Development Advisory Committee

Agenda

Wednesday, April 10, 2013
Meeting Time 5:30 p.m. – 7:30 p.m.
Martha Riley Library – Meeting Room #1
1501 Pleasant Grove Blvd.

Committee Members		**City Staff**
Brett Baumgarten	Betty Sanchez	Chris Robles, *Community Development Manager*
Marcus Lo Duca	Mark Sauer	Bob Schmitt, *Assistant City Attorney*
Jack Paddon	Steve Schnable	Lonnye Heple, *Administrative Aide/DAC Secretary*
Steve Pease	John Tallman	
Thomas Moe		

1. **Roll Call**

2. **Approval of Minutes of February 13, 2013 Meeting**

3. **Public Comment**

4. **Planning Full Cost Billing Processes – Kathy Pease – 15 minutes**

5. **Update on the City County traffic mitigation- Scott Gandler – 15 minutes**

6. **Environmental Utilities Policy as it relates to Sewer Maintenance – Mwah Polson – 15 minutes**

7. **Update from the City Manager's and City Attorney's Offices - Chris Robles/Bob Schmitt – 15 minutes**
   a. **Weekly Building Report**
   b. **CCI inflationary adjustment and planned implementation**
   c. **Prevailing Wage Law – SB 7**
   d. **Electric Backbone Fee Update**
   e. **Automation (permit software) implementation update**

8. **Comments from Committee Members**

9. **Adjourn to June 12, 2013**

Development Advisory Committee Meeting

311 Vernon Street, Roseville, CA 95678 (916) 774-5334

February 13, 2013
Draft Minutes

1. Roll Call

Committee Members Present: Brett Baumgarten, Marcus LoDuca, Jack Paddon, Steve Pease, John Tallman, Tom Moe, Steve Schnable

Committee Members Absent: Betty Sanchez, Mark Sauer

Staff Present: Chris Robles, Bob Schmitt

2. Approval of Minutes of November 14, 2012 Meeting

Jack Paddon made a motion to approve the minutes from the November 14, 2012. John Tallman seconded the motion.

Motion Passed with 5 ayes and 1 abstention (Abstention: Steve Schnable)

Note: Steve Pease had not arrived prior to vote

3. Public Comment

Chair LoDuca opened the floor for public comments. No comments.

4. Prevailing Wage Law

Bob Schmitt gave a presentation on the Prevailing Wage Law.

Steve Pease made a motion to recommend staff to utilize opportunities to use non-prevailing wage for qualified City projects. Jack Paddon seconded the motion.

Motion Passed Unanimously

The Committee also requested that neighborhood parks be considered for construction with non-prevailing wage labor.

Note: Steve Pease departed following the vote on this item.

5. General Plan policy as it relates to schools and school fees

Bob Schmitt gave a presentation on the Public Facilities Element of the General Plan as it relates to school fees.

John Tallman made a motion to recommend staff to engage in the actions necessary to implement an amendment of the General Plan as it relates to schools fees and their application on legislative projects. Jack Paddon seconded the motion.

Motion Passed Unanimously

DRAFT

6. Update on the City/County traffic mitigation fee update.

Scott Gandler provided an update on the status of the proposed fee structure for the City/County traffic mitigation fee.

No Action Required

7. Update from the City Manager's Office

Chris Robles provided a copy of the Weekly Building report.

Chris also notified the committee that City will proceed with applying the inflationary adjustment and several development impact fees to be effective July 1, 2013.

Chris provided an update on the permit software implementation and scheduled date of July 1st for go live.

No Action Required

8. Comments from Committee Members & Staff

None

9. **Adjournment – 6:45 p.m.**

DRAFT

Development Advisory Committee
Staff Report – April 10, 2013

Contact: Kathy Pease
kpease@roseville.ca.us
(916) 774-5434

Agenda Item # 4 – Full Cost Projects Billing

Recommendation

This item provides information the City's billing procedures for full cost entitlement projects and requires no action.

Background

The City has been reviewing its billing procedures and is proposing that all full cost entitlement projects implement a single billing process. Full cost projects are defined as large projects such as; specific plans, specific plan amendments, annexations, environmental impact reports (EIRs), General Plan amendments over 11 acres or text policy amendments, and tentative maps with over 500 lots.

Currently there are two process; one which is authorized by City resolution and includes certain departments and secondly is the billing authorized through individual reimbursement agreements approved by City Council.

Discussion of Proposed Billing Process

The City of Roseville's two billing processes for full cost projects creates some uncertain as to the procedure and cost depending on the project and billing process. In an effort to provide more consistency for both the applicant and the City, it is proposed that all full cost projects implement the billing procedures currently used for specific plan projects.

With a project submittal a deposit will be required. Staff will record time spent working on the project, and staff time will be billed against the deposit on a monthly basis. At the beginning of the process, an estimate of staff and consultant cost to complete the proposed project will be provided to the applicant. The estimate will be based on current staff costs per staff position, plus a factor for direct and indirect costs. A funding agreement between the City and the applicant will be brought forward for Council approval. City staff will look for opportunities to streamline the funding agreement process.

Departments and staff, billing against the project, are responsible for providing verification of service rendered and hours charged. The full cost process is also proposed to ensure that projects reflect actual staff processing costs and provide more certainty to the applicant of costs at the beginning of the project. Projects will not be scheduled for hearing, unless within thirty days of final action, all billing is in good standing and up to date. On the positive side, any monies left on deposit after 30 days from final action shall be returned to the project applicant.

This process will allow the City to more thoroughly track project costs and trends. Where project costs are consistent the City can move projects to a flat fee further simplifying the payment process and providing certainty in entitlement costs to the customer.

Once fully developed the full cost billing policy will be brought back to the DAC for action prior to forwarding to the City council for approval.

