



REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of July 14, 2020

Prepared by:
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SUBJECT: Second reading of Ordinance No. 2020-489 adding Chapter 5.53 regarding licensure of tobacco retailers and Chapter 8.60 regulating smoking in public places and multiunit housing.

RECOMMENDATION:

That the City Council adopt, on the second reading, Ordinance 2020-489, adding Chapter 5.53 regarding licensure of tobacco retailers and Chapter 8.60 regulating smoking in public places and multiunit housing.

BACKGROUND:

The City Council introduced Ordinance No. 2020-489 at its meeting on June 9, 2020. This item was pulled from the consent calendar at the June 23, 2020 Council meeting, and prior to the second reading, the Council considered a proposed change to the ordinance was considered. The Council made a change to the ordinance, namely, to permit any existing tobacco retailers within 1000 feet of a school to continue to be permitted to sell tobacco (although no new tobacco retailer licenses will be issued to any businesses located within 1000 feet of a school after the effective date of the ordinance). This change was made to the ordinance. This constitutes the second reading of the ordinance as revised by the City Council at its June 23, 2020 meeting.

ATTACHMENTS

1. Ordinance No. 2020-489 entitled: "An Ordinance of the City Council of the City of Guadalupe Adding Chapter 5.53, Licensure of Tobacco Retailers, and Chapter 8.60, Smoking in Public Places and Multiunit Residences, to the Guadalupe Municipal Code."

CHANGES MADE TO THE ORDINANCE DURING THE JUNE 23, 2020 CITY COUNCIL MEETING:

5.53.110 Prohibition of tobacco retailing within one thousand feet of a school

A. No tobacco retailer license may be issued to authorize tobacco retailing within one thousand feet of a school, except as provided in subsection B.

B. Exception. A tobacco retailer operating with a valid tobacco retailer license at a location within one thousand feet of a school, on the operative date of this chapter may continue to operate under their existing tobacco retailer license and under any tobacco retailer license that is timely renewed for that location.

BC. All distances shall be measured in a straight line from the nearest point on the parcel boundary of an existing or proposed tobacco retailer to the nearest point on the parcel boundary of the nearest school.

ORDINANCE NO. 2020-489

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUADALUPE ADDING CHAPTER 5.53, LICENSURE OF TOBACCO RETAILERS, AND CHAPTER 8.60, SMOKING IN PUBLIC PLACES AND MULTIUNIT RESIDENCES, TO THE GUADALUPE MUNICIPAL CODE

WHEREAS, the U.S. Centers for Disease Control and Prevention reports that approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death;

WHEREAS, the World Health Organization (WHO) estimates that tobacco kills roughly 6 million people and causes over half a trillion dollars in economic damage each year;

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;

WHEREAS, tobacco use is the number one cause of preventable death in California and continues to be an urgent public health issue, as evidenced by the following:

- 40,000 California adults die from their own smoking annually;
- More than 25% of all adult cancer deaths in California are attributable to smoking;
- Smoking costs California \$13.29 billion in annual health care expenses, \$3.58 billion in Medicaid costs caused by smoking, and \$10.35 billion in smoking-caused productivity losses;
- Tobacco use can cause disease in nearly all of the organs of the body and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all cases of chronic obstructive pulmonary disease in the United States;

WHEREAS, tobacco use among priority populations in California contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

- African American (20%), Asian (15.6%), Hispanic (15.0%), and American Indian/Alaska Native (36.2%) males all report a higher smoking prevalence than White, Non-Hispanic males (14.8%);
- More than half (53.8%) of low socioeconomic status American Indian/Alaska Native Californians smoke, the highest smoking prevalence among all populations;
- Californians with the highest levels of educational attainment and annual household income have the lowest smoking prevalence;
- Those who reported experiencing psychological distress over the past year smoke at rates disproportional to their population in California;

WHEREAS, neither federal nor California state laws restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices, but studies show

that restricting access to these flavored products would have a large benefit to overall public health; and

WHEREAS, flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation;

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco and that these products help establish tobacco habits that can lead to long-term addiction; and

WHEREAS, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting, as evidenced by the following:

- Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users;
- Tobacco industry documents state that if “a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one”;
- The tobacco industry spends an estimated \$620 million annually to market tobacco products to California residents;

WHEREAS, the availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than 100 academic studies that conclusively show that when tobacco products are made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use;

WHEREAS, youth are particularly responsive to changes in tobacco prices, and evidence suggests that tobacco companies deliberately target youth with price reductions;

WHEREAS, the tobacco industry’s price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy. In California, those who use price minimization strategies lower per-pack cost an average \$1.04 (or 18.6% off the total);

WHEREAS, the City Administrator and Department of Public Safety, as the Administrative Authority, is proposing changes to amend the City of Guadalupe Municipal Code by adding Chapter 5.53, Licensure of Tobacco Retailers, and Chapter 8.60, Smoking in Public Places and Multiunit Housing; and

WHEREAS, the City Council finds that adding Chapters 5.53 and 8.60 set forth in this Ordinance are exempt from the California Environmental Quality Act (CEQA) review pursuant to 14 CCR 15061(b)(3).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUADALUPE ORDAINS AS FOLLOWS:

SECTION 1: Chapter 5.53 is hereby added to the Guadalupe Municipal Code to read as follows:

CHAPTER 5.53 LICENSURE OF TOBACCO RETAILERS

5.53.010 Findings and Purpose

A. It is the intent of the City Council, in enacting this chapter, to discourage violations of laws which prohibit or discourage sale or distribution of tobacco products and tobacco paraphernalia to minors and young people, but not to expand or reduce the degree to which the acts regulated by state or federal law are criminally proscribed.

B. All amendments to this chapter shall be applied in a prospective manner only, not retrospectively to situations, conditions or facts existing at the time of or prior to the amendment.

5.53.020 Definitions

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

A. "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of a violation of this chapter, is not an arm's length transaction.

B. "Cigarette" means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.

C. "Cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.

D. "Delivery sale" means any sale of tobacco products to a consumer if products and/or tobacco:

1. the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

2. the tobacco products are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the tobacco products.

D. "Department" means the City of Guadalupe Department of Public Safety or the duly authorized designee of the Department of Public Safety.

E. "Electronic smoking device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device

includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

F. "Flavored tobacco product" means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements or claims concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

G. "Full retail price" means the price listed for a tobacco product on its packaging or on any related shelving, advertising, or display where the tobacco product is sold or offered for sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

H. "Licensing agent" means the City of Guadalupe Department of Finance or the duly authorized designee of the Department of Finance.

I. "Little cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. Little cigar includes, but is not limited to, tobacco products known or labeled as small cigars, little cigars, or cigarillos.

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

K. "Pharmacy" means a place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

L. "School" means any public or private kindergarten, elementary, middle, junior high, or high school.

M. "Self-Service Display" means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

N. "Tobacco paraphernalia" means holders of smoking materials of all types, cigarette rolling machines, and any other item designed for smoking, preparation, storing or consumption of tobacco products.

O. "Tobacco product" means:

1. any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

2. any electronic smoking device, and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or

3. any component, part, or accessory of subsection O.1. or O.2., whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.

4. Tobacco product does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, nor does it mean cannabis products as defined by the Health and Safety Code § 11018.1 or cannabis as defined by Business and Professions Code § 26001, as these laws may be amended from time to time.

P. "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia.

Q. "Tobacco retailing" shall mean engaging in the activities of a tobacco retailer.

R. "Tobacco retailer license" or "license" means a business license that permits the retail sale of tobacco paraphernalia.

5.53.030 Requirement for tobacco retailer license

It is unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer license pursuant to this chapter for each location at which tobacco retailing is to occur. Tobacco retailer licenses are valid for one year. An application to renew a tobacco retailer license should be submitted prior to the expiration of the license.

5.53.040 Application procedure

A. An application for a tobacco retailer license, plus one copy, shall be submitted to the licensing agent in the name of the person(s) proposing to conduct tobacco retailing and shall be signed by such person(s) or an authorized agent thereof. All applications shall be submitted on a form supplied by the licensing agent and shall contain the following information:

1. The name, address, and telephone number of the applicant(s);

2. The business name, address, and telephone number of each location for which a license is sought.

3. Such other information as the licensing agent deems necessary for enforcement of this chapter.

B. Once an application has been submitted to the licensing agent, it will be promptly forwarded to the Department for review. The Department shall, within twenty-one business days of receipt of the application, recommend whether or not the licensing agent should issue the tobacco retailer license.

5.53.050 Issuance of tobacco retailer license

A. Within thirty business days of the licensing agent's receipt of an application for a tobacco retailer license, the licensing agent shall issue a license, unless it has been determined by the licensing agent or Department that the issuance of the license should be denied, based on the following criteria:

1. The application is incomplete or inaccurate;
2. The application seeks authorization for tobacco retailing by a person or at a location for which a suspension or revocation with prejudice is in effect pursuant to section 5.53.160 of this chapter; or
3. The application seeks authorization for tobacco retailing in an area that is in violation of section 5.53.110, or in a manner that is in violation of section 5.53.090, city zoning pursuant to Title 18 of this code, or in violation of any other provision of city, state, or federal law.
4. The application seeks authorization for tobacco retailing in a pharmacy. No pharmacy or any retail establishment that operates an on-site pharmacy will be granted a license.

B. A denial of a tobacco retailer license may be appealed pursuant to section 5.53.160.

C. The licensing agent shall keep a permanent record of all tobacco retailer licenses issued, but may destroy such records as provided by law with the approval of the City Council.

5.53.060 Display of tobacco retailer license

Each licensee shall prominently display the tobacco retailer license at each location where tobacco retailing occurs.

5.53.070 Fees for tobacco retailer license

A. The initial fee or renewal fee for a tobacco retailer license shall be set forth in the "Tobacco Retailer License Fee Schedule" that is adopted by resolution. The fee shall be paid to the licensing agent when a tobacco retailer license application is submitted.

B. Renewal. Renewal fees are due the thirty days prior to the date of expiration of a tobacco retailer license. If the renewal fee is not paid on time, a penalty of fifty percent of the renewal fee shall be added to the renewal fee. If the renewal fee and any applicable late penalty are not paid before the date of expiration of a tobacco retailer license, then the licensing agent shall automatically revoke the license. Thereafter, if the licensee desires to

resume tobacco retailing, a new license application must be submitted to the licensing agent in accordance with section 5.53.040, along with the license fee and late penalty.

5.53.080 Tobacco retailer licenses are nontransferable

A. A tobacco retailer license is nontransferable. If a person to whom a tobacco retailer license has been issued changes the business location or sells the business, then that person must obtain a new license prior to acting as a tobacco retailer at the new location, or the buyer of the business must obtain a license in the new owner's name before acting as a tobacco retailer.

B. Prior violations at a location shall continue to be counted against a location and license revocation periods shall continue to apply to a location unless:

1. The location is being or has been fully transferred to a new owner; and
2. The new owner(s) provide the licensing agent with clear and convincing evidence that the new owner(s) is acquiring or has acquired the location in an arm's length transaction.

5.53.090 Tobacco retailers must operate at a fixed location

No tobacco retailer license may be issued to authorize tobacco retailing at other than a fixed location. All sales of tobacco products and tobacco paraphernalia to consumers shall be conducted face-to-face and over the counter at the licensed location. For example, tobacco retailing by persons on foot, from vehicles, or at mobile kiosks is prohibited, and delivery sales of tobacco products to consumers is prohibited.

5.53.100 Prohibited sales

- A. No person engaged in tobacco retailing may:
1. Honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;
 2. Sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item or service; or
 3. Provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.
 4. Provide any free or nominally-priced sample of any tobacco product to any person.
 5. Sell:
 - a. A flavored tobacco product;
 - b. Any little cigar unless it is sold in a package of at least twenty little cigars;
 - c. Any cigar unless it is sold in a package of at least at least six cigars, provided, however, that this subsection shall not apply to a cigar that has a price of at least \$10.00 per cigar, including all applicable taxes and fees;

- d. Cigarettes at a price that is less than \$10.00 per package of twenty cigarettes, including all applicable taxes and fees;
- e. Little cigars at a price that is less than \$10.00 per package of little cigars, including all applicable taxes and fees; or
- f. Cigars in a package at a price that is less \$5.00 per cigar, including all applicable taxes and fees.
- g. Any tobacco product by means of a self-service display.

B. The minimum prices established in this section shall be adjusted annually by the annual average of the percentage change in the Consumer Price Index for all urban consumers for all items for the Los Angeles statistical area as reported by the United States Bureau of Labor Statistics or any successor to that index.

5.53.110 Prohibition of tobacco retailing within one thousand feet of a school

- A. No tobacco retailer license may be issued to authorize tobacco retailing within one thousand feet of a school, except as provided in subsection B.
- B. Exception. A tobacco retailer operating with a valid tobacco retailer license at a location within one thousand feet of a school, on the operative date of this chapter may continue to operate under their existing tobacco retailer license and under any tobacco retailer license that is timely renewed for that location.
- C. All distances shall be measured in a straight line from the nearest point on the parcel boundary of an existing or proposed tobacco retailer to the nearest point on the parcel boundary of the nearest school.

5.53.120 Positive identification requirements for sale of tobacco products and tobacco paraphernalia

No person engaged in tobacco retailing shall sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of thirty, without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess tobacco products or tobacco paraphernalia.

5.53.130 Minimum age for persons selling tobacco products and tobacco paraphernalia

No person who is younger than the minimum age established by state or federal law for the purchase of tobacco products or tobacco paraphernalia may engage in tobacco retailing or work for a tobacco retailer.

5.53.140 False and misleading advertising prohibited

A tobacco retailer without a valid tobacco retailer license, including for example, a tobacco retailer license that has been suspended or revoked, shall not display any advertisement

promoting the sale or distribution of tobacco products or tobacco paraphernalia at the tobacco retailer's location and shall keep all such products out of public view.

5.53.150 Compliance monitoring

A. Compliance with this chapter shall be primarily enforced by the Department, in conjunction with code enforcement. However, any peace officer may enforce the penal provisions of this chapter against a tobacco retailer.

B. The Department will check the compliance of each tobacco retailer two to four times per twelve-month period. However, the Department may check the compliance of a tobacco retailer more or less often, depending on a tobacco retailer's compliance history. Nothing in this paragraph shall create a right of action for any tobacco retailer or other person, against the county or its agents.

5.53.160 Revocation or suspension of tobacco retailer license, and appeals

A. Grounds for Revocation or Suspension.

1. A tobacco retailer license shall be revoked if the Department finds that one or more of the basis for denial of a license under section 5.53.050 of this chapter exists. The revocation shall be without prejudice to the filing of a new application for a license following correction of the conditions that required revocation of the license, unless the Department finds that missing information was intentionally withheld, or inaccurate information was intentionally provided.

2. A tobacco retailer license shall be suspended, if the Department finds that the licensee or his or her agent or employee has violated this chapter or any federal, state, or local law governing the sale, distribution, advertisement, labeling, packaging, manufacturing, or display of tobacco, tobacco products or tobacco paraphernalia, including, but not limited to: Penal Code Section 308a, or Business and Professions Code Sections 22950 et seq. (Stop Tobacco Access to Kids Enforcement Act "STAKE Act") or sections 37-7 and 37-8 of Santa Barbara County's code, or Business and Professions Code Section 25612.5(c)(7).

3. The licensing agent shall give notice of revocation or suspension to a licensee by personal service or by certified mail return receipt requested, addressed to where the license was issued. The notice of revocation or suspension shall be effective when notice is personally served, or when the certified mail return receipt is returned to the licensing agent. If the licensee fails to file a timely appeal of the suspension or revocation pursuant to this section, the notice of suspension or revocation shall be final, subject only to judicial review.

B. Suspension of Tobacco Retailer License. If the Department finds that there are grounds for suspension of a tobacco retailer license, the following sanctions shall be imposed:

1. Upon a first finding by the Department of a violation of this chapter by a licensee or by any agent or employee of a licensee within any five-year period, the license shall be suspended for thirty days.

2. Upon the second finding by the Department of a violation of this chapter by a licensee or by any agent or employee of a licensee within any five-year period, the license shall be suspended for ninety days.

3. Upon the third or subsequent finding by the Department of a violation of this chapter by a licensee or by any agent or employee of a licensee within any five-year period, the license shall be suspended for twelve months.

C. Appeal of Denial, Revocation and/or Suspension. The decision of the licensing agent to deny the issuance of a tobacco retailer license or the decision of the Department to revoke or suspend a license can be appealed to the Department or its designee. All appeals must be in writing and filed with Department, within ten days of receipt of notice of denial, or within ten days of the effective date of the notice of revocation or suspension of a tobacco retailer license. The Department shall set an appeal hearing at the earliest practicable time and shall give written notice of the hearing to the parties at least ten days before the date of the hearing. At the hearing any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Within a reasonable time after the conclusion of the hearing, the Department shall make a written decision. An appeal shall stay all proceedings until the appeal is resolved. Any decision rendered by the Department shall be a final administrative decision.

