



# CITY COUNCIL Agenda

Council Chamber  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008

June 25, 2024, 5 p.m.

## Welcome to Your City Council Meeting

We welcome your interest and involvement in the city's legislative process. This agenda includes information about topics coming before the City Council and the action recommended by city staff. You can read about each topic in the staff reports, which are available on the city website and in the Office of the City Clerk. The City Clerk is also available to answer any questions you have about City Council meeting procedures.

## How to Watch

### In Person



City Council Chamber  
1200 Carlsbad Village Drive

### On TV



Watch the city's cable channel  
Spectrum 24 and AT&T U-verse 99

### Online



Watch the livestream at  
[carlsbadca.gov/watch](https://carlsbadca.gov/watch)

## How to Participate

If you would like to provide comments to the City Council, please:

- Fill out a speaker request form, located in the foyer.
- Submit the form to the City Clerk before the item begins.
- When it's your turn, the City Clerk will call your name and invite you to the podium.
- For non-agenda public comment, speakers must confine their remarks to matters within the City Council's subject matter jurisdiction.
- For public comment on agenda items, speakers must confine their remarks to the question or matter under consideration.
- Speakers have three minutes, unless the presiding officer (usually the Mayor) changes that time.
- You may not give your time to another person, but can create a group. A group must select a single speaker as long as three other members of your group are present. All forms must be submitted to the City Clerk before the item begins and will only be accepted for items listed on the agenda (not for general public comment at the beginning of the meeting). Group representatives have 10 minutes unless that time is changed by the presiding officer or the City Council.
- Failure to comply with the rules for public participation is disruptive conduct. Continuing disruptive conduct after being asked by the presiding official to cease may result in removal from the meeting.

## Reasonable Accommodations

Reasonable Accommodations Persons with a disability may request an agenda packet in appropriate alternative formats as required by the Americans with Disabilities Act of 1990. Reasonable accommodations and auxiliary aids will be provided to effectively allow participation in the meeting. Please contact the City Manager's Office at 442-339-2821 (voice), 711 (free relay service for TTY users), 760-720-9461 (fax) or [manager@carlsbadca.gov](mailto:manager@carlsbadca.gov) by noon on the Monday before the meeting to make arrangements. City staff will respond to requests by noon on Tuesday, the day of the meeting, and will seek to resolve requests before the start of the meeting in order to maximize accessibility.

**More information about City Council meeting procedures can be found at the end of this agenda and in the Carlsbad Municipal Code chapter 1.20.**

*The City Council also sits as the Carlsbad Municipal Water District Board, Public Financing Authority Board, Community Development Commission and Successor Agency to the Redevelopment Agency. When considering items presented to the Carlsbad Municipal Water District Board, each member receives an additional \$100 per meeting (max \$300/month). When considering items presented to the Community Development Commission each member receives an additional \$75 per meeting (max \$150/month).*

**CALL TO ORDER:**

**ROLL CALL:**

**ANNOUNCEMENT OF CONCURRENT MEETINGS:** City Council is serving as the Carlsbad Municipal Water District Board of Directors on Public Hearing Item No. 11 and Departmental and City Manager Report Item No. 15.

**PLEDGE OF ALLEGIANCE:**

**APPROVAL OF MINUTES:** None.

**PRESENTATIONS:**

Recognition of a donation from the Carlsbad Library & Arts Foundation

**PUBLIC REPORT OF ANY ACTION TAKEN IN CLOSED SESSION:**

**PUBLIC COMMENT:** *The Brown Act allows any member of the public to comment on items not on the agenda, provided remarks are confined to matters within the City Council's subject matter jurisdiction. Please treat others with courtesy, civility, and respect. Members of the public may participate in the meeting by submitting comments as provided on the front page of this agenda. The City Council will receive comments as requested up to a total of 15 minutes in the beginning of the meeting. All other non-agenda public comments will be heard at the end of the meeting. In conformance with the Brown Act, no action can occur on these items.*

**CONSENT CALENDAR:** *The items listed under Consent Calendar are considered routine and will be enacted by one motion as listed below. There will be no separate discussion on these items prior to the time the Council votes on the motion unless members of the Council, the City Manager, or the public request specific items be discussed and/or removed from the Consent Calendar for separate action.*

1. **DONATION FROM THE CARLSBAD LIBRARY & ARTS FOUNDATION** – Adoption of a resolution accepting a donation of \$165,000 from the Carlsbad Library & Arts Foundation to the City of Carlsbad's Library & Cultural Arts Department. (Staff contact: Suzanne Smithson, Community Services Department)
2. **GRANT AGREEMENT WITH THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND AGREEMENTS WITH COMMUNITY RESOURCE CENTER FOR HOMELESS SERVICES** – 1) Adoption of a resolution authorizing the City Manager to execute a grant agreement in the amount of \$436,090 and related program documents with the Department of Housing and Urban Development's Continuum of Care Program; and  
2) Adoption of a resolution approving a professional services agreement in the amount of \$375,755 with Community Resource Center to provide supportive housing services; and  
3) Adoption of a resolution approving a professional services agreement in the amount of \$140,000 with Community Resource Center to provide employment and benefits services to assist individuals and households experiencing homelessness in the City of Carlsbad. (Staff contact: Chris Shilling, Community Services Department)
3. **DISESTABLISHING THE CARLSBAD GOLF LODGING BUSINESS IMPROVEMENT DISTRICT UNDER THE PARKING AND BUSINESS IMPROVEMENT AREA LAW OF 1989** – Adoption of a resolution declaring its intention to repeal Carlsbad Municipal Code Chapter 3.38 and disestablish the Carlsbad Golf Lodging Business Improvement District established in 2012 and fixing the time and place of a public hearing. (Staff contact: Matt Sanford, Administrative Services Department)

4. ADVERTISE FOR BIDS FOR THE FLEET FUEL ISLAND UPGRADE PROJECT (CIP PROJECT NO. 4747)  
Adoption of a resolution approving the plans, specifications and contract documents and authorizing the City Clerk to advertise for bids for the Fleet Fuel Island Upgrade Project. (Staff contact: Steven Stewart, Public Works Department)
5. FIFTH AMENDED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM SAN DIEGO REGIONAL STORMWATER COPERMITTEES MEMORANDUM OF UNDERSTANDING 2024 – Adoption of a resolution authorizing the Mayor to execute the fifth amended National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding 2024. (Staff contact: Tim Murphy and James Wood, Public Works Department)
6. MEMORANDUM OF UNDERSTANDING BETWEEN THE VALLECITOS WATER DISTRICT AND THE CITY OF CARLSBAD FOR OPERATION AND MAINTENANCE OF FIRE HYDRANTS – Adoption of a resolution approving a memorandum of understanding between the Vallecitos Water District and the City of Carlsbad for operation and maintenance of fire hydrants within the city limits and within the Vallecitos Water District service area. (Staff contact: Dave Padilla and Eric Sanders, Public Works Department)
7. CONTINUATION OF PROCLAMATION OF A STORM-RELATED LOCAL EMERGENCY FOR REPAIR OF THE SLOPE BETWEEN EL CAMINO REAL AND TRIESTE DRIVE (CIP PROJECT NO. 6107) – Adoption of a resolution continuing the proclamation of a storm-related local emergency for repair of the slope between El Camino Real and Trieste Drive and authorizing additional appropriations in the amount of \$453,000 for the Trieste Drive Slope Repair, Capital Improvement Program Project No. 6107. (Staff contact: Tom Frank, Public Works Department)

#### **BOARD AND COMMISSION MEMBER APPOINTMENTS:**

8. DISTRICT 4 APPOINTMENT OF ONE MEMBER TO THE PLANNING COMMISSION – Adoption of a resolution appointing one member to the Planning Commission. (Staff contact: Tammy McMinn, City Clerk Department)

**City Manager’s Recommendation:** Adopt the resolution.

**ORDINANCES FOR INTRODUCTION:** None.

**ORDINANCES FOR ADOPTION:** None.

#### **PUBLIC HEARING:**

9. VARIANCE AND COASTAL DEVELOPMENT PERMIT FOR UNPERMITTED RETAINING WALLS AT 939 BEGONIA COURT (V 2023-0002/CDP 2023-0016) – 1) Hold a public hearing; and  
2) Adoption of a resolution denying a variance and a costal development permit application to allow unpermitted retaining walls that exceed the standards of the Hillside Development Regulations on property located at 939 Begonia Court within the Mello II Segment of the city’s Local Coastal Program and Local Facilities Management Zone Four (Case Name: Begonia Court Retaining Wall; Case No.: CDP 2023-0016/ V 2023-0002 (DEV 2020-0134)). (Staff contact: Kyle Van Leeuwen, Community Development Department)

**City Manager’s Recommendation:** Take public input, close the public hearing and adopt the resolution.

10. FISCAL YEAR 2022-23 GROWTH MANAGEMENT PROGRAM MONITORING REPORT – 1) Hold a public hearing; and  
2) Adoption of a resolution accepting the Fiscal Year 2022-23 Growth Management Program Monitoring Report and finding that it satisfies the city’s monitoring requirements. (Staff contact: Jennifer Jesser, Community Services Department)

**City Manager’s Recommendation:** Take public input, close the public hearing and adopt the resolution.

11. CODIFYING ORDINANCES OF THE CARLSBAD MUNICIPAL WATER DISTRICT CODE – 1) Hold a public hearing; and  
2) Introduction of a Carlsbad Municipal Water District Board of Directors ordinance codifying, restating and amending Ordinances No. 1 through No. 48, except any ordinance previously repealed of the Carlsbad Municipal Water District Code, and  
3) Adoption of a Carlsbad Municipal Water District Board of Directors resolution to repeal the Administrative Code for the Carlsbad Municipal Water District. (Staff contact: Shoshana Aguilar, Public Works Department and Gina Herrera, City Attorney Department)

**City Manager’s Recommendation:** Take public input, close the public hearing, introduce the ordinance and adopt the resolution.

**DEPARTMENTAL AND CITY MANAGER REPORTS:**

12. NORTH COUNTY TRANSIT DISTRICT UPDATE – Receive an update from North County Transit District Chief Executive Officer Shawn Donaghy and provide feedback. (Staff contact: Jason Haber, City Manager Department)

**City Manager’s Recommendation:** Receive the update.

13. HOMELESSNESS ACTION PLAN FISCAL YEAR 2023-24 SEMI-ANNUAL REPORT AND 2024 POINT-IN-TIME COUNT DATA – Receive a report and provide direction to staff as necessary on the semi-annual Homelessness Action Plan data and the latest 2024 Point-in-Time Count results. (Staff contact: Mandy Mills and Chris Shilling, Community Services Department)

**City Manager’s Recommendation:** Receive the report and provide direction as necessary.

14. MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CARLSBAD, THE SAN DIEGO ASSOCIATION OF GOVERNMENTS, AND THE NORTH COUNTY TRANSIT DISTRICT REGARDING THE PURSUIT OF GRANT FUNDING FOR THE CARLSBAD VILLAGE RAILROAD TRENCH PROJECT – Adoption of a resolution authorizing the City Manager to execute a memorandum of understanding between the San Diego Association of Governments, the City of Carlsbad and the North County Transit District regarding the pursuit of grant funding for the Carlsbad Village Railroad Trench Project. (Staff contact: Jason Haber, City Manager Department)

**City Manager’s Recommendation:** Adopt the resolution.

15. PROPOSAL FROM THE SAN DIEGO COUNTY WATER AUTHORITY FOR PREPAYMENT OF FIXED CHARGES

Receive a report on the proposal from the San Diego County Water Authority for prepayment of fixed charges and provide direction to staff on how to proceed with the proposal. (Staff contact: Dave Padilla and Shoshana Aguilar, Public Works Department)

**City Manager’s Recommendation:** Receive the report and provide direction to staff.

**COUNCIL COMMENTARY AND REQUESTS FOR CONSIDERATION OF MATTERS:** *This portion of the agenda is for the City Council Members to make brief announcements, brief reports of their activities and requests for future agenda items.*

**City Council Regional Assignments (Revised 12/12/23)**

- |   |  |
|---|--|
| <b>Keith Blackburn</b><br><b>Mayor</b>                          | Buena Vista Lagoon JPC<br>Chamber of Commerce Liaison (alternate)<br>Encina Joint Powers JAC<br>Encina Wastewater Authority Board of Directors<br>Economic Development Subcommittee<br>SANDAG Board of Directors (2 <sup>nd</sup> alternate)<br>SANDAG Shoreline Preservation Work Group (alternate)   |
| <b>Priya Bhat-Patel</b><br><b>Mayor Pro Tem – District 3</b>    | City/School Committee<br>Clean Energy Alliance JPA<br>Economic Development Subcommittee<br>League of California Cities – SD Division (alternate)<br>North County Transit District<br>SANDAG Board of Directors (1 <sup>st</sup> alternate)   |
| <b>Melanie Burkholder</b><br><b>Council Member – District 1</b> | City Council Legislative Subcommittee<br>North County Dispatch Joint Powers Authority (alternate)<br>SANDAG Board of Directors   |
| <b>Teresa Acosta</b><br><b>Council Member – District 4</b>      | Chamber of Commerce Liaison<br>City Council Legislative Subcommittee<br>City/School Committee<br>Clean Energy Alliance JPA (alternate)<br>Encina Joint Powers JAC (alternate)<br>Encina Wastewater Authority Board of Directors (alternate)<br>League of California Cities – SD Division<br>North County Dispatch Joint Powers Authority<br>San Diego County Water Authority |
| <b>Carolyn Luna</b><br><b>Council Member – District 2</b>       | Buena Vista Lagoon JPC<br>Encina Joint Powers JAC<br>Encina Wastewater Authority Board of Directors<br>North County Transit District (alternate)<br>SANDAG Shoreline Preservation Work Group   |

**PUBLIC COMMENT:** Continuation of the Public Comments

*This portion of the agenda is set aside for continuation of public comments, if necessary, due to exceeding the total time allotted in the first public comments section. In conformance with the Brown Act, no Council action can occur on these items.*

**ANNOUNCEMENTS:**

This section of the Agenda is designated for announcements to advise the community regarding events that Members of the City Council have been invited to, and may participate in.

### **CITY MANAGER COMMENTS:**

### **CITY ATTORNEY COMMENTS:**

### **CITY CLERK COMMENTS:**

### **ADJOURNMENT:**

## **City Council Meeting Procedures *(continued from page 1)***

### **Written Materials**

Written materials related to the agenda that are submitted to the City Council after the agenda packet has been published will be available for review prior to the meeting during normal business hours at the City Clerk's office, 1200 Carlsbad Village Drive and on the city website. To review these materials during the meeting, please see the City Clerk.

### **Visual Materials**

Visual materials, such as pictures, charts, maps or slides, are allowed for comments on agenda items, not general public comment. Please contact the City Manager's Office at 442-339-2820 or [manager@carlsbadca.gov](mailto:manager@carlsbadca.gov) to make arrangements in advance. All materials must be received by the City Manager's Office no later than noon the day before the meeting. The time spent presenting visual materials is included in the maximum time limit provided to speakers. All materials exhibited to the City Council during the meeting are part of the public record. **Please note that video presentations are not allowed.**

### **Decorum**

All participants are expected to conduct themselves with mutual respect. Loud, boisterous and unruly behavior can interfere with the ability of the City Council to conduct the people's business. That's why it is illegal to disrupt a City Council meeting. Following a warning from the presiding officer, those engaging in disruptive behavior are subject to law enforcement action.

### **City Council Agenda**

The City Council follows a regular order of business that is specified in the Carlsbad Municipal Code. The City Council may only make decisions about topics listed on the agenda.

### **Presentations**

The City Council often recognizes individuals and groups for achievements and contributions to the community. Well-wishers often fill the chamber during presentations to show their support and perhaps get a photo. If you don't see an open seat when you arrive, there will likely be one once the presentations are over.

### **Consent Items**

Consent items are considered routine and may be enacted together by one motion and vote. Any City Council member may remove or "pull" an item from the "consent calendar" for a separate vote. Members of the public may pull an item from the consent calendar by requesting to speak about that item. A speaker request form must be submitted to the clerk prior to the start of the consent portion of the agenda.

### **Public Comment**

Members of the public may speak on any city related item that does not appear on the agenda, provided remarks are confined to matters within the City Council's subject matter jurisdiction. State law prohibits the City Council from taking action on items not listed on the agenda. Comments requiring follow up will be referred to staff and, if appropriate, considered at a future City Council meeting. Members of the public are also welcome to provide comments on agenda items during the portions of the meeting when those items are being discussed, provided remarks are confined to the question or matter under consideration. In both cases, a request to speak form must be submitted to the clerk in advance of that portion of the meeting beginning.

### **Public Hearing**

Certain actions by the City Council require a "public hearing," which is a time within the regular meeting that has been set aside and noticed according to different rules.

## **Departmental Reports**

This part of the agenda is for items that are not considered routine and do not require a public hearing. These items are usually presented to the City Council by city staff and can be informational in nature or require action. The staff report about each item indicates the purpose of the item and whether or not action is requested.

## **Other Reports**

At the end of each meeting, City Council members and the City Manager, City Attorney and City Clerk are given an opportunity to share information. This usually includes reports about recent meetings, regional issues, and recent or upcoming meetings and events.

## **City Council Actions**

### **Resolution**

A resolution is an official statement of City Council policy that directs administrative or legal action or embodies a public City Council statement. A resolution may be introduced and adopted at the same meeting. Once adopted, it remains City Council policy until changed by subsequent City Council resolution.

### **Ordinance**

Ordinances are city laws contained in the Carlsbad Municipal Code. Enacting a new city law or changing an existing one is a two-step process. First, the ordinance is "introduced" by city staff to the City Council. If the City Council votes in favor of the introduction, the ordinance will be placed on a subsequent City Council meeting agenda for "adoption." If the City Council votes to adopt the ordinance, it will usually go into effect 30 days later.

### **Motion**

A motion is used to propose City Council direction related to an item on the agenda. Any City Council member may make a motion. A motion must receive a "second" from another City Council member to be eligible for a City Council vote.



CITY COUNCIL  
**Staff Report**

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Suzanne Smithson, Library & Cultural Arts Director  
 suzanne.smithson@carlsbadca.gov or 442-339-2011

**Subject:** Donation from the Carlsbad Library & Arts Foundation

**Districts:** All

**Recommended Action**

Adopt a resolution accepting a donation of \$165,000 from the Carlsbad Library & Arts Foundation to the City of Carlsbad's Library & Cultural Arts Department.

**Executive Summary**

The Carlsbad Library & Arts Foundation has offered to donate \$165,000 to the City of Carlsbad's Library & Cultural Arts department, as follows:

- \$50,000 from its Robert H. Gartner Endowment Fund to support cultural programming in the Ruby G. Schulman Auditorium at the Carlsbad City Library complex;
- \$100,000 from its Benson Family Endowment Fund to provide funding in part for library materials and in part to support programs and services of the Library Learning Center; and
- \$15,000 from the Cannon Endowment Fund to support programs, exhibits and activities associated with the William D. Cannon Art Gallery.

Carlsbad Municipal Code Section 2.08.100 requires the City Council's approval to accept donations worth more than \$5,000.

**Explanation & Analysis**

The Carlsbad Library & Arts Foundation was launched in 1998 with the mission to seek, cultivate and provide financial support for the City of Carlsbad's library and cultural arts facilities and programs and ensure they serve community needs.

One way the foundation achieves this mission is by attracting and managing major gifts. Through the generosity of community members, endowments have been established to support specific programs and services:



- The Robert H. Gartner endowment was established in 2005 and is designated to support cultural programming in the Ruby G. Schulman Auditorium located at the Carlsbad City Library complex.
- The Benson Family endowment was established in 2014 with a gift from Dr. and Mrs. Russell Benson through the Benson Family Trust, for the use and benefit of the Library Learning Center and for the acquisition of books and other library materials for the libraries.
- The William D. Cannon Art Gallery endowment was established with a gift from Teresa M. Cannon in 1999, to support the activities and programs of the William D. Cannon Art Gallery at the Carlsbad City Library complex.

The funds for fiscal year 2024-25 will be appropriated as follows:

- The Robert H. Gartner Cultural Endowment Fund will support programs presented by the Library & Cultural Arts Department in the Schulman Auditorium including concerts, films, arts lectures, literary events, author visits, Family Open Studios + events, teen talent shows, plays and play readings for the community to enjoy. These funds will also support film and music licenses for the venue.
- The Benson Family Trust will support specific collection development activities and services, including both physical materials and downloadable ebooks and audiobooks. At the Library Learning Center, these funds will provide marketing and promotional materials, support for the Career Online High School Program and bilingual services. Benson Family Trust funds will also support a reconfiguration of the first-floor service desk to better serve the public.
- The Cannon Endowment funds will support exhibition-related special events at the William D. Cannon gallery in the coming fiscal year as well as the gallery's technical needs. The donation will help build connections between the gallery's exhibitions and the Three-Part-Art education programs, which are developed in relation to specific exhibitions.

### **Fiscal Analysis**

The \$165,000 donation will be used as stated above to enhance cultural programming, visual arts activities, and library services through the Library & Cultural Arts department.

Appropriation of these funds is included in the FY 2024-25 adopted budget.

### **Next Steps**

The Library & Cultural Arts department will apply these funds as appropriated in the FY 2024-25 adopted budget to deliver the identified programs and services.

### **Environmental Evaluation**

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

### **Exhibits**

1. City Council resolution

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, ACCEPTING A DONATION OF \$165,000 FROM THE CARLSBAD LIBRARY & ARTS FOUNDATION TO THE CITY OF CARLSBAD’S LIBRARY & CULTURAL ARTS DEPARTMENT

WHEREAS, the City Council of the City of Carlsbad, California, has determined that the Carlsbad Library & Arts Foundation has generously offered to donate \$165,000 to the City of Carlsbad’s Library & Cultural Arts department; and

WHEREAS, acceptance of this donation will enhance cultural programming in the Ruby G. Schulman Auditorium and William D. Cannon Art Gallery, and facilitate the purchase of library materials, support programs and services at the Library Learning Center.

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

1. That the above recitations are true and correct.
2. That the City Council gratefully accepts the donation of \$165,000 from the Carlsbad Library & Arts Foundation.
3. That the Finance Director, Administrative Services, shall appropriate the \$165,000 donation to the Library & Cultural Arts Department FY 2024-25 operating budget to be used to support library programs and services.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
KEITH BLACKBURN, Mayor

\_\_\_\_\_  
SHERRY FREISINGER, City Clerk  
(SEAL)



CITY COUNCIL  
**Staff Report**

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Chris Shilling, Homeless Services Manager  
 chris.shilling@carlsbadca.gov, 442-339-2284

**Subject:** Grant Agreement with the Department of Housing and Urban Development and Agreements with Community Resource Center for Homeless Services

**Districts:** All

**Recommended Actions**

1. Adopt a resolution authorizing the City Manager to execute a grant agreement in the amount of \$436,090 and related program documents with the Department of Housing and Urban Development's Continuum of Care Program; and
2. Adopt a resolution approving a professional services agreement in the amount of \$375,755 with Community Resource Center to provide supportive housing services; and
3. Adopt a resolution approving a professional services agreement in the amount of \$140,000 with Community Resource Center to provide employment and benefits services to assist individuals and households experiencing homelessness in the City of Carlsbad.

**Executive Summary**

The Carlsbad City Council adopted a Homelessness Action Plan on Feb. 7, 2023, to update the city's goal to reduce homelessness and its effects on the local community and outline the programs and initiatives the city plans to carry out over the next five years. The city's Homelessness Action Plan includes high-level policy direction and strategies, with the annual funding needs being identified each year in a funding plan.

On Nov. 14, 2023, the City Council approved the draft Homelessness Action Plan Funding plan recommendations for FY 2024-25. The funding plan included funding for a wide range of services and programs that support the key areas of focus in the action plan. The funding plan for FY 2024-25 provides an increase in funding for services based on new grant funding received from the federal government for supportive services.

The funding plan includes a new grant in the amount of \$436,090 from the Federal Department of Housing and Urban Development's Continuum of Care Program to pair supportive services with the city's Housing Choice Voucher program for people experiencing homelessness. To

accept this funding, the city must execute a grant agreement with HUD. The attached resolution (Exhibit 1) authorizes the City Manager to execute that agreement and corresponding documents with HUD on the city's behalf, subject to approval as to form by the City Attorney's Office. The grant funds will provide \$375,755 for contracted housing supportive services and \$60,315 to pay for housing navigation and administrative costs which will offset city general funds.

Community Resource Center was selected through a competitive bidding process to provide the contracted housing supportive services in the amount of \$375,755.

The city has also contracted with Community Resource Center to provide employment and benefits services since July 2022. The city's current contract with Community Resource Center is in the second year of its two-year term and set to expire on June 30, 2024. The FY 2024-25 Homelessness Action Plan funding plan recommendations included funding to continue this contract in the amount of \$140,000.

The funding plan allocations were included in the FY 2024-25 Operating Budget, which was adopted by the City Council on June 18, 2024, so appropriations for both agreements are already included in the budget.

Both proposed professional services agreements require the City Council's approval under the Carlsbad Municipal Code because the contract amount exceeds \$100,000 per agreement year.

### **Explanation & Analysis**

#### **HUD Continuum of Care funding**

Some individuals and households who are experiencing homelessness exit homelessness by receiving rental assistance to help pay their rent. People exiting homelessness frequently require more support and case management to stabilize as they transition back into housing. Staff have been working to identify new funding sources to provide the necessary supportive services to allow these households to remain stably housed. In Aug. 2023, staff applied for HUD Continuum of Care Program funding to pair supportive services with rental assistance. The city received notice that it had been awarded HUD funding in the amount of \$436,090.

The grant funds will provide \$375,755 for housing stabilization support with a focus on housing, finances and health and wellness. The support services will help address individual needs and barriers to maintaining stable housing and will assist clients in creating and achieving stabilization goals. Typical goals include accessing health care, therapeutic services, increasing income, budgeting or accessing in home support for medical needs. Funds will also be used for mental health and substance abuse treatment services as needed.

The grant funds will directly provide the city with \$40,560 for part of the Housing Navigator's time and \$19,755 in administrative fees. This will offset city general fund costs of \$60,315. The HUD funding award is expected to continue annually.

The HUD funding award must be accepted by the city by grant agreement, which may be executed by the City Manager pending approval of the resolution in Exhibit 1. The grant agreement must also be approved as to form, that is, that it meets all legal requirements, by the City Attorney's Office.

### **Competitive bidding process**

- Staff posted a request for proposals on Jan. 29, 2024, to select a qualified organization to provide the supportive housing services.
- When the application period closed on March 8, 2022, the city had received two proposals.
- A selection panel comprised of city staff evaluated and ranked the proposals based on best value criteria, in keeping with Carlsbad Municipal Code Sections 3.28.060 and 3.28.050(d)(2) related to procurement of professional services and goods.

Community Resource Center was selected as the highest-ranked proposal. The agreement is for \$375,755 for one year. The professional services agreement, detailing the scope of services to be provided by Community Resource Center, is included as Attachment A to Exhibit 2, which is the resolution approving the agreement.

### **Employment and benefits services program**

On June 14, 2022, the City Council approved a two-year professional services agreement with Community Resource Center to administer an employment and benefits services program. This program continues the work of supporting individuals and households experiencing homelessness in increasing their income through employment and connection to available benefits. With increased income, households are increasingly able to obtain housing and stabilize. This is in alignment with the city's Homelessness Action Plan, which identifies an initiative to improve coordination and access to employment and benefits for people experiencing homelessness.

The program began providing client services in October 2022 and, through April 2024, has served 70 individuals. Of these clients, 33 have secured employment and 32 have applied for benefits. The program provides one full-time benefits specialist and has access to flexible funds to support individuals in completing training certificates, purchasing supplies needed for work such as non-slip shoes, buying transit passes to travel to interviews and work and meet other needs to help individuals access employment. The program operates alongside the existing city funded rapid re-housing program to support individuals in ending their homelessness by addressing both housing and income.

The employment and benefits program has become an in-demand program in the community. The program was at full capacity at the time of the most recent monthly report, for April 2024,.

### **Bidding exemption**

The selection of Community Resource Center for the award of the original agreement expiring on June 30, 2024, came after a competitive bidding process. The agreement was funded for two years in alignment with the Homelessness Goal work plan which has since been updated in the Homelessness Action Plan. Staff requested an exemption to the competitive bidding process for the award of this new agreement, which is subject to approval of the City Council based on the amount of the agreement. The requested exemption is in accordance with Carlsbad Municipal Code Section 3.28.110(N) as it falls under the definition of, "Situations where solicitations of bids or proposals for goods, services and/or professional services would be, in the discretion of the awarding authority, impractical, unavailing, impossible or not in the best interests of the city."

Due to the time and resources necessary to establish social service programs and the limited two-year term of the initial contract, staff believe it is in the best interest of the city to maintain the existing program with the current contractor, Community Resource Center. This will also allow continuity of care for existing clients. The bidding exemption request letter is included as Attachment B to Exhibit 3. The current contract is due to expire on June 30, 2024.

The professional services agreement, detailing the scope of services to be provided by Community Resource Center, is included as Attachment A to Exhibit 3, which is the resolution approving the agreement.

### **Fiscal Analysis**

The professional services agreements with Community Resource Center will be funded by \$375,755 from HUD for supportive housing services and \$140,000 from the General Fund for employment and benefits services.

Funds for the professional services agreements were included in the budget for FY 2024-25 and approved by the City Council on June 18, 2024. Funds for any additional agreement years will be requested through the annual budget process.

A total of \$60,315 of HUD revenue will be used by the city to offset costs attributable to the Housing Navigator staff position and other administration costs.

### **Next Steps**

Staff will execute a required grant agreement with HUD and the two professional services agreements with Community Resource Center.

### **Environmental Evaluation**

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

### **Exhibits**

1. City Council resolution - Authorizing grant agreement and related program documents
2. City Council resolution - Authorizing professional services agreement for Housing Stabilization Services
3. City Council resolution - Authorizing professional services agreement for Employment and benefits services program

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A GRANT AGREEMENT IN THE AMOUNT OF \$436,090 AND RELATED PROGRAM DOCUMENTS WITH THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S CONTINUUM OF CARE PROGRAM

WHEREAS, on Aug. 24, 2023, the city applied for Department of Housing and Urban Development (HUD) Continuum of Care Program funding to provide housing supportive services to housing choice voucher recipients; and

WHEREAS, on Feb. 26, 2024, the city received final notification of an award of \$436,090; and

WHEREAS, the City Council of the City of Carlsbad, California approved the city's new Homelessness Action Plan on Feb. 7, 2023; and

WHEREAS, the City Council of the City of Carlsbad, California approved the city's FY 2024-25 Homelessness Action Plan Funding Plan on Nov. 14, 2023; and

WHEREAS, on June 18, 2024, the City Council of the City of Carlsbad approved the Fiscal Year 2024-25 Operating Budget which included acceptance of the HUD Continuum of Care funds; and

WHEREAS, Initiative 1.1(c) of the Homelessness Action Plan is to identify one-time and ongoing funding sources; and

WHEREAS, HUD Continuum of Care Program funding aligns with Initiative 1.1(c) of the Homelessness Action Plan and would provide new funding for supportive housing services.

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

1. That the above recitations are true and correct.
2. That the City Manager or designee is hereby authorized to execute a grant agreement in the amount of \$436,090 and related program documents between the City of Carlsbad and the Department of Housing and Urban Development for supportive housing services, subject to approval as to form by the City Attorney's Office (Attachment A).

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

---

KEITH BLACKBURN, Mayor

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SHERRY FREISINGER, City Clerk  
(SEAL)





U.S. Department of Housing and Urban Development  
 Office of Community Planning and Development  
 300 N. Los Angeles Street  
 Suite 4054  
 Los Angeles, CA 90012

**Grant Number: CA2286L9D012300**  
**Recipient's Name: City of Carlsbad**  
**Tax ID Number: 95-6004793**  
**Unique Entity Identifier [SAM]: LR6NGYMWXXJ5**  
**Federal Award Date: 6/5/2024**

### **CONTINUUM OF CARE PROGRAM (CDFA# 14.267) GRANT AGREEMENT**

This Grant Agreement (“this Agreement”) is made by and between the United States Department of Housing and Urban Development (“HUD”) and City of Carlsbad (the “Recipient”).

This Agreement, the Recipient’s use of funds provided under this Agreement (the “Grant” or “Grant Funds”), and the Recipient’s operation of projects assisted with Grant Funds are governed by

1. The Consolidated Appropriations Act, 2023 (Pub. L. 117-328, approved December 29, 2022)
2. title IV of the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11301 et seq. (the “Act”);
3. the Continuum of Care Program rule at 24 CFR part 578 (the “Rule”), as amended from time to time;
4. and the Notice of Funding Opportunity for the fiscal year in which the funds were awarded; and
5. the Recipient’s application submissions on the basis of which these Grant Funds were approved by HUD, including the certifications, assurances, technical submission documents, and any information or documentation required to meet any grant award condition (collectively, the “Application”).

The Application is incorporated herein as part of this Agreement, except that only the project (those projects) listed below are funded by this Agreement. In the event of any conflict between any application provision and any provision contained in this Agreement, this Agreement shall control. Capitalized terms that are not defined in this agreement shall have the meanings given in the Rule.

HUD’s total funding obligation authorized by this grant agreement is \$436,090, allocated between the project(s) listed below (each identified by a separate grant number) and, within those projects, between budget line items, as shown below. The Grant Funds an individual project will receive are as shown in the Application on the final HUD-approved Summary Budget for the project. Recipient shall use the Grant Funds provided for the projects listed below, during the budget period(s) period stated below.

<b>Grant No.</b>	<b>Grant Term</b>	<b>Performance Period</b>	<b>Total Amount</b>
CA2286L9D012300		<u>07/01/2024</u> - <u>06/30/2025</u>	\$436,090
a. Continuum of Care planning activities			\$0
b. Acquisition			\$0
c. Rehabilitation			\$0
d. New construction			\$0
e. Leasing			\$0
f. Rental assistance			\$0
g. Supportive services			\$384,100
h. Operating costs			\$9,040
i. Homeless Management Information System			\$2,400
j. VAWA			\$1,000
k. Rural			\$0
l. Admin Costs			\$39,550
m. Relocation Costs			\$0
n. HPC homelessness prevention activities:			
Housing relocation and stabilization services			\$0
Short-term and medium-term rental assistance			\$0

## Pre-award Costs for Continuum of Care Planning

The Recipient may, at its own risk, incur pre-award costs for continuum of care planning awards, after the date of the HUD selection notice and prior to the effective date of this Agreement, if such costs: a) are consistent with 2 CFR 200.458; and b) would be allowable as a post-award cost; and c) do not exceed 10 percent of the total funds obligated to this award. The incurrence of pre-award costs in anticipation of an award imposes no obligation on HUD either to make the award, or to increase the amount of the approved budget, if the award is made for less than the amount anticipated and is inadequate to cover the pre-award costs incurred.

These provisions apply to all Recipients:

If any new projects funded under this Agreement are for project-based rental assistance for a term of fifteen (15) years, the funding provided under this Agreement is for the performance period stated herein only. Additional funding is subject to the availability of annual appropriations.

The budget period and performance period of renewal projects funded by this Agreement will begin immediately at the end of the budget period and performance period of the grant being renewed. Eligible costs incurred between the end of Recipient's budget period and performance period under the grant being renewed and the date this Agreement is executed by both parties may be reimbursed with Grants Funds from this Agreement. No Grant Funds for renewal projects may be drawn down by Recipient before the end date of the project's budget period and performance period under the grant that has been renewed.

For any transition project funded under this Agreement the budget period and performance period of the transition project(s) will begin immediately at the end of the Recipient's final operating year under the grant being transitioned. Eligible costs, as defined by the Act and the Rule incurred between the end of Recipient's final operating year under the grant being transitioned and the execution of this Agreement may be paid with funds from the first operating year of this Agreement.

HUD designations of Continuums of Care as High-performing Communities (HPCS) are published on HUD.gov in the appropriate Fiscal Years' CoC Program Competition Funding Availability page. Notwithstanding anything to the contrary in the Application or this Agreement, Recipient may only use grant funds for HPC Homelessness Prevention Activities if the Continuum that designated the Recipient to apply for the grant was designated an HPC for the applicable fiscal year.

The Recipient must complete the attached "Indirect Cost Rate Schedule" and return it to HUD with this Agreement. The Recipient must provide HUD with a revised schedule when any change is made to the rate(s) included in the schedule. The schedule and any revisions HUD receives from the Recipient will be incorporated into and made part of this Agreement, provided that each rate included satisfies the applicable requirements under 2 CFR part 200 (including appendices).

This Agreement shall remain in effect until the earlier of 1) written agreement by the parties; 2) by HUD alone, acting under the authority of 24 CFR 578.107; 3) upon expiration of the budget period and performance period for all projects funded under this Agreement; or 4) upon the expiration of the period of availability of Grant Funds for all projects funded under this Agreement.

HUD notifications to the Recipient shall be to the address of the Recipient as stated in the Recipient's applicant profile in e-snaps. Recipient notifications to HUD shall be to the HUD Field Office executing the Agreement. No right, benefit, or advantage of the Recipient hereunder may be assigned without prior written approval of HUD.

Build America, Buy America Act. The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

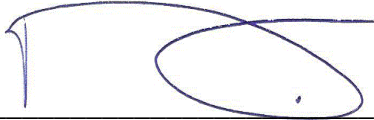
The Agreement constitutes the entire agreement between the parties and may be amended only in writing executed by HUD and the Recipient.

By signing below, Recipients that are states and units of local government certify that they are following a current HUD approved CHAS (Consolidated Plan).

This agreement is hereby executed on behalf of the parties as follows:

**UNITED STATES OF AMERICA,  
Secretary of Housing and Urban Development**

By:



\_\_\_\_\_  
(Signature)

Rufus Washington, Director

\_\_\_\_\_  
(Typed Name and Title)

June 5, 2024

\_\_\_\_\_  
(Date)

**RECIPIENT**

City of Carlsbad

\_\_\_\_\_  
(Name of Organization)

By:

\_\_\_\_\_  
(Signature of Authorized Official)

\_\_\_\_\_  
(Typed Name and Title of Authorized Official)

\_\_\_\_\_  
(Date)

### Indirect Cost Schedule

Agency/Dept./Major Function	Indirect Cost Rate	Direct Cost Base
<u>City of Carlsbad</u>	<u>10%</u>	<u>MTDC</u>

This schedule must include each indirect cost rate that will be used to calculate the Recipient’s indirect costs under the grant. The schedule must also specify the type of direct cost base to which each included rate applies (for example, Modified Total Direct Costs (MTDC)). Do not include indirect cost rate information for subrecipients.

For government entities, enter each agency or department that will carry out activities under the grant, the indirect cost rate applicable to each department/agency (including if the de minimis rate is used per 2 CFR §200.414), and the type of direct cost base to which the rate will be applied.

For nonprofit organizations that use the Simplified Allocation Method for indirect costs or elects to use the de minimis rate of 10% of Modified Total Direct Costs in accordance with 2 CFR §200.414, enter the applicable indirect cost rate and type of direct cost base in the first row of the table.

For nonprofit organizations that use the Multiple Base Allocation Method, enter each major function of the organization for which a rate was developed and will be used under the grant, the indirect cost rate applicable to that major function, and the type of direct cost base to which the rate will be applied.

To learn more about the indirect cost requirements, see 24 CFR 578.63; 2 CFR part 200, subpart E; Appendix IV to Part 200 (for nonprofit organizations); and Appendix VII to Part 200 (for state and local governments).

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$375,755 WITH COMMUNITY RESOURCE CENTER TO PROVIDE SUPPORTIVE HOUSING SERVICES

WHEREAS, the City Council of the City of Carlsbad, California adopted a Homelessness Action Plan on Feb. 7, 2023; and

WHEREAS, the action plan identifies Housing and Shelter as one of three areas of focus; and

WHEREAS, Initiative 1.1 (c) of the Homelessness Action Plan is to identify one-time and ongoing funding sources; and

WHEREAS, Initiative 1.2 (j) of the Homelessness Action Plan is to investigate barriers to people accessing shelter or permanent housing and create programs as appropriate to alleviate found barriers; and

WHEREAS, Initiative 3.1 (c) of the Homelessness Action Plan is to secure supportive services for homeless dedicated Housing Choice Vouchers; and

WHEREAS, the City Council of the City of Carlsbad, California approved the city's FY 2024-25 Homelessness Action Plan Funding Plan on Nov. 14, 2023; and

WHEREAS, the city was notified of its receipt of a Department of Housing and Urban Development (HUD) Continuum of Care Program award for supportive housing services in the amount of \$436,090; and

WHEREAS, on Jan. 29, 2024, the city posted a request for proposals for professional services to select a qualified organization to provide supportive housing services; and

WHEREAS, as of March 8, 2024, staff received two proposals from qualified organizations that met threshold bidding criteria; and

WHEREAS, subsequent to a review of the proposals based on best value criteria consistent with Carlsbad Municipal Code Sections 3.28.060 and 3.28.050(D)(2), staff identified Community Resource Center as the highest ranked proposal.

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

1. That the above recitations are true and correct.

2. That the City Council hereby approves the Professional Services Agreement in the amount of \$375,755 with Community Resource Center (Attachment A).
3. That the City Manager or designee is hereby authorized to execute the Professional Services Agreement between the City of Carlsbad and Community Resource Center for supportive housing services and to act on behalf of the City of Carlsbad in all future decisions and actions necessary to implement the Agreement, and to do so in full compliance with the terms and conditions expressed in the aforementioned Agreement and to the satisfaction of the City Attorney.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

---

KEITH BLACKBURN, Mayor

---

SHERRY FREISINGER, City Clerk  
(SEAL)



**AGREEMENT FOR HUD SUPPORTIVE HOUSING SERVICES  
COMMUNITY RESOURCE CENTER**

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Carlsbad, California, a municipal corporation ("City") and Community Resource Center, a non-profit organization, ("Contractor").

**RECITALS**

- A. City requires the professional services of a consultant that is experienced in providing supportive housing.
- B. Contractor has the necessary experience in providing professional services and advice related to supportive housing.
- C. Contractor has submitted a proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, City and Contractor agree as follows:

**1. SCOPE OF WORK**

City retains Contractor to perform, and Contractor agrees to render, those services (the "Services") that are defined in attached Exhibit "A," which is incorporated by this reference in accordance with this Agreement's terms and conditions.

**2. STANDARD OF PERFORMANCE**

While performing the Services, Contractor will exercise the reasonable professional care and skill customarily exercised by reputable members of Contractor's profession practicing in the Metropolitan Southern California area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

**3. TERM**

The term of this Agreement will be effective for a period of one (1) year(s) from July 1, 2024, through June 30, 2025. The City Manager may amend the Agreement to extend it for four (4) additional one (1) year(s) or parts thereof. Extensions will be based upon a satisfactory review of Contractor's performance, City needs, and appropriation of funds by the City Council. The parties will prepare a written amendment indicating the effective date and length of the extended Agreement.

**4. TIME IS OF THE ESSENCE**

Time is of the essence for each and every provision of this Agreement.

**5. COMPENSATION**

The total fee payable for the Services to be performed during the initial Agreement term shall not exceed three hundred seventy-five thousand seven hundred fifty-five dollars (\$375,755) as defined in attached Exhibit "B". No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. If the City elects to extend the Agreement, the amount shall not exceed three hundred seventy-five thousand seven hundred fifty-five dollars (\$375,755) per Agreement year. The City reserves the right to withhold a ten percent (10%) retention until City has accepted the work and/or Services specified in Exhibit "A."

Incremental payments, if applicable, should be made as outlined in attached Exhibit "A."

**6. STATUS OF CONTRACTOR**

Contractor will perform the Services in Contractor's own way as an independent contractor and in pursuit of Contractor's independent calling, and not as an employee of City. Contractor will be under control of City only as to the result to be accomplished, but will consult with City as necessary. The persons used by Contractor to provide services under this Agreement will not be considered employees of City for any purposes.

The payment made to Contractor pursuant to the Agreement will be the full and complete compensation to which Contractor is entitled. City will not make any federal or state tax withholdings on behalf of Contractor or its agents, employees or subcontractors. City will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Contractor or its employees or subcontractors. Contractor agrees to indemnify City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which City may be required to make on behalf of Contractor or any agent, employee, or subcontractor of Contractor for work done under this Agreement. At the City's election, City may deduct the indemnification amount from any balance owing to Contractor.

**7. SUBCONTRACTING**

Contractor will not subcontract any portion of the Services without prior written approval of City. If Contractor subcontracts any of the Services, Contractor will be fully responsible to City for the acts and omissions of Contractor's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Contractor and City. Contractor will be responsible for payment of subcontractors. Contractor will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

**8. OTHER CONTRACTORS**

The City reserves the right to employ other Contractors in connection with the Services.

**9. INDEMNIFICATION**

Contractor agrees to defend (with counsel approved by the City), indemnify, and hold harmless the City and its officers, elected and appointed officials, employees and volunteers from and against all claims, damages, losses and expenses including attorneys fees arising out of the performance of the work described herein caused by any negligence, recklessness, or willful misconduct of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code Section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a

final adjudication by a court of competent jurisdiction. Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

The parties expressly agree that any payment, attorney's fee, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

## 10. **INSURANCE**

Contractor will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by Contractor or Contractor's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A-VII"; **OR** with a surplus line insurer on the State of California's List of Approved Surplus Line Insurers (LASLI) with a rating in the latest Best's Key Rating Guide of at least "A:X"; **OR** an alien non-admitted insurer listed by the National Association of Insurance Commissioners (NAIC) latest quarterly listings report.