Development Advisory Committee
Staff Report – April 10, 2013

Contact: Scott Gandler
sgandler@roseville.ca.us
(916) 774-5439

Agenda Item # 5 – City/County Traffic Mitigation Fee Update Clarification

Recommendation

This informational item clarifies City/County Fee Update information presented to the Development Advisory Committee (DAC) at their February 13, 2013 meeting and requires no action.

Background

At the February 13, 2013 DAC meeting, Roseville staff presented the final 2013 fee update for the Baseline/Walerga/Fiddyment Roads Traffic Fee Program (City/County Fee) that was adopted in 2004 by and between the City of Roseville and Placer County. This is the first update of the fee program. In the presentation, staff inadvertently compared the new fee to an outdated Technical Memorandum from 2007 and consequently misrepresented the impact of the fee update relative to existing fees. This clarification does not change the outcome of the fee update, and the "new" fees remain the same as was presented.

Discussion of City/County Fee Update

City of Roseville and Placer County engineering staff worked with the consulting firm of Fehr & Peers to complete the fee update. Approval and adoption of the fee update by both the City and Placer County is expected to occur in spring 2013. Important highlights of the update include:

- Inclusion of Creekview and Sierra Vista
- Removal of Fiddyment Road (made part of the City's CIP)
- Refined Baseline Road improvements and costs
- Updated Walerga Road Bridge costs
- Total Project cost adjustments from $34 million to $56 million
- $1,350 fee cap

Total project costs increased from $34 million to $56 million as a result of increased construction costs since 2004 and a revised scope of work for Baseline Road and Walerga Road Bridge improvements. The fees have been capped at $1,350 per DUE resulting in a reduction of the roadway project contingency amounts by approximately 1.9%.

The following table shows the comparison between existing net fees and the proposed updated net fee's for each fee district. The net fees are determined by subtracting total fees collected from each district and credits to the program for Placer County's share of Fiddyment Road improvements from each districts total obligation.

Current Fee Vs. Updated Fee			
Fee District	**Current Net Fee Per DUE**	**Updated Net Fee Per Due**	**Difference**
Sunset	$233	$237	$4
Dry Creek/Placer Vineyards[1]	$861	$727	-$134
Granite Bay	$57	$0	-$57
Newcastle/Horseshoe Bar	$37	$0	-$37
Placer Central	$43	$0	-$43
Placer West	$91	$159	$68
Roseville West			
Del Webb	$353	$343	-$10
HRN	$196	$343	$147
NCRSP	$152	$343	$191
N. Industrial	$193	$343	$150
NRSP (Ph 1 & Ph 2N)	$248	$343	$95
Woodcreek West	$248	$343	$95
NRSP (Ph 3)	$248	$343	$95
NWRSP	$259	$343	$84
Roseville East			
Infill	$78	$57	-$21
NERSP	$30	$57	$27
SERSP	$47	$57	$10
Stoneridge East	$45	$57	$12
Stoneridge West	$45	$57	$12
WRSP – Signature[2]	$412	$770	$358
WRSP – Westpark	$412	$770	$358
Sierra Vista[3]	$0	$1,350	$1,350
Creekview[4]	$0	$616	$616

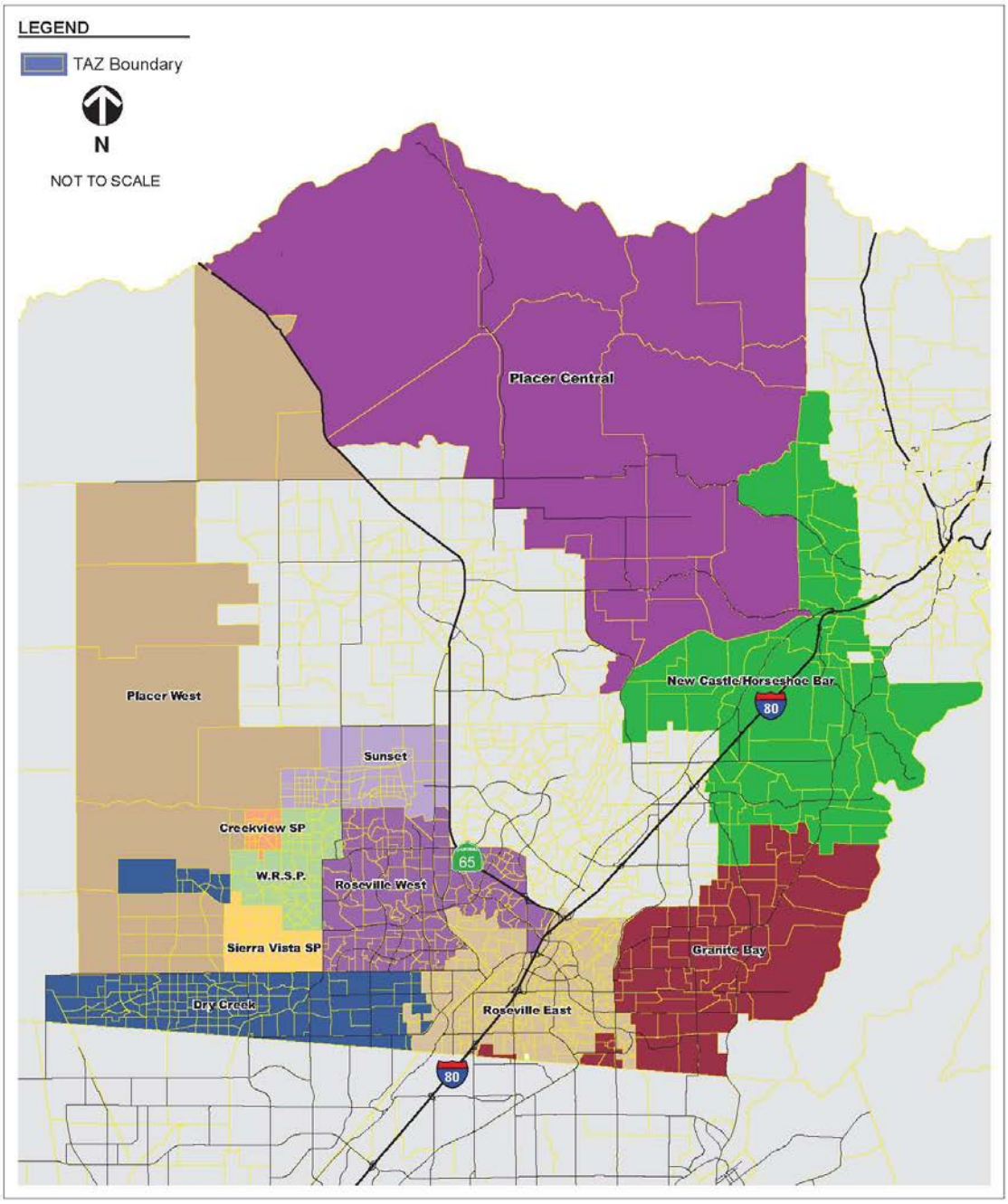
Notes:

[1] The previous program included only Phase 1of Placer Vineyards. The update includes the entire project resulting in a total program obligation increase of $6 million spread across their total DUE's which increased by 10,000.

[2] WRSP - Signature previously had an obligation to construct Improvements on Fiddyment Road which would have resulted in $10 million in credits toward this fee program. At their request, their obligation to construct was reduced and the improvements are now included in the City's CIP, therefore, removing their fee credit from this program.

[3] Sierra Vista Fees are capped at $1,350 in their development agreement.

[4] Creekview's development agreement requires payment of this fee.



FEHR & PEERS
TRANSPORTATION CONSULTANTS
N:\2008Projects\2637A_BaselineFiddymentWalergaFeeUpdate\GIS\GIS\fromRS08-2635\fig01_Fee_Dist.mxd

MODIFIED PLACER COUNTY AND ROSEVILLE FEE DISTRICTS
FIGURE 1

Development Advisory Committee
Staff Report – April 10, 2013

Contact: Mwah Polson
mpolson@roseville.ca.us
(916) 774-5773

Agenda Item: # 6 - Environmental Utilities – Modification to EUD's Policy on Sewer Stubs and Services

Recommendation

This item requires no action from the Development Advisory Committee (DAC). This informational item is provided in response to a recent policy change regarding repairs of sewer services and sewer stubs for both residential and commercial subdivisions.

Background

A meeting was held on January 12, 2013 that included Interim Environmental Utilities Director Ed Kriz, Wastewater Utility Manager Ken Glotzbach, Engineering Manager Kelye McKinney and Senior Engineer J. Mwah Polson. The discussion centered on department policy regarding repairs of sewer services and sewer stubs for both residential and commercial subdivisions. The meeting resulted in modifying our current policy as follows:

Residential and Commercial lots under warranty

Where a project inspection identifies defects in a sewer service and the sewer main is still within the warranty period, the responsibility to repair the service rests solely on the developer who installed the sewer main.

Residential and Commercial lots outside of warranty

Where a project inspection identifies defects in a sewer service and the sewer main is no longer under warranty, the responsibility to repair the defects shall rest on both the developer and the City as follows:

1. The developer shall be responsible to repair defects found in any sewer service from the first joint downstream of the sewer cleanout to the commercial or residential building (that portion of the sewer services that is considered "private"). **See Details 1 & 2**
2. The City shall be responsible to repair defects found in any sewer service from the first joint downstream of the sewer cleanout to the sewer mainline (that portion of the sewer service that is considered "public"). **See Details 1 & 2.**

Sewer Stubs to Residential and Commercial Subdivisions

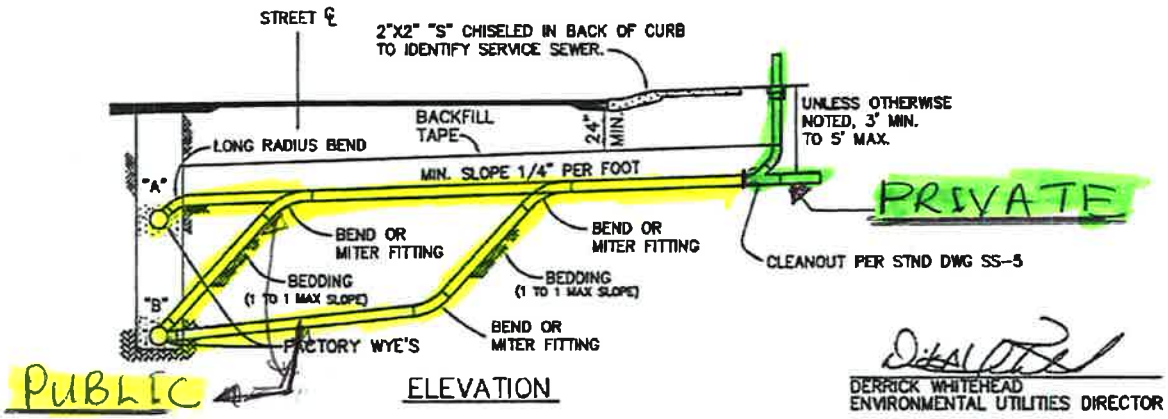
Where sewer stubs have been constructed on sewer mains, these sewer stubs become an integral part of the sewer system of the proposed residential or commercial subdivision they were designed and built to serve. The developer of the subdivisions shall be required to test and repair these stubs, if found damaged, prior to tie-ins. A note to this effect shall be placed on all Building and Improvement Plans to ensure the developer is aware of this requirement prior to initiating construction.