5.53.170 Penalties—Enforcement

- A. Any violation of the provisions of this chapter by any person is a misdemeanor and is punishable as provided in Title 1, Chapter 1.08 of this code.
- B. Violations of this chapter are hereby declared to be public nuisances.
- C. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the county counsel, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

5.53.180 Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this chapter or the rules adopted hereby. The City Council of the City of Guadalupe hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 2: Chapter 8.60 is hereby added to the Guadalupe Municipal Code to read as follows:

CHAPTER 8.60 – SMOKING IN PUBLIC PLACES AND MULTIUNIT HOUSING

8.60.010 Definitions. The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

A. “Adjacent unenclosed property” means any unenclosed area of property, publicly or privately owned, that abuts a multiunit residence, but does not include property containing detached single-family homes.

B. “Business” means any sole proprietorship, partnership, joint venture, corporation, association, landlord, or other entity formed for profit-making purposes. A business also includes owner-operated entities with no employees in which the owner is the only worker.

C. “Cannabis” has the meaning set forth in California Business and Professions Code Section 26001(f), as that section may be amended from time to time.

D. “Common area” means every enclosed area and unenclosed area of a multiunit residence that residents of more than one unit of that multiunit residence are entitled to enter or use, including, but not limited to, halls, pathways, lobbies, courtyards, elevators, stairs, community rooms, playgrounds, gym facilities, swimming pools, parking garages, parking lots, grassy or landscaped areas, restrooms, laundry rooms, cooking areas, and eating areas.

E. “Dining area” means any area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used for consuming food or drink, including, but not limited to restaurants.

F. “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

G. “Employee” means any person who is employed or retained as an independent contractor by any Employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.

H. “Employer” means any business or nonprofit entity that retains the service of one or more employees.

I. “Enclosed area” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has:

1. any type of overhead cover, whether or not that cover includes vents or other openings, and is bounded by walls, doorways, windows, or vegetation of any height, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area; or

2. walls or other vertical constraints to airflow, including, but not limited to, vegetation, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the areathat exceed six (6) feet in height, whether or not those boundaries include vents or other openings.

J. "Multiunit residence" means property containing two (2) or more units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, hotels and motels, and long-term health care facilities. Multiunit residences do not include the following:

1. a mobile home park;
2. a campground;
3. a marina or port;
4. a single-family home, except if used as a health care facility subject to licensing requirements; and

5. a single-family home with a detached or attached in-law or second unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2, as they may be amended from time to time, or an ordinance of the City adopted pursuant to those sections, except if the single-family home or in-law/second unit is used as a health care facility subject to licensing requirements.

K. "Nonprofit entity" means any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association, or other entity created for charitable, religious, philanthropic, educational, political, social, or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a nonprofit entity within the meaning of this chapter.

L. "Nonsmoking area" means any enclosed area or unenclosed area in which smoking is prohibited by

1. this chapter or other law;
2. binding agreement relating to the ownership, occupancy, or use of real property;

or

3. a person with legal control over the area.

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

N. "Place of employment" means any area under the legal or de facto control of an employer that an employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation. Place of employment includes all retail or wholesale tobacco shops, and all tobacco retailers licensed by the City.

O. "Private smokers' lounge" means any enclosed area in or attached to a retailer wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, hookahs, cigars, and pipes.

P. "Public place" means any place, publicly or privately owned, which is open to the general public regardless of any fee or age requirement.

Q. "Reasonable distance" means a distance of twenty (20) feet in any direction from an area in which smoking is prohibited.

R. "Recreational area" means any area including streets and sidewalks publicly or privately owned and open to the general public for recreational purposes, regardless of any fee or age requirement. "Recreational area" includes, but is not limited to, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding

trails, swimming pools, roller- and ice-skating rinks, skateboard parks, amusement parks, and beaches.

S. "Retail or wholesale tobacco shop" means any business establishment, the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, electronic smoking devices and smoking accessories.

T. "Service area" means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. "Service area" includes, but is not limited to, areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.

U. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, heating, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, heating, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no cannabis, tobacco, or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. "Smoke" includes, but is not limited to, tobacco smoke, aerosol from an electronic device or heated product, and cannabis smoke or aerosol.

V. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco product, cannabis product, or any plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking, and includes, but is not limited to tobacco smoke, vapors from an electronic device, and cannabis smoke or aerosol.

W. "Tobacco product" means

1. any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and

2. any electronic smoking device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.

3. Notwithstanding any provision of subsections 1. and 2. to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately. "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

X. "Unenclosed area" means any area that is not an enclosed area.

Y. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room

occupancy (“SRO”) facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; and an in-law or second unit.

8.60.020 Prohibition of Smoking in City Facilities,

Smoking is prohibited in all enclosed areas, including buildings and vehicles owned, leased, or operated by the City.

8.60.030 Prohibition of Smoking in Enclosed Areas.

Smoking is prohibited in the enclosed areas of the following places within the City:

- A. Places of employment;
- B. Public places;
- C. Common areas of multiunit residences;
- D. Retail and wholesale tobacco shops; and
- E. Private smokers’ lounges;
- F. Service areas;
- G. Recreational areas;
- H. Dining areas.

8.60.040 Smoking Restrictions in Units of Multiunit Residences.

Smoking is prohibited in all units of a multiunit residence, including any associated exclusive-use enclosed areas or unenclosed areas, such as a private balcony, porch, deck, or patio.

8.60.050 Prohibition of Smoking in Unenclosed Areas.

A. Smoking is prohibited in the unenclosed areas of the following places within the City:

- 1. Recreational areas;
- 2. Service areas;
- 3. Dining areas;
- 4. Places of employment;
- 5. Any private or public sidewalks located within a commercial zone; and any public place located within a commercial zone.
- 6. Common areas of multiunit residences, provided, however, that a person with legal control over a common area may designate a portion of the unenclosed area of the common area as a designated smoking area if the area:
 - a. is located a reasonable distance from any unit or enclosed area where smoking is prohibited:
 - b. by this chapter or other law;
 - c. by binding agreement relating to the ownership, occupancy, or use of real property; or
 - d. by designation of a person with legal control over the property:
 - i. does not include, and is a reasonable distance from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity

including, for example, playgrounds, tennis courts, swimming pools, school campuses, recreational areas, and sandboxes;

ii. is no more than ten percent (10%) of the total unenclosed area of the multiunit residence for which it is designated;

iii. has a clearly marked perimeter;

iv. is identified by conspicuous signs;

v. is completely within an unenclosed area; and

vi. does not overlap with any enclosed or unenclosed area in which smoking is otherwise prohibited by this chapter or other provisions of this code, state law, or federal law.

B. In the case of a smoking area created by agreement or designation, this provision does not apply unless the person designating the smoking area has actual knowledge of, or has been given notice of, the agreement or designation. A person with legal control over a designated smoking area may be obliged to modify, relocate, or eliminate it as laws change, as binding agreements are created, and as nonsmoking areas on neighboring property are established.

C. Other public places, when being used for a public event including, but not limited to, a farmers market, parade, craft fair, festival, or any other event open to the general public.

D. Nothing in this chapter prohibits any person, employer, or nonprofit entity with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

8.60.060 Reasonable Smoking Distance Required.

A. Smoking in all unenclosed areas shall be prohibited within a reasonable distance from any doorway, window, opening, crack, or vent into an enclosed area in which smoking is prohibited.

B. Smoking in unenclosed areas shall be prohibited within a reasonable distance from any unenclosed areas in which smoking is prohibited under Sec. 8.60.050 of this chapter.

8.60.070 Nonsmoking Buffer Zones.

A. Smoking is prohibited in adjacent unenclosed property located within twenty (20) feet in any direction of any doorway, window, opening, or other vent into an enclosed area of a multiunit residence.

B. Subsection A above does not apply to a person who is smoking in the restricted buffer zone area while actively passing on the way to another destination.

8.60.080 Required and Implied Lease Terms for All Units in Multiunit Residences.

A. Every lease or other rental agreement for the occupancy of a unit in a multiunit residence, entered into, renewed, or continued month to month after the effective date of this ordinance, shall include the provisions set forth in subsection B. below on the earliest possible date allowable by law.

B. Every lease or other rental agreement for the occupancy of a unit in a multiunit residence, entered into, renewed, or continued month to month after the effective date of this ordinance, shall be amended to include the following provisions:

1. A clause providing that as of the effective date of this ordinance, it is a material breach of the agreement to knowingly or intentionally allow, or engage in, smoking in the unit, including exclusive-use areas such as balconies, porches, or patios.

2. A clause providing that it is a material breach of the agreement for tenant to knowingly and intentionally allow, or engage in, smoking in any common area of the multiunit residence other than a designated smoking area.

3. A clause providing that it is a material breach of the agreement for tenants to violate any law regulating smoking while anywhere on the property, or to knowingly and intentionally allow any other person subject to the control of the tenant to engage in such behavior.

4. A clause expressly conveying third-party beneficiary status to all occupants of the multiunit residence as to the smoking provisions of the lease or other rental agreement.

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

D. A tenant who breaches, or knowingly and intentionally allows any other person subject to the control of the tenant to breach, a smoking provision of a lease or other rental agreement for the occupancy of a unit in a multiunit residence shall be liable for the breach to:

1. the landlord; and

2. any occupant of the multiunit residence who is exposed to smoke or who suffers damages as a result of the breach.

3. A landlord shall not be liable to any person for a tenant's breach of smoking regulations if the landlord has fully complied with subsections A and B of this section.

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

8.60.090 Notice and Signage Requirements.

A. Every landlord and homeowner association shall deliver the following, on or before the effective date of the ordinance, to each unit of a multiunit residence:

1. a written notice clearly stating:

a. all units are designated nonsmoking units and smoking is illegal in a unit, including any associated exclusive-use enclosed area or unenclosed area, such as a private balcony, porch, deck, or patio, as of effective date of the ordinance; and

b. Smoking in all common areas except for specifically designated smoking areas, is a violation of this chapter as of the effective date of this ordinance.

2. a copy of this chapter.

B. As of the effective date of the ordinance, every landlord and homeowner association shall provide prospective tenants with written notice clearly stating that:

1. Smoking is prohibited in units, including any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio, as of effective date of ordinance; and

2. Smoking is prohibited in all common areas, except for specifically designated smoking areas, as of effective date of ordinance.

C. As of the effective date of ordinance, every seller of a unit in a multiunit residence shall provide prospective buyers with written notice clearly stating that:

1. Smoking is prohibited in units, including any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio, as of effective date of ordinance; and

2. Smoking is prohibited in all common areas, except for specifically designated smoking areas, as of effective date of ordinance.

D. The person or persons with legal control over common areas shall post clear and unambiguous "No smoking" signs in sufficient numbers and locations in common areas where smoking is prohibited by this chapter or other law. In addition, the person or persons with legal control over the multiunit residence shall post signs in sufficient numbers and locations in the multiunit residence to indicate that smoking is prohibited in all units. The person or persons with legal control over the common areas shall maintain such signs. The absence of signs shall not be a defense to a violation of any provision of this chapter. "No smoking" signs are not required inside or on doorways of units, except for hotels or motels which meet the criteria listed in California Civil Code section 1940, subdivision (b)(2).

E. No Person with legal control over any nonsmoking area shall permit smoking in the nonsmoking area, except as provided in Section 8.60.050.A.6.

8.60.100 Nuisance; Other.

A. The provisions of this chapter are restrictive only and establish no new rights for a person who engages in smoking. Notwithstanding (i) any provision of chapter or of this code, (ii) any failure by any person to restrict smoking under this chapter or (iii) any explicit or implicit provision of this code that allows smoking in any place, nothing in this code shall be interpreted to limit any person's legal rights under other laws with regard to smoking, including, for example, rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles.

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

C. Pursuant to California state law, Health and Safety Code sections 11362.3 and 11362.79, as they may be amended from time to time, smoking cannabis is prohibited wherever smoking tobacco is prohibited.

D. Notwithstanding any provision to the contrary, nothing in this ordinance shall be interpreted to restrict or otherwise regulate the use of a drug, device, or combination product authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

8.60.110 Other Requirements and Prohibitions.

A. No person, employer, or nonprofit entity shall permit smoking in an area which is under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking is prohibited by law.

B. No person, employer, or nonprofit entity shall permit the presence or placement of ash receptacles, such as ashtrays or ash cans, within an area under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking is prohibited by law,

including, without limitation, within a reasonable distance required by this chapter from any area in which smoking is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of smoking in violation of any provision of this chapter.

C. A person, employer, or nonprofit entity that has legal or de facto control of an area in which smoking is prohibited by this chapter shall post a clear, conspicuous, and unambiguous “No smoking” or “Smokefree” sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include the international “No smoking” symbol (consisting of a pictorial representation of a burning cigarette and an electronic smoking device, enclosed in a red circle with a red bar across it). Signs posted on the exterior of buildings to comply with this section shall include the reasonable distance requirement set forth in Sec 8.60.060. For purposes of this section, the City Administrator or his/her designee shall be responsible for the posting of signs in regulated facilities owned or leased in whole or in part by the City. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking in violation of any other provision of this chapter.

D. No person, employer, or nonprofit entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this chapter.

E. Each instance of smoking in violation of this chapter shall constitute a separate violation. For violations other than for smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

F. Pursuant to California state law, Health and Safety Code sections 11362.3 and 11362.79, cannabis smoking is prohibited wherever smoking is prohibited.

G. The Department of Public Safety or its designee shall conduct an ongoing educational program to explain and clarify the purposes and requirements of this chapter as well as to provide guidance to persons, employers, and nonprofit entities about compliance. However, lack of receiving or participating in such education program shall not be a defense to a violation of this chapter.

8.60.120. Penalties and Enforcement.

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

B. Each incident of smoking in violation of this chapter is an infraction subject to a one hundred dollar (\$100) fine or otherwise punishable pursuant to this code. Enforcement of this chapter shall be the responsibility of the Department of Public Safety or its designee. In addition, any peace officer or code enforcement official also may enforce this chapter.

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

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

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

F. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

G. Any person acting for the interests of itself, its members, or the general public (hereinafter "private enforcer") may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this chapter against any person who has violated this chapter two or more times. Upon proof of the violations, a court shall grant all appropriate relief.

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

I. Notwithstanding other penalties in this chapter, code, or other law, persons under the age of 21 who smoke in violation of this chapter may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the City determines to be appropriate. The City Council will consult with court personnel, educators, parents, children, the Department of Public Safety, and other interested parties to determine an appropriate penalty for persons under the age of 21 in the City. The penalty may be established by ordinance and amended from time to time.

8.60.130 Other Laws.

A. It is not the intention of this chapter to regulate any conduct where the regulation of such conduct has been preempted by the State of California.

B. Notwithstanding any provision to the contrary, nothing in this ordinance shall be interpreted to restrict or otherwise regulate the use of a drug, device, or combination product authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

8.60.140 Statutory Constructions and Severability.

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

INTRODUCED at a regular meeting of the City Council on the 23rd day of June 2020, by the following vote:

MOTION: GINA RUBALCABA / EUGENE COSTA JR.

AYES: 5 Councilmembers: Ramirez, Cardenas, Julian, Rubalcaba, Costa Jr.
NOES: 0
ABSENT 0
ABSTAINED 0

PASSED AND APPROVED as the regular meeting of the City Council on the 14th day of July 2020, by the following roll call vote:

MOTION:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

Joice Earleen Raguz, City Clerk

Ariston Julian, Mayor

APPROVED AS IS TO FORM:

Philip F. Sinco, City Attorney



Agenda Item No. 5.

**REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of July 14, 2020**

15/

Prepare by:
Philip F. Sinco, City Attorney

T. Bodem

Approved by:
Todd Bodem, City Administrator

SUBJECT: Second reading of Ordinance No. 2020-490 repealing existing Chapter 3.14 of the City of Guadalupe Municipal Code and replacing it with a new Chapter 3.14 imposing an Essential Services Transaction and Use Tax.

RECOMMENDATION:

That the City Council adopt, on the second reading, Ordinance 2020-490, repealing existing Chapter 3.14 of the Guadalupe Municipal Code and replacing it with a new Chapter 3.14 imposing an essential services transaction and use tax.

BACKGROUND:

The City Council introduced Ordinance No. 2020-490 at its meeting on June 23, 2020. This constitutes the second reading of the ordinance.

