not, their spot will be given to another club member on the waitlist. Parents/Guardians will be notified in advance.
    - Members must wear a mask throughout the day
    - We will do everything possible to keep siblings in the same social pod, but it may not be possible due to demand and scheduled program rotations.

Applications:

- **To be handled by GUSD**

Community Communication:

- **To be approved by CEO before distribution.**
- Social media
- Reminders via email
- External Communications Example:
    - Boys & Girls Clubs of Mid Central Coast plans to open for fall 2020 Mary Buren Clubsite. The health, safety and wellness of our club members and employees is our number one priority. Therefore, we are limiting the number of club members accepted for programming at this time. Our Virtual Club Experience remains free and open to the general public. The virtual club can be found on our Facebook group page @bgccentralcoast and requires acceptance.

Club Member Training:

- Online trainings will be available prior to re-opening date.
- Member orientation at start of summer programming.

Staff Training:

- Staff Training

  Youth Development Professionals with receive professional development/training before the reopening of a Unit to train staff on the following:

  1. Operating Procedures

2. Opportunities and Expectations
3. Cleaning, Disinfecting and Expectations
4. Re-Opening Plan

- via Zoom
  1. COVID-19 Operating Procedure
  2. COVID-19 Opportunities and Expectations

- via Zoom
  1. COVID-19 Cleaning, Disinfecting and Safety
  2. Go over Re-Opening Plan
  3. Review CDC Guidelines
- In person
  - Who: ALL working staff
  - Review Re-Opening Plan
  - Community Buildings

Facility Prep:

- Each room will have seating areas/designated program space
- If space is available, remove excess furniture into storage to allow for appropriate social distancing.
  - If there is not storage available, then SAFELY move furnishings away from areas needed for programming. Tape off with caution tape.
  - Clean bins used to store books, toys, pens, markers, etc.
  - Red bins are for potentially contaminated items (i.e. pool sticks, ping pong paddles, etc.)
- Declutter:
  - Remove as many small items as possible that are not used for daily programming (i.e. board games, books, etc.).
  - If unable to remove to a separate area, then cover items to prevent use.
  - 6 steps: Sort, Sanitize, Set and Order, Standardize, Sustain, Safety
- Lock unused spaces to prevent access.
- Water fountains will not be available for youth. Each room will have water and disposable cups available for members as needed.

Arrival:

- Outside check-in area for members
- Designated staff will be located outside of the building.
  - Parent sign-in and staff available for questions.
- Youth temperature must be taken before entering the building.
  - Track in daily temperature log book, which will be safely stored by the Site Director.
  - Fever of 99.9 degrees or higher may not enter the facility.
    - The individual may not return until they are fever free for 72 hours, without the use of fever-reducing medication. If the individual has had contact with someone confirmed or probable to have COVID-19, he or she must complete isolation or quarantine procedures in coordination with the local health department prior to returning to the program (usually two weeks).
    - A doctor's note may also be needed to allow re-entry.

- Verbal Questionnaire: Parents are required to answer these questions daily prior to youth members entering the building:
    - Has your child had a fever, cough, sore throat, shortness of breath, vomiting, diarrhea, or a rash in the last 5 days?
    - Has your child been exposed to someone who has been diagnosed with COVID-19?
    - Have you or your child traveled internationally in the last two weeks?
        - If "yes" to any of these questions' child will not be allowed to enter the Club until confirmation of a 14-day quarantine period.
- Staff will inspect each member for signs that they may be sick, red cheeks, coughing, sneezing, rash etc. If there are any signs of illness, they will not be allowed to enter the building.
- Parents need to sign-in their child/children for the day.
- Staggered drop-offs will be scheduled and carried out at each clubsite
- Parents will not be allowed in the building or near the club member screening area.
- Parents must stand six feet apart from staff and other parents
- All parents must wear a mask when checking-in their child/children
- Parents must stay onsite and get the "ok" before their child is allowed to enter the building
- Designated staff will give out a new mask to each child daily. Members may also provide their own masks.
- Every club member will be given hand sanitizer upon check-in.
- After hand sanitizing, club members will be escorted to their assigned social pod.
- Members need to be 6ft. apart outside/hallway/waiting areas - designated space will be provided.
- Members will be given their own program supplies. No sharing will be allowed. Supplies will be cleaned and stored away for the next day.
- Members are not permitted to bring outside belongings into the club.
- Exceptions - **Clearly Labeled** packed lunch and **Clearly labeled** beverages.

Departure:

- Outside Pickup
    - Designated Staff will be outside during pickup time 4:30 p.m. - 6:00 p.m.
        - Front desk staff will check to make sure the person picking up is permitted to pickup.
- Parents will call upon arrival and stay outside to wait for their child to be brought to them.
- Parents must show ID and be on the member's application as approved for pickup.
- Members will be called up front when their parent arrives.
- Members will be required to sanitize their hands prior to departure.
- Parents are not allowed in the building. If they need to discuss something it may be done over the phone or a video meeting may be scheduled with the Unit Director.
- Parents must wear a mask when picking up or dropping off their child/children. This will be discussed in the orientation video available before the start date of programming.
- All parent forms and information will be available via our website and/or social media.

Transitioning throughout the building:

- Members must stay with their social pod throughout the day.
- Schedules will be completed in advance (consistent).
- Members may be cued to move throughout the building via walkie talkies and/or PA system.

- Each group will follow a pre-defined program schedule.
- Each group will have designated space throughout the day.
- Members will not be permitted outside of designated rooms.

Rotation

- Members must wash or sanitize hands after each rotation.
- Rotations will be scheduled in a manner that allows for cleaning and disinfecting each occupied area after use.
- Outdoor spaces will be used for cleaning and disinfecting transitions before the next group of youth are allowed to rotate in.
- Rotations should be done in a way that youth do not pass within six feet of each other.

Restroom Breaks:

- Restroom breaks will be scheduled.
- Cleaning crews will sanitize all touchable surfaces - sinks/doorknobs/faucets/flush handles/etc.
- Members and staff are asked to only use restrooms dedicated for their use.
- Anyone who uses the restrooms must wash their hands for at least 20 seconds with soap and water prior to exiting the restroom.
- Staff must communicate over Walkie Talkies when sending a member to the restroom during programming. Staff will ensure that not more than one member is in the restroom at a given time and are not traveling to other areas when exiting.
- Cleaning crews must clean restrooms between groups.

Curriculum:

- Distance Learning Assistance
- All sites will schedule programming sessions from the following Boys & Girls Club of America program curriculum:
    - Summer Brain Gain
    - Triple Play
    - The Arts
    - DIY STEM
    - Keystone & Torch Clubs

Meals:

- Breakfast, lunch and an afternoon snack will be served in designated spaces one group at a time.
- Tables must be wiped down prior to eating and afterwards.
- Members must sanitize hands before eating.
- Members may remove their masks to eat and then put back on after eating.
    - Staff will provide a daily demonstration for all members.
- All rooms must have a trash can accessible.
- Hand sanitizer must be available at all times in all rooms.
- Members may bring sack lunches and beverages.
    - Make sure sack lunches and beverages are **labeled** with child's name.
    - These items will be placed in child's personal cubby.
    - Members may not share food or beverages.

Cleaning Procedures:

- Cleaning Supplies
  - Each room will have designated cleaning supplies as needed.
- Cleaning Crew
  - In charge of disinfecting ALL surfaces in program spaces throughout the day.
- Supplies
  - Track usage at each clubsite and place orders for additional supplies as needed.
  - GUIDANCE FOR CLEANING AND DISINFECTING (See CDC websites below for detailed cleaning information.)

https://www.cdc.gov/coronavirus/2019-ncov/community/pdf/Reopening_America_Guidance.pdf

https://www.cdc.gov/coronavirus/2019-ncov/community/pdf/ReOpening_America_Cleaning_Disinfection_Decision_Tool.pdf

  - Entrance doors must be cleaned before and after arrival time.
  - Tables, doorknobs, light switches, countertops, flush handles, desks, club phones, keyboards, toilet seats, faucets, sinks, touch screens, etc.
  - Restrooms will be checked and cleaned every hour.
- Quality Cleaning Services will perform a deep cleaning service once a week.
- Cleaning crew will be responsible for receiving packages and disinfecting them.

Signage:

  - Direction arrows
  - Floor signs
  - Signage in rooms: "In Use" "Ready for Use" "Ready to clean" "Not available"
  - Keep your distance - Foot prints

Signs for general use:

  - COVID- 19 information sheets - provided by Health Department/CDC displayed on Club's A-frame outdoors
  - Protect, Respect, Wear Your Mask
  - Hand Washing Signage in all restrooms

Incident Reporting:

- We will not be using paper incident reports
- Emails to parents/guardians
  - BGCMCC will also be using Trax Talk to contact parents and guardians.
- Behavior
  - Members are not permitted in the office to "cool down", they must remain in their designated program spaces the entire time.
  - Staff members will be trained in "cool-off techniques" to use in small groups.
  - Children must be able to abide by rules at the Club for the safety of all youth members at the Club. Members unable to abide by rules may need to be sent home.

Field Trips/ Travel:

- No field trips will be permitted.
- No youth members will be permitted in any club owned vehicles.

Visitors:

- Visitors will not be allowed.

Drills:

- Before practicing drills, the Unit Director will inform each staff member the location of exit points and meeting points.

Designated Sick Area:

- If a child begins to show symptoms of illness they will be isolated to a designated "Sick Area".
- Since there is no way for us to know if the member or staff person has COVID-19, we must do the following:
    - Close any area that the person has been in until it can be thoroughly sanitized prior to use.
    - Any personal items in the affected rooms will not be released until sanitized.
- Prepare "Sick Area" by removing as much as you can from the area. Clearly mark the zone as Private: Do Not Enter!
- Any items in the "Sick Area" will be sanitized prior to use and after use.
- Parents will be contacted immediately for pickup. Parent/Emergency Contact must arrive within 60 minutes of being contacted.
    - If member is sent home sick, we may request a doctor's note to return to programming.
- Members must be visible, however avoid 1:1 contact.
- The area(s) used or visited by the ill person should be closed until sanitized. Open outside doors and windows as much as possible ensuring that doing so does not pose a safety risk to children using the facility (i.e. make sure that children are not able to enter the closed off area through any windows or doors) and use ventilating fans to increase air circulation in the area.
    - Once the area has been appropriately sanitized, it can be opened for use.
    - Staff members without close contact with those suspected of having COVID-19 can return to work immediately after sanitization is completed.

What to Do if Someone Tests Positive or is Exposed to COVID-19:

- Immediately send staff members showing symptoms home. Separate any youth member who becomes sick at the club. Advise employees to contact their doctor or local health department as soon as they show symptoms.
- Ensure that staff notify their supervisors if they are showing symptoms of COVID-19 and/or they test positive. Supervisors should require proof of a positive test result or note from a healthcare provider to confirm COVID-19 illness.
- Notify your local public health department of the positive case. The health department will provide guidance on what actions need to be taken.
- Notify the Director of People & Culture, Mrs. Meghan Harris at meghan@bgccentralcoast.org.
- In consultation with the public health department and our Director of People & Culture, prepare the appropriate communications, including:

- All volunteers and employees who test positive will be quarantined for 14 days prior to returning to the facility. All remaining volunteers and employees will be advised to self-monitor their symptoms or self-quarantine, depending on the guidance of the public health department.
- Inform parents of their children's possible exposure to COVID-19 if the volunteer or staff member was in contact with youth members, but maintain the confidentiality of the individual who tested positive. Parents/Guardians will be advised to monitor their child's symptoms or self-quarantine, depending on the guidance of the public health department.
- Use pre-prepared media statement and parent letter.

  Media statement: Safety is the number one priority of Boys & Girls Clubs of Mid Central Coast and we are doing everything possible to keep our members, staff, and volunteers protected from COVID-19. On *(Date)*, we learned that a Club *(staff/volunteer/member)* tested positive for COVID-19. There is a possibility that *(staff/volunteers/members)* were exposed to this individual in the two weeks prior to the date of diagnosis. We are collaborating with the appropriate public health officials and adhering to Centers for Disease Control and Prevention (CDC) recommendations to privately inform anyone determined to have been in close contact with the infected individual. We are also in ongoing communications with this individual, who is following strict medical guidelines and will remain in quarantine as recommended. If you are having symptoms that align with COVID-19, please contact your healthcare provider or if you do not have a healthcare provider, please contact your local public health department and indicate that you may have been exposed.

  - **Parent Letter:** Dear Parent: The safety and protection of your children is our number one priority at Boys & Girls Clubs of Mid Central Coast. We are doing everything possible to keep our Club members, staff and volunteers protected from COVID-19. On *(Date)*, we learned that a Club *(staff/volunteer/member)* tested positive for COVID-19. There is a possibility that *(staff/volunteers/members)* were exposed to this individual in the two weeks prior to the date of diagnosis. We are collaborating with the appropriate public health officials and adhering to Centers for Disease Control and Prevention (CDC) recommendations to privately inform anyone determined to have been in close contact. We are also in ongoing communications with this individual, who is following strict medical guidelines and will remain in quarantine as recommended. If you or your child are having symptoms that align with COVID-19, please contact your healthcare provider or if you do not have a healthcare provider, please contact your local public health department and indicate that you may have been exposed. We continue to work with local public health officials and are taking all precautionary measures regarding deep cleaning and sanitizing of Club facilities to ensure the safety of members, staff and volunteers. As always, we remain committed to our youth members, their families and our community. In the meantime, we are advising all our Club staff, volunteers, and youth to continue to take precautions as recommended by the CDC. We will continue to update you as we learn more.

- See the CDC's Guidance for Businesses and Employers for more information.
  - https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html
- Close any areas used by the sick person for deep cleaning and disinfection.
- Refer to CDC guidance on cleaning and disinfecting, including:
  - https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html

        - https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html
        - https://www.cdc.gov/coronavirus/2019-ncov/community/pdf/ReOpening_America_Cleaning_Disinfection_Decision_Tool.pdf
        - https://www.cdc.gov/coronavirus/2019-ncov/community/pdf/Reopening_America_Guidance.pdf
        - https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html#CleanDisinfect
    - Open outside doors and windows if possible.
    - Clean and disinfect all areas used by the sick person, such as offices, bathrooms, common areas, and shared electronic equipment.
    - Work in collaboration with the public health department to determine when to re-open closed areas and when staff in quarantine may be allowed to return to work.
    - After re-opening, continue regular cleaning, disinfection, social distancing, and hygiene practices.
- Exposure to a Positive Test to COVID-19
    - Employees and volunteers must notify the Unit Director if they have been exposed to COVID-19 and must self-quarantine at home for 14 days.
    - Returning to the Club Following Quarantine: Employees, Volunteers or Club Members with confirmed or presumed COVID-19 must meet these conditions prior to returning to the Club. Persons with confirmed COVID-19 cases may return to work after 14 days if fever is resolved without the use of fever reducing medication AND respiratory symptoms (cough, shortness of breath, rash) have been resolved. They also have to produce a negative COVID-19 test result.

Emergency Closure:

- Use statement if someone within the organization (member, volunteer or staff) tests positive or we are forced to close via State or local government orders.
- Release statement, to be used by the CEO via social media:
    - Safety is our number one priority at Boys & Girls Clubs of Mid Central Coast and we are doing everything possible to keep our members, volunteers, and staff protected from COVID-19. We are forced to temporarily close (club location) at this time. We will continue to serve members through our Virtual Club Experience (VCE). Please visit our Facebook Group page @bgccentralcoast for more details and daily access. As always, we remain committed to our Club kids, their families and our community. We continue to work with local public health officials and are taking all precautionary measures regarding deep cleaning and sanitizing of Club facilities to ensure the safety of members, staff and volunteers. In the meantime, we are advising all Club staff, volunteers and youth members to continue to take precautions as recommended by the CDC. Please follow our social media pages for up-to-date information.

BOYS & GIRLS CLUBS
OF MID CENTRAL COAST

FOR PARENTS/GUARDIANS

Assumption of Risk and Waiver of Liability Relating to Coronavirus/COVID-19

The novel coronavirus, COVID-19, has been declared a worldwide pandemic by the World Health Organization. COVID-19 is extremely contagious and is believed to spread mainly from person-to-person contact. As a result, federal, state, and local governments and federal and state health agencies recommend social distancing and have, in many locations, prohibited the congregation of groups of people.

Boys & Girls Clubs of Mid Central Coast has put in place preventative measures to reduce the spread of COVID-19. However, the organization cannot guarantee that you and/or your child(ren) will not become infected with COVID-19. Further, attending the Club could increase your risk and your child(ren)'s risk of contracting COVID-19.

By signing this agreement, I acknowledge the contagious nature of COVID-19 and voluntarily assume the risk that my child(ren) and anyone in our household may be exposed to or infected by COVID-19 by attending the Club and that such exposure or infection may result in personal injury, illness, permanent disability, and/or death. I understand that the risk of becoming exposed to or infected by COVID-19 at the Club may result from the actions, omissions, or negligence of myself and/or others, including, but not limited to, Club employees, volunteers, program participants and their families.

I voluntarily agree to assume all of the foregoing risks and accept sole responsibility for any injury to my child(ren) or anyone in my household (including, but not limited to, personal injury, disability, and death), illness, damage, loss, claim, liability, or expense, of any kind, that I or my child(ren) may experience or incur in connection with my child(ren)'s attendance at the Club or participation in Club programming ("Claims"). On my behalf, and on behalf of my children, I hereby release, covenant not to sue, discharge, and hold harmless the Club, its employees, agents, board of directors, officers and representatives, of and from the Claims, including all liabilities, claims, actions, damages, costs or expenses of any kind arising out of or relating thereto. I understand and agree that this release includes any Claims based on the actions, omissions, or negligence of the Club, its employees, agents, and representatives, whether a COVID-19 infection occurs before, during, or after participation in any Club program.

Signature: _____

Print: _____ **Date:** _____

Name(s) of Youth Members: _____

Attachment 3.

Guadalupe Union School District

P.O. Box 788, Guadalupe, CA 93434-0788 • 805-343-2114 • Fax: 805-343-6155

Emilio M. Handall, Ed.D.
District Superintendent

September 21, 2020

Dear Anna Libbon,

This letter grants the Boys & Girls Clubs of Mid Central Coast permission to run programming on the Guadalupe Union School District campuses. This programing is to follow all of the California Department of Public Health guidelines and meet all Santa Barbara County Public Health requirements.

Thanks to the Boys & Girls Clubs of Mid Central Coast for providing this much needed service and for the positive impact on the youth of our community.

Sincerely,

Dr. Emilio M. Handall
Superintendent

Attachment 4

RESOLUTION NO. 2020-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY GUADALUPE ADOPTING A LEASE AGREEMENT WITH BOYS & GIRLS CLUBS OF MID CENTRAL COAST

WHEREAS, the Boys & Girls Clubs of Mid Central Coast is a private non-profit youth service agency organized pursuant to the laws of the State of California; and

WHEREAS, the Boys & Girls Clubs of Mid Central Coast wishes to provide enrichment and recreation programs in connection with the After School Education and Safety (ASES) program under its and the Guadalupe Union School District's operation and control; and

WHEREAS, the Boys & Girls Clubs of Mid Central Coast has requested that the City of Guadalupe allow it to use the City Auditorium for this purpose because the Guadalupe Union School District lacks the physical space to operate this program.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Guadalupe that the lease agreement attached to the staff report for this item is hereby approved by the City Council.

PASSED, APPROVED AND ADOPTED at a regular meeting on the 13th day of October 2020 by the following vote:

MOTION:

AYES:
NOES:
ABSENT:
ABSTAIN:

I, Joice Earleen Raguz, City Clerk of the City of Guadalupe DO HEREBY CERTIFY that the foregoing Resolution, being **Resolution No. 2020-82**, has been duly signed by the Mayor and attested by the City Clerk, all at a regular meeting of the City Council, held October 13, 2020 , and that same was approved and adopted.

ATTEST:

_____
Joice Earleen Raguz, City Clerk

_____
Ariston Julian, Mayor

APPROVED AS TO FORM:

_____
Philip Sinco, City Attorney

10a.

PLANNING DEPARTMENT

City of Guadalupe
918 Obispo Street
P.O. Box 908
Guadalupe, CA 93434
Tel (805) 356-3903

To: Mr. Mayor and City Councilmembers
From: Larry Appel, Contract Planning Director
Date: October 1, 2020
Re: **Monthly Planning Report Covering September 2020**

MINISTERIAL PROJECTS

Zoning Clearances Approved	8
Zoning Clearances Denied	0
ADUs Approved	0
ADUs Denied	0
Zoning Clearances Appealed	0
Business Licenses Approved	1
Business Licenses Denied	1

DISCRETIONARY PROJECTS

The following projects are in for Planning Department review and have been worked on during August:

- DJ Farms South – tract map being processed, issues with RxR easements
- Pasadera GP/SP amendment being processed
- Pasadera Lot 9 early grading review and approval
- Sign Ordinance – meet with Guadalupe Merchant's Assoc. in future
- General Plan RFP contact awarded to EMC Planning Group
- General Plan and Rezone of various sites within the City - ongoing
- Submitted LEAP grant after Council Resolution June 23rd
- REAP grant for up to $104,872, going to Council on October 13th

If any Councilmember is interested in a particular project or would like to know its status, please let me know and I would be happy to provide the information.

Ministerial Permit Report– September 2020

(Reported 10-01-20)

Zoning Clearances Approvals

Pasadera Lot 9 Grading	2020-083-ZC	West Main and Obispo Street
Siordia tower/entry	2020-085-ZC	4481 Amber St.
Pasadera Lot 1 Bridge Grading	2020-086-ZC	Obispo Street and SMVRR
Zarzuela Pergola	2020-087-ZC	4397 Hacienda Dr.
Rosas Paving	2020-088-ZC	336 Fuente Dr.
Thole Paving	2020-089-ZC	4452 La Joya Dr.
Cantu Paving	2020-090-ZC	4737 Wong St.
T-Mobile Antennas	2020-091-ZC	4550 10th St.

Zoning Clearances Denied

Business License Approvals

C&R Catering	4785 Garrett Ln.

Business License Denials

Beachside Auto Sales	4922 Surfbird Ln.

Guadalupe City Planning Department
Planning Processing Summary for September 2020
(10-01-2020 update)

Case No.	Name	Submittal Date	Comp. Date	Status	OK for Bldg. Permit Issuance
2017-130-TPM $$	DJ Farms South Master TPM	10-12-17	Complete-09-27-19	COMPLETE letter sent on 09-27-19. **Waiting for resolution of RxR easement for bridge access.**	NO
2019-063-DR 2019-064-CUP $$	Housing Authority of SB Co	06/12/19	COMP letter sent 10-15-19	Occupancy Clearance issued in August. New residents have moved in.	YES
2019-067-VTTM $$	Pasadera Lot 9			Grading Plan issued prior to recordation. Applicant is responding to County Surveyor for tract recordation comments.	NO
2018-135-GPZ No$	General Plan amendment and Rezone of several areas of the City	08/29/18	N/A	Letters to owners were sent out in September. Coordinating efforts with GP Update.	N/A
N/A	General Plan Update	2019 City Council authorization	N/A	Contract awarded to EMC Planning Group by Council on 8-25-20. Kick off meeting set for October 22nd.	N/A
2018-133-OA No$	Round 3 Zoning Ordinance Updates	8/12/19	N/A	Preparing new zoning ordinance Chapter 55 for Home Occupations and Cottage Food Industries (ongoing)	N/A
2018 -133 OA No$	Sign Ordinance	2/24/20	N/A	Conducted Workshop on 8-25-20. Staff to meet with new Guadalupe Merchant's Association.	N/A

No$ = unreimbursed planning work
$ = projects where a fixed fee has been paid
$$ = projects where a variable fee / deposit is made and the applicant is billed for time beyond the initial deposit
10/01/2020

CITY OF GUADALUPE
BUILDING DEPARTMENT

STATUS REPORT

MONTH: September, 2020

	This Month	Last Month	Year to Date	Last Year
Visitors	8	5	118	343
Inspections	344	656	5,058	5,196
Building Permits Issued	14	47	192	212
Certificate of Occupancy	20	48	125	60

VISITORS: Permits, Planning application submittals, submitted plan updates, general information

9/1/2020	AD 9	Scheduling and records update.	x		David, 6.0 hrs,
9/1/2020	SC 7	Lot 87, Shower pan.	x		65 inspections, fog all day
9/1/2020	FR 7	Lot 93, Fire sprinklers hydro test ok.	x		9/1/2020
9/1/2020	FR 4	Lot 93, Rough plumbing.	x		
9/1/2020	FR 8	Lot 93, DWV test.	x		
9/1/2020	FR 1	Lot 93, Etag issued, email PG+E	x		
9/1/2020	FR 4	Lot 94, Rough plumbing.	x		
9/1/2020	FR 8	Lot 94, DWV test.	x		
9/1/2020	FR 1	Lot 94, Etag issued, email PG+E	x		
9/1/2020	FR 7	Lot 100, Fire sprinklers hydro test ok.	x		
9/1/2020	FR 4	Lot 100, Rough plumbing.	x		
9/1/2020	FR 8	Lot 100, DWV test.	x		
9/1/2020	FR 1	Lot 100, Etag issued, email PG+E	x		
9/1/2020	UN 8	Lot 100, Fire sprinklers water line, 1"	x		
9/1/2020	UN 8	Lot 100, Water line house, 1"	x		
9/1/2020	FR 7	Lot 99, Fire sprinklers hydro test ok.	x		
9/1/2020	FR 4	Lot 99, Rough plumbing.	x		
9/1/2020	FR 8	Lot 99, DWV test.	x		
9/1/2020	FR 1	Lot 99, Etag issued, email PG+E	x		
9/1/2020	UN 8	Lot 99, Fire sprinklers water line, 1"	x		
9/1/2020	UN 8	Lot 99, Water line house, 1"	x		
9/1/2020	FR 4	Lot 95, Rough plumbing.	x		
9/1/2020	FR 8	Lot 95, DWV test.	x		
9/1/2020	FR 6	Lot 95, Gas piping.	x		
9/1/2020	FR 10	Lot 95, Gas pressure.	x		
9/1/2020	FR 4	Lot 98, Rough plumbing.	x		
9/1/2020	FR 8	Lot 98, DWV test.	x		
9/1/2020	FR 6	Lot 98, Gas piping.	x		
9/1/2020	FR 10	Lot 98, Gas pressure.	x		
9/1/2020	UN 8	Lot 98, Fire sprinklers water line, 1"	x		
9/1/2020	UN 8	Lot 98, Water line house, 1"	x		
9/1/2020	UN 8	Lot 101, Fire sprinklers water line, 1"	x		
9/1/2020	UN 8	Lot 101, Water line house, 1"	x		
9/1/2020	FR 6	Lot 97, Gas piping.	x		
9/1/2020	FR 10	Lot 97, Gas pressure.	x		
9/1/2020	FR 4	Lot 97, Rough plumbing.	x		
9/1/2020	FR 8	Lot 97, DWV test.	x		
9/1/2020	UN 8	Lot 97, Fire sprinklers water line, 1"	x		
9/1/2020	UN 8	Lot 97, Water line house, 1"	x		
9/1/2020	FR 6	Lot 96, Gas piping.	x		
9/1/2020	FR 10	Lot 96, Gas pressure.	x		
9/1/2020	UN 8	Lot 96, Fire sprinklers water line, 1"	x		
9/1/2020	UN 8	Lot 96, Water line house, 1"	x		

9/1/2020	FR 4	Lot 96, Rough plumbing.	x	
9/1/2020	FR 4	Lot 96, DWV test.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 1, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 2, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 3, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 4, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 5, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 6, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 7, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 8, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 9, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 10, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 11, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 12, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 13, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 14, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 15, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 16, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, apt 17, cert of occupancy issued.	x	
9/1/2020	F 1	856 Pioneer, Final building, laundry room.	x	
9/1/2020	F 1	856 Pioneer, Final building, solar storage room.	x	
9/1/2020		Note: pre-finals for above apartments done previously, had	x	
9/1/2020		to wait for storm water to be recorded by SB county.	x	
9/1/2020	F 10	856 Pioneer, Handrails, guardrails for 2nd story apts 7-12 and	x	
9/1/2020	F 10	rear patio guardrails, hand rails, guardrails for 3rd story apts	x	
9/1/2020	F 10	13-17 and rear patio guardrails are approved.	x	
9/2/2020	AD 9	Scheduling and records update.	x	David, 5.0 hrs,
9/2/2020	F 1	Lot 106, Final building, cert of occupancy issued.	x	32 inspections, some fog early
9/2/2020	F 2	Lot 106, Final electrical.	x	9/2/2020
9/2/2020	F 3	Lot 106, Final mechanical.	x	
9/2/2020	F 4	Lot 106, Final plumbing.	x	
9/2/2020	F 5	Lot 106, Title 24 papers ok.	x	
9/2/2020	F 6	Lot 106, Smokies and carbon monox alarms tested.	x	
9/2/2020	F 10	Lot 106, Fire sprinklers bell ok.	x	
9/2/2020	F 10	Lot 106, Automatic landscape rain sensor computer installed.	x	
9/2/2020	F 3	Lot 104, FAU final, email gas co.	x	
9/2/2020	F 10	Lot 104, Gas pressure test.	x	
9/2/2020	SC 6	Lot 104, Ceiling insulation.	x	
9/2/2020	F 3	Lot 103, FAU final, email gas co.	x	
9/2/2020	F 10	Lot 103, Gas pressure test.	x	