Attachments: Detail 1 & Detail 2

DETAIL #1

GENERAL NOTES:

1. ALL SERVICE LINES SHALL BE 4" FOR RESIDENTIAL AND 6" FOR COMMERCIAL UNLESS OTHERWISE NOTED.
2. SERVICES SHALL HAVE SAME BEDDING AND BACKFILL AS LATERAL SEWER.
3. CONTRACTOR SHALL USE THE MOST APPROPRIATE TYPE CONNECTION (A OR B) FOR THE PARTICULAR SITUATION ENCOUNTERED.
4. SERVICE SEWER SHALL HAVE MINIMUM 3'-0" COVER AT PROPERTY LINE WHENEVER LATERAL DEPTH AND SERVICE SEWER SLOPE OF 1/4" PER FOOT (MINIMUM) PERMIT. SEE NOTE 10.
5. WHEN THE LATERAL SEWER DEPTH IS SUCH THAT MINIMUM COVER AT PROPERTY LINE CANNOT BE MET, THE MINIMUM SLOPE OF 1/4" PER FOOT SHALL GOVERN THE COVER.
6. MIN. SPECIFIED COVER AT THE PROPERTY LINE SHALL BE MEASURED FROM EXISTING GROUND SURFACE OR EDGE OF ADJACENT ROADWAY, WHICHEVER IS LOWER.
7. A SPECIFIC ELEVATION AT THE PROPERTY LINE, WHEN SHOWN ON THE PLANS OR DESIGNATED BY THE ENGINEER, SHALL GOVERN.
8. MITER FITTING SHALL BE MAX. 45°.
9. MINIMUM DEPTH OF COVER SHALL BE INCREASED TO 4'-6" WHERE A WATER MAIN IS TO BE INSTALLED AT BACK OF SIDEWALK AS PART OF THE SUBDIVISION IMPROVEMENTS. IN SUCH CASES, THE SERVICE SHALL BE EXTENDED TO A MINIMUM OF 7' BACK OF SIDEWALK; CLEANOUT TO GRADE SHALL REMAIN WITHIN 3' OF BACK OF SIDEWALK.
10. SEWER SERVICES ORIGINATING FROM SEWER MAINS 14 FT AND GREATER IN DEPTH SHALL HAVE THE CROTCH OF THE VCP "WYE" FITTING FILLED WITH CONCRETE.



ELEVATION

TYPE A TYPE B

CONNECTION DETAILS

DERRICK WHITEHEAD
ENVIRONMENTAL UTILITIES DIRECTOR

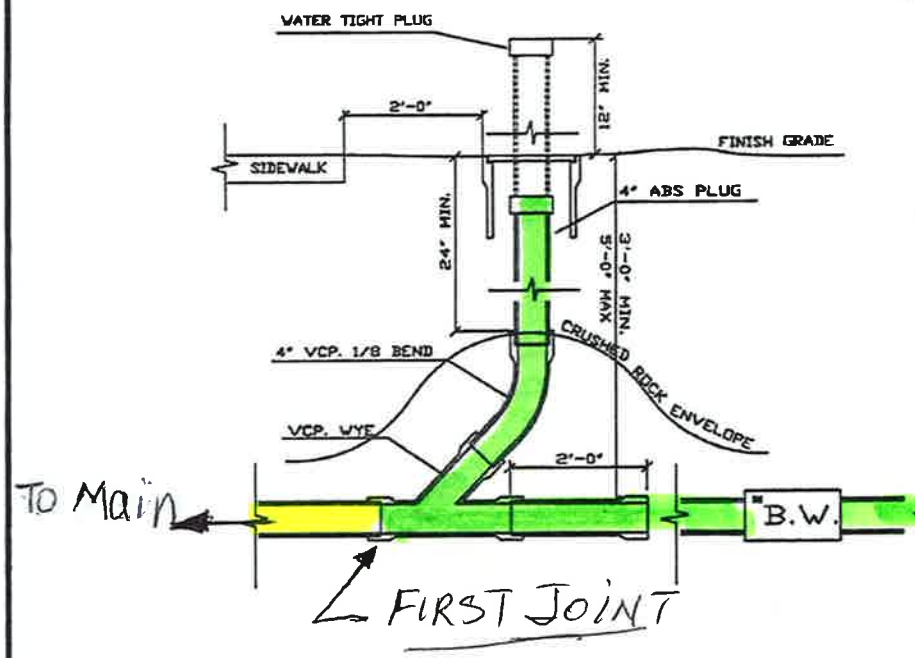
CITY OF ROSEVILLE CALIFORNIA — ENVIRONMENTAL UTILITIES DEPARTMENT

SEWER SERVICE

SCALE: NONE
REVISED: JANUARY 2010
DRAWN BY: R. VAN NESS
APPROVED BY: D. WHITEHEAD

SS-4

DETAIL #2



NOTES:

1) INSTALL ROUND NON-TRAFFIC TYPE CONCRETE VALVE BOX & COVER MARKED "SEWER" IN A NON - TRAFFIC AREA . INSTALL METAL LID MARKED "SEWER" IN AREAS WITH POTENTIAL TRAFFIC. A GS BOX SHALL BE INSTALLED IN TRAFFIC AREAS.
2) THREE FOOT VCP STUB SHALL BE INSTALLED UPSTREAM OF CLEANOUT.
3) CLEANOUT BOX TO BE FREE OF ALL DIRT AND READY AT TIME OF PRE-FINAL INSPECTION.
4) SERVICES OVER 100' LONG AND COMMERCIAL SERVICES REQUIRE A MIN. 6" CLEANOUT WITH 6" FITTINGS. THE CLEANOUT BOX SHALL BE CONSTRUCTED PER W-16.
5) CONNECTION TO MAIN SHALL BE WITH A FACTORY WYE OR AT A MANHOLE.
6) THE CLEANOUT RISER SHALL BE INSTALLED 12" ABOVE GRADE PRIOR TO BUILDING CONSTRUCTION.
7) BUILDING CONTRACTOR SHALL SET BOX TO FINISH GRADE AND INSTALL AN ABS PLUG SET 6" BELOW THE SURFACE PRIOR TO BUILDING PRE-FINAL.
8) BACKWATER VALVE IF REQUIRED SHALL BE INSTALLED BY THE BUILDING CONTRACTOR