10.1 Coverages and Limits. Contractor will maintain the types of coverages and minimum limits indicated below, unless Risk Manager or City Manager approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Contractor's indemnification obligations under this Agreement. City, its officers, agents and employees make no representation that the limits of the insurance specified to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage, as Contractor deems adequate, at Contractor's sole expense. The full limits available to the named insured shall also be available and applicable to the City as an additional insured.

10.1.1 Commercial General Liability (CGL) Insurance. Insurance written on an "occurrence" basis, including personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

10.1.2 Automobile Liability. (if the use of an automobile is involved for Contractor's work for City). \$2,000,000 combined single-limit per accident for bodily injury and property damage.

10.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code. Workers' Compensation will not be required if Contractor has no employees and provides, to City's satisfaction, a declaration stating this.

10.1.4 Professional Liability. Errors and omissions liability appropriate to Contractor's profession with limits of not less than \$1,000,000 per claim. Coverage must be maintained for a period of five years following the date of completion of the work.

10.2 Additional Provisions. Contractor will ensure that the policies of insurance required under this Agreement contain, or are endorsed to contain, the following provisions:

10.2.1 The City will be named as an additional insured on Commercial General Liability which shall provide primary coverage to the City.

10.2.2 Contractor will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage.

10.2.3 If Contractor maintains higher limits than the minimums shown above, the City requires and will be entitled to coverage for the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage will be available to the City.”

10.2.4 This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent by certified mail pursuant to the Notice provisions of this Agreement.

10.3 Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Agreement, Contractor will furnish certificates of insurance and endorsements to City.

10.4 Failure to Maintain Coverage. If Contractor fails to maintain any of these insurance coverages, then City will have the option to declare Contractor in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Contractor is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Contractor or deduct the amount paid from any sums due Contractor under this Agreement.

10.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

**11. BUSINESS LICENSE**

Contractor will obtain and maintain a City of Carlsbad Business License for the term of the Agreement, as may be amended from time-to-time.

**12. ACCOUNTING RECORDS**

Contractor will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Contractor will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Contractor will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

**13. OWNERSHIP OF DOCUMENTS**

All work product produced by Contractor or its agents, employees, and subcontractors pursuant to this Agreement is the property of City. In the event this Agreement is terminated, all work product produced by Contractor or its agents, employees and subcontractors pursuant to this Agreement will be delivered at once to City. Contractor will have the right to make one (1) copy of the work product for Contractor’s records.

**14. COPYRIGHTS**

Contractor agrees that all copyrights that arise from the services will be vested in City and Contractor relinquishes all claims to the copyrights in favor of City.

**15. NOTICES**

The name of the persons who are authorized to give written notice or to receive written notice on behalf of City and on behalf of Contractor under this Agreement are:

For City:

Name Chris Shilling  
 Title Homeless Services Manager  
 Dept Housing & Homeless Services  
CITY OF CARLSBAD  
 Address 1200 Carlsbad Village Dr.  
Carlsbad, CA 92008  
 Phone 442-339-2284

For Contractor:

Name John Van Cleef  
 Title Chief Executive Officer  
 Address 650 2<sup>nd</sup> St.  
ENCINITAS, CA 92024  
 Phone 760-230-6309  
 Email johnvancleef@crcncc.org

Each party will notify the other immediately of any changes of address that would require any notice or delivery to be directed to another address.

**16. CONFLICT OF INTEREST**

Contractor shall file a Conflict of Interest Statement with the City Clerk in accordance with the requirements of the City of Carlsbad Conflict of Interest Code. The Contractor shall report investments or interests as required in the City of Carlsbad Conflict of Interest Code.

Yes  No

If yes, list the contact information below for all individuals required to file:

Name	Email	Phone Number

**17. GENERAL COMPLIANCE WITH LAWS**

Contractor will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of the Services by Contractor. Contractor will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of Contractor's services with all applicable laws, ordinances and regulations.

Contractor will be aware of the requirements of the Immigration Reform and Control Act of 1986 and will comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants whose services are required by this Agreement.

**18. CALIFORNIA AIR RESOURCES BOARD (CARB) ADVANCED CLEAN FLEETS REGULATIONS**

Contractor's vehicles with a gross vehicle weight rating greater than 8,500 lbs. and light-duty package delivery vehicles operated in California may be subject to the California Air Resources Board (CARB) Advanced Clean Fleets regulations. Such vehicles may therefore be subject to requirements to reduce emissions of air pollutants. For more information, please visit the CARB Advanced Clean Fleets webpage at <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets>.

**19. DISCRIMINATION AND HARASSMENT PROHIBITED**

Contractor will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

**20. DISPUTE RESOLUTION**

If a dispute should arise regarding the performance of the Services the following procedure will be used to resolve any questions of fact or interpretation not otherwise settled by agreement between the parties. Representatives of Contractor or City will reduce such questions, and their respective views, to writing. A copy of such documented dispute will be forwarded to both parties involved along with recommended methods of resolution, which would be of benefit to both parties. The representative receiving the letter will reply to the letter along with a recommended method of resolution within ten (10) business days. If the resolution thus obtained is unsatisfactory to the aggrieved party, a letter outlining the disputes will be forwarded to the City Manager. The City Manager will consider the facts and solutions recommended by each party and may then opt to direct a solution to the problem. In such cases, the action of the City Manager will be binding upon the parties involved, although nothing in this procedure will prohibit the parties from seeking remedies available to them at law.

**21. TERMINATION**

In the event of the Contractor's failure to prosecute, deliver, or perform the Services, City may terminate this Agreement for nonperformance by notifying Contractor by certified mail of the termination. If City decides to abandon or indefinitely postpone the work or services contemplated by this Agreement, City may terminate this Agreement upon written notice to Contractor. Upon notification of termination, Contractor has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Contractor has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement.

City may terminate this Agreement by tendering thirty (30) days written notice to Contractor. Contractor may terminate this Agreement by tendering thirty (30) days written notice to City. In the event of termination of this Agreement by either party and upon request of City, Contractor will assemble the work product and put it in order for proper filing and closing and deliver it to City. Contractor will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

**22. COVENANTS AGAINST CONTINGENT FEES**

Contractor warrants that Contractor has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

**23. CLAIMS AND LAWSUITS**

By signing this Agreement, Contractor agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Contractor acknowledges that if a false claim is submitted to City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Contractor acknowledges that the filing of a false claim may subject Contractor to an administrative debarment proceeding as the result of which Contractor may be prevented to act as a Contractor on any public work or improvement for a period of up to five (5) years. Contractor acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.

**24. JURISDICTION AND VENUE**

This Agreement shall be interpreted in accordance with the laws of the State of California. Any action at law or in equity brought by either of the parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of San Diego, State of California, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

**25. SUCCESSORS AND ASSIGNS**

It is mutually understood and agreed that this Agreement will be binding upon City and Contractor and their respective successors. Neither this Agreement nor any part of it nor any monies due or to become due under it may be assigned by Contractor without the prior consent of City, which shall not be unreasonably withheld.

**26. THIRD PARTY RIGHTS**

Nothing in this Agreement should be construed to give any rights or benefits to any party other than the City and Contractor.

**27. ENTIRE AGREEMENT**

This Agreement, together with any other written document referred to or contemplated by it, along with the purchase order for this Agreement and its provisions, embody the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede the purchase order. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties. This Agreement may be executed in counterparts.

**28. AUTHORITY**

The individuals executing this Agreement and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Agreement.

Executed by Contractor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CONTRACTOR  
Community Resource Center, a non-profit organization

CITY OF CARLSBAD, a municipal corporation of the State of California

By:

By:

\_\_\_\_\_  
(sign here)

\_\_\_\_\_  
Scott Chadwick, City Manager

John Van Cleef, Chief Executive Officer  
(print name/title)

ATTEST:

By:

SHERRY FREISINGER, City Clerk

\_\_\_\_\_  
(sign here)

By:

Corrie McCoy, Chief Operating Officer  
(print name/title)

\_\_\_\_\_  
Deputy City Clerk

If required by City, proper notarial acknowledgment of execution by contractor must be attached. If a corporation, Agreement must be signed by one corporate officer from each of the following two groups.

**Group A**

Chairman,  
President, **or**  
Vice-President

**Group B**

Secretary,  
Assistant Secretary,  
CFO **or** Assistant Treasurer

**Otherwise**, the corporation **must** attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM:

CINDIE K. McMAHON, City Attorney

BY: \_\_\_\_\_  
Allegra Frost, Senior Assistant City Attorney



**EXHIBIT A**  
**SCOPE OF SERVICES**

- A. Provide a minimum of two (2) full-time case managers and at least .1 FTE supervisor. All Case Managers must have at least one year of case management experience working with vulnerable populations. It is strongly desired to have at least one (1) Case Manager who is bilingual in both English and Spanish. Each Case Manager will provide housing search assistance, move-in assistance, long-term case management, and housing stability services to City's residents with homeless-dedicated housing choice vouchers ("Participants").
- B. Ensure each Case Manager receives training in all the following areas within the first 6 months of employment and at least once every 3 years thereafter: Cultural Competency, Documentation/HMIS, Motivational Interviewing, Professional Boundaries, Coordinated Entry, Effective Goal Setting, Mandated Reporting, Housing First and Progressive Engagement/Critical Time Intervention Approaches, Trauma-Informed Care, Harm Reduction, Tenant Rights, Conflict Resolution, Mediation, Negotiation, Federal, State, and Local Fair Housing Laws, and HUD Housing Quality Standards (HQS). City shall determine the appropriate type and number of training sessions required on a case-by-case basis, based on the length and depth of the training course.
- C. Adhere to the Regional Task Force on Homelessness (RTFH) CoC Community Standards which can be found at <https://www.rtfhsd.org/about-coc/standards-learning-training/>.
- D. Adhere to the updated version of the federal CoC Program Interim Rule which can be found at <https://www.govinfo.gov/content/pkg/CFR-2017-title24-vol3/xml/CFR-2017-title24-vol3-part578.xml>.
- E. Adhere to the most recent Coordinated Entry System (CES) Policies and Procedures which can be found at <https://www.rtfhsd.org/about-coc/coordinated-entry-system-ces/>.
- F. Abide by the strategies set forth in City's Homelessness Action Plan and any amendments thereto, which takes a community focused and collaborative approach to addressing the needs of those experiencing or at-risk of homelessness within the City of Carlsbad. This plan can be found at <https://www.carlsbadca.gov/departments/housing-homeless-services/homeless-outreach/homeless-response-plan>.
- G. Assist at least 21 households during each agreement year.
- H. Maintain a 90% retention and positive exit rate.
- I. Use a Housing First approach incorporating evidence-based practices such as critical time intervention, intensive case management, cognitive behavioral intervention, trauma-informed care, motivational interviewing, positive youth development, and harm reduction.
- J. Work with the City's Housing Navigator to accept Coordinated Entry referrals, complete Carlsbad Housing Agency paperwork, support with document acquisition, provide housing search assistance, move-in coordination, and any other services needed to obtain and stabilize in housing.

- K. Ensure that HUD funding is only used for leases of at least one year which are renewable for a minimum term of one month and terminable only for cause.
- L. Ensure each Participant has an individualized Housing Stability Plan (HSP) designed to help them reduce barriers to obtaining and maintaining housing. HSPs should be developed at intake and reviewed once the client is in housing and at a minimum every 45 days. HSPs should include focused SMART goals in at least three core areas: housing, financial, and health/wellness. The plan should be reviewed at every meeting to ensure the Participant is on track to meet their identified goals. The plan should be adjusted as needed.
- M. Assist Participants with increasing income through employment and/or benefits and enhancing participants' life skills (i.e. educational and budgeting). Connect Participants to a healthcare home and other healthcare services and track connections and health outcomes. Creatively and collaboratively problem-solve with Participants to address other barriers that may interfere with their housing stability.
- N. Provide customized behavioral health and substance abuse support using trauma-informed care and harm reduction models to Participants as needed.
- O. Ensure staff are available 24 hours a day as needed to mitigate barriers toward maintaining stable housing.
- P. Provide services specifically designed to meet the needs of LGBTQIA+ individuals when appropriate.
- Q. Work collaboratively with City staff to maximize partnerships with community service providers and community organizations to cultivate resources and stay connected to the changing needs of the community.
- R. Attend at least 75% of City organized case conferencing/partner collaboration meetings and abide by privacy and participation policies as determined by City.
- S. Share Participant Homeless Management Information System ("HMIS") data (without personally identifiable information) as part of the City of Carlsbad By-Name List.
- T. Maintain a written grievance procedure, including a formal process for Participants to provide feedback and to resolve conflicts experienced within the program.
- U. Comply with all routine monitoring and program audits as requested by City.
- V. Complete accurate and thorough documentation in a timely manner. Use the HMIS to track Participants. Maintain data on each program Participant and program milestones and outcomes and provide reports to City on the 15th day of each month, starting on August 15, 2024, in a format to the satisfaction of City's Housing & Homeless Services Department. Annually, or when requested, provide City with an Annual Performance Report (APR) from the HMIS in compliance with HUD close-out requirements. Provide documentation of the following data points within monthly reports:
  - 1. Number of referrals received;
  - 2. Number of Participants who have been screened and consented to services;

3. Number of Participants who have been screened and denied or declined program entry;
  4. Number and percentage of total Participants placed into permanent housing;
  5. Average length of time from program enrollment to permanent housing;
  6. Average cost of housing support per household;
  7. Number and percentage of households that increased income;
  8. Number of Participants who exit the program and exit destination; and
  9. Number and percentage of households that return to homelessness within a year of exit to permanent housing.
- W. All billing invoices shall be submitted by the 15th of the month to the Housing & Homeless Services Department. The invoices shall include accompanying documentation for funds expended, which shall include but not be limited to documentation of timecards, mileage, and operating costs.
- X. Operate within the budget set forth in Exhibit "B."
1. If there is a possibility that any portion of the total fee payable for the Services under the Agreement may not be expended by the date of contract termination, City and Contractor agree to mutually decide how such excess funds will be reallocated and fully expended in the budget (Exhibit "B"). In such case, Contractor agrees to draft an amended budget (amended Exhibit "B") to reallocate the excess funds, which will require a contract amendment subject to approval by the city manager or designee.
  2. City and Contractor further agree to discuss and mutually determine any necessary changes to the budget during the lifetime of the Agreement. In the event of a mutually agreeable budget modification, Contractor agrees to draft an amended budget (amended Exhibit "B"), which will require a contract amendment subject to approval by the city council or city manager or designee, depending on the value and nature of the budget modification.

**EXHIBIT B**  
**BUDGET**

<b>Activity</b>	<b>Amount</b>
Personnel (Supportive Services)	\$175,240
Client Food (Supportive Services)	\$2,600
Application Fees (Supportive Services)	\$1,000
Mental Health Services (Supportive Services)	\$60,000
Substance Abuse Treatment (Supportive Services)	\$60,000
Transportation (Supportive Services)	\$10,000
Utility Deposits (Supportive Services)	\$2,400
Operating Costs (Supportive Services)	\$32,300
Unit Maintenance and Repair (Operating Costs)	\$5,000
Client Furniture (Operating Costs)	\$4,040
Licensing Fees (HMIS)	\$2,400
Emergency Transfer/Confidentiality (VAWA)	\$1,000
Administrative Fees (Admin)	\$19,775
<b>Total</b>	<b>\$375,755</b>

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$140,000 WITH COMMUNITY RESOURCE CENTER TO PROVIDE EMPLOYMENT AND BENEFITS SERVICES TO ASSIST INDIVIDUALS AND HOUSEHOLDS EXPERIENCING HOMELESSNESS IN THE CITY OF CARLSBAD

WHEREAS, the City Council of the City of Carlsbad, California adopted a Homelessness Action Plan on Feb. 7, 2023; and

WHEREAS, Initiative 1.2 (f) of the Homelessness Action Plan is to improve coordination and access to employment and benefits for people experiencing homelessness; and

WHEREAS, the City Council of the City of Carlsbad, California approved the city's FY 2024-25 Homelessness Action Plan Funding Plan on Nov. 14, 2023; and

WHEREAS, Community Resource Center has operated the city's employment and benefits program since July 1, 2022, under a professional services agreement; and

WHEREAS, from October 2022 through April 2024 the program served 70 individuals helping 33 obtain employment and 32 access benefits; and

WHEREAS, the current contract to provide these services in Carlsbad expires on June 30, 2024; and

WHEREAS, funds for the employment and benefits program were included in the fiscal year 2024-25 operating budget approved by the City Council on June 18, 2024; and

WHEREAS, it is in the best interests of the city to maintain the existing program with Community Resource Center; and

WHEREAS, the Purchasing Officer has reviewed and is recommending that the City Council approve an exemption from the Purchasing Ordinance's competitive procurement requirements for professional services per Carlsbad Municipal Code Section 3.28.110(N), in order to ensure consistency of care for existing clients and because the contractor is now uniquely qualified to provide these services in the community.

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

1. That the above recitations are true and correct.

2. That the City Manager or designee is hereby authorized to execute the Professional Services Agreement in the amount of \$140,000 between the City of Carlsbad and the Community Resource Center for employment and benefits services and to act on behalf of the City of Carlsbad in all future decisions and actions necessary to implement the Agreement, and to do so in full compliance with the terms and conditions expressed in the aforementioned Agreement and to the satisfaction of the City Attorney (Attachment A).
3. That an exemption from the Purchasing Ordinance's professional services procurement requirements, per Carlsbad Municipal Code Section 3.28.110(N), is approved (Attachment B).

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

---

KEITH BLACKBURN, Mayor

---

SHERRY FREISINGER, City Clerk  
(SEAL)

**AGREEMENT FOR EMPLOYMENT AND BENEFITS SERVICES  
COMMUNITY RESOURCE CENTER**

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Carlsbad, California, a municipal corporation ("City") and COMMUNITY RESOURCE CENTER, a non-profit organization, ("Contractor").

**RECITALS**

- A. City requires the professional services of a consultant that is experienced in providing employment and benefits services to people experiencing homelessness within the City of Carlsbad.
- B. Contractor has the necessary experience in providing professional services and advice related to all of the areas set forth in recital A.
- C. Contractor has submitted a proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, City and Contractor agree as follows:

**1. SCOPE OF WORK**

City retains Contractor to perform, and Contractor agrees to render, those services (the "Services") that are defined in attached Exhibit "A," which is incorporated by this reference in accordance with this Agreement's terms and conditions.

**2. STANDARD OF PERFORMANCE**

While performing the Services, Contractor will exercise the reasonable professional care and skill customarily exercised by reputable members of Contractor's profession practicing in the Metropolitan Southern California area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

**3. TERM**

The term of this Agreement will be effective for a period of one (1) year from July 1, 2024 to June 30, 2025. The City Manager may amend the Agreement to extend it for four (4) additional one (1) year periods or parts thereof. Extensions will be based upon a satisfactory review of Contractor's performance, City needs, and appropriation of funds by the City Council. The parties will prepare a written amendment indicating the effective date and length of the extended Agreement.

**4. TIME IS OF THE ESSENCE**

Time is of the essence for each and every provision of this Agreement.

**5. COMPENSATION**

The total fee payable for the Services to be performed during the initial Agreement term shall not exceed one-hundred forty thousand dollars (\$140,000). No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. If the City elects to extend the Agreement, the amount shall not exceed one-hundred forty thousand dollars (\$140,000) per Agreement year. The City reserves the right to withhold a ten percent (10%) retention until City has accepted the work and/or Services specified in Exhibit "A."

Incremental payments, if applicable, should be made as outlined in attached Exhibit "A."

**6. STATUS OF CONTRACTOR**

Contractor will perform the Services in Contractor's own way as an independent contractor and in pursuit of Contractor's independent calling, and not as an employee of City. Contractor will be under control of City only as to the result to be accomplished, but will consult with City as necessary. The persons used by Contractor to provide services under this Agreement will not be considered employees of City for any purposes.

The payment made to Contractor pursuant to the Agreement will be the full and complete compensation to which Contractor is entitled. City will not make any federal or state tax withholdings on behalf of Contractor or its agents, employees or subcontractors. City will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Contractor or its employees or subcontractors. Contractor agrees to indemnify City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which City may be required to make on behalf of Contractor or any agent, employee, or subcontractor of Contractor for work done under this Agreement. At the City's election, City may deduct the indemnification amount from any balance owing to Contractor.

**7. SUBCONTRACTING**

Contractor will not subcontract any portion of the Services without prior written approval of City. If Contractor subcontracts any of the Services, Contractor will be fully responsible to City for the acts and omissions of Contractor's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Contractor and City. Contractor will be responsible for payment of subcontractors. Contractor will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract and approved in writing by City.

**8. OTHER CONTRACTORS**

The City reserves the right to employ other Contractors in connection with the Services.

**9. INDEMNIFICATION**

Contractor agrees to defend (with counsel approved by the City), indemnify, and hold harmless the City and its officers, elected and appointed officials, employees and volunteers from and against all claims, damages, losses and expenses including attorneys fees arising out of the performance of the work described herein caused by any negligence, recklessness, or willful misconduct of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

The parties expressly agree that any payment, attorney's fee, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.



## 10. **INSURANCE**

Contractor will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by Contractor or Contractor's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A-:VII"; **OR** with a surplus line insurer on the State of California's List of Approved Surplus Line Insurers (LASLI) with a rating in the latest Best's Key Rating Guide of at least "A:X"; **OR** an alien non-admitted insurer listed by the National Association of Insurance Commissioners (NAIC) latest quarterly listings report.

10.1 Coverages and Limits. Contractor will maintain the types of coverages and minimum limits indicated below, unless Risk Manager or City Manager approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Contractor's indemnification obligations under this Agreement. City, its officers, agents and employees make no representation that the limits of the insurance specified to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage, as Contractor deems adequate, at Contractor's sole expense. The full limits available to the named insured shall also be available and applicable to the City as an additional insured.

10.1.1 Commercial General Liability (CGL) Insurance. Insurance written on an "occurrence" basis, including personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

10.1.2 Automobile Liability. (if the use of an automobile is involved for Contractor's work for City). \$2,000,000 combined single-limit per accident for bodily injury and property damage.

10.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code. Workers' Compensation will not be required if Contractor has no employees and provides, to City's satisfaction, a declaration stating this.

10.1.4 Professional Liability. Errors and omissions liability appropriate to Contractor's profession with limits of not less than \$1,000,000 per claim. Coverage must be maintained for a period of five years following the date of completion of the work.

10.2 Additional Provisions. Contractor will ensure that the policies of insurance required under this Agreement contain, or are endorsed to contain, the following provisions:

10.2.1 The City will be named as an additional insured on Commercial General Liability which shall provide primary coverage to the City.

10.2.2 Contractor will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage.

10.2.3 This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent by certified mail pursuant to the Notice provisions of this Agreement.

10.3 Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Agreement, Contractor will furnish certificates of insurance and endorsements to City.

10.4 Failure to Maintain Coverage. If Contractor fails to maintain any of these insurance coverages, then City will have the option to declare Contractor in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Contractor is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Contractor or deduct the amount paid from any sums due Contractor under this Agreement.

10.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

**11. BUSINESS LICENSE**

Contractor will obtain and maintain a City of Carlsbad Business License for the term of the Agreement, as may be amended from time-to-time.

**12. ACCOUNTING RECORDS**

Contractor will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Contractor will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Contractor will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

**13. OWNERSHIP OF DOCUMENTS**

All work product produced by Contractor or its agents, employees, and subcontractors pursuant to this Agreement is the property of City. In the event this Agreement is terminated, all work product produced by Contractor or its agents, employees and subcontractors pursuant to this Agreement will be delivered at once to City. Contractor will have the right to make one (1) copy of the work product for Contractor's records.

**14. COPYRIGHTS**

Contractor agrees that all copyrights that arise from the services will be vested in City and Contractor relinquishes all claims to the copyrights in favor of City.

**15. NOTICES**

The name of the persons who are authorized to give written notice or to receive written notice on behalf of City and on behalf of Contractor under this Agreement are:

For City:

Name Chris Shilling  
 Title Homeless Services Manager  
 Dept Housing & Homeless Services  
CITY OF CARLSBAD  
 Address 3096 Harding Street  
Carlsbad, CA 92008  
 Phone (442) 339-2284

For Contractor:

Name John Van Cleef  
 Title Chief Executive Officer  
 Address 650 2<sup>nd</sup> Street  
ENCINITAS, CA 92024  
 Phone (760) 230-6309  
 Email johnvancleef@crcncc.org

Each party will notify the other immediately of any changes of address that would require any notice or delivery to be directed to another address.

**16. CONFLICT OF INTEREST**

Contractor shall file a Conflict of Interest Statement with the City Clerk in accordance with the requirements of the City of Carlsbad Conflict of Interest Code. The Contractor shall report investments or interests as required in the City of Carlsbad Conflict of Interest Code.

Yes  No

If yes, list the contact information below for all individuals required to file:

Name	Email	Phone Number

**17. GENERAL COMPLIANCE WITH LAWS**

Contractor will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of the Services by Contractor. Contractor will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of Contractor's services with all applicable laws, ordinances and regulations.

Contractor will be aware of the requirements of the Immigration Reform and Control Act of 1986 and will comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants whose services are required by this Agreement.

**18. CALIFORNIA AIR RESOURCES BOARD (CARB) ADVANCED CLEAN FLEETS REGULATIONS**

Contractor's vehicles with a gross vehicle weight rating greater than 8,500 lbs. and light-duty package delivery vehicles operated in California may be subject to the California Air Resources Board (CARB) Advanced Clean Fleets regulations. Such vehicles may therefore be subject to requirements to reduce emissions of air pollutants. For more information, please visit the CARB Advanced Clean Fleets webpage at <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets>.

**19. DISCRIMINATION AND HARASSMENT PROHIBITED**

Contractor will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

**20. DISPUTE RESOLUTION**

If a dispute should arise regarding the performance of the Services the following procedure will be used to resolve any questions of fact or interpretation not otherwise settled by agreement between the parties. Representatives of Contractor or City will reduce such questions, and their respective views, to writing. A copy of such documented dispute will be forwarded to both parties involved along with recommended methods of resolution, which would be of benefit to both parties. The representative receiving the letter will reply to the letter along with a recommended method of resolution within ten (10) business days. If the resolution thus obtained is unsatisfactory to the aggrieved party, a letter outlining the disputes will be forwarded to the City Manager. The City Manager will consider the facts and solutions recommended by each party and may then opt to direct a solution to the problem. In such cases, the action of the City Manager will be binding upon the parties involved, although nothing in this procedure will prohibit the parties from seeking remedies available to them at law.

**21. TERMINATION**

In the event of the Contractor's failure to prosecute, deliver, or perform the Services, City may terminate this Agreement for nonperformance by notifying Contractor by certified mail of the termination. If City decides to abandon or indefinitely postpone the work or services contemplated by this Agreement, City may terminate this Agreement upon written notice to Contractor. Upon notification of termination, Contractor has five (5) business days to deliver any documents owned by City and all work in progress to City address contained in this Agreement. City will make a determination of fact based upon the work product delivered to City and of the percentage of work that Contractor has performed which is usable and of worth to City in having the Agreement completed. Based upon that finding City will determine the final payment of the Agreement.

City may terminate this Agreement by tendering thirty (30) days written notice to Contractor. Contractor may terminate this Agreement by tendering thirty (30) days written notice to City. In the event of termination of this Agreement by either party and upon request of City, Contractor will assemble the work product and put it in order for proper filing and closing and deliver it to City. Contractor will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. City will make the final determination as to the portions of tasks completed and the compensation to be made.

**22. COVENANTS AGAINST CONTINGENT FEES**

Contractor warrants that Contractor has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City will have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

**23. CLAIMS AND LAWSUITS**

By signing this Agreement, Contractor agrees that any Agreement claim submitted to City must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of

litigation or in conjunction with litigation. Contractor acknowledges that if a false claim is submitted to City, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If City seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Contractor acknowledges that the filing of a false claim may subject Contractor to an administrative debarment proceeding as the result of which Contractor may be prevented to act as a Contractor on any public work or improvement for a period of up to five (5) years. Contractor acknowledges debarment by another jurisdiction is grounds for City to terminate this Agreement.

**24. JURISDICTION AND VENUE**

Any action at law or in equity brought by either of the parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of San Diego, State of California, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

**25. SUCCESSORS AND ASSIGNS**

It is mutually understood and agreed that this Agreement will be binding upon City and Contractor and their respective successors. Neither this Agreement nor any part of it nor any monies due or to become due under it may be assigned by Contractor without the prior consent of City, which shall not be unreasonably withheld.

**26. ENTIRE AGREEMENT**

This Agreement, together with any other written document referred to or contemplated by it, along with the purchase order for this Agreement and its provisions, embody the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede the purchase order. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties. This Agreement may be executed in counterparts.

**27. AUTHORITY**

The individuals executing this Agreement and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Agreement.

Executed by Contractor this 22 day of May, 2024.

CONTRACTOR  
Community Resource Center, a non-profit organization

CITY OF CARLSBAD, a municipal corporation of the State of California

By:

By:

John Van Cleef  
(sign here)

Scott Chadwick, City Manager

John Van Cleef, Chief Executive Officer  
(print name/title)

ATTEST:

By:

SHERRY FREISINGER, City Clerk

Corrie McCoy  
(sign here)

By:

Corrie McCoy, Chief Operating Officer  
(print name/title)

Deputy City Clerk

If required by City, proper notarial acknowledgment of execution by contractor must be attached. If a corporation, Agreement must be signed by one corporate officer from each of the following two groups.

**Group A**

Chairman,  
President, **or**  
Vice-President

**Group B**

Secretary,  
Assistant Secretary,  
CFO **or** Assistant Treasurer

**Otherwise**, the corporation **must** attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM:

CINDIE K. McMAHON, City Attorney

BY: Allegra Frost  
Allegra Frost, Senior Assistant City Attorney

**EXHIBIT A**

**SCOPE OF SERVICES**

- A. Provide at least one (1) full-time Employment and Benefits Specialist as approved by City to provide employment and benefit services to people experiencing homelessness in the City of Carlsbad ("Participants"). It is strongly desired that the Employment and Benefits Specialist be bilingual in both English and Spanish.
- B. Maintain office hours within the City of Carlsbad a minimum of 5 days per week for 5-8 hours per day for Participants' use.
- C. Link Participants to general relief, CalWORKS, CalFresh, Veteran benefits, stimulus checks, and other aid programs.
- D. Utilize the SSI/SSDI Outreach, Access, and Recovery ("SOAR") process and complete and submit high-quality SSI/SSDI applications on behalf of Participants. Follow-up with Participants through the appeal process and assist as necessary.
- E. Assist Participants in securing employment, acquiring job skills, and/or increasing earning potential. This may include employment screening/assessment, resume building, interview prep, counseling or job coaching, connection with recruiters, and referral to community-based programs and services such as the San Diego Workforce Partnership. Create partnerships with local employers for job placement.
- F. Maintain responsive and timely communication, both written and verbal, with City staff. Attend monthly meetings with City staff to review and discuss programmatic needs.
- G. Work collaboratively with City staff to identify Participants in need of services. Make and receive referrals from City staff and partners.
- H. Work collaboratively with City staff to maximize partnerships with community service providers and community organizations to cultivate resources and stay connected to the changing needs of the community.
- I. Ensure the Employment and Benefits Specialist, at minimum, completes certification for SOAR within 6 months of employment and receives annual training in Motivational Interviewing and Trauma-Informed Care. City shall determine the appropriate type and number of training sessions required on a case-by-case basis, based on the length and depth of the training course.
- J. Adhere to the Regional Task Force on Homelessness (RTFH) Community Standards which can be found at <https://www.rtfhsd.org/about-coc/standards-learning-training/>.
- K. Abide by the strategies set forth in City's Homelessness Action Plan and any amendments thereto, which takes a community focused and collaborative approach to addressing the needs of those experiencing or at-risk of homelessness within the City of Carlsbad. This plan can be found at <https://www.carlsbadca.gov/departments/housing-homeless-services/homeless-outreach/homeless-response-plan>.

- L. Attend at least 75% of City organized case conferencing/partner collaboration meetings and abide by privacy and participation policies as determined by City.
- M. Share Participant Homeless Management Information System (“HMIS”) data (without personally identifiable information) as part of the City of Carlsbad By-Name List.
- N. Maintain a written grievance procedure, including a formal process for Participants to provide feedback and to resolve conflicts experienced within the program.
- O. Comply with all routine monitoring and program audits as requested by City.
- P. Provide City with monthly data reports of clients served, services provided, and progress towards goals in a format approved by City by the 15th day of each month.
- Q. Provide City with billing invoices by the 15th of each month. The invoices shall include accompanying documentation for funds expended, which shall include but not be limited to documentation of timecards, mileage, and office supplies.
- R. Operate within the budget set forth in Exhibit “B”
  - 1. If there is a possibility that any portion of the total fee payable for the Services under the Agreement may not be expended by the date of contract termination, City and Contractor agree to mutually decide how such excess funds will be reallocated and fully expended in the budget (Exhibit “B”). In such case, Contractor agrees to draft an amended budget (amended Exhibit “B”) to reallocate the excess funds, which will require a contract amendment subject to approval by the city manager or designee.
  - 2. City and Contractor further agree to discuss and mutually determine any necessary changes to the budget during the lifetime of the Agreement. In the event of a mutually agreeable budget modification, Contractor agrees to draft an amended budget (amended Exhibit “B”), which will require a contract amendment subject to approval by the city council or city manager or designee, depending on the value and nature of the budget modification.



**EXHIBIT B****BUDGET**

<b>Personnel</b>	<b>\$69,126.76</b>
<b>Fringe @ 33%</b>	<b>\$22,811.83</b>
<b>Total Personnel</b>	<b>\$91,938.59</b>
<b>Operating Costs</b>	<b>\$16,174.41</b>
<b>Client Flex Funds</b>	<b>\$20,000.00</b>
<b>Total Direct Costs</b>	<b>\$36,174.41</b>
<b>Indirect @ 10%</b>	<b>\$11,887.00</b>
<b>Total Expenses</b>	<b>\$140,000.00</b>



*Memorandum*

January 29, 2024

**To:** Roxanne Muhlmeister, Assistant Finance Director/Purchasing Officer  
**From:** Chris Shilling, Homeless Services Manager  
**Re:** **Request for Exemption to Bidding for Community Resource Center**

---

The purpose of this memorandum is to request authorization for an exemption to the bidding process per Municipal Code - Purchasing Code 3.28.110 (N). This code provides a bidding exemption for situations where solicitations of bids or proposals for good, services and/or professional services would be, in the discretion of the awarding authority, impractical, unavailing, impossible, or not in the best interests of the city.

In October 2022, the City Council approved a new strategic plan and reaffirmed its commitment to reducing homelessness and its impacts on the community, while recognizing the complexity of this regional, statewide and national crisis. On Feb. 7, 2023, the City Council adopted a Homelessness Action Plan to update the city's goal to reduce homelessness and its effects on the local community. The plan outlines programs and initiatives that the city plans to carry out over the next five years. On Nov. 14, 2023, the City Council approved the fiscal year 2024-25 Homelessness Action Plan Funding Plan that determines the most appropriate funding source for each activity and to maximize the impact of the activities within the Homelessness Action Plan.

In fiscal year 2022, a pilot program was proposed to provide employment and benefits specialist services for people experiencing homelessness within the city. In March 2022, a request for proposals was released in search of an organization that could provide these services. The city received two proposals from local organizations. The evaluation team conducted a best value evaluation and interviewed both organizations. The team determined that Community Resource Center was the best value for the city. In June 2022, the City Council approved an agreement for an amount not-to-exceed \$140,000 per agreement year for two years expiring on June 15, 2024. Extensions were not included in the agreement term since this was a pilot program.

This pilot program has been successful over the last two years. In the first nine months of the program, Community Resource Center served 36 individuals, with 15 employment placements and 16 individuals with benefits enrollment. Community Resource Center has designed and implemented the current model and are uniquely positioned to provide these services within the city. Their staff have specialized training and have developed relationships with local businesses for employment. It's in the best interest of the city to continue these services with the existing service provider. A change of service provider for the next fiscal year would disrupt services since Community Resource Center continues to work with a large caseload. Continuing to contract with Community Resource Center would be beneficial for continuity of care for the existing clients. In

**Housing & Homeless Services Department**

1200 Carlsbad Village Drive | Carlsbad, CA 92008 | 442-339-2811

www.carlsbad.gov

Roxanne Muhlmeister

January 29, 2024

Page 2

addition, it is unlikely that a new request for proposals will result in additional bidders, since there is a limited number of homeless service providers in the community.

Housing & Homeless Services Department staff will be presenting this item to the City Council in May/June 2024, with a recommendation to authorize execution of the agreement for an amount not-to-exceed \$140,000 per agreement year for a one-year term with two additional one-year extensions. This term aligns with the five-year Homelessness Action Plan.

**Approval for Exemption**

*Roxanne Muhlmeister*

1/29/2024

**Roxanne Muhlmeister,  
Assistant Finance Director/Purchasing Officer**

**Date**

Attachment: Professional Services Agreement for Community Resource Center

CC: Shea Sainz, Senior Contract Administrator  
Mandy Mills, Housing & Homeless Services Director  
Rosario Aranda, Management Analyst



CITY COUNCIL  
**Staff Report**

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Matt Sanford, Economic Development Manager  
 matt.sanford@carlsbadca.gov, 442-339-5987

**Subject:** Disestablishing the Carlsbad Golf Lodging Business Improvement District Under the Parking and Business Improvement Area Law of 1989

**Districts:** All

**Recommended Action**

Adopt a resolution declaring its intention to repeal Carlsbad Municipal Code Chapter 3.38 and disestablish the Carlsbad Golf Lodging Business Improvement District established in 2012 and fixing the time and place of a public hearing.

**Executive Summary**

On April 18, 2023, the City Council formed a new Carlsbad Tourism Business Improvement District under the Property and Business Improvement District Law of 1994. (California Streets and Highways Code Section 36600 *et seq*<sup>1</sup>)

The new district established a benefit zone focused on golf-related programs that was intended to replace the Carlsbad Golf Lodging Business Improvement District, which was established under an older state law that imposed limitations on the district. The new district creates greater efficiencies in how Carlsbad is marketed for tourism. With a replacement program in place, the Carlsbad Golf Lodging Business Improvement District assessment was discontinued on June 30, 2023. However, before disestablishing the district, all remaining funds in the Carlsbad Golf Lodging Business Improvement District account had to be exhausted. All remaining funds have now been exhausted and the Carlsbad Golf Lodging Business Improvement District's Advisory Board approved a recommendation to the City Council to disestablish the district.

The City Council is being asked to consider a resolution declaring its intention to repeal Carlsbad Municipal Code Chapter 3.38, disestablish the Carlsbad Golf Lodging Business Improvement District and set a public hearing on July 23, 2024.

**Explanation & Analysis**

On Nov. 27, 2012, the City Council approved Ordinance No. CS-194 enacting Chapter 3.38 of the Carlsbad Municipal Code establishing the Carlsbad Golf Lodging Business Improvement District

<sup>1</sup> Et seq, or et sequentes, means all of the codes in the section, not just the single one cited.

under the Parking and Business Improvement Area Law of 1989. (California Streets and Highways Code Section 36500 *et seq.*)

The district provided a benefit to participating lodging businesses by collecting an assessment of 1% of daily room night costs from visitors to be used to market Carlsbad as a golf destination as well as the participating lodging businesses. Over time, the district grew to have eight participating lodging businesses.

The newly established Carlsbad Tourism Business Improvement District and its corresponding assessment began operating on July 1, 2023, as was approved in what is called the district's management district plan. The 1994 law allows for the creation of one or more benefit zones within the district to raise funds within a specific geographic area for different categories of businesses. The new district created such a benefit zone to focus on golf lodging, which includes an optional additional assessment for properties that opt into the golf benefit zone.

Under the new district, lodging businesses may voluntarily elect to pay an additional 1% assessment in addition to the base assessment, which is consistent with the previous Carlsbad Golf Lodging Business Improvement District assessment. The funds raised through the additional assessment are used to promote golf-related programs and activities to increase room sales for those lodging businesses that opt-in to paying the additional assessment. The proceeds of the additional assessment pay for golf-related programs and services specifically tailored only to those paying the additional assessment.

This zone effectively replaced the Carlsbad Golf Lodging Business Improvement District, creating greater efficiencies in operations and destination marketing in Carlsbad.

Funds that were collected by the Carlsbad Golf Lodging Business Improvement District needed to be fully expended before golf-related promotion services could be shifted to the new district. On May 6, 2024, the Carlsbad Golf Lodging Business Improvement District's Advisory Board approved the final reimbursements to properties for golf-related expenses, exhausting the old district's funds. With those funds exhausted, the Advisory Board approved a recommendation to the City Council to disestablish the district.

### **Fiscal Analysis**

Since the Carlsbad Golf Lodging Business Improvement District operations were replaced by a similar program under the new Carlsbad Tourism Business Improvement District, there is no immediate fiscal impact on the city from approving the disestablishment of the no-longer needed district.

### **Next Steps**

Should the City Council adopt the resolution, staff will schedule a public hearing for July 23, 2024, and provide the appropriate notice to the public and interested parties.

After the public hearing, the City Council may adopt the first reading of an ordinance repealing Carlsbad Municipal Code Chapter 3.38 contemporaneously with disestablishing the Carlsbad Golf Lodging Business Improvement District.

### Environmental Evaluation

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

### Exhibits

1. City Council resolution

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, DECLARING ITS INTENTION TO REPEAL CARLSBAD MUNICIPAL CODE CHAPTER 3.38 AND DISESTABLISH THE CARLSBAD GOLF LODGING BUSINESS IMPROVEMENT DISTRICT ESTABLISHED IN 2012 AND FIXING THE TIME AND PLACE OF A PUBLIC HEARING

WHEREAS, on Nov. 27, 2012, the City Council of the City of Carlsbad approved Ordinance No. CS-194 enacting Chapter 3.38 of the Carlsbad Municipal Code establishing the Carlsbad Golf Lodging Business Improvement District (CGLBID) under the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code Section 36500 *et seq.*); and

WHEREAS, the City Council formed a new Carlsbad Tourism Business Improvement District on April 18, 2023 (New CTBID) under the Property and Business Improvement District Law of 1994 (California Streets and Highways Code Section 36600 *et seq.*) as effectuated in City Council Resolution No. 2023-118; and

WHEREAS, the New CTBID will continue providing golf-related programs and activities with Visit Carlsbad as the contracted Owners' Association as defined under the 94 Law; and

WHEREAS, as a result of the New CTBID's establishment, the Carlsbad Golf Lodging Business Improvement District has wound down operations and exhausted its remaining funds as of May 6, 2024; and

WHEREAS, as a result of disestablishing the Carlsbad Golf Lodging Business Improvement District, Chapter 3.38 of the Carlsbad Municipal Code will become obsolete; and

WHEREAS, the City Council has the authority to disestablish the Carlsbad Golf Lodging Business Improvement District under California Streets and Highways Code Section 36550.

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

1. That the above recitations are true and correct.
2. That the City Council declares its intention to repeal Carlsbad Municipal Code Chapter 3.38 contemporaneously with the disestablishment of the Carlsbad Golf Lodging Business Improvement District.

3. That there are no remaining assets to dispose of acquired with the revenues of the assessments levied and collected for the Carlsbad Golf Lodging Business Improvement District's projects, programs, activities, and administration.
4. That the time and place for the public hearing to hear testimony on disestablishing the Carlsbad Golf Lodging Business Improvement District is set for July 23, 2024 at 5 p.m. at Carlsbad City Hall, 1200 Carlsbad Village Drive, Carlsbad, CA 92008.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

---

KEITH BLACKBURN, Mayor

---

SHERRY FREISINGER, City Clerk  
(SEAL)





CITY COUNCIL  
**Staff Report**

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Steven Stewart, Municipal Projects Manager  
steven.stewart@carlsbadca.gov, 442-339-2938

**Subject:** Approval of Plans, Specifications and Contract Documents and Authorization to Advertise for Bids for the Fleet Fuel Island Upgrade Project

**District:** 2

**Recommended Action**

Adopt a resolution approving the plans, specifications and contract documents and authorizing the City Clerk to advertise for bids for the Fleet Fuel Island Upgrade Project.

**Executive Summary**

The Fleet Fuel Island Upgrade Project includes the replacement of the city's three underground fuel storage tanks near the Fleet Maintenance Building, as shown in the location map in Exhibit 3, replacement of the associated fuel pumps and installation of a new canopy over the pumps. Completion of this project will ensure compliance with the California Health and Safety Code requirement for the closure of single-walled underground storage tank systems by December 2025.

The plans, specifications and contract documents for replacing the fuel system have been prepared and reviewed by city staff and a building permit is on file for the successful bidder to use upon contract award.

City Council approval of the plans, specifications and contract documents for this project is required under Carlsbad Municipal Code Section 3.28.080(E) due to the expected value of work exceeding \$200,000.

**Explanation & Analysis**

The Carlsbad Safety and Service Center was constructed in 1985 and consisted of the Police & Fire Headquarters facility, Fleet Maintenance Building and Fleet Fuel Island. Renovation of the Police & Fire Headquarters facility is currently in progress, and renovation of the Fleet Maintenance Building is expected to begin in 2025. A separate project to upgrade the fleet fuel island was added to the Capital Improvement Program in fiscal year 2022-23, as Project No. 4747, and design work has since been completed and reviewed by staff.

The fleet fuel island upgrade project involves replacement of two 20,000-gallon unleaded fuel storage tanks and one 12,000-gallon diesel fuel storage tank. The project also involves replacement of the three fuel dispensers and a fuel leak detection system.

Additionally, installation of a canopy at the fleet fuel island has been incorporated into the design to provide shading and weather protection. Surface lighting on the bottom side of the canopy will be incorporated to enhance lighting and safety during evening hours.

The state requires closure of single-walled underground storage tank systems by Dec. 31, 2025, and staff expect to complete this project to replace the existing single-walled tanks and piping in time for the state’s deadline.