9/2/2020	SC 6	Lot 103, Ceiling insulation.	x			
9/2/2020	F 3	Lot 87, FAU final, email gas co.	x			
9/2/2020	F 10	Lot 87, Gas pressure test.	x			
9/2/2020	SC 6	Lot 87, Ceiling insulation.	x			
9/2/2020	F 3	Lot 88, FAU final, email gas co.	x			
9/2/2020	F 10	Lot 88,Gas pressure test.	x			
9/2/2020	SC 6	Lot 88, Ceiling insulation.	x			
9/2/2020	F 3	Lot 89, FAU final, email gas co.	x			
9/2/2020	F 10	Lot 89, Gas pressure test.	x			
9/2/2020	SC 6	Lot 89, Ceiling insulation.	x			
9/2/2020	UN 8	Lot 92, Water house line, 1".	x			
9/2/2020	UN 8	Lot 92, Fire sprinklers line, 1".	x			
9/2/2020	UN 8	Lot 93, Water house line, 1".	x			
9/2/2020	UN 8	Lot 93, Fire sprinklers line, 1".	x			
9/2/2020	UN 8	Lot 94, Water house line, 1".	x			
9/2/2020	UN 8	Lot 94, Fire sprinklers line, 1".	x			
9/2/2020	UN 8	Lot 95, Water house line, 1".	x			
9/2/2020	UN 8	Lot 95, Fire sprinklers line, 1".	x			
9/2/2020	F 10	Cultural arts center, thrust blocks not ready for fire line.		x		
9/3/2020	AD 9	Scheduling and records update.	x		David, 4.75 hrs	
9/3/2020	F 10	Cultural arts center, fire line thrust blocks, 3 total.	x		13 inspections, fog early	
9/3/2020	F 1	Lot 105, Final building, cert of occupancy issued.	x		9/3/2020	
9/3/2020	F 2	Lot 105, Final electrical.	x			
9/3/2020	F 3	Lot 105, Final mechanical.	x			
9/3/2020	F 4	Lot 105, Final plumbing.	x			
9/3/2020	F 5	Lot 105, Title 24 papers ok.	x			
9/3/2020	F 6	Lot 105, Smokies and carbon monox alarms tested.	x			
9/3/2020	F 10	Lot 105, Fire sprinklers bell ok.	x			
9/3/2020	F 10	Lot 105, Automatic landscape rain sensor computer installed.	x			
9/3/2020	FR 7	Lot 94, Fire sprinklers hydro test ok.	x			
9/3/2020	FR 1	Lot 94, Rough electrical.	x			
9/3/2020	FR 7	Lot 99, Fire sprinklers hydro test ok.	x			
9/3/2020	FR 1	Lot 99, Rough electrical.	x			
9/4/2020	AD 9	Scheduling and records update.	x		David, 5.0 hrs, fog early	
9/4/2020	AD 1	Deliver covenent and agreement documents to the Alvarez	x		14 inspections, dropoff	
9/4/2020	AD 1	Headquarters for 2 future jobs, 8:00 am arrival.	x		documents for the Alvarez	
9/4/2020	F 1	Lot 86, Final building, cert of occupancy issued.	x		Brothers today to sign	
9/4/2020	F 2	Lot 86, Final electrical.	x		for 2 future jobs	
9/4/2020	F 3	Lot 86, Final mechanical.	x		9/4/2020	
9/4/2020	F 4	Lot 86, Final plumbing.	x			
9/4/2020	F 5	Lot 86, Title 24 papers ok.	x			

9/4/2020	F 6	Lot 86, Smokies and carbon monox alarms tested.	x		
9/4/2020	F 10	Lot 86, Fire sprinklers bell ok.	x		
9/4/2020	F 10	Lot 86, Automatic landscape rain sensor computer installed.	x		
9/4/2020	FR 2	Lot 46, 2nd floor nailing, joists and girders.	x		
9/4/2020	SC 6	Lot 93, Wall insulation, ceiling later at final.	x		
9/4/2020	SW 6	5091 Sandpiper, Roof mount pv conduit, wall conduit.	x		
9/4/2020	FR 2	5091 Sandpiper, Roof mounted pv attachments.	x		
9/4/2020	FR 1	5091 Sandpiper, Rough electrical.	x		
9/4/2020	F 2	5091 Sandpiper, Final electrical, permit finaled.	x		
9/4/2020	AD 2	In office, job card documents brought up to date and completed,	x		
9/4/2020	AD 2	at the start of the virus lock down the Peoples' Self Help	x		
9/4/2020	AD 2	job supers didn't want non-PSH personel in the office-just	x		
9/4/2020	AD 2	PSH supers only, not finished today, take home to complete.	x		
9/5/2020	AD 2	Working from home to complete the PSH 38 apartment	x	David, 1.0 hr	
9/5/2020	AD 2	complex job sign off cards for project completion	x	9/5/2020	
9/5/2020	AD 2	documention for the PSH organization.	x		
9/7/2020		Labor Day, City holiday, no inspections today.		9/7/2020	
9/8/2020	AD 9	Scheduling and records update.	x	David, 4.25 smoky, fog	
9/8/2020	MS 4	Eduardo meeting, Amber St, early.	x	8 inspections	
9/8/2020	FR 5	4827 Pagaling, Rough framing for garage conversion.	x	9/8/2020	
9/8/2020	SC 1	Lot 93, Drywall attachment ok.	x		
9/8/2020	SC 6	Lot 100, Wall insulation, ceiling at final.	x		
9/8/2020	SC 3	Lot 100, Stucco lath attachmnet ok.	x		
9/8/2020	SC 3	Lot 101, Stucco lath attachmnet ok.	x		
9/8/2020	SC 3	Lot 93, Stucco lath attachmnet ok.	x		
9/8/2020	SC 3	Lot 94, Stucco lath attachmnet ok.	x		
9/9/2020	AD 9	Scheduling and records update.	x	David, 4.0 hrs, smoky, fog	
9/9/2020	FN 5	864 Pioneer, ADA path of travel reinforced flatwork for ground	x	9 inspections	
9/9/2020	FN 5	level apts 1-6, laundry room and solar collection room,	x	9/9/2020	
9/9/2020	FN 5	special request for early inspection, at site at 7:01 today.	x		
9/9/2020	UN 1	Lot 49, Underslab drain plumbing.	x		
9/9/2020	UN 1	Lot 50, Underslab drain plumbing.	x		
9/9/2020	UN 1	Lot 51, Underslab drain plumbing.	x		
9/9/2020	UN 1	Lot 52, Underslab drain plumbing.	x		
9/9/2020	UN 1	Lot 71, Underslab drain plumbing.	x		
9/9/2020	UN 1	Lot 72, Underslab drain plumbing.	x		
9/9/2020	UN 1	Lot 73, Underslab drain plumbing.	x		
9/9/2020	UN 1	Lot 74, Underslab drain plumbing.	x		
9/9/2020	FR 3	Lot 95, Rough mechanical.	x		

9/9/2020	FR 7	Lot 95, Rough sprinklers.	x		
9/9/2020	FR 3	Lot 98, Rough mechanical.	x		
9/9/2020	FR 7	Lot 98, Rough sprinklers.	x		
9/10/2020	AD 9	Scheduling and records update.	x		David, 3.0 hrs, fog and smoke.
9/10/2020	MS 4	Cutrural Atrs Center, Site visit with super Joe, remeinder to get	x		3 inspections.
9/10/2020	MS 4	the on site drainage agreement recorded with county before	x		9/10/2020
9/10/2020	MS 4	final inspections.	x		
9/10/2020	FR 2	Lot 47, 2nd floor nailing, joists and girders,	x		
9/10/2020	SC 1	Lot 100, Drywall attachment ok for house only, garage not ready.		x	
9/10/2020	FN 1	864 Pioneer, ADA path of travel to remainder of laundry room,	x		
9/10/2020		solar collection room, reinforced flatwork.	x		
9/11/2020	AD 9	Scheduling and records update.	x		David, 5.0 h hrs, fog and smoke
9/11/2020	MS 4	400 Obispo, site visit and job overview for 2nd story t.i.	x		17 inspections
9/11/2020	SW 6	400 Obispo, Conduit under new generator concrete slab.	x		9/11/2020
9/11/2020	FR 1	Lot 98, Etag issued, email PG+E	x		
9/11/2020	FR 1	Lot 98, Rough electrical.	x		
9/11/2020	FR 7	Lot 98, Fire sprinklers hydro test ok.	x		
9/11/2020	FR 1	Lot 97, Etag issued, email PG+E	x		
9/11/2020	FR 3	Lot 97, Rough mechanical.	x		
9/11/2020	FR 7	Lot 97, Fire sprinklers hydro test ok.	x		
9/11/2020	FR 7	Lot 97, Rough fire sprinklers.	x		
9/11/2020	FR 1	Lot 95 Etag issued, email PG+E	x		
9/11/2020	FR 1	Lot 95, Rough electrical.	x		
9/11/2020	FR 7	Lot 95, Fire sprinklers hydro test ok.	x		
9/11/2020	FR 1	Lot 96, Etag issued, email PG+E	x		
9/11/2020	FR 3	Lot 96, Rough mechanical.	x		
9/11/2020	FR 7	Lot 96, Fire sprinklers hydro test ok.	x		
9/11/2020	FR 7	Lot 96, Rough fire sprinklers.	x		
9/11/2020	FR 2	Lot 48, 2nd floor nailing, joists and girders.	x		
9/14/2020	AD 9	Scheduling and records update.	x		David, 3.0 hrs,
9/14/2020	SC 9	Lot 92, Stucco scratch coat.	x		8 inspections, fog and smoke.
9/14/2020	SC 9	Lot 93, Stucco scratch coat.	x		9/14/2020
9/14/2020	SC 9	Lot 100, Stucco scratch coat.	x		
9/14/2020	SC 9	Lot 101, Stucco scratch coat.	x		
9/14/2020	MS 4	400 Obispo, site visit with super John.	x		
9/14/2020	FR 2	Lot 94, Rough framing.	x		
9/14/2020	FR 2	Lot 94 Roof framing, nailing.			
9/14/2020	FR 9	Lot 94, Shear walls, straps and holdowns.	x		

9/15/2020	AD 9	Scheduling and records update.	x	David, 5.25 hrs, smoke and fog
9/15/2020	FR 3	856 Pioneer, Solar water heater roof mount, rough.	x	16 inspections,
9/15/2020	F 3	856 Pioneer, Solar water heater roof mount, final.	x	9/15/2020
9/15/2020	FR 4	856 Pioneer, Solar water heater rough plumbing.	x	
9/15/2020	F 4	856 Pioneer, Solar water heater final plumbing, final.	x	
9/15/2020		864 Pioneer on same permit, will final when 17 apartment		
9/15/2020		complex is complete in about 5 weeks.		
9/15/2020	FN 5	4491 Holly St, Setbacks.	x	
9/15/2020	FN 5	4491 Holly St, Forms.	x	
9/15/2020	FN 5	4491 Holly St, Rebar reinforcement, holdowns,	x	
9/15/2020	FN 5	4491 Holly St,Footings and slab.	x	
9/15/2020	FN 5	4491 Holly St, Capillary break.	x	
9/15/2020	FN 2	4491 Holly St, #4 rebar grounding electrode.	x	
9/15/2020	MS 4	Amber St, Eduardo site visit and deliver plans for the tower.	x	
9/15/2020	FR 1	Lot 96, Rough electrical.	x	
9/15/2020	SC 6	Lot 94, Wall insulation ok, ceiling at final.	x	
9/15/2020	SC 7	Lot 89, Shower pan.	x	
9/15/2020	FR 2	Lot 95 Roof framing, nailing.	x	
9/15/2020	FR 5	Lot 95, Rough framing.		
9/15/2020	FR 9	Lot 95, Shear walls, straps and holdowns.	x	
9/16/2024	AD 9	Scheduling and records update.	x	David, 4.75 hrs, fog cleared by noon
9/16/2020	MS 4	400 Obispo, site visit with super John for elevator plan check	x	16 inspections.
9/16/2020	MS 4	requirements, fire dept. final prior to cert of occupancy.	x	9/16/2020
9/16/2020	SC 11	4436 3rd St, Roof strip complete, final roof covering ready by	x	
9/16/2020	SC 11	Friday noon.	x	
9/16/2020	SC 6	Lot 95, Wall insulation ok, ceiling at final.	x	
9/16/2020	FR 10	Lot 92, Interior gas test ok.	x	
9/16/2020	FR 10	Lot 93, Interior gas test ok.	x	
9/16/2020	FR 10	Lot 100, Interior gas test ok.	x	
9/16/2020	FR 10	Lot 101, Interior gas test ok.	x	
9/16/2020	FR 10	Lot 102, Interior gas test ok.	x	
9/16/2020	FR 1	Lot 97, Rough electrical.	x	
9/16/2020	FN 2	Lot 71, Grounding electrode, #4 rebar.	x	
9/16/2020	FN 2	Lot 72, Grounding electrode, #4 rebar.	x	
9/16/2020	FN 2	Lot 73, Grounding electrode, #4 rebar.	x	
9/16/2020	FN 2	Lot 74, Grounding electrode, #4 rebar.	x	
9/16/2020	FR 2	Lot 99 Rough framing.	x	
9/15/2020	FR 2	Lot 99, Roof framing, nailing.	x	
9/16/2020	FR 9	Lot 99, Shear walls, straps and holdowns.	x	
9/17/2020	AD 9	Scheduling and records update including job card signoff	x	David, 6.0 hrs, fog then sun
9/17/2020	AD 9	completion for 856 Pioneer (17 of 34 new apartments.)	x	10 inspections

9/17/2020	FR 2	Lot 97 Rough framing.	x		9/17/2020
9/17/2020	FR 2	Lot 97, Roof framing, nailing.	x		
9/17/2020	FR 9	Lot 97, Shear walls, straps and holdowns.	x		
9/17/2020	FR 2	Lot 98, Rough framing.	x		
9/17/2020	FR 2	Lot 98, Roof framing, nailing.	x		
9/17/2020	FR 9	Lot 98, Shear walls, straps and holdowns.	x		
9/17/2020	MS 4	4460 3rd St, Site visit with owner Vincente for the following:			
9/17/2020	MS 4	rafter repairs, new fascia boards, roof strip, new comp roof,			
9/17/2020	MS 4	demo plastic rear patio covering and replace with new wood			
9/17/2020	MS 4	framed patio cover.			
9/17/2020	MS 4	852 Pacheco, Site visit with owner Wendy, windows installed		x	
9/17/2020	MS 4	today need framing repairs for minimum header allowances,		x	
9/17/2020	MS 4	will have to remove and remove/replace with correct size,		x	
9/17/2020	MS 4	follow-up visit tomorrow with Wendy.		x	
9/17/2020	AD 6	4803 Almaguer, 3.25 kw roof mount pv system, needs minor	x		
9/17/2020	AD 6	cut sheet correction, can approve plan check shortly.	x		
9/17/2020	SC 11	415 Campodonico, Roof strip complete, late phone request.	x		
9/18/2020	AD 9	Scheduling and records update.	x		David, 4.5 hrs, hi clouds after
9/18/2020	FR 6	Lot 76, Gas piping.	x		fog lifted, 15 inspections.
9/18/2020	FR 10	Lot 76, Gas pressure.	x		9/18/2020
9/18/2020	FR 3	Lot 76, Rough mechanical.	x		
9/18/2020	FR 6	Lot 77, Gas piping.	x		
9/18/2020	FR 10	Lot 77, Gas pressure.	x		
9/18/2020	FR 3	Lot 77, Rough mechanical.	x		
9/18/2020	SW 8	Lot 90, Water line, 1" pvc.	x		
9/18/2020	SW 8	Lot 90, Fire sprinkler line, 1" pvc.	x		
9/18/2020	SC 6	Lot 99, Wall insulation, ceiling at final.	x		
9/18/2020	F 10	4436 3rd St. Comp roof final, delivered job card to site.	x		
9/18/2020	MS 4	4460 3rd St, Site visit with owner Vincente	x		
9/18/2020	MS 4	4803 Almaguer, Site visit with owner Wendy, header info for	x		
9/18/2020	MS 4	all windows.	x		
9/18/2020	FR 2	Lot 96 Rough framing.	x		
9/18/2020	FR 2	Lot 96, Roof framing, nailing.	x		
9/18/2020	FR 9	Lot 96, Shear walls, straps and holdowns.	x		
9/21/2020	AD 9	Scheduling and records update.	x		David, 4.5 hrs, fog early
9/21/2020	FR 2	280 Obispo, Exterior shear only, no ladder for roof.	x		23 inspections
9/21/2020	SC 7	Lot 91, Shower pan.	x		9/21/2020
9/21/2020	FR 7	Lot 87, Fire sprinklers pitot test.	x		
9/21/2020	FR 7	Lot 88, Fire sprinklers pitot test.	x		
9/21/2020	FR 7	Lot 89, Fire sprinklers pitot test.	x		
9/21/2020	FR 7	Lot 90, Fire sprinklers pitot test.	x		

9/21/2020	FR 7	Lot 91, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 92, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 93, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 94, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 95, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 96, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 97, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 98, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 99, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 100, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 101, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 102, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 103, Fire sprinklers pitot test.	x			
9/21/2020	FR 7	Lot 104, Fire sprinklers pitot test.	x			
9/21/2020	F 11	415 Campodonico, Asphalt comp roof final.	x			
9/21/2020	FN 5	Amber St, Tower pier footings and Eduardo site visit.	x			
9/21/2020	FN 5	Lot 82-86, 4' wide sidewalks complete.	x			
9/22/2020	AD 9	Scheduling and records update.	x			David, 5.0 hrs, fog early
9/22/2020	FR 2	280 Obispo, Roof framing and nailing, super Cobb not on site,		x		11 inspections,
9/22/2020	FR 2	cancel for today.		x		9/22/2020
9/22/2020	FR 1	Lot 77, Rough electrical.	x			
9/22/2020	FR 7	Lot 77, Rough fire sprinklers.	x			
9/22/2020	FR 1	Lot 76, Rough electrical.	x			
9/22/2020	FR 7	Lot 76, Rough fire sprinklers.	x			
9/22/2020	FR 6	Lot 75, Gas piping.	x			
9/22/2020	FR 10	Lot 75, Gas pressure.	x			
9/22/2020	FR 1	Lot 75, Rough electrical.	x			
9/22/2020	FR 3	Lot 75, Rough mechanical.	x			
9/22/2020	SC 1	Lot 95, Drywall attachment.	x			
9/22/2020	FN 5	Guadalupe Cemetary, ADA path of travel for new business	x			
9/22/2020	FN 5	office, Carlos special request, 11:00 arrival.	x			
9/23/2020	AD 9	Scheduling and records update.	x			David, 4.5 h fog lifted early today,
9/23/2020	SW 3	864 Pioneer, 7:13 am arrival to site, bio swale, 160' in parking	x			14 inspections.
9/23/2020	SW 3	lot- soil/sand/rock/filter fabric, north side enhanced swale at	x			9/23/2020
9/23/2020	SW 3	rear patios of apts 1-6.	x			
9/23/2020	FR 5	4827 Pagaling, Rough framing.	x			
9/23/2020	FR 6	4827 Pagaling, Gas piping.	x			
9/23/2020	FR 10	4827 Pagaling, Gas pressure.	x			
9/23/2020	FR 3	4827 Pagaling, Rough mechanical, need sheet metal firestop		x		
9/23/2020	FR 3	in chase at top plate for B vent, also cut back wood by 1"		x		
9/23/2020	FR 3	or more at B vent, ok to insulate, can view items at insulation		x		

9/23/2020	FR 6	Lot 44, Gas piping.	x	
9/23/2020	FR 10	Lot 44, Gas pressure.	x	
9/23/2020	FR 1	Lot 44, Rough electrical.	x	
9/23/2020	FR 3	Lot 44, Rough mechanical.	x	
9/23/2020	FR 2	Lot 44 Rough framing.	x	
9/23/2020	FR 2	Lot 44, Roof framing, nailing.	x	
9/23/2020	FR 9	Lot 44, Shear walls, straps and holdowns.	x	
9/23/2020	MS 4	4827 Pagaling, discuss correction notice from this morning to	x	
9/23/2020	MS 4	contractor about fire stop, wood clearance for B vent, 10:30 am	x	
9/23/2020	SC 6	Lot 98, Wall insulation, ceiling later at final.	x	
9/24/2020	AD 9	Scheduling and records update.	x	David, 3.75 hrs, finally no fog today, breeze
9/24/2020	MS 4	Guadalupe Cemetary, Site visit #1 with Carlos to discuss	x	13 inspections
9/24/2020	MS 4	parking and access to new site.	x	9/24/2020
9/24/2020	FR 2	Lot 45 Rough framing.	x	
9/24/2020	FR 2	Lot 45, Roof framing, nailing.	x	
9/24/2020	FR 9	Lot 45, Shear walls, straps and holdowns.	x	
9/24/2020	FR 6	Lot 45, Gas piping.	x	
9/24/2020	FR 10	Lot 45, Gas pressure.	x	
9/24/2020	FR 1	Lot 45, Rough electrical.	x	
9/24/2020	FN 2	Lot 49, Grounding electrode, #4 rebar.	x	
9/24/2020	FN 2	Lot 50, Grounding electrode, #4 rebar.	x	
9/24/2020	FN 2	Lot 51, Grounding electrode, #4 rebar.	x	
9/24/2020	FN 2	Lot 52, Grounding electrode, #4 rebar.	x	
9/24/2020	SC 6	Lot 97, Wall insulation, ceiling later at final.	x	
9/24/2020	MS 4	Guadalupe Cemetary, Site visit #2 with Carlos, Joyce and John	x	
9/24/2020	MS 4	to discuss demo of existing business building, new front entry	x	
9/24/2020	MS 4	awning at new business office building, general access	x	
9/24/2020	MS 4	questions, new fees for demo of existing old building: $461.00	x	
9/24/2020	MS 4	new permit for front entry awning: $207.00.	x	
9/25/2020	AD 9	Scheduling and records update.	x	David, 5.5 hrs, no fog today, breeze
9/25/2020	MS 4	Guadalupe Cemetary, Meeting with Joyce to discuss parking		13 inspections,
9/25/2020	MS 4	lot improvement prior to the final, Carlos not here today.		9/25/2020
9/25/2020	SC 6	Lot 96, Wall insulation, ceiling at final.	x	
9/25/2020	FR 6	Lot 46, Gas piping.	x	
9/25/2020	FR 10	Lot 46, Gas pressure.	x	
9/25/2020	FR 6	Lot 47, Gas piping.	x	
9/25/2020	FR 10	Lot 47, Gas pressure.	x	
9/25/2020	FR 2	280 Obispo, Roof framng and nailing.	x	
9/25/2020	FR 5	280 Obispo, Shear nailing, straps and holdowns.	x	
9/25/2020	F 11	209 Guadalupe St, Commercial sign, final.	x	
9/25/2020	F 11	209 Guadalupe St, Water meter upgrade to 1", final.	x	

9/25/2020	F 11	209 Guadalupe St, Slatted 6' tall fence, final.	x	
9/25/2020	MS 4	Amber St, Site visit with Eduardo at the new tower.	x	
9/25/2020	SC 6	4827 Pagaling, Wall, ceiling insulation.	x	
9/25/2020	FR 3	4827 Pagaling, Wall heater clearance at B vent now ok, both	x	
9/25/2020	FR 3	requests late afternoon arrival.	x	
9/28/2020	AD 9	Scheduling and records update.	x	David, 3.75 hrs, fog
9/28/2020	MS 4	3rd St, Site visit with design guy and Vincente for new shed	x	9 inspections
9/28/2020	MS 4	roof and fascia and roof strip and re-roof job.	x	9/28/2020
9/28/2020	SC 3	Lot 94, Stucco lath attachment.	x	
9/28/2020	SC 3	Lot 95, Stucco lath attachment.	x	
9/28/2020	SC 3	Lot 96, Stucco lath attachment.	x	
9/28/2020	SC 3	Lot 97, Stucco lath attachment.	x	
9/28/2020	SC 3	Lot 98, Stucco lath attachment	x	
9/28/2020	SC 1	Lot 99, Drywall attachment.		
9/28/2020	SC 3	Lot 99, Stucco lath attachment.	x	
9/28/2020	FR 5	280 Obispo St, Rough framing.	x	
9/29/2020	AD 9	Scheduling and records update.	x	David, 4.5 hrs, fog early, then clear ar at noon.
9/29/2020	AD 6	4460 Ladera, Plan check 5.6 kw roof mount pv system.	x	20 inspections,
9/29/2020	MS 4	964 Pioneer, Site visit with super Steve S: approx. finals	x	9/29/2020
9/29/2020	MS 4	for the remaining 17 apts is end of October.	x	
9/29/2020	F 2	209 Guadalupe St, Final electric for old shop.	x	
9/29/2020	F 11	209 Guadalupe, Metal roof final.	x	
9/29/2020	SC 1	Lot 97, Drywall attachment ok.	x	
9/29/2020	SC 1	Lot 98, Drywall attachment ok.	x	
9/29/2020	FR 7	Lot 44, Rough fire sprinklers.	x	
9/29/2020	FR 7	Lot 44, Hydro test.	x	
9/29/2020	FR 7	Lot 45, Rough fire sprinklers.	x	
9/29/2020	FR 7	Lot 45, Hydro test.	x	
9/29/2020	FR 7	Lot 75, Rough fire sprinklers.	x	
9/29/2020	FR 7	Lot 75, Hydro test.	x	
9/29/2020	FR 7	Lot 76, Hydro test.	x	
9/29/2020	FR 7	Lot 76, Hydro test.	x	
9/29/2020	FR 6	280 Obispo, Gas piping.	x	
9/29/2020	FR 10	280 Obispo, Gas presure.	x	
9/29/2020	FR 1	280 Obispo, Rough electrical.	x	
9/29/2020	FR 3	280 Obispo, Rough mechanical.	x	
9/29/2020	FR 2	280 Obispo, Rough framing.	x	
9/29/2020	FR 4	280 Obispo, Rough plumbing.	x	
9/30/2020	AD 9	Scheduling and records update.	x	David, 4.25 hrs, fog early, then clear.
9/30/2020	SC 1	Lot 96, Drywall attachment.	x	15 inspections

9/30/2020	FR 2	Lot 73, 2nd floor nailing, floor joist and girders.	x			9/30/2020				
9/30/2020	SC 6	Lot 90, Ceiling insulation.	x							
9/30/2020	F 3	Lot 90, FAU approved, email gas co.	x							
9/30/2020	SC 6	Lot 91, Ceiling insulation.	x							
9/30/2020	F 3	Lot 91, FAU approved, email gas co.	x							
9/30/2020	SC 6	Lot 92, Ceiling insulation.	x							
9/30/2020	F 3	Lot 92, FAU approved, email gas co.	x							
9/30/2020	SC 6	Lot 101, Ceiling insulation.	x							
9/30/2020	F 3	Lot 101, FAU approved, email gas co.	x							
9/30/2020	F 11	5127 Sandpiper, PV cancel today from Bakersfield.		x						
9/30/2020	FR 1	4255 Gularte, Rough electric.	x							
9/30/2020	FR 1	4255 Gularte, E-tag issued, email PG+E	x							
9/30/2020	FN 2	4255 Gularte, 2 driven ground rods.	x							
9/30/2020	SW 6	4255 Gularte, Conduit for ground rods, riser.	x							
		David Rose, Contract Bldg Inspector, September, 2020								
		21 inspections days of 30 calendar days.								
		344 total inspections.								
		Thank you.								

10c.

Public Works/Engineering Report
September 2020

Development

Pasadera

City staff worked with Pasadera staff to make progress on the subdivision map for Lot 9. Discussions were held on September 15 to respond to County questions on Pasadera's submittal. City staff met with Pasadena staff on Tuesday, September 22 to discuss grading associated with the bridge to DJ Farms South, and continues to work with Pasadera on approval of rough grading of Lot 9.

Escalante Meadows

Staff submitted comments on the Public Improvement Plans on September 2. City staff continues to work with the developer on an easement vacation. In addition, City staff met with Escalante Meadows staff to continue working towards determining how transit projects may help the competitiveness of a grant on which Escalante Meadows is currently working.