DERRICK WHITEHEAD
ENVIRONMENTAL UTILITIES DIRECTOR

PUBLIC

PRIVATE

CITY OF ROSEVILLE CALIFORNIA

ENVIRONMENTAL UTILITIES DEPARTMENT

SEWER SERVICE CLEANOUT

SCALE: NONE
REVISED: JANUARY 2010
DRAWN BY: R. VAN NESS
APPROVED BY: D. WHITEHEAD

SS-5

Development Advisory Committee
Staff Report – April 10, 2013

Contact: Chris Robles
crobles@roseville.ca.us
(916) 774-5421

Agenda Item #7: Update from the City Manager's Office

Discussion

a. **Weekly Building Report**
Attached for the Committee is the Weekly Building Report (Attachment 1) quantifying the permit activity for the week and year to date with a comparison for the same time last year.

b. **CCI inflationary adjustment and planned implementation**
On May 16, 2012, the City Council approved an ordinance suspending the annual Construction Cost Index (ENR CCI) inflationary fee adjustments applying to several development impact fees with a provision for the inflationary adjustment to be reinstated July 1, 2013. The rate of the inflationary adjustment is measured in May based on the preceding year. Staff will report out in May to the Committee this year's inflationary adjustment that will be effective on July 1, 2013.

By ordinance Roseville calculates its inflationary adjustment by averaging the 20 city average with San Francisco. The 20 cities average is 2.3% and the SF average is 0.0% resulting The ENR CCI 20 cities average/SF average for the period April 2012 to April 2013 is 1.015%.

c. **Senate Bill 7 – Proposed Prevailing Wage law**
Attached for the Committee information is an opposition letter from the League of California Cities opposing Senate Bill 7 which proposes to eliminate the Charter City exemption from prevailing wage law. Also attached is the analysis of SB 7 by the Senate Committee on Labor and Industrial Relations.

d. **Electric Backbone Fee Nexus Study Update**
On January 16, 2013, the Roseville City Council approved a contract with Utility Financial Solutions to review the Electric Backbone Mitigation Fee, analyze Electric infrastructure requirements, and propose infrastructure cost recovery methods. Electric staff has been providing capital investment and utility planning data to UFS to assist in their analysis. A draft report from the consultant on the future electric infrastructure investment costs and different electric industry approaches to recovering those costs is expected by April 2013. After discussions between UFS, Electric, and City management staff on Fee options, a report on the Backbone Fee Review Project is expected to be presented to the DAC in early summer, with subsequent reports to the RPUC and City Council later in 2013, and implementation of the Fee changes (if any) in 2014.

e. **Automation (permit software) implementation update**
The project is progressing well and is on budget. The scheduled go live date for the new system continues to be July 1, 2013.

Attachments:
1. Weekly Building Report
2. League of California Cities letter
3. Senate Committee on Labor and Industrial Relations

The Weekly Building Report

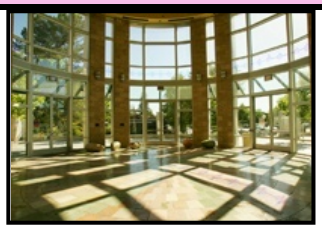
Applied **Building Permits**	**3/22 - 3/29**	**2012**	**2013 YTD**
New Commercial	0	4	3
Hybrid Commercial	0	14	7
Multi Family	0	0	0
Tenant Improvements	5	115	92
SFD	0	42	47
WR SFD	0	63	92
Total SFD & WR SFD ***Applied***	0	105	139
All Other Misc Permits	66	1000	1058
Total Permits	71	1238	1299

Issued **Building Permits**	**3/22 - 3/29**	**2012**	**2013 YTD**
New Commercial	0	2	2
Hybrid Commercial	0	8	2
Multi Family	0	0	0
Tenant Improvements	5	116	95
SFD	3	52	47
WR SFD	12	69	103
Total SFD & WR SFD ***Issued***	15	121	**150**
All Other Misc Permits	84	756	711
Total Permits	104	1003	960

Fee Deferral Applications	**To Date**
SFD Fee Deferrals ***ISSUED***	187
SFD Fee Deferrals ***Applied but not reviewed to date*** (17 non-deferred)	3
SFD Fee Deferrals ***Approved but not Issued*** (12 non-deferred)	16
SFD Fee Deferrals ***FINALED***	1849

Customers At Permit Center	**3/22 - 3/29**	**YTD**
	179	3045

Your Permit Center



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

March 5, 2012

The Honorable Darrell Steinberg
Senate President Pro Tem
State Capitol, Room 205
Sacramento, CA 95814

RE: **Opposition to SB 7 (Steinberg) Charter Cities: Unlawful Conditions on State Funding**

Dear Senator Steinberg:

I regret to inform you of the opposition of the League of California Cities to your SB 7, which would prohibit a charter city from receiving or using state funding or financial assistance for a construction project if the city has a voter-approved charter provision or ordinance that authorizes a contractor to not comply with state prevailing wage requirements on local construction projects funded by (non-state) city funds.

The League's opposition to this measure rests on the fundamental principle of local control and the constitutional limits on state authority over charter cities. Moreover, this measure would establish a disturbing framework for future state micromanaging of charter city laws and policies by the tactic of withholding state funds as political leverage to attempt to force changes to city charters and ordinances.