ATTACHMENTS

1. Ordinance No. 2020-490 entitled "An Ordinance of the City of Guadalupe, California, Repealing Chapter 3.14 of Title 3 of the Guadalupe Municipal Code and Replacing with a New Chapter 3.14 Imposing an Essential Services Transaction and Use Tax to be Administered by the Department of Tax and Fee Administration."

ORDINANCE NO. 2020-490

AN ORDINANCE OF THE CITY OF GUADALUPE, CALIFORNIA, REPEALING CHAPTER 3.14 OF TITLE 3 OF THE GUADALUPE MUNICIPAL CODE AND REPLACING WITH A NEW CHAPTER 3.14 IMPOSING AN ESSENTIAL SERVICES TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE DEPARTMENT OF TAX AND FEE ADMINISTRATION

WHEREAS, under the provisions of the laws in the State of California, a general municipal election shall be held on November 3, 2020, for the election of municipal officers; and

WHEREAS, the City Council also desires to allow the voters of the City of Guadalupe the opportunity to reauthorize and enhance the local transaction and use tax, previously established by the City's voters when it approved Measure X at the 2014 general election, by enacting a one (1)-cent Local Transactions and Use Tax (Sales Tax) to remain in effect until ended by voters; and

WHEREAS, the local funding provided by Measure X2014 has provided vital funding for essential City services, including police and fire services; maintenance of parks, recreational facilities, and, the City library; as well as other City services that protect and enhance the City's local quality of life; and

WHEREAS, the City's voters overwhelmingly approved Measure X2014 by more than 77% in favor, which provided a reliable source of locally controlled funding that cannot be taken away by the state; and

WHEREAS, Measure X2014's funding will cease before the end of 2021, and the City will lose critical revenue for its essential services and operations if the funding is not reauthorized and will have to make cuts to essential services and operations in the coming years; and

WHEREAS, the funding provided by Measure X2014 has been significant, but it is currently insufficient to meet the City's existing and future needs, and therefore, must be enhanced in order to avoid devastating cuts to existing City services and operations

WHEREAS, locally controlled funding is more necessary than ever to keep the City fiscally stable so that it may continue to provide essential services because the State has taken millions of dollars from California cities, including the City of Guadalupe, over the last several decades to deal with its own budget problems; and

WHEREAS, this measure will give the City of Guadalupe local control over local funds for local needs that cannot be taken by Sacramento; and

WHEREAS, a secure source of local funding is needed to maintain and, more importantly, create new opportunities for the City's youth by maintaining and improving recreational

facilities and programs, after-school programs, anti-gang outreach, maintenance/improvement of parks, and maintaining the City library, because maintaining library, park, and recreation facilities provides necessary alternatives to keep kids out of gangs and reduce crime while maintaining quality of life for the City's residents; and

WHEREAS, the City must also prevent cuts to the number of police officers and firefighters to ensure our local police and fire departments have the resources necessary to keep residents safe that will be likely in the coming years if the proposed Essential Services Transaction and Use Tax Measure is not passed by the voters; and

WHEREAS, expanding local funding will also further help the City to qualify and receive its fair share of millions of dollars in matching grants, so taxpayers don't have to pay the entire cost of critical programs; and

WHEREAS, a local finance measure gives Guadalupe residents local control. Every penny generated by the measure stays in Guadalupe to be used for the needs and services of our residents and the City and cannot be taken away by the State.

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

SECTION 1. Chapter 3.14 of Title 3 of the Guadalupe Municipal Code is hereby repealed in its entirety and replaced to read as follows:

CHAPTER 3.14 PUBLIC SAFETY AND ESSENTIAL SERVICES TRANSACTIONS AND USE TAX

3.14.010 Title.

This chapter shall be known as the "Essential Services Transactions and Use Tax Ordinance of the City of Guadalupe." The City of Guadalupe hereinafter shall be called "City." This chapter shall be applicable in the incorporated territory of the City.

3.14.020 Purpose.

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

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those

provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

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

3.14.030 Operative date.

“Operative date” means the first day of the first calendar quarter commencing more than 110 days after the adoption of this chapter.

3.14.040 Contract with State.

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

3.14.050 Transactions tax rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of 1.00% of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date of the ordinance codified in this chapter.

3.14.060 Place of sale.

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

determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3.14.070 Use tax rate.

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of the ordinance codified in this chapter for storage, use or other consumption in said territory at the rate of 1.00% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to State sales or use tax regardless of the place to which delivery is made.

3.14.080 Adoption of provisions of State law.

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

3.14.090 Limitations on adoption of State law and collection of use taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name Guadalupe shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California.

2. The result of that substitution would require action to be taken by or against Guadalupe or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter.

3. In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

3.14.100 Permit not required.

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

3.14.110 Exemptions and exclusions.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any State-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his or her agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance codified in this chapter.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of the ordinance codified in this chapter.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this chapter, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any State-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance codified in this chapter.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of the ordinance codified in this chapter.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

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

3.14.120 Amendments.

All amendments subsequent to the effective date of the ordinance codified in this chapter to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

3.14.130 Enjoining collection forbidden.

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

SECTION 2. USE OF TAX PROCEEDS. The proceeds of the tax approved by this Ordinance may be used for unrestricted general revenue purposes.

SECTION 3. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 4. ELECTION REQUIRED. This Ordinance shall not become operative unless and until a majority of the electors voting on this measure vote to approve the imposition of the tax at the General Election to be held on November 3, 2020.

SECTION 5. EFFECTIVE DATE. This Ordinance relates to the levying and collecting of the City transaction and use taxes and shall take effect immediately.

SECTION 6. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. This Ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), and the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to § 15601(b)(3) (general rule) and § 15378(b)(4) of the CEQA Guidelines. The transactions and use tax imposed by the adoption of this Ordinance is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. The City Council hereby finds with certainty that there is no possibility the passage of this Ordinance will have a significant effect on the environment. Additionally, it

creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible date.

SECTION 7. CLERICAL CORRECTION. The City Clerk is hereby authorized to make minor changes herein to address clerical errors, so long as substantial conformance of the intent of this document is maintained. In doing so, the City Clerk shall consult with the City Administrator and City Attorney concerning any changes deemed necessary.

INTRODUCED at a regular meeting of the City Council held this 23rd day of June 2020, by the following roll call vote, subject to voter approval at the November 3, 2020, General Municipal Election.

MOTION: TONY RAMIREZ / GINA RUBALCABA

AYES: 5 Councilmembers: Ramirez, Cardenas, Julian, Rubalcaba, Costa Jr.
NOES: 0
ABSENT: 0
ABSTAINED: 0

PASSED AND APPROVED as the regular meeting of the City Council on the 14th day of July 2020, by the following roll call vote, subject to voter approval at the November 3, 2020, General Municipal Election.

MOTION:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST:

Joice Earleen Raguz, City Clerk

Ariston Julian, Mayor

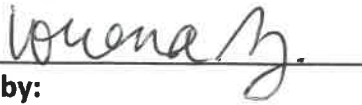
APPROVED AS TO FORM:

Philip F. Sinco, City Attorney



Agenda Item No. 6.

REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of July 14, 2020



Prepared by:
Lorena Zarate, Finance Director



Approved by:
Todd Bodem, City Administrator

SUBJECT: May 2020 Finance Report

RECOMMENDATION:

That the City Council accept the May 2020 Finance Report

DISCUSSION:

The Finance Department has prepared a Financial Report through May 2020 for the Council's and the public's information. Attached hereto as attachment no. 1 is the Report. Staff requests that the City Council accept this Report for its information.

ATTACHMENTS:

1. May 2020 Finance Report



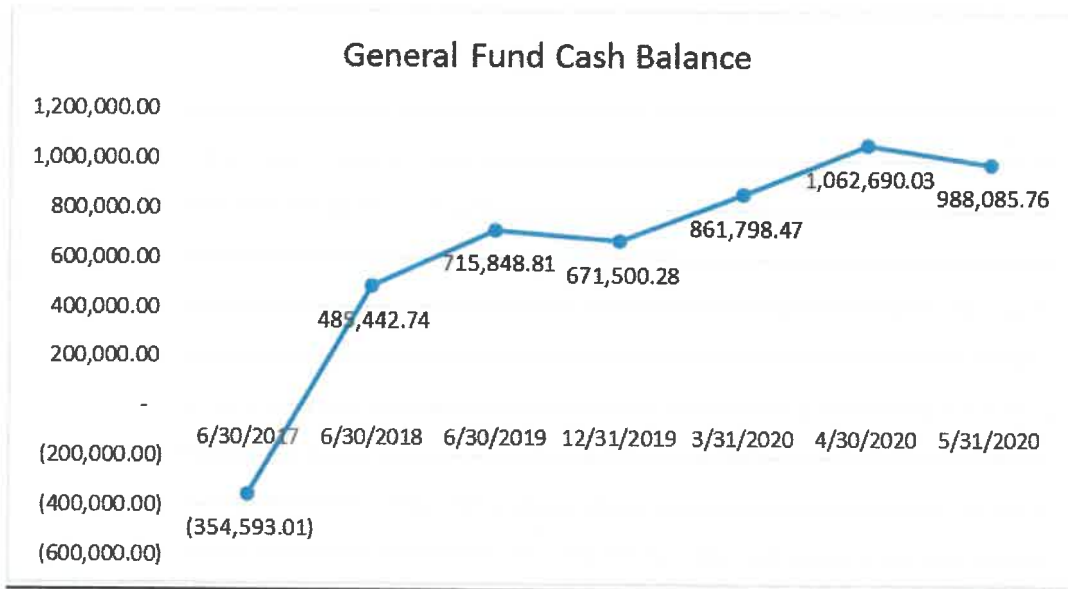
City of Guadalupe Financial Report Fiscal Year to Date through May 31, 2020

Overview

The fiscal year 2019-20 financial report concentrates on the General Fund and Water/Wastewater Enterprise Funds as of May 31, 2020, or 92 percent of the year expended. The purpose of the report is to provide a status of cash, fund balance and budgeted Revenue and Expenditures versus actual at 92 percent of the fiscal year expended.

General Fund Cash

The annual cash balance below shows positive trend as compared to prior years; total cash as of May 31th, 2020 was \$988,085.76. Since 2017, there has been a positive increase in cash balances.



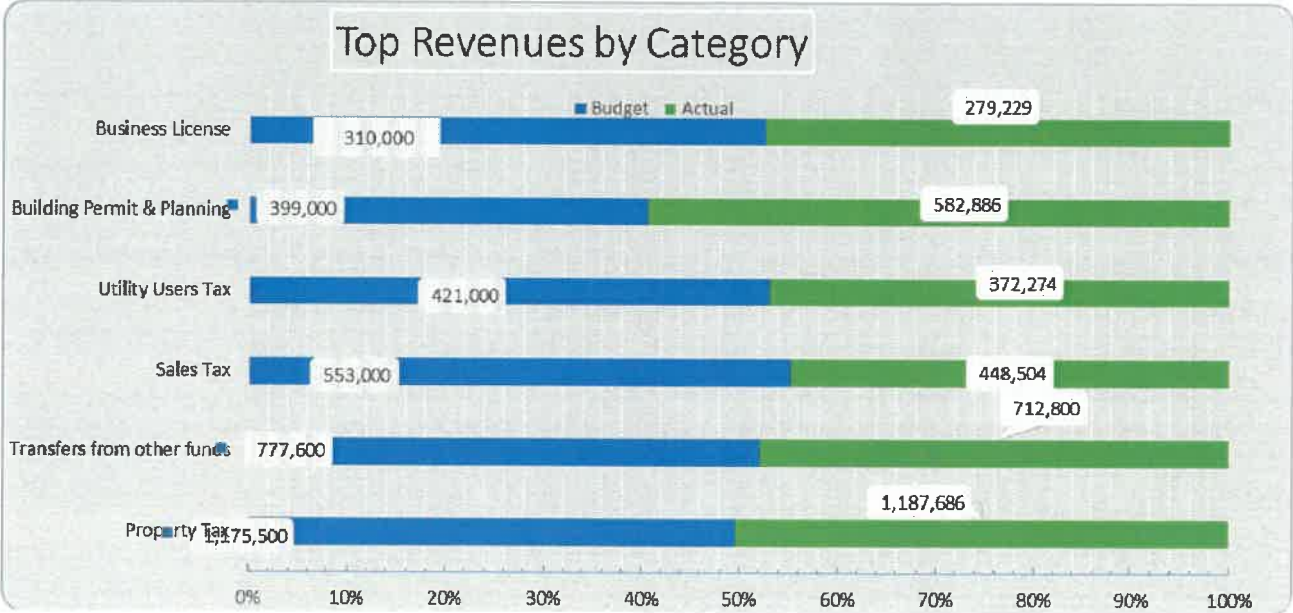
General Fund Revenue

Budgeted revenues versus actual revenue received through May 31, 2020 shows the General Fund slightly above target at 97.1 percent of expected revenues.

The table and graph below show General Fund revenue by category. Highlighted in yellow are specific revenue categories that have fallen short as compared to the budget. In regards to sales tax revenue, which is one of the City's top revenue categories, timing delays in payments cause the shortage. In addition, the COVID pandemic has caused the deferral of sales tax payments to local jurisdictions to help relief small businesses, which may cause sales tax

revenue to be lower than expected. However, based on a study done by HDL, a sales tax revenue forecasting company, the City of Guadalupe is expected to receive a total of \$592,400 in sales tax revenue, which includes Measure X revenue, for fiscal year 2020. The reasoning for this estimate is that most businesses in town, which would generate sales tax income for the City, are considered essential businesses. Building License and Business Permit revenues are currently exceeding the budget, due to the Pasadera development, which has continued amid the COVID pandemic. City Staff will continue to monitor the General Fund revenue closely. City Staff is also working with FEMA to obtain reimbursement for costs related to the pandemic.

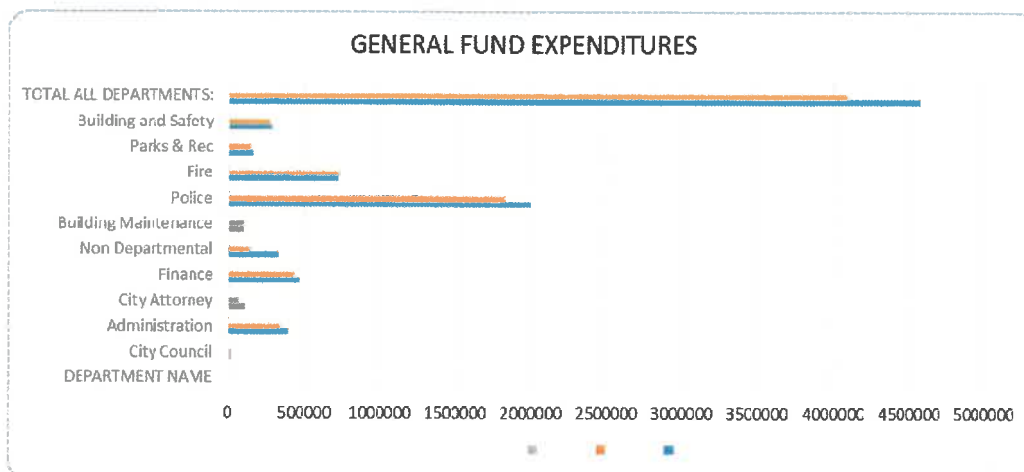
Gen. Fund Revenue by Category			
Category	Budget	Actual	%
Property Tax	1,175,500	1,187,686	101.0%
Transfers from other funds	777,600	712,800	91.7%
Sales Tax	553,000	448,504	81.1%
Utility Users Tax	421,000	372,274	88.4%
Building Permit & Planning	399,000	582,886	146.1%
Business License	310,000	279,229	90.1%
Revenue from other agencies	195,000	165,350	84.8%
Franchise Fees	180,000	226,148	125.6%
COPS Grant	100,000	152,755	152.8%
Rental of Property	100,000	105,115	105.1%
Administrative Overhead	100,000	90,946	90.9%
Other	479,122	327,582	68.4%
Total Revenue	4,790,222	4,651,276	97.1%



General Fund Expenditures

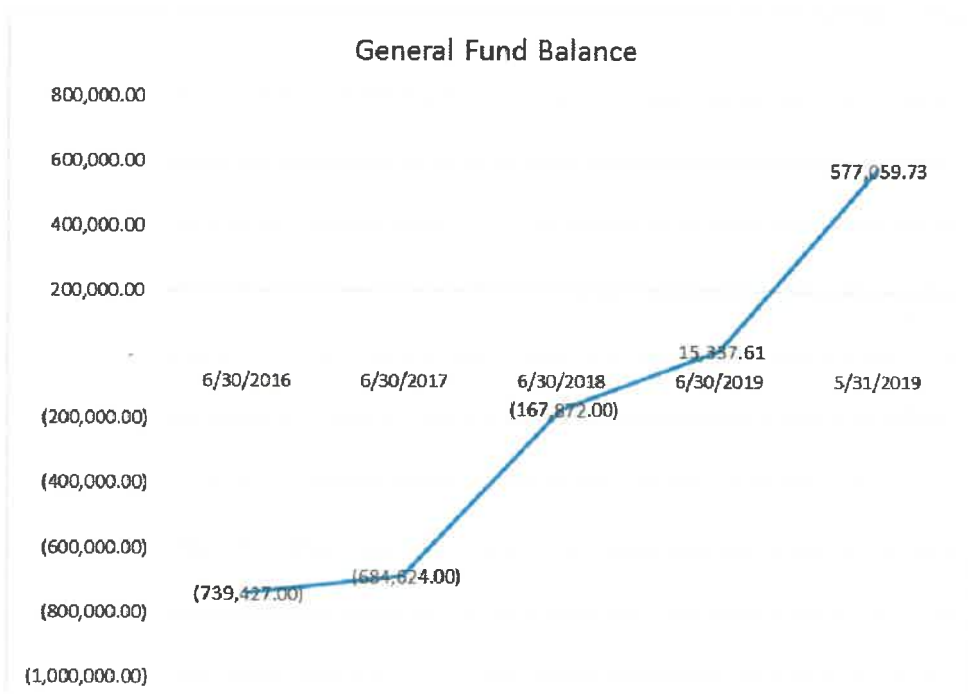
Expenditures are just under budget at 90 percent expended. The Table and Chart below shows all General Fund Departments and spending trends as of May 31, 2020. Highlighted in yellow, are departments within the General Fund that individually exceed the departmental budget. The City Council department is exceeding the budget mostly because of training/travel expenses. The Finance department is exceeding the budget mostly because of temporary employees during new staff transitions. The Building Maintenance department is exceeding the budget mostly because of operating expenses and professional services, including improvements to offices and building supplies. The Fire department is exceeding the budget mostly because of employee payroll costs. Overall, expenditures for the General Fund are lower than revenues so far. City Staff will continue to monitor closely, especially as it relates to virus pandemic. The Finance Department has created a new account code to track COVID related costs separately to help with reimbursement from FEMA.