Staff are currently ready to advertise this project for construction bidding and a building permit is on file with the Community Development Department for the successful bidding contractor to use upon contract award. Once the lowest and most responsive bid has been determined, staff plan to return to the City Council in fall 2024 to request award of a contract to the successful contractor.

**Fiscal Analysis**

The Fleet Fuel Island Upgrade Project is currently funded from the Infrastructure Replacement fund. The appropriation, total expenditures to date and budgeted allocations are shown below:

<b>Fleet Fuel Island Upgrade Project Capital Improvement Program Project No. 4747</b>	
Total project fund appropriations to date	\$4,063,800
Total expenditures/encumbrances to date	-\$879,134
<b>Total available project balance</b>	<b>\$3,184,666</b>
Construction budget (engineer’s estimate)	-\$2,163,861
Construction contingency (estimated)	-\$324,580
Construction management, inspection and testing (estimated)	-\$525,000
<b>Total remaining project costs</b>	<b>-\$3,013,441</b>
<b>Remaining balance</b>	<b>\$171,225</b>

**Next Steps**

With the City Council’s approval, the City Clerk will advertise a request for bids for the Fleet Fuel Island Upgrade Project. Staff will then evaluate the bids received and identify the lowest responsive and responsible bidder.

Staff plan to return to the City Council in fall 2024 with a recommendation to award a construction contract to the lowest responsive and responsible bidder and request additional funding, if needed.

**Environmental Evaluation**

The City Planner, through the process outlined in Carlsbad Municipal Code Section 19.04.060, has determined that the project belongs to a class of projects that the state Secretary for Natural Resources has found do not have a significant impact on the environment, and it is therefore categorically exempt from the requirement for the preparation of environmental

documents in accordance with Sections 15301 and 15303 of the California Environmental Quality Act Guidelines.

In making this determination, the City Planner has found that the exceptions listed in Section 15300.2 of the CEQA Guidelines do not apply to this project. The project is consistent with the requirements of both a Class 1 exemption as outlined in Section 15301 and a Class 3 exemption as outlined in Section 15303 because it consists of maintenance of public facilities, such as the restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety through the installation of minor electrical and utility systems to serve the construction.

#### Exhibits

1. City Council resolution
2. [Plans, Specifications and Contract Documents](#) (on file in the Office of the City Clerk)
3. Location map

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING THE PLANS, SPECIFICATIONS AND CONTRACT DOCUMENTS AND AUTHORIZING THE CITY CLERK TO ADVERTISE FOR BIDS FOR THE FLEET FUEL ISLAND UPGRADE PROJECT

WHEREAS, the City Council of the City of Carlsbad, California has determined it necessary, desirable and in the public interest to construct the project as designed; and

WHEREAS, the City Council of the City of Carlsbad, California has determined that the plans, specifications and contract documents for the Fleet Fuel Island Upgrade Project, Capital Improvement Program, or CIP, Project No. 4747, have been completed to the satisfaction of staff; and

WHEREAS, the plans, specifications and contract documents for the project are on file at the City Clerk's office and are incorporated by reference; and

WHEREAS, there is adequate funding for the project and no additional funds are requested at this time; and

WHEREAS, City Council approval of the plans, specifications and contract documents is required under Carlsbad Municipal Code Section 3.28.080(E) because the expected value to construct the project exceeds the \$200,000 limit established by the Public Contract Code, including the alternative provisions of the Uniform Public Construction Cost Accounting Act; and

WHEREAS, the City Council authorizes the City Clerk to advertise for bids for the Fleet Fuel Island Upgrade Project; and

WHEREAS, the City Planner has determined that the project belongs to a class of projects that the State Secretary for Natural Resources has found do not have a significant impact on the environment, and it is therefore categorically exempt from the requirement for the preparation of environmental documents pursuant to Sections 15301 and 15303 of the California Environmental Quality Act, or CEQA, Guidelines. Further, that in making this determination, the City Planner has found that the exceptions listed in Section 15300.2 of the state CEQA Guidelines do not apply to this project, and that the project is consistent with Classes 1 and 3 exemptions as outlined in Sections 15301 and 15303 because it consists of maintenance of public facilities, such as restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety through the installation of minor electrical and utility systems to serve the construction.

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

1. That the above recitations are true and correct.
2. That the plans, specifications and contract documents for the Fleet Fuel Island Upgrade Project, CIP Project No. 4747, are approved and on file at the City Clerk's Office.
3. That the City Clerk is hereby authorized and directed to publish, in accordance with state law and Carlsbad Municipal Code Section 3.28.080(C), a notice to contractors inviting bids for construction of the project in accordance with plans, specifications and contract documents referred to herein.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

---

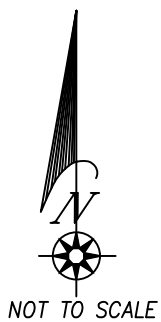
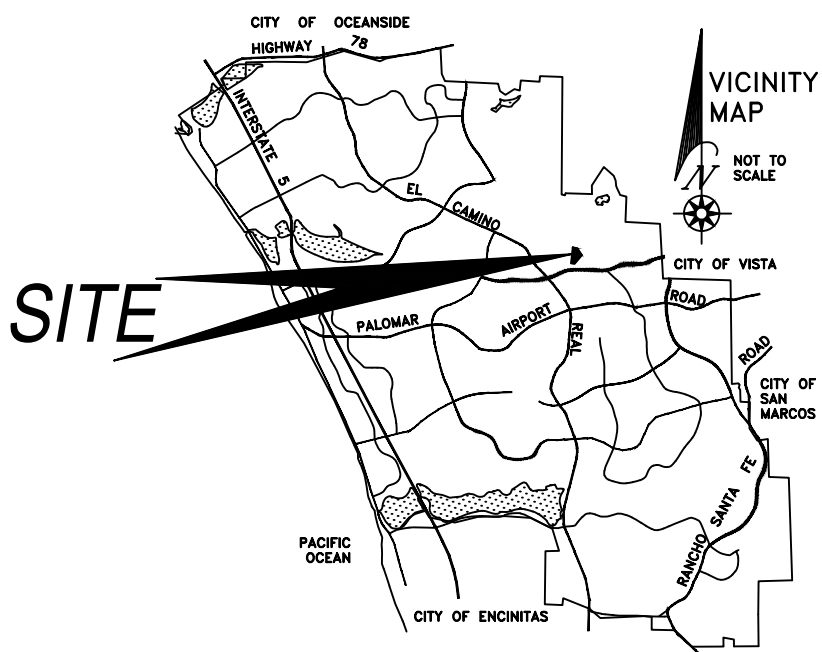
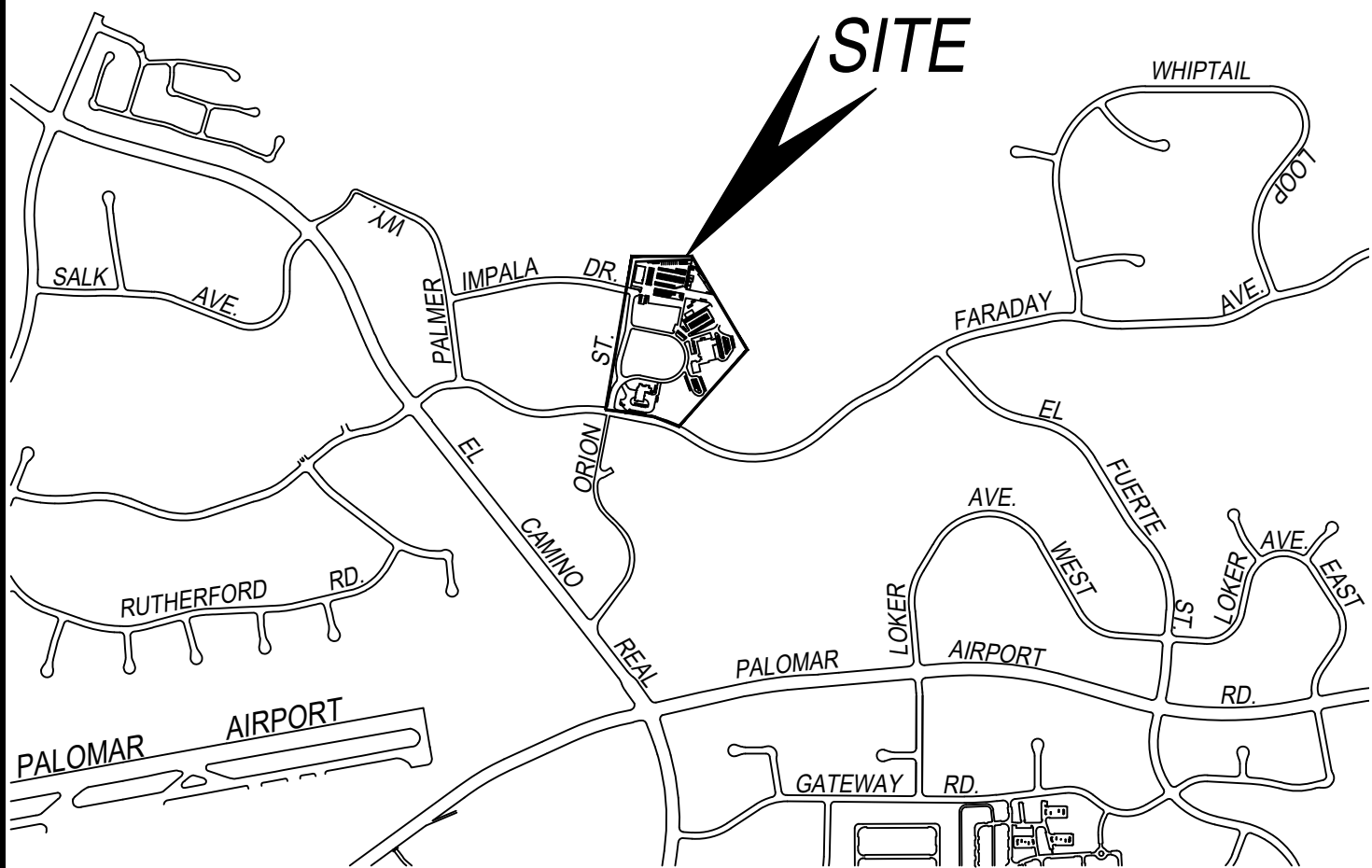
KEITH BLACKBURN, Mayor

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SHERRY FREISINGER, City Clerk  
(SEAL)

Plans, Specifications and Contract Documents  
(on file in the Office of the City Clerk)

# LOCATION MAP



PROJECT NAME

Fleet Fuel Island Upgrade Project  
CIP Project No. 4747

3



CITY COUNCIL  
**Staff Report**

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Tim Murphy, Senior Program Manager  
tim.murphy@carlsbadca.gov, 442-339-2587  
James Wood, Environmental Sustainability Director  
james.wood@carlsbadca.gov, 442-339-2584

**Subject:** Fifth Amended National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding 2024

**Districts:** All

### Recommended Action

Adopt a resolution authorizing the Mayor to execute the fifth amended National Pollutant Discharge Elimination System San Diego Regional Stormwater Copermittees Memorandum of Understanding 2024.

### Executive Summary

The City of Carlsbad is subject to a permit issued by the California Regional Water Quality Control Board's San Diego Region that requires it to cooperate in implementing various regional watershed programs.

The City Council previously approved a memorandum of understanding that outlines the inter-agency management structure of these efforts and describes how the permit holders work together and share costs associated with implementing the permit's obligations.

The City Council is now being asked to approve a fifth amendment to this memorandum of understanding that allows the parties to continue to share compliance costs.

The City Council's approval is required because the City Council has not delegated authority to the City Manager or designee to sign memorandums of understanding of this nature.

### Explanation & Analysis

#### **Background**

The permit, National Pollutant Discharge Elimination System Order No. R9-2013-0001, requires the city to cooperate with other agencies subject to the permit, known as the copermittees.



The City Council adopted a resolution to participate in the memorandum of understanding in 2007. The copermittees include the 18 incorporated cities in the county and the County of San Diego, San Diego Unified Port District and the San Diego County Regional Airport Authority.

Regional programs include implementation and maintenance of the Project Clean Water website, a web-based regional clearinghouse that provides a centralized point of access to water quality information and resources for San Diego County; regional education and outreach programs; membership in the California Stormwater Quality Association; regional studies; and regulatory reports, including regional monitoring reports.

Watershed programs involve copermittees located within the same watershed management area. The Carlsbad Watershed Management Area includes the County of San Diego and the incorporated cities of Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach and Vista. Watershed programs include development of a water quality improvement plan, a strategic watershed-based plan intended to guide programs toward improved water quality in storm water discharges and receiving waters; annual reports; and monitoring of storm drain discharges and receiving waters within the watershed management area.

The City Council has approved four separate amendments to the memorandum of understanding, in 2010, 2014, 2015, and 2019. This fifth amendment allows copermittees to continue sharing costs associated with permit compliance as necessary until a superseding permit is adopted by the Regional Water Quality Control Board or until August 2029, whichever is longer.

The amendment also updates the not-to-exceed limits for the Regional and Carlsbad Watershed Management Area programs for fiscal years 2024-25 through 2028-29.

### **Fiscal Analysis**

There are adequate funds in the Watershed Protection Program's operating budget to fully fund the city's obligation under the memorandum of understanding for fiscal year 2024-25. Expected expenditures of \$117,985 for fiscal year 2024-25 were included in the operating budget submitted and approved by the City Council on June 18, 2024. Subsequent annual budgets will be requested through the annual budget process.

### **Next Steps**

The city will continue to work with other copermittees to implement the requirements of the permit.

### **Environmental Evaluation**

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

### **Exhibit**

1. City Council resolution

**RESOLUTION NO.**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE THE FIFTH AMENDED NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM SAN DIEGO REGIONAL STORMWATER COPERMITTEES MEMORANDUM OF UNDERSTANDING 2024

WHEREAS, the California Regional Water Quality Control Board San Diego Region issued National Pollutant Discharge Elimination System, or NPDES, Order No. R9-2007-0001 and subsequent NPDES Order No. R9-2013-0001, as amended by NPDES Order Nos. R9-2015-0001 and R9-2015-0100, or Permit, to regulate discharges from municipal separate storm sewer systems in the San Diego region; and

WHEREAS, the San Diego Regional Stormwater Copermittees, or Copermittees, consist of the County of San Diego, San Diego Unified Port District, San Diego County Regional Airport Authority and the incorporated cities of San Diego, Carlsbad, Chula Vista, Coronado, Escondido, Imperial Beach, La Mesa, San Marcos, Del Mar, El Cajon, Encinitas, Lemon Grove, National City, Oceanside, Poway, Santee, Solana Beach and Vista; and

WHEREAS, the Permit requires that the Copermittees cooperate in implementation of various regional and watershed programs; and

WHEREAS, on Dec. 18, 2007, the City Council, through Resolution No. 2007-325, authorized the Mayor to execute the Memorandum of Understanding, or MOU, between the City of Carlsbad and the Copermittees as required pursuant to the Permit; and

WHEREAS, on May 11, 2010, the City Council, through Resolution No. 2010-104, authorized the Mayor to execute the first amendment to the Copermittee MOU; and

WHEREAS, on April 22, 2014, the City Council, through Resolution No. 2014-068, authorized the Mayor to execute the second amendment to the Copermittee MOU; and

WHEREAS, on Aug. 25, 2015, the City Council, through Resolution No. 2015-211, authorized the Mayor to execute the third amendment to the Copermittee MOU; and

WHEREAS, on June 25, 2019, the City Council, through Resolution No. 2019-107, authorized the Mayor to execute the fourth amendment to the Copermittee MOU; and

WHEREAS, the fifth amendment allows the Copermittees to continue sharing costs until a superseding NDPEs Order is adopted by the Regional Board or until August 2029, whichever is longer;

and increases the not-to-exceed amounts for the Regional and Carlsbad Watershed Management Area Programs for fiscal years 2024-25 through 2028-29.

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

1. That the above recitations are true and correct.
2. That the Mayor is authorized to execute the fifth amendment to the Memorandum of Understanding between the City of Carlsbad and the San Diego Regional Stormwater Copermittees, attached hereto as Attachment A.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

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KEITH BLACKBURN, Mayor

---

SHERRY FREISINGER, City Clerk  
(SEAL)

**Fifth Amended National Pollutant Discharge Elimination System**

**San Diego Regional Stormwater Copermittees**

**MEMORANDUM OF UNDERSTANDING**

**2024**

This Memorandum of Understanding (MOU), entered into by the County of San Diego (County), the San Diego Unified Port District (Port), the San Diego County Regional Airport Authority (Airport), and the incorporated cities of San Diego, Carlsbad, Chula Vista, Coronado, Escondido, Imperial Beach, La Mesa, San Marcos, Del Mar, El Cajon, Encinitas, Lemon Grove, National City, Oceanside, Poway, Santee, Solana Beach, and Vista (Cities), collectively called Copermittees, establishes the shared program responsibilities of each party with respect to compliance with the National Pollutant Discharge Elimination System (NPDES) stormwater permit regulations administered by the United States Environmental Protection Agency (U.S. EPA) under the authority granted by the Federal Water Pollution Control Act (Clean Water Act) 33 USCA 1251 et seq. as amended.

RECITALS

WHEREAS, in 1987 Congress amended Section 402 of the Federal Water Pollution Control Act (33 USCA §1342p) to require the U.S. EPA to promulgate regulations for applications for permits for stormwater discharges; and

WHEREAS, the U.S. EPA adopted final permit regulations on November 16, 1990; and

WHEREAS, these permit regulations require the control of pollutants from stormwater discharges by requiring an NPDES permit, which would allow the lawful discharge of stormwater into waters of the United States; and

WHEREAS, the County, the Port, the Airport, and the Cities desire to implement an integrated stormwater management program with the objective of improving surface water quality in the County of San Diego, but do so without waiving and expressly subject to any and all objections and appeals made by any Copermittee in response to any NPDES Permit; and

WHEREAS, the California State Water Resources Control Board (CSWRCB) as designee of the U.S. EPA has delegated authority to the San Diego Regional Water Quality Control Board (Regional Board) for administration of the NPDES stormwater permit within the boundaries of its region; and

WHEREAS, on, May 8, 2013, the Regional Board issued an NPDES permit as Order No. R9-2013-0001, as amended by Order Nos. R9-2015-0001 and R9-2015-0100, NPDES No. CAS0109266, (Permit) governing waste discharge requirements for stormwater and urban runoff from the County, the Port, the Airport, and the Cities, naming these entities as Copermittees; and

WHEREAS, said Permit requires that the Copermittees cooperate in the implementation of various Water Quality Improvement Plans and watershed management strategies to comply with the Permit and any future amendments and/or reissuances thereto.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

## I. DEFINITIONS

**At Large** means representing all of the Copermittees of this MOU.

**Chair** means presiding over and providing leadership and direction to a Working Body. This includes serving as a point of contact to external entities such as Regional Board staff, stakeholders, and industry groups, soliciting group input on and developing meeting content, facilitating meetings, and coordinating with the Secretary or Working Body Support staff to finalize work products for distribution to the Working Body. Chair responsibilities may also be divided between Co-Chairs.

**Contract Administration** means developing, soliciting, awarding, negotiating, and managing contracts.

**Consensus** means general agreement reached between the participants of a Working Body.

**Copermittee**, for the purposes of this agreement, means a stormwater agency located within San Diego County identified in Table 1a of the 2013 Permit, as amended.

**Default Formula** is the formula by which shared costs budgets for Regional General Programs or Watershed General Programs identified in Table 1 of this MOU are calculated, as described in Section II.B.1.a.(1).

**Direct Costs** mean those costs directly related to the development of a work product, and/or to the performance of a particular function or service. Direct Costs may include the wages of Copermittee employees engaged in an activity and the cost of materials or supplies, and/or contracts or consultants, needed to support that activity. Depreciation, equipment, and office space are not considered Direct Costs.

**Fiscal Year** starts on July 1 and ends on June 30 of the following year.

**General Programs** are collaborative urban runoff management activities which are (1) mandated by or necessary to implement requirements of the Permit, (2) necessary to anticipate the requirements, or prepare for renewal, of the Permit, (3) required to comply with Regional Board Orders or other directives required of Copermittees as point-source dischargers of urban runoff (e.g., 13267 Orders, Total Maximum Daily Loads, etc.), or (4) other stormwater and/or watershed management activities conducted with the unanimous approval of Copermittees sharing the cost or responsibility.

**In-kind Contribution** means a non-monetary contribution that can be used to satisfy an equivalent monetary obligation. Examples of In-kind Contributions are equipment or services provided for use.

**Program Planning Subcommittee or Planning Subcommittee** is composed as described in Section III.C.4 and 5.

**Regional General Program(s)** are activities that apply to all Copermittees, or that provide a regional benefit to Copermittees as determined by the Regional Management Committee.

**Regional Principal Permittee** is the County of San Diego unless another Regional Principal Permittee is selected in accordance with Section III.A. In addition to the responsibilities of all Copermittees described in Section II, the Regional Principal Permittee provides general coordination for the development and implementation of Regional General Programs, including the specific tasks and responsibilities described in Section III.A.1.b.

**Regional Stormwater Management Committee or Management Committee** is composed as described in Section III.B.2.

**Regional Work Plan** is a work plan that is one or more of the following: (1) developed and adopted annually for the purpose of conducting regional business to implement requirements of the Permit, (2) necessary to anticipate the requirements, or prepare for renewal, of the Permit, (3) required to comply with Regional Board Orders or other orders, directives, and/or regulatory mandates required of

Copermittees as dischargers of municipal stormwater (e.g., 13267 Orders, Total Maximum Daily Loads, etc.), or (4) other stormwater and/or watershed management activities conducted with the unanimous approval of Copermittees sharing the cost or responsibility.

**Representative** means a Copermittee staff member or consultant who serves as a point of contact and/or participant in the activities of a Working Body on behalf of the Copermittee. Except as described in Section III.B (Regional Stormwater Management Committee), Representatives are not required to attend meetings, but are expected to maintain a reasonable knowledge of, and involvement in, the activities of the Working Body. To the best of their ability each Copermittee Representative should have expertise and knowledge in the subject matter of each applicable Working Body.

**Secretary** means a person who takes responsibility for the records, correspondence, minutes or notes of meetings, and related affairs of a Working Body. This includes: maintaining group contact lists; preparing and sending out meeting notifications and agendas; arranging for meeting rooms and equipment; taking, preparing, and finalizing meeting minutes or notes; and, coordinating with the Chair or Working Body Support staff to organize and distribute work products to the Working Body.

**Simple Majority** means at least one-half (50%) of applicable Copermittees, rounded up to the nearest integer, or plus one where the number of Copermittees is even. For the purposes of this MOU, a simple majority may never be less than three Copermittees.

**Shared Cost Budget** is one that is agreed upon and shared by Copermittees for the purpose of conducting stormwater regulatory activities, and can be developed at a watershed, regional or other scale. The timeframe of shared cost budgets may be annual (fiscal year) or multi-year.

**Special Formula** means any cost share formula that differs from the Default Formula in the selection or weighting of individual factors or in the methodology used to calculate one or more of them.

**Three-fourths Majority** means at least three-fourths (75%) of applicable Copermittees, rounded up to the nearest integer. For the purposes of this MOU, a Three-fourths Majority may never be less than three Copermittees.

**Two-thirds Majority** means at least two-thirds (67%) of applicable Copermittees, rounded up to the nearest integer. For the purposes of this MOU, a Two-thirds Majority may never be less than three Copermittees.

**Urbanized Land Area** means the total of all SANDAG land uses within the geographic area, subject to the cost share, excepting therefrom, the following coded land uses: 1403 Military Barracks; 4102 Military Airports; 6700 Military Use; 6701 Military Use; 6702 Military Training; 6703 Military Weapons; 7209 Casinos; 7603 Open Space Reserves, Preserves; 7609 Undevelopable Natural Areas; 9200 Water; 9201 Bays, Lagoons; 9202 Inland Water; and 9300 Indian Reservations.

**Voting Member** means a Copermittee or Watershed Copermittee acting as an at-large representative responsible for voting on items as described in Section III.B. and Section III.C. of this MOU.

**Watershed Copermittee** means any Copermittee that is identified both as a Copermittee under Table 1.a of the Permit and a Responsible Copermittee under any Watershed Management Area as defined in Table B-1 of the Permit.

**Watershed General Programs** are activities that apply to the Copermittees comprising any individual Watershed Management Area (WMA) defined in Table B-1 of the Permit, or providing a general benefit to Copermittees within the WMA as determined by a Working Body.

**Working Body** means Committees, Subcommittees, and Sub-working body(s) such as Ad-Hoc Subcommittees assembled to conduct specific tasks required by, for, or in furtherance of, compliance with the Permit.

## II. RESPONSIBILITIES OF ALL COPERMITTEES

The following apply to General Programs.

### A. Performance and Reimbursement of Tasks

1. Any individual Copermittee performing tasks necessary to fulfill budgeted General Program responsibilities for a Working Body is entitled to reimbursement of the costs incurred in accordance with section II.B.
2. Any Copermittee performing contract administration tasks to fulfill budgeted General Program responsibilities for a Working Body is entitled to reimbursement of contract management costs at a rate of 5% of the total contract cost or as otherwise agreed on by the participating Copermittees.
3. Any Copermittee performing tasks other than contract administration or voluntarily serving as a Working Body Chair, Co-chair, or Secretary, is entitled to reimbursement of the Direct Costs of performing those services in accordance with section II.B.
4. A Copermittee shall not be obliged to conduct work, enter into any contract, continue with any work or contract, or incur any other cost on behalf of other Copermittees if each Copermittee has not contributed the funds that it is obliged to contribute toward the activity or program, or if the Copermittee has not received adequate assurances that such funds will be received before payments become due. The Copermittee shall have sole discretion to determine whether assurances that require funds will be timely received or adequate.
5. A member of a Working Body providing Working Body Support may terminate those obligations for convenience, but shall first make a good faith effort to carry out or transfer existing responsibilities to another party by providing written notification of termination to the Copermittees within the Working Body 90 days prior to the intended date of termination.

### B. Fiscal Responsibilities

1. Division of Shared General Program Costs
  - a. Prior to the allocation of shared costs, each proposed or approved budget task or sub-task shall be identified as either a Regional General Program cost or a Watershed General Program cost, and the Copermittees sharing that cost shall be identified. The cost of any particular budget element shall be subject to the approval of only the Copermittees to which it applies. The associated costs shall be divided among participating Copermittees as described below.
    - (1) Default Formula. Shared costs shall be divided according to a Default Formula of 45% Urbanized Land Area, 45% Population, and 10% Equal Division unless a Special Formula is approved by the Copermittees to which the cost applies. This formula applies only to the geographic boundary of the Regional General Program or Watershed General Program being considered.
      - (a) Population costs shall be divided among the Copermittees as follows: Whenever any geographic portion of the Port or Airport jurisdiction(s), respectively, lies(s) within the geographic area to which the shared program or activity is applicable, the Port or Airport, respectively, will each pay a fixed 0.5% of total Population costs. The remaining percentage of the population costs shall be divided among Copermittees by dividing the total population of each Copermittee by the combined total Copermittee population within the geographic area applicable to the shared program or activity. **These percentages shall be calculated at least once every 5 years using the most recently available population data available from the San Diego**

**Association of Governments (SANDAG), unless more recent data are available from an equivalent source such as the U.S. Census Bureau, and are determined to be acceptable by the Copermittees sharing the cost.**

- (b) Urbanized Land Area costs shall be divided among Copermittees by dividing the total Urbanized Land Area of each Copermittee by the combined total Urbanized Land Area of all participating Copermittees within the geographic area applicable to the shared program or activity. Urbanized Land Area shares shall be calculated using the most recently available San Diego Association of Governments (SANDAG) land use statistics. The Urbanized Land Area share for the County shall include those urbanized lands in the unincorporated portion of the County that are west of the County Water Authority (CWA) service area boundary as it exists on the date of this MOU or as formally amended by the CWA.
  - (c) Ten Percent (10%) of the total cost to be shared shall be divided equally amongst all of the Copermittees.
  - (d) Modification of the Default Formula requires the unanimous vote of all Copermittees. For cost sharing that applies only to a group that contains fewer than all Copermittees, a unanimous vote is required of all affected Copermittees.
- (2) Special Formulas. Special Formulas may be applied to any shared Regional or Watershed General Program cost and require the unanimous vote of the Copermittees participating in the cost.
- (3) In-kind Contributions. Subject to approval by the Copermittees participating in a particular shared General Program budget, a Copermittee may provide an In-kind contribution of equal value rather than a monetary contribution toward all or part of the cost of an activity. Copermittee In-kind contributions may include Working Body Support.

## 2. Work Plans and Shared Cost Budgets

### a. Limitations on Cost-sharing

General Program activities that are cost-shared by all Copermittees include collaborative municipal stormwater and watershed management activities which are

- (1) mandated by or necessary to implement requirements of the Permit,
- (2) necessary to anticipate the requirements, or prepare for renewal, of the Permit,
- (3) required to comply with Regional Board Orders or other directives required of Copermittees as dischargers of municipal stormwater (e.g., 13267 Orders, Total Maximum Daily Loads, etc.), or
- (4) other watershed management activities conducted with the unanimous approval of Copermittees sharing the cost or responsibility.

Examples of such activities include:

- (1) Development or implementation of any program requirements of the MS4 Permit, such as, the BMP Design Manual, regional education and outreach, or Water Quality Improvement Plans;



- (2) Public participation activities, such as facilitating public meetings and workshops;
- (3) Program assessment;
- (4) Plan updates;
- (5) Water quality monitoring, assessment and reporting;
- (6) Annual reporting, including establishment and management of data and information clearinghouses;
- (7) Preparation of technical analyses, recommendations and comments regarding the MS4 Permit, total maximum daily loads, and other relevant storm water quality regulations;
- (8) Preparation of documents required by the MS4 Permit, such as Reports of Waste Discharge; and
- (9) Special studies related to storm water quality-related pollutants, their sources, and potential best management practices.

b. Work Plans and Shared Cost Budgets

- (1) **No later than October 31<sup>st</sup> of each year**, each Working Body shall prepare and submit to the Planning Subcommittee a proposed Work Plan and Shared Costs Budget for the upcoming Fiscal Year.
- (2) Each Work Plan shall identify the parties that will serve as a Working Body Chair, Cochair, or Secretary for the upcoming Fiscal Year. These assignments will be served on a fiscal year basis and shall be for a minimum term of one year.
- (3) A Copermittee may not be compelled to act, or continue acting, as a Working Body Chair, Co-chair, or Secretary, and may at any time terminate an existing assignment. Before doing so, the Copermittee shall first make a good faith effort to carry out or transfer existing responsibilities.
- (4) Each budget shall describe major tasks, schedules, and projected costs, which Copermittees will provide Working Body Support, Contract Administration, In-kind contributions, and any other information applicable to regional general program costs.
- (5) To ensure that each Copermittee governing body has sufficient time to consider fiscal impacts, **the Planning Subcommittee shall prepare a consolidated draft Regional Work Plan and Shared Costs Budget no later than December 31<sup>st</sup> of each year for the Regional General Programs**. After consideration of comments and discussion, a final Regional Work Plan and Shared Costs Budget shall be prepared, approved by the Management Committee, and distributed to the Copermittees no later than January 31<sup>st</sup> of each year. The consolidated Regional Work Plan and Shared Costs Budget shall also identify the party or parties serving as Regional General Program operations fund managers.
- (6) Modifications to any adopted Regional Work Plan and Shared Costs Budget that will result in an overall increase in cost require the approval of the Regional Management Committee.
- (7) Copermittees from each Working Body, for which costs will be shared, shall prepare, agree upon and distribute to the participating Copermittees in that watershed, a watershed work plan and Shared Costs Budget.
- (8) Approval of the Shared Costs Budget for each fiscal year is subject to approval by Copermittee governing bodies as part of their regular annual budgeting process.

3. Cumulative Budget Limits

- a. The total Shared Cost Budget authorized under this MOU may not exceed the cumulative limits specified for each spending category in **Table 1**. These values represent the maximum amount that may be cost-shared for each spending category for the duration of this MOU. **They do not represent funding commitments.** Once a cumulative limit has been reached, the Copermittees must establish separate agreements for sharing additional costs for that budget category. The estimated annual limits shown for each fiscal year are for planning purposes only. Where an estimated annual limit is not reached in any fiscal year, the surplus amount may be carried over into subsequent fiscal years, so long as the cumulative limit is not exceeded. Budget limits apply only to their designated budget category. They may not be exchanged or credited across budget categories. Spending in each budget category may not exceed the applicable cumulative limit under any circumstances.

**Table 1: Not-to-exceed Limits by Budget Category**

	<b>FY 2024-25</b>	<b>FY 2025-26</b>	<b>FY 2026-27</b>	<b>FY 2027-28</b>	<b>FY 2028-29</b>	<b>Cumulative Limit</b>
<b>Regional Budgets</b>	\$1,082,501	\$1,114,976	\$1,148,425	\$1,182,878	\$1,218,364	\$5,747,144
<b>San Luis Rey, SLR</b>	\$753,250	\$1,740,123	\$1,153,722	\$843,838	\$1,287,738	\$5,778,671
<b>Carlsbad, CAR</b>	\$572,785	\$1,129,049	\$1,159,676	\$1,052,999	\$1,055,576	\$4,970,085
<b>San Dieguito, SDG</b>	\$755,662	\$564,235	\$481,502	\$428,530	\$438,369	\$2,668,298
<b>Los Penasquitos, LPQ</b>	\$843,685	\$674,499	\$584,117	\$617,617	\$632,619	\$3,352,537
<b>San Diego River, SDR</b>	\$1,783,600	\$2,795,208	\$2,260,918	\$1,839,693	\$2,926,208	\$11,605,627
<b>San Diego Bay, SDBay</b>	\$952,200	\$855,500	\$910,800	\$936,100	\$836,050	\$4,490,650
<b>Tijuana, TJ</b>	\$691,200	\$626,400	\$635,850	\$681,750	\$619,650	\$3,254,850
<b>Bacteria TMDL</b> <i>(Cities of Carlsbad, Del Mar, El Cajon, Encinitas, Escondido, La Mesa, Lemon Grove, Oceanside, Port of San Diego, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista and the County of San Diego.</i>	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$100,000
<b>Total Watershed Management Area (WMA) Budgets</b>	<b>\$6,372,382</b>	<b>\$8,405,014</b>	<b>\$7,206,585</b>	<b>\$6,420,527</b>	<b>\$7,816,210</b>	<b>\$36,220,718</b>
<b>Total WMAs + Regional Budgets</b>	<b>\$7,454,883</b>	<b>\$9,519,990</b>	<b>\$8,355,010</b>	<b>\$7,603,405</b>	<b>\$9,034,574</b>	<b>\$41,967,862</b>

#### 4. Management and Payment of Funds

- a. For Regional General Programs, the Copermittees shall each pay a yearly assessment into one or more Regional General Program operations funds for their respective portion of any Regional Shared Costs Budget approved pursuant to this MOU and based on the Default Formula. The Regional General Program operations fund shall be managed by the Regional Principal Permittee, or any other Permittee on approval of the Copermittees.
- b. For Watershed General Programs, the applicable watershed Copermittees shall each pay an assessment into one or more Watershed General Program operations funds for their assigned portion of any watershed shared costs budget approved pursuant to this MOU and based on the Special Formula applicable to that watershed. Each Watershed General Program operations fund shall be managed by the watershed lead permittee, or any other watershed permittee on approval of the participating Copermittees.
- c. The Copermittee managing each General Program operations fund shall provide budget balance and expenditure status reports following the end of each fiscal year. This shall include a detailed accounting of all costs and expenses in accordance with the accepted work plan and Shared Costs Budget, including those incurred by Copermittees providing Working Body Support, contracting services, In-kind services, or other applicable costs.
- d. Each Copermittee shall pay invoices within 60 days of receipt from the Copermittee managing the applicable General Program operations fund.
- e. Funds collected and not expended in any fiscal year shall be credited to the Copermittees' share of the next fiscal year's costs in accordance with the Copermittees' defined shared costs.
- f. Copermittees providing Working Body Support, Contract Administration, In-kind services, or incurring other budgeted costs on behalf of other Copermittees shall provide documentation of those expenses as requested by the Copermittee managing the applicable General Program operations fund. They shall only receive credit for those expenses if a detailed accounting of all costs and expenses meeting the minimum standards agreed upon by the Copermittees has been provided.
- g. Differences in the approved actual cost of expenses from those budgeted shall be either credited or added as appropriate to the amount of the Copermittees' share. In the event that any Copermittees' share of the next fiscal year's costs is less than the amount to be credited, the difference shall be refunded to the Copermittee. Refunds shall be provided to Copermittees no later than 90 days after final accounting.

At its discretion, a Copermittee managing a General Program operations fund may, prior to the completion of a fiscal year, make payment to any Copermittee providing Working Body Support, Contract Administration, In-kind services, or incurring other budgeted expenditures on behalf of other Copermittees so long as all of the conditions of Section II B.4.f above have been satisfied and there are sufficient funds available to make a payment without requiring additional contributions or jeopardizing program objectives. If for some reason excess payment is made, the Copermittee receiving the payment agrees to return the additional payment without any recourse against the managing Copermittee.

### **III. REGIONAL GENERAL PROGRAMS**

In addition to the requirements of Section II, the following apply to Regional General Programs.

#### **A. Regional Principal Permittee**

1. The County is hereby designated Regional Principal Permittee (Principal Permittee).

- a. The County or any other Copermittee may not be compelled to act, or continue acting, as Principal Permittee. A Copermittee may at any time terminate its assignment as Principal Permittee but shall first make a good faith effort to carry out or transfer existing responsibilities.
- b. In addition to the responsibilities of all Copermittees described in Section II, the Principal Permittee shall provide general coordination for the development and implementation of Regional General Programs, including the following tasks and responsibilities:
  - (1) Establish, chair, and provide overall coordination and leadership of the Regional Stormwater Management Committee (Management Committee) and the Regional Program Planning Subcommittee (Planning Subcommittee).
  - (2) Maintain a current contact list of Copermittees and interested parties.
  - (3) Maintain knowledge of and advise the Copermittees regarding current and proposed state and federal policies, regulations, and other NPDES programs; assist the Copermittees in the development and presentation of positions on these issues before local, state, and federal agencies.

#### **B. Regional Stormwater Management Committee**

1. The purpose of the Regional Stormwater Management Committee (Management Committee) is to develop, approve, and coordinate municipal stormwater and watershed management, and to explore issues of regional significance.
2. The Management Committee shall consist of one Representative of each Copermittee. Each Copermittee shall have one vote.
3. The Management Committee shall meet at least annually.
4. At a minimum, the Management Committee shall have the following responsibilities:
  - a. Address common issues, promote consistency among jurisdictional and watershed programs, and plan and coordinate activities required under the Permit;
  - b. Develop, implement, and arrange for implementation of Regional General Programs;
  - c. Provide a general forum for informing and receiving input from stakeholders and interested parties;
  - d. Provide a forum for public participation in the development and implementation of regional urban runoff management programs and activities;
  - e. Review specific issues pertaining to Working Bodies, make recommendations, or conduct work in support of shared regional priorities or objectives;
  - f. Formally approve the recommendations, work products, and deliverables of Working Bodies presented for consideration;
  - g. Adopt an Annual Regional Work Plan and Shared Costs Budget in accordance with the budgetary limits set forth in Table 1;
  - h. Approve an Annual Regional Work Plan and Shared Costs Budget; and
  - i. Approve year-end Budget Balance and Expenditure Status Reports.
5. The Management Committee shall be chaired by the Principal Permittee or may alternatively be chaired or co-chaired by any other Copermittee. A reassignment or change in the responsibilities of the Principal Permittee requires a three-fourths majority approval of all Copermittees.
6. Voting Requirements for the Management Committee

- a. For a meeting or a vote to be held, a quorum of a Two-thirds Majority of voting representatives of the Management Committee must either be present or participate remotely via legally acceptable electronic communication (telephone, voice over internet protocol, etc.).
- b. Management Committee voting shall not be conducted outside of meetings (e.g., by email).
- c. For a motion to be approved, an affirmative vote of a Simple Majority of the Management Committee is needed.
- d. On approval of the Management Committee, activities undertaken by a subset of Copermittees, but providing a regional benefit to Copermittees, may be considered Regional General Programs.
- e. **Approval of any shared cost requires a unanimous vote of all Copermittees participating in the cost.**

### **C. Regional Program Planning Subcommittee**

1. The purposes of the Planning Subcommittee shall be to provide regional coordination of urban runoff management activities, to develop and implement Regional General Programs, and to coordinate the activities of Working Bodies.
2. At a minimum, the Planning Subcommittee shall have the following responsibilities:
  - a. Serve as an intermediary between the Management Committee and other Copermittee Working Body(s);
  - b. Plan and coordinate Management Committee meetings;
  - c. Review specific issues pertaining to Regional Working Body(s), make recommendations, or conduct work in support of shared regional priorities or objectives;
  - d. Oversee, coordinate, and track the progress of As-Needed Regional Working Body(s) in developing specific work products, responding to information requests, and completing tasks;
  - e. Establish and maintain a calendar of Copermittee meetings and events;
  - f. Conduct regional program planning including developing an Annual Regional Work Plan and Shared Costs Budget for Management Committee consideration and approval;
  - g. Review and recommend Management Committee approval of work products, recommendations, and requests of Regional Working Body(s) for consideration and approval;
  - h. Annually receive, review, comment on, and consolidate the recommended Work Plans and Shared Costs Budgets of each Regional Working Body(s);
  - i. Coordinate and liaise with Regional Board staff, stakeholders, regulated parties, and other interested parties to identify and explore key regional issues and concerns.
  - j. Provide Representation to the California Stormwater Quality Association (CASQA);
  - k. Provide representation or participation for other professional organizations and societies as appropriate and feasible;
  - l. Provide regular updates to Copermittees and interested parties via Management Committee meetings or other appropriate means (e-mail, etc.); and
  - m. Provide subject area input as needed for the development, implementation, review, and revision of General Programs, and the development of associated reports and work products.
3. The Planning Subcommittee shall be chaired by the Principal Permittee or may alternatively be chaired or co-chaired by any other Copermittee upon approval of the Management Committee.

4. Planning Subcommittee meetings shall be open to all Copermittees; however, voting membership in any year shall be limited to one representative of each Watershed Management Area (WMA) listed in Permit Table B-1 except the South Orange County WMA. Any Copermittee may only represent one WMA as a voting member of the Planning Subcommittee. For each fiscal year, each WMA will designate a Copermittee as a voting member of the Planning Subcommittee prior to the beginning of that fiscal year. Each WMA may also designate an alternate voting member.
5. Each voting member shall be considered an at-large member. Their purpose is to represent the interests of all Copermittees of this MOU rather than those of their specific WMAs.
6. The Planning Subcommittee may not alter the responsibilities of, or impose new fiscal obligations on, any Copermittee or Working Body, except as approved by the Management Committee. However, the Planning Subcommittee may approve changes to approved Annual Regional Work Plans and Shared Costs Budgets within approved annual budget limits.
7. Voting Requirements for the Planning Subcommittee:
  - a. The Planning Subcommittee shall only make advisory recommendations for items requiring Management Committee approval.
  - b. The Planning Subcommittee may use any voting methodology it deems appropriate to develop advisory recommendations or conduct other business, and, shall present minority or dissenting recommendations for consideration by the Management Committee as applicable.

#### **IV. DISPUTE RESOLUTION**

Should a dispute arise among any of the parties regarding any matter related to this MOU, the parties agree to first meet and confer in good faith to attempt to resolve the dispute. If that fails to resolve the dispute, they shall submit the matter to mediation.

1. **Mandatory Non-binding Mediation.** If a dispute arises out of, or relates to this MOU, or the breach thereof, and if the dispute cannot be settled through the meet and confer process as described above, the Parties agree to attempt to settle the dispute in an amicable manner, using mediation under the Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed to by the parties. A mediation session is required before having recourse in a court of law. The cost of mediation shall be borne by the parties equally.
2. **Selection of Mediator.** A single Mediator that is acceptable to all Parties shall be used to mediate the dispute. The Mediator may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party.
3. **Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions in the mediation process will be confidential settlement negotiations under Ca. Evidence Code section 1152. The Parties may agree to exchange any information they deem necessary.
  - a. Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present.
  - b. Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be “non-binding” and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in

writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

## **V. GENERAL PROVISIONS**

### **A. Term of Agreement**

1. This MOU shall become effective on the date the last party executes the MOU.
2. The life of the MOU shall be effective through August 2029, or with the life of the current Permit plus twelve months, whichever is longer. For purposes of this paragraph, any Permit renewal or replacement after May 2024 shall be considered a new permit; any earlier amendment of the Permit increasing the obligations of the Regional Principal Permittee or a Watershed Lead Permittee may at that Copermittee's sole option, be declared to be a new permit; and the Management Committee shall determine whether any other earlier amendment to the Permit is of such significance as to effectively be a new Permit.

### **B. Withdrawal of Copermittee**

1. Participation in this MOU may be withdrawn by any Copermittee for any reason only after the Copermittee complies with all of the following conditions of withdrawal:
  - a. The Copermittee shall notify all of the other Copermittees in writing 90 days prior to its intended date of withdrawal.
  - b. Any expenses associated with withdrawal, including but not limited to, filing and obtaining the withdrawing Copermittee's individual NPDES permit and the amendment of the Permit will be solely the responsibility of the withdrawing Copermittee.
  - c. The withdrawing Copermittee shall be responsible for their portion of any shared costs incurred according to the conditions of this MOU up to the time that each of the conditions in Section V.B.1.a. has been met.
  - d. Any monies paid by withdrawing Copermittee in excess of the amount due under the terms of the MOU shall be refunded to the Copermittee at the time the withdrawal becomes final as set forth in Section V.B.1.a.
  - e. The withdrawing Copermittee shall not be entitled to participate in the division of proceeds in any reserve fund account when the MOU is dissolved.