Just eight months ago, citing a provision in the state constitution that traces *"back more than 100 years,"* [1] the California Supreme Court held that (1) the construction of a city-operated facility for the benefit of the city's inhabitants with city funds is *"quintessentially a municipal affair,"* and (2) the state cannot require a charter city to exercise its purchasing power based upon *"some indirect effect* [of the charter city's purchasing power] *on the regional and state economies." State Building and Construction Trades Council of California, AFL-CIO v. City of Vista (2012) 54 Cal. 4th 547.*

This measure tries to leverage a different outcome than the Court's ruling by withholding vital state construction funds, derived from all of the state's taxpayers, from charter cities that fail to adopt prevailing wage requirements for projects they build with *local* funds. Such a condition is unlawful because the state is seeking to accomplish indirectly what it cannot achieve directly.

[1] Section 5 of Article XI of the State Constitution authorizes charter cities to make and enforce all ordinances and regulations related to municipal affairs, and that those local laws and regulations, with respect to municipal affairs, "*shall supersede all laws inconsistent therewith."*

Senate Committee on Labor and Industrial Relations
Ted W. Lieu, Chair

Date of Hearing: March 13, 2013
Consultant: Alma Perez

2013-2014 Regular Session
Fiscal: Yes
Urgency: No

Bill No: SB 7
Author: Steinberg and Cannella
As Introduced/Amended: February 19, 2013

SUBJECT

Public works: charter cities

KEY ISSUE

Should the Legislature prohibit a charter city from receiving/using state funds for a construction project if the city has a provision or ordinance authorizing a contractor *to not comply* with prevailing wage requirements on any public works contract?

ANALYSIS

Existing law defines the term "public works" to include, among other things, construction, alteration, demolition, installation or repair work done under contract and *paid for in whole or in part out of public funds.*

Existing law also defines "public works" as street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not. [Labor Code §1720(a)(3)]

Under existing law, "paid for in whole or in part out of public funds" means, among other things, the following:

1. The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.
2. The performance of construction work by the state or political subdivision in execution of the project.
3. Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.
4. Money loaned by the state or political subdivision that is to be repaid on a contingent basis.

Existing law requires all employees who work on public works projects costing $1,000 or more to be paid the **general prevailing rate of per diem wages** and the general prevailing rate for holiday and overtime work for the specific location where the public work is to be performed (Labor Code §1771) This requirement is applicable to work performed under contract and it does not apply to work carried out by a public agency with its own forces. Existing law provides certain exemptions to the payment of prevailing wage that includes, among others, private residential projects. The Director of the Department of Industrial Relations (DIR) is tasked with the responsibility of determining the general prevailing rate of per diem wages in accordance with specified standards. (Labor Code §1773)

The California Constitution grants cities the ability to become charter cities. A county or city may adopt a charter by majority vote of its electors voting on the question. Under existing law, a charter city may make and enforce all ordinances and regulations in respect to ***"municipal affairs***," subject only to restrictions and limitations provided in their charters and in respect to other matters they are subject to general laws. [CA Const. art. XI §3 & 5]

This Bill would prohibit a charter city from receiving or using state funding or financial assistance for a construction project - if the city has a charter provision or ordinance that authorizes a contractor to not comply with prevailing wage requirements on any public works contract.

Specifically, this bill would:

- Provide that a charter city includes any agency of a charter city and any entity controlled by a charter city whose contracts would be subject to this article.

- Specify that it does not apply to contracts awarded prior to January 1, 2014.

- Prohibit receipt or use of state funds for a construction project if the city has awarded, *within the current or prior two years*, a contract without requiring compliance of all prevailing wage requirements.

- Specify that this prohibition does not apply [and state funds may be used] if a charter city:
    - Has a provision or local ordinance that requires the payment of prevailing wage.

    - Has adopted a local prevailing wage ordinance that includes requirements that are equal to or greater than the state's existing prevailing wage provisions and that do not authorize a contractor to not comply with such.

- Exclude contracts for projects costing $25,000 or less when the project is for construction work, or projects of $15,000 or less when the project is for alteration, demolition, repair, or maintenance work.

- Define what is included under "state funding and financial assistance", and would exempt from its definition, tax revenues that charter cities are entitled to receive without conditions under the Constitution.

- Require the Director of the Department of Industrial Relations to maintain a list of charter cities that may receive and use state funding for their construction projects.

- Lastly, this bill includes several related legislative findings and declarations.

COMMENTS

1. A Brief History of State and Federal Prevailing Wage Law:

   State prevailing wage laws vary from state to state, but do share a common history that predates federal prevailing wage law. Many of these state laws were enacted as part of Progressive Era reform efforts to improve working conditions at the end of the 19th and the beginning of the 20th centuries. Between 1891 and 1923, seven states adopted prevailing wage laws that required payment of specified hourly wages on government construction projects, the State of Kansas being the first in 1891.

   Eighteen additional states (including California in 1931) and the federal government adopted prevailing wage laws during the Great Depression of the 1930s amidst concern that acceptance of the low bid, a common requirement of government contracting for public projects, would reduce local wages and disrupt the local economies. This was particularly in the depths of the Great Depression, where, for some local economies, the government had become the primary purchaser of construction products and a significant employer.

   In general, the proponents of prevailing wage legislation wanted to prevent the government from using its purchasing power to undermine the wages of its citizens. It was believed that the government should set an example, by paying the wages prevailing in a locality for each occupation hired by government contractors to build public projects. Even today, prevailing wage laws are generally meant to ensure that wages commonly paid to construction workers in a particular region will determine the minimum wage paid to the same type of workers employed on publicly funded construction projects.

2. Brief Background on Charter Cities:

   The California Constitution gives cities the power to become charter cities. For a charter city, the charter adopted constitutes state law and has the force of legislative enactment. Changes to a charter can originate in three ways: a charter commission; the governing body of the city; or by petition of the voters. A charter is adopted only with a majority vote of the city's voters. The California Constitution authorizes a charter city to exercise plenary authority over "municipal affairs," while a general law city is subject to the general laws passed by the Legislature.