2019-20 GENERAL FUND EXPENDITURES			
DEPARTMENT NAME	Adopted Budget	Actual Spent as of 5/31/2020	92%
City Council	15,377	14,568	95%
Administration	391,608	348,357	89%
City Attorney	110,000	71,001	65%
Finance	463,310	436,900	94%
Non Departmental	330,663	144,763	44%
Building Maintenance	94,136	101,279	108%
Police	1,994,855	1,824,903	91%
Fire	719,072	730,982	102%
Parks & Rec	158,282	144,259	91%
Building and Safety	286,060	272,541	95%
TOTAL ALL DEPARTMENTS:	4,563,363	4,089,554	90%



General Fund Balance

The term fund balance is used to describe the net position of governmental funds calculated in accordance with generally accepted accounting principles (GAAP). It is intended to serve as a measure of the financial resources available to the fund. There are constraints in spending fund balance depending on the type of resources (nonspendable, restricted, committed and assigned). Fund balance represents the total amount accumulated in the fund from prior years at a point in time. The fund balance in the General Fund as of May 31, 2020 is positive \$577,059.73. The graph below shows this upward trend through the past several years. A priority for City is to continue to increase the fund balance enough to establish a reserve of a minimum of 15% of the General Fund operating budget, which is \$684,504.

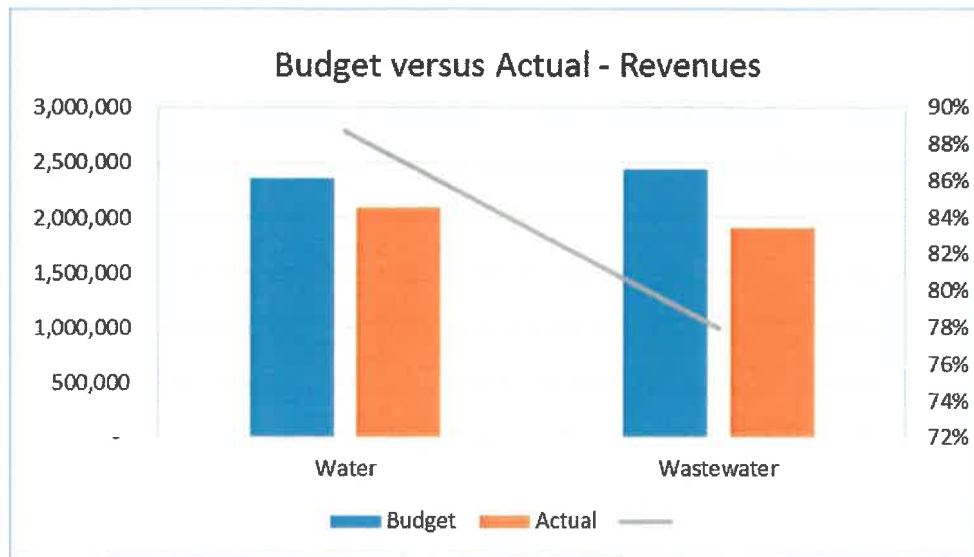


ENTERPRISE FUNDS – WATER AND WASTEWATER

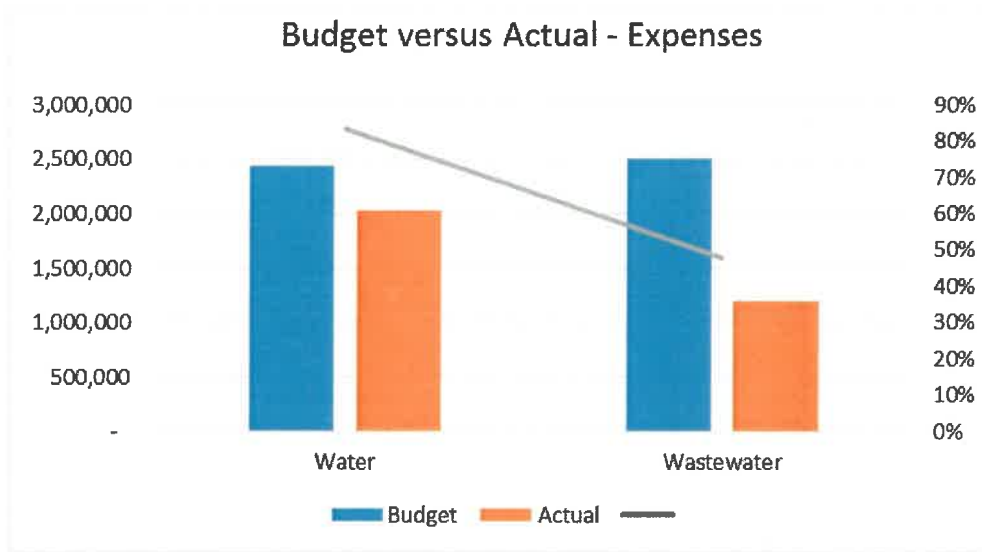
The Statement of Revenues and Expenditures through May of fiscal year 2019-20 is shown in the Table below.

Actuals Through May 31, 2020	Water	Wastewater
REVENUES		
Charges for Services	1,873,802	1,507,947
Interest	29,816	23,049
Other	86,713	41,774
Connection Fees	22,384	12,076
Developer Fees	79,373	318,750
Total	2,092,088	1,903,596
EXPENSES		
Operating	897,318	1,016,458
Capital	25,298	182,651
Depreciation	-	-
State Water	961,871	-
Debt Service	147,648	-
Total	2,032,136	1,199,109

The following charts compare budget to actual Revenue and Expense:



The Enterprise funds experienced revenue at 89 percent of budget for Water. Wastewater was below budget at 78 percent of revenue expected for the period.



Operating expenses for Water and Wastewater are below budget at 83 percent and 48 percent, respectively.

CONCLUSION

The funds analyzed in this report are generally in line with budget. Overall Revenue exceeded Expenditures in the Enterprise Funds and General Fund. There were no significant budget fluctuations as of May 2020. However, City Staff will monitor closely as COVID pandemic progresses.

Information in this report is unaudited.



**REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of July 14, 2020**

Prepared by:
Shannon Sweeney,
Public Works Director / City Engineer

Approved by:
Todd Bodem, City Administrator

SUBJECT: West Main Street Waterline Design Project Notice of Award

RECOMMENDATION:

It is recommended that the City Council adopt Resolution No. 2020-51 authorizing the Mayor to execute a professional services contract with Tartaglia Engineering for the design of the West Main Street Waterline.

DISCUSSION:

In 2014, the Water Master Plan identified project number EWCIP – 5 as an upgrade of 1,000 feet of 4-inch steel pipe to 12-inch PVC pipe on West Main Street from Guadalupe Street to Pioneer Street, to meet fire flow requirements.

This design project was not budgeted in the FY 19 – 20 or 20 – 21 budget. However, there are some residual funds in the disadvantaged community improvements (DACI) grant from 2016 that will go unspent if not used by the end of calendar year 2020 and that will cover the costs for this design project.

On June 5, 2020, the City solicited formal proposals for the West Main Street Waterline Design Project. The request for proposals (RFP) was available on the City's website, advertised in the Santa Maria Times, and emailed to five local design consultants.

The deadline to receive proposals was 2:00 p.m., June 24, 2020. The City received three proposals, ranging from \$27,200 to \$31,510. The lowest proposal, from Tartaglia Engineering, was found to meet the City's needs.

Staff recommends awarding the contract to Tartaglia Engineering for a total of \$27,200. It is also recommended to authorize the City Administrator to approve contract change orders during design up to 15% over the contract amount if deemed necessary.

FISCAL IMPACT:

This design project was not budgeted in the FY 19 – 20 or 20 – 21 budget. However, there are some residual funds in the disadvantaged community improvements (DACI) grants from 2016 that will go unspent if not used by the end of calendar year 2020 that can only be used for planning purposes and will cover the costs for this design project.

ATTACHMENTS:

1. Resolution No. 2020-51 “Approving a contract with Tartaglia Engineering for the West Main Street Waterline Design Project”.
2. RFP Results
3. Agreement

RESOLUTION NO. 2020-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY GUADALUPE APPROVING A CONTRACT WITH TARTAGLIA ENGINEERING FOR THE WEST MAIN STREET WATERLINE DESIGN PROJECT

WHEREAS, the City of Guadalupe Water Master Plan identified distribution waterlines in need of upgrade in order to meet fire flow requirements; and,

WHEREAS, the City of Guadalupe Issued a Request for Proposals (RFP) on June 5, 2020; and,

WHEREAS, the City of Guadalupe received three proposals for the design of the West Main Street waterline ranging in price from \$27,200 to \$34,510 by the proposal closing date of June 24, 2020 at 2:00 PM; and,

WHEREAS, Tartaglia Engineering meets the qualifications for the design of the project; and,

WHEREAS, Staff recommends the award of the design contract to Tartaglia Engineering; and,

WHEREAS, although this project was not budgeted in the FY 19 – 20 or 20 – 21 budget, residual funds are available through the disadvantaged community improvements (DACI) grant to cover these costs,

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Guadalupe as follows:

SECTION 1. Authorize the contract with Tartaglia Engineering for \$27,200.00; and,

SECTION 2. Authorize the City Administrator to approve change orders to the contract during construction up to 15% of the bid price, if deemed necessary.

PASSED, APPROVED AND ADOPTED at a regular meeting on the 14th day of July, 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. 2020-51**, has been duly signed by the Mayor and attested by the City Clerk, all at a regular meeting of the City Council, held July 14, 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



BID OPENING REPORT

Bids were opened on June 24, 2020 at 2:00 ^{a.m.} _{p.m.}

For West main Street water line design
Project

Pre-Bid Estimate \$30,000

CONTRACTOR:

BID AMOUNT:

Comp. Date

CONTRACTOR:	BID AMOUNT:	Comp. Date
1. <u>MKN</u>	<u>\$34,510.00</u>	<u>Dec. 21, 2020</u>
2. <u>Tartaglia</u>	<u>\$127,200.00</u>	<u>Oct., 2020</u>
3. <u>Cannon</u>	<u>\$33,591.00</u>	<u>Oct. 12, 2020</u>
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____
9. _____	_____	_____
10. _____	_____	_____
11. _____	_____	_____
12. _____	_____	_____
13. _____	_____	_____
14. _____	_____	_____
15. _____	_____	_____

Signed: [Signature]

Date: 6/24/2020

THE ABOVE BID AMOUNTS HAVE NOT BEEN CHECKED.
THE BID TOTALS ARE SUBJECT TO CORRECTION AFTER
THE BIDS HAVE BEEN COMPLETELY REVIEWED.

**AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF GUADALUPE
AND
TARTAGLIA ENGINEERING**

THIS AGREEMENT FOR CONSULTANT SERVICES (the "Agreement") is made and entered into this 14th day of July, 2020, by and between the CITY OF GUADALUPE, a municipal corporation ("City") and Tartaglia Engineering, a California ("Consultant").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

Section 1. Term of Agreement. Subject to the provisions of Section 19 (Termination of Agreement) of this Agreement, the term of this Agreement shall be for a period of one (1) year from the date of execution of this Agreement, as first shown above. Such term may be extended upon written agreement of both parties to this Agreement.

Section 2. Scope of Services. Consultant agrees to perform the services set forth in Exhibit A (Scope of Services) and made a part of this Agreement.

Section 3. Additional Services. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in Exhibit A, unless such additional services are authorized in advance and in writing by the City Council or City Administrator of City. Consultant shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Administrator.

Section 4. Compensation and Method of Payment.

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in Exhibit A (Compensation) and made a part of this Agreement.

(b) Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by subcategory), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. City shall independently review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement and Scope of Services. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event City disputes any charges or expenses, City shall return the original invoice to Consultant with specific items in dispute identified for correction and re-submission.

All undisputed charges shall be paid in accordance with this Agreement and Scope of Services.

(c) Except as to any charges for work performed or expenses incurred by Consultant, which are disputed by City, City will cause Consultant to be paid within forty-five (45) days of receipt of Consultant's invoice.

(d) Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

(e) Consultant shall have the right to suspend services if not paid in accordance with this Agreement.

Section 5. Inspection and Final Acceptance. City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed, if the work is found to be defective or not in compliance with the defined Scope of Services. Acceptance of any of the Consultant's work by City shall not constitute a waiver of any of the provisions of this Agreement, including but not limited to, Sections 15 and 16, pertaining to indemnification and insurance, respectively. Consultant agrees to cooperate in any such inspection.

Section 6. Ownership of Documents. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. Reuse of any materials outside the scope of this Agreement shall be at the sole risk of the City.

Section 7. Consultant's Books and Records.

(a) Consultant shall maintain any and all documents and records demonstrating or relating to Consultant's performance of services pursuant to this Agreement. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently completed and detailed so as to permit an accurate evaluation of the services provided by Consultant pursuant to this Agreement. Any and all such documents or records shall be maintained for three (3) years from the date of execution of this Agreement and to the extent required by laws relating to the audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, upon reasonable notice during regular business hours, upon written request by City or its designated representative. Copies of such documents or records shall be provided directly to the

City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Consultant's address indicated for receipt of notices in this Agreement. The City shall compensate the Consultant for all costs associated with providing these materials to the City.

(c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or destroyed due to dissolution or termination of Consultant's business, City may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

Section 8. Status of Consultant.

(a) Consultant is and shall at all times during the terms of this Agreement remain a wholly independent Consultant and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

(b) The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, employees or agents of City.

(c) Neither Consultant nor any of Consultant's officers, employees or agents shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

Section 9. Standard of Performance. Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

Section 10. Compliance With Applicable Laws, Permits and Licenses. Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement applicable to Consultant. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable at law or in equity as a result of any failure of Consultant to comply with this section.

Section 11. Nondiscrimination. Consultant shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, disability, marital status or sexual orientation in connection with or related to the performance of this Agreement.

Section 12. Unauthorized Aliens. Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. sections 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorney's fees, incurred by City.

Section 13. Conflicts of Interest. Consultant agrees to at all times avoid conflicts of interest with the interests of the City in the performance of this Agreement.

Section 14. Confidential Information: Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Administrator, except as may be required by law.

(b) Consultant, its officers, employees, agents or subconsultants, shall not, without prior written authorization from the City Administrator or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories or other information concerning the work performed under this Agreement. A response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subconsultant of Consultant, provides any information or work product in violation of this section, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response. Consultant shall be compensated for all costs associated with complying with this section.