### **C. Non-Compliance with MOU Requirements**

1. Any participant to this MOU found to be in non-compliance with the conditions of this MOU shall be solely liable for any lawfully assessed penalties resulting from such non-compliance. Failure to comply with MOU conditions within specified or agreed upon timelines shall constitute non-compliance with the MOU.
2. Limitations on Use of Funds. Notwithstanding the rights and obligations of the Parties created by this MOU, no Party may be found in breach of this MOU where compliance would require that Party to violate any law or grant assurance, including but not limited to provisions of the Federal Aviation Administration 1999 Policy and Procedure Concerning the Use of Airport Revenue [64Fed. Reg. 7696, dated Feb. 16, 1999]; the Airport and Airway Improvement Act of 1982 codified at 49 U.S.C. § 47107(b); the Federal Aviation Administration Authorization Act of 1994, P.L. 103-305 (Aug. 23, 1994); the Airport Revenue Protection Act of 1996, Title VIII of the Federal Aviation Administration Act of 1996, P.L. 104-264 (Oct. 9, 1996), 110 Stat. 3269 (Oct. 9, 1996); 49 U.S.C. § 46301(n)(5); and 49 U.S.C. § 47133. The Parties recognize that the Authority has received federal Airport Improvement Project ("AIP") grants containing grant assurance 25,



which provides: “All revenues generated by the airport will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport.”

#### **D. Amendments to the Memorandum of Understanding**

This MOU may be amended only by unanimous vote of approval of all 21 Copermittees at a meeting of the Regional Management Committee. No amendment shall be effective unless it is in writing and signed by the duly authorized representatives of the Copermittees.

#### **E. Governing Law**

This MOU shall be governed and construed in accordance with the laws of the State of California. If any provision or provisions shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### **F. Headings**

The headings used throughout this MOU are for convenience only and do not in any way limit or amplify the terms or provisions of the MOU.

#### **G. Consent and Breach Not Waiver**

No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Copermittee to have waived or consented. Any consent by any Copermittee to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

#### **H. No Indemnification**

1. Each Copermittee shall have the sole responsibility to comply with the Permit.
2. Each Copermittee shall pay all fines, penalties, and costs which may arise out of such Copermittee's non-compliance with the Permit.
3. By entering into this MOU, no Copermittee assumes liability for claims or actions arising out of the performance of any work or actions or omissions, by any other Copermittee, its agents, officers, and employees under this MOU.
4. By entering into this MOU, each Copermittee agrees to defend itself from any claim, action or proceeding arising out of the acts or omissions of itself and retain its own legal counsel and bear its own defense costs.

#### **I. Application of Prior Agreements**

This MOU constitutes the entire Agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.

#### **J. Right to Audit**

Each Party retains the right to review and audit, and the reasonable right of access to other Parties' respective premises to review and audit the other Parties' compliance with the provisions of this MOU (Party's Right). The Party's Right includes the right to inspect and photocopy same, and to retain copies, outside of the Parties' premises, of any and all records, including any and all books, records, and documents, related to this MOU with appropriate safeguards, if such retention is deemed necessary by the

auditing Party in its sole discretion. This information shall be kept by the auditing Party in the strictest confidence allowed by law.

**K. Execution of Agreement**

This MOU may be executed in counterpart and the signed counterparts shall constitute a single instrument. In the event that any Copermitee is unable to execute this amendment prior to August 31, 2024, execution of this amendment after that date shall constitute ratification of this amendment, and the MOU and extensions shall be in effect once all signatures are obtained.

Except as hereinabove amended, the Fifth Amended National Pollutant Discharge Elimination System, San Diego Regional Stormwater Copermittees, Memorandum of Understanding shall remain in full force and effect. In the event of a conflict between the provision of the MOU and those of this Amendment, this Amendment shall control.

IN WITNESS WHEREOF, this Fifth Amended MOU is executed as follows:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Keith Blackburn, Mayor  
City of Carlsbad

Approved as to form.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Cindie McMahon, City Attorney  
City of Carlsbad



CITY COUNCIL  
**Staff Report**

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Dave Padilla, Interim Utilities Director  
 dave.padilla@carlsbadca.gov, 442-339-2356

Eric Sanders, Utilities Manager  
 eric.sanders@carlsbadca.gov, 442-339-2361

**Subject:** A memorandum of understanding between the Vallecitos Water District and the City of Carlsbad for Operation and Maintenance of Fire Hydrants

**District:** 3

**Recommended Action**

Adopt a resolution approving a memorandum of understanding between the Vallecitos Water District and the City of Carlsbad for operation and maintenance of fire hydrants within the city limits and within the Vallecitos Water District service area.

**Executive Summary**

This memorandum of understanding will ensure that the 182 fire hydrants currently installed within the Vallecitos Water District service area, which are also within Carlsbad city limits, will be properly maintained and replaced when needed. The memorandum of understanding also provides for the maintenance obligations of any future hydrants that are installed within this approximately 1.5-square mile area.

There have been ongoing discussions between the city and the Vallecitos Water District about the entity that is responsible for the fire hydrants. This memorandum of understanding finalizes those discussions and provides for a clear delineation between the obligations of each agency.

The memorandum of understanding between the city and the Vallecitos Water District will allow the city and city contractors to operate, maintain and replace the fire hydrants within the Vallecitos Water District service area, thereby improving service reliability and firefighting capabilities.

**Explanation & Analysis**

The Carlsbad Municipal Water District provides water service to 82% of the city, but other areas in the city are served by the Vallecitos Water District and the Olivenhain Municipal Water. The Carlsbad Municipal Water District maintains 4,578 fire hydrants in its service area so that they are operational when needed. The Olivenhain Municipal Water District has a similar maintenance program for its fire hydrants within the Carlsbad city limits. As a matter of practice, the Vallecitos Water District does not maintain fire hydrants.

Because the Vallecitos Water District does not maintain the fire hydrants in its district, the proposed memorandum of understanding is needed so that staff or city contractors may work on the fire hydrants within the Vallecitos Water District's service area within Carlsbad city limits. City staff anticipate contracting with a vendor so that staff time is not diverted from existing maintenance responsibilities.

The city will bear all reasonable costs for the operation, maintenance, repair and replacement of fire hydrants within the Vallecitos Water District service area within city limits, excluding the buried hydrant piping. The Vallecitos Water District will provide firefighting water at no cost to the city and will continue to maintain and be responsible for the connecting isolation valves, piping and accessory items affixed to the water district system.

The Vallecitos Water District Board of Directors voted in support of the memorandum of understanding on June 19, 2024.

### **Fiscal Analysis**

Staff have estimated an annual operation and maintenance cost of \$30,000. Funding has been added to the General Fund's Public Works Administration budget for this cost in the fiscal year 2024-25 adopted budget. The amount may be refined in future years once all fire hydrants receive their initial maintenance.

### **Next Steps**

Staff will initiate a contract for fire hydrant operation and maintenance with an appropriate vendor while following city procurement guidelines.

### **Environmental Evaluation**

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

### **Exhibits**

1. City Council resolution
2. Location map

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE VALLECITOS WATER DISTRICT AND THE CITY OF CARLSBAD FOR OPERATION AND MAINTENANCE OF FIRE HYDRANTS WITHIN THE CITY LIMITS AND WITHIN THE VALLECITOS WATER DISTRICT SERVICE AREA

WHEREAS, the City Council of the City of Carlsbad, California, has determined that all fire hydrants within the city limits should be regularly maintained and in good working order; and

WHEREAS, there are presently 182 fire hydrants within the city limits and within the Vallecitos Water District, or VWD, service area that have been subject to ongoing discussions between the city and the VWD about which entity has the obligation to maintain them; and

WHEREAS, the city now desires to have the right to operate, maintain and replace these fire hydrants and future fire hydrants within the city limits and within the VWD service area; and

WHEREAS, the City Planner has determined that in keeping with Public Resources Code Section 21065, this action does not constitute a “project” within the meaning of the California Environmental Quality Act in that it has no potential to cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore does not require environmental review.

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

1. That the above recitations are true and correct.
2. That the Memorandum of Understanding between the VWD and the City of Carlsbad, Attachment A, allows the city or city contractors to operate, maintain, repair and replace the fire hydrants within the VWD service area and within the city limits, thereby improving service reliability and firefighting capabilities.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

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KEITH BLACKBURN, Mayor

---

SHERRY FREISINGER, City Clerk  
(SEAL)

**Memorandum of Understanding  
Between the Vallecitos Water District and the City of Carlsbad  
Regarding Fire Hydrant Operation and Maintenance**

This Memorandum of Understanding (“MOU”) is made and entered, by and between the Vallecitos Water District, a public agency organized and operating pursuant to Water Code Section 30000 *et seq.* (“Water District”), and the City of Carlsbad, a California charter city (“City”). Water District and City may be referred to herein individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Water District is authorized to supply water to the inhabitants of the territory comprising the Vallecitos Water District, and the Water District owns and operates certain water transmission and distribution facilities within the boundaries of the City; and

WHEREAS, all fire hydrants within the Water District’s service area are installed in accordance with Water District’s Standard Specifications and Drawings for the Construction of Water and Sewer Facilities pursuant to development project review and approval by the Water District; and

WHEREAS, the City may provide fire protection services for the inhabitants of the City; and

WHEREAS, the Parties desire to clarify maintenance obligations for all existing 182 fire hydrants, as well as any future fire hydrants, connected to the water distribution system of the Water District within the boundaries of its service area, and within City jurisdiction, as shown on Exhibit “A”; and

WHEREAS, it is the intent of the Parties to provide for the usage of water through existing and future fire hydrants, and for the maintenance, repair and replacement of all fire hydrants, in the event of disrepair, destruction or obsolescence.

NOW, THEREFORE, THE PARTIES DO HEREBY MUTUALLY AGREE AS FOLLOWS:

1. The connecting isolation valves, piping, and appurtenances affixed to the water distribution system of the Water District shall remain the property of the Water District.
2. The City shall not install new fire hydrants upon the water distribution system of the Water District without first obtaining the consent of the Water District, and such consent shall not be unreasonably withheld by the Water District.
3. The City shall maintain and keep in good repair all fire hydrants now installed, and any subsequently installed fire hydrants, on the water distribution system of the Water District within the City’s boundaries.
4. City agrees to report to the Water District any significant quantities of water used through the fire hydrant(s).
5. All water used by the City through said fire hydrants for firefighting purposes, including but not limited to actual firefighting operations, drills, and exercises, shall be without cost to the City and the Water District will not charge the City for the use of the water, provided the City obtains the consent of the Water District before conducting any tests or blow-offs.



Any other use of water by the City shall be arranged for and paid for according to Water District's established rates, rules and regulations.

6. City and the Water District agree that the Water District shall have the right to take water through said hydrants on a temporary basis for water quality flushing and other beneficial uses, including the use of temporary construction meters by the Water District.
7. City shall bear all reasonable costs for the installation, maintenance, repair, and replacement of fire hydrants, break-off spool, and associated bolts, nuts, and gaskets, excluding the vertical hydrant spools, bury ell, and piping, under the terms of this MOU, and pursuant to Government Code Section 53069.9 may fix and collect a charge from its residents to pay for these costs. No costs shall be charged to the Water District for said activities. If the City elects to not replace a fire hydrant, the District shall remove the hydrant from the system and blind flange the connection.
8. City agrees to defend, indemnify and hold harmless Water District, its officials (both appointed and elected), officers, employees, and agents, from any claims, costs, penalties, causes of action, demands, losses, and liability of any nature whatsoever, including but not limited to liability for bodily injury, sickness, disease, or death, property damage or violations of law, arising solely out of the acts or omissions of the City (including its officials, officers, employees, and agents) in the performance of this MOU. At its sole discretion, Water District may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve City of any obligation imposed by this MOU. Water District shall notify City promptly of any claim, action or proceeding and cooperate fully in the defense.
9. Water District agrees to defend, indemnify and hold harmless City, its officials (both appointed and elected), officers, employees, and agents, from any claims, costs, penalties, causes of action, demands, losses, and liability of any nature whatsoever, including but not limited to liability for bodily injury, sickness, disease, or death, property damage or violations of law arising solely out of the acts or omissions of the Water District (including its officials, officers, employees, and agents) in the performance of this MOU. At its sole discretion, City may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve Water District of any obligation imposed by this MOU. City shall notify Water District promptly of any claim, action or proceeding and cooperate fully in the defense.
10. This MOU becomes effective upon execution of all Parties and will remain in effect unless sooner terminated by either Party. Notwithstanding, the defense and indemnity obligations of Sections 8 and 9 shall survive termination of this MOU.
11. This MOU may be terminated by either Party if the other Party has failed to comply with the terms of this MOU following fifteen (15) days' notice and opportunity to cure, or for any other reason, upon thirty (30) days written notice.
12. Where a trial verdict or arbitration award allocates or determines the comparative fault of the Parties, City and Water District may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments, and awards, consistent with such comparative fault.

13. This MOU will be governed, interpreted, construed, and enforced in accordance with the laws of the State of California. Venue for any disputes must be brought only in the state of federal courts located in San Diego County, California.
14. This MOU shall be binding upon and shall inure to the benefit of the successors of the Parties hereto. Except as otherwise provided in this MOU, the rights, titles and interests of any Party to this MOU shall not be assignable or transferable without the consent of the governing body of each Party hereto.
15. The waiver of any breach of a specific provision of this MOU does not constitute a waiver of any other breach of that term or any other term of this MOU.
16. The Parties are hereby authorized to take any and all legal or equitable actions, including but not limited to an injunction and specific performance, necessary or permitted by law to enforce this MOU.
17. This MOU constitutes the full and complete agreement of the Parties.
18. Except as otherwise may be provided in this MOU, neither this MOU nor any provision hereof may be modified or amended except by a written instrument signed by the Parties.
19. This MOU may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.
20. All the covenants contained in this MOU are for the express benefit of each and all such Parties. This MOU is not intended to benefit any third parties, and any such third party beneficiaries are expressly disclaimed.
21. If any section, clause or phrase of this MOU or the application thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the MOU or the application of such provisions to any other Party or to other persons or circumstances shall not be affected thereby. Each Party hereby declares that it would have entered into this MOU, and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.
22. Notices required or permitted hereunder shall be sufficiently given if made in writing and delivered either personally or by registered or certified mail, postage prepaid to the respective Parties, as follows:

WATER DISTRICT:

Vallecitos Water District  
201 Vallecitos De Oro  
San Marcos, CA 92069  
Attn: General Manager

CITY:

City of Carlsbad  
1200 Carlsbad Village Dr.  
Carlsbad, CA 92008  
Attn: City Manager

The Parties may from time to time change the address to which notice may be provided by providing notice of the change to the other Party.

23. The above Recitals are true and correct and are incorporated into this MOU.

[Signatures on Following Page(s)]

IN WITNESS WHEREOF, the Parties have executed this MOU Regarding Fire Hydrant Operation and Maintenance as of the date first written above.

VALLECITOS WATER DISTRICT

CITY OF CARLSBAD

\_\_\_\_\_  
GENERAL MANAGER

\_\_\_\_\_  
CITY MANAGER

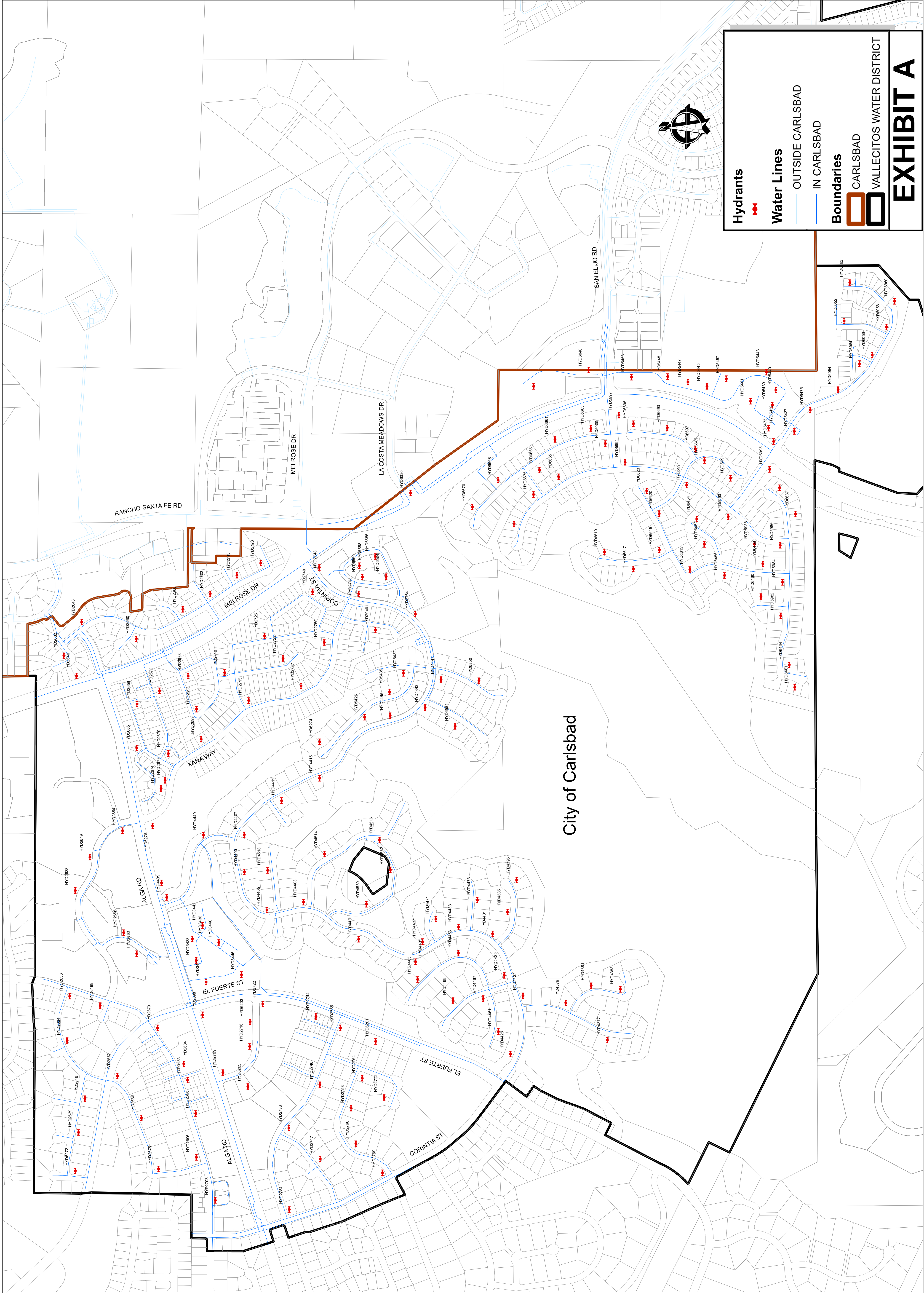
Date: \_\_\_\_\_


Date: \_\_\_\_\_



APPROVED AS TO FORM:  
CINDIE K. McMAHON, City Attorney



BY: \_\_\_\_\_  
Deputy / Assistant City Attorney

Exhibit "A"  
Map of Fire Hydrants in Water District Service Area in the City of Carlsbad



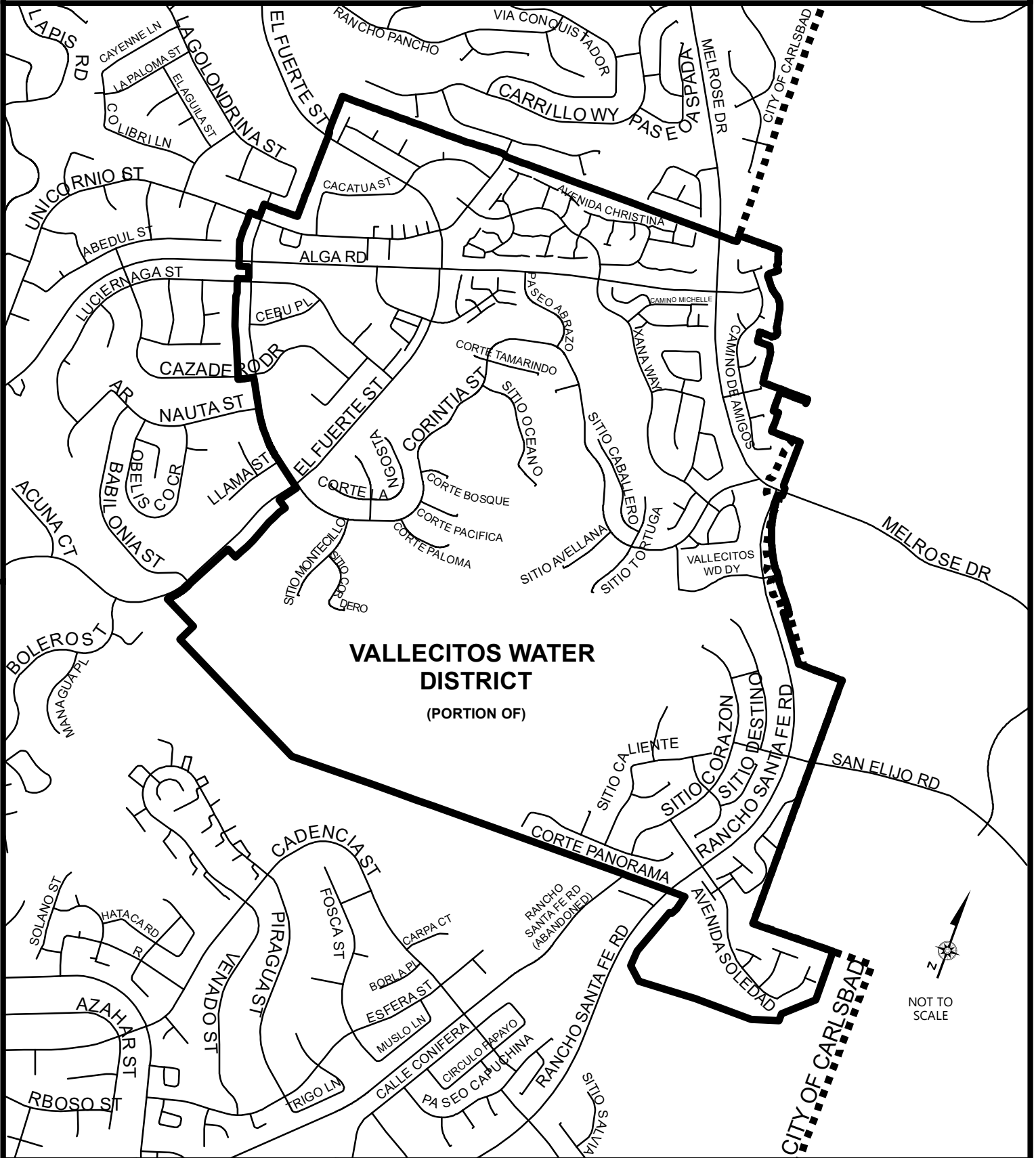
**Hydrants**  


**Water Lines**  
 OUTSIDE CARLSBAD  
 IN CARLSBAD

**Boundaries**  
 CARLSBAD  
 VALLECITOS WATER DISTRICT

**EXHIBIT A**

# LOCATION MAP



PORTION OF VALLECITOS WATER DISTRICT  
SERVICE AREA BOUNDARY

EXHIBIT  
**2**



CITY COUNCIL  
**Staff Report**

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Tom Frank, Transportation Director/City Engineer  
 tom.frank@carlsbadca.gov, 442-339-2766

**Subject:** Continuation of Proclamation of a Storm-Related Local Emergency for Repair of the Slope Between El Camino Real and Trieste Drive and Authorization of Additional Appropriations

**District:** 1

**Recommended Action**

Adopt a resolution continuing the proclamation of a storm-related local emergency for repair of the slope between El Camino Real and Trieste Drive and authorizing additional appropriations in the amount of \$453,000 for the Trieste Drive Slope Repair, Capital Improvement Program Project No. 6107

**Executive Summary**

The atmospheric river in early February 2024 and the winter storm in January 2024 resulted in unexpected slope movement in an area between El Camino Real and Trieste Drive, with the potential to affect nearby property, infrastructure and the environment. Emergency repair of the slope area behind four homes on Trieste Drive is necessary to ameliorate the risk. Exhibit 3 shows the area requiring emergency slope repair.

- The City Manager, in his role as Director of Emergency Services, proclaimed a local emergency on Feb. 14, 2024, as shown in Exhibit 2, to expedite the slope repair.
- On Feb. 15, 2024, the City Council ratified the emergency proclamation so that the repair can continue to be exempted from the city's normal bidding procedures and the necessary repairs can be completed as swiftly as possible.
- The City Council continued the emergency proclamation on Feb. 27, 2024.
- The City Council continued the emergency proclamation again on March 12, 2024, approving the plans for the repair work and authorizing additional appropriations in the amount of \$955,000.
- The City Council continued the emergency proclamation on March 19, 2024, March 26, 2024, April 9, 2024, April 16, 2024, April 23, 2024, May 7, 2024, May 14, 2024, May 21, 2024, June 11, 2024, and June 18, 2024.

Staff are now requesting that the City Council continue the emergency proclamation again to complete the work.



Construction projects that cost less than \$200,000 can be awarded by the City Manager using informal bidding procedures under Carlsbad Municipal Code Section 3.28.080 -Construction Projects, subsections (B) and (H), which implement California Public Contract Code Section 22032.

This project will cost approximately \$3.4 million. California Public Contract Code Sections 22035 and 22050 and Carlsbad Municipal Code Sections 3.28.110(A) and 3.28.120 provide for an exemption from formal bidding procedures for emergency construction procurements. The emergency proclamation allows the city to use the emergency exemption.

Public Contract Code Section 22050 (C)(1) requires the City Council to review the emergency action at every subsequent City Council meeting to determine, by a four-fifths vote, whether there is a need to continue the emergency action.

Staff recommend that the City Council continue the proclamation of the storm-related local emergency again to allow for the swift repair of the slope and authorize additional appropriations in the amount of \$453,000 by approving the resolution provided as Exhibit 1.

### **Explanation & Analysis**

The slope area between El Camino Real and Trieste Drive, generally behind the backyards of four residential properties that front onto Trieste Drive (4215-4245 Trieste Drive), has experienced soil movement. The city has a Capital Improvement Program project , Project No. 6107, to repair the slope. The project was in the 50% design and environmental review stage. However, the recent severe storm events have created additional fissures in the soil that need to be repaired quickly.

The City Engineer recommended expedited, or emergency, stabilization of the slope while the larger slope repair project proceeds through the design and environmental review and permitting process. The emergency proclamation allows the city to procure a contractor to perform the necessary emergency work to prevent or mitigate loss of, or damage to, property, essential public services and the environment.

Staff and Urban Corps, a city contractor, completed emergency protective measures at a cost of \$5,774, which included removing debris and placing tarps and stakes in the right-of-way.

Upon proclamation of the emergency, Engineering Systems Inc., the city's geotechnical engineering consultant, met with contractors to check on their availability and capabilities to perform the emergency work. Condon-Johnson & Associates, Inc., or Condon-Johnson, initially provided a cost estimate of approximately \$871,000 for the emergency work.

The emergency work was initially intended to address the unexpected slope movement that occurred as a result of the recent atmospheric rivers and storms, not to perform the original scope of work of the Capital Improvement Program project. However, due to recent further slope movement, the city's geotechnical engineering consultant recommended performing the additional final repairs at the same time as the emergency work.

On March 12, 2024, the contractor Condon-Johnson's estimate increased to \$2,443,180 for the total cost, which includes the initial estimate of \$870,990 for installation of 26 emergency shore stability pins in Phase 1, which stabilize the slope, and \$1,572,190 for installation of an additional row of 28 shore stability pins and other more permanent repairs such as grading and

re-compaction of the slope within the repair area as well as increased steel, additional two pins for Phase 1 and stabilizing the slope by hydroseeding.

The contractor Condon-Johnson's estimate recently increased by \$536,979 for the unanticipated import of soil material to the site and additional geogrid material to stabilize the slope.<sup>1</sup>

Subsequently, the city's special inspection consultant, Leighton Consulting Inc., needed to test and analyze the import soil and geogrid material, which resulted in additional time and testing in the amount of \$74,550.

### Timeline

- March 6, 2024 - Staff issued a notice to proceed to the contractor to perform the emergency work. The emergency work started on March 12, 2024, and is expected to be completed by July 14, 2024.
- March 19, 2024 - In keeping with Carlsbad Municipal Code Section 15.16.060(B)(2) - Work exempt from grading permit, the City Engineer made the determination to exempt the work from the requirement that the project receive a grading permit.
- March 19, 2024 - The consultant indicated that the number of emergency shore stability pins will increase to 28 instead of the initial 26 that was proposed. This change will be reflected in the as-built drawings.
- March 19, 2024 - The contractor, Condon-Johnson, and the City Manager fully executed the contract in the amount of \$870,990.
- March 20, 2024- The contractor submitted a change order request in the amount of \$1,572,190 for Phases 2-5. Staff have processed a change order in that amount.
- June 13, 2024 - Leighton Consulting submitted a request for additional funds for special inspections in the amount of \$74,550.
- June 14, 2024 - The contractor submitted a change order request in the amount of \$536,979 for additional geogrid material, grading and imported soil material.

Staff will use the construction contingency balance to partially offset the additional costs.

Staff recommend that the City Council continue the emergency proclamation again to complete the emergency work at the slope near El Camino Real and Trieste Drive as swiftly as possible to prevent damage to nearby infrastructure and property and authorize additional appropriations in the amount of \$453,000 for the project

### Fiscal Analysis

Funding for the emergency work in the amount of \$3,317,600 will come from the funding in the General Capital Construction Fund for Capital Improvement Program Project No. 6107. Since the total emergency work will now include additional geogrid material, and grading and recompacting the import soil material, additional funds in the amount of \$453,000 will need to be appropriated to Project No. 6107 to cover the rest of the needed funding. Total project cost for the emergency work is \$3,431,103.

<sup>1</sup> A geogrid is a flat intersecting grid that's used to reinforce and stabilize soil.

<b>Trieste Drive Slope Repair Project Capital Improvement Program Project No. 6107</b>	
Total appropriated funds to date	\$3,317,600
Total expenditures and encumbrances to date	-\$338,974
<b>Total available funding</b>	<b>\$2,978,626</b>
Emergency work (slope repair) – Condon-Johnson & Associates, Inc.	-\$2,980,159
Design and administrative costs – Engineering Systems Inc.	-\$190,250
Construction management – Infrastructure Engineering Corporation	-\$78,320
Special inspection – Leighton Consulting, Inc.	-\$126,600
Environmental monitoring (estimated) – LSA	-\$50,000
Construction contingency balance	-\$0
<b>Total estimated emergency Capital Improvement Program project costs</b>	<b>-\$3,425,329</b>
Emergency protective measures - Urban Corps	-\$905
Staff labor and materials costs	-\$4,869
<b>Total estimated emergency protective measures costs</b>	<b>-\$5,774</b>
<b>Total estimated project costs</b>	<b>-\$3,431,103</b>
<b>Additional appropriation needed</b>	<b>\$452,477</b>
<b>Additional appropriation needed (rounded)</b>	<b>\$453,000</b>

Because this emergency work may have qualified for outside funding, the City Manager sent a letter to the California Governor’s Office of Emergency Services on Feb. 22, 2024, requesting any and all state and federal resources including, but not limited to, state assistance through the California Disaster Assistance Act.

The state replied and subsequently requested supplemental information on the city’s budget and how recent storms impacted it. On Feb. 26, 2024, staff provided the requested supplemental information and the initial damage estimate of \$1,293,774, which has now increased to approximately \$3 million.

City staff met with Office of Emergency Services staff on April 4, 2024, to discuss this emergency project and have provided additional supplemental information. Staff provided CalOES staff additional information as requested on April 11, 2024. Staff also met with Office of Emergency Services’ staff on April 25, 2024.

CalOES determined on June 7, 2024, that the impacts from the early February 2024 winter storms were not of such severity and magnitude to be beyond the capabilities of local government to respond to and recover from and denied the city’s request for funding.

**Next Steps**

The contractor has completed Phases 1, 2 and 3 of the emergency work and is proceeding with the remainder of the work with an estimated completion date of July 12, 2024. Staff will return

to the City Council again on July 16, 2024, to review the emergency action and ask the City Council to determine by a four-fifths vote whether there is a need to continue it.

### **Environmental Evaluation**

The project was determined to be exempt from the California Environmental Quality Act under Sections 15301(d) and 15301(f) of the CEQA Guidelines, which apply to projects for the restoration or rehabilitation of deteriorated or damaged structures, and the addition of safety or health protection devices. None of the exceptions to the exemption applied to the project and a notice of exemption was filed on Jan. 25, 2023.

### **Exhibits**

1. City Council resolution
2. Proclamation of a storm-related local emergency, dated Feb. 14, 2024
3. Location map

**RESOLUTION NO.**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, CONTINUING THE PROCLAMATION OF A STORM-RELATED LOCAL EMERGENCY FOR REPAIR OF THE SLOPE BETWEEN EL CAMINO REAL AND TRIESTE DRIVE AND AUTHORIZING ADDITIONAL APPROPRIATIONS IN THE AMOUNT OF \$453,000 FOR THE TRIESTE DRIVE SLOPE REPAIR, CAPITAL IMPROVEMENT PROGRAM PROJECT NO. 6107

WHEREAS, on Feb. 4, 2024, the Governor of the State of California found that conditions of extreme peril exist in San Diego County and other counties due to the early February 2024 storms caused by the atmospheric river and proclaimed a state of emergency to make additional resources available to local governments, formalize emergency actions, and help the state prepare for the impact of the storms; and

WHEREAS, the City Council empowers the City Manager, as Director of Emergency Services, to proclaim the existence of a local emergency when the city is affected by a public calamity and the City Council is not in session; and

WHEREAS, conditions or threatened conditions of extreme peril to the safety of persons and property have arisen within the City of Carlsbad caused by an unexpected slope movement with potential to affect nearby property, infrastructure and the environment; and

WHEREAS, on Feb. 14, 2024, the City Manager/Director of Emergency Services proclaimed a storm-related local emergency for repair of the slope between El Camino Real and Trieste Drive, generally behind the backyards of four residential properties that front onto Trieste Drive (4215 - 4245 Trieste Drive); and

WHEREAS, Carlsbad Municipal Code, or CMC, Section 3.28.110(A) implements Public Contract Code Section 22035 and provides an exemption from formal bidding procedures for emergency construction procurements, and to use the emergency exemption, CMC Section 3.28.120 and Public Contract Code Section 22050 require a proclamation of a local public emergency by a four-fifths vote of the City Council, or by the City Manager subject to ratification by a four-fifths vote of the City Council at the next City Council meeting; and

WHEREAS, on Feb. 15, 2024, the City Council ratified the proclamation of a local emergency as the emergency proclamation and emergency exemption are appropriate in this instance because the

emergency work appears to be caused by unexpected slope movement, which could pose a threat to the public, property, infrastructure and the environment; and

WHEREAS, on Feb. 27, 2024, the City Council continued the emergency proclamation; and

WHEREAS, on March 12, 2024, the City Council continued the emergency proclamation again, approved the plans and authorized additional appropriations in the amount of \$955,000; and

WHEREAS, on March 19, 2024, March 26, 2024, April 9, 2024, April 16, 2024, April 23, 2024, May 7, 2024, May 14, 2024, May 21, 2024, June 11, 2024, and June 18, 2024, the City Council continued the emergency proclamation again; and

WHEREAS, on March 19, 2024, the City Engineer made the determination to exempt the work from the requirements of a grading permit, consistent with CMC Section 15.16.060(B)(2); and

WHEREAS, the total cost of the emergency work has increased to \$3,431,103, which now requires additional appropriations in the amount of \$453,000; and

WHEREAS, a contractor commenced the emergency work on March 12, 2024, and is expected to complete the work by July 14, 2024; and

WHEREAS, staff request that the City Council continue the emergency proclamation again to enable completion of the work and authorize additional appropriations in the amount of \$453,000 for the Trieste Drive Slope Repair, Capital Improvement Program Project No. 6107; and

WHEREAS, Public Contract Code Section 22050(c)(1) requires the City Council to review the emergency action at every subsequent City Council meeting to determine, by a four-fifths vote, whether this is a need to continue the emergency action; and

WHEREAS, the project was determined to be exempt from the California Environmental Quality Act, or CEQA, under Section 15301(d) and (f) of the CEQA Guidelines, which applies to projects for restoration or rehabilitation of deteriorated or damaged structures, and the addition of safety or health protection devices; and

WHEREAS, none of the exceptions to the CEQA exemption applied to the project and a Notice of Exemption was filed on Jan. 25, 2023.

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

1. That the above recitations are true and correct.

2. That the Proclamation of a Storm-related Local Emergency for repair of the slope near El Camino Real and Trieste Drive is continued.
3. That the City Manager or designee is authorized to appropriate an additional \$453,000 to the Trieste Drive Slope Repair, Capital Improvement Program Project No. 6107.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

---

KEITH BLACKBURN, Mayor

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SHERRY FREISINGER, City Clerk  
(SEAL)



# Proclamation of Local Emergency

City Hall  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008

## **FOR STORM-RELATED EMERGENCY PROTECTION ACTIVITIES TO REPAIR A SLOPE BETWEEN EL CAMINO REAL AND TRIESTE DRIVE**

WHEREAS, on February 4, 2024, the Governor of the State of California found that conditions of extreme peril exist in San Diego County and other counties due to the early February 2024 storms caused by a powerful, slow-moving atmospheric river and proclaimed a state of emergency to make additional resources available to local governments, formalize emergency actions and help the state prepare for the impact of the storms; and

WHEREAS, California Government Code Section 8630 allows the City Council or an official designated by ordinance adopted by the City Council, to proclaim a local emergency; and

WHEREAS, the City of Carlsbad's Emergency Services Ordinance, including Carlsbad Municipal Code Section 6.04.100(A)(1), empowers the City Manager, as the City of Carlsbad's Director of Emergency Services, to proclaim the existence of a local emergency, subject to ratification by the City Council, when there exists, or there is threatened to exist, conditions of extreme peril to the safety of persons and property within the City of Carlsbad; and

WHEREAS, in the case of an emergency, California Public Contract Code Section 22050 allows the City Council, or a person delegated the authority by the City Council, to repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services and supplies for those purposes without giving notice for bids to let contract; and

WHEREAS, the repair project was determined to be exempt from the California Environmental Quality Act, or CEQA, under Section 15301 (d) and (f) of the CEQA Guidelines, which applies to projects for restoration or rehabilitation of deteriorated or damaged structures and the addition of safety or health protection devices; and

WHEREAS, none of the exceptions to the CEQA exemption applied to the project and a Notice of Exemption was filed on Jan. 25, 2023; and

WHEREAS, the Director of Emergency Services finds:

1. The National Weather Service issued multiple winter storm warnings, high wind warnings, wind advisories, and flood and flash flood watches throughout the State of California in anticipation of a powerful, slow-moving, atmospheric river in early February.
2. Conditions of extreme peril to the safety of persons and property have arisen within the City of Carlsbad caused by the powerful, slow-moving atmospheric river in early February, requiring immediate action to prevent or mitigate the loss or impairment of life, health, and property.



Local Emergency – REPAIR OF THE SLOPE BETWEEN EL CAMINO REAL AND TRIESTE DRIVE

Page 2

3. Prior to the early February 2024 storms, powerful winter storms that occurred less than a month ago had amplified the impact of local flooding due to the record-breaking amount of rainfall including a severe rainstorm which began on January 22, 2024 (“January Storm”), in all dropping 2 to 3 inches of rain in a three-hour period, a total that exceeds that of an average wet month and rivals the rainfall needed to spur a 100-year flood event.

4. On Jan. 22, 2024, the County of San Diego proclaimed an emergency due to the January Storm, which the county characterized as a thousand-year storm, and which caused drastic flooding and flash flooding in the county.

5. The conditions of the early February 2024 storms, in addition to the impacts of the January Storm, created an emergency condition on a slope that is located between El Camino Real and Trieste Drive, generally behind the backyards of four residential properties that front onto Trieste Drive (4215 - 4245 Trieste Drive) causing rapid slope movement and additional fissures in the soil that warrant immediate emergency repair.

6. That the City Council of the City of Carlsbad was not in session and could not be immediately called into session.

NOW, THEREFORE, IT IS PROCLAIMED that, subject to review and ratification by the City Council at its next meeting, a local emergency now exists in the City of Carlsbad, California, on a slope between El Camino Real and Trieste Drive, generally behind the backyards of four residential properties that front onto Trieste Drive (4215 - 4245 Trieste Drive).

IT IS FURTHER PROCLAIMED AND ORDERED that, under California Public Contract Code Section 22050 and Carlsbad Municipal Code Sections 3.28.110(A) and 3.28.120, city staff may proceed at once to obtain the necessary permits, equipment, services, and supplies to repair the slope between El Camino Real and Trieste Drive, generally behind the backyards of four residential properties that front onto Trieste Drive (4215 - 4245 Trieste Drive), without giving notice for bids to let contracts.

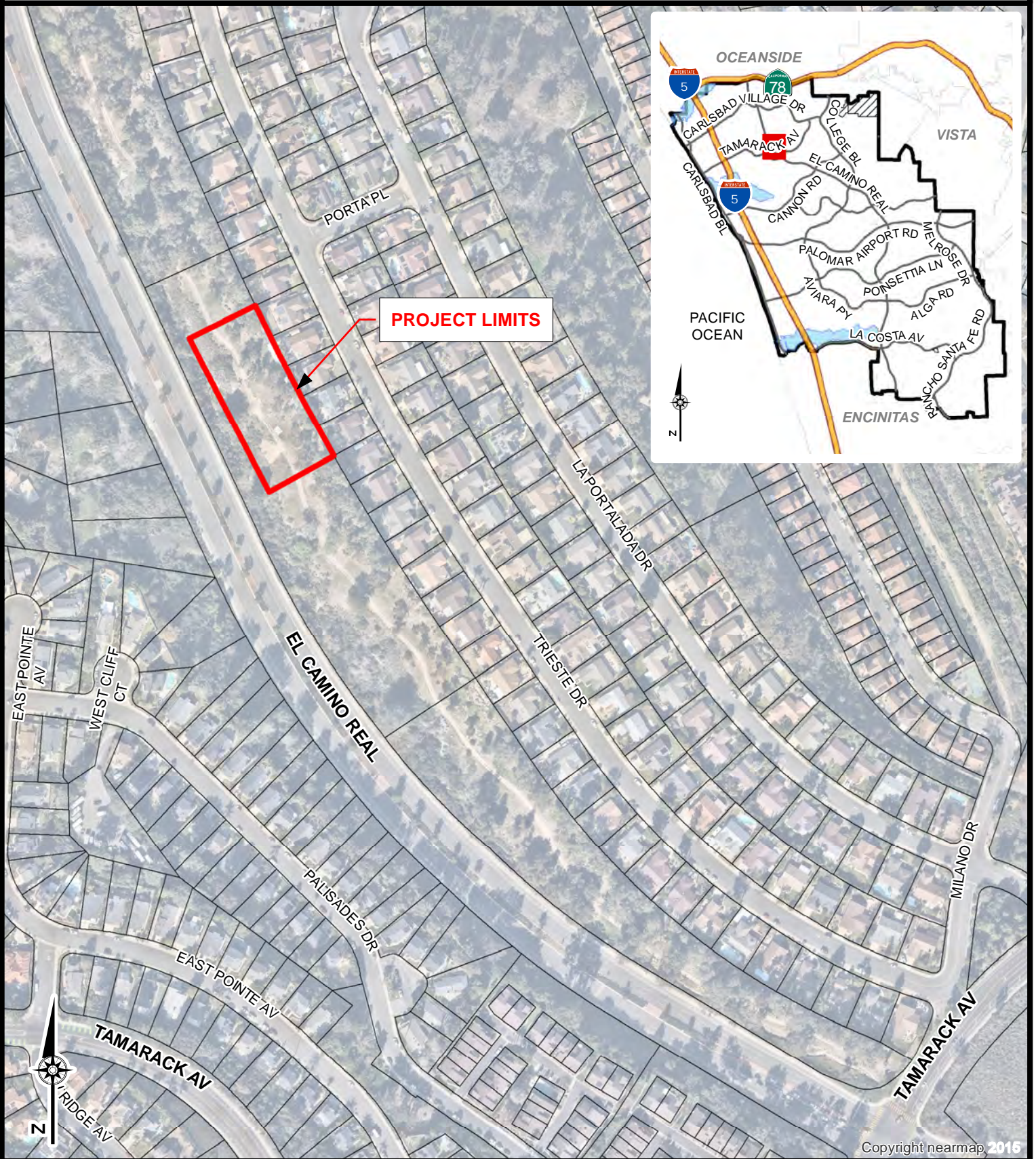
Dated: 14 FEB 24

By:  \_\_\_\_\_

SCOTT CHADWICK  
City Manager/Director of Emergency Services

# LOCATION MAP

Exhibit 3



## TRIESTE DRIVE SLOPE REPAIR PROJECT

PROJECT  
NUMBER  
6107

EXHIBIT  
3



## CITY COUNCIL Staff Report

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Tammy McMinn, Senior Deputy City Clerk  
tammy.mcminn@carlsbadca.gov, 442-339-2953

**Subject:** District 4 Appointment of One Member to the Planning Commission

**Districts:** All

### Recommended Action

Adopt a resolution appointing one member to the Planning Commission.