Pioneer Street Apartments

The developer submitted a fully executed stormwater maintenance agreement to the County on August 26. The County returned the agreement to the developer with comments. The developer gave a revised maintenance agreement to the City for execution. The City signed and notarized the revised maintenance agreement on September 23 and returned it to the developer for resubmittal to the County.

11th Street Apartments

The City received a draft stormwater maintenance agreement from the developer on September 21. A maintenance plan itself was missing some pages. These remaining pages were submitted on September 29. The City gave the developer back a fully executed agreement that same day.

Facilities

American Legion Hall

The American Legion Hall termite repairs were delayed due to the discovery of lead paint. New bids are being sought to address this complication.

City Hall

Staff received a proposal of approximately $21,000 to clean the bell tower. Due to the high cost of the proposal, staff cleaned and painted the bell tower using existing staff and renting a lift for approximately $4,500 for the month of September.

Staff have purchased signs to help the public navigate City Hall. Eight signs have been purchased at a cost approximately $60 per sign that will be bolted perpendicular to the wall, so that visitors to City Hall can more easily see where to go.

Senior Center

The gas to the pilot lights for the stove was turned off on September 15. The heater was reprogrammed the same day.

General

Public Works intern

American Public Works Association (APWA) has a scholarship program for public works interns. The scholarship provides $3,000 per internship. The City of Guadalupe was invited to develop such an internship. The position was advertised on September 1 on the Indeed website, at Cal Poly's environmental engineering job board, on the APWA website and on the City's homepage. By the end of September, 14 applications were received. Interviews are scheduled for the third week in October.

$625.60 was received from Govplanet on September 10, 2020 from the sale of four electric motors.

Parks

LeRoy Park Community Center

City staff met with the contractor, inspector, and consultant for weekly coordination site meetings on September 2, 9, 16, 23, and 30. City staff worked with the County of Santa Barbara on September 10, and subsequently with the Department of Water Resources in Glendale on September 16 to find the well driller's report for an old unused well so that it can be properly abandoned. The City received word back on September 24 that no records exist for this well. This means that the contractor will need to get the well videoed to determinate its depth to properly abandon it. This was an unanticipated expense of $1,421. Also, significant framing damage was found inside the building. A change order in the amount of $59,873 was approved to replace the damaged framing.

City staff evaluated the playground equipment for transfer to O'Connell Park. Staff will move a portion of the playground equipment based on available existing space at O'Connell Park.

City staff have begun preliminary discussions with the contractor regarding how to key the new building.

Central Park

City staff has been active in providing input on the future of Central Park by attending several meetings, including coordination meetings on September 21 and 28.

Jack O'Connell Park

Staff spent $139.96 on four replacement swings, two to replace swings that were removed with bolt cutters, and two additional for stock. These swings were replaced on September 15.

Streets

ATP Project

The City submitted the last request for reimbursement in the amount of $33,259.06 and completion report on September 16. An additional pedestrian count report will be due in May 2021.

Caltrans Highway 1 2024 improvements project

The City wrote a support letter on September 17 for a complete streets proposal to Caltrans. The complete streets proposal of the 2024 Highway 1 improvements project will add an additional $952,500 worth of safety improvements, if approved, as requested by the community.

Community members may notice significant Caltrans presence performing survey work along Guadalupe Street. This is in preparation for the 2024 improvements project.

2020 Slurry Seal Project

This project was awarded on September 8. Insurance and bond paperwork were received on September 16. All was in order. The City and contractor developed a mutually acceptable schedule for this work to be completed. The work is currently scheduled to occur at the end of October.

Stormwater

City staff compiled data for the stormwater annual reporting for MS4 Phase II facilities, which is due to the state by October 30.

Transit

Moore and Associates continues to work on the Short Range Transit Plan during the month of September. They are currently working on developing technical memo #5 which describes the operational, financial, and capital plans for the next five years.

Water

Well Abandonment

5th Street Well, 9th Street Well, and the old Obispo Street Well are all budgeted to be abandoned in Fiscal Year 20-21. City staff identified work required in the right-of-way for 5th Street Well and issued a request for quote to three construction companies the week of September 21.

Advanced Metering Infrastructure

City staff completed a grant application for $245,000 to the United States Bureau of Reclamation for the Water and Energy Efficiency Grant program. Applications were due on September 17. The City's application was submitted on September 15, and in an abundance of caution was also fed-exed to the Bureau in an effort to reduce missing out on this opportunity because of a technicality. The City has received word back that both applications were received. We anticipate receiving word of award in February 2021.

Obispo Waterline Replacement

The City received final plans and specifications for this project on September 15, 2020. This project will be advertised during the month of October.

West Main Street Waterline Replacement

A design review meeting for this project was held on September 18. Comments on the draft design were submitted to the consultant on September 24.

Lead and copper sampling

In September, water staff performed sampling to meet the lead and copper rule. This rule requires customer side sampling of a minimum of 20 homes with specific plumbing type every three years.

Hit hydrant

A fire hydrant was hit in a hit-and-run accident on Friday, September 11 at Sandpiper and Point Sal Dunes. Low flows and pressures were experienced throughout the Riverview and Point Sal Dunes developments for approximately half an hour, in between the time the hydrant was hit and time for water staff to respond to the incident and isolate the hydrant run. This situation emphasizes the need to upsize the 4-inch water line on W. Main St., which is the main feed to that area. The hydrant was replaced on September 16.

Wastewater

Wastewater Plant Permit

The City's wastewater treatment plant permit, like permits for most wastewater facilities on the Central Coast, is out of date. As directed by our existing permit a Report of Waste Discharge was submitted to the Regional Water Quality Control Board (Regional Board) in 2014. The Regional Board approved a general wastewater treatment plant permit on September 25, 2020. City staff provided comments during the public comment period in July. One of the comments were addressed in the revised permit. The City will work with the Regional Board in the upcoming months to update its permit to existing conditions. Some additional monitoring will be expected.

Equipment Maintenance

The City received the third rebuilt blower back the week of September 28. With the return of this blower, all three blowers have been rebuilt within the last two years.

Staff had the grit chamber evaluated on September 22 to identify the improvements needed to bring this piece of equipment back into service.

Clay's Lease Agreement

City staff worked with Clay's Septic and Jetting Inc. to establish a new lease agreement starting September 9, 2020. The agreement was fully executed on August 25, 2020. Concurrently, staff established a contract with Engel and Gray, a local biosolids composting facility for the handling of treatment plant biosolids. So far, this arrangement is working out well.

Process

The City had numerous wastewater discharge violations in the beginning of September. It is time for the City to establish another treatment train both to accommodate much-needed maintenance on the existing system and to establish a means for handling intermittent high flows that disrupt the existing process. This plan was discussed with City Council September 22. A draft schedule for these improvements are aeration basin upgrade (new aerator, new recycle pump, repair of liner, possible sludge removal) in October, start-up of aeration basin starting November, and Biolac maintenance (including grit removal, Biolac parts replacement, and possible maintenance boat purchase) starting in January.

Collections system

In the month of September, there were no sewer overflows. Two additional sewer monitors were placed in the collection system, one at the Gularte Lift Station, and the other at 10th and Obispo. Total cost of these additional sewer monitors is $4,877.00 from Southland Water Technologies. The sewer monitors already installed have been instrumental in protecting the system against

sewer overflows. Since the first ones were installed in January 2020, no sewer overflows have occurred.

Staff met with Clay's Septic and Jetting (Clay's) on September 15 to initiate discussions about Clay's obligation, written into their new lease agreement, to clean the City's collection system.

City of Guadalupe

Capital Improvement Projects Budget - Fiscal Year 20-21

September 2020

Project Numbers	PROJECT DESCRIPTIONS	2020-21 TOTAL	Update
100	**Buildings**		
089-101	Public Works Corporation Yard Building	$ 300,000	On hold.
089-104	Financial Accounting Software	$ 156,000	Installation in progress.
089-105	General Plan Update	$ 164,220	Awarded in August
200	**Parks**		
089-201	Leroy Park (Community Center and Site)	$ 3,850,000	Construction underway.
089-202	O'Connell Park Improvement	$ 200,000	Actual available $177,000.
300	**Streets, Sidewalks, Bicycle Facilities**		
089-302	Street Maintenance FY 20/21	$ 411,500	Advertised August 7. Bids opened August 24. Construction scheduled October 2020.
089-304	Street Rehabilitation FY 20/21	$ 902,400	Not yet started. Waterlines on Obispo and West Main need to be installed first.
089-306	Guadalupe and Obispo Streets Pedestrian Improvements	$ 406,000	Complete. Last reimbursement request to be submitted in September
089-307	La Guardia and Gularte Lanes Pedestrian Improvements	$ 179,537	One easement needed. Evaluating value.
400	**Water**		
089-401	Recoat Elevated Tank (Design and Construction)	$ 490,000	Deferred. Inspection scheduled for 2021.
089-403	Well Abandonment (9th St., 5th St., Obispo)	$ 100,000	Well 5 application complete.Right-of-way pipework out to bid
089-405	Obispo and West Main Waterlines	$ 1,000,000	Obispo water line out to bid in October. West Main under design.
500	**Wastewater**		
089-503	Effluent Irrigation Pump Station Rehabilitation (Construction)	$ 522,821	Currently under design.
089-504	Hwy 1 Lift Station	$ 1,000,000	Requesting state revolving fund financing.
089-505	Sewer Main Improvements	$ 1,400,000	One easement needed. Evaluating value.
089-506	Collection System Cleaning	$ 60,000	This work has been folded into the Clay's lease agreement
089-507	Aeration Basin Improvements	$ 150,000	Work to begin October 2020.
089-508	WWTP Site Improvements	$ 106,000	Additional effluent spray field pipe purchased for $10,262.74
	Transfer to CIP fund 089:	**$ 11,398,478**	

Completed.

10d.

Human Resources
918 Obispo Street
P.O. Box 908
Guadalupe, CA 93434
Ph: 805.356.3893
Fax: 805.343.5512
Email: egerber@ci.guadalupe.ca.us

HUMAN RESOURCES MONTHLY REPORT
SEPTEMBER 2020

DEPARTMENT REPORT – PUBLIC SAFETY

- **Police Department**

  An Oral Board for Emergency Preparedness Coordinator was scheduled for Wednesday, September 2, 2020. Two candidates were interviewed. An offer of employment is pending.

  An Oral Board for Code Compliance Officer was scheduled for Thursday, September 3, 2020. Three candidates interviewed in-person. The fourth interview was a Zoom call and not successful. The fourth candidate is visiting the City on October 2, 2020 to fulfill the panel interview.

  The Police Department welcomed retired annuitant, Rosanne Tesoro, as Evidence Technician on September 8, 2020. This is a temporary, part-time assignment.

  The Memorandum of Understanding draft is underway for the Police Department. Amelia Villegas is assigned to this task.

- **Fire Department**

  Interviews for Paid Call Firefighter are postponed until the week of October 12.

  The Memorandum of Understanding for the Fire Department is currently under negotiation. Amelia Villegas is assigned to this task.

DEPARTMENT REPORT – PUBLIC WORKS

The APWA Central Coast Chapter IS awarding one (1) scholarship of $3,000 to a qualifying undergraduate to intern with the City of Guadalupe Public Works Department. Applicants must have completed, prior to the 2020 Fall Semester or Quarter, at least one year in a college or trade/technical school major that qualifies for a career in the Public Works field and meets the needs of this internship. To date, there are 12 applicants. Interviews will take place mid-October.

DEPARTMENT REPORT – FINANCE

The Finance Department welcomed retired annuitant, Esther Britt, as Accounting Clerk on September 21, 2020. This is a temporary, part-time assignment while personnel is on medical leave.

STATE OF EMERGENCY - COVID-19

Governor Newsom signed a multitude of legislation this September to protect California and its workers. Text of the proclamations and orders are enclosed:

- Proclamation declaring September 2020 as "Preparedness Month" in the State of California, promoting shared responsibility in being prepared for disasters.
- Executive Order N-78-20 extending consumer protections against price gouging through March 4, 2021, as California continues to respond to the Covid-19 pandemic.
- AB 2257 defines a strict "ABC Test" in order to properly classify an independent contractor.
    - The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
    - The person performs work that is outside the usual course of the hiring entity's business.
    - The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.
- AB 1867 immediately expends critical paid sick days protections to the workforce. Every employee exposed to or tests positive for Covid-19 will have access to paid sick days for the remainder of 2020. This covers gaps from federal law, which excludes first responders and healthcare workers.
- Washington and Oregon join California, Colorado, and Nevada in the Western States Pact, piloting Google and Apple Exposure Notification Technology to slow the spread of Covid-19. Additionally, through the Western States Pact, governors and legislative leaders from five western states requested $1 trillion in direct and flexible relief to states and local governments to preserve core government services like public health, public safety and public education, and help people get back to work.
- SB 1159 expands access to worker's compensation and makes it easier for first responders, health care workers and people who test positive due to an outbreak at work to get the support they need, including necessary medical care and wage replacement benefits.
- AB 685 ensures timely notification to employees and local and state public health officials of COVID-19 cases at workplaces. This notification will help workers take necessary precautions such as seeking testing, getting medical help or complying with quarantine directives.
- SB 1383 builds on previous work to extend Paid Family Leave benefits from six to eight weeks for each parent of a newborn. This ensures job-protected leave for

Californians who work for an employer with five or more employees to bond with a newborn, care for a seriously ill family member, address a military exigency or care for their own illness. This aligns the employer size threshold under the California Family Rights Act (CFRA) with the employer size threshold in Pregnancy Disability Leave, a program that has been in place since 1978.

- AB 1876 further expanding access to the California Earned Income Tax Credit (CalEITC) to ensure all California tax filers, specifically undocumented ITIN filers who are otherwise eligible, may qualify for the CalEITC and the Young Child Tax Credit (YCTC). The COVID-19 recession has not only dealt a swift and broad-based blow to California's economy – it has taken a disproportionate toll on low-income Californians of color, worsening income disparities that predate the pandemic. In the first two months of the COVID-19 recession, the majority of jobs lost were in low-paying industries. An estimated 289,059 undocumented Californians lost their jobs due to the pandemic. Among those most severely impacted, immigrant women have lost their jobs at a disproportionate rate.

In the month of September, there was one positive Covid-19 case from an employee and two positive Covid-19 cases from a spouse and/or significant other. This directly impacted the Finance Department. A delay to warrants usually issued in early September were postponed to a later date.

CJPIA is researching inconsistencies among local public health departments, the State, and CDC's return to work criteria for both employees and household members.

To date, there are five employees who tested positive for Covid-19 and three spouses and/or significant others.

WORKER'S COMPENSATION

One employee who has been out for since February 2019 for non-COVID related injury still remains out. No determination has been made on that claim to date.

Ergonomic solutions for five employees are underway.

PROCLAMATION

As Californians grapple with the impacts of the COVID-19 pandemic and some of the largest wildfires in state history, this Preparedness Month is a time for all of us to reflect and act on our shared responsibility to be prepared. Individuals, neighborhoods, businesses and communities can all take steps to increase their resilience and look out for one another when disaster strikes. Throughout September, the Governor's Office of Emergency Services, other state and local agencies, businesses and community organizations are conducting preparedness events to educate the public about the importance of being prepared.

My Administration has prioritized investments in resources that can help our first responders and communities prepare for and respond to emergencies. From my first day in office, we have taken swift action toward that end, including launching the nation's first statewide Earthquake Early Warning System and making major investments to fortify the state's wildfire preparedness and response capabilities. With another dangerous wildfire season underway amid the ongoing pandemic, the state is hiring 858 more firefighters and six California Conservation Corps crews to bolster firefighting support.

In the past year and a half, the state has completed 35 emergency fuels management projects to protect 200 of the most wildfire-vulnerable communities, augmented the CAL FIRE air fleet with new FIREHAWK S-70i helicopters and C-130 airplanes and bolstered firefighting surge capacity and pre-positioning capabilities. The state also launched an Innovation Procurement Sprint to develop early warning technologies and placed fire detection cameras across the state. This year's budget included $85.6 million in new, ongoing dollars to fund permanent firefighting positions and continues the funding for CAL FIRE to procure innovative technology that allows us to model fire behavior.

Listos California, the state's emergency preparedness campaign, awarded $50 million in local assistance grants to non-profit organizations throughout the state to build resiliency in vulnerable communities and connect residents to culturally and linguistically competent support -- a whole-community approach that fosters critical networks that can save lives. During the pandemic, Listos has mobilized volunteers to check in on older Californians isolating at home and connect them to resources and has partnered with trusted local organizations to help the state's public awareness campaigns reach our diverse communities.

This month, I urge all Californians to learn about how they can help keep their loved ones and communities safe during an emergency.

NOW THEREFORE I, GAVIN NEWSOM, Governor of the State of California, do hereby proclaim September 2020, as "Preparedness Month."

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 1st day of September 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

EXECUTIVE ORDER N-78-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS the Legislature has declared its intent to protect citizens from price gouging during states of emergency, and has enacted statutes consistent with that purpose; and

WHEREAS in particular, the March 4, 2020 Proclamation of a State of Emergency triggered certain protections against price gouging set forth in Penal Code section 396, and (pursuant to the Emergency Services Act) I have issued further Executive Orders extending and expanding those protections; and

WHEREAS the circumstances necessitating those protections against price gouging continue to exist, and are expected to continue to exist; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations as specified in this Order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, 8627, and 8665, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1) The waiver of the time limitation set forth in Penal Code section 396, subdivision (b)—as set forth in Paragraph 4 of the March 4, 2020 Proclamation of a State of Emergency and Paragraph 1 of Executive Order N-44-20—is further extended such that all prohibitions against price gouging set forth that subdivision shall remain in effect through March 4, 2021.

2) The prohibitions set forth in Paragraphs 2 and 3 of Executive Order N-44-20, prohibiting certain sales and offers of sale between April 4, 2020 and September 4, 2020, are extended to prohibit such sales and offers of sale through March 4, 2021.

   This Paragraph 2 extends the duration of Paragraphs 2 and 3 of Executive Order N-44-20; it does not otherwise alter the scope of conduct prohibited by those paragraphs. Through March 4, 2021, each instance in which an item is sold or offered for sale in a manner prohibited by Paragraph 2 or Paragraph 3 of Executive Order N-44-20 shall constitute a separate violation of Executive Order N-44-20 and this Order, redressable as set forth in Paragraph 4 of Executive Order N-44-20.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 3rd day of September 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

Assembly Bill No. 2257

CHAPTER 38

An act to add Article 1.5 (commencing with Section 2775) to Chapter 2 of Division 3 of, and to repeal Section 2750.3 of, the Labor Code, and to amend Sections 17020.12 and 23045.6 of, and to add Sections 18406, 21003.5, and 61001 to, the Revenue and Taxation Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 4, 2020. Filed with Secretary of State September 4, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2257, Gonzalez. Worker classification: employees and independent contractors: occupations: professional services.

Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission. Under the ABC test, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of the ABC test described above. Existing law, instead, provides that these exempt relationships are governed by the multifactor test previously adopted in the case of S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341. Existing exemptions include persons providing professional services under specified circumstances, including certain services provided by still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists.

This bill would revise and recast these provisions. The bill would additionally exempt certain occupations in connection with creating, marketing, promoting, or distributing sound recordings or musical compositions. The bill would also exempt a musician or musical group for the purpose of a single-engagement live performance event, unless certain conditions apply, and would define related terms. The bill would also exempt an individual performance artist presenting material that is their original work and creative in character and the result of which depends primarily

on the individual's invention, imagination, or talent, if certain conditions are satisfied.

This bill would delete the existing professional services exemptions for services provided by still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists. The bill would, instead, establish an exemption for services provided by a still photographer, photojournalist, videographer, or photo editor, as defined, who works under a written contract that specifies certain terms, subject to prescribed restrictions. The bill would establish an exemption for services provided to a digital content aggregator, as defined, by a still photographer, photojournalist, videographer, or photo editor. The bill would establish an exemption for services provided by a fine artist, freelance writer, translator, editor, content contributor, advisor, narrator, cartographer, producer, copy editor, illustrator, or newspaper cartoonist who works under a written contract that specifies certain terms, subject to prescribed restrictions.

This bill would create additional exemptions for various professions and occupations. In this regard, the bill would exempt from the ABC test people who provide underwriting inspections and other services for the insurance industry, a manufactured housing salesperson, subject to certain obligations, people engaged by an international exchange visitor program, as specified, consulting services, animal services, and competition judges with specialized skills, as specified. The bill would also create exceptions for licensed landscape architects, specialized performers teaching master classes, registered professional foresters, real estate appraisers and home inspectors, and feedback aggregators. The bill would revise the conditions pursuant to which business service providers providing services pursuant to contract to another business are exempt. The bill would revise the criteria pursuant to which referral agencies and service providers providing services to clients through referral agencies are exempt and would revise applicable definitions. The bill would also create an exemption for business-to-business relationships between 2 or more sole proprietors, as specified. The bill would provide that a hiring entity need only satisfy all of the conditions of one of the exemption provisions to qualify for the exemption from the ABC Test.

Existing law authorizes an action for injunctive relief to prevent misclassification of employees, to be prosecuted against a putative employer by the Attorney General or a city attorney.

This bill would also authorize a district attorney to prosecute an action for injunctive relief.

Existing provisions of tax law define "employee" for purposes of those provisions.

This bill would make conforming changes to tax law regarding the determination of the status of a worker as either an employee or an independent contractor per the criteria described above.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 2750.3 of the Labor Code is repealed.

SEC. 2. Article 1.5 (commencing with Section 2775) is added to Chapter 2 of Division 3 of the Labor Code, to read:

Article 1.5. Worker Status: Employees

2775. (a) As used in this article:

(1) "Dynamex" means Dynamex Operations W. Inc. v. Superior Court (2018) 4 Cal.5th 903.

(2) "Borello" means the California Supreme Court's decision in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341.

(b) (1) For purposes of this code and the Unemployment Insurance Code, and for the purposes of wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The person performs work that is outside the usual course of the hiring entity's business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

(2) Notwithstanding paragraph (1), any exceptions to the terms "employee," "employer," "employ," or "independent contractor," and any extensions of employer status or liability, that are expressly made by a provision of this code, the Unemployment Insurance Code, or in an applicable order of the Industrial Welfare Commission, including, but not limited to, the definition of "employee" in subdivision 2(E) of Wage Order No. 2, shall remain in effect for the purposes set forth therein.

(3) If a court of law rules that the three-part test in paragraph (1) cannot be applied to a particular context based on grounds other than an express exception to employment status as provided under paragraph (2), then the determination of employee or independent contractor status in that context shall instead be governed by the California Supreme Court's decision in S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341 (Borello).

2776. Section 2775 and the holding in Dynamex do not apply to a bona fide business-to-business contracting relationship, as defined below, under the following conditions:

(a) If an individual acting as a sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership, or

corporation ("business service provider") contracts to provide services to another such business or to a public agency or quasi-public corporation ("contracting business"), the determination of employee or independent contractor status of the business services provider shall be governed by Borello, if the contracting business demonstrates that all of the following criteria are satisfied:

(1) The business service provider is free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(2) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business. This subparagraph does not apply if the business service provider's employees are solely performing the services under the contract under the name of the business service provider and the business service provider regularly contracts with other businesses.

(3) The contract with the business service provider is in writing and specifies the payment amount, including any applicable rate of pay, for services to be performed, as well as the due date of payment for such services.

(4) If the work is performed in a jurisdiction that requires the business service provider to have a business license or business tax registration, the business service provider has the required business license or business tax registration.

(5) The business service provider maintains a business location, which may include the business service provider's residence, that is separate from the business or work location of the contracting business.

(6) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(7) The business service provider can contract with other businesses to provide the same or similar services and maintain a clientele without restrictions from the hiring entity.

(8) The business service provider advertises and holds itself out to the public as available to provide the same or similar services.

(9) Consistent with the nature of the work, the business service provider provides its own tools, vehicles, and equipment to perform the services, not including any proprietary materials that may be necessary to perform the services under the contract.

(10) The business service provider can negotiate its own rates.

(11) Consistent with the nature of the work, the business service provider can set its own hours and location of work.

(12) The business service provider is not performing the type of work for which a license from the Contractors' State License Board is required, pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(b) When two bona fide businesses are contracting with one another under the conditions set forth in subdivision (a), the determination of whether

an individual worker who is not acting as a sole proprietor or formed as a business entity, is an employee or independent contractor of the business service provider or contracting business is governed by Section 2775.

(c) This section does not alter or supersede any existing rights under Section 2810.3.

2777. Section 2775 and the holding in Dynamex do not apply to the relationship between a referral agency and a service provider, as defined below, under the following conditions:

(a) If an individual acting as a sole proprietor, or a business entity formed as a partnership, limited liability company, limited liability partnership, or corporation ("service provider") provides services to clients through a referral agency, the determination of whether the service provider is an employee or independent contractor of the referral agency shall be governed by Borello, if the referral agency demonstrates that all of the following criteria are satisfied:

(1) The service provider is free from the control and direction of the referral agency in connection with the performance of the work for the client, both as a matter of contract and in fact.

(2) If the work for the client is performed in a jurisdiction that requires the service provider to have a business license or business tax registration in order to provide the services under the contract, the service provider shall certify to the referral agency that they have the required business license or business tax registration. The referral agency shall keep the certifications for a period of at least three years. As used in this paragraph:

(A) "Business license" includes a license, tax certificate, fee, or equivalent payment that is required or collected by a local jurisdiction annually, or on some other fixed cycle, as a condition of providing services in the local jurisdiction.

(B) "Local jurisdiction" means a city, county, or city and county, including charter cities.

(3) If the work for the client requires the service provider to hold a state contractor's license pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, the service provider has the required contractor's license.

(4) If there is an applicable professional licensure, permit, certification, or registration administered or recognized by the state available for the type of work being performed for the client, the service provider shall certify to the referral agency that they have the appropriate professional licensure, permit, certification, or registration. The referral agency shall keep the certifications for a period of at least three years.

(5) The service provider delivers services to the client under the service provider's name, without being required to deliver the services under the name of the referral agency.

(6) The service provider provides its own tools and supplies to perform the services.

(7) The service provider is customarily engaged, or was previously engaged, in an independently established business or trade of the same nature as, or related to, the work performed for the client.

(8) The referral agency does not restrict the service provider from maintaining a clientele and the service provider is free to seek work elsewhere, including through a competing referral agency.

(9) The service provider sets their own hours and terms of work or negotiates their hours and terms of work directly with the client.

(10) Without deduction by the referral agency, the service provider sets their own rates, negotiates their rates with the client through the referral agency, negotiates rates directly with the client, or is free to accept or reject rates set by the client.

(11) The service provider is free to accept or reject clients and contracts, without being penalized in any form by the referral agency. This paragraph does not apply if the service provider accepts a client or contract and then fails to fulfill any of its contractual obligations.

(b) For purposes of this section, the following definitions apply:

(1) "Client" means:

(A) A person who utilizes a referral agency to contract for services from a service provider, or

(B) A business that utilizes a referral agency to contract for services from a service provider that are otherwise not provided on a regular basis by employees at the client's business location, or to contract for services that are outside of the client's usual course of business. Notwithstanding subdivision (a), it is the responsibility of a business that utilizes a referral agency to contract for services, to meet the conditions outlined in this subparagraph.

(2) (A) "Referral agency" is a business that provides clients with referrals for service providers to provide services under a contract, with the exception of services in subparagraph (C).

(B) Under this paragraph, referrals for services shall include, but are not limited to, graphic design, web design, photography, tutoring, consulting, youth sports coaching, caddying, wedding or event planning, services provided by wedding and event vendors, minor home repair, moving, errands, furniture assembly, animal services, dog walking, dog grooming, picture hanging, pool cleaning, yard cleanup, and interpreting services.

(C) Under this paragraph, referrals for services do not include services provided in an industry designated by the Division of Occupational Safety and Health or the Department of Industrial Relations as a high hazard industry pursuant to subparagraph (A) of paragraph (3) of subdivision (e) of Section 6401.7 of the Labor Code or referrals for businesses that provide janitorial, delivery, courier, transportation, trucking, agricultural labor, retail, logging, in-home care, or construction services other than minor home repair.

(3) (A) "Referral agency contract" is the agency's contract with clients and service providers governing the use of its intermediary services described in paragraph (2). The intermediary services provided to the service provider

by the referral agency are limited to client referrals and other administrative services ancillary to the service provider's business operation.

(B) A referral agency's contract may include a fee or fees to be paid by the client for utilizing the referral agency. This fee shall not be deducted from the rate set or negotiated by the service provider as set forth in paragraph (10) of subdivision (a).

(4) "Service provider" means an individual acting as a sole proprietor or business entity that agrees to the referral agency's contract and uses the referral agency to connect with clients.