Section 15. Indemnification.

(a) City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to Consultant or any other person for, and Consultant shall indemnify, defend, protect and hold harmless Indemnitees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements (collectively, "Claims") which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by Consultant's performance of or failure to perform any services under this Agreement or by the negligent or willfully wrongful acts or omissions of Consultant, its agents, officers, directors, sub consultants or employees, committed in performing any of the services under this Agreement.

(b) If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant's expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by Consultant under Section 16 shall ensure Consultant's obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

(c) The provisions of this section do not apply to Claims occurring as a result of the City's sole negligence or willfully wrongful acts or omissions.

(d) City agrees to indemnify Consultant for any such neglect or willfully wrongful acts committed by City or its officers, agents or employees.

Section 16. Insurance. Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work provided by Consultant, its agents, representatives or employees in performance of this Agreement. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver, if so approved in writing by City Administrator. Consultant agrees to provide City with copies of required policies upon request.

Consultant shall provide the following scope and limits of insurance:

A. Minimum Scope of Insurance: Coverage shall be at least as broad as:

(1) Insurance Services Office Form Commercial General liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office Form No. CA 0001 covering Automobile Liability, including code 1"any auto" and endorsement CA 0025, or equivalent forms subject to written approval of City.

(3) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers' Liability insurance and covering all persons providing services on behalf of the Consultant and all risks to such persons under this Agreement.

(4) Errors and omission liability insurance appropriate to the Consultant's profession.

B. Minimum Limits of Insurance: Consultant shall maintain limits of insurance no less than:

(1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employer's Liability limits of \$1,000,000 per accident.

(4) Errors and Omissions Liability \$1,000,000 per claim.

C. Other Provisions: Insurance policies required by this Agreement shall contain the following provisions:

(1) All Policies: Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, canceled by the insurer or other party to this Agreement, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to City.

(2) General Liability and Automobile Liability Coverages.

(a) City and its respective elected and appointed officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and its respective elected and appointed officers, officials or employees.

(b) Consultant's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed officers, officials, employees and volunteers. Any insurance or self insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Consultant's insurance.

(c) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(d) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

(3) Workers' Compensation and Employer's Liability Coverage. Unless the City Administrator otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Consultant.

D. Other Requirements: Consultant agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this Agreement have been met. The City Attorney may require that Consultant furnish City with copies of original endorsements effecting coverage required by this section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies at any time.

(1) Consultant shall furnish certificates and endorsements from each subconsultant identical to those Consultant provides.

(2) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

(3) The procuring of such required policy or policies of insurance shall not be construed to limit Consultant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

Section 17. Assignment. The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under the Agreement. In recognition of that interest, Consultant shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement, entitling City to any and all remedies at law or in equity, including summary termination of this Agreement. City acknowledges, however, that Consultant, in the performance of its duties pursuant to this Agreement, may utilize sub consultants.

Section 18. Continuity of Personnel. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the services required under this Agreement, prior to any such performance.

Section 19. Termination of Agreement.

(a) City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days' written notice of termination to Consultant. In the event such notice is given, Consultant shall cease immediately all work in progress.

(b) Consultant may terminate this Agreement at any time upon thirty (30) days' written notice of termination to City.

(c) If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant or City may terminate this Agreement immediately upon written notice.

(d) Upon termination of this Agreement by either Consultant or City, all property belonging exclusively to City which is in Consultant's possession shall be returned to City. Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in Section 4 of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 of this Agreement.

Section 20. Default. In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

Section 21. Excusable Delays. Consultant shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of the City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

Section 22. Cooperation by City. All public information, data, reports and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in Exhibit A, shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.

Section 23. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or United States mail, postage prepaid, addressed as follows:

To City: City Administrator
 City of Guadalupe
 918 Obispo Street
 Guadalupe, CA 93434

To Consultant: Tartaglia Engineering
 7360 El Camino Real, Suite E
 PO Box 1930
 Atascadero, CA 93423

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

Section 24. Authority to Execute. The person or persons executing this Agreement on behalf of the Consultant represents and warrants that they have the authority to so execute this Agreement and to bind Consultant to the performance of its obligations hereunder.

Section 25. Binding Effect. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

Section 26. Modification of Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

Section 27. Waiver. Waiver by any party to this Agreement of any term, condition or covenant of this Agreement shall not constitute a waiver of any other term, condition or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any provisions of this Agreement.

Section 28. Law to Govern; Venue. This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Santa Barbara. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

Section 29. Attorney's Fees, Costs and Expenses. In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to any award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

Section 30. Entire Agreement. This Agreement, including the attached exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

Section 31. Severability. If a term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

Section 32. Preparation of Agreement. This Agreement is the product of negotiation and preparation by and among the parties and their respective attorneys. The parties, therefore, expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or any party's attorney, and will be construed accordingly.

CITY:


CITY OF GUADALUPE


By: _____
Ariston Julian, Mayor

APPROVED AS TO FORM:

Phillip Sinco, City Attorney

CONSULTANT:

By:  _____
Title: OWNER

By:  _____
Title: Office Manager

Task / Description	Prof. Engr.	Land Survey	Civil Eng.	Engin. Tech.	Drafts-man	Eng. Aide	Clerical	Survey 1-Man	Inspect. ST	Inspect. OT	Total
24-Jun-20	\$129.00	\$125.00	\$123.00	\$89.00	\$68.00	\$58.00	\$48.00	\$169.00	\$116.00	\$141.00	
Project Management											
1.5 Project management, communication	20.0						5.0				\$2,820.00
6 Assist with staff reports, presentations	4.0						1.0				\$564.00
Sub-Total, Project Management											\$3,384.00
Project Management (rounded)											
Project Meetings											
1 Project kick-off meeting & site visit	4.0		4.0								\$1,104.00
2 Monthly progress meetings	6.0		6.0								\$1,656.00
Supplies, Postage											\$100.00
Sub-Total, Project Meetings											\$2,860.00
Project Meetings (rounded)											
Design Phase											
1 Topographic survey		4.0		18.0				16.0			\$4,806.00
2 Develop criteria	3.0		5.0								\$10,473.00
3 Draft plans, specifications & estimate	8.0	1.0	37.0	25.0	30.0	2.0	8.0				\$5,344.00
4 Final plans, specifications & estimate	8.0		21.0	9.0	8.0						\$200.00
Supplies, Postage											\$20,823.00
Sub-Total, Design Phase											\$20,900.00
Design Phase (rounded)											
Total: Project Management, Project Meetings, Design Phase Services (rounded)											
											\$27,280.00
Notes											
1. Schedule based on a 4 month work period (July - October).											
2. It is 14 miles from our office in Grover Beach to the City of Guadalupe. Tartaglia Engineering does not charge for the first 30 miles and 30 minutes of travel, both ways.											



REPORT TO THE CITY COUNCIL OF THE CITY OF GUADALUPE
Agenda of July 14, 2020

Prepared by:
Shannon Sweeney,
Public Works Director / City Engineer

Approved by:
Todd Bodem, City Administrator

SUBJECT: ATP Cycle 3 Pedestrian Improvements Project – Notice of Completion

RECOMMENDATION:

It is recommended that the City Council approve:

1. The filing of a Notice of Completion for the ATP Cycle 3 Pedestrian Improvements Project and authorize the City Clerk to file it with the County Recorder.
2. The five percent retention payment to R. Burke Corporation after 35 days, provided no liens are filed by subcontractors.

DISCUSSION:

In April 2016, the California Transportation Commission (CTC) announced a call for projects for Cycle 3 of the State's Active Transportation Program (ATP). The City of Guadalupe requested \$401,000 for a project described as "Pedestrian Improvements including installation of sidewalk, curb ramps and re-striping of crosswalks along Guadalupe Street and near the elementary school, and traffic calming along Guadalupe Street to increase visibility of pedestrians at existing crosswalks, adding 2 new crosswalks, including an in-roadway lighted crosswalk at 5th St." Construction drawings for this project were completed in February 2019. On December 4, 2019, the CTC approved the funding for this project.

On January 31, 2020, the consultant solicited formal bids for the ATP Cycle 3 Pedestrian Improvements Project. By bid deadline of March 12, 2020, the City received one bid, from R. Burke Corporation in the amount of \$372,725. This bid was found to be complete and responsive.

Staff recommended awarding this project to R. Burke Corporation in the amount of \$372,725 and recommended City Administrator authorization to approve contract change orders during construction up to 15% over the contract amount if deemed necessary.

This project was substantially complete the week of June 29. A final project walk-through held on June 29 identified a punch list of minor items to be completed. These minor items, mostly consisting of addressing sidewalk expansion joint gaps, are scheduled to be completed by the first full week in July.

During the construction project, several items generated change orders due to lack of clarity in the drawings or unforeseen field circumstances. These items included cost of the double permit fee for Caltrans, addition of curb to the back of sidewalk at 9th Street, asphalt delivery from Paso Robles, installation of decomposed granite behind the sidewalk at 5th Street and Guadalupe Street, and a repair to address unsuitable subgrade on the east side of Guadalupe Street at 9th Street. The total of these unforeseen costs was \$14,729.36.

Additional work was performed to repair degraded sidewalk and address tripping hazards in the sidewalk near the Amtrak station, on 5th Street just west of Guadalupe Street, four locations on the west side of Guadalupe Street, and on 10th St. just east of Obispo Street. The total cost of this additional work was \$8,273.60. The remaining \$10,997.60 over the original contract price is due to differentiations in the quantity of materials versus the original contract.

The total additional cost is \$34,000.56 or 9.1% over the contract amount.

FISCAL IMPACT:

The ATP Cycle 3 Pedestrian Improvements Project invoices are currently being paid for from Measure A funds. However, the bulk of these funds will be returned to the City on a reimbursable basis. Sufficient funds are available from the grant and Measure A for this project as completed.

The additional costs remain within the City Administrator's authorization to approve.

ATTACHMENTS:

1. Resolution 2020-52 "To authorize the City Clerk to file the Notice of Completion with the County Recorder, and to approve the five percent retention payment to R. Burke Corporation in no liens are filed by subcontractor for the ATP Cycle 3 Pedestrian Improvement Project".
2. Notice of Completion

RESOLUTION NO. 2020-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY GUADALUPE TO APPROVE THE NOTICE OF COMPLETION, AUTHORIZE AND DIRECT THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE COUNTY RECORDER, AND TO APPROVE AND DIRECT THE FIVE PERCENT RETENTION PAYMENT TO R. BURKE CORPORATION IF NO LIENS ARE FILED BY SUBCONTRACTORS FOR THE ATP CYCLE 3 PEDESTRIAN IMPROVEMENTS PROJECT

WHEREAS, on March 24, 2020, the City Council approved a construction contract with R. Burke Corporation for the ATP Cycle 3 Pedestrian Improvements Project for \$372,725.00; and,

WHEREAS, the work has been completed to the satisfaction of City Staff and the City Engineer; and,

WHEREAS, the contract was completed within 15% of quoted price;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Guadalupe as follows:

SECTION 1. Approve filing of the notice of completion for the ATP Cycle 3 Pedestrian Improvements Project, and authorize and direct the City Clerk to immediately file the notice of completion with the County Recorder;

SECTION 3. Authorize and direct the 5 percent retention payment to R. Burke Corporation thirty-five (35) days after the recordation of the notice of completion, if no liens are filed by subcontractors.

PASSED, APPROVED AND ADOPTED at a regular meeting on the 14th day of July 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 C.C. **Resolution No. 2020-52**, has been duly signed by the Mayor and attested by the City Clerk, all at a regular meeting of the City Council, held July 14, 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

RECORDING REQUEST BY

City of Guadalupe

AND WHEN RECORDED MAIL TO

Todd Bodem, City Administrator
918 Obispo Street
P.O. Box 908
Guadalupe, CA 93434

APN # N/A

**NOTICE OF COMPLETION
NO TRANSFER OF PROPERTY**

NOTICE IS HEREBY GIVEN PURSUANT TO CIVIL CODE SECTION 3039:

1. The undersigned is the corporate officer for the City of Guadalupe, owner of property hereinafter described.
2. The FULL NAME of owner is City of Guadalupe
3. The FULL ADDRESS of the owner is: 918 Obispo Street, Guadalupe, CA 93434
4. The NATURE OF THE INTEREST OF THE OWNER is in fee.
5. All work of improvement on the property hereinafter described was completed on July 14, 2020.
6. The work done was the ATP Cycle 3 Pedestrian Improvements Project No. 2020-001.
7. THE NAME OF THE ORIGINAL CONTRACTOR, if any, for such work of improvements in the City of Guadalupe:
8. R. Burke Corporation.
9. The property in which said work of improvement was completed is in the City of Guadalupe, County of Santa Barbara, State of California.

Dated: _____

(Signature of Owner Name In Paragraph 2)
Todd Bodem, City Administrator – City of Guadalupe

VERIFICATION

I, the undersigned, say:

I am Joice Earleen Raguz, the City Clerk, declared of the foregoing Notice of Completion; I have read said Notice of Completion and know the contents thereof; the same is true of my own knowledge. I declare under penalty or perjury that the foregoing is true and correct.

Executed on the _____ at the City of Guadalupe, California

_____, City Clerk of the City of Guadalupe
(Signature) Joice Earleen Raguz

9a.



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: July 1, 2020
Re: **Monthly Planning Report Covering June 2020**

MINISTERIAL PROJECTS

Zoning Clearances Approved	8
Zoning Clearances Denied	1
ADUs Approved	0
ADUs Denied	0
Zoning Clearances Appealed	0
Business Licenses Approved	4
Business Licenses Denied	0

DISCRETIONARY PROJECTS

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

- DJ Farms South – tract map being processed
- Pasadera GP/SP amendment being processed
- Additional work on Pasadera Lot 4 (grading plan, Right to Farm, wall)
- Work on Brown CUP zoning clearance at 209 Guadalupe Street
- Sign Ordinance update postponed to September 22nd
- General Plan RFP contract going to Council on July 28th
- General Plan and Rezone of various sites within the City - ongoing
- Submitted LEAP grant after Council Resolution June 23rd

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– June 2020

(Reported 07-01-20)

Zoning Clearances Approvals

Ball Hort. storage	2020-028-ZC	400 Obispo Street
Tapia pav. removal	2020-066-ZC	4885 Amaguer Street
Cook Shed/slab	2020-067-ZC	1045 Obispo Street
Delgadillo gazebo	2020-068-ZC	134 Santa Barbara Street
Barnum rear patio	2020-069-ZC	234 Egret Lane
Hoffman patio	2020-070-ZC	4381 La Joya
Herrada paving	2020-072-ZC	4531 Castillo Drive
Gomez fencing	2020-075-ZC	209 Guadalupe Street

Zoning Clearances Denied

Garcia Detached ADU	2020-073-ZC	4710 Third Street
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Business License Approvals

Megan's Love 4 Paws 4588 Del Mar Drive
(no boarding allowed)

Point Sal Restaurant 878 Guadalupe Street

Secure Fleet Services 209 Guadalupe Street
(diesel repair)

Church of God of Prophecy 4719 West Main, Ste A
(no CUP required)

Business License Denials

None

Guadalupe City Planning Department Planning Processing Summary for June 2020 (07-01-2020 update)

<u>Case No.</u>	<u>Name</u>	<u>Submittal Date</u>	<u>Comp. Date</u>	<u>Status</u>	<u>OK for Bldg. Permit Issuance</u>
2017-130-TPM \$\$	DJ Farms South Master TPM	10-12-17	Complete-09-27-19	COMPLETE letter sent on 09-27-19. Project under review by planner.	NO
2019-063-DR 2019-064-CUP \$\$	Housing Authority of SB Co	06/12/19	COMP letter sent 10-15-19	PSHH is considering a Temp Occ. Clearance but will need a surety to cover landscaping. Sign Plans approved.	NO
2019-067-VTTM \$\$	Pasadera Lot 9			Working on review of grading plan. 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	Staff has completed field work and identified all parcels to be included in the application. Letters to owners will go out in July or August.	N/A
N/A	General Plan Update	2019 City Council authorization	N/A	Rincon selected to prepare the update. Contract goes to City Council on 7-28.	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	Rewrite Sign Ordinance as new Chapter 18.51 of the Municipal Code. First reading on September 22 nd	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

07/01/2020



**CITY OF GUADALUPE
BUILDING DEPARTMENT**

STATUS REPORT

MONTH: June, 2020

	This Month	Last Month	Year to Date	Last Year
Visitors	2	4	97	226
Inspections	523	473	3,427	3,125
Building Permits Issued	14	6	124	121
Certificate of Occupancy	13	4	53	35

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

6/30/2020	AD 9	Scheduling and records update.							David, 3.25 hrs, 24 inspections.
6/30/2020	F 1	Lot 125, Final building, cert of occupancy issued.							early fog, leaving office at 10:30 for trip.
6/30/2020	F 2	Lot 125, Final electrical.							6/30/2020
6/30/2020	F 3	Lot 125, Final mechanical.							
6/30/2020	F 4	Lot 125, final plumbing.							
6/30/2020	F 5	Lot 125, Title 24 papers ok.							
6/30/2020	F 6	Lot 125, Smokies and carbon monox alarms tested.							
6/30/2020	F 10	Lot 125, Fire sprinklers bell ok.							
6/30/2020	F 10	Lot 125 Automatic landscape rain sensor computer installed.							
6/30/2020	F 1	Lot 131, Final building, cert of occupancy issued.							
6/30/2020	F 2	Lot 131, Final electrical.							
6/30/2020	F 3	Lot 131,Final mechanical.							
6/30/2020	F 4	Lot 131, final plumbing.							
6/30/2020	F 5	Lot 131, Title 24 papers ok.							
6/30/2020	F 6	Lot 131, Smokies and carbon monox alarms tested.							
6/30/2020	F 10	Lot 131, Fire sprinklers bell ok.							
6/30/2020	F 10	Lot 131, Automatic landscape rain sensor computer installed.							
6/30/2020	F 1	Lot 132, Final building, cert of occupancy issued.							
6/30/2020	F 2	Lot 132, Final electrical.							
6/30/2020	F 3	Lot 132,Final mechanical.							
6/30/2020	F 4	Lot 132, final plumbing.							
6/30/2020	F 5	Lot 132, Title 24 papers ok.							
6/30/2020	F 6	Lot 132, Smokies and carbon monox alarms tested.							
6/30/2020	F 10	Lot 132, Fire sprinklers bell ok.							
6/30/2020	F 10	Lot 132, Automatic landscape rain sensor computer installed.							
6/30/2020		David Rose, 1099 Contract Building Inspector, part of June 8, all of June 9-10, part of June 11 were virus lockdown days, 523 total inspections for June, 2020. Thank you.							