### Executive Summary

The City Council is being asked to appoint one member to the Planning Commission, which holds regularly scheduled public hearings to consider land use matters, such as the general plan, local coastal program, growth management program, specific plans, master plans, amendments to the zoning ordinance, zone changes, special studies, and discretionary development permits for public and private projects.

The commission consists of seven members appointed by the District Council Members and the Mayor.

This appointment will be nominated by the District 4 Council Member and confirmed by the City Council. Members must be residents of Carlsbad and normally serve four-year terms, unless appointed to fill an unexpired term.

### Explanation & Analysis

Commissioner Kevin Sabellico was appointed to the Planning Commission in January 2021, to fill the expired term of Commissioner Velyn Anderson for a term ending in December 2024. Commissioner Sabellico resigned in May 2024. There is currently an unscheduled vacancy on the Planning Commission for a term ending in December 2024.

The City Clerk's Office received 15 applications from residents wishing to serve on the Planning Commission. In keeping with City Council Policy No. 88, the District 4 Council Member has chosen the following two applicants to advance in the process and interview with the full City Council:

- Esteban Danna – District 2
- Jarrett Ramaiya – District 4

Exhibit 2 contains the applications of the applicants moving forward in the interview process.

The Maddy Act (California Government Code Sections 54970-54974) requires that on or before December 31 of each year the legislative body shall prepare a Local Appointments List, which contains the appointive terms of Board and Commission members that will expire in the next calendar year. The name of the incumbent appointee, the date of appointment and the term expiration date is also included on the list. Based on the prepared list, the City Clerk's Office accepts applications (available on the city's website and in the City Clerk's Office) for any upcoming vacancies.

The current members of the Planning Commission are:

<b>Commission member</b>	<b>District</b>
Dave Hubinger	4
Bill Kamenjarin	1 <sup>1</sup>
Alicia Lafferty	1
Roy Meenes	3
Peter Merz	4
Joseph Stine	4

Members of the Planning Commission are subject to the provisions of California's Political Reform Act of 1974 and must file statements of economic interest each year and complete two hours of ethics training every two years.

### **Fiscal Analysis**

This action has no financial impact.

### **Next Steps**

Following the appointment of one member to the Planning Commission, the City Clerk's Office will update the commission roster and coordinate the oaths of office and the filing of the appointee's statements of economic interest and ethics training certificates.

### **Environmental Evaluation**

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

### **Exhibits**

1. City Council resolution
2. Applications received from residents advancing to the interview process

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<sup>1</sup> Commissioner Kamenjarin was appointed in 2021. At that time, his residence was in District 2. Following the Independent Redistricting Commission's adoption of a new district map in February 2022, his residence is now in District 1.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPOINTMENT ONE MEMBER TO THE PLANNING COMMISSION

WHEREAS, Commissioner Kevin Sabellico was appointed to the Planning Commission in January 2021, to fill the expired term of Commissioner Velyn Anderson for a term ending in December 2024; and

WHEREAS, Commissioner Sabellico resigned in May 2024; and

WHEREAS, an unscheduled vacancy on the Planning Commission exists with a term ending in December 2024.

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

1. That the above recitations are true and correct.
2. That the following Carlsbad resident is appointed to serve on the Planning Commission, for a term ending in December 2024, or until a replacement is appointed:

\_\_\_\_\_

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

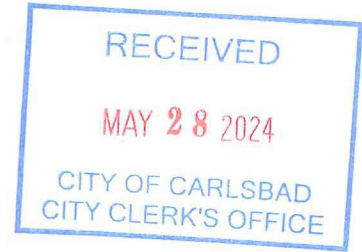
ABSENT:

\_\_\_\_\_  
KEITH BLACKBURN, Mayor

\_\_\_\_\_  
SHERRY FREISINGER, City Clerk  
(SEAL)



# Boards, Commissions and Committees Application for Appointment



Arts Commission		Housing Commission		Planning Commission	<input checked="" type="checkbox"/>
Beach Preservation Committee		Library Board of Trustees		Senior Commission	<input type="checkbox"/>
Historic Preservation Commission		Parks & Recreation Commission		Traffic Safety & Mobility Commission	<input type="checkbox"/>
Tourism Business Improvement District		Golf Lodging Business Improvement District		Agricultural Mitigation Fee Committee	<input type="checkbox"/>
Community-Police Engagement Commission					

### Personal Information

*If applying for more than one, please indicate order of preference.*

Name Esteban Danna		Date of Birth: <i>TMD</i>
Home Address		<i>District No. 2</i> <input checked="" type="checkbox"/>
City Carlsbad	ZIP 92010	
Home Phone	Mobile	
E-mail		
Occupation City Planner		
Employer		
Employer Address		
City	ZIP 92024	
Work Phone	Mobile	

### Acknowledgements

	Yes	No
I am a resident of the City of Carlsbad.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am a registered voter in Carlsbad.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Are you currently or have you ever been an officer of or employed by the City of Carlsbad? If yes, please explain below.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Are you currently or have you ever been under contract with the City of Carlsbad? If yes, please explain below.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
I am a Citizens Academy graduate.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
I am familiar with the responsibilities of the board/commission/committee(s) on which I wish to serve.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to be interviewed regarding my qualifications for appointment by the City Council or at the request of an individual Council member.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to file financial disclosure statements.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to complete two hours of state mandated ethics training every two years.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please make sure that your text fits in the box provided or attach an additional sheet if needed.

**Explanations**

I was previously employed by the City of Carlsbad and worked as an Associate Planner between May 2018 and March 2023.

**Please describe your educational background**

I have a Masters Degree in Geography from California State University Northridge, a Bachelors Degree in History from California State University San Marcos, and Associates Degree in Liberal Arts and Sciences from Palomar College.

**Please describe relevant experience**

I have worked as a City Planner for 14 years, currently working as a Senior Planner for the City of Encinitas. I have also worked for the Cities of Manhattan Beach and Carlsbad.

**Please describe your current or past community involvement**

**Please list all service on boards, commissions or committees, private or public agencies, (including non-profit organizations)**

**Additional information or comments**

Please see additional information and comments attached.

**Submittal Information**

Please select the submit button below to electronically submit application. If you prefer to print, please select "print form" button, sign and mail to:

City of Carlsbad  
City Clerk's Office  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008.

Signature Esteban Danna Date 05/24/2024

\* Only required to sign if submitting paper form; if submitting electronically your submittal via e-mail is considered acknowledgement.

Clear form

Print form

Submit form

Esteban Danna – Application for Planning Commission Vacancy

Additional Information and Comments

I am very excited to have the opportunity to continue serving my community as a Planning Commissioner. I grew up in Carlsbad and attended Carlsbad schools from elementary to high school. I am uniquely qualified to serve in the City of Carlsbad's Planning Commission because I have spent 14 years working as a City Planner in Southern California coastal communities. I worked as a City Planner in the Cities of Manhattan Beach, Carlsbad, and currently as a Senior Planner in Encinitas. Over the nearly five years that I worked as an Associate Planner in the City of Carlsbad, I developed deep knowledge of the city's Local Coastal Program as well as its zoning codes, standards, and policies. I also have honed expertise in current state laws that affect local zoning, including California Coastal Commission authority, Density Bonus Law, and CEQA. Additionally, my time working as a planner for the City of Carlsbad has allowed me to establish excellent professional relationships with city staff, architects, developers, and consultants.

My work experience would allow me to hit the ground running for this limited-time appointment while simultaneously giving back to my community. I appreciate your consideration.



**ESTEBAN M. DANNA**

**EXPERIENCE**

---

**CITY OF ENCINITAS**

**4/2023 – Present**      **Senior Planner** | Planning Division | Encinitas, CA

- Supervise and assign workload to two Associate Planners and one Assistant Planner
- Review and process discretionary permit applications
- Analyze CEQA applicability to projects and process appropriate environmental documents
- Prepare staff reports, resolutions, and ordinances for Planning Commission hearings
- Present staff recommendation for discretionary permit applications to Planning Commission
- Coordinate project reviews with other city departments/divisions
- Developed and implemented electronic record keeping protocol for permitting system
- Oversaw selection of CEQA consultants for third-party reviews and staff training; assign projects to consultants

**CITY OF CARLSBAD**

**5/2018 – 3/2023**      **Associate Planner** | Planning Division | Carlsbad, CA

- Reviewed and processed discretionary permit applications
- Analyzed CEQA applicability to projects and processed appropriate environmental documents
- Prepared staff reports, resolutions, and ordinances for Planning Commission and City Council hearings
- Presented staff recommendation for discretionary permit applications to Planning Commission and City Council
- Coordinated project reviews with other city departments/divisions
- Met with developers, architects, engineers and community members involved in residential, commercial, and industrial projects
- Responded to citizen complaints and requests for information within 24 hours
- Trained newly hired planners in current planning policies, processes, and practices
- Participated in interview panels for the recruitment of planning technicians and planning interns

**UNITED STATES DEPARTMENT OF STATE**

**5/2017 – 5/2018**      **Vice Consul** | U.S. Embassy | Warsaw, Poland

- Managed workflow of 15-member team to efficiently and accurately adjudicate up to 500 visas daily
- Interviewed applicants and adjudicated non-immigrant visas consistent with U.S. immigration law
- Represented the U.S. mission at events; engaged in public speaking at universities; provided logistical support to visiting U.S. presidential and congressional delegations
- Spearheaded reconfiguration of the Consular Section's public areas to reduce wait times and enhance security
- Acted as Site Officer and VIP access control during U.S. President's July 2017 speech in Warsaw

**8/2016 – 5/2017**      **Training** | Foreign Service Institute | Arlington, VA

**8/2015 – 8/2016**      **Professional Associate in Public Diplomacy** | U.S. Embassy | Bogota, Colombia

- Created and executed media plan for 2016 Bogota 10K Green Race
- Drafted briefing memo, detailed agenda, and summary cable as Control Officer for the U.S. Ambassador at the Colombia Series conference
- Fundraised over \$80,000 and coordinated Los Lobos' headline performance as public affairs liaison for the Embassy's 4th of July event

JAN 29 2024

CITY OF CARLSBAD  
CITY CLERK'S OFFICE



Boards, Commissions and Committees  
Application for Appointment

Arts Commission	<input type="checkbox"/>	Housing Commission	<input type="checkbox"/>	Planning Commission	<input checked="" type="checkbox"/>
Beach Preservation Committee	<input type="checkbox"/>	Library Board of Trustees	<input type="checkbox"/>	Senior Commission	<input type="checkbox"/>
Historic Preservation Commission	<input type="checkbox"/>	Parks & Recreation Commission	<input type="checkbox"/>	Traffic & Mobility Commission	<input type="checkbox"/>
Tourism Business Improvement District	<input type="checkbox"/>	Golf Lodging Business Improvement District	<input type="checkbox"/>	Agricultural Mitigation Fee Committee	<input type="checkbox"/>
CDBG Advisory Committee	<input type="checkbox"/>	Design Review Committee	<input type="checkbox"/>	Growth Management Plan Update Advisory Committee	<input type="checkbox"/>
Community-Police Engagement Commission	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>

Personal Information

If applying for more than one, please indicate order of preference.

Name <b>Jarrett Ramaiya</b>		Date of Birth: <i>EM</i>
Home Address		Required for Voter Registration Verification District No. 4 <input checked="" type="checkbox"/>
City <b>Carlsbad</b>	ZIP <b>92011</b>	
Home Phone	Mobile	
E-mail		
Occupation <b>Deputy Director / Development Services Department</b>		
Employer		
Employer Address		
City <b>Murrieta</b>	ZIP <b>92562</b>	
Work Phone	Mobile	

Acknowledgements

	Yes	No
I am a resident of the City of Carlsbad.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am a registered voter in Carlsbad.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Are you currently or have you ever been an officer of or employed by the City of Carlsbad? If yes, please explain below.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are you currently or have you ever been under contract with the City of Carlsbad? If yes, please explain below.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
I am a Citizens Academy graduate.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
I am familiar with the responsibilities of the board/commission/committee(s) on which I wish to serve.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to be interviewed regarding my qualifications for appointment by the City Council or at the request of an individual Council member.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to file financial disclosure statements.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to complete two hours of state mandated ethics training every two years.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please make sure that your text fits in the box provided or attach an additional sheet if needed.

**Explanations**

Requesting consideration to serve on the Planning Commission on behalf of the City Council. With my land-use background, I want to volunteer my time toward continued public service. The City faces many challenges such as continued growth, unfunded mandates from the State Legislature, climate change adaptation, sea-level rise, etc. I want to serve as a Planning Commissioner to implement the City's General Plan and zoning code, and leverage my experience for decision-making and recommendations for public hearing items.

**Please describe your educational background**

Masters of Arts: Environmental Policy  
Bachelor of Arts: Urban Sociology

**Please describe relevant experience**

20 years working in land use for city and county jurisdictions. As Deputy Director in the Development Services Department for the City of Murrieta, our planning teams work with the General Plan, Municipal Code, Development Code, California Environmental Quality Act (CEQA), etc. We process discretionary applications and also work on advance planning for changes to the General Plan and elements.

**Please describe your current or past community involvement**

Have been a resident in Carlsbad since 3/01/2003, and participate in on-going clean-ups of Agua Hedionda Lagoon and coastline. Our daughter attends Aviara Oaks Middle School and we are active in volunteering in the City's outstanding school district.

**Please list all service on boards, commissions or committees, private or public agencies, (including non-profit organizations)**

Member of American Planning Association (APA), member of Association of Environmental Professionals (AEP), and member of Western Riverside Council of Governments (WRCOG) Planning Director's monthly meeting. Attendance at trainings and conferences with the League of California Cities in support of our Planning Commissioners (City of Murrieta Planning Commission).

**Additional information or comments**

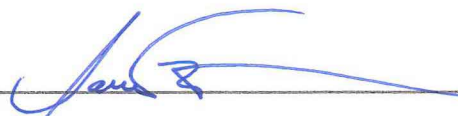
Over the last twenty years, I have presented to Planning Commissions, City Councils, Board of Supervisors, Land Agency Formation Commission (LAFCO), and other hearing bodies. I am familiar with the duties and responsibilities required and would be humbled to serve in the community that I live in.

**Submittal Information**

Please select the submit button below to electronically submit application. If you prefer to print, please select "print form" button, sign and mail to:

City of Carlsbad  
City Clerk's Office  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008.

Signature \_\_\_\_\_



Date \_\_\_\_\_

01/26/2024

\* Only required to sign if submitting paper form; if submitting electronically your submittal via e-mail is considered acknowledgement.

Clear form

Print form

Submit form



## CITY COUNCIL Staff Report

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Kyle Van Leeuwen, Associate Planner  
kyle.vanleeuwen@carlsbadca.gov, 442-339-2611

**Subject:** Variance and Coastal Development Permit for Unpermitted Retaining Walls at 939 Begonia Court (V 2023-0002/CDP 2023-0016)

**District:** 3

### Recommended Action

1. Hold a public hearing; and
2. Adopt a resolution denying a variance and a coastal development permit application to allow unpermitted retaining walls that exceed the standards of the Hillside Development Regulations on property located at 939 Begonia Court within the Mello II Segment of the city's Local Coastal Program and Local Facilities Management Zone Four (Case Name: Begonia Court Retaining Wall; Case No.: CDP 2023-0016 / V 2023-0002 (DEV 2020-0134)).

### Executive Summary

In late 2018, the city received notice that unpermitted work to install retaining walls was being conducted at 939 Begonia Court. The city began issuing notices of violation to the property owner in early 2019. The property owner stopped construction in June 2019 and has been working with the city to resolve the issue since that time. The work does not meet city development regulations, so the only options are to either obtain a variance from these regulations or to remove the retaining walls.

A request for a variance was considered and denied by the City Council on Feb. 23, 2021. The applicant has since submitted a new variance request that includes retention of the unpermitted retaining walls and additional engineering improvements.

These unpermitted walls conflict with the height limitations included in the Hillside Development Regulations that are adopted as part of the city's Zoning Ordinance. To approve the variance, the city must make the following findings:

- Due to special circumstances, the property is deprived of privileges enjoyed by similar properties in the vicinity
- The approval of a variance would not be a grant of special privileges
- The variance does not allow a use that is not expressly authorized by the zoning code
- The variance is consistent with the intent of the city's General Plan, municipal code, etc.
- The variance is consistent with the Local Coastal Program, the planning document for the city's Coastal Zone

Staff have reviewed the new application request and are again recommending that the variance findings cannot be made, and that the variance and coastal development permit applications be denied.

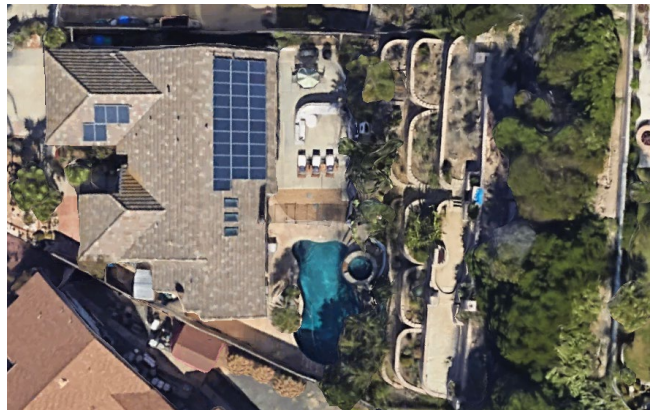
The Planning Commission considered the request on March 20, 2024, and voted to recommend that the City Council deny the variance and coastal development permit that would allow the retaining walls located at 939 Begonia Court.

The project is before the City Council because the Coastal Resource Protection Overlay Zone, Chapter 21.203 of the Carlsbad Municipal Code, requires City Council approval of a coastal development permit for development proposals that impact steep slopes within the Coastal Zone. (Section 21.203.040 (A).) Carlsbad Municipal Code Section 21.54.040 (C)(3) requires all concurrently processed development permits to be considered and approved by the same decision maker, so the requested variance from city zoning standards also requires the City Council's approval.

### **Explanation & Analysis**

#### **Project description and history**

The applicant, Rene Lichtman, on behalf of the property owner, Valerie Lichtman, is requesting a variance and coastal development permit to allow a series of retaining walls, which are currently built but unpermitted, to be kept in place.



The retaining walls, shown at right, step up the rear yard slope, which is over 40% inclination, with central stairs leading up the slope. The walls, which are installed up to 22 vertical feet from the toe of slope, were installed without required grading or building permits. (A location map is provided as Exhibit 2. )

In late 2018, upon discovering unpermitted grading and ongoing construction on the property, the city's Code Enforcement Division opened a case on the property. Code Enforcement subsequently issued a notice of violation against the property owner in February 2019 and a final notice of violation in June 2019. Construction of the retaining walls stopped in approximately June 2019, and those violations have not been corrected to this date.

Aerial photographs and statements by the property owner indicate the construction of the retaining walls began in 2016.

The property owner had the option to either remove the retaining walls and return the rear yard to its previous state, or to process and receive approval of a permit to legalize the installed retaining walls. The retaining walls, which are not compliant with provisions of the Carlsbad Municipal Code in Chapter 21.95 – Hillside Development Regulations, would first need approval of a variance and coastal development permit prior to any building or grading permits being approved.

The applicant decided to submit applications for a variance and a coastal development permit, requesting authorization to retain the walls in their current location.

- The applicant submitted a request for a variance and coastal development permit in June 2020.
- The Planning Commission reviewed the proposal on Dec. 16, 2020, and recommended the City Council deny the request
- The City Council denied the request for the variance and coastal development permit on Feb. 23, 2021.

The applicant has been in discussions with the City Attorney's office since that time about the code enforcement case and potential remediation. One of the outcomes of those discussions was allowing the applicant to again submit a request for a new variance and coastal development permit, in part because the previous reviews occurred during Covid-19 restrictions, which may have impacted the applicant's ability to fully present their case before decision makers under the virtual meeting format, and because the one-year restriction against submitting a variance application after a substantially similar application has been denied had lapsed. (Section 21.54.130.)

On March 30, 2023, the applicant submitted a new application to keep the retaining walls and terracing in place. The application includes:

- A variance to the Hillside Development Ordinance, to allow retaining walls into an uphill perimeter manufactured slope beyond the limit of 6 vertical feet from the toe of slope, where 6 vertical feet is the standard limit under Carlsbad Municipal Code Section 21.95.140(C)(1)(a)(i).
- A coastal development permit, because the work is considered development under the state Coastal Act and Carlsbad Municipal Code Section 21.04.107. This permit would allow the retaining walls to be built on the slope.

Approval of both permits would allow for the retention of the retaining walls, with additional measures to ensure the stability of the slope and structural soundness of the walls, with the subsequent approval and issuance of a grading permit.

Additional information is included in the Planning Commission staff report (Exhibit 3), including information from the applicant to justify the variance and coastal development permit request. The applicant has also provided a statement describing the history of how the walls came to be built and why the removal of the walls, and reconstruction of the slope, would be too costly for the property owner to achieve. While this statement describes the origin of the unpermitted work and highlights the financial hardship the applicant might face in remediating their unpermitted work, these considerations do not establish or support any required findings for the variance or coastal development permit.

The variance and coastal development permit would normally be heard by the Planning Commission as the final decision-maker. However, an aspect of the project's Coastal Development Permit application for deviations to grading of steep slopes within the Coastal Zone (Carlsbad Municipal Code Section 21.203.040 (A)) requires action by the City Council. Therefore, under Municipal Code Section 21.54.040, decision-making authority for multiple

development permits, both applications require City Council action. The Planning Commission conducted a public hearing on the project and has recommended that the City Council deny the applicant's requests.

### **Project analysis – Variance request**

Under Carlsbad Municipal Code Section 21.50.050, variances may be granted when special circumstances that result from the unique size, shape, topography or dimensions of a property act to deprive that property of privileges enjoyed by other properties in the vicinity that fall under the same zoning classification. Variances may not grant a special privilege that is not shared by other properties in the surrounding area.

All properties in the vicinity are subject to the same hillside development and design standards in Carlsbad Municipal Code 21.95.140, which prohibit retaining walls from being constructed on a manufactured uphill perimeter slope of a certain size. Except for the subject property, all neighboring properties comply with this requirement.

Before the unpermitted grading, the lot was similar in size, shape and topography to surrounding lots. A single-family home was constructed at roughly the same size as the neighboring properties and included a usable front and rear yard, again similar to other properties in the neighborhood. Staff find that the lot contains no special circumstances or characteristics that deprive it of a privilege enjoyed by other properties in the vicinity. Rather, approval of a variance in this case would grant a special privilege not enjoyed by surrounding properties. Staff therefore recommended denial of the variance request. The full list of variance findings with staff's analysis can be found in Exhibit 3, the Planning Commission staff report.

### **Project analysis – Coastal Development Permit**

Certain areas covered by the city's Local Coastal Program allow appeals of such zoning matters to the state Coastal Commission. The property is located within the Mello II Segment of the Local Coastal Program, not in the appeal jurisdiction. The site is also located within Coastal Resources Protection Overlay Zone and subject to its regulations.

Improvements typically associated with a single-family residence outside the coastal appeal area, such as retaining walls, are exempt from a coastal development permit. This exemption assumes that the proposed work complies with all of the provisions of the Zoning Ordinance. Therefore, a project that does not comply with the hillside development regulations is not exempt from obtaining a coastal development permit.

Approval of a coastal development permit would be needed to allow the construction or retention of retaining walls that are inconsistent with the hillside development regulations. However, that construction or retention would also require a variance to be approved. If the required findings for the variance cannot be made, as discussed above, approval of a coastal development permit will not be necessary. Therefore, further analysis of the project's consistency with the local coastal program, Carlsbad Municipal Code Sections 21.201, and 21.203, is not included.

### **Planning Commission**

The Planning Commission considered the proposed project at a public hearing on March 20, 2024. During the hearing, commissioners raised questions to staff clarifying that the overall height of unpermitted walls was over three times that of what the Hillside Development

Regulations allows, and that the variance request is to retain all of the unpermitted walls with necessary retrofitting for stability. Commissioners also asked questions of the applicant and their representatives, including questions about what the applicant's engineers considered as options to remediate the issue and stabilize the slope. The commission also questioned why the applicant, after having their previous variance request denied, would propose the same scope of project with this second variance request.

After questions and discussion, the Planning Commission voted to recommend the City Council deny the project. A complete description of the project and the staff analysis are included in the Planning Commission staff report (Exhibit 3). The Planning Commission's actions and decisions are included in the attached minutes (Exhibit 4) and resolution (Exhibit 5).

### **Community Engagement**

A public notice of this meeting, as well as for the Planning Commission hearing, was mailed to both property owners within 600 feet of the project site and occupants of property within 100 feet of the project site and posted consistent with the requirements of the Ralph M. Brown Act, California's open meeting law.

Information regarding public notification of this item such as mailings, public hearing notices posted in a newspaper of general circulation and on the city's website are available in the Office of the City Clerk.

The project is also subject to City Council Policy No. 84 - Development Project Public Involvement Policy. The applicant posted a project application sign at a conspicuous location on the site and mailed the early public notice to property owners located within 600 feet of the project site and to occupants of property located within 100 feet in May of 2023.

In response to the notice sent to surrounding properties in May of 2023, staff received emails from three neighbors during the month of June 2023. One uphill neighbor was supportive of the project, with concerns that "to bulldoze and regrade the hillside, strikes [them] as an unpragmatic solution which [they] would strongly oppose" and stating that allowing the retaining walls to stay "would be less disruptive for the surrounding neighborhood, less hazardous to hillside stability, and more cost-sensitive to one of our city residents." Two other neighbors stated concerns about the project, citing noise and privacy issues created by the elevated terraces and concerns about the stability of the unpermitted work on the slope. These early outreach comments are included with the Planning Commission staff report.

### **Fiscal Analysis**

There is no fiscal impact from this item.

### **Options**

The following options are available to the City Council:

1. Deny the proposed variance and coastal development permit applications (recommended by staff and the Planning Commission)
2. Remand the project back to the Planning Commission for additional review.
3. Support the variance request. If the City Council reviews the applicant's justification for the variance included in the Planning Commission staff report (Exhibit 3) and supports



the variance request, it is requested that the City Council provide specific direction to staff to return with a draft resolution to approve the variance and coastal development permit applications, and to provide specific text supporting the required findings to approve the variance and coastal development permit applications.

### **Next Steps**

If the City Council denies the applications, staff will ensure that the property owner obtains a grading permit to restore the slope to its previously approved condition or a condition consistent with all municipal code standards.

### **Environmental Evaluation**

If this coastal development permit (CDP 2023-0016) and variance (V 2023-0002) is denied, the project is exempt from environmental review in accordance with Sections 15061(b)(4) and 15270 of the California Environmental Quality Act Guidelines because CEQA does not apply to projects that a public agency rejects or disapproves. (See Exhibit 3, Planning Commission staff report.)

If the City Council reviews the applicant's justification for the variance and supports the variance request, CEQA would require findings to be made to support the City Council's approval of the applications.

### **Exhibits**

1. City Council resolution
2. Location map
3. [Planning Commission staff report, March 20, 2024](#) (on file in the Office of the City Clerk)
4. [Planning Commission minutes dated March 20, 2024](#) (on file in the Office of the City Clerk)
5. [Planning Commission Resolution No. 7508](#) (on file in the Office of the City Clerk)

**RESOLUTION NO.** \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, DENYING A VARIANCE AND COASTAL DEVELOPMENT PERMIT APPLICATION TO ALLOW UNPERMITTED RETAINING WALLS THAT EXCEED THE STANDARDS OF THE HILLSIDE DEVELOPMENT REGULATIONS ON PROPERTY LOCATED AT 939 BEGONIA COURT WITHIN THE MELLO II SEGMENT OF THE CITY'S LOCAL COSTAL PROGRAM AND LOCAL FACILITIES MANAGEMENT ZONE FOUR

CASE NAME: BEGONIA COURT RETAINING WALL  
CASE NO.: CDP 2023-0016 / V 2023-0002 (DEV 2020-0134)

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WHEREAS, the City Council of the City of Carlsbad, California has determined that pursuant to the provisions in the Carlsbad Municipal Code, the Planning Commission did, on March 20, 2024, hold a duly noticed public hearing as prescribed by law to consider Variance No. V 2023-0002 and Coastal Development Permit No. CDP 2023-0016, as referenced in Planning Commission Resolution No. 7508, and the Planning Commission adopted Resolution No. 7508 recommending to the City Council that they be denied; and

WHEREAS, the City Council of the City of Carlsbad held a duly noticed public hearing to consider the Variance and Coastal Development Permit; and

WHEREAS, at the public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to the Variance and Coastal Development Permit.

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

1. That the above recitations are true and correct.
2. That the City Council hereby denies Variance No. V 2023-0002 and Coastal Development Permit No. CDP 2023-0016, and that the findings and conditions of the Planning Commission contained in the Planning Commission adopted Resolution No. 7508 on file with the City Clerk and incorporated herein by reference, are the findings and conditions of the City Council.
3. This action is final the date this resolution is adopted by the City Council. The Provisions of Chapter 1.16 of the Carlsbad Municipal Code, "Time Limits for Judicial Review" shall apply:

"NOTICE"

The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure, Section 1094.6, which has been made applicable in the City of Carlsbad by Carlsbad Municipal Code Chapter 1.16. Any petition or other paper seeking review must be filed in the appropriate court not later than the ninetieth day following the date on which this decision becomes final; however, if within ten days after the decision becomes final a request for the record is filed with a deposit in an amount sufficient to cover the estimated cost or preparation of such record, the time within which such petition may be filed in court is extended to not later than the thirtieth day following the date on which the record is either personally delivered or mailed to the party, or his attorney of record, if he has one. A written request for the preparation of the record of the proceedings shall be filed with the City Clerk, City of Carlsbad, 1200 Carlsbad Village Drive, Carlsbad, CA 92008.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

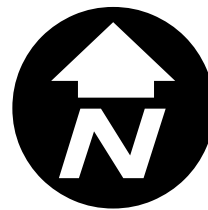
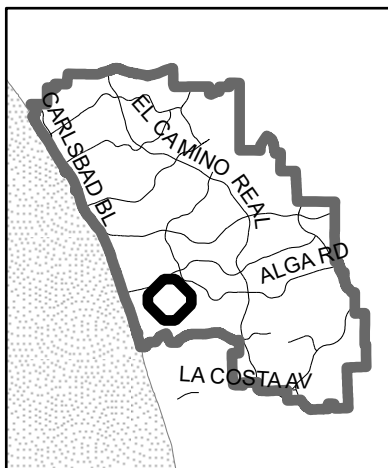
NAYS:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
KEITH BLACKBURN, Mayor

\_\_\_\_\_  
SHERRY FREISINGER, City Clerk  
(SEAL)



NOT TO SCALE

**SITE MAP**

# BEGONIA COURT RETAINING WALL CDP 2023-0016 / V 2023-0002

Planning Commission Staff Report, March 20, 2024  
(on file in the Office of the City Clerk)

Planning Commission Minutes dated March 20, 2024  
(on file in the Office of the City Clerk)

Planning Commission Resolution No. 7508  
(on file in the Office of the City Clerk)



CITY COUNCIL  
**Staff Report**

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Jennifer Jesser, Senior Planner  
 jennifer.jesser@carlsbadca.gov, 442-339-2637

**Subject:** Fiscal Year 2022-23 Growth Management Program Monitoring Report

**Districts:** All

**Recommended Action**

1. Hold a public hearing; and
2. Adopt a resolution accepting the Fiscal Year 2022-23 Growth Management Program Monitoring Report and finding that it satisfies the city's monitoring requirements.

**Executive Summary**

The city's Growth Management Program has guided the growth of Carlsbad since the 1980s. This report on the city's Growth Management Program is presented to the City Council each year in accordance with Carlsbad Municipal Code Section 21.90 - Growth Management, subsection 130(d). The report includes the status of development activity, the adequacy of public facilities and public facility financing.

This year's report shows that all public facilities identified in the Fiscal Year 2022-23 Growth Management Program Monitoring Report meet the required facility performance standards for FY 2022-23. Regarding the Circulation performance standard, the report includes the status of the vehicle mode of travel. The status of the pedestrian, bicycle and transit travel modes will be reported separately.

Exhibit 1 is a resolution accepting the Fiscal Year 2022-23 Growth Management Program Monitoring Report and finding that it satisfies the city monitoring requirements, as established in Section 21.90.130(d). The monitoring report is included as Attachment A to Exhibit 1.

**Explanation & Analysis**

**Background**

The City Council approved an ordinance in 1986 that established a growth management program with a requirement that new development construct and pay for the public facilities needed to serve the development. Developers either build the improvements themselves or pay fees to the city so the city can construct the facilities.

Carlsbad voters affirmed the general principles of Carlsbad's Growth Management Program when they passed Proposition E in November 1986. Proposition E also established limits, or caps, on the number of homes in the city. However, as described in the monitoring report, state housing laws preempt the city's ability to require compliance with the housing caps.



Also in 1986, the City Council approved a Citywide Facilities and Improvements Plan that included performance standards for the following eleven public facilities:

City administration	Parks	Fire	Sewer collection
Library	Drainage	Open space	Water distribution
Wastewater treatment	Circulation	Schools	

These performance standards are applied citywide, by city quadrant, by local facility management zone or by project site, depending on the facility. New development must comply with the public facility performance standards.

**FY 2022-23 Growth Management Program Monitoring Report (Exhibit 1, Attachment A)**

The report includes:

- An analysis of the public facility performance standards, including the current status of each facility and the projected status for when the community is built out (i.e., fully developed). This analysis shows:
  - All public facilities identified in the report met the required performance standards during fiscal year 2022-23. The report also identifies that when the city is built out, additional facilities will be needed to meet the standard for libraries, drainage, open space, sewer collection and water distribution.
  - The status of the circulation performance standard shows the vehicle mode of travel meets the performance standard, except where streets have been exempted from the standard. The status of the pedestrian, bicycle and transit travel modes will be reported separately.
- A summary of development activity during the reporting period:
  - Building permits were issued for 276 new dwelling units (194 primary dwelling units and 82 accessory dwelling units).
  - Building permits were issued for 290,988 square feet of new non-residential space.
- An updated resident population and existing dwelling unit inventory.
  - The total existing dwelling units in Carlsbad, as of June 30, 2023, is 47,629 and the existing population estimate is 117,107.
- An analysis of the Proposition E residential dwelling unit caps.
  - As described in the report, state housing laws preempt the city’s ability to require compliance with the Proposition E dwelling unit caps. The report analyzes the Proposition E dwelling unit caps for reference purposes only and shows that the existing and planned unbuilt dwellings during fiscal year 2022-23 remained below the dwelling unit caps.

## **Carlsbad Tomorrow Growth Management Citizens Committee**

To address state housing laws and evaluate other issues affecting Carlsbad's growth, the City Council established a goal in fiscal year 2021-2022 to "engage the community through a citizens committee to create a new plan to manage growth in Carlsbad in a way that maintains an excellent quality of life." The City Council approved the formation of the Carlsbad Tomorrow: Growth Management Citizens Committee on March 8, 2022.

The committee met from March 2022-April 2023 to review and identify key elements of a new plan to manage growth in a way that maintains excellent quality of life and ensures compliance with state laws. The committee's recommendations are provided in a report titled "Carlsbad Tomorrow: Growth Management Citizens Committee Final Report April 2023." The report was presented to the City Council on July 18, 2023, at which time the City Council directed staff to return in 2024, three months after the adoption of the General Plan's Housing Element rezoning program, with a work plan for next steps to implement the committee's recommendations. The Housing Element, the part of the General Plan that covers housing, was adopted on Jan. 30, 2024. A City Council memorandum (Exhibit 2) updated the City Council on the next steps to update the program, and a report on the subject will be presented to the City Council before its August recess.

Changes to the Growth Management Program to implement the committee's recommendations are awaiting City Council approval, so the Fiscal Year 2022-23 Growth Management Program Monitoring Report provides information on the city's progress in implementing the current Growth Management Program.<sup>1</sup>

### **Fiscal Analysis**

There is no fiscal impact associated with this action.

### **Next Steps**

The Fiscal Year 2022-23 Growth Management Program Monitoring Report will be kept on file and posted on the city's website.

### **Environmental Evaluation**

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

### **Exhibits**

1. City Council resolution
2. [City Council memorandum, dated April 18, 2024](#) (on file in the Office of the City Clerk)

<sup>1</sup> More information about the committee's work and a link to the committee's report can be found at [carlsbadca.gov/city-hall/meetings-agendas/boards-commissions/growth-management-committee](https://carlsbadca.gov/city-hall/meetings-agendas/boards-commissions/growth-management-committee)

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, ACCEPTING THE FISCAL YEAR 2022-23 GROWTH MANAGEMENT PROGRAM MONITORING REPORT AND FINDING THAT IT SATISFIES THE CITY'S MONITORING REQUIREMENTS

WHEREAS, in 1986, the Carlsbad City Council adopted the Growth Management Program to ensure that adequate public facilities are provided concurrent with growth; and

WHEREAS the Growth Management Program is implemented through Carlsbad Municipal Code Chapter 21.90 and the Citywide Facilities and Improvements Plan; and

WHEREAS Carlsbad Municipal Code Section 21.90.130(d) requires the City Planner to provide to the City Council an annual Growth Management Program monitoring report that includes information on development activity, public facilities and improvements, and public facility financing; and

WHEREAS the Fiscal Year 2022-23 Growth Management Program Monitoring Report (Attachment A) addresses the status of all public facility performance standards, except the status of the Circulation performance standard for the pedestrian, bicycle, and transit travel modes, which will be reported separately.

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

1. That the above recitations are true and correct.
2. That the Fiscal Year 2022-23 Growth Management Program Monitoring Report satisfies Carlsbad Municipal Code Section 21.90.130(d) by providing information to the City Council regarding the status of the Carlsbad Growth Management Program for the fiscal year covering July 1, 2022 to June 30, 2023, except for the status of the Circulation performance standard for the pedestrian, bicycle and transit travel modes, which will be reported separately.
3. That the Fiscal Year 2022-23 Growth Management Program Monitoring Report (Attachment A) is accepted, and the City Planner shall file the report and post it to the city website.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

---

KEITH BLACKBURN, Mayor

---

SHERRY FREISINGER, City Clerk  
(SEAL)

CITY OF CARLSBAD  
Fiscal Year 2022-23  
Growth Management Program Monitoring Report  
July 1, 2022 through June 30, 2023

Carlsbad City Council

Mayor Keith Blackburn

Mayor Pro Tem Priya Bhat-Patel, District 3

Council Member Melanie Burkholder, District 1

Council Member Carolyn Luna, District 2

Council Member Teresa Acosta, District 4

*February 2024*

*Report prepared in cooperation with the following City of Carlsbad district and departments:*

*Carlsbad Municipal Water District*

*Community Development*

*Community Services*

*Fire*

*Library & Cultural Arts*

*Parks & Recreation*

*Public Works*

# Introduction

This Growth Management Program Monitoring report for fiscal year (FY) 2022-23 (July 1, 2022 – June 30, 2023), is provided in accordance with Carlsbad Municipal Code Section 21.90.130(d), which requires the preparation of an annual monitoring report on the Growth Management Program.

## GROWTH MANAGEMENT PROGRAM OVERVIEW

The principle behind the Growth Management Program is to ensure that new development and growth does not outpace the performance standards established for public facilities such as circulation facilities, libraries, parks, open space, and facilities to provide water and sewer services. The City of Carlsbad's Growth Management Program was created in 1986 and is comprised of:

- The Growth Management Ordinance (Carlsbad Municipal Code Chapter 21.90);
- The Citywide Facilities and Improvements Plan; and
- Proposition E, passed by voters in November 1986, established a cap on the number of residential dwelling units in the city. The dwelling unit cap is no longer enforceable due to state law (see “Impacts of State Law”, below).
- Local Facility Management Plans for 25 local facility management plans

The Citywide Facilities and Improvements Plan specifies the performance standards for 11 public facilities, as listed in Table 1. To ensure that the public facility performance standards could be achieved, the Growth Management Program directed the development of financing and management plans describing how/when the public facilities would be developed. The subsections below provide additional information.

### **CARLSBAD TOMORROW: GROWTH MANAGEMENT CITIZENS COMMITTEE**

The city's Growth Management Program was created in the 1980s and is largely credited with maintaining the city's excellent quality of life, well-planned infrastructure, and financial health over the past 35+ years. However, in recent years, state laws have suspended the ability of cities to establish or implement any provision that limits housing development or population (see “Impacts of State Law”, below).

To address state housing laws and evaluate the issues affecting Carlsbad's growth, the City Council established a goal (fiscal year 2021-2022) to “engage the community through a citizens committee to create a new plan to manage growth in Carlsbad in a way that maintains an excellent quality of life.” The City Council approved the formation of the Carlsbad Tomorrow: Growth Management Citizens Committee on March 8, 2022.

The committee met from March 2022 – April 2023 to review and identify key elements of a new plan to manage growth in a way that maintains excellent quality of life and ensures compliance with state laws. The committee's recommendations are provided in a report titled “Carlsbad Tomorrow: Growth Management Citizens Committee Final Report April 2023.” The report was presented to the City Council on July 18, 2023, at which time the council directed staff to return in 2024 with a work plan to implement the committee's recommendations.

While changes to the Growth Management Program to implement the committee’s recommendations are pending City Council action, this report provides information on the city’s progress in 2022-2023 in implementing the existing Growth Management Program.

Table 1: Citywide Facilities and Improvements Plan Public Facility Performance Standards

Public Facility	Performance Standard	Status on Page
City Administrative Facilities <sup>1</sup>	1,500 sq. ft. per 1,000 population must be scheduled for construction within a five-year period or prior to construction of 6,250 dwelling units, beginning at the time the need is first identified.	11
Library <sup>1</sup>	800 sq. ft. (of library space) per 1,000 population must be scheduled for construction within a five-year period or prior to construction of 6,250 dwelling units, beginning at the time the need is first identified.	13
Wastewater Treatment	Sewer plant capacity is adequate for at least a five-year period.	14
Parks <sup>1</sup>	3.0 acres of Community Park or Special Use Area per 1,000 population within the Park District must be scheduled for construction within a five-year period beginning at the time the need is first identified. The five-year period shall not commence prior to August 22, 2017.	15
Drainage	Drainage facilities must be provided as required by the city concurrent with development.	17
Circulation	Implement a comprehensive livable streets network that serves all users of the system – vehicles, pedestrians, bicycles, and public transit. Maintain LOS D or better for all modes that are subject to this multi-modal level of service (MMLOS) standard, as identified in Table 3-1 of the General Plan Mobility Element, excluding LOS exempt intersections and streets approved by the City Council.	18
Fire	No more than 1,500 dwelling units outside of a five-minute response time.	27
Open Space <sup>2</sup>	Fifteen percent of the total land area in the Local Facility Management Zone (LFMZ) exclusive of environmentally constrained non-developable land must be set aside for permanent open space and must be available concurrent with development.	28
Schools <sup>2</sup>	School capacity to meet projected enrollment within the Local Facility Management Zone (LFMZ) as determined by the appropriate school district must be provided prior to projected occupancy.	33
Sewer Collection System	Trunk-line capacity to meet demand, as determined by the appropriate sewer districts, must be provided concurrent with development.	34
Water Distribution System	Line capacity to meet demand as determined by the appropriate water district must be provided concurrent with development. A minimum of 10-day average storage capacity must be provided prior to any development.	36

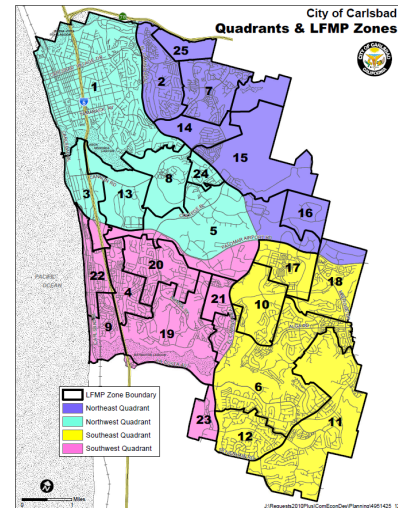
<sup>1</sup> The performance standards for city administrative facilities, library facilities, and parks are stated in terms of population, which is discussed in the subsection below entitled “Population.”

<sup>2</sup> The performance standards for open space and schools are based on a “Local Facility Management Zone,” which is discussed in the subsection below entitled “Facility and Improvement Plans.”

Figure 1

## LOCAL FACILITY AND IMPROVEMENT PLANS

To develop a road map for how the above standards could be met, a Citywide Facilities and Improvements Plan was created in 1986 that detailed how compliance with the performance standards will be achieved, how the necessary public facilities will be provided, and what financing mechanisms will be used for the facilities. Because planned development and growth varies throughout the city and at different levels, Carlsbad is divided into twenty-five local facilities management zones (Figure 1). Each Local Facility Management Zone has an adopted Local Facilities Management Plan. Consistent with the Growth Management Program and the Citywide Facilities and Improvements Plan, each Local Facility Management Plan must describe how the Local Facility Management Zone will be developed, how the required public facilities will be provided, and how those facilities will be funded.



## FAILURE TO MEET A PERFORMANCE STANDARD

The Growth Management Ordinance, Carlsbad Municipal Code Section 21.90.080, states:

“If at any time after preparation of a local facilities management plan the performance standards established by a plan are not met then no development permits or building permits shall be issued within the [affected] local zone until the performance standard is met or arrangements satisfactory to the city council guaranteeing the facilities and improvements have been made.”

As described in the following subsection, the city’s ability to stop development due to lack of compliance with a growth management performance standard has been largely preempted by recent state law.

## IMPACTS OF STATE LAW

According to the Growth Management Program, development activity cannot proceed if either the residential growth caps or public facility performance standards are not met. However, updates to state law and the city’s Housing Element have modified these components of the Growth Management Program.