(5) "Tutor" means a person who develops and teaches their own curriculum, teaches curriculum that is proprietarily and privately developed, or provides private instruction or supplemental academic enrichment services by using their own teaching methodology or techniques. A "tutor" does not include an individual who contracts with a local education agency or private school through a referral agency for purposes of teaching students of a public or private school in a classroom setting.

(6) (A) "Youth sports coaching" means services provided by a youth sports coach who develops and implements their own curriculum, which may be subject to requirements of a youth sports league, for an athletic program in which youth who are 18 years of age or younger predominantly participate and that is organized for the purposes of training for and engaging in athletic activity and competition. "Youth sports coaching" does not mean services provided by an individual who contracts with a local education agency or private school through a referral agency for purposes of teaching students of a public or private school.

(7) "Interpreting services" means:

(A) Services provided by a certified or registered interpreter in a language with an available certification or registration through the Judicial Council of California, State Personnel Board, or any other agency or department in the State of California, or through a testing organization, agency, or educational institution approved or recognized by the state, or through the Registry of Interpreters for the Deaf, Certification Commission for Healthcare Interpreters, National Board of Certification for Medical Interpreters, International Association of Conference Interpreters, United States Department of State, or the Administrative Office of the United States Courts.

(B) Services provided by an interpreter in a language without an available certification through the entities listed in subparagraph (A).

(8) "Consulting" means providing substantive insight, information, advice, opinions, or analysis that requires the exercise of discretion and independent judgment and is based on an individual's knowledge or expertise of a particular subject matter or field of study.

(9) "Animal services" means services related to daytime and nighttime pet care including pet boarding under Section 122380 of the Health and Safety Code.

(c) The determination of whether an individual worker is an employee of a service provider or whether an individual worker is an employee of a client is governed by Section 2775.

2778. (a) Section 2775 and the holding in Dynamex do not apply to a contract for "professional services" as defined below, and instead the determination of whether the individual is an employee or independent contractor shall be governed by Borello if the hiring entity demonstrates that all of the following factors are satisfied:

(1) The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity. Nothing in this paragraph prohibits an individual from choosing to perform services at the location of the hiring entity.

(2) If work is performed more than six months after the effective date of this section and the work is performed in a jurisdiction that requires the individual to have a business license or business tax registration, the individual has the required business license or business tax registration in order to provide the services under the contract, in addition to any required professional licenses or permits for the individual to practice in their profession.

(3) The individual has the ability to set or negotiate their own rates for the services performed.

(4) Outside of project completion dates and reasonable business hours, the individual has the ability to set the individual's own hours.

(5) The individual is customarily engaged in the same type of work performed under contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.

(6) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services.

(b) For purposes of this section:

(1) An "individual" includes an individual providing services as a sole proprietor or other business entity.

(2) "Professional services" means services that meet any of the following:

(A) Marketing, provided that the contracted work is original and creative in character and the result of which depends primarily on the invention, imagination, or talent of the individual or work that is an essential part of or necessarily incident to any of the contracted work.

(B) Administrator of human resources, provided that the contracted work is predominantly intellectual and varied in character and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(C) Travel agent services provided by either of the following:

(i) A person regulated by the Attorney General under Article 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code.

(ii) An individual who is a seller of travel within the meaning of subdivision (a) of Section 17550.1 of the Business and Professions Code

and who is exempt from the registration under subdivision (g) of Section 17550.20 of the Business and Professions Code.

(D) Graphic design.

(E) Grant writer.

(F) (i) Fine artist.

(ii) For the purposes of this subparagraph, "fine artist" means an individual who creates works of art to be appreciated primarily or solely for their imaginative, aesthetic, or intellectual content, including drawings, paintings, sculptures, mosaics, works of calligraphy, works of graphic art, crafts, or mixed media.

(G) Services provided by an enrolled agent who is licensed by the United States Department of the Treasury to practice before the Internal Revenue Service pursuant to Part 10 of Subtitle A of Title 31 of the Code of Federal Regulations.

(H) Payment processing agent through an independent sales organization.

(I) Services provided by any of the following:

(i) By a still photographer, photojournalist, videographer, or photo editor who works under a written contract that specifies the rate of pay and obligation to pay by a defined time, as long as the individual providing the services is not directly replacing an employee who performed the same work at the same volume for the hiring entity; the individual does not primarily perform the work at the hiring entity's business location, notwithstanding paragraph (1) of subdivision (a); and the individual is not restricted from working for more than one hiring entity. This subclause is not applicable to a still photographer, photojournalist, videographer, or photo editor who works on motion pictures, which is inclusive of, but is not limited to, theatrical or commercial productions, broadcast news, television, and music videos. Nothing in this section restricts a still photographer, photojournalist, photo editor, or videographer from distributing, licensing, or selling their work product to another business, except as prohibited under copyright laws or workplace collective bargaining agreements.

(ii) To a digital content aggregator by a still photographer, photojournalist, videographer, or photo editor.

(iii) For the purposes of this subparagraph the following definitions apply:

(I) "Photo editor" means an individual who performs services ancillary to the creation of digital content, such as retouching, editing, and keywording.

(II) "Digital content aggregator" means a licensing intermediary that obtains a license or assignment of copyright from a still photographer, photojournalist, videographer, or photo editor for the purposes of distributing that copyright by way of sublicense or assignment, to the intermediary's third party end users.

(J) Services provided by a freelance writer, translator, editor, copy editor, illustrator, or newspaper cartoonist who works under a written contract that specifies the rate of pay, intellectual property rights, and obligation to pay by a defined time, as long as the individual providing the services is not directly replacing an employee who performed the same work at the same

volume for the hiring entity; the individual does not primarily perform the work at the hiring entity's business location, notwithstanding paragraph (1) of subdivision (a); and the individual is not restricted from working for more than one hiring entity.

(K) Services provided by an individual as a content contributor, advisor, producer, narrator, or cartographer for a journal, book, periodical, evaluation, other publication or educational, academic, or instructional work in any format or media, who works under a written contract that specifies the rate of pay, intellectual property rights and obligation to pay by a defined time, as long as the individual providing the services is not directly replacing an employee who performed the same work at the same volume for the hiring entity, the individual does not primarily perform the work at the hiring entity's business location notwithstanding paragraph (1) of subdivision (a); and the individual is not restricted from working for more than one hiring entity.

(L) Services provided by a licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist provided that the individual:

(i) Sets their own rates, processes their own payments, and is paid directly by clients.

(ii) Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.

(iii) Has their own book of business and schedules their own appointments.

(iv) Maintains their own business license for the services offered to clients.

(v) If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.

(vi) This subparagraph shall become inoperative, with respect to licensed manicurists, on January 1, 2022.

(M) A specialized performer hired by a performing arts company or organization to teach a master class for no more than one week. "Master class" means a specialized course for limited duration that is not regularly offered by the hiring entity and is taught by an expert in a recognized field of artistic endeavor who does not work for the hiring entity to teach on a regular basis.

(N) Services provided by an appraiser, as defined in Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code.

(O) Registered professional foresters licensed pursuant to Article 3 (commencing with Section 750) of Chapter 2.5 of Division 1 of the Public Resources Code.

(b) Section 2775 and the holding in Dynamex do not apply to the following, which are subject to the Business and Professions Code:

(1) A real estate licensee licensed by the State of California pursuant to Division 4 (commencing with Section 10000) of the Business and Professions Code, for whom the determination of employee or independent

contractor status shall be governed by subdivision (b) of Section 10032 of the Business and Professions Code. If that section is not applicable, then this determination shall be governed as follows:

(A) For purposes of unemployment insurance by Section 650 of the Unemployment Insurance Code.

(B) For purposes of workers' compensation by Section 3200 et seq.

(C) For all other purposes in the Labor Code by Borello. The statutorily imposed duties of a responsible broker under Section 10015.1 of the Business and Professions Code are not factors to be considered under the Borello test.

(2) A home inspector, as defined in Section 7195 of the Business and Professions Code, and subject to the provisions of Chapter 9.3 (commencing with Section 7195) of Division 3 of that code.

(3) A repossession agency licensed pursuant to Section 7500.2 of the Business and Professions Code, for whom the determination of employee or independent contractor status shall be governed by Section 7500.2 of the Business and Professions Code, if the repossession agency is free from the control and direction of the hiring person or entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

2779. (a)Section 2775 and the holding in Dynamex do not apply to the relationship between two individuals wherein each individual is acting as a sole proprietor or separate business entity formed as a partnership, limited liability company, limited liability partnership, or corporation performing work pursuant to a contract for purposes of providing services at the location of a single-engagement event, as defined below, under the following conditions:

(1) Neither individual is subject to control and direction by the other, in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(2) Each individual has the ability to negotiate their rate of pay with the other individual.

(3) The written contract between both individuals specifies the total payment for services provided by both individuals at the single-engagement event, and the specific rate paid to each individual.

(4) Each individual maintains their own business location, which may include the individual's personal residence.

(5) Each individual provides their own tools, vehicles, and equipment to perform the services under the contract.

(6) If the work is performed in a jurisdiction that requires an individual to have a business license or business tax registration, then each individual has the required business license or business tax registration.

(7) Each individual is customarily engaged in the same or similar type of work performed under the contract or each individual separately holds themselves out to other potential customers as available to perform the same type of work.

(8) Each individual can contract with other businesses to provide the same or similar services and maintain their own clientele without restrictions.

(b) "Single-engagement event" means a stand-alone non-recurring event in a single location, or a series of events in the same location no more than once a week.

(c) "Services" under this section do not include services provided in an industry designated by the Division of Occupational Safety and Health or the Department of Industrial Relations as a high hazard industry pursuant to subparagraph (A) of paragraph (3) of subdivision (e) of Section 6401.7 or janitorial, delivery, courier, transportation, trucking, agricultural labor, retail, logging, in-home care, or construction services other than minor home repair.

2780. (a) (1) Section 2775 and the holding in Dynamex do not apply to the following occupations in connection with creating, marketing, promoting, or distributing sound recordings or musical compositions, and instead the holding in Borello shall apply to all of the following:

(A) Recording artists, subject to the below.

(B) Songwriters, lyricists, composers, and proofers.

(C) Managers of recording artists.

(D) Record producers and directors.

(E) Musical engineers and mixers engaged in the creation of sound recordings.

(F) Musicians engaged in the creation of sound recordings, subject to the below.

(G) Vocalists, subject to the below.

(H) Photographers working on recording photo shoots, album covers, and other press and publicity purposes.

(I) Independent radio promoters.

(J) Any other individual engaged to render any creative, production, marketing, or independent music publicist services related primarily to the creation, marketing, promotion, or distribution of sound recordings or musical compositions.

(2) This subdivision shall not apply to any of the following:

(A) Film and television unit production crews, as such term is commonly used in the film and television industries, working on live or recorded performances for audiovisual works, including still photographers and cinematographers.

(B) Publicists who are not independent music publicists.

(3) Notwithstanding Section 2775, paragraphs (1) and (2), and the holding in Dynamex, the terms and conditions of any current or future collective bargaining agreements or contractual agreements between the applicable labor unions and respective employers shall govern the determination of employment status in all events.

(4) The following shall apply to recording artists, musicians, and vocalists:

(A) Recording artists, musicians, and vocalists shall not be precluded from organizing under applicable provisions of labor law, or otherwise

exercising rights granted to employees under the National Labor Relations Act (29 U.S.C. Sec. 151 et seq.).

(B) (i) Musicians and vocalists who are not royalty-based participants in the work created during any specific engagement shall be treated as employees solely for purposes of receiving minimum and overtime wages for hours worked during the engagement, as well as any damages and penalties due to the failure to receive minimum or overtime wages. Any such wages, damages, and penalties owed under this subparagraph shall be determined according to the applicable provisions of this code, wage orders of the Industrial Welfare Commission, or applicable local laws.

(ii) "Royalty-based participant" means an individual who has either negotiated for the collection or direct administration of royalties derived from the exploitation of a sound recording or musical composition, or is entitled to control, administer or collect royalties related to the exploitation of a sound recording or musical composition as a co-author or joint owner thereof.

(C) In all events, and notwithstanding subparagraph (B), the terms and conditions of any current or future collective bargaining agreements or contractual agreements between the applicable labor unions and respective employers shall govern the determination of employment status.

(b) (1) Section 2775 and the holding in Dynamex do not apply to a musician or musical group for the purpose of a single-engagement live performance event, and instead the determination of employee or independent contractor status shall be governed by Borello, unless one of the following conditions is met:

(A) The musical group is performing as a symphony orchestra, the musical group is performing at a theme park or amusement park, or a musician is performing in a musical theater production.

(B) The musical group is an event headliner for a performance taking place in a venue location with more than 1,500 attendees.

(C) The musical group is performing at a festival that sells more than 18,000 tickets per day.

(2) This subdivision is inclusive of rehearsals related to the single-engagement live performance event.

(3) As used in this subdivision:

(A) "Event headliner" means the musical group that appears most prominently in an event program, advertisement, or on a marquee.

(B) "Festival" means a single day or multiday event in a single venue location that occurs once a year, featuring performances by various musical groups.

(C) "Musical group" means a solo artist, band, or a group of musicians who perform under a distinct name.

(D) "Musical theater production" means a form of theatrical performance that combines songs, spoken dialogue, acting, and dance.

(E) "Musician" means an individual performing instrumental, electronic, or vocal music in a live setting.

(F) "Single-engagement live performance event" means a stand-alone musical performance in a single venue location, or a series of performances in the same venue location no more than once a week. This does not include performances that are part of a tour or series of live performances at various locations.

(G) "Venue location" means an indoor or outdoor location used primarily as a space to hold a concert or musical performance. "Venue location" includes, but is not limited to, a restaurant, bar, or brewery that regularly offers live musical entertainment.

(c) Section 2775 and the holding in Dynamex do not apply to the following, and instead, the determination of employee or independent contractor status shall be governed by Borello:

(1) An individual performance artist performing material that is their original work and creative in character and the result of which depends primarily on the individual's invention, imagination, or talent, given all of the following conditions are satisfied:

(A) The individual is free from the control and direction of the hiring entity in connection with the performance of the work, both as a matter of contract and in fact. This includes, and is not limited to, the right for the performer to exercise artistic control over all elements of the performance.

(B) The individual retains the rights to their intellectual property that was created in connection with the performance.

(C) Consistent with the nature of the work, the individual sets their terms of work and has the ability to set or negotiate their rates.

(D) The individual is free to accept or reject each individual performance engagement without being penalized in any form by the hiring entity.

(2) "Individual performance artist" shall include, but is not limited to, an individual performing comedy, improvisation, stage magic, illusion, mime, spoken word, storytelling, or puppetry.

(3) This subdivision does not apply to an individual participating in a theatrical production, or a musician or musical group as defined in subdivision (b).

(4) In all events, notwithstanding paragraph (1), the terms and conditions of any current or future collective bargaining agreements or contractual agreements between the applicable labor unions and respective employer shall govern the determination of employment status.

2781. Section 2775 and the holding in Dynamex do not apply to the relationship between a contractor and an individual performing work pursuant to a subcontract in the construction industry, and instead the determination of whether the individual is an employee of the contractor shall be governed by Section 2750.5 and by Borello, if the contractor demonstrates that all the following criteria are satisfied:

(a) The subcontract is in writing.

(b) The subcontractor is licensed by the Contractors' State License Board and the work is within the scope of that license.

(c) If the subcontractor is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.

(d) The subcontractor maintains a business location that is separate from the business or work location of the contractor.

(e) The subcontractor has the authority to hire and to fire other persons to provide or to assist in providing the services.

(f) The subcontractor assumes financial responsibility for errors or omissions in labor or services as evidenced by insurance, legally authorized indemnity obligations, performance bonds, or warranties relating to the labor or services being provided.

(g) The subcontractor is customarily engaged in an independently established business of the same nature as that involved in the work performed.

(h) (1) Subdivision (b) shall not apply to a subcontractor providing construction trucking services for which a contractor's license is not required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, provided that all of the following criteria are satisfied:

(A) The subcontractor is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation.

(B) For work performed after January 1, 2020, the subcontractor is registered with the Department of Industrial Relations as a public works contractor pursuant to Section 1725.5, regardless of whether the subcontract involves public work.

(C) The subcontractor utilizes its own employees to perform the construction trucking services, unless the subcontractor is a sole proprietor who operates their own truck to perform the entire subcontract and holds a valid motor carrier permit issued by the Department of Motor Vehicles.

(D) The subcontractor negotiates and contracts with, and is compensated directly by, the licensed contractor.

(2) For work performed after January 1, 2020, any business entity that provides construction trucking services to a licensed contractor utilizing more than one truck shall be deemed the employer for all drivers of those trucks.

(3) For purposes of this subdivision, "construction trucking services" mean hauling and trucking services provided in the construction industry pursuant to a contract with a licensed contractor utilizing vehicles that require a commercial driver's license to operate or have a gross vehicle weight rating of 26,001 or more pounds.

(4) This subdivision shall only apply to work performed before January 1, 2022.

(5) Nothing in this subdivision prohibits an individual who owns their truck from working as an employee of a trucking company and utilizing that truck in the scope of that employment. An individual employee providing their own truck for use by an employer trucking company shall

be reimbursed by the trucking company for the reasonable expense incurred for the use of the employee-owned truck.

2782. (a) (1) Section 2775 and the holding in Dynamex do not apply to the relationship between a data aggregator and an individual providing feedback to the data aggregator, and instead the holding in Borello shall apply, under the following conditions:

(A) The individual is free from control and direction from the data aggregator with respect to the substance and content of the feedback.

(B) Any consideration paid for the feedback provided, if prorated to an hourly basis, is an amount equivalent to or greater than the minimum wage.

(C) The nature of the feedback requested requires the individual providing feedback to the data aggregator to exercise independent judgment and discretion.

(D) The individual has the ability to reject feedback requests, without being penalized in any form by the data aggregator.

(2) As used in this section:

(A) "Data aggregator" is a business, research institution, or organization that requests and gathers feedback on user interface, products, services, people, concepts, ideas, offerings, or experiences from individuals willing to provide it.

(B) "Minimum wage" is local or state minimum wage, whichever is greater.

2783. Section 2775 and the holding in Dynamex do not apply to the following occupations as defined in the paragraphs below, and instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by Borello:

(a) A person or organization who is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code or a person who provides underwriting inspections, premium audits, risk management, or loss control work for the insurance and financial service industries.

(b) A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code. Nothing in this subdivision shall circumvent, undermine, or restrict the rights under federal law to organize and collectively bargain.

(c) An individual who holds an active license from the State of California and is practicing one of the following recognized professions: lawyer, architect, landscape architect, engineer, private investigator, or accountant.

(d) A securities broker-dealer or investment adviser or their agents and representatives that are either of the following:

(1) Registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority.

(2) Licensed by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.

(e) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.

(f) A manufactured housing salesperson, subject to all obligations under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, including all regulations promulgated by the Department of Housing and Community Development relating to manufactured home salespersons and all other obligations of manufactured housing salespersons to members of the public.

(g) A commercial fisher working on an American vessel.

(1) For the purposes of this subdivision:

(A) "American vessel" has the same meaning as defined in Section 125.5 of the Unemployment Insurance Code.

(B) "Commercial fisher" means a person who has a valid, unrevoked commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code.

(C) "Working on an American vessel" means the taking or the attempt to take fish, shellfish, or other fishery resources of the state by any means, and includes each individual aboard an American vessel operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, including maintaining the vessel or equipment used aboard the vessel. However, "working on an American vessel" does not apply to anyone aboard a licensed commercial fishing vessel as a visitor or guest who does not directly or indirectly participate in the taking.

(2) For the purposes of this subdivision, a commercial fisher working on an American vessel is eligible for unemployment insurance benefits if they meet the definition of "employment" in Section 609 of the Unemployment Insurance Code and are otherwise eligible for those benefits pursuant to the provisions of the Unemployment Insurance Code.

(3) On or before March 1, 2021, and each March 1 thereafter, the Employment Development Department shall issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. This report shall include, but not be limited to, the number of commercial fishers who apply for unemployment insurance benefits, the number of commercial fishers who have their claims disputed, the number of commercial fishers who have their claims denied, and the number of commercial fishers who receive unemployment insurance benefits. The report required by this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

(4) This subdivision shall become inoperative on January 1, 2023, unless extended by the Legislature.

(h) A newspaper distributor working under contract with a newspaper publisher, as defined in subparagraph (A), and a newspaper carrier working under contract either with a newspaper publisher or newspaper distributor.

(1) For purposes of this subdivision:

(A) "Newspaper" means a newspaper of general circulation, as defined in Section 6000 of the Government Code, and any other publication circulated to the community in general as an extension of or substitute for that newspaper's own publication, whether that publication be designated a "shoppers' guide," as a zoned edition, or otherwise.

(B) "Publisher" means the natural or corporate person that manages the newspaper's business operations, including circulation.

(C) "Newspaper distributor" means a person or entity that contracts with a publisher to distribute newspapers to the community.

(D) "Carrier" means a person who effects physical delivery of the newspaper to the customer or reader.

(2) This subdivision shall become inoperative on January 1, 2021, unless extended by the Legislature.

(i) An individual who is engaged by an international exchange visitor program that has obtained and maintains full official designation by the United States Department of State under Part 62 (commencing with Section 62.1) of Title 22 of the Code of Federal Regulations for the purpose of conducting, instead of participating in, international and cultural exchange visitor programs and is in full compliance with Part 62 (commencing with Section 62.1) of Title 22 of the Code of Federal Regulations.

(j) A competition judge with a specialized skill set or expertise providing services that require the exercise of discretion and independent judgment to an organization for the purposes of determining the outcome or enforcing the rules of a competition. This includes, but is not limited to, an amateur umpire or referee.

2784. Section 2775 and the holding in Dynamex do not apply to the relationship between a motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code and an individual performing services pursuant to a contract between the motor club and a third party to provide motor club services utilizing the employees and vehicles of the third party and, instead, the determination of whether such an individual is an employee of the motor club shall be governed by Borello, if the motor club demonstrates that the third party is a separate and independent business from the motor club.

2785. (a) Section 2775 does not constitute a change in, but is declaratory of, existing law with regard to wage orders of the Industrial Welfare Commission and violations of this code relating to wage orders.

(b) Insofar as the application of Sections 2776 to Section 2784 would relieve an employer from liability, those sections shall apply retroactively to existing claims and actions to the maximum extent permitted by law.

(c) Except as provided in subdivisions (a) and (b) of this section, this article shall apply to work performed on or after January 1, 2020.

(d) If a hiring entity can demonstrate compliance with all of conditions set forth in any one of Sections 2776 to 2784, inclusive, then Section 2775 and the holding in Dynamex do not apply to that entity, and instead the determination of an individual's employment status as an employee or independent contractor shall be governed by Borello.

2786. In addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees as independent contractors may be prosecuted against the putative employer in a court of competent jurisdiction by the Attorney General, by a district attorney, or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association.

2787. The provisions of this Article are severable. If any provision of this Article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. Section 17020.12 of the Revenue and Taxation Code is amended to read:

17020.12. (a) For the purposes of this part, except as otherwise provided, the determination of whether an individual is an employee shall be governed by Section 1 of Article 1.5 of the Labor Code.

(b) Section 7701(a)(20) of the Internal Revenue Code, relating to definition of "employee," shall apply, except as otherwise provided.

SEC. 4. Section 18406 is added to the Revenue and Taxation Code, to read:

18406. For the purposes of this part, except as otherwise provided, the determination of whether an individual is an employee shall be governed by Article 1.5 (commencing with Section 2775) of Chapter 2 of Division 3 of the Labor Code.

SEC. 5. Section 21003.5 is added to the Revenue and Taxation Code, to read:

21003.5. For the purposes of this part, except as otherwise provided, the determination of whether an individual is an employee shall be governed by Article 1.5 (commencing with Section 2775) of Chapter 2 of Division 3 of the Labor Code.

SEC. 6. Section 23045.6 of the Revenue and Taxation Code is amended to read:

23045.6. (a) For the purposes of this part, except as otherwise provided, the determination of whether an individual is an employee shall be governed by of Article 1.5 (commencing with Section 2775) of Chapter 2 of Division 3 of the Labor Code.

(b) Section 7701(a)(20) of the Internal Revenue Code, relating to the definition of "employee," shall apply, except as otherwise provided.

SEC. 7. Section 61001 is added to the Revenue and Taxation Code, to read:

61001. For the purposes of this part, except as otherwise provided, the determination of whether an individual is an employee shall be governed by Article 1.5 (commencing with Section 2775) of Chapter 2 of Division 3 of the Labor Code.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure businesses and workers have immediate clarity on the specific standards used to determine an individual's employment classification working in the professions impacted by this legislation, including musicians, various professionals in the music recording industry, writers, photographers, videographers, photo editors, and illustrators, and others, it is necessary for this act to take effect immediately.

O

Assembly Bill No. 1867

CHAPTER 45

An act to add and repeal Section 12945.21 of the Government Code, to add Section 113963 to the Health and Safety Code, and to amend Section 248.5 of, and to add Sections 248 and 248.1 to, the Labor Code, relating to worker protections, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor September 9, 2020. Filed with Secretary of State September 9, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1867, Committee on Budget. Small employer family leave mediation: handwashing: supplemental paid sick leave.

(1) Existing law, the California Fair Employment and Housing Act (FEHA), establishes the Department of Fair Employment and Housing (DFEH) within the Business, Consumer Services, and Housing Agency to enforce civil rights laws with respect to housing and employment and to protect and safeguard the right of all persons to obtain and hold employment without discrimination based on specified characteristics or status. Under FEHA, the DFEH has specified powers, including the power to receive, investigate, conciliate, mediate, and prosecute certain complaints. The Moore-Brown-Roberti Family Rights Act, commonly known as the California Family Rights Act, which is a part of FEHA, makes it an unlawful employment practice for an employer, as defined, to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12-month period for family care and medical leave, as specified.

This bill would, upon specified circumstances, require the DFEH to create a small employer family leave mediation pilot program, as prescribed. The pilot program would authorize a small employer or the employee to request all parties to participate in mediation through the DFEH's dispute resolution division within a specified timeframe, after notice. The bill would prohibit an employee from pursuing civil action until the mediation is complete if an employer or employee requests mediation, as prescribed. The bill would toll the statute of limitations for the employee, including for additional related claims, from receipt of a request to participate in the program until the mediation is complete. These provisions of the bill would be repealed on January 1, 2024.

(2) Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities and delegates the enforcement of those standards to the State Department of Public Health and local health agencies. Existing law requires food employees to keep

their hands and exposed portions of their arms clean, washing as specified, and regulates the provision of handwashing facilities. A violation of these provisions is a misdemeanor, punishable as prescribed.

This bill would require a food employee working in any food facility to be permitted to wash their hands every 30 minutes and additionally as needed. By changing the scope of an existing crime, the bill would impose a state-mandated local program.

(3) Existing law, the Healthy Workplaces, Healthy Families Act of 2014, entitles an employee who works in California for the same employer for 30 or more days within a year from the commencement of employment to paid sick days. Under existing law, an employee accrues paid sick days at a rate of not less than one hour per every 30 hours worked, subject to certain use, accrual, and yearly carryover limitations. Existing law authorizes an employer to use a different accrual method from that described above, provided that the accrual is on a regular basis so that the employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year or in each 12-month period. Under existing law, an employer is not required to provide additional paid sick leave if the employer has a paid leave policy or paid time off policy and makes available an amount of leave to employees under the same conditions and the policy satisfies the accrual, carryover, and use requirements described above. Existing law requires an employer, in each workplace of the employer, to display a poster in a conspicuous place containing specified information on paid sick days. Existing law requires the Labor Commissioner to create a poster containing this information and make it available to employers. Existing law requires the Labor Commissioner to enforce the act and provides for procedures, including investigation and hearing, and for remedies and penalties.

This bill would establish COVID-19 food sector supplemental paid sick leave for food sector workers, as prescribed. The bill would require a hiring entity to provide a number of hours of COVID-19 food sector supplemental paid sick leave, determined as prescribed, to each food sector worker who performs work for or through the hiring entity if that food sector worker is unable to work due to any of specified reasons relating to COVID-19. The bill would authorize a food sector worker to determine how many hours of this leave to use, up to the total number of hours to which the worker is entitled. Under the bill, the rate of compensation would be the highest of the food sector worker's regular rate of pay in the last pay period, the state minimum wage, or an applicable local minimum wage, up to daily and aggregate total maximum payments. The bill would exempt a hiring entity from being required to provide the COVID-19 food sector supplemental paid sick leave if the hiring entity provides the relevant food sector worker, as of the effective date of the bill's provisions, with a specified other supplemental benefit. The bill would require the Labor Commissioner to enforce the COVID-19 food sector supplemental paid sick leave provisions, as provided. For purposes of enforcement, the bill would deem all food

sector workers to be employees and any hiring entity to be an employer. The bill would define terms for these purposes.