9c.

Public Works/Engineering Report June 2020

Development

Pasadera

Staff returned comments back on the subdivision of Lot 9 of Tract 29,064 on June 29.

Beachside Coolers

A fully executed stormwater maintenance agreement was returned to Beachside Coolers on June 24 for recordation with the County.

Guadalupe Court

A fully executed stormwater maintenance agreement was returned to Guadalupe Court on June 24 for recordation with the County.

209 Guadalupe Street

City staff reviewed and encroachment permit application for improvements on 2nd Street associated with this property. Comments were returned to the applicant on June 24.

Escalante Meadows

Staff reviewed the grading plans and public improvement plans for the Escalante Meadows development and return comments on June 25.

General Plan

City staff worked with contract planning staff to review the three bids received for the general plan update. The group met on June 22 to discuss the results.

Facilities

Senior Center

Reroofing the Senior Center began May 26, 2020. Once the tiles were pulled off, significant damage was discovered to the wood underneath the tiles. The contractor requested additional funding in the amount of \$8,000 to fix the damaged wood. This project was completed on June 24.

Public Works Garage

The Public Works garage door was repaired on June 1.

LeRoy Park Community Center

Renovation of the community center at Leroy Park was rebid May 29. Bids were opened on June 15. One bid was received, from Quinncon, Inc. Base bid amount was \$4,095,036. A field meeting was held on June 22 with representatives from the design consultant and Our Children's Trees, along with City staff to discuss the viability of maintaining existing trees.

General

On June 5, the City received a reimbursement check from the Integrated Regional Water Management (IRWM) in the amount of \$16,328.36. 45% of this reimbursement belongs to the wastewater capital fund and 55% of this reimbursement belongs to the water capital fund based on expenditures associated with the reimbursement request.

Fleet

Proceeds from the sale of a SMOOTH Gilig bus, in the amount of \$2,711.50 were received by the City from Govplanet on June 24, 2020.

Parks

Signs were posted at all city playgrounds on June 5 to inform the public that playgrounds are open but to wash hands before and after use and maintain social distance.

O'Connell Park Gopher Control

31 gophers were trapped in the month of June, and 205 gophers were trapped for the five month period. Our gopher contractor indicated that this is been a difficult year throughout the county for ground burrowing animals. He believes that the entrapment method may not be the most effective approach, and recommends a PERC (pressurized exhaust rodent control) method. He estimated that this would cost about \$1,100 per month for a three hour weekly treatment. For the last five months, we have paid \$560 per month for the trapping method.

Streets

Maintenance

The street name sign for Elm St. And Obispo Street was identified as missing. A new street sign was ordered on June 5.

Streets for slurry seal maintenance have been identified based off the five-year pavement maintenance plan. Southern California Gas was notified on June 5 of these 10 locations which include portions of Obispo St., Pacheco St., Campodónico Ave., 9th St., 10th St., 12th St., Peralta Avenue, Olivera, 5th St., and West Main St.

ATP Project

The City received invoices from R. Burke Corporation (construction) for work performed in June directly related to this construction project. Ultimately, the bulk of these funds will be reimbursed from the state. The construction project was completed on June 29. May's contractor invoices for this project in the amount of \$202,719.86 were submitted to the state for reimbursement on June 19. A check in the amount of \$13,663.63 was received by the City on June 22, reimbursement from April's expenditures.

LaGuardia Sidewalk

The City received funding from the People's Self-help Housing development fees to install this sidewalk. Adequate easement exists across all but one property for the extent of the sidewalk. On June 30, City staff found an appraiser with the expertise to evaluate the value of the remaining easement needed and negotiate with the property owner, and is awaiting a proposal.

Upcoming streets projects

Caltrans is planning several significant projects in and around the City of Guadalupe that are scheduled to occur in 2024. Caltrans is working with the City and other parties to coordinate these projects. Two such meetings were held on June 5 and June 12. Another meeting was held on June 10 to coordinate Caltrans projects with the Guadalupe Trail to the beach feasibility project.

Tools

Staff informed management that numerous personal tools were being brought from home to complete City work. Streets staff was asked to list and prioritize these tools. Tools purchased within the existing budget included a DeWalt 20 V cordless combo kit that includes a circular saw, impact gun, sawsall, hammer gun, and grinder. Additional tools purchased include a compressor, impact wrench set, utility pouch, work lights, air toolkit, cable cutter, wire stripper, multi-bit screwdriver set, air hoses, locking pliers, contour gauge, and allen wrench set. Tools needed but not yet purchased because of lack of budget include nose pliers, cutting pliers, vise grips, a welding machine, cutting torches, spider boxes for electrical work, and a plasma cutter.

Stormwater

The City's municipal separate storm sewer system (MS4) permit was previously administered by a consultant. On June 8, City staff spoke with Regional Board stormwater staff to determine how this function can be brought in-house to reduce costs. City staff determined that stormwater training will need to occur in June and the annual report is due on October 15 annually.

Transit

The City received its annual transit grant funds of \$62,756 on June 16.

\$2,711.50 was wired to the City from Govplanet on June 18, 2020 from the sale of the SMOOTH 2005 Gillig bus. This not only provides proceeds from the sale of obsolete equipment but also lowers insurance costs. We received 21 bids from five states for this auction item. The highest bid came from the state of Mississippi.

Water

Elevated Water Tank Recoating

The City went out to bid for the recoating of the elevated tank and inspection services on June 12, 2020.

Meter Reading

In early June, the handheld device needed to efficiently read to touch read meters began to fail. A new device cost approximately \$8,000. This device is specific to our meter reading system and therefore cannot be competitively bid. Without this device, staff is not able to transfer meter reads to the billing system.

Distribution system water quality

On June 3, water staff received word of a positive coliform result at 170 Pioneer St. Per the Bacteriological Sample Siting Plan, repeat samples were collected the following day from the sample station, upstream and downstream locations, and source water. Another positive coliform result occurred at the sample station but nowhere else. Staff identified the problem as glue associated with PVC piping. They re-plumbed the sample station on June 4 and resampled. Samples came back negative the following day. City staff have requested that the first two positive coliform samples be invalidated, as they were not representative of distribution system water. The regulator concurred, and invalidated the first two samples.

Distribution system repairs

On June 9, water department staff repaired a water service on 10th St. The location of the leak and the nature of the repair required shutdown of water supply to all of City Hall for the duration of the repair. Because of expertise of our water department staff, the repair was completed in under two hours. However, the project highlighted the need for an electronic

pump to keep the excavated hole free of water during the repair. This not only expedites the repair but also helps protect water quality. The pump and case were purchased from Iconix for \$278.66 and the battery and charger were purchased from Central City Tool for \$304.48 for a total cost of \$583.14.

An additional service line leak was repaired on 9th St on June 16.

Obispo Waterline Replacement

The City received the preliminary alignment exhibit for the new Obispo Street waterline between 9th St. and 11th St. on June 5 and provided comments back on June 8. Staff met virtually with the consultant on June 10 to verify constructability and to meet City needs.

West Main Street Waterline Replacement

The City went out for Request for Proposals (RFPs) for the design of the W. Main St. waterline replacement project. This project was identified in the 2014 Water Master Plan to address insufficient fire flows in the vicinity of Mackenzie School. The project involves replacing a 4-inch water line on W. Main St. between Guadalupe Street and Pioneer Street with a 12-inch water line. This will also help alleviate low fire flows on Tognazzini Avenue. Three proposals were received on the opening date of June 24. Proposals ranged from \$27,200-\$34,510. The low bid had an acceptable proposal. The design of this waterline is to be paid for from the disadvantaged community planning (DACI) grant from the Integrated Regional Water Management (IRWM).

Water Systems Automation

The week of June 15, Autosys, Inc rehabilitation water system communications, removing Bonita Tank and Tognazzini Well from the communications path and adding Pasadera.

Wastewater

Collections System

On the evening of June 16, sewer monitor gave warning of potential overflow at Mahoney and Pagaling. Staff visited the site that evening to verify that there were no problems.

Sewer Main and Lift Station Replacement

On June 8, City staff discussed the possibility of seeking state grant funds associated with the Clean Water State revolving fund to pay for the replacement of the sewer main and lift stations originally planned to be funded by a CDBG grant. While this program usually administers loans, the City's small population and low income can result in loan forgiveness anywhere between 75% and 100%. City staff submitted a pre-application on June 19 to the state requesting \$3,153,000 for the replacement of 3,000 feet of sewer trunk main, Pioneer Lift Station, and Highway 1 Lift Station.

Effluent Pump Station

On June 18, staff provided the design consultant with the last piece of information necessary to complete the most efficient and cost-effective design. Design of this project is anticipated to be completed by November 2020.

Effluent Spray Field

Last fiscal year, City staff spent approximately \$36,000 to develop a more functional effluent spray field. With the new piping layout and management strategy, disposal of effluent is far more effective, as is evidenced by the reduction in size of the largest effluent pond from 18 acres down to 6 acres. With this proof of concept, an additional \$30,000 in materials is needed to complete the project, so that the effluent pond are empty by the start of the rainy season. Note that the 2014 Wastewater Master Plan estimated this project to cost \$580,000.

Process

The City had no wastewater violations or collection system overflows for the month of June.

Capital Projects Status Update

June 2020

PROJECT DESCRIPTIONS	2019-20 TOTAL	Status
Buildings		
Public Works Corporation Yard Building	\$ 60,000	On hold.
O'Connell Park Booster Pump	\$ 30,000	Service, \$4,450. \$2,800 repurposed to gopher control.
Financial Accounting Software	\$ 75,000	Awaiting decision from Finance
Parks		
Leroy Park (Community Center and Site)	\$ 1,000,000	Bid
O'Connell Park Improvement	\$ 200,000	Funding available only for new, not maintenance.
Streets, Sidewalks, Bicycle Facilities		
Street Maintenance FY 19/20	\$ 315,000	Done 9/3/19. Total cost \$257,177.76.
Street Rehabilitation FY 19/20 (West Main Street)	\$ 451,200	Underground waterline upgrade needed before paving.
Mobility and Downtown Revitalization Project	\$ 117,029	Done and fully reimbursed
Guadalupe and Obispo Streets Pedestrian Improvements	\$ 400,000	Project completed June 29.
La Guardia and Gualarte Lanes Pedestrian Improvements	\$ 179,537	One easement missing. Appraiser to evaluate value.
Water		
Recoat Elevated Tank (Design)	\$ 50,000	Bid
Bonita Water Facilities Removal	\$ 400,000	On hold.
Tognazini Well Discharge	\$ 100,000	\$1,200 new chem feed pump reduced starts from 4x/day to 4x/week. No further work needed.
Wastewater		
WWTP Site Cleanup	\$ 50,000	Work completed with available material.
WWTP Office Improvements	\$ 30,000	Substantially completed. Included roof, hot water heater, fumigation, cleanup.
Effluent Irrigation Pump Station Rehabilitation (Design)	\$ 76,725	Design begun. Scheduled to be completed in November.
Sewer Main Improvements	\$ 1,400,000	Submitted State revolving fund pre-application June 19.
Collection System Cleaning	\$ 50,000	Sewer monitors installed January. Generator received in April.
Transfer to CIP fund 089:	4,984,491	

Completed.



9d.

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 JUNE 2020

DEPARTMENT REPORT – PUBLIC SAFETY

In response to the recent protests against police brutality, African-American Police Chiefs representing departments across California called for changing state law so they can immediately fire officers for egregious behavior, with due process appeals only after the fact. Michael Cash, Director of Public Safety participated in this event held in Sacramento June 19, 2020.

- **Police Department**

An internal and external job requisition for Police Officer was posted June 23, 2020. Phone interviews will begin the second week of July.

Paola Estrada will be completing her temporary post providing office assistance and social media communications this summer as she is expected back to school in the fall. A permanent part-time position of 15-20 hours per week is being considered when Paola departs. Departure date is to be determined.

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

- **Fire Department**

The Memorandum of Understanding has been reached. Details are provided separately.

- **Unrepresented Position**

An internal and external job requisition for Code Compliance Officer will be posted in July.

STATE OF EMERGENCY - COVID-19

All staff are reporting to their regularly scheduled posts on-site. A telecommuting agreement was extended to an employee who falls under a high risk category; a physician’s note was provided to Human Resources 6/29/20.

The Reopening In Safe Environment (RISE) initiative within Santa Barbara County reported the following changes in CA:

- o 11 Sectors Added Effective June 12, 2020
 - o 1 Sector Pending (Personal Services) Awaiting PHO Approval
 - o Update to Places of Worship for expanded outdoor services
 - o Higher Education added detail for essential services; no guidelines yet
 - o [New Face Coverings Order June 18, 2020](#) – mandatory throughout CA
- PUBLIC HEALTH ORDER CHANGES**
- o [County Health Order 2020 12 June 12, 2020](#) – update to Resilience Roadmap

Where are we now?



Santa Barbara County's R.I.S.E. Guide and the Governor's Resilience Roadmap

STAGE 1	STAGE 2	STAGE 3 OR STAGE 4
COMPLETE	COMPLETE	SANTA BARBARA COUNTY IS HERE
Agriculture and Livestock Auto Dealerships Childcare Programs and Providers Communications Construction Delivery Services Energy/Utilities Food Packing Hotels and Lodging* Life Sciences Logistics and Warehousing Manufacturing Mining and Logging Office Workspaces ** Ports Public Transit Real Estate Transactions Retail	Destination retail, including shopping malls and swap meets Personal services, limited to: car washes, pet grooming, tanning facilities, and landscape gardening Office-based businesses Day Camps Dine-in restaurants Outdoor museums and open gallery spaces Faith Based Organizations** Hair Salons and Barbershops** Schools and School Based Programs Tribal Casinos	Beverage Industry – Wineries/Bars Fitness Centers/Gyms Movie Theaters and Family Entertainment Centers Zoos and Museums Cardrooms, Satellite Wagering Facilities and Racetracks Campgrounds RV Parks and Outdoor Recreation Music/Film/TV Production Professional Sports – No live audiences Hotels and lodging for tourism and leisure <i>Effective after June 19, 2020 pending approval from the Santa Barbara County Health Department</i> Personal Services: Nail Salons, tattoo parlors, body waxing, massage services <i>Awaiting State Guidelines</i> Indoor Playgrounds Higher Education Live Theater Saunas and Steam Rooms Nightclubs, Concert Venues, Festivals and Theme Parks

* (essential workers only) ** With restrictions

3

Effective July 2, 2020 at 5 p.m., Santa Barbara County Public Health issues a health officer order mandating the closure of the following industries:

- Bars, breweries, pubs, and brewpubs
- Indoor Dine-in restaurants
- Indoor Wineries and Tasting Rooms
- Indoor Family Entertainment Centers

- Indoor Movie Theaters
- Indoor Zoos and Museums
- Indoor Cardrooms

This guidance is to stay in place for a minimum of three weeks and is subject to extension based on epidemiologic indicators.