In 2017 the California Legislature passed SB 166, known as the No Net Loss Law, which requires local jurisdictions to ensure that their housing element inventories can accommodate, at all times throughout the planning period, their remaining unmet share of the regional housing need. The California Department of Housing and Community Development (HCD) has taken the following positions with respect to Carlsbad: that failure to meet the GMP performance standards cannot be used as a basis for implementing a moratorium that precludes meeting Carlsbad’s share of the regional housing need, and that the GMP residential unit caps could not prevent the city from achieving consistency with the Housing Element inventory and SB 166. In 2019, the legislature passed SB 330, the Housing Crisis Act of 2019, which prohibits local jurisdictions from imposing moratoriums on housing development and using residential housing caps or other limits to regulate the number of housing units built within a jurisdiction.

As noted in the City’s May 5, 2020, staff report, Item 12,<sup>3</sup> Senate Bill 166 of 2017 states that “Each city, county, or city and county shall ensure that its housing element inventory... can accommodate, at all times

<sup>3</sup> City Council May 5, 2020 Staff Report, Item 12 available at: <https://carlsbadca.swagit.com/play/05052020-1021#full-agenda>



throughout the planning period, its remaining unmet share of the regional housing need allocated pursuant to Section 65584.” Furthermore, where housing is an allowable use, Senate Bill 330 (2019)] prohibits a city from enacting a “development policy, standard or condition” that would have the effect of “imposing a moratorium or similar restriction or limitation on housing development ... other than to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium...”

The following state laws limit the city’s ability to stop development:

- Senate Bill 166 (2017) states that “Each city, county, or city and county shall ensure that its housing element inventory... can accommodate, at all times throughout the planning period, its remaining unmet share of the regional housing need allocated pursuant to Section 65584.” The California Department of Housing and Community Development has taken the position that exceedances of the city’s growth management standards cannot constitute a basis for implementing a moratorium that precludes attainment of the city’s regional housing need allocation.
- Senate Bill 330 (2019) prohibits a city from enacting a “development policy, standard or condition” that would have the effect of “imposing a moratorium or similar restriction or limitation on housing development ... other than to specifically protect against an imminent threat to the health and safety of persons residing in, or within the immediate vicinity of, the area subject to the moratorium...” On April 17, 2020, the city received an opinion from the California Department of Housing and Community Development, which states in part that a "housing moratorium adopted pursuant to the City's [Growth Management Program] would be impermissible under Government Code section 66300 [Senate Bill 330].”

On April 17, 2020, the city received an opinion from the California Department of Housing and Community Development regarding the city’s ability to implement a moratorium under the City's Growth Management Plan where vehicular deficiencies exist (CMC §§ 21.90.080 and 21.90.130) in light of SB 330. The department’s opinion concludes that "the housing moratorium adopted pursuant to the city’s GMP would be impermissible under Government Code section 66300.” “HCD does not consider, however, that general concerns about the health and welfare of the citizenry—including traffic conditions that cause minor delays-present an imminent threat to health and safety.” In City Council Resolutions No. 2020-104, No 2020-105, No 2020-106, No 2020-208, the City Council similarly concluded that “The City finds that Gov. Code § 65863(a) (SB 166 [2017]) and Gov. Code, § 66300(b)(1)(B)(i) (SB 330 [2019]) preempt the City from implementing a moratorium pursuant to Carlsbad Municipal Code §§ 21.90.080 and 21.90.130 and [Growth Management Program] regulations.”

The city also reached similar conclusions with the adoption of its Housing Element in April 2021 (Resolution No. 2021-074.). That resolution states “Consistent with Updated Housing Element Program 2.2, the City Council finds that Government Code Sections 65583(a)(3) and 65863(a) (SB 166 [2017]) and Government Code Section 66300(b)(1)(D) (SB 330 [2019]) preempt the city from implementing residential growth management plan caps, residential quadrant limits, and residential control points. Consequently, the City finds that it cannot and will not enforce these residential caps, quadrant limits, and control points, including but not limited to those contained in the General Plan (including, but not limited to the Land Use and Community Design Element Table 2-3, Section 2.6, Policy 2-P.8(a) and (b), Policy 2- P.16(d), and Policy 2-P.57), Growth Management Plan (Proposition E); City Council Policy Statement No. 43, Carlsbad Municipal Code Chapter 21.90 including but not limited to CMC §§ 21.90.030 (b), 21.90.045 and 21.90.185.”

## SUMMARY STATUS OF PUBLIC FACILITY PERFORMANCE STANDARDS

As further detailed in this report and summarized in Table 2, during FY 2022-23 the city met the Growth Management Program performance standards for the 11 public facilities.

Table 2: Public Facility Adequacy Status

Public Facility	FY 2022-23 Adequacy Status (Meets performance standard?)	Buildout Adequacy Status (Meets performance standard?)
City Administrative Facilities	Yes	Yes
Library	Yes	Additional facilities to be provided
Wastewater Treatment Capacity	Yes	Yes
Parks	Yes	Yes
Drainage	Yes	Additional facilities to be provided
Circulation	Yes*	Additional facilities to be provided
Fire	Yes	Yes
Open Space	Yes	Additional facilities to be provided
Schools	Yes	Yes
Sewer Collection System	Yes	Additional facilities to be provided
Water Distribution System	Yes	Additional facilities to be provided

\* The information on the status of the Circulation performance standard is provided in part by this report (status of the vehicle travel mode). The status of the pedestrian, bicycle and transit travel modes will be reported separately.

## FY 2022-23 DEVELOPMENT ACTIVITY

### Residential Development Activity

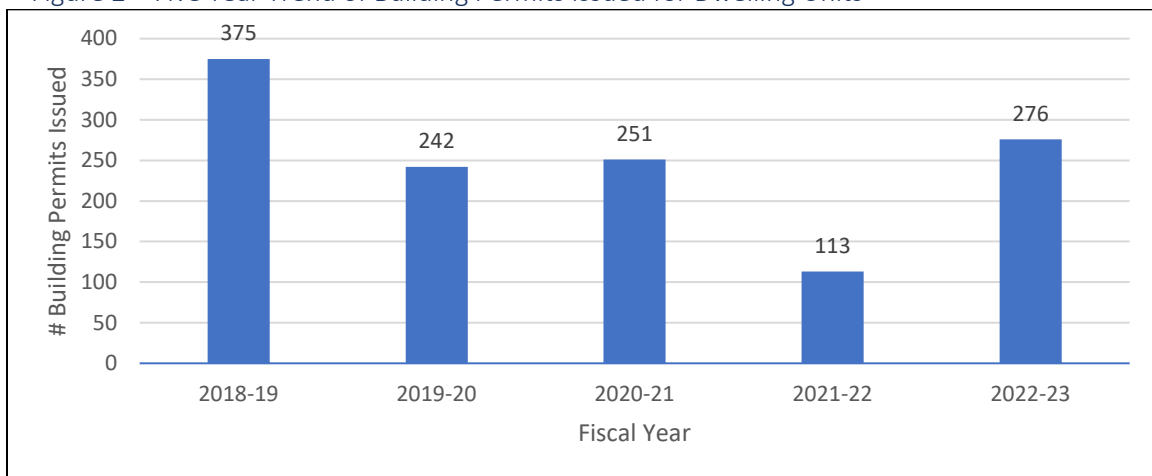
During FY 2022-23, building permits were issued for 276 new dwelling units (194 primary dwellings and 82 accessory dwellings). Table 6 indicates where the residential development activity occurred.

Table 3: FY 2022-23 Building Permits Issued – Dwelling Units

Quadrant	Local Facility Management Zone	Primary Dwellings	Accessory Dwellings
Northwest	1	120	48
	3	0	4
	8	0	1
<b>Total NW</b>		<b>120</b>	<b>53</b>
Northeast	2	0	5
	7	0	2
<b>Total NE</b>		<b>0</b>	<b>7</b>
Southwest	5	70	0
	6	0	2
	9	0	1
	19	1	3
	20	0	1
<b>Total SW</b>		<b>71</b>	<b>7</b>
Southeast	6	3	8
	11	0	4
	12	0	2
	18	0	1
<b>Total SE</b>		<b>3</b>	<b>15</b>
<b>Total Citywide</b>		<b>194</b>	<b>82</b>

Figure 2 shows the recent five-year trend of building permits issued for dwelling units and shows that the permits issued in FY 2022-23 were 26 percent less than the permits issued in FY 2018-19, 10 to 14 percent higher than FY 2019-20 and FY 2020-21, and 144 percent higher than FY 2021-22.

Figure 2 – Five Year Trend of Building Permits Issued for Dwelling Units



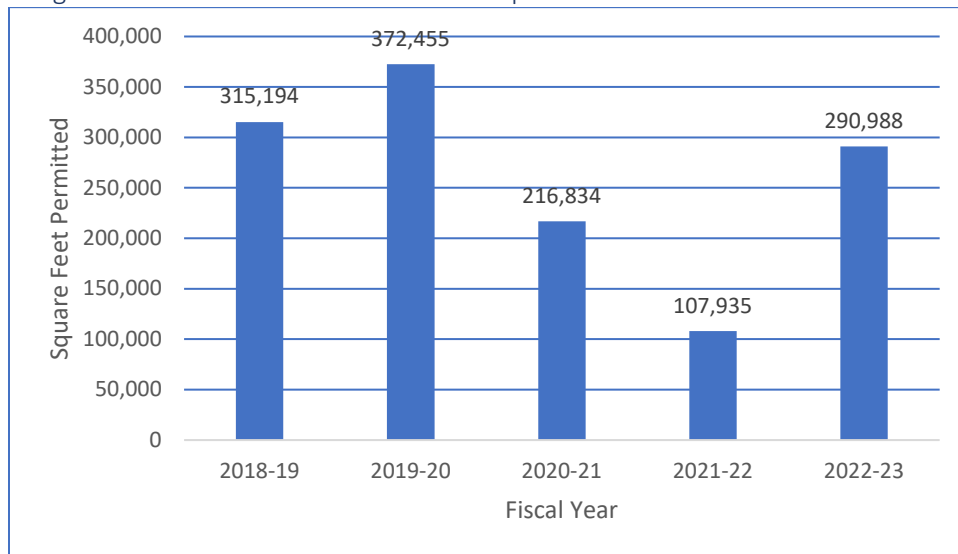
## Non-Residential Development Activity

During FY 2022-23, building permits were issued for 63,338 square feet of new commercial construction and 227,650 square feet of new industrial construction. Table 7 provides a breakdown by quadrant and Local Facility Management Zone, excluding the zones that had no building permit activity. Figure 3 shows the recent five-year trend of building permits issued for non-residential construction. The amount of non-residential square feet permitted in FY 2022-23 was 7.7% less than FY 2018-19, 21.9% less than FY 2019-20, and 34.2% to 169.6% more than FY 2020-21 to FY 2021-22.

Table 4 – FY 2022-23 Non-Residential Development

Quadrant	Local Facility Management Zone	Commercial (SF)	Industrial (SF)	Combined (SF)
Northwest	1	44,852	-	44,852
	5	-	480	
	13	18,486	-	18,486
Total NW		63,338	-	97,842
Southeast	18	-	227,170	227,170
Total SE		-	-	227,170
<b>Total Citywide</b>		<b>63,338</b>	<b>227,650</b>	<b>290,988</b>

Figure 3 – FY 2022-23 Non-Residential Square Feet Permitted



## Growth Management Program (Proposition E) Dwelling Unit Cap Analysis

In 1986, through Proposition E, voters limited the number of dwelling units in the city to the 54,599 dwelling units, and limited units in each quadrant, as shown in Table 3. However, as described in the “Impacts of State Law” section above, state housing laws preempt the city’s ability to require compliance with the Proposition E dwelling unit caps. Table 3 shows the Proposition E dwelling unit caps for reference purposes only and shows that existing and planned unbuilt dwellings remain below the dwelling unit caps (as of June 30, 2023).

Table 3 represents the number of existing dwellings and the number of future dwelling units (“unbuilt planned dwellings”), as of June 30, 2023, that could be built (based on the applicable growth management control point density) on all parcels that have a residential land use designation according to the General Plan Land Use Map. The “total existing and unbuilt planned dwellings”, as shown in Table 3, assumes all parcels with a residential land use designation will be developed with residential dwellings, including land that is currently developed with non-residential uses (e.g., churches and professional care facilities).

Table 5: FY 2022-23 Residential Dwelling Status Per Quadrant

As of June 30, 2023					
	Northwest Quadrant	Northeast Quadrant	Southwest Quadrant	Southeast Quadrant	Citywide Total
<b>Proposition E Dwelling Cap<sup>4</sup></b>	<b>15,370</b>	<b>9,042</b>	<b>12,859</b>	<b>17,328</b>	<b>54,599</b>
Existing Dwellings <sup>5</sup>	12,781	7,460	10,274	16,488	47,003
Unbuilt Planned Dwellings <sup>6</sup>	2,553	1,480	1,650	534	6,217
Total Existing and Unbuilt Planned Dwellings	15,334	8,940	11,924	17,022	53,220
<b>Units below or above dwelling cap<sup>7</sup></b>	<b>36 below</b>	<b>102 below</b>	<b>935 below</b>	<b>306 below</b>	<b>1,379 below</b>

The section below titled “Housing Element Rezone Program” identifies how the rezone program affects the dwelling unit caps. The rezone program was approved by City Council on January 30, 2024, which is outside the reporting period of this report and is therefore not reflected in Table 5.

<sup>4</sup> Proposition E dwelling caps are not enforceable and are shown here for reference purposes only (see the “Impacts of State Law” section of this report).

<sup>5</sup> Existing dwellings exclude accessory dwelling units and commercial living units. The number of accessory dwelling units and commercial living units (professional care facilities) are shown in Table 4 for purposes of population estimates. Table 3 compares existing dwellings to the Proposition E dwelling unit caps, and for purposes of the dwelling caps, accessory dwellings and commercial living units are excluded. California Government Code Section 65852.2 states that accessory dwelling units shall not be considered in the application of any local ordinance, policy or program that limits residential growth. Regarding commercial living units (e.g., professional care facilities, hotels, and time-shares), Carlsbad Municipal Code Section 21.04.093 states that such units are not considered dwelling units due to the assistance/services provided in conjunction with the living unit and/or the use of the living unit for temporary lodging.

<sup>6</sup> All quadrants except the Village - includes unbuilt approved projects, as well as vacant and underdeveloped property designated for residential use by the General Plan.

<sup>7</sup> For reference purposes only.

## POPULATION

### Existing Population (as of June 30, 2023)

The performance standards for city administrative facilities, library facilities, and parks are stated in terms of population. The demand for these facilities is based on each new dwelling unit built and the estimated number of new residents it adds to the city, which is determined using the average number of persons per dwelling unit. Utilizing data from the 2020 Federal Census (total population divided by total number of dwelling units), the average for Carlsbad is 2.44 persons per dwelling unit.

As shown in Table 4, as of June 30, 2023, the city's population is estimated to be 117,107, which is calculated by multiplying 2.44 persons per dwelling unit by the number of dwelling units and accessory dwelling units and adding population in commercial living units (professional care facilities). The population estimates are based on the 2020 Census population estimate and the city's dwelling unit estimates and may vary from estimates of other agencies.

The city's population estimate methodology has been refined and updated since the last (March 2022) Growth Management Program Monitoring Report for FY 2021-22, as described below:

- The FY 2021-22 report utilized a persons per dwelling unit (2.404) estimate that was based on the April 2020 Census total population (114,746) divided by the 2020 Census total dwellings (47,734). The city maintains a database of existing dwellings, which differs from the 2020 Census dwelling estimate. Because the city uses its dwelling database to estimate population, as shown in Table 4, a more accurate method to calculate persons per dwelling is to divide the 2020 Census total population (114,746) by the city's estimated total dwellings in April 2020 (46,772), which results in 2.44 persons per dwelling.
- The FY 2021-22 report utilized data from the 2010 Census for the number of group quarters (professional care facilities/commercial living units) in the city, as that data was not yet available from the 2020 Census. Since the last report (March 2022) for FY 2021-22, additional data from the 2020 Census was evaluated regarding the number of group quarters (professional care facilities/commercial living units). The 2020 Census reports a lower population in group quarters (professional care facilities/commercial living units) compared to the 2010 Census.

Overall, the updated population estimate methodology results in a population estimate that is 693 persons less than the FY 2021-22 report. The reduction in population is primarily due to the updated 2020 Census group quarters information.

The city's population estimate remains higher when compared to the population estimates from the California Department of Finance (DOF) and the San Diego Association of Governments (SANDAG); both agencies are estimating a decline in population since the 2020 Census. The Department of Finance (DOF) estimates that Carlsbad's population, as of January 1, 2023, was 114,549 (316 less than the DOF January 1, 2022, estimate). SANDAG's current population estimates are consistent with the DOF. City staff will continue to monitor projected population estimates from the DOF and SANDAG.

The city updates its population estimate methodology after each decennial census; the next will be in 2030. The city's method ensures a consistent methodology over a 10-year period, which provides stable population projections for public facility planning purposes. If other agencies continue to estimate a declining population, the city's population estimates will remain conservatively high and will be adjusted after the 2030 Census.

Table 6: Existing Population (as of June 30, 2023)

Quadrant	Existing Dwelling Units	Existing Accessory Dwelling Units	Total Existing Dwelling Units	Dwelling Unit Population	Population in Professional Care Facilities 2020 Census	Population in Professional Care Facilities After 2020	Total Population
NW	12,781	310	13,091	31,944	172	-	32,116
NE	7,460	56	7,516	18,340	179	270	18,789
SW	10,274	54	10,328	25,201	139	-	25,340
SE	16,488	206	16,694	40,735	127	-	40,826
<b>TOTAL</b>	<b>47,003</b>	<b>626</b>	<b>47,629</b>	<b>116,220</b>	<b>617</b>	<b>270</b>	<b>117,107</b>

Buildout Population (as of June 30, 2023)

Table 5 estimates the number of dwellings that will exist at buildout based on current (June 30, 2023) General Plan residential land use designations.

Table 7: Estimated Buildout Population (as of June 30, 2023)

Quadrant	Dwelling Units <sup>8</sup>	Population <sup>9</sup>
NW	15,644	39,215
NE	8,996	22,550
SW	11,978	30,026
SE	17,228	43,186
Total	53,846	134,977

The section below titled “Housing Element Rezone Program” identifies how the rezone program affects the estimated buildout population. The rezone program was approved by City Council on January 30, 2024, which is outside the reporting period of this report; however, the information is provided in anticipation of questions about the rezone program.

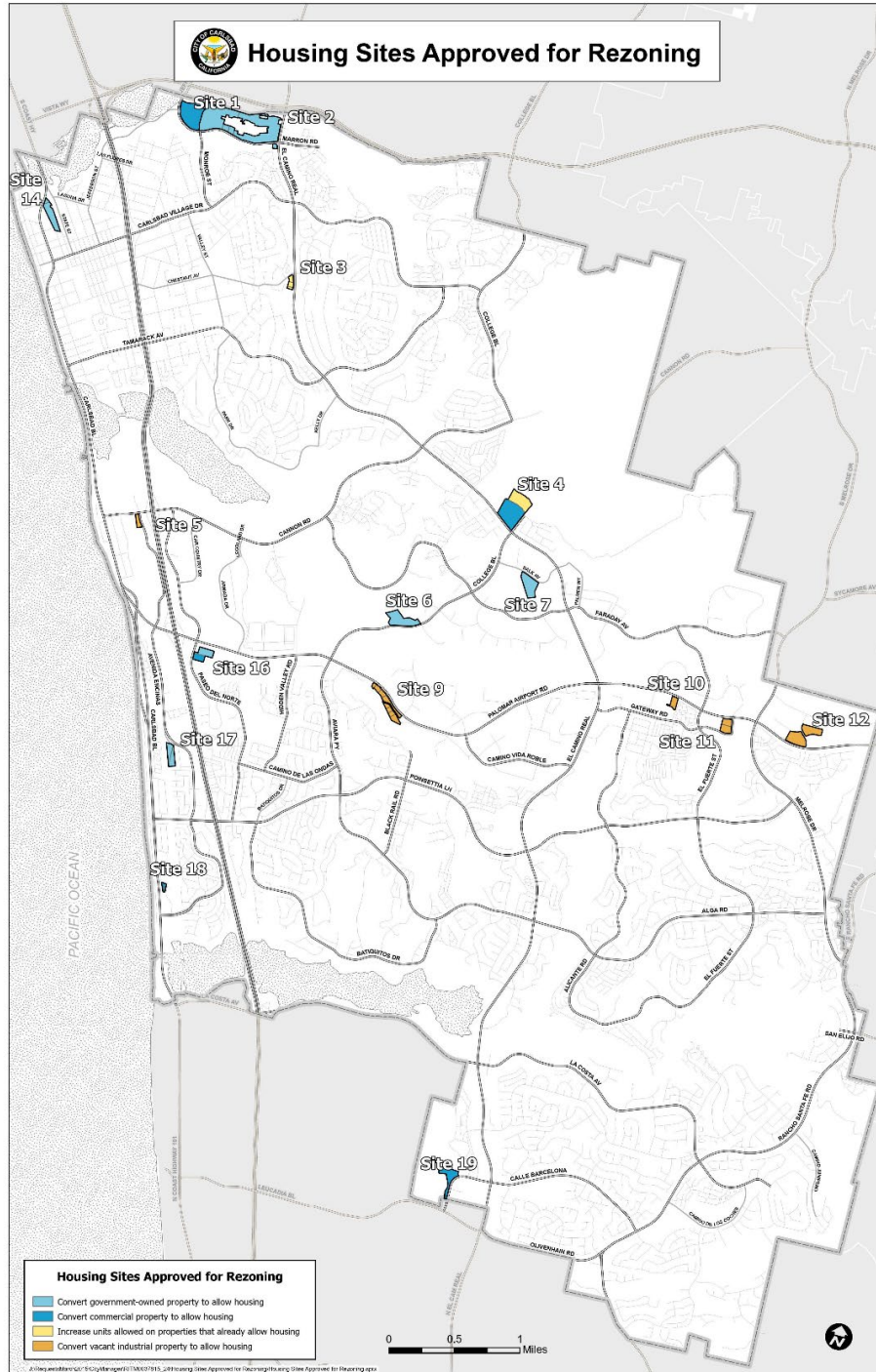
<sup>8</sup> Includes existing accessory dwellings.

<sup>9</sup> Includes population in group quarters (e.g., professional care facilities) – an additional 0.86% of household population.

## HOUSING ELEMENT REZONE PROGRAM

On Jan. 30, 2024, the City Council voted to approve the rezoning of [properties](#) around Carlsbad, as shown below. The purpose of the rezone program is to meet state housing requirements by implementing Housing Element Program 1.1, which requires rezoning various properties to allow higher residential densities to accommodate the city's Regional Housing Needs Assessment obligations.

Figure 4 – Housing Sites Approved for Rezoning





The rezone program results in an increased number of future dwellings and population. The following information estimates future dwellings and population with the rezoned sites and shows how the dwelling caps are affected.

Table 8 – Estimated Buildout Dwellings and Population with Rezone Program

Quadrant	Growth Management Dwelling Caps	Estimated Buildout Dwelling Units	Estimated Buildout Population
Northwest	15,370	17,081	42,817
Northeast	9,042	9,600	24,065
Southwest	12,859	12,385	31,046
Southeast	17,328	17,270	43,291
Citywide	54,599	56,366	141,219

As described in the “Impacts of State Law” section above, state housing laws preempt the city’s ability to require compliance with the Growth Management (Proposition E) dwelling unit caps. The approval of the Housing Element Rezone Program on Jan. 30, 2024, results in an increase in future dwelling units that will exceed the Growth Management dwelling caps in the northwest and northeast quadrants, as well as citywide. This estimate includes consistent methodology of persons per household and vacancy rates from the 2020 census. This methodology is updated during each 10-year census period. Current demographic projections from the San Diego Association of Governments show the region’s population declining after 2042. This report will continue to use the best available data from the census. Environmental documents, such as Environmental Impact Reports, will also use the best available information for consistency and public disclosure of impacts.

Although the city is no longer able to enforce the dwelling unit caps, future development must still comply with the Growth Management Program’s public facility performance standards, which will ensure adequate public facilities are provided concurrent with growth.

The sections below describe the status of each public facility performance standard, as of June 30, 2023 (prior to approval of the rezone program). Analysis of how the rezone program affects the public facility performance standards is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.

## CITY ADMINISTRATIVE FACILITIES

### Performance Standard

1,500 sq. ft. per 1,000 population must be scheduled for construction within a five-year period or prior to construction of 6,250 dwelling units, beginning at the time the need is first identified.

### FY 2022-23 Facility Adequacy Analysis

Based on the estimated June 30, 2023, population estimate of 117,107, the current demand for administrative facilities is **175,661** square feet. To date, city administrative facilities exceed the performance standard. The existing inventory of City of Carlsbad and Carlsbad Municipal Water District buildings (leased and owned) occupied for administrative services are included in Table 8:

Table 9: Existing Administrative Facilities (as of June 30, 2023)

Facility	Address	Square Feet
City Hall Complex	1200 Carlsbad Village Drive	16,000
Faraday Administration Building	1635 Faraday Ave.	68,000
Fleet Service Center	2480 Impala Drive	10,540
Water District (Maintenance & Operations)	5950 El Camino Real	18,212
Parks Yard (Maintenance & Operations)	1166 Carlsbad Village Drive	4,012
Public Works Operations	405 Oak Ave.	9,950
Safety Center (Police and Fire administration)	2560 Orion Way	55,027
First Responder Safety Training Center	5750 Orion Way	15,090
Senior Center (Parks & Recreation administration)	799 Pine Ave.	5,770
Harding Community Center (Parks & Recreation administration)	3096 Harding St.	1,335
<b>Total Existing Square Feet of Administrative Facilities</b>		<b>203,936</b>
<b>Square Feet Required by Performance Standard</b>		<b>175,661</b>
<b>Square Feet that Exceeds Standard</b>		<b>28,275</b>

### Buildout Facility Adequacy Analysis

Based on the General Plan residential land use designations in effect June 30, 2023, the projected buildout population is 134,977, the demand for city administrative facilities will be **202,466** square feet. The existing **203,936** square feet of administrative facilities exceeds the growth management performance standard at buildout (estimated June 30, 2023). Analysis of how the Housing Element rezone program (approved January 30, 2024) affects the City Administrative Facilities performance standard at buildout is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.

### *New Orion Center Project*

A development proposal is underway for the Orion Center project, which will centralize the city's maintenance and operations functions into a single location on Orion Way. The goal for the facility is to accommodate the existing and future needs for Public Works (Facilities and Streets Maintenance) and Parks & Recreation (Parks Maintenance). The proposed project will make two existing city facilities available for redevelopment: 405 Oak Street, and 1166 Carlsbad Village Drive. The Orion Center project will provide 25,000 square feet of administrative space (among other uses), which will be a net increase of 11,000 square feet over the two existing sites. The Planning Commission approved a Conditional Use Permit for the project in April 2023.

### *New City Hall Project*

On Aug. 16, 2022, the City Council received an update on a new City Hall and directed staff to pursue a new approximately 40,000 square foot City Hall to be built on the site of the current City Hall Complex (16,500 square feet). After the August 2022 City Council update report, city staff refined the plans for the City Hall Complex and determined the facility will be approximately 34,000 square feet, which is an increase of 17,500 square feet compared to the existing facility. The new facility will include administrative facilities for existing City Hall Complex staff. Additionally, the New City Hall Project will likely also include the planning efforts for a new Cole Library facility, see "Library Facilities" in the next section.

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## LIBRARY FACILITIES

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### Performance Standard

800 sq. ft. (of library space) per 1,000 population must be scheduled for construction within a five-year period or prior to construction of 6,250 dwelling units, beginning at the time the need is first identified.

*Note: library space is used as a standard library measurement of customer use and includes collection space, seating, meeting rooms, staff areas, technology, and other public facility needs. The performance standard was originally developed based on surveys of other libraries of comparable size and based on related standards (such as volumes per capita) set by the American Library Association.*

### FY 2022-23 Inventory and Adequacy of Facilities

The current inventory of library facilities (city-owned) is shown in Table 9:

Table 10: Existing Library Facilities (as of June 30, 2023)

Facility	Square Feet
Dove Library	64,000
Cole Library	24,600
Learning Center	11,393
<b>Total Existing Library Square Feet</b>	<b>99,993</b>
<b>Square Feet Required by Performance Standard</b>	<b>93,686</b>
<b>Square Feet that Exceed Standard</b>	<b>6,307</b>

Based on the June 30, 2023, population estimate of 117,107, the growth management standard requires **93,686** square feet of public library space. The city's current 99,993 square feet of library facilities adequately meets the growth management standard.

### Facility Adequacy at Buildout

Based on the General Plan residential land use designations in effect June 30, 2023, the projected buildout population is 134,977, the demand for library facilities will be **107,982** square feet. The existing **99,993** square feet of library facilities will fall short of the growth management standard at buildout (estimated June 30, 2023). Analysis of how the Housing Element rezone program (approved January 30, 2024) affects the Library Facilities performance standard at buildout is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.

In 2015-16, the city completed major maintenance and renovation for both the Cole and Dove facilities that addresses current Americans with Disabilities Act requirements and allows delivery of modern library services and technology, while extending the life of the Cole Library by 10 to 15 years.

Built in 1967, the design of the Cole Library did not contemplate modern library services, such as delivery of electronic resources, automated materials handling, and media formats. The library's role as a community gathering space has also evolved.

With an already maximized building footprint and infrastructure constraints, the Cole Library will not expand further to meet these changing needs. Complete replacement and expansion of the Cole facility is included in the Capital Improvement Program budget between the years 2023 and buildout, as part of the new City Hall project (see "Administrative Facilities" in the preceding section). The City Hall project will most likely inform the timing, impact and opportunities for a new Cole library facility.

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## WASTEWATER TREATMENT CAPACITY

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### Performance Standard

Sewer plant capacity is adequate for at least a five-year period.

### FY 2022-23 Facility Adequacy Analysis

The Encina Water Pollution Control Facility currently provides adequate capacity in excess of the performance standard. Carlsbad’s FY 2022-23 annual daily average dry weather sewer flow was 6.22 million gallons per day (MGD) representing 61% of the city’s 10.26 MGD capacity rights. The city’s annual daily average sewage flow to the Encina Water Pollution Control Facility for the previous five years is shown in Table 10:

Table 11: Five-Year Annual Daily Average Sewage Flow

Fiscal Year	Annual daily average flow
FY 2018-19	6.03 MGD
FY 2019-20	6.31 MGD
FY 2020-21	6.31 MGD
FY 2021-22	5.72 MGD
FY 2022-23	6.22 MGD

### Buildout Facility Adequacy Analysis

The Encina Water Pollution Control Facility Phase V Expansion provides adequate sewer treatment capacity to ensure compliance with the growth management wastewater performance standard through buildout of the Carlsbad sewer service area.

The City of Carlsbad 2019 Sewer Master Plan Update contains an analysis of annual daily average sewer flow through buildout (2040) of the city based on the Carlsbad General Plan land use projections. The analysis indicates that the city’s projected ultimate buildout flow is approximately 8.31 MGD. The city has purchased capacity rights to 10.26 MGD in the Encina Water Pollution Control Facility, which ensures adequate wastewater treatment capacity is available to accommodate an unanticipated increase in future sewer flows.

Analysis of how the Housing Element rezone program (approved January 30, 2024) affects the Wastewater Treatment Capacity performance standard at buildout is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.

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## PARKS

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### Performance Standard

3.0 acres of Community Park or Special Use Area per 1,000 population within the Park District<sup>10</sup> must be scheduled for construction<sup>11</sup> within a five-year period beginning at the time the need is first identified<sup>12</sup>. The five-year period shall not commence prior to August 22, 2017.

### FY 2022-23 Facility Adequacy Analysis

As shown in Table 11, all quadrants were in compliance with the park standard during FY 2022-23.

Table 12: Existing Park Inventory and Required Park Acreage (as of June 30, 2024)

Quadrant	Park acreage inventory existing	Park acreage required by Standard
NW	131.7	96.3
NE	68.7	56.4
SW	93.6	76.0
SE	138.3	122.6
<b>Total</b>	<b>432.4</b>	<b>351.3</b>

The existing park acreage inventory in each quadrant meets the current park acreage required by the performance standard.

### Veterans Memorial Park

The existing park acreage inventory in Table 11 includes 23.425 acres allocated to each quadrant for Veterans Memorial Park. On July 26, 2022, the City Council adopted the Veterans Memorial Park Master Plan. The Veterans Memorial Park site has been selected, a financing plan for the construction of the park has been approved, and the adoption of the master plan signified completion of the park design. Therefore, the park has been “scheduled for construction.”

Veterans Memorial Park is a 93.7-acre park located approximately 350 feet east of Cannon Road and Faraday Avenue. Because of its size, relatively centralized location, and citywide significance, the park will help fulfill citywide park facility needs. The city’s intention for the park to be a citywide park facility, and for the total park acreage to be allocated equally to all city quadrants, dates to the Citywide Facilities and Improvements Plan (CFIP) approved in 1986 (See Resolution 8797, adopted September 23, 1986, Exhibit A at pp. 33–35 [allocating 25 acres from the Macario Canyon park to each quadrant]). Additionally, the following documents reaffirmed the acreage allocation of Veterans Memorial Park for citywide benefit:

- Community Facilities District No. 1 (CFD), established in 1991, finances public facilities of citywide benefit, including Veterans Memorial Park.
- 2015 General Plan Open Space, Conservation and Recreation Element credits equal acreage from Veterans Memorial Park to each quadrants future park inventory.

<sup>10</sup> "Park District" = "quadrant". There are four park districts within the city, corresponding to the four quadrants.

<sup>11</sup> “Scheduled for construction” means that the improvements have been designed, a site has been selected, and a financing plan for construction of the facility has been approved (See Resolution 2017-170.) An identical definition was adopted in the Citywide Facilities and Improvements Plan in September 1986 (pages 14 and 32).

<sup>12</sup> The threshold for triggering the construction of a new park is as follows: Once a deficit of park acreage in a quadrant is identified, a new park must be scheduled for construction within the time frame of five years.

## Buildout Facility Adequacy Analysis

Based on the FY 2022-23 Capital Improvement Program list of projects, Veterans Memorial Park is proposed to be constructed prior to buildout. The scheduling of construction of this community park results in the projected park inventory for all city quadrants exceeding the projected required acreage at buildout, as shown in Table 13:

Table 13: Projected Park Inventory at Buildout

Quadrant	Buildout Population	Buildout Required Acreage	Current Inventory	Projected Inventory
NW	39,215	117.6	131.7	131.7
NE	22,550	67.7	68.7	68.7
SW	30,026	90.1	93.6	93.6
SE	43,186	129.6	138.3	138.3
<b>Total</b>	<b>134,977</b>	<b>404.9</b>	<b>432.4</b>	<b>432.4</b>

Analysis of how the Housing Element rezone program (approved January 30, 2024) affects the Parks performance standard at buildout is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.

### Additional Parks Acreage

The projected park acreage numbers in Table 13 do not include park projects listed in the CIP as “partially funded” or “unfunded”. Should additional funding mechanisms be found, and these parks are built, the additional park acreage would further aid in meeting/exceeding the growth management parks performance standard.

- Partially funded – In the FY 2022-23 CIP, \$614,000 has been appropriated to the Robertson Ranch Park project (NE – 11.2 acres), which continued its status as “partially funded”. The master planning process for this park began in FY 2022-23.
- Unfunded – Zone 5 Business Park Recreational Facility (NW – 9.3 acres) and Cannon Lake Park (NW – 6.8 acres).

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## DRAINAGE

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### Performance Standard

Drainage facilities must be provided as required by the city concurrent with development.

### FY 2022-23 Facility Adequacy Analysis

All areas of the city currently (as of June 30, 2023) meet the growth management drainage performance standard because required drainage facilities have been provided concurrent with development.

Drainage facility needs are best assessed as specific development plans for individual projects are finalized. Therefore, the drainage performance standard was written to allow the city to require appropriate drainage facilities as development plans are finalized and approved.

The construction of drainage facilities related development projects is addressed during the review of individual project proposals. Maintenance, repair, and replacement drainage projects are identified on an ongoing basis and are incorporated in the Capital Improvement Program as a part of the Storm Drain Condition Assessment Program, the Citywide Storm Drain Rehabilitation and Replacement Program, or as individual/stand-alone projects.

Master planned drainage facilities are identified in the city's 2008 Drainage Master Plan. The associated Planned Local Drainage Area fee program finances the construction of these facilities. The goal of the Drainage Master Plan is to assess the performance of existing drainage infrastructure, identify anticipated improvements and identify a funding mechanism to ensure construction of the planned facilities. The Drainage Master Plan is updated periodically to reflect changes in the general plan, city growth, construction costs, drainage standards and environmental regulations. At the present, the Public Works Branch is updating the 2008 Drainage Master Plan to ensure these larger/master planned facilities will be adequately funded.

### Buildout Facility Adequacy Analysis

As development occurs in the future, additional drainage facilities will be required consistent with the performance standard. The 2008 Drainage Master Plan proposes the construction of new facilities to reduce the flooding risk from potential storm events. Construction of the proposed drainage facilities will provide the backbone system to maintain the drainage performance standard through buildout of the city. The current update to the Drainage Master Plan will address funding availability for the construction of needed flood control facilities. The estimated costs for these facilities and the programming of Planned Local Drainage Area funds are included in the annual Capital Improvement Program.

Analysis of how the Housing Element rezone program (approved January 30, 2024) affects the Drainage performance standard at buildout is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.



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## CIRCULATION

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The information on the status of the Circulation performance standard for the vehicle travel mode is provided by this report. The status of the pedestrian, bicycle and transit travel modes will be reported separately.

### Performance Standard

Implement a comprehensive livable streets network that serves all users of the system – vehicles, pedestrians, bicycles and public transit. Maintain level of service (LOS) D or better for all modes that are subject to this multi-modal level of service (MMLOS) standard, as identified in Table 3-1 of the General Plan Mobility Element, excluding LOS exempt intersections and streets approved by the City Council.

### Background

The following Circulation information discusses the service levels for each travel mode, which are represented as a letter “grade” ranging from LOS A to LOS F. LOS A reflects a high level of service for a travel mode (e.g., outstanding characteristics and experience for that mode) and LOS F would reflect an inadequate level of service for a travel mode (e.g., excessive congestion for vehicles or inadequate facilities for bicycle, pedestrian or transit users).

The monitoring and implementation of the performance standard for the circulation system are guided by the following:

#### General Plan Mobility Element Goals and Policies

*Goal 3-G.1: Keep Carlsbad moving with livable streets that provide a safe, balanced, cost-effective, multi-modal transportation system (vehicles, pedestrians, bikes, transit), accommodating the mobility needs of all community members, including children, the elderly and the disabled.*

The California Complete Streets Act (2008) requires cities in California to plan for a balanced, multi-modal transportation system that meets the needs of all travel modes. Accomplishing this state mandate requires a fundamental shift in how the city plans and designs the street system – recognizing the street as a public space that serves all users of the system (elderly, children, bicyclists, pedestrians, etc.) within the urban context of that system (e.g., account for the adjacent land uses).

- Prior to adoption of the General Plan Mobility Element on Sept. 22, 2015, the growth management circulation performance standard was based on the circulation needs of a single mode of travel – the automobile.
- The General Plan Mobility Element identifies a new livable streets strategy for mobility within the city.
- The livable streets strategy focuses on creating a ‘multi-modal’ street network that supports the mobility needs of pedestrians, bicyclists, transit users and vehicles.
- Providing travel mode options that reduce dependence on the vehicle also supports the city’s Climate Action Plan in achieving its goals of reducing greenhouse gas emissions within the city.

*Implementing Policy 3-P.3: Apply and update the city’s multi-modal level of service (MMLOS) methodology and guidelines that reflect the core values of the Carlsbad Community Vision related to transportation and connectivity. Utilize the MMLOS methodology to evaluate impacts of individual development projects and amendments to the General Plan on the city’s transportation system.*

*Implementing Policy 3-P.4: Implement the city’s MMLOS methodology and maintain LOS D or better for each mode of travel for which the MMLOS standard is applicable, as identified in Table 3-1 and Figure 3-1<sup>13</sup>.*

### General Plan Mobility Element Street Typology

The city’s approach to provide livable streets recognizes that improving the LOS for one mode of transportation can sometimes degrade the LOS for another mode. For example, pedestrian-friendly streets are designed to encourage pedestrian uses and typically have amenities that slow vehicle travel speeds (e.g., short-distance pedestrian crossings that restrict vehicle mobility). The “street typology” is defined in the General Plan Mobility Element and determines which travel modes are subject to the MMLOS D standard, as summarized in Table 14. For example, the vehicular mode of travel is subject to the MMLOS D standard on the following street typologies: freeways, arterial streets, arterial connector streets and industrial streets.

Table 14: Street Typology and MMLOS Standard

STREET TYPOLOGY	Modes subject to the MMLOS D Standard			
	Vehicular	Transit	Pedestrian	Bicycle
Freeways	Yes	Yes	No	No
Arterial Streets	Yes	Yes	No	No
Identity Streets	No	No	Yes	Yes
Village Streets	No	No	Yes	Yes
Arterial Connector Streets	Yes	No	Yes	Yes
Neighborhood Connector Streets	No	No	Yes	Yes
Coastal Streets	No	No	Yes	Yes
School Streets	No	No	Yes	Yes
Employment/Transit Connector Streets	No	Yes	Yes	Yes
Industrial Streets	Yes	Yes	No	No
Local/Neighborhood Streets	No	No	Yes	Yes
All Streets Located Within Half-Mile of a Transit Center	No	Yes	Yes	Yes
Bicycle/Pedestrian Pathways	No	No	Yes	Yes

### Methods to Measure Level of Service (LOS) for Different Transportation Modes

#### *How vehicular LOS is measured*

The city monitors facilities that are subject to the vehicular LOS standard according to that street’s typology as defined in Table 14. This section of the report summarizes the vehicular LOS methodology used for monitoring purposes. For the fiscal year (FY) 2022-23 monitoring report all the street facilities required to meet the vehicular LOS standard were monitored including the arterial, arterial connector, and industrial street typologies.

The city evaluates the roadway network at the “facility” level according to Chapter 16 of the Highway Capacity Manual. A facility is defined as one direction of travel along a length of road that has similar travel and geometric characteristics, and it typically extends between multiple signalized intersections.

<sup>13</sup> Table 3-1 and Figure 3-1 are found in the General Plan Mobility Element and are summarized in Table 14 of this report.

Each facility has an associated capacity that is defined in the Highway Capacity Manual as “the ability of a transportation facility or service to meet the quantity of travel demanded of it.” For Growth Management Plan monitoring purposes, travel demand on a roadway is measured by the volume of vehicles using the facility during the peak hours of operation. A volume threshold is established for each LOS grade according to the Highway Capacity Manual. The vehicular LOS is determined by comparing the traffic volume against these thresholds. For example, a LOS D is recorded when a traffic volume exceeds the LOS C threshold but is below the LOS D threshold.

A street “facility” is comprised of smaller and contiguous “segments” that typically extend between two adjacent signalized intersections. Per the Highway Capacity Manual, an entire facility is reported as failing if the volume along any one of its segments exceeds its capacity, which defines LOS F. When a facility has been monitored and found to operate at LOS D, each segment of that facility will be evaluated the following monitoring cycle and the LOS will be reported as follows:

- a. If the volume of any one segment of the facility exceeds the reported capacity for that segment, the facility will be reported as LOS F; or
- b. If none of the segment volumes exceeds its reported capacity for that segment, the facility will be reported as LOS D (or the new level if it has changed).

As noted above, travel demand is assumed to equal the traffic volume measured during the peak hour of operation. Vehicular LOS is determined based on one mid-block traffic count collected for each facility (or segment) being evaluated. The data is collected while school is in session in either the spring or fall. The morning and afternoon (a.m./p.m.) peak hours’ LOS is reported for each facility or segment. Each street evaluated will have separate LOS results reported for the a.m. and p.m. peak hour conditions with independent grades reported for each direction of travel. This approach to data collection is consistent with industry standards.

#### *How Pedestrian, Bicycle and Transit Service MMLOS is measured*

The General Plan Mobility Element calls for the use of a MMLOS methodology to provide a metric for evaluating bicycle, pedestrian and transit modes of travel. In 2015, a method for evaluating bicycle and pedestrian LOS was first developed as part of the General Plan Environmental Impact Report (EIR); this EIR method was applied on a broad, program level to evaluate service to pedestrian, bicycle and transit users. When consultants applied the EIR’s method during the preparation of impact studies of proposed development projects, limitations were discovered in terms of the study area, directional travel and potential inconsistent interpretations of how the method should be applied.

Accordingly, in 2018 city staff began developing a more robust MMLOS calculation method for the City Council to consider. The method is intended to calculate MMLOS for each mode and identify a broader range of improvements that could be implemented to ensure the minimum operating standard would be met. As noted in General Plan Mobility Element Policy 3-P.3, the purpose of the MMLOS methodology is to provide a means for evaluating impacts of individual development projects, as well as monitoring the LOS for individual streets to ensure that they are meeting the specified standard by street type. The proposed MMLOS methodology for evaluating bicycle, pedestrian and transit LOS has not been approved by City Council.

The FY 2022-23 Growth Management Program Monitoring Report is being presented to City Council with the status of the Vehicular LOS Standard, but not the status of the other modes because the proposed

draft MMLOS methodology for those modes is still being vetted and has not been approved by City Council. Staff will present the FY2022-23 draft MMLOS analysis, including the proposed draft methodology developed by the Traffic Safety and Mobility Commission subcommittee, and the draft findings and recommendations, to City Council as a separate item later this year. This approach will ensure that the City Council and stakeholders can fully understand the proposed methodology. Additionally, it facilitates a focused discussion on any potential policy adjustments needed to align with the objectives of the City's General Plan Vision and Mobility Element.