This bill would similarly establish COVID-19 supplemental paid sick leave for covered workers, including certain persons employed by private businesses of 500 or more employees or persons employed as certain types of health care providers or emergency responders by public or private entities. The bill would require the Labor Commissioner to make publicly available a model notice relating to COVID-19 supplemental paid sick leave for covered workers for purposes of the posting requirements under existing law. The bill would permit notice by electronic means in lieu of posting, for purposes of COVID-19 supplemental paid sick leave only, if a hiring entity's covered workers do not frequent a workplace.

The bill's requirements to provide COVID-19 food sector supplemental paid sick leave and COVID-19 supplemental paid sick leave for covered workers would expire on December 31, 2020, or upon the expiration of any federal extension of the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act, whichever is later.

This bill would appropriate $100,000 from the Labor and Workforce Development Fund to the Labor Commissioner for staffing resources to implement and enforce the provisions related to the COVID-19 supplemental paid sick leave for covered workers and COVID-19 food sector supplemental paid sick leave.

The bill would require the Labor Commissioner to enforce existing law and the bill's provisions through prescribed procedures.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 12945.21 is added to the Government Code, to read:

12945.21. (a) The department shall create a small employer family leave mediation pilot program for employers with between 5 and 19 employees. Under the pilot program, such an employer may, within 30 days of receipt of a right-to-sue notice alleging a violation of Section 12945.2, or the employee may, within 30 days of obtaining a right-to-sue notice alleging a violation of Section 12945.2, request all parties to participate in the department's dispute resolution division. The right-to-sue notice shall include or be accompanied by a written statement describing the parties' right to participate in the mediation pilot program, including information on the

timeframe to request mediation. If the employer or employee requests mediation in compliance with this subdivision, the employee shall not pursue any civil action under this section until the mediation is complete. The department shall initiate the mediation promptly following the request. The employee's statute of limitations, including for all related claims not under this section, shall be tolled upon receipt of a request to participate in the department's dispute resolution division under this subdivision until the mediation is complete. For purposes of this subdivision, a mediation is complete when, at any time after the employer or employee's request, the department notifies the parties that it believes further mediation would be fruitless.

(b) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 2. Section 113963 is added to the Health and Safety Code, to read:

113963. Consistent with Section 113952, a food employee working in any food facility, as defined in Section 113789 of the Health and Safety Code, shall be permitted to wash their hands every 30 minutes and additionally as needed.

SEC. 3. Section 248 is added to the Labor Code, to read:

248. (a) As used in this section:

(1) "COVID-19 food sector supplemental paid sick leave" means supplemental paid sick leave provided pursuant to this section.

(2) "Food sector worker" means any person who satisfies all of the following criteria:

(A) The person satisfies one or more of the following criteria:

(i) The person works in an industry or occupation defined in paragraph (B) of Section 2 of IWC Wage Order 3-2001, paragraph (H) of Section 2 of IWC Wage Order 8-2001, paragraph (H) of Section 2 of IWC Wage Order 13-2001, or paragraph (D) of Section 2 of IWC Wage Order 14-2001.

(ii) The person works for a hiring entity that operates a food facility, as defined in Section 113789 of the Health and Safety Code.

(iii) The person delivers food from a food facility, as defined in Section 113789 of the Health and Safety Code, for or through a hiring entity.

(B) The person leaves the person's home or other place of residence to perform work for or through the person's hiring entity.

(3) "Hiring entity" means a private sole proprietorship or any kind of private entity whatsoever, including, but not limited to, any kind of corporation, partnership, limited liability company, limited liability partnership, or any other kind of business enterprise, and specifically including, but not limited to, any delivery network company, as defined in subdivision (b) of Section 6041.5 of the Revenue and Taxation Code, and any transportation network company, as defined in subdivision (c) of Section 5431 of the Public Utilities Code, that has 500 or more employees in the United States. For purposes of this paragraph, Section 826.40(a)(1) and (2) of Title 29 of the Code of Federal Regulations shall be used to determine the number of employees that the hiring entity employs.

(4) "IWC Wage Order" means a wage order of the Industrial Welfare Commission.

(b) A food sector worker shall be entitled to COVID-19 food sector supplemental paid sick leave as follows:

(1) A hiring entity shall provide COVID-19 food sector supplemental paid sick leave to each food sector worker who performs work for or through the hiring entity if that food sector worker is unable to work due to any of the following reasons:

(A) The food sector worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19.

(B) The food sector worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.

(C) The food sector worker is prohibited from working by the food sector worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

(2) A food sector worker shall be entitled to the following number of hours of COVID-19 food sector supplemental paid sick leave:

(A) A food sector worker is entitled to 80 hours of COVID-19 food sector supplemental paid sick leave, if the food sector worker satisfies either of the following criteria:

(i) The hiring entity considers the food sector worker to work "full time."

(ii) The food sector worker worked or was scheduled to work, on average, at least 40 hours per week for the hiring entity in the two weeks preceding the date the food sector worker took COVID-19 food sector supplemental paid sick leave.

(B) A food sector worker who does not satisfy either of the criteria in subparagraph (A) is entitled to an amount of COVID-19 food sector supplemental paid sick leave as follows:

(i) If the food sector worker has a normal weekly schedule, the total number of hours the food sector worker is normally scheduled to work for or through a hiring entity over two weeks.

(ii) If the food sector worker works a variable number of hours, 14 times the average number of hours the food sector worker worked each day for or through the hiring entity in the six months preceding the date the food sector worker took COVID-19 food sector supplemental paid sick leave. If the food sector worker has worked for the hiring entity fewer than six months, this calculation shall instead be made over the entire period the food sector worker has worked for the hiring entity.

(C) The total number of hours of COVID-19 food sector supplemental paid sick leave to which a food sector worker is entitled pursuant to subparagraph (A) or (B) shall be in addition to any paid sick leave that may be available to the food sector worker under Section 246, but shall not be in addition to the total number of hours of supplemental paid sick leave available to the worker under Executive Order N-51-20.

(D) A food sector worker may determine how many hours of COVID-19 food sector supplemental paid sick leave to use, up to the total number of hours to which the food sector worker is entitled pursuant to subparagraph

(A) or (B). The hiring entity shall make COVID-19 food sector supplemental paid sick leave available for immediate use by the food sector worker, upon the oral or written request of the worker to the hiring entity.

(E) A hiring entity is not required to provide a food sector worker more than the total number of hours of COVID-19 food sector supplemental paid sick leave to which the food sector worker is entitled pursuant to subparagraph (A) or (B) above.

(3) (A) Each hour of COVID-19 food sector supplemental paid sick leave shall be compensated at a rate equal to the highest of the following:

(i) The food sector worker's regular rate of pay for the food sector worker's last pay period.

(ii) The state minimum wage.

(iii) The local minimum wage to which the food sector worker is entitled.

(B) Notwithstanding subparagraph (A), a hiring entity shall not be required to pay more than five hundred eleven dollars ($511) per day and five thousand one hundred ten dollars ($5,110) in the aggregate to a food sector worker for COVID-19 food sector supplemental paid sick leave taken by the worker.

(4) A hiring entity shall not require a food sector worker to use any other paid or unpaid leave, paid time off, or vacation time provided by the hiring entity to the food sector worker before the food sector worker uses COVID-19 food sector supplemental paid sick leave or in lieu of COVID-19 food sector supplemental paid sick leave.

(c) Notwithstanding subdivision (b), if a hiring entity already provides the relevant food sector worker with a supplemental benefit, such as supplemental paid leave, that is payable for the reasons listed in paragraph (1) of subdivision (b) and that would compensate the food sector worker in an amount equal to or greater than the amount of compensation for taking COVID-19 food sector supplemental paid sick leave to which the food sector worker would otherwise be entitled as set forth under paragraph (3) of subdivision (b), then the hiring entity may count the hours of the other paid benefit or leave towards the total number of hours of COVID-19 food sector supplemental paid sick leave that the hiring entity is required to provide to the food sector worker under paragraph (2) of subdivision (b). For purposes of the foregoing, the other supplemental paid benefit or leave that may be counted does not include paid sick leave to which the food sector worker is entitled under Section 246, but may include paid leave already provided by the hiring entity pursuant to Executive Order N-51-20 or supplemental paid leave provided pursuant to federal or local law for the same reasons set forth in paragraph (1) of subdivision (b).

(d) (1) In addition to other remedies as may be provided by the laws of this state or its subdivisions, including, but not limited to, the remedies available to redress any unlawful business practice under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, the Labor Commissioner shall enforce this section. For purposes of such enforcement and to implement COVID-19 food sector supplemental paid sick leave, this section shall apply as follows:

(A) The Labor Commissioner shall enforce this section as if COVID-19 food sector supplemental paid sick leave constitutes "paid sick days," "paid sick leave," or "sick leave" under subdivision (n) of Section 246, subdivisions (b) and (c) of Section 246.5, Section 247, Section 247.5, and Section 248.5. Any claim by a covered worker that is enforceable by the Labor Commissioner for supplemental paid sick leave pursuant to Executive Order N-51-20 shall also be enforceable through this section.

(B) Section 249 applies to COVID-19 food sector supplemental paid sick leave.

(2) For purposes of sections of this code cited in subparagraphs (A) to (C), inclusive, of paragraph (1), in construing this section all food sector workers shall be considered employees and any hiring entity shall be considered an employer.

(e) The requirement to provide COVID-19 food sector supplemental paid sick leave as set forth in this section applies retroactively to April 16, 2020, and shall expire on December 31, 2020 or upon the expiration of any federal extension of the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127), whichever is later, except that a food sector worker taking COVID-19 food sector supplemental paid sick leave at the time of the expiration of this section shall be permitted to take the full amount of COVID-19 food sector supplemental paid sick leave to which that food sector worker otherwise would have been entitled under this section.

SEC. 4. Section 248.1 is added to the Labor Code, to read:

248.1. (a) As used in this section:

(1) "COVID-19 supplemental paid sick leave" means supplemental paid sick leave provided pursuant to this section.

(2) "Covered worker" means any person who satisfies the following criteria:

(A) The person satisfies one or more of the following criteria:

(i) The person is employed by a hiring entity, as defined in subparagraph (A) of paragraph (3).

(ii) The person is employed as a health care provider or emergency responder, as defined under Section 826.30(c) of Title 29 of the Code of Federal Regulations, by a hiring entity as defined in subparagraph (B) of paragraph (3) that has elected to exclude such employees from emergency paid sick leave under the federal Families First Coronavirus Response Act (Public Law 116-127).

(B) The person satisfying one or more of the criteria in subparagraph (A) leaves the person's home or other place of residence to perform work for the person's hiring entity.

(C) Notwithstanding subparagraph (A), a "covered worker" shall not include any of the following:

(i) A person who works in an industry or occupation defined in paragraph (B) of Section 2 of IWC Wage Order 3-2001, paragraph (H) of Section 2 of IWC Wage Order 8-2001, paragraph (H) of Section 2 of IWC Wage Order 13-2001, or paragraph (D) of Section 2 of IWC Wage Order 14-2001.

(ii) A person who works for a hiring entity that operates a food facility, as defined in Section 113789 of the Health and Safety Code.

(iii) A person who delivers food from a food facility, as defined in Section 113789 of the Health and Safety Code, for or through a hiring entity.

(3) "Hiring entity" means either of the following:

(A) A private sole proprietorship or any kind of private entity whatsoever, including, but not limited to, any kind of corporation, partnership, limited liability company, limited liability partnership, or any other kind of business enterprise that has 500 or more employees in the United States. For purposes of this paragraph, Section 826.40(a)(1) and (2) of Title 29 of the Code of Federal Regulations shall be used to determine the number of employees that the hiring entity employs.

(B) An entity, including a public entity, that employs health care providers or emergency responders as defined under Section 826.30(c) of Title 29 of the Code of Federal Regulations, and that has elected to exclude such employees from emergency paid sick leave under the federal Families First Coronavirus Response Act (Public Law 116-127).

(4) "IWC Wage Order" means a wage order of the Industrial Welfare Commission.

(b) A covered worker shall be entitled to COVID-19 supplemental paid sick leave as follows:

(1) A hiring entity shall provide COVID-19 supplemental paid sick leave to each covered worker who performs work for the hiring entity if that covered worker is unable to work due to any of the following reasons:

(A) The covered worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19.

(B) The covered worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19.

(C) The covered worker is prohibited from working by the covered worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

(2) A covered worker shall be entitled to the following number of hours of COVID-19 supplemental paid sick leave:

(A) A covered worker is entitled to 80 hours of COVID-19 supplemental paid sick leave, if the covered worker satisfies either of the following criteria:

(i) The hiring entity considers the covered worker to work "full time."

(ii) The covered worker worked or was scheduled to work, on average, at least 40 hours per week for the hiring entity in the two weeks preceding the date the covered worker took COVID-19 supplemental paid sick leave.

(B) Notwithstanding subparagraph (A), a covered worker who is an active firefighter who was scheduled to work more than 80 hours for the hiring entity in the two weeks preceding the date the covered worker took COVID-19 supplemental paid sick leave is entitled to an amount of COVID-19 supplemental paid sick leave equal to the total number of hours that the covered worker was scheduled to work for the hiring entity in those two preceding weeks. This subparagraph applies to an active firefighting member of any of the following:

(i) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(ii) A fire department of the University of California and the California State University.

(iii) The Department of Forestry and Fire Protection.

(iv) A county forestry or firefighting department or unit.

(v) A fire department that serves a United States Department of Defense installation and whose firefighters are certified by the United States Department of Defense as meeting its standards for firefighters.

(vi) A fire department that serves a National Aeronautics and Space Administration installation and that adheres to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(vii) A fire department that provides fire protection to a commercial airport regulated by the Federal Aviation Administration (FAA) under Part 139 (commencing with Section 139.1) of Subchapter G of Chapter 1 of Title 14 of the Federal Code of Regulations whose firefighters are trained and certified by the State Fire Marshal as meeting the standards of Fire Control 5 and Section 139.319 of Title 14 of the Federal Code of Regulations.

(viii) Fire and rescue services coordinators who work for the Office of Emergency Services. For purposes of this clause, "fire and rescue services coordinators" means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.

(C) A covered worker who does not satisfy either of the criteria in subparagraph (A) or (B) is entitled to an amount of COVID-19 supplemental paid sick leave as follows:

(i) If the covered worker has a normal weekly schedule, the total number of hours the covered worker is normally scheduled to work for the hiring entity over two weeks.

(ii) If the covered worker works a variable number of hours, 14 times the average number of hours the covered worker worked each day for the hiring entity in the six months preceding the date the covered worker took COVID-19 supplemental paid sick leave. If the covered worker has worked for the hiring entity over a period of fewer than six months but more than 14 days, this calculation shall instead be made over the entire period the covered worker has worked for the hiring entity.

(iii) If the covered worker works a variable number of hours and has worked for the hiring entity over a period of 14 days or fewer, the total number of hours the covered worker has worked for that hiring entity.

(D) The total number of hours of COVID-19 supplemental paid sick leave to which a covered worker is entitled pursuant to subparagraph (A), (B), or (C) shall be in addition to any paid sick leave that may be available to the covered worker under Section 246.

(E) A covered worker may determine how many hours of COVID-19 supplemental paid sick leave to use, up to the total number of hours to which the covered worker is entitled pursuant to subparagraph (A), (B), or (C). The hiring entity shall make COVID-19 supplemental paid sick leave

available for immediate use by the covered worker, upon the oral or written request of the worker to the hiring entity.

(F) A hiring entity is not required to provide a covered worker more than the total number of hours of COVID-19 supplemental paid sick leave to which the covered worker is entitled pursuant to subparagraph (A), (B), or (C).

(3) (A) Each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the highest of the following:

(i) The covered worker's regular rate of pay for the covered worker's last pay period, including pursuant to any collective bargaining agreement that applies.

(ii) The state minimum wage.

(iii) The local minimum wage to which the covered worker is entitled.

(B) Notwithstanding subparagraph (A), a covered worker who is entitled to an amount of COVID-19 supplemental paid sick leave under subparagraph (B) of paragraph (2), shall be compensated for each hour of COVID-19 supplemental paid sick leave at the regular rate of pay to which the worker would be entitled as if the worker had been scheduled to work those hours, pursuant to existing law or an applicable collective bargaining agreement.

(C) Notwithstanding subparagraph (A) or (B), a hiring entity shall not be required to pay more than five hundred eleven dollars ($511) per day and five thousand one hundred ten dollars ($5,110) in the aggregate to a covered worker for COVID-19 supplemental paid sick leave taken by the worker.

(4) A hiring entity shall not require a covered worker to use any other paid or unpaid leave, paid time off, or vacation time provided by the hiring entity to the covered worker before the covered worker uses COVID-19 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave.

(c) Notwithstanding subdivision (b), if a hiring entity already provides a covered worker with a supplemental benefit, such as supplemental paid leave, that is payable for the reasons listed in paragraph (1) of subdivision (b) and that would compensate the covered worker in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered worker is entitled as set forth under paragraph (3) of subdivision (b), then the hiring entity may count the hours of the other paid benefit or leave towards the total number of hours of COVID-19 supplemental paid sick leave that the hiring entity is required to provide to the covered worker under paragraph (2) of subdivision (b). For purposes of the foregoing, the other supplemental paid benefit or leave that may be counted does not include paid sick leave to which the covered worker is entitled under Section 246, but may include paid leave already provided by the hiring entity pursuant to Executive Order N-51-20 or Section 248, or supplemental paid leave provided pursuant to federal or local law for the same reasons set forth in paragraph (1) of subdivision (b). Additionally, if a hiring entity already provided supplemental paid leave between March 4, 2020, and the effective date of this section for the reasons

listed in paragraph (1) of subdivision (b) but did not compensate the covered worker in an amount equal to or greater than the amount of compensation for COVID-19 supplemental paid sick leave to which the covered worker is entitled as set forth under paragraph (3) of subdivision (b), the employer may retroactively provide supplemental pay to the covered worker to satisfy the compensation requirements under paragraph (3) of subdivision (b), in which case those hours may count towards the total number of hours of COVID-19 supplemental paid sick leave required under paragraph (2) of subdivision (b).

(d) (1) In addition to other remedies as may be provided by the laws of this state or its subdivisions, including, but not limited to, the remedies available to redress any unlawful business practice under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, the Labor Commissioner shall enforce this section. For purposes of such enforcement and to implement COVID-19 supplemental paid sick leave, this section shall apply as follows:

(A) The Labor Commissioner shall enforce this section as if COVID-19 supplemental paid sick leave constitutes "paid sick days," "paid sick leave," or "sick leave" under subdivisions (i) and (n) of Section 246, subdivisions (b) and (c) of Section 246.5, Section 247, Section 247.5, and Section 248.5. However, the requirement in subdivision (i) of Section 246 is not enforceable until the next full pay period following the date of enactment of this section.

(B) Section 249 applies to COVID-19 supplemental paid sick leave.

(C) By seven days after the effective date of this section, the Labor Commissioner shall make publicly available a model notice for purposes of Section 247. Only for purposes of COVID-19 supplemental paid sick leave, if a hiring entity's covered workers do not frequent a workplace, the hiring entity may satisfy the notice requirement of subdivision (a) of Section 247 by disseminating notice through electronic means, such as by electronic mail.

(2) For purposes of sections of this code cited in subparagraphs (A) to (C), inclusive, of paragraph (1), in construing this section all covered workers shall be considered employees and any hiring entity shall be considered an employer.

(e) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section shall take effect not later than 10 days after the date of enactment of this section.

(f) The requirement to provide COVID-19 supplemental paid sick leave as set forth in this section shall expire on December 31, 2020, or upon the expiration of any federal extension of the Emergency Paid Sick Leave Act established by the federal Families First Coronavirus Response Act (Public Law 116-127), whichever is later, except that a covered worker taking COVID-19 supplemental paid sick leave at the time of the expiration of this section shall be permitted to take the full amount of COVID-19 supplemental paid sick leave to which that covered worker otherwise would have been entitled under this section.

SEC. 5. Section 248.5 of the Labor Code is amended to read:

248.5. (a) The Labor Commissioner shall enforce this article, including investigating an alleged violation, and ordering appropriate temporary relief to mitigate the violation or to maintain the status quo pending the completion of a full investigation or hearing through the procedures set forth in Sections 98, 98.3, 98.7, 98.74, or 1197.1, including by issuance of a citation against an employer who violates this article, and by filing a civil action. If a citation is issued, the procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the Labor Commissioner shall be the same as those set out in Section 98.74 or 1197.1, as appropriate.

(b) (1) If the Labor Commissioner, in any administrative proceeding under subdivision (a), determines that a violation of this article has occurred, they may order any appropriate relief, including reinstatement, backpay, the payment of sick days unlawfully withheld, and the payment of an additional sum in the form of an administrative penalty to an employee or other person whose rights under this article were violated.

(2) If paid sick days were unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred fifty dollars ($250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars ($4,000), shall be included in the administrative penalty.

(3) If a violation of this article results in other harm to the employee or person, such as discharge from employment, or otherwise results in a violation of the rights of the employee or person, the administrative penalty shall include a sum of fifty dollars ($50) for each day or portion thereof that the violation occurred or continued, not to exceed an aggregate penalty of four thousand dollars ($4,000).

(c) Where prompt compliance by an employer is not forthcoming, the Labor Commissioner may take any appropriate enforcement action to secure compliance, including the filing of a civil action. In compensation to the state for the costs of investigating and remedying the violation, the commissioner may order the violating employer to pay to the state a sum of not more than fifty dollars ($50) for each day or portion of a day a violation occurs or continues for each employee or other person whose rights under this article were violated.

(d) An employee or other person may report to the Labor Commissioner a suspected violation of this article. The commissioner shall encourage reporting pursuant to this subdivision by keeping confidential, to the maximum extent permitted by applicable law, the name and other identifying information of the employee or person reporting the violation. However, the commissioner may disclose that person's name and identifying information as necessary to enforce this article or for other appropriate purposes, upon the authorization of that person.

(e) The Labor Commissioner or the Attorney General may bring a civil action in a court of competent jurisdiction against the employer or other person violating this article and, upon prevailing, shall be entitled to collect legal or equitable relief on behalf of the aggrieved as may be appropriate to remedy the violation, including reinstatement, backpay, the payment of

sick days unlawfully withheld, the payment of an additional sum, not to exceed an aggregate penalty of four thousand dollars ($4,000), as liquidated damages in the amount of fifty dollars ($50) to each employee or person whose rights under this article were violated for each day or portion thereof that the violation occurred or continued, plus, if the employer has unlawfully withheld paid sick days to an employee, the dollar amount of paid sick days withheld from the employee multiplied by three; or two hundred fifty dollars ($250), whichever amount is greater; and reinstatement in employment or injunctive relief; and further shall be awarded reasonable attorney's fees and costs, provided, however, that any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney's fees and costs.

(f) In an administrative or civil action brought under this article, the Labor Commissioner or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code.

(g) The remedies, penalties, and procedures provided under this article are cumulative.

(h) An employer shall not be assessed any penalty or liquidated damages under this article due to an isolated and unintentional payroll error or written notice error that is a clerical or an inadvertent mistake regarding the accrual or available use of paid sick leave. In reviewing for compliance with this section, the factfinder may consider as a relevant factor whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 7. The sum of $100,000 is hereby appropriated from the Labor and Workforce Development Fund to the Labor Commissioner for staffing resources to implement and enforce the provisions related to the COVID-19 supplemental paid sick leave and COVID-19 food sector supplemental paid sick leave.

SEC. 8. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

SEC. 9. Section 1 of this act shall become operative only if Senate Bill 1383 of the 2019–20 Regular Session is enacted and takes effect on or before January 1, 2021.

O

Senate Bill No. 1159

CHAPTER 85

An act to add Section 77.8 to, and to add and repeal Sections 3212.86, 3212.87, and 3212.88 of, the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 17, 2020. Filed with Secretary of State September 17, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, Hill. Workers' compensation: COVID-19: critical workers.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee, as defined, for injuries sustained in the course of employment. Existing law creates a disputable presumption that specified injuries sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of the employment. Existing law governs the procedures for filing a claim for workers' compensation, including filing a claim form, and provides that an injury is presumed compensable if liability is not rejected within 90 days after the claim form is filed, as specified. Existing case law provides for how certain presumptions may be rebutted.

This bill would define "injury" for an employee to include illness or death resulting from the 2019 novel coronavirus disease (COVID-19) under specified circumstances, until January 1, 2023. The bill would create a disputable presumption, as specified, that the injury arose out of and in the course of the employment and is compensable, for specified dates of injury. The bill would limit the applicability of the presumption under certain circumstances. The bill would require an employee to exhaust their paid sick leave benefits and meet specified certification requirements before receiving any temporary disability benefits or, for police officers, firefighters, and other specified employees, a leave of absence. The bill would also make a claim relating to a COVID-19 illness presumptively compensable, as described above, after 30 days or 45 days, rather than 90 days. Until January 1, 2023, the bill would allow for a presumption of injury for all employees whose fellow employees at their place of employment experience specified levels of positive testing, and whose employer has 5 or more employees.

This bill would require the Commission on Health and Safety and Workers' Compensation to conduct a study of the impacts of COVID-19 and the specific presumptions created by this bill and report its findings to the Legislature and the Governor, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 77.8 is added to the Labor Code, to read:

77.8. The Commission on Health and Safety and Workers' Compensation shall conduct a study of the impacts claims of COVID-19 have had on the workers' compensation system, including overall impacts on indemnity benefits, medical benefits, and death benefits, including differences in the impacts across differing occupational groups, and including the effect of Sections 3212.87 and 3212.88. A preliminary report or a final report shall be delivered to the Legislature, pursuant to Section 9795 of the Government Code, and the Governor by December 31, 2021, and the final report shall be delivered to the Legislature, pursuant to Section 9795 of the Government Code, and the Governor no later than April 30, 2022.

SEC. 2. Section 3212.86 is added to the Labor Code, immediately following Section 3212.85, to read:

3212.86. (a) This section applies to any employee with a COVID-19-related illness.

(b) The term "injury," as used in this division, includes illness or death resulting from COVID-19 if both of the following circumstances apply:

(1) The employee has tested positive for or was diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction.

(2) The day referenced in paragraph (1) on which the employee performed labor or services at the employee's place of employment at the employer's direction was on or after March 19, 2020, and on or before July 5, 2020. The date of injury shall be the last date the employee performed labor or services at the employee's place of employment at the employer's direction.

(3) If paragraph (1) is satisfied through a diagnosis of COVID-19, the diagnosis was done by a licensed physician and surgeon holding an M.D. or D.O. degree or state licensed physician assistant or nurse practitioner, acting under the review or supervision of a physician and surgeon pursuant to standardized procedures or protocols within their lawfully authorized scope of practice, and that diagnosis is confirmed by testing or by a COVID-19 serologic test within 30 days of the date of the diagnosis.

(c) The compensation that is awarded for injury pursuant to this section shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) (1) If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any temporary disability benefits or benefits under Section 4800, 4800.5, or 4850 are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary disability benefits or Section 4800, 4800.5, or 4850 benefits, if applicable, from the date of disability. There shall not be a waiting period for temporary disability benefits.

(2) To qualify for temporary disability or Section 4800, 4800.5, or 4850 benefits under this section, an employee shall satisfy either of the following:

(A) If the employee has tested positive or is diagnosed with COVID-19 on or after May 6, 2020, the employee shall be certified for temporary disability within the first 15 days after the initial diagnosis, and shall be recertified for temporary disability every 15 days thereafter, for the first 45 days following diagnosis.

(B) If the employee has tested positive or was diagnosed with COVID-19 before May 6, 2020, the employee shall have obtained a certification, no later than May 21, 2020, documenting the period for which the employee was temporarily disabled and unable to work, and shall be recertified for temporary disability every 15 days thereafter, for the first 45 days following diagnosis.

(3) An employee shall be certified for temporary disability by a physician holding a physician's and surgeon's license issued pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. If the employee has a predesignated physician pursuant to subdivision (d) of Section 4600, is covered by a medical provider network pursuant to Article 2.3 (commencing with Section 4616) of Chapter 2 of Part 2, is covered by a workers' compensation health care organization pursuant to Article 2 (commencing with Section 4600) of Chapter 2 of Part 2, or is covered by a group health plan, the certifying physician shall be a physician and surgeon in that network, organization, or plan. Otherwise, the certifying physician may be a physician and surgeon of the employee's choosing.

(e) An injury described in subdivision (b) is presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence. Unless controverted, the appeals board is bound to find in accordance with the presumption.