Whether a given activity is a municipal affair over which a city has sovereignty, or a statewide concern, over which the legislature has authority, is a determination that has been the legal question of many cases before the court. The California Constitution does not define "municipal affair" and thus, the determination of whether an activity is a municipal affair or statewide concern is done on a case-by-case basis. The Constitution does, however, set out a list of four core categories that are presumed to be municipal affairs. Article XI, Section 5(b) of the California Constitution states:

> (b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees. [CA Const. art. XI §5(b)]

3. <u>Court Decisions on Charter Cities and Prevailing Wage:</u>

Determining whether the payment of prevailing wages is a municipal affair subject to charter sovereignty versus an issue of statewide concern, has been the subject of court cases for many decades. Historically, charter cities have been found to not be bound by state prevailing wage requirements as long as the project is a "municipal affair," and not funded by state or federal grants requiring the payment of prevailing wage. Such was the case in *Vial v. City of San Diego* [122 Cal. App. 3d 346, 348 (1981)], in which Donald Vial (Director of the Department of Industrial Relations) and Labor Commissioner James L. Quillin petitioned for a writ of mandate to compel the City of San Diego to comply with the state prevailing wage laws. The superior court denied the petition and the department appeals.

In a more recent case, *State Building & Construction Trades Council of California v. City of Vista, 173 Cal. App. 4th 567, 93 Cal. Rptr. 3d 95, 2009 Cal. App. LEXIS 627 (Cal. App. 4th Dist., 2009)*, the issue was again at question. The case involved two contracts to design and build fire stations with local public funds. The State Building & Construction Trades Council contends that the subject matter of the state's prevailing wage law is a "statewide concern" over which the state has primary legislative authority requiring the payment of prevailing wages. The City responded that the matter was a municipal affair and therefore governed by its local ordinances. The court agreed with the city.

In a 5-2 decision, the California Supreme Court affirmed the right of charter cities to opt-out of the state's prevailing wage law pursuant to California's Constitution and stated, "Here, we reaffirm our view — first expressed 80 years ago [see *City of Pasadena v. Charleville* (1932) 215 Cal. 384, 389 (*Charleville*)] — that the wage levels of contract workers constructing locally funded public works are a municipal affair (that is, exempt from state regulation), and

that these wage levels are not a statewide concern (that is, subject to state legislative control)." However, the court went further in questioning the existence of an "actual conflict" between state law and charter city law and stated the following:

> "This court's 1991 decision in *California Fed. Savings*, *supra*, 54 Cal.3d at pages 16-17, emphasized the importance of determining, as a matter of statutory construction, that **state law actually conflicts with local law** before proceeding to the difficult state constitutional question of which law governs a particular matter."

According to the court, in this case, no party was contending that California' prevailing wage law exempts charter cities from its scope. They state that indeed, the prevailing wage law makes express reference to charter cities, defining "public works" to include "street, sewer, or other improvement work . . . of any political subdivision or district [of the state], *whether the political subdivision or district operates under a freeholder's charter or not*." ([Labor Code, §1720(a)(3)]; and §1720(a)(1) [applying the law to any construction work "done under contract and paid for . . . out of public funds"].) According to the court, because the state's prevailing wage law does not exempt charter cities, and because Vista's ordinance prohibits compliance with that law, they concluded that an actual conflict exists between state law and Vista's ordinance.

4. <u>Need for this bill?</u>

As of July 1, 2011, there were 482 incorporated cities in California. Of California's 482 cities, 121 of them are charter cities.

Although California's prevailing wage law has been in the books since 1931, the question of whether something is a municipal affair versus one of statewide concern continues to spark much heated discussion. The many cases that have been before the courts on this issue are a clear indication of the need for clarity on what are matters of statewide concern - warranting the payment of prevailing wage.

This bill, however, does not focus on the issue of clarity for what is or isn't a "municipal affair," since that is a matter that would require amending the California Constitution, but it does focus on providing clarity on how state funds can be used by charter cities. This bill would prohibit a charter city from receiving or using state funding for a construction project if the city has a charter provision or ordinance that authorizes a contractor not to comply with prevailing wage requirements on any public works contract.

Current law has similar limitation on the use of state funds under Public Contract Code §2502 and 2503. Under these existing conditions, if a charter provision, initiative, or ordinance prohibits, limits, or constrains the governing board's authority or discretion to adopt a project labor agreement, as specified, or prohibits the governing board from considering whether to allocate funds to a city-funded project covered by such an agreement, then the state funding or financial assistance shall not be used to support any construction projects awarded by the city.

5. Proponent Arguments:

According to proponents of the measure, the prevailing wage law is critical to the delivery of a quality construction product because it encourages contractors to perform the work with an efficient, skilled and streamlined workforce, ultimately creating long-term cost-savings to the taxpayers. Proponents argue that this legislation is designed to provide incentives to charter cities to follow the prevailing wage law on municipal projects and thereby deter the underground economy and low-road construction models driven by unscrupulous contractors.

Proponents argue that a long list of academic studies and public policy research has confirmed that the prevailing wage continues to be a useful and effective driver for local economic growth. They argue that in charter cities with prevailing wage exemptions, new developments have failed to generate quality jobs and, in fact, these cities have not seen the cost savings promised by prevailing wage exemptions and instead have had their construction costs go up due to substandard construction performed by under-qualified contractors. Further, proponents argue that removing prevailing wage protections pushes workers into requiring more subsidies in healthcare, housing and other social services.

According to proponents, this bill does not change the outcome of State Building and Construction Trades Council v. City of Vista; instead it helps protect other local governments, including all general law cities and the majority of charter cities, from the practices of a minority group of charter cities that wish to reward their allies with prevailing wage exemptions that consequently pass on the costs of healthcare and apprenticeship training to the surrounding cities. They argue that cities that follow the prevailing wage law are furthering a policy that benefits the State, not just their own residents, so they are more deserving of state funds for their construction projects.