#### *Exemptions to the LOS D Standard*

General Plan Mobility Element Policy 3-P.9 requires the city to develop and maintain a list of street facilities where specified modes of travel are exempt from the LOS standard (LOS-exempt street facilities), as approved by the City Council.

Regarding vehicular LOS standards, the City Council has the authority to exempt a street facility from the vehicular LOS standard if the street facility meets one or more of the following criteria from General Plan Mobility Element Policy 3-P.9:

- a. Acquiring the rights of way is not feasible; or
- b. The proposed improvements would significantly impact the environment in an unacceptable way and mitigation would not contribute to the nine core values of the Carlsbad Community Vision; or
- c. The proposed improvements would result in unacceptable impacts to other community values or General Plan policies; or
- d. The proposed improvements would require more than three through travel lanes in each direction.

General Plan Mobility Element Policy 3-P.11 requires new development that adds vehicular traffic to street facilities that are exempt from the vehicle LOS D standard to implement:

- Transportation Demand Management (TDM) strategies that reduce the reliance on single-occupant automobiles and assist in achieving the city's livable streets vision; and
- Transportation System Management (TSM) strategies that improve traffic signal coordination and improve transit service.

Each of the previously exempt street facilities were monitored this cycle and evaluated against the vehicular LOS standard. The results of this evaluation are summarized in Table 15 below. No changes have occurred since the adoption of these resolutions that would warrant lifting exemptions for these street facilities.

Table 14: Vehicle LOS Exempt Street Facilities

Street Facility	From	To	LOS (AM/PM)	Meets LOS Standard?	Date of Exemption
1. La Costa Avenue	Interstate-5	El Camino Real	B/C	Yes	Exempted with adoption of the General Plan Mobility Element on Sept. 22, 2015
2. La Costa Avenue	El Camino Real	Interstate-5	C/B	Yes	
3. El Camino Real	Palomar Airport Road	Camino Vida Roble	D/C	Yes	
4. El Camino Real	Camino Vida Roble	Poinsettia Lane	C/C	Yes	
5. El Camino Real	Poinsettia Lane	Aviara Parkway/Alga Road	C/C	Yes	
6. El Camino Real	Aviara Parkway/Alga Road	La Costa Avenue	<b>F/C</b>	<b>No</b>	
7. El Camino Real	La Costa Avenue	Aviara Parkway/Alga Road	C/C	Yes	
8. El Camino Real	Aviara Parkway/Alga Road	Poinsettia Lane	C/C	Yes	
9. El Camino Real	Poinsettia Lane	Camino Vida Roble	C/C	Yes	
10. El Camino Real	Camino Vida Roble	Palomar Airport Road	C/C	Yes	
11. Palomar Airport Road	Avenida Encinas	Paseo del Norte	<b>F/F</b>	<b>No</b>	
12. Palomar Airport Road	Paseo del Norte	Armada Drive	D/C	Yes	
13. Palomar Airport Road	Armada Drive	College Blvd/Aviara Parkway	C/C	Yes	
14. Palomar Airport Road	College Blvd/Aviara Parkway	Armada Drive	C/C	Yes	
15. Palomar Airport Road	Armada Drive	Paseo del Norte	C/D	Yes	
16. Palomar Airport Road	Paseo del Norte	Avenida Encinas	<b>F/F</b>	<b>No</b>	
17. Palomar Airport Road	El Camino Real	El Fuerte Street	B/C	Yes	
18. Palomar Airport Road	El Fuerte Street	Melrose Drive	B/C	Yes	
19. Palomar Airport Road	Melrose Drive	El Fuerte Street	C/C	Yes	
20. Palomar Airport Road	El Fuerte Street	El Camino Real	C/C	Yes	
21. El Camino Real	Oceanside city limits	Marron Road	<b>F/E</b>	<b>No</b>	Dec. 17, 2019
22. El Camino Real	Marron Road	Oceanside city limits	<b>E/E</b>	<b>No</b>	
23. Melrose Drive	Vista city limits	Palomar Airport Road	<b>F/E</b>	<b>No</b>	
24. El Camino Real	Cannon Road	College Boulevard	C/B	Yes	Jun. 9, 2020
25. El Camino Real	College Boulevard	Cannon Road	<b>C/F</b>	<b>No</b>	
26. Cannon Road	El Camino Real	College Boulevard	D/E	<b>No</b>	
27. Cannon Road	College Boulevard	El Camino Real	D/D	Yes	Nov. 3, 2020
28. El Camino Real	Tamarack Avenue	Cannon Road	C/C	Yes	
29. College Boulevard	Carlsbad Village Drive	Oceanside City Limits	C/E	<b>No</b>	Jan. 12, 2021*
30. Cannon Road	Avenida Encinas	Paseo del Norte	<b>F/E</b>	<b>No</b>	
31. Cannon Road	Paseo del Norte	Avenida Encinas	<b>E/F</b>	<b>No</b>	
32. Aviara Parkway/Alga Road	Manzanita Street	El Camino Real	<b>F/F</b>	<b>No</b>	July 12, 2022
33. Aviara Parkway/Alga Road	El Camino Real	Manzanita Street	<b>F/F</b>	<b>No</b>	

\*On January 12, 2021 City Council also exempted the remaining facility of Palomar Airport Road between Avenida Encinas to Paseo del Norte.

## FY 2022-23 Facility Adequacy Analysis

The following vehicular LOS and MMLOS results are based on the data reported in the *City of Carlsbad Roadway Level of Service Analysis Report (March 2024)*.

### Vehicular LOS

The vehicular LOS grades reflect traffic data gathered in fall of 2023. The traffic data represents typical weekday traffic conditions. Counts were collected at each midblock location for three consecutive weekdays. For each roadway segment, the highest one-hour AM and one-hour PM volume of the three days were determined for each direction of travel.

The LOS results for the vehicular mode are illustrated in Figure 5. All the deficient roadway facilities identified above were previously determined by City Council to be deficient and exempt per General Plan Mobility Policy 3-P.10.

## Buildout Facility Adequacy Analysis

The 2015 General Plan EIR evaluated how buildout of the land uses planned by the General Plan will impact the vehicle, pedestrian, bicycle and transit levels of service, and identified that additional circulation facilities may need to be constructed to meet the GMP performance standard at buildout. The following summary provides the results of that evaluation. Analysis of how the Housing Element rezone program (approved January 30, 2024) affects the Circulation performance standard at buildout is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.

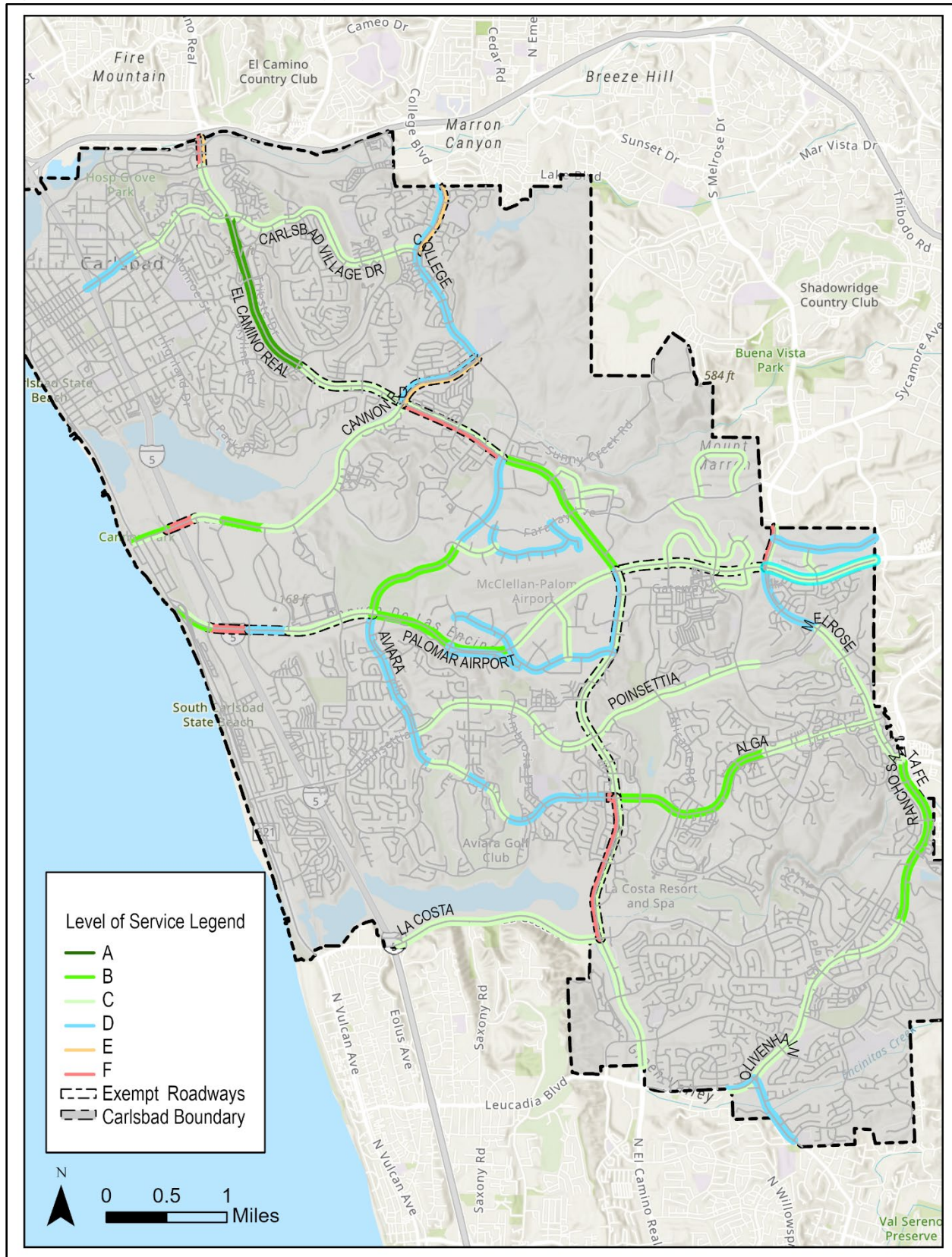
### *Vehicular Level of Service at Buildout (estimated as of June 30, 2023)*

- Additional future road segments (extensions of College Boulevard and Camino Junipero) needed to accommodate the city's future growth were identified as part of the General Plan update. The General Plan Mobility Element identifies these needed future road segments as "Planned City of Carlsbad Street Capacity Improvements."
- The General Plan also called out the need to implement the scheduled Interstate-5 North Coast Project and Interstate-5/Interstate-78 Interchange Improvement Project that are needed to accommodate future growth.
- The CIP funds projects that will upgrade the LOS including several roadway widenings along El Camino Real near College Boulevard (northbound), La Costa Avenue (southbound) and Cassia Road (northbound).
- The General Plan EIR identifies TDM and TSM as mitigation measures for roadway sections that have been determined to be LOS-exempt.

## Next Steps

City staff will present a comprehensive analysis of the Multimodal Level of Service (MMLOS) monitoring results to both the City Council and the Traffic Safety & Mobility Commission. The presentation will encompass detailed findings across various modes of travel, including considerations for pedestrians, bicyclists, and transit users. Following a thorough evaluation of these results, staff may propose updates to the City's MMLOS policies. Additionally, staff might recommend revisions to the existing methodologies used to evaluate each mode of travel. These adjustments will aim to enhance the accuracy and effectiveness of MMLOS assessments, ensuring they more accurately reflect the diverse needs of the city's transportation network.

Figure 5: Vehicular Level of Service (LOS) Results



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## FIRE

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### Performance Standard

No more than 1,500 dwelling units outside of a five-minute response time.

### FY 2022-23 Facility Adequacy Analysis

As of June 30, 2023, the city’s fire facilities comply with the performance standard. There are no more than 1,500 dwelling units outside of a five-minute response distance from any of the city’s seven fire stations.

The intent of the performance standard, as applied to fire facilities, is to establish the distribution of station locations, based upon response distances. At the time the performance standard was developed, scientific fire behavior information and recognized best practices supported the position that a response time of five minutes would result in effective fire incident intervention. The performance standard provides no other mechanism for the installation of additional fire stations. It states that up to 1,500 dwelling units could exist outside the five-minute reach of the closest fire station for an indeterminate length of time without violating the standard. The five-minute response distance measure was selected exclusively as a means of geographically positioning fire stations throughout the city. Therefore, the standard is applied as a means of measuring compliance with locating fire facilities, not the performance of the Fire Department in meeting service responsibilities.

To determine if the standard is met for FY 2022-23, the city refers to the response time analysis conducted for buildout of the number and location of dwellings planned by the General Plan, which is more dwellings than currently exist. See “buildout” section below, which concludes that the existing fire stations are adequate to meet the standard at buildout (i.e., adequate to serve more dwellings than currently exist).

### Buildout Facility Adequacy Analysis

At buildout (estimated June 30, 2023), the established threshold of more than 1,500 units that exist outside of a five-minute response distance will not be exceeded for any of the fire stations.

To determine if fire facilities comply with the Fire performance standard at buildout, the city’s Geographic Information System Department mapped a five-minute response time from each fire station, based on the drivetime attributes of each roadway, and identified the number of estimated dwelling units at buildout that are outside the five-minute drivetime.

Table 16: Number of Dwellings Outside Five Minute Response Time (as of June 30, 2023)

Fire Station Number	Total number of dwelling units outside of five minutes
1,3 & 4 (aggregated)	1,198
2	0
5	3
6	16
7	0

Analysis of how the Housing Element rezone program (approved January 30, 2024) affects the Fire performance standard at buildout is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.



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## OPEN SPACE

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### Performance Standard

Fifteen percent of the total land area in the zone [Local Facility Management Zone] exclusive of environmentally constrained non-developable land must be set aside for permanent open space and must be available concurrent with development.

Note: Pursuant to the Citywide Facilities and Improvements Plan, the Open Space standard is applicable in Local Facilities Management Zones 11 – 15 and 17 – 25. The standard does not apply in Zones 1 – 10 and 16 because these zones were either fully built out or had previously approved master plans which would provide sufficient open space at full build out. For more information, see the “Background Summary” below.

### FY 2022-23 Facility Adequacy Analysis

As of June 30, 2023, adequate open space has been provided concurrent with new development to comply with the performance standard. Local Facility Management Plans have been adopted for all Local Facility Management Zones where the standard applies (Zones 11–15 and 17–25). Each Local Facility Management Plan (LFMP) identifies how the open space standard will be met within the zone. Within the applicable zones, approved development projects have been, and future development projects will be required to be, consistent with the open space required for the applicable Local Facility Management Zone.

### Buildout Facility Adequacy Analysis

All Local Facilities Management Zones, except for Zone 22, have provided the required growth management open space as identified in the applicable Local Facility Management Plans, which address required open space through buildout of the zones. Future projects in Zone 22 must provide their proportionate share of required open space in compliance with the standard.

Analysis of how the Housing Element rezone program (approved January 30, 2024) affects the Open Space performance standard at buildout is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.

### Background

The history of the open space standard helps to clarify its applicability today. It should be noted that the open space provided to meet the open space standard does not represent all the open space in Carlsbad. Open space to meet standard is provided within the applicable Local Facility Management Zones and is in addition to constrained open space, such as protected habitat and slopes greater than 40 percent. The city utilizes other methods to protect all the open space resources and amenities throughout the city, including the Habitat Management Plan (protects the city’s natural open space preserve system), Growth Management Parks standard (parks are a source of recreational open space in the city), and the Trails Master Plan (trails are another source of recreational open space).

## Citizens Committee for the Review of the Land Use Element (1985)

In 1985, a citizen's committee made recommendations to the City Council regarding changes to the city's General Plan Land Use Element. The committee's recommendations were used as the basis for developing the growth management facility standards. The committee recommended that future open space would be provided by future master planned areas (15 percent of the master plan area), as required by the Zoning Ordinance at that time (and today).

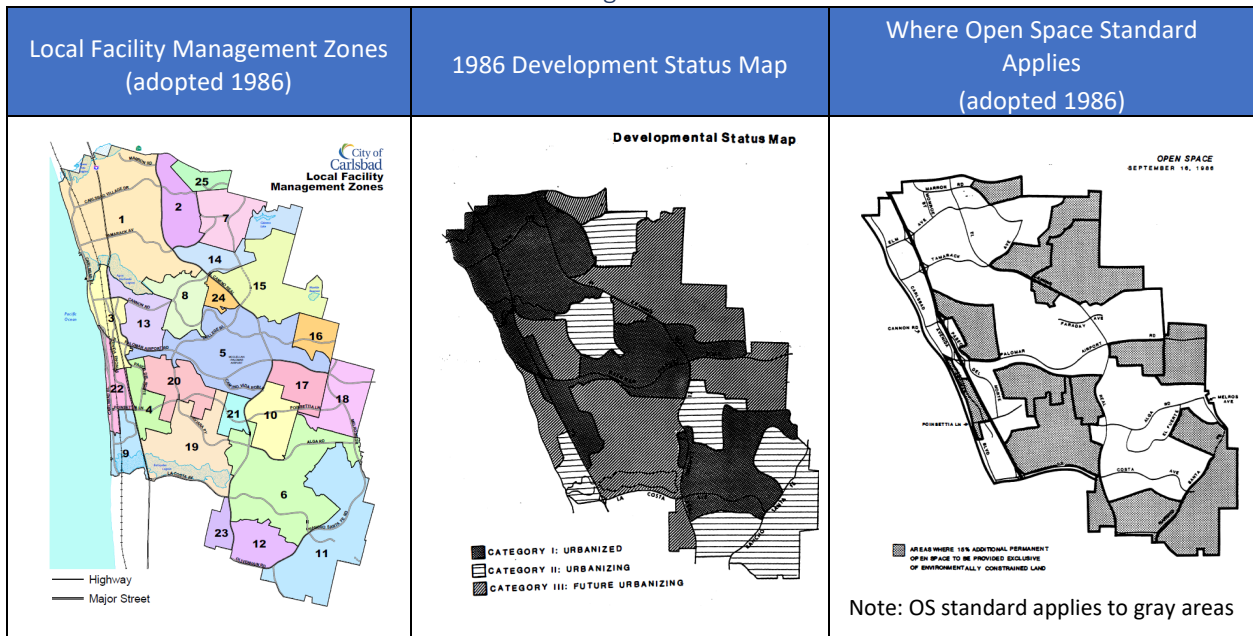
## Public Facility Standards (July 1986) and Citywide Facilities and Improvements Plan (Sept. 1986)

In 1986, the City Council adopted the Growth Management Ordinance (Carlsbad Municipal Code Chapter 21.90) and the public facility standards for the Growth Management Program. The Citywide Facilities and Improvements Plan specified that the open space standard applies in some Local Facility Management Zones (Zones 11–15 and 17–25), but not others (Zones 1–10 and 16) because those zones were determined to have already been developed or to have already met the standard. (i.e., subject to previously adopted master and/or specific plans). Some previously adopted master and/or specific plans found that full build-out under the plans would provide sufficient open space required at the time these plans were approved, specifically, 15% of all areas (regardless of any constraints such as slope). Accordingly, the CFIP found these zones did not need to meet the later-adopted open space performance standard of 15% of non-constrained land. The CFIP exemption for these zones was recognized in the individual Local Facility Management Plans decades ago. This methodology is consistent with traditional land use methodology which applies new standards prospectively. (See 2020/2021 Growth Management Program Monitoring Report p. 27; *Friends of H Street v. City of Sacramento* (1993) 20 Cal.App.4th 152, 169 [California's planning statutes "address future growth, and do not require local governments to bring existing neighborhoods and streets into compliance with the general plan."].)

The following are some key facts during the development of the open space standard:

- As part of the development of the Growth Management Program, the city identified areas that were, at the time, "urbanized" (developed areas) "urbanizing" (some development or some level of planning completed, such as an existing master plan) and "future urbanizing" (very little to no development and no existing master plan).
- A comparison of the Local Facilities Management Zones map and the 1986 Development Status Map shows that the zones where the open space standard is applicable (Zones 11 – 15 and 17 – 25) align, for the most part, with the areas identified in 1986 as "future urbanizing," which is where future master plans would be required (e.g., Aviara, Bressi Ranch and Quarry Creek master plans) and is consistent with the 1985 committee recommendation for master plans to provide additional future open space.
  - The "urbanized" areas were already developed, and the "urbanizing" areas had previously approved development or master plans. Although the open space standard was not applied to the "urbanizing" areas, the existing approved master plans within these areas provided open space as required by city regulations in place at the time. Prior to the Growth Management Program and the open space standard, the city's zoning ordinance required 15 percent of the total area of any master plan to be designated as open space. This 15 percent standard differs from the Growth Management open space standard because it applies to the total land area of a master plan and does not exclude environmentally constrained non-developable land.

Figure 6



### Common Questions About the Open Space Standard

Is there a 40 percent open space requirement?

It is a misconception that there is a standard that requires the city to provide 40 percent open space. There is no requirement or standard that requires 40 percent open space per individual projects or on a citywide basis.

Neither Proposition E nor the Citywide Facilities and Improvements Plan (CFIP) performance standards required 40 percent open space. Proposition E states “emphasis shall be given to ensuring good traffic circulation, schools, parks, libraries, open space, and recreational amenities.” The CFIP open space standard states “Fifteen percent of the total land area in the zone, exclusive of environmentally constrained non-developable land...concurrent with development.” The CFIP also states that Local Facilities Management Zones 1-10 and 16 “are already developed or meet or exceed the requirement” and are not subject to the CFIP open space standard. This methodology predates Proposition E, and was included in the CFIP, adopted by the City Council on September 23, 1986, by Resolution 8797.

A July 8, 1986, City Council staff report on the facility standards states: “compliance with this [open space] standard should result in approximately 35 to 40% of the total land area in the city being open space when the city is fully built out.” A couple years later, a June 27, 1988, staff report to an open space committee, stated that “staff has estimated that approximately 10,000 acres or 38.5% of the total land area in the city is projected to be set aside for open space uses.”

The shorthand estimate of 40% was simply derived by adding the 25 percent estimated constrained lands to the 15 percent GMP open space set-aside. However, this shorthand calculation did not consider that the standard only applied to 14 of the 25 Local Facility Management Zones (CFIP, p. 46), rather than the entire city. The reference to 40 percent open space was an estimate, not a standard or goal. Today, 38 percent of Carlsbad is dedicated as open space.

### Why doesn't the open space standard apply to Local Facilities Management Zone 9?

Local Facilities Management Zone 9 (Zone 9) is a good example of one of the "urbanizing" areas in 1986 where the open space standard was not applied. Zone 9 includes part of the Ponto area and the majority of the zone is subject to the Poinsettia Shores Master Plan. This is an area where the city has received community comments stating that the zone does not meet the open space standard and more open space is needed. In 1986 the City Council determined that the open space needs for Zone 9 had been met and therefore the open space standard does not apply to Zone 9.

Zone 9 was an "urbanizing" area when the Growth Management Program was being developed. A master plan was approved for the area (Batiqitos Lagoon Educational Park Master Plan). The master plan met the open space standard required at the time (Zoning Ordinance), which is 15 percent of the total area of the master plan.

The following is a summary of actions related to Zone 9 that relate to the open space planned in that area:

- Oct. 1, 1985 – Batiqitos Lagoon Educational Park Master Plan approved by City Council and, as required by the zoning ordinance at the time, was required to provide a minimum 15 percent of the total master plan area as open space.
- May 6, 1986 – City Council staff report on development of the Growth Management Program:
  - City council directed staff, working in conjunction with the developer of Zone 9, to finalize a pilot local facility management program to serve as a format model for programs for the other zones. The Batiqitos Lagoon Educational Park Master Plan for Zone 9 had been approved the year before and it was a recent development plan to use as a model.
- June 24, 1986 – Growth Management Ordinance approved (Zoning Ordinance Chapter 21.90):
  - Section 21.90.030(g) allowed development of phase I of the Batiqitos Lagoon Educational Park Master Plan to proceed prior to approval of a Local Facility Management Plan for Zone 9, subject to certain conditions including that the developer agree to participate in the restoration of a significant lagoon and wetland resource area and make any open space dedications of property necessary to accomplish the restoration. The master plan developer did make the open space land dedications that were needed for the restoration of Batiqitos Lagoon.
- Sept. 16, 1986 – City Council approves the Citywide Facilities and Improvements Plan, including the open space standard with the clarification that the standard is not applicable in Zones 1-10 and 16.
- July 11, 1989 – City Council approves the Local Facilities Management Plan for Zone 9. Other than noting the existing open space within the zone, open space was not further analyzed in the plan, as the open space standard does not apply to Zone 9.
- Jan. 18, 1994 – City Council adopts an ordinance approving Poinsettia Shores Master Plan, which replaced the Batiqitos Lagoon Educational Park Master Plan. The related Planning Commission staff report (Oct. 20, 1993) evaluates open space in the master plan as follows:

“The Poinsettia Shores Master Plan will not adjust or modify any existing General Plan designated open space areas or boundaries. Of the project's 162.8 total acres, approximately 34.8 acres are natural lagoon/wetland habitat which have Open Space General Plan designations (planning areas "I", "K", and "L") and have already been dedicated in fee title to the State of California, State Lands

Commissions in accordance with previous BLEP [Batiquitos Lagoon Educational Park] approvals. The master plan has additional open space totaling approximately 11 acres comprised of a community recreation center (planning area "M") and open space areas consisting of blufftop and roadway setbacks. The total master plan open space (approximately 46 acres) represents 28% of the entire master plan area. This exceeds the [Zoning Ordinance] requirement of at least 15% of the master plan area (24.4 acres) to be set aside as open space. As outlined in the Citywide Facilities Improvement Plan and the Zone 9 Local Facility Management Plan, this master plan has complied with all open space requirements. The project is also consistent with the Open Space and Conservation Resource Management Plan and incorporates master plan trails and links with the Citywide Trails System as required. The master plan's frontage on the east side of Carlsbad Boulevard (planning areas "G" and "H") is the location for linkage with the Citywide Trails System. These planning areas will be required to provide for the trail link within the required 40-foot structural setback from Carlsbad Boulevard. ... On August 26, 1993, the master plan's open space program was reviewed by the City's Open Space Advisory Committee and unanimously supported..."

While the open space standard is not applicable to Zone 9, open space has been provided for the area, including private recreation areas, trail linkages and a significant natural open space dedication that helped in the restoration of Batiquitos Lagoon<sup>1</sup>.

<sup>1</sup> City of Carlsbad Planning Commission Staff Report dated Oct. 20, 1993, for MP 175(D)/GPA 91-05/LCPA 91-02/LFMP 87-09(A) Poinsettia Shores Master Plan.

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## SCHOOLS

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### Performance Standard

School capacity to meet projected enrollment within the Local Facility Management Zone (LFMZ) as determined by the appropriate school district must be provided prior to projected occupancy.

Note: public school facilities are not planned, funded, or constructed by the city.

### FY 2022-23 Facility Adequacy Analysis

All new residential development is required to verify that school capacity can meet the projected enrollment from the school district serving the development. As of June 30, 2023, all school districts serving Carlsbad have verified they have capacity to serve development in the city.

### Buildout Facility Adequacy Analysis

Based on Chapter 3.11 of the 2015 General Plan Environmental Impact Report, for all school districts at all grade levels, capacity is expected to be sufficient for the buildout student population with no need for additional schools.

Analysis of how the Housing Element rezone program (approved January 30, 2024) affects the Schools performance standard at buildout is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.

## SEWER COLLECTION SERVICES

### Performance Standard

Trunk-line capacity to meet demand, as determined by the appropriate sewer districts, must be provided concurrent with development.

### FY 2022-23 Facility Adequacy Analysis

The evaluation of conformance with the performance standard requires sewer master plan updates be conducted on an interval that is commensurate with development activity. As part of the updates, sewer flow monitoring is necessary to evaluate whether the sewer flow generation factors used to estimate sewer flows and system capacity adequately reflect actual conditions or require revision. The city conducts sewer master plan updates on a 5-year interval to evaluate trunk line capacity and requires sewer studies during discretionary project review for sewer system sizing.

Sewer collection system improvements are provided on a project-by-project basis concurrent with development. Currently, the City of Carlsbad’s sewer service area pipelines comply with the performance standard. The sewer agencies that provide sewer collection systems within the city include: Carlsbad, Leucadia Wastewater District and Vallecitos Water District. Each agency indicates that they currently have adequate conveyance capacity in place to meet Carlsbad’s sewer collection demands.

The City of Carlsbad is served by the following six major sewer interceptor systems in four of these interceptor systems, wastewater flow capacity is shared with other agencies as listed in Table 17. For both the Vista/Carlsbad Interceptor and the Buena Interceptor, Carlsbad’s capacity rights increase in the downstream direction as they flow to the Encina Water Pollution Control Facility. Capacity rights increase from 3.3% to 50% for the Vista/Carlsbad Interceptor and from 18% to 35% in the Buena Interceptor. This system of interceptors provides adequate capacity to transport wastewater to EWPCF.

Table 17: Carlsbad Sewer Interceptors

Interceptor System	Sewer Districts Served	Carlsbad Capacity Rights <sup>1</sup>	FY 2022-23 Average Daily Flows
<b>Vista/Carlsbad Interceptor</b>	City of Carlsbad City of Vista	Ranges from 1.0 MGD up to 41.8 MGD (3.3% - 50%)	3.20 MGD <sup>4</sup>
<b>Buena Interceptor<sup>2</sup></b>	City of Carlsbad Buena Sanitation Dist.	Ranges from 1.2 MGD up to 3.6 MGD (18% - 35%)	0.59 MGD
<b>Vallecitos Interceptor</b>	City of Carlsbad Buena Sanitation Dist. Vallecitos Water Dist.	5 MGD (24%)	1.62 MGD
<b>Occidental Sewer<sup>3</sup></b>	City of Carlsbad City of Encinitas Leucadia Wastewater Dist.	8.5 MGD (40%)	0.24 MGD

<sup>1</sup> Million gallons per day (MGD)

<sup>2</sup> Buena Sanitation District and the City of Carlsbad are negotiating the transfer of this facility to the City of Carlsbad upon City of Vista’s commissioning of their Buena Outfall Force Main, Phase III project.

<sup>3</sup> The downstream sections (NB8 and NB9) of the North Batiquitos Sewer, often referred to as Ponto Sewer and originally termed the Occidental Sewer

<sup>4</sup>Flows conveyed via Vista Carlsbad Interceptor to EWPCF

<b>North Agua Hedionda Interceptor</b>	City of Carlsbad	6 MGD (100%)	1.27 MGD
<b>South Agua Hedionda Interceptor</b>	City of Carlsbad	4.7 MGD (100%)	0.91 MGD

### Buildout Facility Adequacy Analysis

The City of Carlsbad 2019 Sewer Master Plan Update evaluated the sewer infrastructure needs of the Carlsbad sewer service area and identified facilities required to accommodate future sewer flows at buildout. The master plan identified the Vista/Carlsbad Interceptor and Buena Interceptor as requiring improvements to accommodate build-out demand (see below). Sewer trunk main adequacy is estimated by comparing wastewater flow projections to the capacity of the sewer system using a computer model. Sewer flow monitoring is used to assess actual flows and to evaluate the need for sewer capacity improvements.

Collection system improvements to meet buildout conditions are identified at four locations: Faraday Avenue, Poinsettia Avenue, Pio Pico and Foxtail Loop. These projects are programmed in the Capital Improvement Program.

The adequacy of major sewer facilities for buildout conditions is summarized as follows:

**Vista/Carlsbad Interceptor:** The City’s 2019 Sewer Master Plan Update indicates that portions of the Vista/Carlsbad (VC) Interceptor do not satisfy buildout system flows. Hydraulic model results indicate that the 36-inch diameter gravity mains of Reach VC-3 are insufficient to convey buildout flows. Most of reach VC-3 consists of 36-inch diameter gravity main and is scheduled for upsizing to 42 inches as a future Capital Improvement Program project to meet buildout flows.

**Buena Interceptor:** The Buena Interceptor is currently shared by Vista and Carlsbad and, although the city’s wastewater flows are not projected to exceed its capacity rights, the combined flows of Buena Sanitation District and City of Carlsbad during peak wet weather periods exceed the design capacity criterion. As a result, Buena Sanitation District has constructed a parallel trunk sewer which will allow Buena Sanitation District flow to be diverted to the parallel trunk sewer. Construction was completed in 2021, however Buena Sanitation District has not yet regularly diverted flow to this sewer. When they do, the City of Carlsbad will be the only agency with flows remaining in the existing Buena Interceptor and peak wet weather flow at buildout conditions would reach 7.3 MGD or approximately 69 percent of pipe capacity.

Analysis of how the Housing Element rezone program (approved January 30, 2024) affects the Sewer Collection Services performance standard at buildout is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.

In summer 2024, Carlsbad will initiate the next Sewer Master Plan Update, which will include projections for land use, zoning, population, and development type for the next 20-year period. These criteria will serve as the basis for flow projections and related sewer system improvements for the study period.



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## WATER DISTRIBUTION SERVICES

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### Performance Standard

Line capacity to meet demand as determined by the appropriate water district must be provided concurrent with development. A minimum of 10-day average storage capacity must be provided prior to any development.

### FY 2022-23 Facility Adequacy Analysis

Carlsbad’s water distribution is provided by three agencies including the Carlsbad Municipal Water District (CMWD), which is a subsidiary district of the City of Carlsbad, serving 32.32 square miles (82.7 percent of the city), Olivenhain Municipal Water District (OMWD) serving 5.28 square miles (13.5 percent of the city), and Vallecitos Water District (VWD) serving 1.48 square miles (3.8 percent of the city). These districts indicate that they have adequate pipeline and storage capacity to meet the water distribution performance standard.

Water distribution demand requirements are estimated using a computer model to simulate the following water distribution scenarios: 1) average daily demand; 2) maximum day demand plus a fire event; and 3) peak hour demand. This computer model was calibrated using actual flow measurements collected in the field to verify it sufficiently represents the actual water system.

Existing (2014 baseline year) and buildout (2040) daily demand as calculated in the CMWD 2019 Potable Water Master Plan are 24.1 MGD and 29.6 MGD, respectively. These were based on average daily demands of 15.1 MGD and 18.5 MGD and a peaking factor of 1.6. Within the CMWD service area, the actual existing average daily potable water demand has been much less than this for the previous five years as shown in Table 18:

Table 18: Water Distribution Average Daily Demand

Fiscal Year	MGD
2018-19	12.4 <sup>1</sup>
2019-20	11.9
2020-21	12.8
2021-22	12.5
2022-23	11.4

Water conservation by CMWD customers has resulted in an overall reduction in per capita consumption. Factors leading to this reduction include (1) an expansion of CMWD’s recycled water system beginning in 2008, (2) in 2009, a campaign was initiated to reduce customer consumption by the wholesale water agencies, (3) implementation of a new tiered water rate structure to encourage water conservation, and (4) voluntary and mandatory conservation measures in 2015 in response to drought conditions.

Based on the water model analysis prepared for the CMWD 2019 Potable Water Master Plan, future pipelines and water system facilities were identified to ensure water system improvements are constructed to accommodate future customers. In addition, funds for the construction of future facilities are included in the Capital Improvement Program. Therefore, the future water infrastructure is programmed to be in place at the time of need to ensure compliance with the performance standard.

<sup>1</sup> Corrected demand for 2018-19 based on potable water sales data.

The 10-day storage requirement is part of the water distribution performance standard and a planning criterion to accommodate pipeline maintenance recommended by the San Diego County Water Authority. To meet the requirement, CMWD needs approximately 130 MG of storage capacity based on the average water demand and 185 MG for buildout conditions. CMWD has a total storage capacity of 242.5 MG which consists of 195 MG of storage capacity at Maerkle Dam and 47.5 MG of storage capacity in various storage tanks throughout the distribution system as shown in Table 19.

Table 19: Storage Tanks and Capacity

Facility Name	Year Built	Capacity (MG)
Santa Fe II Tank	1986	9
La Costa Tank	1985	6
Maerkle Tank	1991	10
TAP Tank	1985	6
D-3 Tank	1995	8.5
Ellery Tank	1972	5
Elm Tank	1972	1.5
Skyline Tank	1972	1.5
Maerkle Reservoir	1962	195

CMWD also has interagency agreements with OMWD, VWD and Oceanside to provide additional supply if needed. In 2004, the OMWD completed construction of a water treatment facility at the San Diego County Water Authority Emergency Storage Reservoir, which provides the storage necessary to meet the 10-day storage criterion for OMWD. VWD’s average day demand is 13.3 MGD with an existing storage capacity of 120.5 MG. Through interagency sharing arrangements, VWD can obtain additional water supplies to meet a 10-day restriction on imported water supply.

### Buildout Facility Adequacy Analysis

As proposed land development projects are reviewed by the city, the Water Master Plans from CMWD, OMWD, and VWD are consulted to check pipeline sizes and facility capacities to verify adequacy to support the water needs of the project and city. To comply with water master plan requirements, land development projects may be required to construct a master plan water project concurrent with construction of the development project.

The CMWD 2019 Potable Water Master Plan identifies facilities necessary to meet water demands for buildout within its service area. These consist of new pipelines and pipeline rehabilitation projects that are programmed into the Capital Improvement Program, some of which may be constructed concurrently with new development projects in the northeastern portion of the city.

The 2019 Potable Water Master Plan identified that no additional storage is required to meet the future storage requirements, due in part to conservation measures and expansion of CMWD’s recycled water system.

Analysis of how the Housing Element rezone program (approved January 30, 2024) affects the Water Distribution Services performance standard at buildout is included in Exhibit 11 of the [Planning Commission Staff Report](#), dated October 18, 2023, for the Housing Element Implementation and Public Safety Element Update.

City Council Memorandum, dated April 18, 2024  
(on file in the Office of the City Clerk)



MUNICIPAL WATER DISTRICT

# Staff Report

**Meeting Date:** June 25, 2024

**To:** President and Board Members

**From:** Scott Chadwick, Executive Manager

**Staff Contact:** Shoshana Aguilar, Senior Management Analyst  
shoshana.aguilar@carlsbadca.gov, 760-814-0241  
Gina Herrera, Assistant General Counsel  
gina.herrera@carlsbadca.gov, 442-339-5123

**Subject:** Codifying Ordinances of the Carlsbad Municipal Water District Code

**Districts:** All

## Recommended Actions

1. Introduce a Carlsbad Municipal Water District Board of Directors ordinance codifying, restating and amending Ordinances No. 1 through No. 48, except any ordinance previously repealed of the Carlsbad Municipal Water District Code.
2. Adoption a Carlsbad Municipal Water District Board of Directors resolution repealing the Administrative Code for the Carlsbad Municipal Water District.

## Executive Summary

The Carlsbad Municipal Water District (CMWD) Board is being asked to formally codify all existing CMWD ordinances to improve government transparency and prepare for future updates. This codification process will render these ordinances accessible online in a format akin to the Carlsbad Municipal Code.

Until now, the CMWD Board has adopted ordinances without formal codification. Staff have collaborated with the city's vendor responsible for the municipal code to reformat these adopted ordinances in a manner similar to the city's municipal code.

Codifying the ordinances will improve transparency for both the public and staff, facilitating a better understanding of existing legal requirements. Additionally, the codification will streamline future updates, minimizing the risk of errors. This codification does not substantively change existing local law, nor introduce new provisions. Rather, it simply codifies and organizes existing ordinances.

The Board is also being asked to repeal the Administrative Code, which became obsolete when the city and the CMWD entered into an operating agreement, for the city to provide administrative functions for the CMWD.

### **Explanation & Analysis**

The existing CMWD ordinances, or rules, are organized as individual ordinances in the order that they were adopted, which can be challenging for stakeholders to access and understand.

The new codified format will consolidate the CMWD ordinances into a single, easily accessible online resource organized by subject matter, enabling the public and staff to conveniently view and search for the CMWD regulations. The codification will allow for easier revisions, ensuring alignment between written regulations and current practices. It will also make it easier for staff to update the code as necessary to stay consistent with evolving state rules and regulations. This effort aligns with the city's strategic goal of organizational excellence.

The legal framework for this codification is rooted in Government Code Sections 50022.1, which authorizes local agencies to codify or consolidate their existing ordinances into a comprehensive code.

This process involves organizing existing rules, eliminating redundancies and ensuring consistency. By maintaining an up-to-date code, the CMWD enhances its operational efficiency and minimizes the risk of outdated or conflicting regulations.

The Board is also being asked to adopt a resolution to repeal the Administrative Code that was adopted in 1983 by the Costa Real Municipal Water District, and later amended. The Administrative Code became obsolete when Costa Real Municipal Water District became a subsidiary of the City of Carlsbad, and its name reverted back to the CMWD, because the CMWD entered into an agreement with the City of Carlsbad to provide the administrative functions of the CMWD, including accounting, cash management, human resources, risk management, purchasing, inspection and contract management.

Additionally, all employees of the CMWD became city employees. The conflict-of-interest code that was initially included in the Administrative Code was repealed by the Board in 1991, and was replaced, and later amended, with the Conflict of Interest Code of the Carlsbad Municipal Water District and the appendix to that code setting forth the designated positions and disclosure categories consistent with the requirements of the California Political Reform Act.

### **Fiscal Analysis**

The costs to codify and publish the code online are minimal and can be accommodated within the CMWD operating budget.

### **Next Steps**

Staff will return to the CMWD Board for adoption of this ordinance at a future date and partner with the Office of the Secretary to the CMWD Board and the city's Communication & Engagement Department on noticing and outreach.

Staff plan to return to the CMWD Board after ordinance adoption with recommendations for amendments to the codified ordinances to align with existing practices.

### Environmental Evaluation

The City Planner, through the process outlined in the Carlsbad Municipal Code relating to Environmental Protection (Section 19.04.060), has determined that this action is categorically exempt from environmental review under the California Environmental Quality Act, or CEQA, Guidelines Section 15061(b)(3) which states that an activity is exempt from the provisions of the act if it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The City Planner issued a CEQA Determination of Exemption notice. The notice was issued for public review on May 22, 2024, with the appeal period ending on May 31, 2024. No appeals of the determination were filed.

### Exhibits

1. Carlsbad Municipal Water District Board of Directors ordinance
2. Carlsbad Municipal Water District Board of Directors resolution

**ORDINANCE NO.**

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE CARLSBAD MUNICIPAL WATER DISTRICT OF THE CITY OF CARLSBAD, CALIFORNIA, CODIFYING, RESTATING, AND AMENDING ORDINANCES NO. 1 THROUGH NO. 48, EXCEPT ANY ORDINANCE PREVIOUSLY REPEALED OF THE CARLSBAD MUNICIPAL WATER DISTRICT CODE

WHEREAS, Carlsbad Municipal Water District, hereinafter referred to as CMWD, is organized under the Municipal Water District Law of 1911, Division 20 (commencing with Section 71000) of the California Water Code; and

WHEREAS, pursuant to California Water Code Section 71278, the board of a municipal water district must act by ordinance, motion, or resolution; and

WHEREAS, on April 25, 1989, the Board of Directors of the Costa Real Municipal Water District approved Resolution No. 1, consenting to the establishment of Costa Real Municipal Water District as a subsidiary district of the City of Carlsbad, consistent with the approved proposal of the San Diego Local Agency Formation Commission, to integrate the planning and management of water resources within the City of Carlsbad and revert the name back to the Carlsbad Municipal Water District; and

WHEREAS, on Jan. 1, 1990, the CMWD became a subsidiary district of the City of Carlsbad; and

WHEREAS, Government Code Sections 50022.1 to 50022.10 provide authority for a local public agency to codify existing ordinances; and

WHEREAS, the Board of Directors of the CMWD has adopted a comprehensive code of ordinances ("Code") that has been amended in piecemeal fashion several times; and

WHEREAS, the Board of Directors of the CMWD desires to codify, restate, and amend Ordinances No. 1 to No. 48, except for those ordinance previously repealed; and

WHEREAS, the City Planner has determined that the ordinances and related amendments are exempt from the California Environmental Quality Act, or CEQA, pursuant to the common sense exemption, Section 15061(b)(3) of the CEQA Guidelines, since there would be no possibility of a significant effect on the environment; the City Planner issued a CEQA Determination of Exemption notice. The notice was issued for public review on May 23, 2024, with the appeal period ending on June 1, 2024. No appeals of the determination were filed.

NOW, THEREFORE, be it ordained by the Board of Directors of the Carlsbad Municipal Water District as follows:

1. The above recitations are true and correct and are incorporated into this Ordinance.
2. Miscellaneous.
  - a. Existing Law Continued. The adoption of the provisions in this Ordinance that are substantively the same as existing ordinances relating to the same subject are restatements and continuations of existing ordinances and not new enactments or amendments, except for formatting to codify the existing ordinances. The adoption of this Ordinance is not intended to affect or disrupt the continuity of the CMWD's business or administration of its law, including but limited to the following:
    - i. Action and proceedings that began before the effective date of this Ordinance;
    - ii. Prosecution for ordinance violations committed before the effective date of this Ordinance; or
    - iii. Matters of record that refer to or are connected with a provision of the prior Code, as amended, and which references shall be constructed to apply to the corresponding provisions of the CMWD Code.
  - b. References to Prior Ordinances Apply to All Amendments. Whenever a reference is made to this Code as the "Carlsbad Municipal Water District Code" or to any portion thereof, or to any ordinance by the Carlsbad Municipal Water District, the reference shall apply to all amendments, corrections and additions, now or hereafter made.
  - c. Title, Chapter and Section Headings. Title, chapter and section headings contained in this Code shall not be deemed to govern, limit, modify or in any matter affect the scope, meaning or intent of the provisions of any title, chapter or section hereof.
  - d. References to Specific Ordinances and Code Sections. The provisions of this Ordinance do not affect matters of record which refer to, or are connected with ordinances, titles, chapters, or section headings included within the CMWD Code. Renumbering and relabeling of existing ordinances, title, chapter, and section headings by this Ordinance does not affect the continuing validity of existing laws. Any existing reference to an ordinance, title, chapter, or section heading which is renumbered or relabeled by this Ordinance must be construed to apply to the corresponding provisions contained within this Ordinance.