(f) Notwithstanding Section 5402, if liability for a claim of a COVID-19-related illness is not rejected within 30 days after the date the claim form is filed pursuant to Section 5401, the illness shall be presumed compensable. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 30-day period.

(g) The Department of Industrial Relations shall waive the right to collect any death benefit payment due pursuant to Section 4706.5 arising out of claims covered by this section.

(h) This section applies to all pending matters except as otherwise specified, including, but not limited to, pending claims relying on Executive Order N-62-20. This section is not a basis to rescind, alter, amend, or reopen any final award of workers' compensation benefits.

(i) For purposes of this section:

(1) "COVID-19" means the 2019 novel coronavirus disease.

(2) "Place of employment" does not include an employee's residence.

(j) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 3. Section 3212.87 is added to the Labor Code, to read:

3212.87. (a) This section applies to the following employees:

(1) Active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(2) Active firefighting members of a fire department that serves a United States Department of Defense installation and who are certified by the United States Department of Defense as meeting its standards for firefighters.

(3) Active firefighting members of a fire department that serves a National Aeronautics and Space Administration installation and who adhere to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(4) Active firefighting members of a fire department that provides fire protection to a commercial airport regulated by the Federal Aviation Administration (FAA) under Part 139 (commencing with Section 139.5) of Subchapter G of Chapter 1 of Title 14 of the Federal Code of Regulations and are trained and certified by the State Fire Marshal as meeting the standards of Fire Control 5 and Section 139.319 of Title 14 of the Federal Code of Regulations

(5) Peace officers, as defined in Section 830.1 of the Penal Code, subdivisions (a), (b), (e), (f), and (h) of Section 830.2 of the Penal Code, subdivision (a) of Section 830.3 of the Penal Code, subdivisions (a) and (b) of Section 830.37 of the Penal Code, subdivisions (a) and (b) of Section 830.5 of the Penal Code, and subdivision (a) of Section 830.53 of the Penal Code, who are primarily engaged in active law enforcement activities.

(6) (A) Fire and rescue services coordinators who work for the Office of Emergency Services.

(B) For purposes of this paragraph, "fire and rescue services coordinators" means coordinators with any of the following job classifications: coordinator, senior coordinator, or chief coordinator.

(7) An employee who provides direct patient care, or a custodial employee in contact with COVID-19 patients, who works at a health facility. For the purposes of this subdivision, "health facility" means a health facility as defined in subdivision (a), (b), (c), (m), or (n) of Section 1250 of the Health and Safety Code.

(8) An authorized registered nurse, emergency medical technician-I, emergency medical technician-II, emergency medical technician-paramedic, as described in Chapter 2 (commencing with Section 1797.50) of Division 2.5 of the Health and Safety Code.

(9) An employee who provides direct patient care for a home health agency, as defined under Section 1727 of the Health and Safety Code.

(10) Employees of health facilities, other than those described in paragraph (7). For these employees, the presumption shall not apply if the

employer can establish that the employee did not have contact with a health facility patient within the last 14 days who tested positive for COVID-19. If it is determined that the presumption does not apply, the claim shall be evaluated pursuant to Sections 3202.5 and 3600. For the purposes of this subdivision, "health facility" means a health facility, as defined in subdivision (a), (b), (c), (m), or (n) of Section 1250 of the Health and Safety Code.

(11) A provider of in-home supportive services under Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, or Sections 14132.95, 14132.952, and 14132.956 of, the Welfare and Institutions Code, when they provide the in-home supportive services outside their own home or residence.

(b) The term "injury," as used in this division, includes illness or death resulting from COVID-19 if all of the following circumstances apply:

(1) The employee has tested positive for COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction.

(2) The day referenced in paragraph (1), on which the employee performed labor or services at the employee's place of employment at the employer's direction, was on or after July 6, 2020. The date of injury shall be the last date the employee performed labor or services at the employee's place of employment at the employer's direction prior to the positive test.

(c) The compensation that is awarded for injury pursuant to this section shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any temporary disability benefits or benefits under Section 4800, 4800.5, or 4850 are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary disability benefits or Section 4850 benefits, if applicable, from the date of disability. There shall not be a waiting period for temporary disability benefits.

(e) An injury described in subdivision (b) is presumed to arise out of and in the course of the employment, except as provided in this subdivision. This presumption is disputable and may be controverted by other evidence. Unless controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a person described in subdivision (a) following termination of service for a period of 14 days, commencing with the last date actually worked in the specified capacity at the employee's place of employment as described in subdivision (b).

(f) Notwithstanding Section 5402, if liability for a claim of a COVID-19-related illness is not rejected within 30 days after the date the claim form is filed pursuant to Section 5401, the illness shall be presumed compensable. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 30-day period.

(g) The Department of Industrial Relations shall waive the right to collect any death benefit payment due pursuant to Section 4706.5 arising out of claims covered by this section.

(h) This section applies to all pending matters, unless otherwise specified in this section, but shall not be a basis to rescind, alter, amend, or reopen any final award of workers' compensation benefits.

(i) For purposes of this section:

(1) "COVID-19" means the 2019 novel coronavirus disease.

(2) Unless otherwise indicated, "test" or "testing" means a PCR (Polymerase Chain Reaction) test approved for use or approved for emergency use by the United States Food and Drug Administration to detect the presence of viral RNA. "Test" or "testing" does not include serologic testing, also known as antibody testing. "Test" or "testing" may include any other viral culture test approved for use or approved for emergency use by the United States Food and Drug Administration to detect the presence of viral RNA which has the same or higher sensitivity and specificity as the PCR Test.

(3) An "employee's place of employment" does not include an employee's home or residence.

(j) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 4. Section 3212.88 is added to the Labor Code, to read:

3212.88. (a) This section applies to employees who are not described in Section 3212.87, who test positive during an outbreak at the employee's specific place of employment, and whose employer has five or more employees.

(b) The term "injury," as used in this division, includes illness or death resulting from COVID-19 if all of the following circumstances apply:

(1) The employee tests positive for COVID-19 within 14 days after a day that the employee performed labor or services at the employee's place of employment at the employer's direction.

(2) The day referenced in paragraph (1) on which the employee performed labor or services at the employee's place of employment at the employer's direction was on or after July 6, 2020. The date of injury shall be the last date the employee performed labor or services at the employee's place of employment at the employer's direction prior to the positive test.

(3) The employee's positive test occurred during a period of an outbreak at the employee's specific place of employment.

(c) The compensation that is awarded for injury pursuant to this section shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(d) If an employee has paid sick leave benefits specifically available in response to COVID-19, those benefits shall be used and exhausted before any temporary disability benefits, benefits under Section 4800, 4800.5, or 4850 or Section 44977, 44984, 45192, 45196, 87780, 87787, 88192, or 88196 of the Education Code are due and payable. If an employee does not have those sick leave benefits, the employee shall be provided temporary

disability benefits or Section 4850 benefits, if applicable, from the date of disability. There shall not be a waiting period for temporary disability benefits.

(e) (1) An injury described in subdivision (b) is presumed to arise out of and in the course of the employment, except as provided in this subdivision. This presumption is disputable and may be controverted by other evidence. Unless controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a person described in subdivision (a) following termination of service for a period of 14 days, commencing with the last date actually worked in the specified capacity at the employee's place of employment. This section does not affect an employee's rights to compensation for an injury or illness under this division in accordance with a preponderance of evidence.

(2) Evidence relevant to controverting the presumption may include, but is not limited to, evidence of measures in place to reduce potential transmission of COVID-19 in the employee's place of employment and evidence of an employee's nonoccupational risks of COVID-19 infection.

(f) Notwithstanding Section 5402, if liability for a claim of a COVID-19-related illness is not rejected within 45 days after the date the claim form is filed pursuant to Section 5401, the illness shall be presumed compensable. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 45-day period.

(g) The Department of Industrial Relations shall waive the right to collect any death benefit payment due pursuant to Section 4706.5 arising out of claims covered by this section.

(h) This section applies to all pending matters, unless otherwise specified in this section, but is not a basis to rescind, alter, amend, or reopen any final award of workers' compensation benefits.

(i) When the employer knows or reasonably should know that an employee has tested positive for COVID-19, the employer shall report to their claims administrator in writing via electronic mail or facsimile within three business days all of the following:

(1) An employee has tested positive. For purposes of this reporting, the employer shall not provide any personally identifiable information regarding the employee who tested positive for COVID-19 unless the employee asserts the infection is work related or has filed a claim form pursuant to Section 5401.

(2) The date that the employee tests positive, which is the date the specimen was collected for testing.

(3) The specific address or addresses of the employee's specific place of employment during the 14-day period preceding the date of the employee's positive test.

(4) The highest number of employees who reported to work at the employee's specific place of employment in the 45-day period preceding the last day the employee worked at each specific place of employment.

(j) An employer or other person acting on behalf of an employer who intentionally submits false or misleading information or fails to submit

information when reporting pursuant to subdivision (i) is subject to a civil penalty in the amount of up to ten thousand dollars ($10,000) to be assessed by the Labor Commissioner.

(1) If, upon inspection or investigation, the Labor Commissioner determines that an employer or other person has intentionally submitted false or misleading information in violation of subdivision (i), the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally, in the same manner as provided for service of a summons as described in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, by certified mail with return receipt requested, or by registered mail in accordance with subdivision (c) of Section 11505 of the Government Code. Each citation shall be in writing and shall describe the nature of the violation, including reference to the statutory provision alleged to have been violated.

(2) If a person desires to contest a citation or the proposed assessment of a civil penalty therefor, they shall, within 15 business days after service of the citation, notify the office of the Labor Commissioner which appears on the citation of their request for an informal hearing. The Labor Commissioner or their deputy or agent shall, within 30 days, hold a hearing at the conclusion of which the citation or proposed assessment of a civil penalty shall be affirmed, modified, or dismissed. The decision of the Labor Commissioner shall consist of a notice of findings, findings, and order which shall be served on all parties to the hearing within 15 days after the hearing by regular first-class mail at the last known address of the party on file with the Labor Commissioner. Service shall be completed pursuant to Section 1013 of the Code of Civil Procedure. Any amount found due by the Labor Commissioner as a result of a hearing shall become due and payable 45 days after notice of the findings and written findings and order have been mailed to the party assessed. A writ of mandate may be taken from this finding to the appropriate superior court, as long as the party agrees to pay any judgment and costs ultimately rendered by the court against the party for the assessment. The writ of mandate shall be taken within 45 days of service of the notice of findings, findings, and order thereon.

(3) An employer or person to which a citation has been issued shall, in lieu of contesting a citation pursuant to this section, transmit to the office of the Labor Commissioner designated on the citation the amount specified for the violation within 15 business days after issuance of the citation.

(4) If the party filing a writ of mandate is unsuccessful in challenging the decision of the hearing officer, the Labor Commissioner shall recover costs and attorney fees.

(k) (1) The claims administrator shall use information reported pursuant to subdivision (i) to determine if an outbreak has occurred for the purpose of administering a claim pursuant to this section. To calculate the number of employees at a specific place of employment, the claims administrator shall utilize the data reported pursuant to subdivision (i) for the first employee who is part of the outbreak, or, for claims between July 6, 2020,

and the effective date of this section, the number reported under paragraph (2).

(2) Any employer who is aware of an employee testing positive on or after July 6, 2020, and prior to the effective date of this section, shall report to their claims administrator, in writing via electronic mail or facsimile, within 30 business days of the effective date of this section, all of the data required in subdivision (i). For the data required by paragraph (4) of subdivision (i), the employer shall instead report the highest number of employees who reported to work at each of the employee's specific places of employment on any given work day between July 6, 2020, and the effective date of this section. The claims administrator shall use the information reported under this paragraph to determine if an outbreak has occurred from July 6, 2020, to the effective date of this section, for the purpose of applying the presumption under this section.

(*l*) A claim is not part of an outbreak if it occurs during a continuous 14-day period where the requisite number of positive tests under paragraph (4) of subdivision (m) have not been met. For purposes of applying the presumption in this section, the claims administrator shall continually evaluate each claim to determine whether the requisite number of positive tests have occurred during the surrounding 14-day periods.

(m) For purposes of this section:

(1) "COVID-19" means the 2019 novel coronavirus disease.

(2) Unless otherwise indicated, "test" or "testing" means a PCR (Polymerase Chain Reaction) test approved for use or approved for emergency use by the United States Food and Drug Administration to detect the presence of viral RNA. "Test" or "testing" does not include serologic testing, also known as antibody testing. "Test" or "testing" may include any other viral culture test approved for use or approved for emergency use by the United States Food and Drug Administration to detect the presence of viral RNA which has the same or higher sensitivity and specificity as the PCR Test.

(3) (A) "A specific place of employment" means the building, store, facility, or agricultural field where an employee performs work at the employer's direction. "A specific place of employment" does not include the employee's home or residence, unless the employee provides home health care services to another individual at the employee's home or residence.

(B) In the case of an employee who performs work at the employer's direction in multiple places of employment within 14 days of the employee's positive test, the employee's positive test shall be counted for the purpose of determining the existence of an outbreak at each of those places of employment, and if an outbreak exists at any one of those places of employment, that shall be the employee's "specific place of employment."

(4) An "outbreak" exists if within 14 calendar days one of the following occurs at a specific place of employment:

(A) If the employer has 100 employees or fewer at a specific place of employment, 4 employees test positive for COVID-19.

(B) If the employer has more than 100 employees at a specific place of employment, 4 percent of the number of employees who reported to the specific place of employment, test positive for COVID-19.

(C) A specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to a risk of infection with COVID-19.

(n) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In light of the Governor's declaration on March 4, 2020, of a state of emergency due to the spread of COVID-19, and because of the heightened risk of COVID-19 infection to frontline workers and workers whose workplaces have suffered a COVID-19 outbreak, it is necessary that this act take effect immediately.

O

Assembly Bill No. 685

CHAPTER 84

An act to amend, repeal, and add Sections 6325 and 6432 of, and to add and repeal Section 6409.6 of, the Labor Code, relating to occupational safety.

[Approved by Governor September 17, 2020. Filed with Secretary of State September 17, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 685, Reyes. COVID-19: imminent hazard to employees: exposure: notification: serious violations.

(1) Existing law, the California Occupational Safety and Health Act of 1973 (OSHA), requires the Division of Occupational Safety and Health, when, in its opinion, a place of employment, machine, device, apparatus, or equipment or any part thereof is in a dangerous condition, is not properly guarded, or is dangerously placed so as to constitute an imminent hazard to employees, to prohibit entry or use, as applicable, and to attach a conspicuous notice of that condition, as specified. OSHA requires that this prohibition be limited to the immediate area in which the imminent hazard exists. OSHA prohibits this notice from being removed except by an authorized representative of the division under certain conditions. OSHA makes a violation of this provision regarding dangerous conditions a crime.

This bill would authorize the division, when, in its opinion, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2, also known as COVID-19), so as to constitute an imminent hazard to employees, to prohibit the performance of that operation or process, or entry into that place of employment. The bill would require the division to provide a notice thereof to the employer, to be posted in a conspicuous place at the place of employment. The bill would require such a prohibition to be limited to the immediate area in which the imminent hazard exists, as specified. The bill would require such a prohibition to be issued in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power or water. By expanding the scope of a crime, the bill would impose a state-mandated local program.

This COVID-19 imminent hazard provision would be repealed on January 1, 2023.

(2) Existing law requires an employer to file a report of every occupational injury or occupational illness, as defined, of each employee that results in lost time beyond the date of the injury or illness, and that requires medical treatment beyond first aid, with the Department of Industrial Relations, on a form prescribed by the department. Existing law requires

an employer to immediately report a serious occupational injury, illness, or death to the division by telephone or email, as specified.

This bill would require a public or private employer or representative of the employer, except as specified, that receives a notice of potential exposure to COVID-19 to provide specified notifications to its employees within one business day of the notice of potential exposure. The bill would require the employer to provide prescribed notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as a qualifying individual, as defined, within the infectious period, as defined, that they may have been exposed to COVID-19. The bill would require notice to the exclusive representative, if any, of notified employees. The bill would require an employer to provide those employees and any exclusive representative with certain information regarding COVID-19-related benefits and options. The bill would require an employer to notify all employees, the employers of subcontracted employees, and any exclusive representative on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control. The bill would require an employer to maintain records of notifications for at least 3 years. The bill would provide for a specified civil penalty for an employer that violates the notification requirements. The bill would define additional terms for its purposes.

The bill would require an employer, if the employer or representative of the employer is notified of the number of cases that meet the definition of a COVID-19 outbreak, as defined, within 48 hours, to report prescribed information to the local public health agency in the jurisdiction of the worksite. The bill would require an employer that has an outbreak to continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite. The bill would exempt a health facility, as defined, from this reporting requirement.

The bill would require the State Department of Public Health to make specified information on outbreaks publicly available on its internet website, as specified. The bill would require local public health departments and the division to provide a link to this page on its internet websites. By requiring additional duties from local public health departments, this bill would impose a state-mandated local program.

(3) OSHA creates a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. OSHA requires the division, before issuing a citation alleging that a violation is serious, to make a reasonable attempt to determine and consider certain facts. This OSHA requirement is satisfied if the division sends, at least 15 days before issuing such a citation, a standardized form containing descriptions of the alleged violation the division intends to cite as serious and clearly soliciting the prescribed information. OSHA permits an employer to rebut the presumption, as prescribed, and establishes inferences that may be drawn at hearing with regard to information provided by an employer in rebuttal.

This bill would exempt a citation alleging a serious violation relating to SARS-CoV-2 from the precitation standardized form provision and the rebuttal at hearing provision.

This exemption would be repealed on January 1, 2023.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(5) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) As COVID-19 continues to ravage California, one of the best tools available for limiting exposure and minimizing spread is to gather thorough and accurate data.

(b) As the average age of those falling ill from COVID-19 has become younger, it is critical to track workplace exposure and to use that data to find ways to keep workers safe on the job.

(c) With infections and deaths disproportionately high in the Latino, Black, and Asian-Pacific Islander communities, more information about workplace illness and industry clusters can inform policy makers in addressing healthcare disparities and protecting vulnerable workers.

(d) Current law lacks clarity as to an employer's reporting requirements, including to their own workforce. This deficiency has led to workers and members of the public living in fear for their own safety, unaware of where outbreaks may already be occurring.

(e) Consistent with California's efforts to track and trace COVID-19 cases, it is imperative that positive COVID-19 tests or diagnoses be reported immediately in the occupational setting, to members of the public, and to relevant state agencies.

SEC. 2. Section 6325 of the Labor Code is amended to read:

6325. (a) When, in the opinion of the division, a place of employment, machine, device, apparatus, or equipment or any part thereof is in a dangerous condition, is not properly guarded or is dangerously placed so as to constitute an imminent hazard to employees, entry therein, or the use thereof, as the case may be, shall be prohibited by the division, and a

conspicuous notice to that effect shall be attached thereto. Such prohibition of use shall be limited to the immediate area in which the imminent hazard exists, and the division shall not prohibit any entry in or use of a place of employment, machine, device, apparatus, or equipment, or any part thereof, which is outside such area of imminent hazard. Such notice shall not be removed except by an authorized representative of the division, nor until the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety appliances or devices are provided. This subdivision shall not prevent the entry or use with the division's knowledge and permission for the sole purpose of eliminating the dangerous conditions.

(b) When, in the opinion of the division, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) so as to constitute an imminent hazard to employees, the performance of such operation or process, or entry into such place of employment, as the case may be, may be prohibited by the division, and a notice thereof shall be provided to the employer and posted in a conspicuous place at the place of employment. Such prohibition of use shall be limited to the immediate area in which the imminent hazard exists, and the division shall not prohibit the performance of any operation or process, entry into or use of a place of employment, or any part thereof, which is not exposing employees to, or is outside such area of imminent hazard. In addition, this prohibition shall be issued in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power or water. This notice shall not be removed except by an authorized representative of the division, nor until the place of employment, operation, or process is made safe and the required safeguards or safety appliances or devices are provided. This subdivision shall not prevent the entry or use with the division's knowledge and permission for the sole purpose of eliminating the dangerous conditions.

(c) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 3. Section 6325 is added to the Labor Code, to read:

6325. (a) When, in the opinion of the division, a place of employment, machine, device, apparatus, or equipment or any part thereof is in a dangerous condition, is not properly guarded or is dangerously placed so as to constitute an imminent hazard to employees, entry therein, or the use thereof, as the case may be, shall be prohibited by the division, and a conspicuous notice to that effect shall be attached thereto. Such prohibition of use shall be limited to the immediate area in which the imminent hazard exists, and the division shall not prohibit any entry in or use of a place of employment, machine, device, apparatus, or equipment, or any part thereof, which is outside such area of imminent hazard. Such notice shall not be removed except by an authorized representative of the division, nor until the place of employment, machine, device, apparatus, or equipment is made

safe and the required safeguards or safety appliances or devices are provided. This section shall not prevent the entry or use with the division's knowledge and permission for the sole purpose of eliminating the dangerous conditions.

(b) This section shall become operative on January 1, 2023.

SEC. 4. Section 6409.6 is added to the Labor Code, to read:

6409.6. (a) If an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall take all of the following actions within one business day of the notice of potential exposure:

(1) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19 in a manner the employer normally uses to communicate employment-related information. Written notice may include, but is not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending and shall be in both English and the language understood by the majority of the employees.

(2) Provide a written notice to the exclusive representative, if any, of employees under paragraph (1).

(3) Provide all employees who may have been exposed and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws, including, but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee.

(4) Notify all employees, and the employers of subcontracted employees and the exclusive representative, if any, on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.

(b) If an employer or representative of the employer is notified of the number of cases that meet the definition of a COVID-19 outbreak, as defined by the State Department of Public Health, within 48 hours, the employer shall notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation, and worksite of employees who meet the definition in subdivision (d) of a qualifying individual. An employer shall also report the business address and NAICS code of the worksite where the qualifying individuals work. An employer that has an outbreak subject to this section shall continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

(c) The notice required pursuant to paragraph (2) of subdivision (a) shall contain the same information as would be required in an incident report in a Cal/OSHA Form 300 injury and illness log unless the information is inapplicable or unknown to the employer. This requirement shall apply regardless of whether the employer is required to maintain a Cal/OSHA

Form 300 injury and illness log. Notifications required by this section shall not impact any determination of whether or not the illness is work related.

(d) For purposes of this section, the following definitions apply:

(1) "COVID-19" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(2) "Infectious period" means the time a COVID-19-positive individual is infectious, as defined by the State Department of Public Health.

(3) "Notice of potential exposure" means any of the following:

(A) Notification to the employer or representative from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite.

(B) Notification to the employer or representative from an employee, or their emergency contact, that the employee is a qualifying individual.

(C) Notification through the testing protocol of the employer that the employee is a qualifying individual.

(D) Notification to an employer or representative from a subcontracted employer that a qualifying individual was on the worksite of the employer receiving notification.

(4) "Qualifying individual" means any person who has any of the following:

(A) A laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health.

(B) A positive COVID-19 diagnosis from a licensed health care provider.

(C) A COVID-19-related order to isolate provided by a public health official.

(D) Died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county.

(5) "Worksite" means the building, store, facility, agricultural field, or other location where a worker worked during the infectious period. It does not apply to buildings, floors, or other locations of the employer that a qualified individual did not enter. In a multiworksite environment, the employer need only notify employees who were at the same worksite as the qualified individual.

(e) An employer shall not require employees to disclose medical information unless otherwise required by law.

(f) An employer shall not retaliate against a worker for disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate. Workers who believe they have been retaliated against in violation of this section may file a complaint with the Division of Labor Standards Enforcement pursuant to Section 98.6. The complaint shall be investigated as provided in Section 98.7.

(g) The State Department of Public Health shall make workplace industry information received from local public health departments pursuant to this section available on its internet website in a manner that allows the public to track the number and frequency of COVID-19 outbreaks and the number of COVID-19 cases and outbreaks by industry reported by any workplace in accordance with subdivision (b). Local public health departments and

the division shall provide a link to this page on their internet websites. No personally identifiable employee information shall be made public or posted.

(h) This section shall apply to both private and public employers, except that subdivision (b) shall not apply to a "health facility," as defined in Section 1250 of the Health and Safety Code.

(i) This section shall not apply to employees who, as part of their duties, conduct COVID-19 testing or screening or provide direct patient care or treatment to individuals who are known to have tested positive for COVID-19, are persons under investigation, or are in quarantine or isolation related to COVID-19, unless the qualifying individual is an employee at the same worksite.

(j) No personally identifiable employee information shall be subject to a California Public Records Act request or similar request, posted on a public internet website, or shared with any other state or federal agency.

(k) An employer shall maintain records of the written notifications required in subdivision (a) for a period of at least three years.

(*l*) The division shall enforce paragraphs (1), (2), and (4) of subdivision (a) by the issuance of a citation alleging a violation of these paragraphs and a notice of civil penalty in a manner consistent with Section 6317. Any person who receives a citation and penalty may appeal the citation and penalty to the appeals board in a manner consistent with Section 6319.

SEC. 5. Section 6432 of the Labor Code is amended to read:

6432. (a) There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious. The actual hazard may consist of, among other things:

(1) A serious exposure exceeding an established permissible exposure limit.

(2) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.

(b) (1) Before issuing a citation alleging that a violation is serious, the division shall make a reasonable attempt to determine and consider, among other things, all of the following:

(A) Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards.

(B) Procedures for discovering, controlling access to, and correcting the hazard or similar hazards.

(C) Supervision of employees exposed or potentially exposed to the hazard.

(D) Procedures for communicating to employees about the employer's health and safety rules and programs.

(E) Information that the employer wishes to provide, at any time before citations are issued, including, any of the following:

(i) The employer's explanation of the circumstances surrounding the alleged violative events.

(ii) Why the employer believes a serious violation does not exist.

(iii) Why the employer believes its actions related to the alleged violative events were reasonable and responsible so as to rebut, pursuant to subdivision (c), any presumption established pursuant to subdivision (a).

(iv) Any other information that the employer wishes to provide.

(2) The division shall satisfy its requirement to determine and consider the facts specified in paragraph (1) if, not less than 15 days prior to issuing a citation for a serious violation, the division delivers to the employer a standardized form containing the alleged violation descriptions ("AVD") it intends to cite as serious and clearly soliciting the information specified in this subdivision. The director shall prescribe the form for the alleged violation descriptions and solicitation of information. Any forms issued pursuant to this section shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) If the division establishes a presumption pursuant to subdivision (a) that a violation is serious, the employer may rebut the presumption and establish that a violation is not serious by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. The employer may accomplish this by demonstrating both of the following:

(1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b).

(2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

(d) If the employer does not provide information in response to a division inquiry made pursuant to subdivision (b), the employer shall not be barred from presenting that information at the hearing and no negative inference shall be drawn. The employer may offer different information at the hearing than what was provided to the division and may explain any inconsistency, but the trier of fact may draw a negative inference from the prior inconsistent factual information. The trier of fact may also draw a negative inference from factual information offered at the hearing by the division that is inconsistent with factual information provided to the employer pursuant to subdivision (b), or from a failure by the division to provide the form setting forth the descriptions of the alleged violation and soliciting information pursuant to subdivision (b).

(e) "Serious physical harm," as used in this part, means any injury or illness, specific or cumulative, occurring in the place of employment or in connection with any employment, that results in any of the following:

(1) Inpatient hospitalization for purposes other than medical observation.

(2) The loss of any member of the body.

(3) Any serious degree of permanent disfigurement.

(4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

(f) Serious physical harm may be caused by a single, repetitive practice, means, method, operation, or process.

(g) A division safety engineer or industrial hygienist who can demonstrate, at the time of the hearing, that their division-mandated training is current shall be deemed competent to offer testimony to establish each element of a serious violation, and may offer evidence on the custom and practice of injury and illness prevention in the workplace that is relevant to the issue of whether the violation is a serious violation.

(h) Paragraph (2) of subdivision (b) and subdivision (d) shall not apply to a citation alleging a serious violation relating to the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(i) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 6. Section 6432 is added to the Labor Code, to read:

6432. (a) There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious. The actual hazard may consist of, among other things:

(1) A serious exposure exceeding an established permissible exposure limit.

(2) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.

(b) (1) Before issuing a citation alleging that a violation is serious, the division shall make a reasonable attempt to determine and consider, among other things, all of the following:

(A) Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards.

(B) Procedures for discovering, controlling access to, and correcting the hazard or similar hazards.

(C) Supervision of employees exposed or potentially exposed to the hazard.

(D) Procedures for communicating to employees about the employer's health and safety rules and programs.

(E) Information that the employer wishes to provide, at any time before citations are issued, including, any of the following:

(i) The employer's explanation of the circumstances surrounding the alleged violative events.

(ii) Why the employer believes a serious violation does not exist.

(iii) Why the employer believes its actions related to the alleged violative events were reasonable and responsible so as to rebut, pursuant to subdivision (c), any presumption established pursuant to subdivision (a).