WORKER'S COMPENSATION

Governor Gavin Newsom announced that workers who contract COVID-19 while on the job are eligible to receive workers' compensation on 5/6/20. The Governor signed an [executive order](#) that creates a presumption for accessing workers' compensation benefits applicable to Californians who must work outside of their homes during the stay at home order. The presumption will stay in place for 60 days after issuance of the executive order.

Industrial Paid Leave was initiated for First Responders who are not covered by the Families First Coronavirus Response Act (FFCRA), which excludes healthcare workers and first responders. Industrial Paid Leave provides full compensation to the employee. Emergency Paid Sick Leave (FFCRA) is reimbursable through the IRS. CJPIA advised filing a claim for all positive cases for two reasons:

- The first is that their medical bills will be paid as part of the claim.
 - Additionally, even if the city elects to provide leave benefits (presumably as part of the FFCRA) any permanent disability benefits would be paid as part of the claim.
- A claim was filed for one employee who tested positive 6/8/20; 16 employees tested negative.
 - Two additional claims will be filed in July 2020; an additional 12 employees results are pending; 4 volunteer results are pending.

Return to Work Policy

Guidance from Santa Barbara County Public Health Department, CJPIA, our Worker's Compensation Team and source material from the CDC have formed strategies for Return to Work Criteria. The City has adopted the following criteria for those with negative lab results:

Symptom-Based Strategy

- At least 3 days (72 hours) have passed since negative lab results, presently displaying no symptoms or fever, without the use of fever-reducing medications; and/or
- You were not in direct contact with presumptive positive persons, and received negative lab results, you may be able to return to work sooner. This will be on a case-by-case determination.

OR

Time-Based Strategy

- If at least 3 days (72 hours) have passed since negative lab results, presently displaying no symptoms or fever, without the use of fever-reducing medications; **but are in a high-risk category**. You will need to provide a physician's note stating quarantine is necessary, return to work after 14-days of quarantine after last exposure.

The City has adopted the following criteria for those with positive lab results:

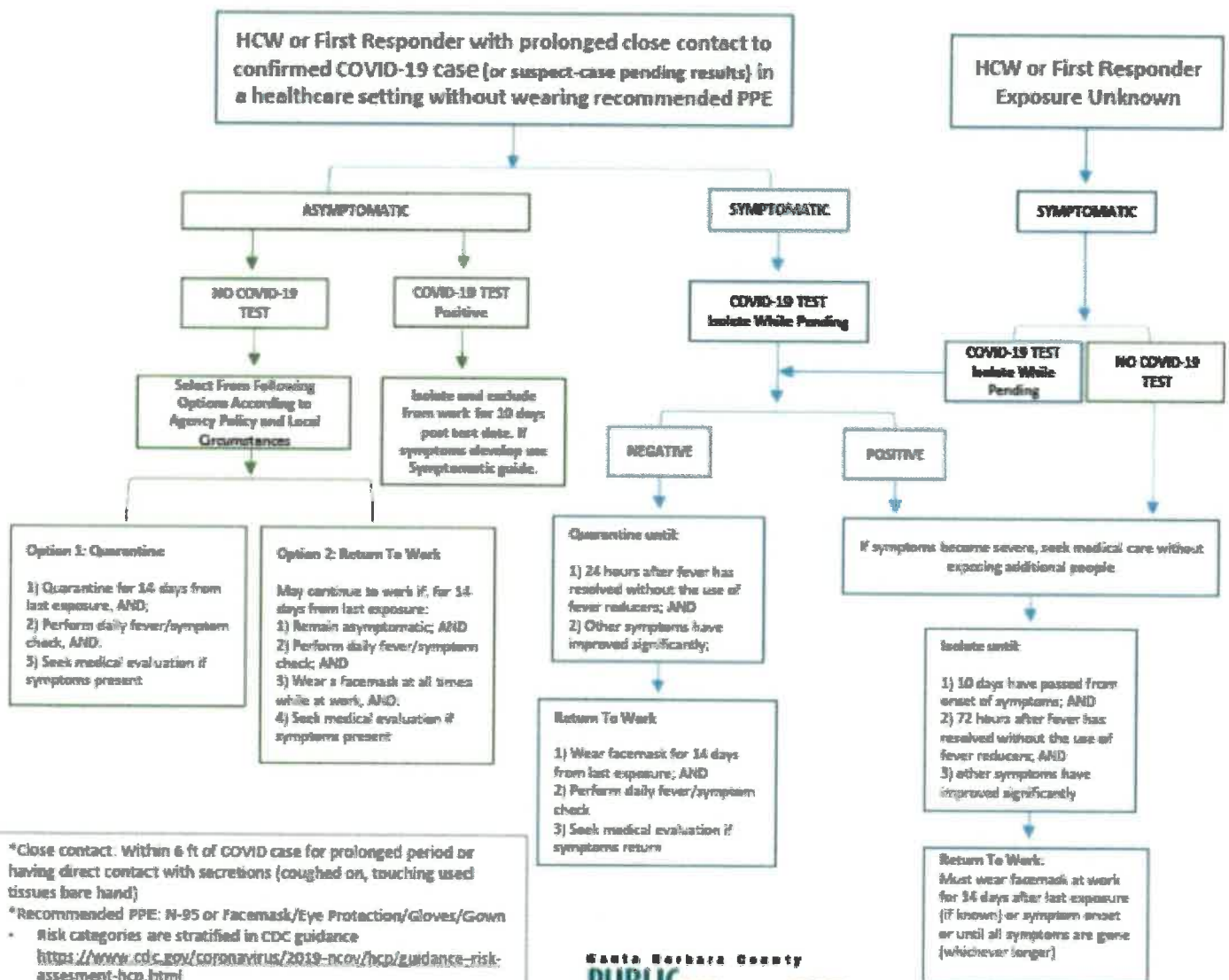
If an employee has symptoms, one must stay home until:

- You have had no fever for at least 72 hours (without the use of medicine that reduces fevers) AND
- Your respiratory symptoms have improved (for example, cough or shortness of breath) AND
- At least 10 days have passed since your symptoms first appeared. If your symptoms persist you should remain in isolation for 14 days.

If an employee tested positive for COVID-19 but never had any symptoms:

- You must stay home for 10 days after the test was taken, but
- If you develop symptoms, you need to follow the instructions above.

COVID-19 Exposure Guidance Algorithm for Health Care Worker or First Responder



*Close contact: Within 6 ft of COVID case for prolonged period or having direct contact with secretions (coughed on, touching used tissues bare hand)
 *Recommended PPE: N-95 or Facemask/Eye Protection/Gloves/Gown

- Risk categories are stratified in CDC guidance <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assessment-hcp.html>
- https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html?CDC_AA_refval=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhealthcare-facilities%2Fhcp-return-to-work.html



OTHER WORKER'S COMPENSATION

- One employee who has been out for since February 2019 still remains out. No determination has been made on that claim to date.
- Ergonomic solutions for an additional six employees are planned for fiscal year, FY 20-21.



SONIA Y. ANGELL, MD, MPH
State Public Health Officer & Director

State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

Released June 18, 2020

- Revised on June 29, 2020 to clarify that children under two years old are exempt from wearing face coverings due to risk of suffocation

GUIDANCE FOR THE USE OF FACE COVERINGS

Because of our collective actions, California has limited the spread of COVID-19 and associated hospitalizations and deaths in our state. Still, the risk for COVID-19 remains and the increasing number of Californians who are leaving their homes for work and other needs, increases the risk for COVID-19 exposure and infection.

Over the last four months, we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing.

This document updates existing [CDPH guidance](#) for the use of cloth face coverings by the general public when outside the home. It mandates that face coverings be worn state-wide in the circumstances and with the exceptions outlined below. It does not substitute for existing guidance about social distancing and handwashing.

Guidance

People in California must wear face coverings when they are in the high-risk situations listed below:

- Inside of, or in line to enter, any indoor public space;¹
- Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank;²
- Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle;
- Engaged in work, whether at the workplace or performing work off-site, when:
 - Interacting in-person with any member of the public;
 - Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time;

¹ Unless exempted by state guidelines for specific public settings

² Unless directed otherwise by an employee or healthcare provider



- Working in any space where food is prepared or packaged for sale or distribution to others;
- Working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
- In any room or enclosed area where other people (except for members of the person's own household or residence) are present when unable to physically distance.
- Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present. When no passengers are present, face coverings are strongly recommended.
- While outdoors in public spaces when maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible.

The following individuals are exempt from wearing a face covering:

- Persons younger than two years old. These very young children must not wear a face covering because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
- Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.
- Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence.
- Persons who are engaged in outdoor work or recreation such as swimming, walking, hiking, bicycling, or running, when alone or with household members, and when they are able to maintain a distance of at least six feet from others.

- Persons who are incarcerated. Prisons and jails, as part of their mitigation plans, will have specific guidance on the wearing of face coverings or masks for both inmates and staff.

Note: Persons exempted from wearing a face covering due to a medical condition who are employed in a job involving regular contact with others should wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.

Background

What is a cloth face covering?

A cloth face covering is a material that covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand or can be improvised from household items such as scarfs, T-shirts, sweatshirts, or towels.

How well do cloth face coverings work to prevent spread of COVID-19?

There is scientific evidence to suggest that use of cloth face coverings by the public during a pandemic could help reduce disease transmission. Their primary role is to reduce the release of infectious particles into the air when someone speaks, coughs, or sneezes, including someone who has COVID-19 but feels well. Cloth face coverings are not a substitute for physical distancing, washing hands, and staying home when ill, but they may be helpful when combined with these primary interventions.

When should I wear a cloth face covering?

You should wear face coverings when in public places, particularly when those locations are indoors or in other areas where physical distancing is not possible

How should I care for a cloth face covering?

It's a good idea to wash your cloth face covering frequently, ideally after each use, or at least daily. Have a bag or bin to keep cloth face coverings in until they can be laundered with detergent and hot water and dried on a hot cycle. If you must re-wear your cloth face covering before washing, wash your hands immediately after putting it back on and avoid touching your face. Discard cloth face coverings that:

- No longer cover the nose and mouth
- Have stretched out or damaged ties or straps
- Cannot stay on the face
- Have holes or tears in the fabric

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HEALTH OFFICER ORDER NO. 2020-12
COUNTY OF SANTA BARBARA

FOR THE CONTROL OF COVID-19
PHASED REOPENING WITHIN SANTA BARBARA COUNTY

Health Officer Order No. 2020-12 Supersedes and Replaces Health Officer Order
No. 2020-8.2 and Health Officer Order No. 2020-8.3

Effective Date: June 12, 2020, 8:00 a.m. PDT

Please read this Order carefully. Violation of or failure to comply with this Order may constitute a misdemeanor punishable by fine of up to \$1,000, imprisonment, or both. (Health and Safety Code §§ 101029, 120295 et seq.) Violators are also subject to civil enforcement actions including fines or civil penalties per violation per day, injunctive relief, and attorneys' fees and costs.

This Health Officer Order No. 2020-12 supersedes and replaces Health Officer Order No. 2020-8.2 that was effective May 21, 2020 and Health Officer Order No. 2020-8.3 that was effective May 26, 2020. Nothing in this Health Officer Order No. 2020-12 supersedes State Executive Orders or State Health Officer Orders. COVID-19 industry specific guidance provided by the California Department of Public Health is available at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Guidance.aspx#>

Summary: This Health Officer Order provides guidance on the reopening of some, but not all, Businesses (as defined) within the County of Santa Barbara. Businesses allowed to reopen must comply with requirements to protect against COVID-19 and social distancing. Businesses that are not allowed to reopen physical locations at this time are listed in the Attachment A.

WHEREAS, on March 4, 2020, Governor Newsom declared a state of emergency for conditions caused by a novel coronavirus, COVID-19, and on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic, and on March 12, 2020, the County of Santa Barbara declared a local emergency and a local health emergency in relation COVID-19 in the community; and

WHEREAS, in the County of Santa Barbara as well as throughout California and the nation, there are insufficient quantities of critical healthcare infrastructure, including hospital beds, ventilators and workers, capable of adequately treating mass numbers of patients at a single time – should the virus spread unchecked; and

WHEREAS, in direct response to the lack of healthcare infrastructure, governments across the nation are taking actions to slow the spread of COVID-19 in order to “flatten the curve” of infection and reduce the numbers of individuals infected at any one time by minimizing situations where the virus can spread; and

WHEREAS, in furtherance of this effort, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 requiring all persons residing in the State to remain in their homes or places of residence, except as needed to maintain the continuity of operations

for critical infrastructure (the "State Stay-at-Home Order"); and

WHEREAS, also on March 19, 2020, the State Public Health Officer ordered all individuals living in the State of California to stay home or at their place of residence, except as needed to maintain continuity of operations for the federal critical infrastructure sectors, which was updated on March 28, 2020; and

WHEREAS, on March 20, 2020, the State Public Health Officer designated a list of Essential Critical Infrastructure Workers, to help state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to protect public health and safety, which was updated on March 22, 2020; and

WHEREAS, on May 4, 2020, Governor Newsom issued Executive Order N-60-20 to allow reopening of lower-risk businesses and spaces ("Stage Two"), and then to allow reopening of higher-risk businesses and spaces ("Stage Three") and to allow a County to pursue a variance to move further into the stages upon notification and certification of a written attestation to the California Department of Public Health (CDPH); and

WHEREAS on May 7, 2020, the State Public Health Officer ordered that upon certification a County may move through the stages of reopening at their own pace as long as the sectors are given guidance from the State about reopening requirements; and

WHEREAS, on May 20, 2020, the CDPH approved and posted to the State's website the County of Santa Barbara's Variance Attestation allowing the County to move through the stages; and

WHEREAS, the CDPH issued guidance regarding various businesses and activities including for places of worship and providers of religious services and cultural ceremonies, hair salons and barbershops, schools and school-based programs; childcare; day camps; casinos operated by sovereign tribal nations; music, film and television production; professional sports without live audiences; campgrounds, RV Parks and outdoor recreation; hotels; cardrooms, satellite wagering facilities and racetracks; family entertainment centers; restaurants, bars and wineries; fitness facilities, museums, zoos, aquariums and galleries; and

WHEREAS, the County Health Officer finds: (1) the County has received repeated reports that some businesses have refused to comply with the State Stay-at-Home Order and State guidance; (2) the reported activities are inconsistent with the State Stay-at-Home Order and/or Stage Two or Stage Three of the California Resilience Roadmap; (3) guidance for businesses is required to prevent the potential increased spread of COVID-19 which would add strain to the County of Santa Barbara health care system; (4) without the guidance and restrictions described herein some businesses are likely to continue to impair efforts at mitigating the spread of the illness both within the County and statewide; and (5) distinctions made in this Order are to minimize the spread of COVID-19 that could occur through proximity and duration of contact between individuals; and

WHEREAS, the intent of this Order is to order businesses in the County of Santa Barbara regarding operations under the State Stay-at-Home Order and the Stage Two and Stage Three of the California Resilience Roadmap, and to slow the spread of COVID-19 to the

maximum extent possible. All provisions of this Order should be interpreted to effectuate this intent.

ACCORDINGLY, UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, THE HEALTH OFFICER OF THE COUNTY OF SANTA BARBARA ORDERS:

1. This Order 2020-12 is effective 8:00 a.m. (PDT) June 12, 2020 and continuing until 5:00 p.m. (PDT), on July 12, 2020 or until it is extended, rescinded, superseded, or amended in writing by the County of Santa Barbara Health Officer ("Health Officer"). This Order applies in the incorporated and unincorporated areas of Santa Barbara County ("County").
2. "Business" or "Businesses" for the purpose of this Health Officer Order is defined to mean any institution, establishment, public or private agency, for-profit, non-profit, or educational entity, whether an organization, corporate entity, partnership, or sole proprietorship.
3. All Businesses except those listed in Attachment A, as attached hereto and incorporated by this reference, may remain open or open, upon completion of, and in accordance with all of the following:
 - a. Perform a detailed risk assessment including reviewing State and local guidance relevant to the Business and create a site-specific protection plan;
 - b. Train employees about how to limit the spread of COVID-19 including how to screen themselves for COVID-19 symptoms and when to stay home. COVID-19 symptoms are described in Attachment B;
 - c. Set up individual control measures and screenings;
 - d. Put disinfection protocols in place;
 - e. Implement and post the social distancing protocol in accordance with Section 3;
 - f. Complete the RISE attestation and self-certification process at: <https://recoveryabc.org/reopen-your-business/>. (if a Business does not have access to the internet it can call 833-688-5551); and
 - g. Post the self-certification at the Business location.
4. **Social Distancing Protocol.** All Businesses shall implement social distancing protocol, except when closer contact is required for fire, law enforcement, first responders, childcare, adult or senior care, care to individuals with special needs, and patient care. Social distancing is maintaining at least a six-foot distance from all individuals who are not part of the same household or living unit.