Proponents argue that this bill would not require charter cities to follow the prevailing wage law and, therefore does not prevent charter cities from having their own policies. As such, there is no conflict between this bill and the constitutional authority of charter cities. Instead, they argue, this bill will reward the majority of cities that currently follow the state prevailing wage law.

6. Opponent Arguments:

According to opponents of the measure, their opposition rests on the fundamental principle of local control and the constitutional limits on state authority over charter cities, as recently upheld by the California Supreme Court in the Vista decision. They argue that in Vista, the Court firmly protected the right of charter cities to determine whether they should pay prevailing wages when contracting for public works projects paid for with local funds.

Opponents argue that this measure conflicts with Vista by attempting, via the Legislature, to leverage a different outcome than the Court's ruling by withholding vital state construction funds – derived from all of the state's taxpayers – from charter cities that fail to adopt prevailing wage requirements for projects built with local funds. According to opponents, while prevailing wage is the issue raised in this bill, the threat posed by the measure to local charter authority is much broader. They argue that if this framework is authorized, there will

be no end to efforts to leverage compliance with other state edicts, while ignoring the constitutional legitimacy of the doctrine of municipal affairs.

Some cities writing in opposition argue that they already require the payment of prevailing wages for city funded projects, but fear that this legislative tactic could be used in the future to erode other local flexibility that is important to their communities. Additionally, opponents argue that by saddling local taxpayers with higher costs, the state will guarantee less construction will take place on locally funded projects. Overall, opponents argue that whether a charter city pays prevailing wage with local funds is up to each city and not the Legislature.

7. Prior Legislation:

SB 829 (Rubio) of 2012: Chaptered
SB 829 would provide that if a charter provision, initiative, or ordinance of a charter city prohibits, limits, or constrains in any way the governing board's authority or discretion to adopt, require, or utilize a project labor agreement (PLA) that includes specified taxpayer protection provisions for some or all of the construction projects to be awarded by the city, state funding or financial assistance may not be used to support any construction projects awarded by the city, as specified.

SB 922 (Steinberg) of 2011: Chaptered
SB 922 would authorize a public entity to use, enter into, or require contractors to enter into, a PLA for a construction project, if the agreement includes specified taxpayer protection provisions. This bill would also provide that if a charter provision, initiative, or ordinance prohibits the governing board's consideration of a PLA for a project to be awarded by the city, or prohibits consideration whether to allocate funds to a city-funded project covered by such an agreement, then state funding or financial assistance may not be used to support that project, as specified.

SUPPORT

State Building and Construction Trades Council of California, AFL-CIO (Sponsor)
Bricklayers and Allied Craftworkers, AFL-CIO
California Chapters of the National Contractors Association
California Labor Federation
California Legislative Conference of the Plumbing, Heating and Piping Industry
California Sheet Metal and Air Conditioning Contractors National Association
California State Council of Laborers
Carpet Linoleum & Soft Tile Workers Local Union No. 12
Cement Masons Local Union No. 500
Contra Costa Building and Construction Trades Council
District Council 16 Local Union 294
Fresno, Madera, Kings and Tulare Counties Building & Construction Trades Council, AFL-CIO
Glaziers, Architectural Metal and Glass Workers Union, Local 718, of San Francisco
Imperial County Building Trades and 16 Affiliate Unions

International Brotherhood Electrical Workers
International Brotherhood of Electrical Workers Local Union 234
International Brotherhood of Electrical Workers Local Union No. 340
International Union of Painters and Allied Trades Local Union 376
Kern, Inyo and Mono Counties Building and Constructions Trades Council
Los Angeles/Orange Counties Building and Construction Trades Council
Northern California Carpenters Regional Council
Painters & Allied Trades District Council 36
Painters & Allied Trades Local # 3
Painters & Drywall Finishers Local 741 District Council 16
Painters & Drywall Finishers Local Union 913
Painters and Drywall Finishers Local 83
Plaster Tenders of Southern California Local Union 1414
Plumbers & Steamfitters Local Union # 230
Plumbers, Steamfitters and Refrigeration Fitters Local Union # 467
San Diego County Building & Construction Trades Council, AFL-CIO
San Mateo County Building & Construction Trades Council
Santa Clara & San Benito Counties Building & Construction Trades Council
Sheet Metal, Air, Rail, Transportation Workers Local Union 105
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry Underground Utility/Landscape Local 355
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States Local Union 114
Ventura County Plumbers and Pipefitters local # 484

OPPOSITION

Air Conditioning Trade Association
Associated Builders and Contractors of California
League of California Cities
Plumbing-Heating-Cooling Contractors Association of California
The City of Arcadia
The City of Cerritos
The City of Folsom
The City of Glendora
The City of Grass Valley
The City of Indian Wells
The City of Norco
The City of Petaluma
The City of Pico Rivera
The City of Roseville
The City of Selma
The City of Shafter
The City of Solvang
The City of Torrance
The City of Wasco

Western Electrical Contractors Association
Western Electrical Contractors Association

This measure also runs counter to recent trends embraced by the Legislature and Governor to devolve authority to local agencies, including public safety realignment and the Governor's articulation of the principle of "subsidiarity."

While prevailing wages is the issue raised, the threat posed by this measure to local charter authority is much broader. If this framework is authorized, there will be no end to efforts to leverage compliance with other state edicts, while ignoring the constitutional legitimacy of the doctrine of municipal affairs.

If you have any questions, or if I can be of any assistance, please call me at (916) 658-8222.

Sincerely,

Daniel Carrigg
Legislative Director

Cc: Chair and Members, Senate Committee on Labor and Industrial Relations
Senator Anthony Canella
Gareth Elliott, Legislative Affairs Secretary, Office of Governor Jerry Brown
Alma Perez, Consultant, Senate Committee on Labor and Industrial Relations