(iv) Any other information that the employer wishes to provide.

(2) The division shall satisfy its requirement to determine and consider the facts specified in paragraph (1) if, not less than 15 days prior to issuing a citation for a serious violation, the division delivers to the employer a standardized form containing the alleged violation descriptions ("AVD") it intends to cite as serious and clearly soliciting the information specified in this subdivision. The director shall prescribe the form for the alleged violation descriptions and solicitation of information. Any forms issued pursuant to this section shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) If the division establishes a presumption pursuant to subdivision (a) that a violation is serious, the employer may rebut the presumption and establish that a violation is not serious by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. The employer may accomplish this by demonstrating both of the following:

(1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b).

(2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

(d) If the employer does not provide information in response to a division inquiry made pursuant to subdivision (b), the employer shall not be barred from presenting that information at the hearing and no negative inference shall be drawn. The employer may offer different information at the hearing than what was provided to the division and may explain any inconsistency, but the trier of fact may draw a negative inference from the prior inconsistent factual information. The trier of fact may also draw a negative inference from factual information offered at the hearing by the division that is inconsistent with factual information provided to the employer pursuant to subdivision (b), or from a failure by the division to provide the form setting forth the descriptions of the alleged violation and soliciting information pursuant to subdivision (b).

(e) "Serious physical harm," as used in this part, means any injury or illness, specific or cumulative, occurring in the place of employment or in connection with any employment, that results in any of the following:

(1) Inpatient hospitalization for purposes other than medical observation.
(2) The loss of any member of the body.
(3) Any serious degree of permanent disfigurement.
(4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

(f) Serious physical harm may be caused by a single, repetitive practice, means, method, operation, or process.

(g) A division safety engineer or industrial hygienist who can demonstrate, at the time of the hearing, that their division-mandated training is current shall be deemed competent to offer testimony to establish each element of a serious violation, and may offer evidence on the custom and practice of injury and illness prevention in the workplace that is relevant to the issue of whether the violation is a serious violation.

(h) This section shall become operative on January 1, 2023.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 8. The Legislature finds and declares that Section 4 of this act, which adds Section 6409.6 to the Labor Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The need to protect the privacy of employees from the public disclosure of their personally identifiable information outweighs the interest in public disclosure of that information.

O

Senate Bill No. 1383

CHAPTER 86

An act to amend and repeal Section 12945.6 of, and to amend, repeal, and add Section 12945.2 of, the Government Code, relating to employment.

[Approved by Governor September 17, 2020. Filed with Secretary of State September 17, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1383, Jackson. Unlawful employment practice: California Family Rights Act.

Existing law, the Moore-Brown-Roberti Family Rights Act, commonly known as the California Family Rights Act, makes it an unlawful employment practice for a government employer or any employer with 50 or more employees, as specified, to refuse to grant a request by an employee, who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child of the employee or to care for themselves, a child, a parent, or a spouse, as specified. Existing law authorizes an employer to refuse to grant the request if the employer employs less than 50 employees within 75 miles of the worksite where the employee is employed or if the employee is a salaried employee who is among the highest paid 10% of the employer's employees, as provided. Existing law, if both parents of a child are employed by the same employer, authorizes the employer to only grant both employees a total of 12 workweeks of unpaid protected leave during the 12-month period.

Existing law prohibits an employer from refusing to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable time of up to 4 months before returning to work. Existing law also prohibits an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes that leave, as specified. The California Family Rights Act specifies that those existing pregnancy, childbirth, or a related medical condition leave provisions are separate and distinct from the protections provided by the California Family Rights Act.

Existing law, the New Parent Leave Act, makes it an unlawful employment practice for any employer to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child. The New Parent Leave Act defines employee as a parent who has more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles.

This bill would expand the California Family Rights Act to make it an unlawful employment practice for any employer with 5 or more employees to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child of the employee or to care for themselves or a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as specified. The bill would require an employer who employs both parents of a child to grant leave to each employee. The bill would also make it an unlawful employment practice for any employer to refuse to grant a request by an employee to take up to 12 workweeks of unpaid protected leave during any 12-month period due to a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States. The bill would define employee for these purposes as an individual who has at least 1,250 hours of service with the employer during the previous 12-month period, unless otherwise provided.

The people of the State of California do enact as follows:

SECTION 1. Section 12945.2 of the Government Code is amended to read:

12945.2. (a) Except as provided in subdivision (b), it shall be an unlawful employment practice for any employer, as defined in paragraph (2) of subdivision (c), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period or who meets the requirements of subdivision (u), to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The commission shall adopt a regulation specifying the elements of a reasonable request.

(b) Notwithstanding subdivision (a), it shall not be an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs less than 50 employees within 75 miles of the worksite where that employee is employed.

(c) For purposes of this section:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following:

(A) Under 18 years of age.

(B) An adult dependent child.

(2) "Employer" means either of the following:

(A) Any person who directly employs 50 or more persons to perform services for a wage or salary.

(B) The state, and any political or civil subdivision of the state and cities.

(3) "Family care and medical leave" means any of the following:

(A) Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.

(B) Leave to care for a parent or a spouse who has a serious health condition.

(C) Leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(4) "Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.

(5) "FMLA" means the federal Family and Medical Leave Act of 1993 (P.L. 103-3).

(6) "Health care provider" means any of the following:

(A) An individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code, an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.

(B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(7) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(8) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(A) Inpatient care in a hospital, hospice, or residential health care facility.

(B) Continuing treatment or continuing supervision by a health care provider.

(d) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (e).

(e) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee's accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee's own serious health condition, the employee may also elect, or

the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, or spouse with a serious health condition, unless mutually agreed to by the employer and the employee.

(f) (1) During any period that an eligible employee takes leave pursuant to subdivision (a) or takes leave that qualifies as leave taken under the FMLA, the employer shall maintain and pay for coverage under a "group health plan," as defined in Section 5000(b)(1) of the Internal Revenue Code, for the duration of the leave, not to exceed 12 workweeks in a 12-month period, commencing on the date leave taken under the FMLA commences, at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a "group health plan" beyond 12 workweeks. An employer may recover the premium that the employer paid as required by this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(B) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subdivision (a) or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under paragraph (1), employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in subdivision (a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, or other similar plans, the employer may, at the employer's discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall not be required to make plan payments for an employee during the leave period,

and the leave period shall not be required to be counted for purposes of time accrued under the plan. However, an employee covered by a pension plan may continue to make contributions in accordance with the terms of the plan during the period of the leave.

(g) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

(h) If the employee's need for a leave pursuant to this section is foreseeable, the employee shall provide the employer with reasonable advance notice of the need for the leave.

(i) If the employee's need for leave pursuant to this section is foreseeable due to a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision.

(j) (1) An employer may require that an employee's request for leave to care for a child, a spouse, or a parent who has a serious health condition be supported by a certification issued by the health care provider of the individual requiring care. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.

(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care provider in subparagraph (C) of paragraph (1), the employer may require the employee to obtain recertification, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(k) (1) An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by the employee's health care provider. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) A statement that, due to the serious health condition, the employee is unable to perform the function of the employee's position.

(2) The employer may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(3) (A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under paragraph (1).

(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.

(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from the employee's health care provider that the employee is able to resume work. Nothing in this paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(*l*) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual's giving information or testimony as to the individual's own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(m) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(n) The amendments made to this section by Chapter 827 of the Statutes of 1993 shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.

(o) This section shall be construed as separate and distinct from Section 12945.

(p) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(q) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer shall not be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the amount specified in subdivision (a).

(r) (1) Notwithstanding subdivision (a), an employer may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:

(A) The employee is a salaried employee who is among the highest paid 10 percent of the employer's employees who are employed within 75 miles of the worksite at which that employee is employed.

(B) The refusal is necessary to prevent substantial and grievous economic injury to the operations of the employer.

(C) The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary under subparagraph (B).

(2) In any case in which the leave has already commenced, the employer shall give the employee a reasonable opportunity to return to work following the notice prescribed by subparagraph (C).

(s) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.

(t) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(u) (1) An employee employed by an air carrier as a flight deck or cabin crew member meets the eligibility requirements specified in subdivision (a) if all of the following requirements are met:

(A) The employee has 12 months or more of service with the employer.

(B) The employee has worked or been paid for 60 percent of the applicable monthly guarantee, or the equivalent annualized over the preceding 12-month period.

(C) The employee has worked or been paid for a minimum of 504 hours during the preceding 12-month period.

(2) As used in this subdivision, the term "applicable monthly guarantee" means both of the following:

(A) For employees described in this subdivision other than employees on reserve status, the minimum number of hours for which an employer has agreed to schedule such employees for any given month.

(B) For employees described in this subdivision who are on reserve status, the number of hours for which an employer has agreed to pay such employees on reserve status for any given month, as established in the collective bargaining agreement or, if none exists, in the employer's policies.

(3) The department may provide, by regulation, a method for calculating the leave described in subdivision (a) with respect to employees described in this subdivision.

(v) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 2. Section 12945.2 is added to the Government Code, to read:

12945.2. (a) It shall be an unlawful employment practice for any employer, as defined in paragraph (3) of subdivision (b), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period or who meets the requirements of subdivision (r), to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The council shall adopt a regulation specifying the elements of a reasonable request.

(b) For purposes of this section:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis.

(2) "Domestic partner" has the same meaning as defined in Section 297 of the Family Code.

(3) "Employer" means either of the following:

(A) Any person who directly employs five or more persons to perform services for a wage or salary.

(B) The state, and any political or civil subdivision of the state and cities.

(4) "Family care and medical leave" means any of the following:

(A) Leave for reason of the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

(B) Leave to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner who has a serious health condition.

(C) Leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(D) Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States, as specified in Section 3302.2 of the Unemployment Insurance Code.

(5) "Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.

(6) "FMLA" means the federal Family and Medical Leave Act of 1993 (P.L. 103-3).

(7) "Grandchild" means a child of the employee's child.

(8) "Grandparent" means a parent of the employee's parent.

(9) "Health care provider" means any of the following:

(A) An individual holding either a physician's and surgeon's certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code, an osteopathic physician's and surgeon's certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.

(B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(10) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(11) "Parent-in-law" means the parent of a spouse or domestic partner.

(12) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(A) Inpatient care in a hospital, hospice, or residential health care facility.

(B) Continuing treatment or continuing supervision by a health care provider.

(13) "Sibling" means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.

(c) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (d).

(d) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee's accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee's own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner with a serious health condition, unless mutually agreed to by the employer and the employee.

(e) (1) During any period that an eligible employee takes leave pursuant to subdivision (a) or takes leave that qualifies as leave taken under the FMLA, the employer shall maintain and pay for coverage under a "group

health plan," as defined in Section 5000(b)(1) of the Internal Revenue Code, for the duration of the leave, not to exceed 12 workweeks in a 12-month period, commencing on the date leave taken under the FMLA commences, at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a "group health plan" beyond 12 workweeks. An employer may recover the premium that the employer paid as required by this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(B) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subdivision (a) or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under paragraph (1), employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in subdivision (a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, or other similar plans, the employer may, at the employer's discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall not be required to make plan payments for an employee during the leave period, and the leave period shall not be required to be counted for purposes of time accrued under the plan. However, an employee covered by a pension plan may continue to make contributions in accordance with the terms of the plan during the period of the leave.

(f) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when

the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

(g) If the employee's need for a leave pursuant to this section is foreseeable, the employee shall provide the employer with reasonable advance notice of the need for the leave.

(h) If the employee's need for leave pursuant to this section is foreseeable due to a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision.

(i) (1) An employer may require that an employee's request for leave to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner who has a serious health condition be supported by a certification issued by the health care provider of the individual requiring care. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.

(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care provider in subparagraph (C) of paragraph (1), the employer may require the employee to obtain recertification, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(j) (1) An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by the employee's health care provider. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) A statement that, due to the serious health condition, the employee is unable to perform the function of the employee's position.

(2) The employer may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(3) (A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under paragraph (1).

(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.

(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may

require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from the employee's health care provider that the employee is able to resume work. Nothing in this paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(k) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual's giving information or testimony as to the individual's own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(*l*) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(m) The amendments made to this section by Chapter 827 of the Statutes of 1993 shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.

(n) This section shall be construed as separate and distinct from Section 12945.

(o) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(p) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.

(q) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(r) (1) An employee employed by an air carrier as a flight deck or cabin crew member meets the eligibility requirements specified in subdivision (a) if all of the following requirements are met:

(A) The employee has 12 months or more of service with the employer.

(B) The employee has worked or been paid for 60 percent of the applicable monthly guarantee, or the equivalent annualized over the preceding 12-month period.

(C) The employee has worked or been paid for a minimum of 504 hours during the preceding 12-month period.

(2) As used in this subdivision, the term "applicable monthly guarantee" means both of the following:

(A) For employees described in this subdivision other than employees on reserve status, the minimum number of hours for which an employer has agreed to schedule such employees for any given month.

(B) For employees described in this subdivision who are on reserve status, the number of hours for which an employer has agreed to pay such employees on reserve status for any given month, as established in the collective bargaining agreement or, if none exists, in the employer's policies.

(3) The department may provide, by regulation, a method for calculating the leave described in subdivision (a) with respect to employees described in this subdivision.

(s) This section shall become operative on January 1, 2021.

SEC. 3. Section 12945.6 of the Government Code is amended to read:

12945.6. (a) It shall be an unlawful employment practice for an employer to do any of the following:

(1) Refuse to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, upon request, to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. If, on or before the commencement of this parental leave, the employer does not provide a guarantee of employment in the same or a comparable position upon the termination of the leave, the employer shall be deemed to have refused to allow the leave. The employee shall be entitled to utilize accrued vacation pay, paid sick time, other accrued paid time off, or other paid or unpaid time off negotiated with the employer, during the period of parental leave.

(2) Refuse to maintain and pay for coverage for an eligible employee who takes parental leave pursuant to this section under a group health plan, as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed 12 weeks over the course of a 12-month period, commencing on the date that the parental leave commences, at the level and under the conditions that coverage would have

been provided if the employee had continued to work in the employee's position for the duration of the leave.

(b) An employee is entitled to take, in addition to the leave provided pursuant to this section, leave provided pursuant to Section 12945 if the employee is otherwise qualified for that leave.

(c) This section shall not apply to an employee who is subject to both Section 12945.2 and the federal Family and Medical Leave Act of 1993.

(d) An employer may recover the premium that the employer paid as required by this section for maintaining coverage for the employee under the group health plan, if both of the following conditions occur:

(1) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(2) The failure of the employee to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the control of the employee.

(e) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer is not required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents parental leave totaling more than the amount specified in subdivision (a). The employer may, but is not required to, grant simultaneous leave to both of these employees.

(f) Parental leave taken pursuant to this section shall run concurrently to parental leave taken as described in Sections 44977.5, 45196.1, 87780.1, and 88196.1 of the Education Code.

(g) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, an individual because of either of the following:

(1) An individual's exercise of the right to parental leave provided by subdivision (a).

(2) An individual's giving information or testimony as to the individual's own parental leave, or another person's parental leave, in an inquiry or proceeding related to rights guaranteed under this section.

(h) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(i) For purposes of this section, "employer" means either of the following:

(1) A person who directly employs 20 or more persons to perform services for a wage or salary.

(2) The state, and any political or civil subdivision of the state and cities.

(j) To the extent that state regulations interpreting the Moore-Brown-Roberti Family Rights Act, also known as the California Family Rights Act (Sections 12945.2 and 19702.3), are within the scope of, and not inconsistent with this section or with other state law, including the California Constitution, the council shall incorporate those regulations by reference to govern leave under this section.

(k) This section shall take effect January 1, 2020. This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

O

Assembly Bill No. 1876

CHAPTER 87

An act to amend Section 17052 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor September 18, 2020. Filed with Secretary of State September 18, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1876, Committee on Budget. Personal income taxes: federal individual taxpayer identification number: earned income tax credits: young child tax credit.

The Personal Income Tax Law, beginning on or after January 1, 2015, in modified conformity with federal income tax laws, allows an earned income tax credit against personal income tax and a payment from the Tax Relief and Refund Account for an allowable credit in excess of tax liability to an eligible individual that is equal to that portion of the earned income tax credit allowed by federal law as determined by the earned income tax credit adjustment factor, as specified. The law provides that the amount of the credit is calculated as a percentage of the eligible individual's earned income and is phased out above a specified amount as income increases and provides alternative calculation factors under specified circumstances. Existing law, for taxable years beginning on or after January 1, 2020, allows the earned income tax credit to an eligible individual who has, or whose spouse has, a qualifying child younger than 6 years old, as specified, if that individual includes on the tax return the federal individual taxpayer identification number of the eligible individual, eligible individual's spouse if married, and a qualifying child who is younger than 6 years old, as specified.

The Personal Income Tax Law allows a refundable young child tax credit against the taxes imposed under that law, for each taxable year beginning on or after January 1, 2019, to a qualified taxpayer in specified amount multiplied by the earned income tax credit adjustment factor, as provided.

This bill, for each taxable year beginning on or after January 1, 2020, would remove the above-described limitations on the use of a federal individual taxpayer identification number in order to be eligible for the earned income tax credit and the refundable young child tax credit, subject to specified requirements, including the provision of specified documents to the Franchise Tax Board.

Existing law establishes the continuously appropriated Tax Relief and Refund Account and provides that payments required to be made to taxpayers or other persons from the Personal Income Tax Fund are to be paid from that account, including any amount to be paid as an earned income tax credit

and as a young child tax credit in excess of any tax liabilities. By authorizing additional payments from this account, the bill would make an appropriation.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 17052 of the Revenue and Taxation Code is amended to read:

17052. (a) (1) For each taxable year beginning on or after January 1, 2015, there shall be allowed against the "net tax," as defined by Section 17039, an earned income tax credit in an amount equal to an amount determined in accordance with Section 32 of the Internal Revenue Code, relating to earned income, as applicable for federal income tax purposes for the taxable year, except as otherwise provided in this section.

(2) (A) The amount of the credit determined under Section 32 of the Internal Revenue Code, relating to earned income, as modified by this section, shall be multiplied by the earned income tax credit adjustment factor for the taxable year.

(B) Unless otherwise specified in the annual Budget Act, the earned income tax credit adjustment factor for a taxable year beginning on or after January 1, 2015, shall be 0 percent.

(C) The earned income tax credit authorized by this section shall only be operative for taxable years for which resources are authorized in the annual Budget Act for the Franchise Tax Board to oversee and audit returns associated with the credit.

(b) (1) In lieu of the table prescribed in Section 32(b)(1) of the Internal Revenue Code, relating to percentages, the credit percentage and the phaseout percentage shall be determined as follows:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
No qualifying children	7.65%	7.65%
1 qualifying child	34%	34%
2 qualifying children	40%	40%
3 or more qualifying children	45%	45%

(2) (A) In lieu of the table prescribed in Section 32(b)(2)(A) of the Internal Revenue Code, the earned income amount and the phaseout amount shall be determined as follows:

In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
No qualifying children	$3,290	$3,290
1 qualifying child	$4,940	$4,940

2 or more qualifying children	$6,935	$6,935

(B) Section 32(b)(2)(B) of the Internal Revenue Code, relating to joint returns, shall not apply.

(c) (1) Section 32(c)(1)(A)(ii)(I) of the Internal Revenue Code is modified by substituting "this state" for "the United States."

(2) For each taxable year beginning on or after January 1, 2018, Section 32(c)(1)(A)(ii)(II) of the Internal Revenue Code is modified by deleting "25 but not attained age 65" and inserting in lieu thereof the following: "18."

(3) Section 32(c)(2)(A) of the Internal Revenue Code is modified as follows:

(A) Section 32(c)(2)(A)(i) of the Internal Revenue Code is modified by deleting "plus" and inserting in lieu thereof the following: "and only if such amounts are subject to withholding pursuant to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code."

(B) Section 32(c)(2)(A)(ii) of the Internal Revenue Code shall not apply.

(4) For taxable years beginning on or after January 1, 2017, paragraph (3) shall not apply and in lieu thereof Section 32(c)(2)(A) of the Internal Revenue Code is modified as follows:

(A) Section 32(c)(2)(A)(i) of the Internal Revenue Code is modified by deleting "plus" and inserting in lieu thereof the following: "and only if such amounts are subject to withholding pursuant to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code, plus."

(B) Section 32(c)(2)(A)(ii) of the Internal Revenue Code shall apply.

(5) Section 32(c)(3)(C) of the Internal Revenue Code, relating to place of abode, is modified by substituting "this state" for "the United States."

(d) Section 32(i)(1) of the Internal Revenue Code is modified by substituting "$3,400" for "$2,200."

(e) (1) In lieu of Section 32(j) of the Internal Revenue Code, relating to inflation adjustments, for taxable years beginning on or after January 1, 2016, the amounts specified in paragraph (2) of subdivision (b) and in subdivision (d) shall be recomputed annually in the same manner as the recomputation of income tax brackets under subdivision (h) of Section 17041.

(2) For each taxable year beginning on or after January 1, 2018, and before January 1, 2019, when recomputing the amounts referenced in paragraph (1), the percentage change in the California Consumer Price Index shall be deemed to be the greater of 3.1 percent or the percentage change in the California Consumer Price Index as calculated under subdivision (h) of Section 17041 for that taxable year.

(3) For each taxable year beginning on or after January 1, 2019, and before January 1, 2020, when recomputing the amounts referenced in paragraph (1), the percentage change in the California Consumer Price Index shall be deemed to be the greater of 3.5 percent or the percentage change in the California Consumer Price Index as calculated under subdivision (h) of Section 17041 for that taxable year.

(f) If the amount allowable as a credit under this section exceeds the tax liability computed under this part for the taxable year, the excess shall be credited against other amounts due, if any, and the balance, if any, shall be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

(g) (1) The Franchise Tax Board may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the Franchise Tax Board pursuant to this section.

(2) (A) The Franchise Tax Board may prescribe any regulations necessary or appropriate to carry out the purposes of this section, including any regulations to prevent improper claims from being filed or improper payments from being made with respect to net earnings from self-employment.

(B) The adoption of any regulations pursuant to subparagraph (A) may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) and shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law. The regulations shall become effective immediately upon filing with the Secretary of State, and shall remain in effect until revised or repealed by the Franchise Tax Board.

(h) Notwithstanding any other law, amounts refunded pursuant to this section shall be treated in the same manner as the federal earned income refund for the purpose of determining eligibility to receive benefits under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or amounts of those benefits.

(i) (1) For the purpose of implementing the credit allowed by this section for the 2015 taxable year, the Franchise Tax Board shall be exempt from the following:

(A) Special Project Report requirements under State Administrative Manual Sections 4819.36, 4945, and 4945.2.

(B) Special Project Report requirements under Statewide Information Management Manual Section 30.

(C) Section 11.00 of the 2015 Budget Act.

(D) Sections 12101, 12101.5, 12102, and 12102.1 of the Public Contract Code.

(2) The Franchise Tax Board shall formally incorporate the scope, costs, and schedule changes associated with the implementation of the credit allowed by this section in its next anticipated Special Project Report for its Enterprise Data to Revenue Project.

(j) (1) In accordance with Section 41 of the Revenue and Taxation Code, the purpose of the California Earned Income Tax Credit is to reduce poverty

among California's poorest working families and individuals. To measure whether the credit achieves its intended purpose, the Franchise Tax Board shall annually prepare a written report on the following:

(A) The number of tax returns claiming the credit.

(B) The number of individuals represented on tax returns claiming the credit.

(C) The average credit amount on tax returns claiming the credit.

(D) The distribution of credits by number of dependents and income ranges. The income ranges shall encompass the phase-in and phaseout ranges of the credit.

(E) Using data from tax returns claiming the credit, including an estimate of the federal tax credit determined under Section 32 of the Internal Revenue Code, an estimate of the number of families who are lifted out of deep poverty by the credit and an estimate of the number of families who are lifted out of deep poverty by the combination of the credit and the federal tax credit. For the purposes of this subdivision, a family is in "deep poverty" if the income of the family is less than 50 percent of the federal poverty threshold.

(2) The Franchise Tax Board shall provide the written report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, the Senate and Assembly Committees on Appropriations, the Senate Committee on Governance and Finance, the Assembly Committee on Revenue and Taxation, and the Senate and Assembly Committees on Human Services.

(k) The tax credit allowed by this section shall be known as the California Earned Income Tax Credit.

(*l*) The amendments made to this section by Chapter 722 of the Statutes of 2016 shall apply to taxable years beginning on or after January 1, 2016.

(m) (1) For each taxable year beginning on or after January 1, 2017, and before January 1, 2018, if the amount of credit computed pursuant to subdivisions (a) and (b) is less than or equal to one hundred dollars ($100) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with no qualifying children, or less than or equal to two hundred fifty dollars ($250) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with one or more qualifying children, and the earned income amount is greater than or equal to the corresponding amount in the table set forth in paragraph (2) below, then in lieu of the table prescribed in paragraph (1) of subdivision (b), the credit percentage and the phaseout percentage shall be determined as follows:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
No qualifying children	2.20%	1.22%
1 qualifying child	3.10%	2.29%
2 qualifying children	2.13%	3.45%

3 or more qualifying children	2.12%	3.49%

(2) For each taxable year beginning on or after January 1, 2017, and before January 1, 2018, if the amount of credit computed pursuant to subdivisions (a) and (b) is less than or equal to one hundred dollars ($100) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with no qualifying children, or less than or equal to two hundred fifty dollars ($250) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with one or more qualifying children, then in lieu of the table prescribed in subparagraph (A) of paragraph (2) of subdivision (b), the earned income amount and the phaseout amount shall be determined as follows:

In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
No qualifying children	$5,354	$5,354
1 qualifying child	$9,484	$9,484
2 qualifying children	$13,794	$13,794
3 or more qualifying children	$13,875	$13,875

(n) (1) For each taxable year beginning on or after January 1, 2018, and before January 1, 2019, if the amount of credit computed pursuant to subdivisions (a) and (b) is less than or equal to one hundred three dollars ($103) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with no qualifying children, or less than or equal to two hundred fifty-eight dollars ($258) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with one or more qualifying children, and the earned income amount is greater than or equal to the corresponding amount in the table set forth in paragraph (2) below, then in lieu of the table prescribed in paragraph (1) of subdivision (b), the credit percentage and the phaseout percentage shall be determined as follows:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
No qualifying children	2.20%	1.08%
1 qualifying child	3.10%	2.00%
2 qualifying children	2.13%	2.82%
3 or more qualifying children	2.12%	2.85%

(2) For each taxable year beginning on or after January 1, 2018, and before January 1, 2019, if the amount of credit computed pursuant to

subdivisions (a) and (b) is less than or equal to one hundred three dollars ($103) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with no qualifying children, or less than or equal to two hundred fifty-eight dollars ($258) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with one or more qualifying children, then in lieu of the table prescribed in subparagraph (A) of paragraph (2) of subdivision (b), the earned income amount and the phaseout amount shall be determined as follows:

In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
No qualifying children	$5,520	$5,520
1 qualifying child	$9,778	$9,778
2 qualifying children	$14,222	$14,222
3 or more qualifying children	$14,305	$14,305

(o) (1) For each taxable year beginning on or after January 1, 2019, if the amount of credit computed pursuant to subdivisions (a) and (b) is less than or equal to two hundred dollars ($200) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with no qualifying children, or less than or equal to five hundred five dollars ($505) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with one or more qualifying children, and the earned income amount is greater than or equal to the corresponding amount in the table set forth in paragraph (2) below, then in lieu of the table prescribed in paragraph (1) of subdivision (b), the credit percentage and the phaseout percentage shall be determined as follows:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
No qualifying children	5.43%	0.92%
1 qualifying child	6.33%	2.88%
2 qualifying children	4.20%	3.75%
3 or more qualifying children	4.15%	3.78%

(2) For each taxable year beginning on or after January 1, 2019, if the amount of credit computed pursuant to subdivisions (a) and (b) is less than or equal to two hundred dollars ($200) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with no qualifying children, or less than or equal to five hundred five dollars ($505) multiplied by the ratio of the earned income tax credit adjustment factor for that taxable year divided by 0.85 for an eligible individual with one or more qualifying children, then in lieu

of the table prescribed in subparagraph (A) of paragraph (2) of subdivision (b), the earned income amount and the phaseout amount shall be determined as follows:

In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
No qualifying children	$4,334	$4,334
1 qualifying child	$9,381	$9,381
2 qualifying children	$14,137	$14,137
3 or more qualifying children	$14,302	$14,302

(3) For taxable years beginning on or after January 1, 2020, and until and including the taxable year in which the minimum wage, as defined in Section 1182.12 of the Labor Code, is set at fifteen dollars ($15) per hour, both of the following shall occur:

(A) The amounts in paragraphs (1) and (2) shall be recomputed annually in the same manner as the recomputation of income tax brackets under subdivision (h) of Section 17041.