All Businesses must prepare and post a "Social Distancing Protocol", Attachment C, for each of their facilities in the County frequented by the public or employees. The Social Distancing Protocol must be posted at or near the entrance of the relevant facility and shall be easily viewable by the public and employees. A copy

of the Social Distancing Protocol must also be provided to each employee performing work at the facility. All Businesses shall implement the Social Distancing Protocol, and shall designate a specific on-duty employee to monitor and enforce compliance with the Social Distancing Protocol at all times the Business is open to the public. Businesses shall provide evidence of its implementation to any authority enforcing this Order upon demand.

Completion and posting of the Social Distancing Protocol, Attachment C, is required for compliance with this Order. The Social Distancing Protocol must explain how the Business is achieving the following:

- a. Limiting the number of persons who can enter into the facility and work areas at any one time to ensure that persons in the facility and work areas can easily maintain a minimum six-foot distance from one another at all times;
 - b. Where lines may form at a facility, marking increments of six feet, at a minimum, establishing where individuals must stand to maintain adequate social distancing;
 - c. Providing hand sanitizer, soap and water, or other effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and employees and in locations where there is high-frequency employee interaction with the public (e.g., cashiers);
 - d. Providing for contactless payment systems, or if not feasible to do so disinfect payment systems for the next customer by disinfecting all payment portals, keypads, pens, and styluses after each use;
 - e. Regularly cleaning and disinfecting other high-touch surfaces;
 - f. Posting a sign at the entrance of the facility and work area informing the public and employees that they should avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into their elbow; and not shake hands or engage in unnecessary physical contact; and
 - g. Any additional social distancing measures being implemented.
5. Bars, wineries, breweries, tasting rooms and other venues that serve alcoholic beverages but that do not have an on-site permitted food facility:
- a. Must obtain an Emergency Food Permit issued by the Santa Barbara County Health Department to temporarily serve food.
 - b. A Business in possession of an Emergency Food Permit issued by the Santa Barbara County Health Department may continue to temporarily serve food at their discretion, unless otherwise suspended, revoked, or terminated.
 - c. A Business in possession of an Emergency Food Permit issued by the Santa Barbara County Health Department may cease operations of food service at their discretion.
6. Businesses that must keep physical locations closed are listed in Attachment A, as attached hereto and incorporated by this reference. Businesses listed in Attachment A may continue to provide services so long as those services can be

provided remotely and without individuals physical present at the Business location. Maintenance to prevent property damage of the Businesses listed in Attachment A is allowed. This list may be amended from time to time, as required for our region's response to COVID-19.

This Order is issued as a result of the worldwide pandemic of COVID-19 which has infected at least 7,387,386 individuals worldwide, in 213 countries and territories, including 1,847 cases, and 15 deaths in the County, and is implicated in over 415,778 worldwide deaths.

This Order is issued based on evidence of increasing transmission of COVID-19 both within the County and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19.

This Order is issued because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time.

This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. As the presence of individuals increases, the difficulty and magnitude of tracing individuals who may have been exposed to a case rises exponentially.

This Order is issued in accordance with, and incorporates by reference: the March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 12, 2020 Declaration of Local Health Emergency and Proclamation of Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in the County; the March 17, 2020 Resolution of the Board of Supervisors ratifying the County Declaration of Local Health Emergency and Proclamation of Emergency regarding COVID-19; the guidance issued on March 11, 2020 by the California Department of Public Health regarding large gatherings of 250 people or more; Governor Gavin Newsom's Executive Order N-25-20 of March 12, 2020 preparing the State to commandeer hotels and other places of temporary residence, medical facilities, and other facilities that are suitable as places of temporary residence or medical facilities as necessary for quarantining, isolating or treating individuals who test positive for COVID-19 or who have had a high-risk exposure and are thought to be in the incubation period; the March 13, 2020 Presidential Declaration of a National Emergency due to the national impacts of COVID-19; the guidance issued on March 15, 2020 by the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials through the United States and around the world recommending the cancellation of gatherings involving more than fifty (50) or more persons in a single space at the same time; the March 16, 2020 order of the State Public Health Officer prohibiting all gatherings with expected presence above ten (10) individuals; Governor Newsom's Executive Order N-33-20 of March 19, 2020 ordering all persons to stay at home to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19; the March 22, 2020, Presidential Declaration of a Major Disaster in California beginning on January 20, 2020 under Federal Emergency

Management Agency (FEMA) Incident DR-4482-CA; and, Governor Newsom's Executive Order N-60-20 of May 4, 2020 to allow reopening of lower-risk businesses and spaces ("Stage Two"), and then to allow reopening of higher-risk businesses and spaces ("Stage Three"), and directing the Public Health Officer to establish criteria and procedures to determine whether and how particular local jurisdictions may implement public health measures that depart from the statewide directives of the State Public Health Officer.

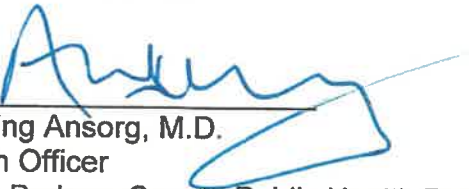
This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101040 and 120175; Health and Safety Code sections 101030 et seq., 120100 et seq.; and Title 17 of the California Code of Regulations section 2501.

If any provision of this Order or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

The violation of any provision of this Order constitutes a threat to public health. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code sections 101029 and 120295, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order.

Copies of this Order shall promptly be: (1) made available at the County Public Health Department; (2) posted on the County Public Health Department's website (publichealthsb.org); and (3) provided to any member of the public requesting a copy of this Order.

IT IS SO ORDERED:



Henning Ansorg, M.D.
Health Officer
Santa Barbara County Public Health Department

ATTACHMENT A

HEALTH OFFICER ORDER NO. 2020-12 COUNTY OF SANTA BARBARA

Businesses that Must Keep Physical Locations Closed

1. Amphitheaters, concert halls and venues, performing arts centers
2. Amusement and theme parks
3. Arenas
4. Banquet halls
5. Body art facilities including piercing, branding, and tattoos (except for the sale of retail items)
6. Celebrations (such as weddings, family reunions, birthday parties, bar/bat mitzvah, quinceañeras, bachelor/bachelorette parties, baby showers, etc.)
7. Climbing gyms
8. Community centers
9. Conference and convention centers
10. Dance halls, dances
11. Fairs, festivals, public exhibitions
12. In-person higher education including technical schools, colleges, universities, adult education, and trade schools (distance learning is permitted)
13. Ice skating rinks
14. Live performance venues, live theatre
15. Music events, concerts
16. Nail salons, manicurist, and pedicurist, except those required for medical necessity, such as treatment for diabetes, or persons taking prescribed blood thinners
17. Nightclubs
18. Indoor paintball, laser tag, or air soft facilities
19. Personal services such as day spas, body waxing and massage parlors, except those required for medical necessity
20. Playgrounds
21. Raceways
22. Rodeos, public equestrian events
23. Roller skating rinks, roller derby
24. Saunas and steam rooms
25. Organized sports (except professional sports without a live audience)
26. Sports stadiums and facilities (except as necessary for professional sporting events without live audiences)
27. Trampoline and bounce houses

ATTACHMENT B

**HEALTH OFFICER ORDER NO. 2020-12
COUNTY OF SANTA BARBARA**

COVID-19 SELF-EVALUATION

The County Health Officer has defined COVID-19 symptoms as follows:

**Mild to Moderate Symptoms Related to or
Other Respiratory Illness such as:**

Sore Throat

Runny Nose

Fever

Chills

Not Feeling Well

Sneezing

Coughing

Gastro-Intestinal symptoms such as:

Soft Stool

Stomach Cramps

New Loss of smell and/or taste

ATTACHMENT C: SOCIAL DISTANCING PROTOCOL

Businesses must complete Social Distancing Protocol or similar COVID- 19 protection plan described in CDPH industry guidance and checklists required by the state for all businesses prior to reopening.

Business name: _____ Facility Address: _____

Approximate gross square footage of space open to the public: _____

Businesses must implement all applicable measures listed below, and be prepared to explain why any measure that is not implemented is inapplicable to the business.

Signage:

- Signage at each public entrance of the facility to inform all employees and public that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into a cloth or tissue or, if not available, into one's elbow; and not shake hands or engage in any unnecessary physical contact.
- Signage posting a copy of the Social Distancing Protocol at each public entrance to the facility.

Measures To Protect Employee Health (check all that apply to the facility):

- Everyone who can carry out their work duties from home has been directed to do so.
- All employees have been told not to come to work if sick.
- All desks or individual work stations are separated by at least six feet.
- Break rooms, bathrooms, and other common areas are being disinfected frequently, on the following schedule:

Break rooms: _____

Bathrooms: _____

Other: _____

- Disinfectant and related supplies are available to all employees at the following location(s):
 - Hand sanitizer effective against COVID-19 is available to all employees at the following location(s): _____
 - Soap and water are available to all employees at the following location(s): _____
 - Copies of this Protocol have been distributed to all employees.
 - Optional—Describe other measures: _____

Measures To Prevent Crowds From Gathering (check all that apply to the facility):

- Limit the number of public in the store at any one time to _____, which allows for public and employees to easily maintain at least six-foot distance from one another at all practicable times.
- Post an employee at the door to ensure that the maximum number of persons in the facility set forth above is not exceeded.
- Placing per-person limits on goods that are selling out quickly to reduce crowds and lines. Explain: _____
- Optional—Describe other measures: _____

Measures To Keep People At Least Six Feet Apart (check all that apply to the facility)

- Placing signs outside the store reminding people to be at least six feet apart, including when in line.
- Placing tape or other markings at least six feet apart in customer line areas inside the store and on sidewalks at public entrances with signs directing customers to use the markings to maintain distance.
- Separate order areas from delivery areas to prevent persons from gathering.
- All employees have been instructed to maintain at least six feet distance from the public and from each other, except employees may momentarily come closer when necessary to accept payment, deliver goods or services, or as otherwise necessary.
- Optional—Describe other measures: _____

Measures To Prevent Unnecessary Contact (check all that apply to the facility):

- Preventing people from self-serving any items that are food-related.
 - Lids for cups and food-bar type items are provided by staff; not to customers to grab.
 - Bulk-item food bins are not available for self-service use.
- Not permitting customers to bring their own bags, mugs, or other reusable items from home.
- Providing for contactless payment systems or, if not feasible, sanitizing payment systems regularly. Describe: _____
- Optional—Describe other measures (e.g. providing senior-only hours): _____

Measures To Increase Sanitization (check all that apply to the facility):

- Disinfecting wipes that are effective against COVID-19 are available near shopping carts and shopping baskets.
- Employee(s) assigned to disinfect carts and baskets regularly.
- Hand sanitizer, soap and water, or effective disinfectant is available to the public at or near the entrance of the facility, at checkout counters, and anywhere else inside the store or immediately outside where people have direct interactions.
- Disinfecting all payment portals, keypads, pens, and styluses after each use.
- Disinfecting all high-contact surfaces frequently.
- Optional—Describe other measures: _____

* Any additional measures not included here should be listed on separate pages, which the business should attach to this document.

You may contact the following person with any questions or comments about this protocol:

Name: _____ **Phone number:** _____

EXECUTIVE ORDER N-62-20

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 on March 19, 2020, I issued Executive Order N-33-20, directing all residents statewide to obey all state public health directives, including the State Public Health Officer's order to all individuals living in the state to stay home or at their other place of residence, except as otherwise specified, including as needed to maintain continuity of operations of critical infrastructure sectors during the COVID-19 response; and

WHEREAS employees who report to their places of employment are often exposed to an increased risk of contracting COVID-19, which may require medical treatment, including hospitalization; and

WHEREAS employees who report to work while sick increase health and safety risks for themselves, their fellow employees, and others with whom they come into contact; and

WHEREAS prompt and efficient treatment will be realized by facilitating access to this state's workers' compensation system for medical treatment and disability benefits; and

WHEREAS the provision of workers' compensation benefits related to COVID-19, when appropriate, will reduce the spread of COVID-19 and otherwise mitigate the effects of COVID-19 among all Californians, thereby promoting public health and safety; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations 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, and 8627, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) Any COVID-19-related illness of an employee shall be presumed to arise out of and in the course of the employment for purposes of awarding workers' compensation benefits if all of the following requirements are satisfied:

- a. The employee 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;
 - b. The day referenced in subparagraph (a) 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;
 - c. The employee's place of employment referenced in subparagraphs (a) and (b) was not the employee's home or residence; and
 - d. Where subparagraph (a) is satisfied through a diagnosis of COVID-19, the diagnosis was done by a physician who holds a physician and surgeon license issued by the California Medical Board and that diagnosis is confirmed by further testing within 30 days of the date of the diagnosis.
- 2) The presumption set forth in Paragraph 1 is disputable and may be controverted by other evidence, but unless so controverted, the Workers' Compensation Appeals Board is bound to find in accordance with it. This presumption shall only apply to dates of injury occurring through 60 days following the date of this Order.
- 3) Notwithstanding Labor Code section 5402, if liability for a claim of a COVID-19-related illness pursuant to Paragraph 1 is not rejected within 30 days after the date the claim form is filed under Labor Code section 5401, the illness shall be presumed compensable, unless rebutted by evidence only discovered subsequent to the 30-day period.
- 4) An accepted claim for the COVID-19-related illness referenced in Paragraph 1 shall be eligible for all benefits applicable under the workers' compensation laws of this state, including full hospital, surgical, medical treatment, disability indemnity, and death benefits, and shall be subject to those laws including Labor Code sections 4663 and 4664, except as otherwise provided in this Order.
- 5) Notwithstanding any applicable workers' compensation statute or regulation, where 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 Labor Code section 4850 are due and payable. Where an employee does not have such sick leave benefits, the employee shall be provided temporary disability benefits or Labor Code section 4850 benefits if applicable, from the date of disability. In no event shall there be a waiting period for temporary disability benefits.
- 6) To qualify for temporary disability or Labor Code section 4850 benefit payments under this Order, an employee must satisfy either of the following:
 - a. If the employee tests positive or is diagnosed under Paragraph 1 on or after the date of this Order, the employee must be certified for temporary disability within the first 15 days after the

initial diagnosis, and must be recertified for temporary disability every 15 days thereafter, for the first 45 days following diagnosis; or

- b. If the employee tested positive or was diagnosed under Paragraph 1 prior to the date of this Order, the employee must obtain a certification, within 15 days of the date of the Order, documenting the period for which the employee was temporarily disabled and unable to work, and must be recertified for temporary disability every 15 days thereafter, for the first 45 days following diagnosis.

All employees must be certified for temporary disability by a physician holding a physician and surgeon license issued by the California Medical Board. The certifying physician can be a designated workers' compensation physician in an applicable Medical Provider Network or Health Care Organization, a pre-designated workers' compensation physician, or a physician in the employee's group health plan. If the employee does not have a designated workers' compensation physician or group health plan, the employee should be certified by a physician of the employee's choosing who holds a physician and surgeon license.

- 7) The Administrative Director of the Division of Workers' Compensation shall adopt, amend, or repeal any regulations that the Administrative Director deems necessary to implement this Order. Any regulations so promulgated by the Administrative Director shall be exempt from the Administrative Procedures Act (Chapter 3.5 of Part 1 of Title 2 of the Government Code), except that the Administrative Director shall submit the regulations to the Office of Administrative Law for publication in the California Regulatory Notice Register.
- 8) This Order shall apply to all workers' compensation insurance carriers writing policies that provide coverage in California, self-insured employers, and any other employer carrying its own risk, including the State of California. Nothing in this Order shall be construed to limit the existing authority of insurance carriers to adjust the costs of their policies.
- 9) The Department of Industrial Relations shall waive collection on any death benefit payment due pursuant to Labor Code section 4706.5 arising out of claims covered by this Order.

Nothing in this Order shall be construed to modify or suspend any workers' compensation statute or regulation not in conflict with this Order, or to reduce or eliminate any other right or benefit to which an employee is otherwise entitled under law, including the Families First Coronavirus Recovery Act, collective bargaining agreement, or Employee Benefit Plan, including group health insurance, that is in effect prior to March 19, 2020.

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 6th day of May 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State