(B) The phaseout percentage for each of the four categories of eligible individuals shall be recalculated by the Franchise Tax Board in such a manner that, for a taxpayer with an earned income of thirty thousand dollars ($30,000), the calculated amount of credit is equal to zero.

(4) For taxable years beginning after the taxable year in which the minimum wage, as defined in Section 1182.12 of the Labor Code, is set at fifteen dollars ($15) per hour, the amounts in paragraphs (1) and (2) shall be recomputed annually in the same manner as the recomputation of income tax brackets under subdivision (h) of Section 17041.

(p) For each taxable year beginning on or after January 1, 2020, Section 32(m) of the Internal Revenue Code, relating to identification numbers, is modified as follows:

(1) By deleting "(other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act)."

(2) By substituting "federal individual taxpayer identification number or a social security number" for "social security number."

(q) An eligible individual, eligible individual's spouse, or qualifying child using a federal individual taxpayer identification number as authorized under subdivision (p) shall:

(1) Upon request of the Franchise Tax Board, provide:

(A) Identifying documents acceptable for purposes of obtaining a California driver's license as authorized by subdivisions (a) and (c) of Section 12801.9 of the Vehicle Code, enacted by Chapter 524 of the Statutes of 2013, and related regulations adopted for purposes of establishing documents acceptable to prove identity.

(B) Identifying documents used to report earned income for the taxable year.

(2) Upon receiving a valid social security number issued to that individual by the Social Security Administration, notify the Franchise Tax Board, in the time and manner prescribed by the Franchise Tax Board.

SEC. 2. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

O

Agenda Item No. 11.

REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of October 13, 2020

Presented by:
Larry Appel, Contract Planning Director

Approved by:
Todd Bodem, City Administrator

SUBJECT: 2018 Draft General Plan Preferred Alternative

EXECUTIVE SUMMARY:

The 2018 Draft General Plan identified three Strategic Growth Alternatives for the City and then a Preferred Alternative was selected by the Cal Poly students. At the time of the Council presentation by the Cal Poly professor, no action was requested nor taken by City Council as to the direction the draft plan should follow. EMC is now reviewing these same alternatives and needs specific direction as to what growth strategy should be evaluated in updating our General Plan.

RECOMMENDATION:

It is recommended that the City Council:

a) Receive a written report from staff (Larry Appel, Contract Planning Director); and
b) Receive input from the public; and
c) City Council to discuss and provide direction to staff on the Preferred Alternative

FISCAL IMPACT:

Minimal to significant fiscal impact could occur based on the alternative selected. Significant impacts would occur if Council chose the high growth scenario which would require the City to upgrade public infrastructure like wastewater treatment facilities.

BACKGROUND:

A meeting was held between the Mayor, City Administrator and Planning Director on September 28th when the Director discussed the various scenarios originally proposed in the 2018 draft General Plan. It was suggested by the Mayor that a decision on which scenario to use should be made by the entire Council, so this hearing was scheduled.

DISCUSSION:

The draft General Plan document, prepared by Cal Poly contained three Strategic Growth Strategies ranging from a status quo to a high growth scenario. The draft report then selected the high growth

scenario as the "Preferred Growth Scenario." The following section summarizes the three scenarios as well as the preferred scenario.

Historic Growth Alternative (#1)

- Expected Population by 2040: 9,200 (27% increase)
- 600 additional housing units (mix of densities) by 2040
- 130 new jobs by 2040

Guiding Principles:

- Maintain existing growth rate
- Maintain existing economic trends
- Commercial expansion consists of existing projects
- Guadalupe Flyer is the preferred alternative transportation to private vehicles
- Focus on fixing existing residential areas, aging infrastructure and public facilities

Revitalization Alternative (#2) – Moderate Growth

- Expected Population by 2040: 10,700 (31% increase)
- 900 additional housing units by 2040 (mixed densities, use of downtown mixed use, Gularte Tract upzone, etc.)
- 520 new jobs by 2040
- New RxR pedestrian bridge at 4th Street and multiple new bike lanes

Guiding Principles:

- Mixed Use (high density in downtown plus streamline processing)
- Enhance multimodal transportation (new RxR overpass, bike lanes and ped. walkways)
- Commercialization of Downtown (increase comm. opportunities, focus on tourism)
- Enhance Civic Space (create public plaza, increase outdoor-based development/seating)
- Connect North/South (comm. available to Pasadera) and East/West (residential neighborhoods)

Strategic Growth (#3) – High Growth

- Expected Population by 2040: 12,900 (38% increase)
- 1250 additional housing units by 2040 (up-zoning portions of the city)
- 870 new jobs by 2040
- New RxR pedestrian bridge at 4th Street and multiple new bike lanes

Guiding Principles:

- Convert Ball Horticultural to medium density residential (14.5 du/ac)
- Gularte Tract from R-1 to R-2 (14.5 du/ac)
- General-Commercial (G-C) to Mixed Use to allow high density second floor
- Three (3) story mixed use in the downtown areas
- More downtown parks and plazas
- Business-friendly environment
- Downtown is social and cultural center of town
- Distinct social/cultural identity

Preferred Growth Scenario (High Growth)

After considering the three scenarios, the students selected the most aggressive growth plan. There are at least three elements of this scenario that are not attainable. The first issue is with gaining some of the added housing units through mixed use in the downtown area. There's no problem with considering second floors as potential reuse for housing, but the report goes on to say that there should be three stories allowed in downtown. This idea has a fatal flaw in that the city's fire equipment does not reach any buildings taller than two stories. For that reason, the third story concept must be dropped. The second element is the addition of a second RxR pedestrian bridge crossing at 4th street. While another crossing could assist with the flow of bikes and pedestrians across town, the cost of it would be prohibitive. The third element is the conversion of the Ball Horticultural fields to medium density housing. The City Council has already decided that is not a good idea at this time and therefore should not be considered at this time.

By the end of the discussion on October 13th, staff is hoping that a majority of the Council will be able to provide direction as to which scenario is best to utilize with the General Plan update.

Workshop Survey:

As part of the Cal Poly project, several community workshops were held to solicit information from residents. The survey results were recently provided in table form by EMC. You were asked to review those surveys and provide any direction in the right column of each page. We will provide your comments to EMC for our "kick-off" meeting next week.

ENVIRONMENTAL REVIEW:

None required for this public hearing.

PUBLIC NOTICE: none required other than the Agenda notice

Agenda Item No. 12.

REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of October 13, 2020

Philip F. Sinco

Prepared by:
Philip F. Sinco, City Attorney

Approved by:
Todd Bodem, City Administrator

SUBJECT: Regulation Options for Short-Term Rentals

RECOMMENDATION:

That the City Council accept this report for information and provide direction to staff.

BACKGROUND:

With the advent of online companies, such as VRBO and AirBnB, there has been an increase in the number of short-term rentals of residential properties. A short-term rental is defined as any rental of residential property for less than 30 days. Although such rentals have been around for decades, it was Airbnb's business model of facilitating short-term rentals that has brought short-term rentals to more communities and in greater numbers. There are currently less than a dozen short-term rentals in the City of Guadalupe (according to the City's best estimates), but the number of such rentals is likely to increase in the coming years with the growing popularity of such rentals both with visitors and property owners alike. Short-term rentals can be hosted (i.e., the property owner lives on or at the property) or unhosted (i.e., the entire property may be rented). Many cities have struggled with the impacts from short-term rentals, such as loss of housing stock, noise disturbances, increased traffic, loss of parking, and property nuisances. In order to address these impacts, cities that have taken action concerning short-term rentals have generally either banned them entirely or have enacted a variety of measures to regulate them.

DISCUSSION:

Option No. 1 – Banning of Short-Term Rentals:

There is well-established case law providing cities with the broad authority to regulate short term rentals as a land use matter. In the case of *Ewing v City of Carmel by the Sea,* the court upheld the city's ordinance prohibiting short term rentals in areas zoned for single family residences. The court found that the residential character of a neighborhood can be threatened when a significant number of homes are occupied by short-term tenants, which could impact the stability of a community. The court held that cities could favor longer term renters who contribute to the stability of a community in a way that short-term renters do not.

The primary disadvantage of banning short-term rentals is that it would be difficult to enforce such a complete prohibition, and the City would not be able to collect any potential revenue from these illegal short-term rentals that would likely continue to operate in spite of such a ban.

Option No. 2 – Regulation of Short-Term Rentals:
If a city decides to permit short-term rentals, there are a variety of regulatory options available to to mitigate the various negative impacts that may result from short-term rentals.

One approach to regulating these impacts **not** recommended (as it might be subject to a legal challenge) is to limit the number of adult occupants that may occupy a short-term rental (although some cities have taken this approach). In the case of *College Area Renters and Landlord Association v. City of San Diego,* the court held that San Diego's zoning ordinance regulating the number of residents age 18 or older in non-owner occupied residences violated the California Constitution's Equal Protection principles because there was no rational basis to distinguish between overcrowded homes that were owner occupied and overcrowded homes filled with tenants – both created the same impacts that the City was attempting to mitigate. The court cautioned: "In general, zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users." Although this case did not address short-term rentals, its holding does suggest that a court might find an ordinance unconstitutional if it limits occupancy to fewer adults than would be allowed for longer term rentals.

Accordingly, any regulations for short-term rentals should essentially be the same for guests of short-term rentals and for the neighborhood's residents. Fortunately, the City of Guadalupe already has a number of appropriate regulations to address these types of impacts that apply to whoever is occupying residential properties that can be found in Chapter 8.50 entitled "Property Nuisances."

In addition to regulating properties used for short-term rentals in the same manner as owner-occupied properties or properties occupied by long-term (i.e. month-to-month or longer) tenants, a local jurisdiction could also adopt an ordinance requiring that property owners who rent all or a portion of their properties to short-term renters obtain a business license and pay transient occupancy tax on these short-term stays.

Transient occupancy tax (commonly referred to as "TOT") is a tax imposed on transient lodging of less than 30 days. Most cities in California, including the City of Guadalupe, long ago adopted a TOT ordinance, that imposes a specific percentage of the lodging rate (typically between 10%-12%) as a tax. The rate in the City of Guadalupe is 6%, but no TOT revenue is currently being generated as there are no hotels, motels, or similar lodging businesses operating in the City of Guadalupe. Although the use of a private residence for short-term rentals would qualify as transient lodging under the City's TOT ordinance, and thus, requires the owners of such properties to pay TOT, no property owners in the City using their properties for short-term rentals have voluntarily stepped forward to pay TOT, nor does the City's business license ordinance clearly state that such property owners are required to obtain a business license to use their properties in this manner. In fact, the definition for a "hotel" and "motel" is different in the sections of the City's Municipal Code concerning business licenses and transient occupancy tax such that it is clear that a short-term rental of a private residence is required to pay TOT

to the City, it does not appear that the owner of such a residence used for short-term rentals would be required to obtain a business license.
The City could adopt an ordinance that would, among other things, amend the City's current business license requirements so that any person who rents out a residential property for short-term rentals would be required to obtain a business license from the City. This would have two main advantages: (1) if a property is used for short-term rentals and the property owner has not obtained a business license, the City could pursue criminal prosecution (or administrative remedies such as issuance of administrative citations) against the property owner (which are much easier to prove than property nuisances); and (2) the City would receive additional revenue in the form of the fee paid for an annual business license (in addition to the TOT these property owners would also be required to pay to the City.

Although some hosts of short-term rentals are accustomed to collecting and remitting TOT, most hosts who offer short-term rentals through online platforms such as AirBnB or VRBO may struggle with remitting TOT. It can be difficult for cities to collect TOT from these hosts, although with less than a dozen such known properties providing short-term rentals, City staff could probably administer this process, unless the number of such properties increased significantly.

To address this challenge, Airbnb (by far the online platform with the most short-term rentals) developed the Voluntary Collection Agreement (VCA) to ensure that TOT is collected and remitted while relieving hosts of tax filings and cities of the burden of collection and enforcement. When a city signs a VCA with Airbnb, Airbnb collects the appropriate TOT amount from guests as part of their booking transactions and remits the tax revenue directly to the city on behalf of the short-term rental hosts. Under the VCA, Airbnb registers as a taxpayer, remits the collected tax, and files a single tax return.

Having AirBnB collect and remit TOT to the City is an advantage to the City and a very good reason to enter into such an agreement. However, there are a few disadvantages to the City if it should enter into a VCA. One provision of AirBnB's VCA requires cities to waive and release any and all claims arising out of unpaid TOT prior to the effective date of the VCA. This can be a major disadvantage for a city with a large amount of outstanding past claims; however, even if the City of Guadalupe could prove how long any of the small number of short-term rentals have been operating and how much money they have made, the amount of outstanding TOT that might be owed to the City is unlikely to be significant enough for this to be a disadvantage to entering into a VCA. More troubling is that fact that VCA's limit how often a city can audit AirBnb's records and require that a city will not seek personally identifiable information relating to a host or a guest until the city has conducted an audit of AirBnB. The practical effect of these two provisions is to discourage seeking information related to specific hosts from AirBnB. Another drawback is that the City is not able to obtain the addresses for short-term rentals by asking AirBnB for them, which means it might be difficult to determine if all of the short-term rentals in the City have actually obtained business licenses.

In determining whether to enter into the a VCA, cities will need to weigh the benefit of AirBnB's cooperation in facilitating TOT collection against the concessions made by the city entering into the VCA. One of the first steps is to consider how many short-term rentals are in the city's market, and how many of those short-term rentals use AirBnB as a platform. In the case of the City of Guadalupe, as mentioned, there are not very many such short-term rentals: only about nine (9) or ten (10) such rentals, and at least nine (9) of them are AirBnB. Given these facts, it may not be a significant burden at the current time for

the City to determine which properties need to obtain business licenses, pay TOT, and document the amount of TOT required to be paid. On the other hand, since it would be easier for property owners to modify their records to show less revenue than what was actually incurred if the City required them to self-report, it is possible that the amount of TOT that would be paid by AirBnB would more closely approximate the actual amount of TOT owned.

In sum, the City can ban short-term rentals in residential zones entirely, but this would be difficult to enforce and would not provide the City with any potential revenue. Alternatively, if the City wishes to allow such rentals, it should consider adoption of an ordinance finding that properties used for short-term rentals are a business and require the property owner to obtain a business license and pay TOT on these short-term stays. Finally, the City would need to determine if the advantages of entering into a VCA with AirBnB (it does not appear that such agreements are available with VRBO at this time) for collection of TOT.

FISCAL IMPACT:

None, unless the City Council directs staff to prepare an ordinance that authorizes short-term rentals, requiring their owners to obtain business licenses, and require payment of transient occupancy taxes, in which case there will be a minor increase to the City's general fund in an estimated amount of approximately $10,000 to $20,000 annually, which could increase depending on the number of additional short-term rentals that are made available on online platforms such as AirBnB.

ATTACHMENTS:

1. Power Point presentation entitled "Short Term Rentals: Governmental Options for Regulation."

SHORT TERM RENTALS

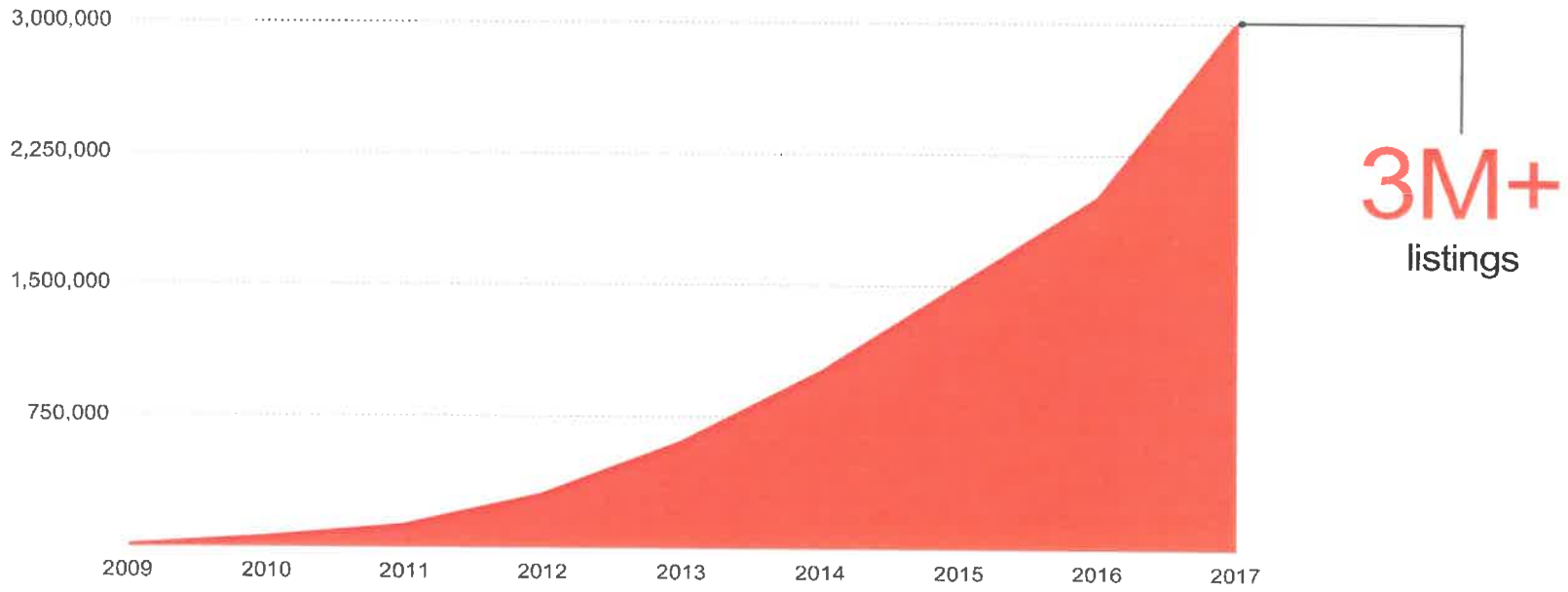
GOVERNMENTAL OPTIONS FOR REGULATING

WHAT IS A SHORT-TERM RENTAL?

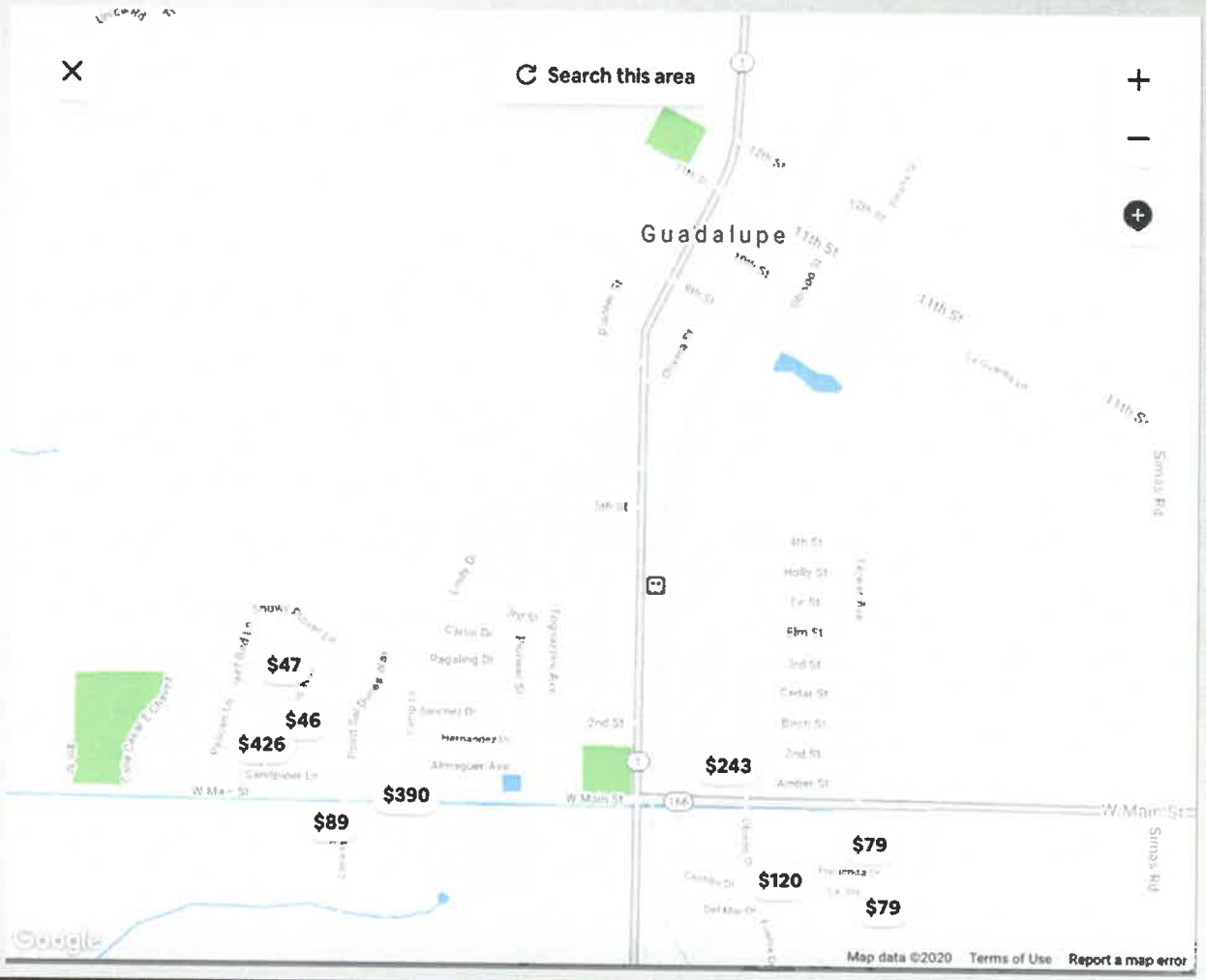
- Typically, refers to a rental of a residence for less than 30 days.
- Can be hosted or non-hosted (that is, the property owner may or not not live on site).
- Short-term rentals have been common in tourist destinations and have been regulated for decades.

AIRBNB – SHORT TERM RENTALS

Cumulative Total Listings on Airbnb



AirBnB rentals in the City of Guadalupe 2020



52%

are low to moderate income

53%

say that hosting helped them stay in their homes

81%

of hosts share the home in which they live

48%

of host income is used to pay for regular household expenses like rent and groceries

To date, **tens of millions of travelers** have chosen Airbnb to experience cities not as tourists, but as locals.

79%
of travelers want to explore a specific neighborhood

91%
of travelers want to "live like a local"

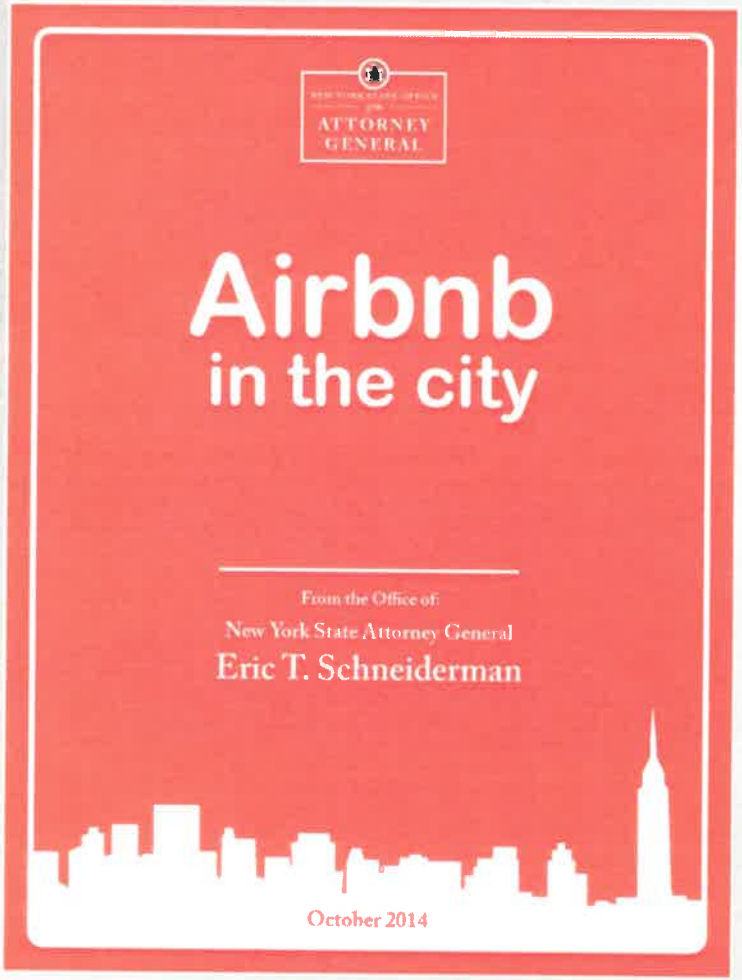
74%
of Airbnb properties are outside the main hotel districts

Airbnb travelers stay longer and spend more in diverse neighborhoods throughout the city.

Airbnb guests stay
2.1x
longer than typical visitors

Airbnb guests spend
1.8x
more than typical visitors

42%
of guest spending is in the neighborhoods where they stayed



- Most Short-Term Rentals Booked Violated the Law. Short-term rentals are often illegal.
- Commercial Users Accounted for a Disproportionate Share of Private Short-Term Rentals by Volume and Revenue. Ninety-four percent of hosts offered two units or less, but six percent offered up to hundreds and received 37% to all revenue received by hosts.
- Private Short-Term Rentals Displaced Long-Term Housing in Thousands of Apartments.

NEGATIVE IMPACTS OF SHORT-TERM RENTALS

- Noise/parties
- Parking
- Loss of residential character of neighborhood
- Loss of housing stock
- Other public safety concerns

SHORT-TERM RENTALS MAY BE PROHIBITED

EWING V. CITY OF CARMEL-BY-THE-SEA

- Owners of a single-family home in a residentially zoned area challenged the City's adoption of an ordinance prohibiting transient use (defined as less than 30 days by code) in the neighborhood.
- Holding: Preservation of the residential character of a neighborhood is sufficient reason to prohibit short term rentals in that neighborhood.

ADVANTAGES OF PERMITTING SHORT TERM RENTALS

- Short-term rentals can be found to be a "business" that requires property owners who use their properties for short-term rentals to obtain an annual business license.
- In addition to receiving fees for such business licenses, a property owner could be criminally prosecuted and prevented from renting his or her or their property to short-term renters until they obtain a business license.

ADVANTAGES OF PERMITTING SHORT TERM RENTALS

- Short-term rentals also have the potential to generate revenue pursuant to a transient occupancy tax ordinance. Revenue and Taxation Code section 7280, et seq., authorizes cities to levy a tax on the "privilege of occupying a room or rooms" including that in a house, provided the period of occupancy is for less than 30 days.

BUT....

- Although some hosts of short-term rentals are accustomed to collecting and remitting TOT, hosts who offer short-term rentals through Online Platforms without the use of a professional property manager may struggle with remitting TOT. It can be difficult for cities to collect TOT from these hosts.

SOLUTION?

- To address this challenge, Airbnb developed a tool, the Voluntary Collection Agreement (VCA), to ensure that TOT is collected and remitted while relieving hosts of tax filings and cities of the burden of collection and enforcement. When a city enters into a VCA, Airbnb agrees to collect appropriate local taxes from guests as part of their booking transactions and remits the tax revenue directly to the city on behalf of the short-term rental hosts.

SOLUTION?

- A VCA is a legally binding agreement between Airbnb and a taxing authority for the former to contractually assume the tax collection and remittance obligations of hosts for booking transactions completed on the Airbnb platform. Under the VCA, Airbnb registers as a taxpayer, remits the collected tax, and files a single tax return.

SOLUTION?

- In determining whether to enter into a VCA, a city needs to weigh the benefit of Airbnb's cooperation in facilitating TOT collection against the concessions made by the city entering into the VCA. A provision of Airbnb's VCA requires cities to waive and release any and all previously unpaid TOT of their host clients. This could result in a loss of potentially collectable revenue; however, this amount might be offset by the cost of attempting to collect unpaid TOT.

CONSIDERATIONS

- One of the first steps is to consider how many short-term rentals are in the city's market, and how many of those short-term rentals use Airbnb as a platform. It may not be a significant burden to monitor and pursue enforcement against the relatively small number of AirBnb rentals in the City (although this number could increase if short term rentals become more popular).

CONSIDERATIONS

- In addition, cities should consider the likelihood and frequency of their TOT audits, and how that may interplay with enforcement actions in their jurisdictions. A provision of the VCA requires the city to agree that it will only audit Airbnb once per any consecutive 48- month period (4 years). The city also agrees that it will not seek personally identifiable information relating to a host or a guest until the city has conducted an audit of Airbnb. The practical effect of these two provisions is to discourage seeking information related to specific hosts from Airbnb.