- e. Effect of Ordinance on Past Actions, Obligations and Irregularities. All rights and obligations existing under any ordinance in effect prior to the effective date of this Ordinance continue in full force and effect. This Ordinance does not invalidate any action taken prior to the effective date of this Ordinance if the action was proper under the law governing the action at the time the action was taken. Adoption of this Ordinance supersedes the incorporated ordinances, and to the extent there is a conflict therewith, this Ordinance takes precedence over the incorporated ordinances. In the event of any irregularities in the restatement of any ordinances, this Ordinance constitutes a readoption of any said ordinance with the intent of curing any such adoption irregularity. Adoption of this Ordinance, and the resulting amendment of any ordinance or portion of any ordinance of the CMWD, do not revive any rights repealed or extinguished by any prior ordinance of the CMWD.
  - f. Effect of Ordinance on Period of Limitation. When a limitation or period of time prescribed in any existing ordinance for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this Ordinance goes into effect, and the same or any limitation is prescribed in this Ordinance, the time which has already run is deemed part of the time prescribed as such limitation by this Ordinance.
  - g. Successor Codes. All references in this Ordinance to California codes includes all successor provisions to such codes. Where any of the provisions of this Ordinance conflict with subsequent changes in the cited or successor codes or other applicable California law, the provisions of those changed or successor codes or other applicable law applies in place of the conflicting provisions in this Ordinance. Any such changed or successor or other applicable law applies to allow imposition of the maximum penalties, interest, charges, and damages and the strictest compliance deadlines then allowed by law.
3. Title 1 Restated and Amended. Title 1 “General Provisions” of the CMWD Code is hereby restated and amended as set forth in Attachment A to this Ordinance, which is incorporated by this reference as if set forth in full at this point.

4. Title 2 Restated and Amended. Title 2 “Water Rates and System Facilities” of the CMWD Code is hereby restated and amended as set forth in Attachment A to this Ordinance, which is incorporated by this reference as if set forth in full at this point.
5. Title 3 Restated and Amended. Title 3 “Environment” of the CMWD Code is hereby restated and amended as set forth in Attachment A to this Ordinance, which is incorporated by this reference as if set forth in full at this point.
6. Parentheticals. Parenthetical references of a historical nature are not a substantive part of this Ordinance and may be deleted and modified as necessary as part of the codification of the Carlsbad Municipal Water District Code.
7. CEQA. Based upon the whole of the administrative record before it, the Board of Directors of the CMWD hereby finds that the recodification, restatement and amendment of the CMWD Code as set forth in this Ordinance is exempt from environmental review under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.), or CEQA, pursuant to State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) Sections 15061(b)(3) and 15378(b)(5). An activity is subject to CEQA only if that activity has “the potential for causing a significant effect on the environment.” (State CEQA Guidelines, § 15061(b)(3).) An activity is thus exempt from CEQA “[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” (Ibid.) Here, the codification, restatement, and amendment of the CMWD Code as set forth in this Ordinance does not have the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment. (State CEQA Guidelines, § 15061(b)(3).) Moreover, approval of the Ordinance constitutes an administrative activity of CMWD and is additionally exempt from CEQA on that basis. (State CEQA Guidelines, § 15378(b)(5).) Staff will file with the San Diego County Clerk a CEQA Notice of Exemption within five (5) working days after the adoption of this Ordinance.
8. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The Board of Directors of the CMWD hereby declares

that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrases be declared unconstitutional.

9. Publication. The CMWD Board Secretary has caused notice of this Ordinance to be advertised in a newspaper of general circulation as is required by law.

EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption; and the CMWD Board Secretary shall certify the adoption of this ordinance and cause the full text of the ordinance, or a summary of the ordinance prepared by the CMWD General Counsel to be published at least once in a newspaper of general circulation in the City of Carlsbad within fifteen days after its adoption.

INTRODUCED AND FIRST READ at a Special Meeting of the Carlsbad Municipal Water District Board of Directors on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, and thereafter

PASSED, APPROVED AND ADOPTED at a Special Meeting of the Carlsbad Municipal Water District Board of Directors on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

APPROVED AS TO FORM AND LEGALITY:

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CINDIE K. McMAHON, General Counsel

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KEITH BLACKBURN, President

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SHERRY FREISINGER, Secretary  
(SEAL)

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- 1.04 Code Adoption**
- 1.08 Administration**
- 1.12 Territory**
- 1.16 Emergency Purchasing**
- 1.20 Enforcement**

**Chapter 1.04**

**CODE ADOPTION (RESERVED)**

**Section:**

**1.04.010 Carlsbad Municipal Water District Code adopted.**

**1.04.010 Carlsbad Municipal Water District Code adopted.**

Reserved.

**Chapter 1.08**

**ADMINISTRATION**

**Sections:**

- 1.08.010 Meetings.**
- 1.08.020 District seal.**
- 1.08.030 Officers designated—Duties.**
- 1.08.040 Holidays.**
- 1.08.050 Rules and regulations amendment.**

**1.08.010 Meetings.**

- A. The meetings of the Carlsbad Municipal Water District shall be held within the boundary of the territory over which said District exercises jurisdiction. Regular meetings of the Board of Directors shall be held without notice on the first and third Wednesday of each month at the hour of 2:00 p.m. at 5780 El Camino Real, Carlsbad, San Diego County, California.
- B. The special meetings of the Board of Directors of the Carlsbad Municipal Water District may be ordered and called at any time by the President of the Board of Directors of the District or by a majority of the members of said Board of Directors, by delivering personally or by mailing a written notice ordering and calling said meeting, to each member of the Board of Directors of this District and to each local newspaper of general circulation, radio station, or television station, requesting notice of special meetings, at least 24 hours before the time set forth for the holding of such meeting.  

Said order and call shall specify the time and place of the special meeting and the business to be transacted at said meeting, and no other business shall be considered at such meeting by the Board of Directors.
- C. If at any time, any regular meeting or any special meeting or any adjourned meeting shall fall on a holiday, such meeting shall be held on the next business day. If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet at the place designated for regular meetings, or at the place specified in the notice of any special meeting, or at the place to which any meeting was adjourned, then such meeting or the adjourned meeting, may be held for the duration of the emergency at such place as is designated by the President of the Board of Directors of the District.
- D. The Board of Directors of the District may adjourn any regular, special or adjourned meeting to a time and place specified in the order of adjournment. When any regular meeting or adjourned regular meeting is so adjourned, the adjourned meeting shall be deemed a regular meeting for all purposes. If the order of adjournment fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified in the ordinance for the holding of regular meetings.
- E. At the first meeting of the Board of Directors in the month of January of each odd-numbered year, the Board of Directors shall choose one of its members President of the Board.
- F. All meetings of the Board of Directors of the District shall be open and public and all persons shall be permitted to attend any meeting of the Board of Directors and all acts and delibera-

tions of the Board of Directors shall be taken and conducted openly; provided, however, that nothing contained herein shall be deemed to prevent the Board of Directors from holding executive sessions to consider the employment or dismissal of a public officer or employee, or to hear complaints or charges brought against a public officer or employee of the District by another public officer, person, or employee, unless such officer or employee requests a public hearing, or prevent the Board of Directors from excluding from any such public or private hearing during the examination of a witness, any or all other witnesses in the matter being investigated by the Board of Directors of the District.

- G. A majority of the members of the Board of Directors of the District shall constitute a quorum for the transaction of business.
- H.
  1. The Board of Directors of the District shall act only by ordinance, resolution or motion.
  2. On all ordinances, the roll shall be called and the ayes and noes recorded in the minutes (journal) of the proceedings of the Board of Directors, and the enacting clause of the ordinance shall be: "BE IT ORDAINED by the Board of Directors of the Carlsbad Municipal Water District as follows:"
  3. Resolutions, motions and orders may be adopted by a voice vote, but on demand of any member, the roll shall be called the vote recorded.
  4. No ordinance, motion or resolution shall be passed or become effective without the affirmative vote of a majority of the members of the Board.
- I. Except as otherwise provided by law or ordinance adopted by this Board, "Robert's Rules of Order, Revised" are hereby adopted as the rules of practice and procedure governing the conduct of the business and procedure before this Board. The President shall preside at all meetings and shall have a vote on all matters before the Board. In the absence of the President, the Vice-President shall preside, and in the absence of both, the presiding officer shall be elected by a majority vote of the members of the Board.
- J.
  1. The minutes of the meetings of the Board of Directors shall be recorded and kept by the Executive Secretary in a book maintained for that purpose, entitled "Book of Minutes of the Meetings of the Board of Directors of the Carlsbad Municipal Water District." Unless otherwise expressly directed by the Board at the time of their adoption, all ordinances and resolutions adopted by the Board may be referred to in the minutes of the meetings of the Board by number and title, but the same shall be recorded in full in books kept for that purpose and entitled "Book of Ordinances" and "Book of Resolutions," respectively.
  2. The President or other person who may preside at the meeting, or the Secretary, shall authenticate the minutes, ordinances and resolutions after these have been transcribed into the appropriate books, and when so authenticated shall constitute the official minutes, ordinances and resolutions of the Board of Directors of the Carlsbad Municipal Water District.
  3. The minute book, the book of ordinances, and the book of resolutions shall be kept at the office of the Executive Secretary at the principal place of business of the District.
- K. The order of business at all regular meetings of the Board of Directors shall be as follows:
  1. Reading and correction of the minutes of the preceding regular meeting and all intervening special meetings.



1.08.020

2. Reading and consideration of all correspondence addressed to the Board and received since the last regular meeting.
3. Reading and consideration of all reports of officers, board members, special and standing committees, the general manager, comptroller, or other officer, submitted to the Board of Directors prior to or at said meeting.
4. Unfinished business.
5. New business.
6. Adjournment. (Ord. 25 § 1, 1967; Ord. 20 § 1, 1963; Ord. 18 § 1, 1960; Ord. 17 § 1, 1959; Ord. 15 § 1, 1959; Ord. 13 § 1, 1958; Ord. 11 § 1, 1958; Ord. 6 § 1, 1956; Ord. 5 § 1, 1955; Ord. 3 § 1, 1954; Ord. 2 § 1, 1954; Ord. 1 §§ 1—9, 11, 1954)

**1.08.020 District seal.**

The seal bearing the words “Carlsbad Municipal Water District, organized March 22, 1954,” is adopted as the official seal of this District. (Ord. 1 § 10, 1954)

**1.08.030 Officers designated—Duties.**

- A. The President and Secretary, in addition to the respective duties imposed on them by law, shall perform such duties as may be imposed on them by the Board of Directors and the President may from time to time appoint one or more committees.
- B. The Treasurer, and such other person or persons as may be authorized by the Board of Directors, shall draw checks or warrants to pay demands on the District when such demands have been audited and approved by the Board of Directors.
- C. The attorney shall be the legal advisor of the District and shall perform such duties as may be prescribed by the Board of Directors.
- D. The Board of Directors shall designate a depository or depositories to have the custody of the funds of the District, who shall give security sufficient to secure the District against possible loss and who shall be authorized to and shall pay warrants or checks drawn by the District for demands against the District when approved by the Board of Directors.
- E. The Secretary, the Treasurer, and all other officers employed who may be required to furnish bond by the Board of Directors, shall give bonds conditioned for the faithful performance of their duties; and the premiums of such bonds shall be paid by the District.
- F. No director shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the Board of Directors, and no officer or employee of the District shall in any manner be interested directly or indirectly in any contract made by such officer or employee, pursuant to discretionary authority vested in him or her, or be interested in the benefits to be derived therefrom; provided, however, that no Director, officer or employee shall be deemed to be interested, directly or indirectly, in any such contract if such Director, employee, or officer owns or controls directly or indirectly 5% or less of the outstanding stock or securities of any corporation contracting with the District, or if such contract or instrument shall be entered into by said officer, Director, or employee pursuant to the provisions of any ordinance or regulation of the District of uniform application, and which ordinance or regula-

tion shall have become effective prior to the making or execution of such contract or instrument. (Ord. 1 § 12, 1954)

**1.08.040 Holidays.**

- A. The holidays of the Carlsbad Municipal Water District are:
1. Every Saturday.
  2. Every Sunday.
  3. January 1st.
  4. February 12th, known as "Lincoln Day."
  5. February 22nd.
  6. May 30th.
  7. July 4th.
  8. First Monday in September.
  9. September 9th, known as "Admission Day."
  10. October 12th.
  11. November 11th, known as "Veterans Day."
  12. December 25th.
  13. Good Friday from 12:00 noon until 3:00 p.m.
  14. Every day on which an election is held throughout the State.
  15. Every day appointed by the President or Governor for a public fast, thanksgiving, or holiday.
- B. If January 1st, February 12th, February 22nd, May 30th, July 4th, September 9th, October 12th, November 11th, or December 25th falls upon a Sunday, the Monday following is a holiday.
- C. The office of the district for transaction of business shall be closed on each holiday above set forth. (Ord. 19 § 1, 1963)

**1.08.050 Rules and regulations amendment.**

These rules and regulations may be amended by a majority vote of the members of the Board of Directors of the Carlsbad Municipal Water District at any regular meeting, by the adoption of an ordinance amending this ordinance or any section thereof. (Ord. 1 § 13, 1954)

**Chapter 1.12**

**TERRITORY**

**Section:**

**1.12.010 Territory excluded.**

**1.12.010 Territory excluded.**

The Board of Directors of the Carlsbad Municipal Water District does hereby approve the exclusion of the following described territory, located and lying within the Carlsbad Municipal Water District from the corporate area of the Carlsbad Municipal Water District:

All that portion of the Carlsbad Municipal Water District of San Diego County, more particularly described as follows:

Beginning at the Northeast corner of Lot 7, Block C, of North Carlsbad Annex, as shown on Map No. 1888 filed in the office of the County Recorder of San Diego County;

1. Thence Southeasterly along the Easterly line of said Lot 7, Block C, and its Southeasterly prolongation to the Southerly line of Palm Road;
2. Thence Westerly along said Southerly line to the Northeast corner of Lot 1 in Block E of said Map 1888;
3. Thence Southeasterly along the Easterly line of Lot 1, Block E, to the Southeast corner thereof;
4. Thence North 89 degrees 30 minutes 45 seconds West along the Southerly line of said Lot 1, Block E, 206.94 feet;
5. Thence North 2 degrees 16 minutes 35 seconds West 395.99 feet to the Southerly line of said Palm Road;
6. Thence Southwesterly along said Southerly line of Palm Road to an intersection with the Southeasterly prolongation of the Southwesterly line bearing South 37 degrees 20 minutes East of Lot 6, Block C of said Map 1888;
7. Thence North 37 degrees 20 minutes West across Palm Road and continuing North 37 degrees 20 minutes West along Southwesterly line of said Lot 6, Block C, 50 feet;
8. Thence North 15 degrees 57 minutes 52 seconds West along the Westerly line of said Lot 6, Block C, to the Northwest corner thereof;
9. Thence North 84 degrees 18 minutes 33 seconds E along the Northerly line of Lots 6 and 7, Block C, to the Northeast corner of Lot 7 and the point of beginning.

And all that portion of the Carlsbad Municipal Water District, San Diego County, being portions of Lot 2, Tract 55, and Lot 1, Tract 56, of Hotaling Lands, as per Map No. 1717 filed in the office of the Recorder of San Diego County, more particularly described as follows:

Beginning at the point of intersection in the Northerly line of Grandview Street and the Northerly prolongation of the Easterly line of the Westerly 319.65 feet of Lot 1, Tract 56, of said Map 1717;

1. Thence South 35 degrees 12 minutes East 369.48 feet;
2. Thence South 54 degrees 48 minutes West 319.65 feet to the Easterly line of Ridgeway Street;
3. Thence in a direct line to a point in the centerline of Ridgeway Street South 35 degrees 12 minutes East 337.42 feet from the centerline of Grandview Street;
4. Thence South 54 degrees 48 minutes West 210 feet to a point in Lot 2, Tract 55, of said Map 1717;
5. Thence North 35 degrees 12 minutes West 240.73 feet;
6. Thence North 54 degrees 48 minutes East 20 feet;
7. Thence North 35 degrees 12 minutes West to the Northerly line of Grandview Street, being also a point in the boundary line of the City of Oceanside;
8. Thence Northeasterly along said Northerly line of Grandview Street and the boundary of the City of Oceanside to the point of beginning.

Also including:

Parcel No. 1

1. Beginning at the Northeasterly corner of Section 36, Township 11 South, Range 5 West, S.B.B. & M.; thence South 0 degrees 11 minutes 19 seconds East along said Easterly Section line 1757.74 feet to a point of intersection in the Northwesterly right-of-way line of Vista Way as shown on Map of Hotaling Lands as per Map thereof No. 1717 filed in the office of the Recorder of San Diego County on the 16th day of April, 1921 (State Route 196), said point being the True Point of Beginning;
2. Thence continuing South 0 degrees 11 minutes 19 seconds East along said Easterly section line to a point of intersection in the Northerly line of the Northeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of said Section 36;
3. Thence Westerly along the Northerly line of said Northeast 1/4 of the Northeast 1/4 of the Southeast 1/4 to the Northwesterly corner thereof;
4. Thence Southerly along the Westerly line of the said Northeast 1/4 of the Northeast 1/4 of the Southeast 1/4 to a point of intersection with the Northeasterly right-of-way of State Highway Route No. 2 as shown on Plan XI-SD-2-B & Cbd., Sheet 33, of the Highway Department of the State of California;
5. Thence South 32 degrees 18 minutes 38 seconds East along the Northeasterly right-of-way line of said State Highway Route No. 2, 323.0 feet more or less to the point of intersection with a line that bears North 57 degrees 41 minutes 22 seconds East from the Engineer's Station 508-00 as shown on said plan XI-SD-2-B & Cbd., Sheet 33;

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6. Thence South 57 degrees 41 minutes 22 seconds West along the aforementioned line 380 feet to a point of intersection with the southwesterly right-of-way line of said State Highway Route 2 as shown on said plan XI-SD-2-B & Cbd.;
7. Thence North 32 degrees 18 minutes 38 seconds West along the said right-of-way line to a point of intersection with a line running parallel with and 829.06 feet Northerly of the Southerly line of Block 48 as shown on the South Oceanside Map No. 622, filed in the office of the County Recorder of San Diego County, California, on the 7th day of February, 1890;
8. Thence Westerly along said aforementioned line to the Westerly line of said Block 48 and also being the boundary line common to the City of Oceanside & the City of Carlsbad;
9. Thence Northerly along said Westerly line of Block 48 to a point of intersection with the Northwesterly line of Vista Way as shown on Tolle Tract Map No. 1952, filed in the office of the County Recorder of San Diego County, State of California, on the 3rd day of November, 1926;
10. Thence Northeasterly along said Northwesterly right-of-way line to the true point of beginning.

Parcel No. 2

1. Beginning at the intersection of the West line of the Atchison, Topeka & S.F. Railway right-of-way and the North line of Lot 3, Section 1, Township 12 South, Range 5 West, being a point on the mutual boundary between the cities of Oceanside & Carlsbad; thence South 41 degrees 16 minutes East 190.73 feet along said right-of-way line and said mutual boundary to the true point of beginning;
2. Thence leaving said right-of-way line and said mutual boundary South 58 degrees 34 minutes 39 seconds West 235.57 feet;
3. Thence South 32 degrees 22 minutes 43 seconds East 107.05 feet; thence South 10 degrees 39 minutes East 219.68 feet;
4. Thence South 39 degrees 33 minutes East 168.12 feet to the beginning of a tangent curve, concave Southwesterly and having a radius of 1105.92 feet;
5. Thence Southeasterly along the arc of said curve an arc distance of 143.38 feet;
6. Thence South 49 degrees 54 minutes West 171.00 feet to the most Easterly corner of the land described in the deed to Jeannette S. Joy, recorded March 10, 1949 in Book 3135, page 257 of Official Records of said San Diego County;
7. Thence along the Southeast line of the land so deeded, South 51 degrees 33 minutes 10 seconds West 144.00 feet, more or less to the mean high tide line of the Pacific Ocean;
8. Thence continuing South 51 degrees 33 minutes 10 seconds West into the Pacific Ocean to its intersection with the Westerly extension of the Southerly line of said Lot 3, Section 1, Township 12 South, Range 5 West;

9. Thence East along said Westerly extension and along said Southerly line of said Lot 3 to the Southeast corner thereof;
10. Thence North along the East line of said Lot 3 to its intersection with the Westerly line of A.T. & S.F.R.R. right-of-way;
11. Thence Northwesterly along said Westerly line to the true point of beginning. (Ord. 7 § 1, 1956; Ord. 4 § 1, 1955)

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## Chapter 1.16

### EMERGENCY PURCHASING

#### Sections:

- 1.16.010 Authority.**
- 1.16.020 Emergency determination.**
- 1.16.030 Amount limitation.**
- 1.16.040 Use of available supplies, equipment or personnel.**
- 1.16.050 Presentation of actions to the Board of Directors.**

#### **1.16.010 Authority.**

The General Manager of the District is authorized to execute public works contracts and purchasing agreements, as necessary, to restore water service or safeguard the health and safety of the public, in the event of a breakage or failure of a dam, pump, pipeline, conduit, or other water facilities, causing an immediate emergency. (Ord. 27 § 1, 1987)

#### **1.16.020 Emergency determination.**

The General Manager makes a written determination of the facts constituting such emergency to be presented to the Board of Directors at the next meeting of the Board including facts demonstrating that prior Board approval was impractical. (Ord. 27 § 1, 1987)

#### **1.16.030 Amount limitation.**

Any public works contracts authorized hereunder shall be less than \$25,000.00. (Ord. 27 § 1, 1987)

#### **1.16.040 Use of available supplies, equipment or personnel.**

Prior to entering into any purchasing agreement, the General Manager shall require the use of reasonably available District supplies, equipment, and personnel, as well as the supplies, equipment and personnel reasonably available under mutual aid agreements. (Ord. 27 § 1, 1987)

#### **1.16.050 Presentation of actions to the Board of Directors.**

Any actions by the General Manager under the authority of this chapter shall be presented to the Board of Directors at the first meeting held after the General Manager has taken such action. (Ord. 27 § 2, 1987)

**Chapter 1.20****ENFORCEMENT****Sections:**

- 1.20.010**    **Penalty for violation of District provisions.**
- 1.20.020**    **Time limits for judicial review.**
- 1.20.030**    **Environmental protection procedures.**

**1.20.010**    **Penalty for violation of District provisions.**

Unless otherwise specified in a District ordinance, penalties for violation shall be the same as set forth in Chapter 1.08 of the Carlsbad Municipal Code which is adopted by reference except that whenever any provisions incorporated refer to the City, Board, territory, area, agency, official, employee, or otherwise it shall mean the corresponding District Board, territory, area, agency, official, employee, or otherwise. (Ord. 38 § 1, 1991)

**1.20.020**    **Time limits for judicial review.**

Chapter 1.16 of the Carlsbad Municipal Code is adopted by reference except that whenever any provisions incorporated refer to the City, Board, territory, area, agency, official, employee, or otherwise it shall mean the corresponding District Board, territory, area, agency, official, employee, or otherwise. (Ord. 38 § 2, 1991)

**1.20.030**    **Environmental protection procedures.**

Environmental protection procedures shall be the same as those set forth in Chapter 19.04 of the Carlsbad Municipal Code which is adopted by reference except that whenever any provisions incorporated refer to the City, Board, territory, area, agency, official, employee, or otherwise it shall mean the corresponding District Board, territory, area, agency, official, employee, or otherwise. (Ord. 38 § 2, 1991)



**Title 2**

**WATER RATES AND SYSTEM FACILITIES**

**Chapters:**

- 2.04           General Regulations**
- 2.08           Retail and Recycled Water Rates  
and Collection**
- 2.12           Meters, Service Connections,  
Connection Fees and Payment**
- 2.16           Connections and Installation of  
Service**
- 2.20           Extensions of Water Pipelines and  
Other Facilities**
- 2.24           Engineering Services Fees**
- 2.28           Fire Hydrants**
- 2.32           Cross-Connection Control  
Program**
- 2.36           Procedures for Work in the CMWD  
Right-of-Way**

## Chapter 2.04

### GENERAL REGULATIONS

#### Sections:

- 2.04.010** Definitions.
- 2.04.020** Wasting water—Report to CMWD.
- 2.04.030** Adoption of rules and regulations.
- 2.04.040** Failure to comply with rules and regulations or pay rates—Penalty.
- 2.04.050** Turning water or recycled water on and off from premises.
- 2.04.060** Persons not to interfere with CMWD water system.
- 2.04.070** Entrance upon private property by employees of CMWD.
- 2.04.080** Right of CMWD to enter premises, install meters and enforce collection of charges.
- 2.04.090** Interference with inspection—Stoppage of service—Notice required.
- 2.04.100** Service of notice of stoppage of water or recycled water service.
- 2.04.110** Length of water or recycled water service stoppage.
- 2.04.120** Liability of CMWD to damage from break beyond meter.
- 2.04.130** Responsibility for damage resulting from turning off water or recycled water.
- 2.04.140** Unlawful use of water, recycled water, facilities and appurtenances.
- 2.04.150** Bills for labor, materials.
- 2.04.160** Settlement of disputes between customer and CMWD.
- 2.04.170** No mandatory duty.
- 2.04.180** Claims for damage.

#### **2.04.010** Definitions.

The following terms are defined for purposes of this title:

“Applicant” means a person who applies for water or recycled water service.

“Board” means Board of Directors of the Carlsbad Municipal Water District.

“City of Carlsbad” means a municipal corporation in the State of California.

“CMWD” means Carlsbad Municipal Water District.

“Connection” means the metered water or recycled water service connection from a CMWD water or recycled water pipeline facility, respectively.

“Cost” includes labor, material, transportation, expense, supervision, engineering, and other necessary overhead expense.

“Customer” means any person to whom the CMWD supplies water or recycled water service under a contract, either expressed or implied, to make payment therefor.

“Delivery charge” means the minimum monthly charge to a customer for availability of service, the revenue from which enables the CMWD to maintain and operate a water system and a separate recycled water system ready to deliver to a customer. The delivery charge shall be based on the size of the water meter that is appropriate to provide service for the customer.

“Engineering service fees” means plan checking and inspection service fees for review of water and recycled water facility improvement plans submitted by applicant, customer or their engi-

ner and subsequent inspection of the installation of water and recycled water facilities in conformance with approved standard drawings and specifications.

“Extension” means water or recycled water pipeline extension.

“Executive Manager” means the position that reports to the Board of Directors of the Carlsbad Municipal Water District.

“General Counsel” means the position that has been appointed by the Board of Directors to advise on legal matters.

“General Manager” means the position that reports to the Executive Manager of the Carlsbad Municipal Water District and is responsible for the operation and maintenance of the water system and recycled water system.

“Industrial or commercial” means any customer using water or recycled water for a building or landscape irrigation of the site that is not a residential unit for the purpose of producing goods or services other than the services of housing, permanent or transient occupants.

“Legal or equitable owner” means any owner of record, mortgage trustee, or contract purchaser.

“Meter” means device to measure the amount of water or recycled water the customer uses in units where one unit is 748 gallons.

“Pipeline” means an existing or proposed water or recycled water pipeline in the water or recycled water distribution system, respectively of the CMWD.

“Public Works Director” means the Public Works Director of the City of Carlsbad or designated representative. The Public Works Director is responsible for the engineering decisions required for the planning, design, and construction of CMWD’s water and recycled water facilities.

“Recycled water,” sometimes referred to as “reclaimed water,” means water obtained from the treatment of domestic waste water which is suitable for direct beneficial use or a controlled use that otherwise would not occur and also meets the highest level in conformance with California Code of Regulations, Title 22, Division 4, Chapter 3 (Use of Recycled Water for Irrigation and for Impoundments), currently Sections 60304 and 60305.

“Recycled water connection fee” means the fee paid for the planning, design, and construction of capacity improvements and/or new facilities required for the delivery, distribution, and storage of recycled water.

“Residential unit” means any single-family residential living unit which includes, but is not limited to, the following: houses, duplexes, apartments, condominiums, and mobile homes.

“Risk Manager” means the Risk Manager of the City of Carlsbad.

“Service connection” includes the tapping of a CMWD water or recycled water pipeline and the laying of a service line from the tapped connection on the pipeline to the meter location.

“Water” means potable water fit for human consumption in accordance with applicable State of California Department of Public Health (CDPH) standards.

“Water connection fee” means the fee paid for the planning, design, and construction of capacity improvements and/or new facilities required for the delivery, distribution, and storage of water. (Ord. 47 § II.1, 2019; Ord. 45 § II.1, 2009)

**2.04.020 Wasting water—Report to CMWD.**

No person shall willfully or neglectfully waste water in any manner whatsoever; and any person having knowledge of any condition whereby water is being wasted shall notify the CMWD of such fact by contacting the Executive Manager. (Ord. 47 § II.2, 2019; Ord. 45 § II.2, 2009)

**2.04.030 Adoption of rules and regulations.**

- A. The Board may, from time to time by resolution, adopt rules and regulations for the operation and maintenance of the water and recycled water facilities of the CMWD, and for furnishing water or recycled water to customers, and may likewise by resolution modify the rates, charges, fees, and penalties established and imposed by this title, and may from time to time by resolution prescribe rules for the extension of water or recycled water pipelines within the boundaries and outside the boundaries of the CMWD.
- B. The Executive Manager may, from time to time, issue rules and regulations to carry out the purposes of this title. (Ord. 47 § II.3, 2019; Ord. 45 § II.3, 2009)

**2.04.040 Failure to comply with rules and regulations or pay rates—Penalty.**

- A. On failure to comply with the rules and regulations established by the CMWD as a condition precedent to the right to use the water or recycled water, or to pay rates or any charges imposed, in the time and manner stated in this title, upon reasonable notice, the water and recycled water will be shut off until payment of amount due including a 10% late fee is received by CMWD. Charges not paid after 44 days are considered delinquent and are subject to additional fees. Charges will continue to accrue until customer notifies the CMWD to discontinue service. CMWD may be notified in writing or by calling the City of Carlsbad's Billing Division of the Finance Department. If the commercial potable water or the recycled water bill remains unpaid after 44 days following the mailing date of such bill, then the Executive Manager may cause the commercial potable water or the recycled water service to be shut off from the premises where the delinquency occurs, and the same meter shall remain shut off until all bills, plus any additional charges shall have been paid.
- B. Subject to the provisions in CMWD's Residential Potable Water Service Shutoff Protection Policy for Nonpayment of Charges, if the residential potable water bill remains unpaid after 60 days following the mailing date of such bill, then the Executive Manager may cause the residential potable water service to be shut off from the premises where the delinquency occurs and the same meter shall remain shut off until all bills, plus any additional charges shall have been paid. (Ord. 47 § II.4, 2019; Ord. 45 § II.4, 2009)

**2.04.050 Turning water or recycled water on and off from premises.**

No one except an authorized employee of the CMWD or City of Carlsbad shall turn the water or recycled water on or off from any building or premises at a service gate valve, angle meter stop valve, or corporation stop valve located upstream of the meter. (Ord. 47 § II.5, 2019; Ord. 45 § II.5, 2009)

2.04.060

**2.04.060 Persons not to interfere with CMWD water system.**

No person shall in any manner whatsoever meddle, tamper with, or interfere with any part of the water or recycled water system of the CMWD. (Ord. 47 § II.6, 2019; Ord. 45 § II.6, 2009)

**2.04.070 Entrance upon private property by employees of CMWD.**

Any authorized employee of the CMWD or City of Carlsbad shall be admitted at all reasonable hours to all open areas of the premises supplied by water or recycled water to verify facilities are in good operating condition, to make any repairs, replacements or improvements, and to verify that rules and regulations are observed by the customer. (Ord. 47 § II.7, 2019; Ord. 45 § II.7, 2009)

**2.04.080 Right of CMWD to enter premises, install meters and enforce collection of charges.**

Any authorized employee of CMWD or City of Carlsbad shall have the right at any time, and at any point where water or recycled water is used, to install a water or recycled water meter of adequate size, and enforce collection for the amount of water or recycled water that shall be used, in accordance with all the ordinances, rules and regulations of the CMWD governing the consumption of water or recycled water, and for that purpose may at any time go upon the premises of the customer of water or recycled water. (Ord. 47 § II.8, 2019; Ord. 45 § II.8, 2009)

**2.04.090 Interference with inspection—Stoppage of service—Notice required.**

In case any authorized employee or agent of the CMWD or City of Carlsbad be refused admittance to any premises supplied with water or recycled water by the CMWD, or on being admitted he or she shall be hindered or prevented from making such examination or inspection by any person, or for any reason thereto, the maintenance on such premises of a vicious dog or animal, or for any other reason, the Executive Manager of the CMWD may cause the service of water or recycled water of such premises to be discontinued, after giving written notice to the owner or occupant thereof of his or her intention to do so. (Ord. 47 § II.9, 2019; Ord. 45 § II.9, 2009)

**2.04.100 Service of notice of stoppage of water or recycled water service.**

Such notice as is provided for in 2.04.090 shall be deemed served upon the legal owner or occupant thereof if it is mailed to his or her last known address, and a copy thereof mailed to such premises if his or her mailing address is not at such premises, or a door hanger may be placed at the premises by CMWD or City of Carlsbad employee notifying legal owner or customer of water or recycled water service being shut off, or other method that the Executive Manager determines to be legally sufficient to ensure adequate notification is received by the legal owner or occupant. (Ord. 47 § II.10, 2019; Ord. 45 § II.10, 2009)

**2.04.110 Length of water or recycled water service stoppage.**

Water or recycled water service may be discontinued until the customer or owner has given satisfactory assurance to the Executive Manager that any such employee will not be hindered or prevented from making such examination or inspection. (Ord. 47 § II.11, 2019; Ord. 45 § II.11, 2009)

**2.04.120 Liability of CMWD to damage from break beyond meter.**

The CMWD will not be responsible for injuries or damages to buildings or their contents from any water leakage, damage, or earth movement originating from a break beyond the meter connection. (Ord. 47 § II.12, 2019; Ord. 45 § II.12, 2009)

**2.04.130 Responsibility for damage resulting from turning off water or recycled water.**

The CMWD shall not be responsible for any damage, such as bursting of boilers, damage to crops or landscaping, the breaking of any pipe or fixture, stoppage or interruption of water or recycled water supply, or any other damage resulting from the shutting off of water or recycled water. (Ord. 47 § II.13, 2019; Ord. 45 § II.13, 2009)

**2.04.140 Unlawful use of water, recycled water, facilities and appurtenances.**

It is unlawful for any person to open any fire hydrant, corporation stop valve, gate valve, angle meter stop valve or to interfere in any manner with any water service, water connection, or any water meter attached to any service pipe connected to the water pipelines, or to turn on or off water or recycled water pipelines of the CMWD, or to tap, break, or injure any water or recycled water pipeline of the CMWD, or any reservoir, pumping station or pressure reducing station of the CMWD, or to tap any water or recycled water service pipe, or take or draw water from any water pipe or fire hydrant of the CMWD without paying the established water rate therefor, after having made written application and received permission therefor as provided by this title or in anywise to trespass upon the public property of the CMWD without written permission first being obtained from the CMWD. (Ord. 47 § II.14, 2019; Ord. 45 § II.14, 2009)

**2.04.150 Bills for labor, materials.**

All bills for labor and materials furnished, or other charges not provided for otherwise, shall become due and payable 30 days from date of mailing. (Ord. 47 § II.15, 2019; Ord. 45 § II.15, 2009)

**2.04.160 Settlement of disputes between customer and CMWD.**

- A. If a dispute arises between any water or recycled water customer and the CMWD concerning water or recycled water service or the amount of a water or recycled water bill to such customer, the dispute may be settled, subject to the approval of the Board, by the Executive Manager. The final decision and settlement of any such dispute shall be recorded in the minutes of the Board.
- B. The provisions and procedures provided for in this section are permissive only and shall in no way affect the other provisions of this title. (Ord. 47 § II.16, 2019; Ord. 45 § II.16, 2009)

**2.04.170 No mandatory duty.**

Nothing in this title is intended to create a mandatory duty on behalf of CMWD or the City of Carlsbad and/or its employees under the Government Tort Claims Act and no cause of action against CMWD or the City of Carlsbad and/or its employees is created by this chapter that would not arise independently of the provisions of this title. (Ord. 47 § II.17, 2019; Ord. 45 § II.17, 2009)

**2.04.180 Claims for damage.**

- A. No claim for injuries or damages against the CMWD shall ever be allowed or paid unless there has been first filed with the Secretary to the Board a claim therefor within the time periods required by subsection B of this section. All such claims for damages shall be first verified by the claimant before an officer authorized to administer oaths.
- B. A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be filed not later than 6 months after the accrual of the cause of action. A claim relating to any other cause of action shall be filed not later than one year after the accrual of the cause of action. (Ord. 47 § II.18, 2019; Ord. 45 § II.18, 2009)

## Chapter 2.08

### RETAIL AND RECYCLED WATER RATES AND COLLECTION

#### Sections:

- 2.08.010** New account fee.
- 2.08.020** Continuity of service fee (landlords only).
- 2.08.030** Delivery charge.
- 2.08.040** Delivery charge for residential automatic fire extinguishing system.
- 2.08.050** Delivery charge—Proration.
- 2.08.060** Delivery charge where house becomes vacant—Request for discontinuance of service.
- 2.08.070** Rate structure.
- 2.08.080** Water rates, charges, and fees to be established by resolution.
- 2.08.090** Meter readings and billings.
- 2.08.100** Service charges to be a lien against property of consumer.
- 2.08.110** Shutting off water on supply side of meter.
- 2.08.120** Adjustment of bills for meter error.

#### **2.08.010** New account fee.

A new account fee as determined by resolution of the Board will be assessed on a customer on their first bill. The CMWD requires at least 24 hours' notice of water service turn on. If customer contacts the CMWD the same day that customer wants service turned on, then the customer will have an additional charge assessed on their next water bill. If customer requests service on holidays, weekends, or after 5:00 p.m. on weekdays to have water turned on the same day, then a charge must be paid to the CMWD on the following normal working day. (Ord. 47 § III.1, 2019; Ord. 45 § III.1, 2009)

#### **2.08.020** Continuity of service fee (landlords only).

The CMWD will provide a continuity of service fee option for landlords only who wish to retain water service to rental properties during periods of vacancy. The continuity of service must be requested by the landlord and a fee, as determined by a resolution of the Board, paid to CMWD. The water bill will be sent to the landlord's address and the landlord will be billed for the continuity of service fee. (Ord. 47 § III.2, 2019; Ord. 45 § III.2, 2009)

#### **2.08.030** Delivery charge.

The CMWD shall charge each customer a monthly delivery charge for each service connection with a meter in such amounts as provided by resolution of the Board as adopted from time to time. (Ord. 47 § III.3, 2019; Ord. 45 § III.3, 2009)

#### **2.08.040** Delivery charge for residential automatic fire extinguishing system.

When a water meter for a single-family residential unit is required to provide standby capacity for a automatic fire extinguishing system, the delivery charge will be determined according to the size of the meter necessary to meet the water use requirements for the customer, as determined accord-



2.08.050

ing to the rules of the CMWD, without consideration of additional size necessary to provide the delivery charge. The delivery charge to provide water for a automatic fire extinguishing system is required when: (a) the automatic fire extinguishing system is required by law, including any requirement imposed as a condition of development, permit, or occupancy; and (b) the Fire Chief, Fire Marshal, or Building Official of the City of Carlsbad has provided a written statement verifying the requirement for additional meter size. The determination under this section shall be made at the time the meter is first obtained, or at the time a meter is replaced with one of greater size because of the later installation of the automatic fire extinguishing system. This provision shall not apply to meters greater than one inch in size. (Ord. 47 § III.4, 2019; Ord. 45 § III.4, 2009)

**2.08.050 Delivery charge—Proration.**

The delivery charge will be prorated based on the normal date the meter is read for the month that water service is started. (Ord. 47 § III.5, 2019; Ord. 45 § III.5, 2009)

**2.08.060 Delivery charge where house becomes vacant—Request for discontinuance of service.**

If a single-family residence becomes vacant, the regular monthly delivery charge shall be charged and collected from the owner thereof; whether water is used or not; until the day upon which the office of the CMWD is notified of the fact that the property is unoccupied and is requested to shut off water therefrom. (Ord. 47 § III.6, 2019; Ord. 45 § III.6, 2009)

**2.08.070 Rate structure.**

The CMWD rate structure shall be approved by the Board. Rates shall be set at a level sufficient to pay for water purchases, maintenance and operations, debt service, replacement funding, adequate reserves, and to meet the objectives established by the Board.

- A. Residential Water Rate. The residential water rate is a tier rate per unit of water used where one unit equals 748 gallons.
- B. Commercial/Nonresidential. The commercial/nonresidential water rate is a flat rate per unit of water used where one unit equals 748 gallons.
- C. Agricultural Water Rate. The agricultural water rate shall be in compliance with the rate reduction and rules and requirements adopted by the Metropolitan Water District of Southern California and the San Diego County Water Authority in relation to cost and availability of imported water. Once a customer is authorized an Agricultural Water Rate, that customer must comply with water supply reductions under Chapter 3.04 of this Code when the Board declares Stage 2 or higher water conservation stages.
- D. The Recycled Water Rate. The recycled water rate is a flat rate per unit of recycled water used where one unit equals 748 gallons and applies only to the delivery of recycled water to the customer. (Ord. 47 § III.7, 2019; Ord. 45 § III.7, 2009)

**2.08.080 Water rates, charges, and fees to be established by resolution.**

The rates, charges, and fees for all water and recycled water delivered by CMWD shall be fixed, and may be changed as necessary, by Resolution of the Board after following the provisions required by the California Constitution. All water and recycled water bills shall be due on mailing and must be paid by the due date printed on the water or recycled water bill. (Ord. 47 § III.8, 2019; Ord. 45 § III.8, 2009)

**2.08.090 Meter readings and billings.**

Meters shall be read and billings rendered on a monthly basis. The billing period is 30 days and is based on the meter reading date. The date on which the bill is deemed delinquent shall be indicated on the bill. (Ord. 47 § III.9, 2019; Ord. 45 § III.9, 2009)

**2.08.100 Service charges to be a lien against property of consumer.**

In addition to any other remedy provided for in this chapter for the enforcement and collection of any water and recycled water rates, charge, fee or account, all rates provided for in this title shall be charged against the property on which it is furnished, and against the owner thereof, and shall be a lien against the premises to which any water or recycled water may be supplied, and a charge against the owner thereof and the occupant thereof using the water. If for any cause any sums owing therefor become delinquent, the water or recycled water shall be cut off and in no case shall it be turned on to the same property until all such delinquencies shall have been paid in full. Such property owner and occupant shall be severally responsible to the CMWD in an action brought by the CMWD in any Court of competent jurisdiction for the amount of all such money as may be due and unpaid, together with all penalties provided herein and costs. No change of ownership or occupation shall affect the application of this chapter. This section shall not apply to non-permanent connections. (Ord. 47 § III.10, 2019; Ord. 45 § III.10, 2009)

**2.08.110 Shutting off water on supply side of meter.**

Upon the written request or call to the City's Billing Division of the Finance Department, of the customer or occupant of a building or premises to have the water shut off on the supply side of the meter, the CMWD shall have the water shut off, and at the time record the reading of the meter and render a bill in a sum which shall be the greater of the amount of water used according to the rates and charges provided for, or for the monthly minimum charge due for the fractional part of the month. (Ord. 47 § III.11, 2019; Ord. 45 § III.11, 2009)

**2.08.120 Adjustment of bills for meter error.**

- A. Fast Meters. When upon test, a meter is found to be registering fast within the tolerances above set forth in Section 2.12.050(B), the CMWD shall refund to the customer the amount of the overcharge, based upon corrected meter readings for the period the meter was in use, but not to exceed a period of 6 months.
- B. Slow Meters. When, upon test, a meter is found to be registering slow beyond the tolerances above set forth in Section 2.12.050(B), the CMWD shall bill the customer for the amount of

the undercharge, based upon corrected meter readings for the period the meter was in service, but not to exceed a period of 6 months.

- C. Failed Meter Reads. In the event a water meter fails to register during any month, a charge will be made based upon three month average amount of water used during the same period for the previous year. In the event there was no meter at this place during the previous year, a charge will be made upon an estimate fixed by the CMWD, which shall be paid by the customer.
- D. General. When it is found that the error in a meter is due to some cause, the date of which can be fixed, the overcharge or the undercharge shall be computed back to, but not beyond, such date. (Ord. 47 § III.12, 2019; Ord. 45 § III.12, 2009)

## Chapter 2.12

### METERS, SERVICE CONNECTIONS, CONNECTION FEES AND PAYMENT

#### Sections:

- 2.12.010** Service connections in public right-of-way or easements.
- 2.12.020** Meter installation.
- 2.12.030** Service connection and meter ownership.
- 2.12.040** Charges for replacement, repairs, or adjustment caused by negligence of customer.
- 2.12.050** Examination of meters at customer's request.
- 2.12.060** Water meter permit.
- 2.12.070** Water and recycled water connection fee.
- 2.12.080** Minimum water meter size for buildings.
- 2.12.090** Irrigation water meters.
- 2.12.100** Maximum water meter size.
- 2.12.110** Construction meters.
- 2.12.120** Fire protection meters.
- 2.12.130** Meter installation charges.
- 2.12.140** Repairs by CMWD.
- 2.12.150** Transportation of water across property line.
- 2.12.160** Connection.
- 2.12.170** Cutting off or interfering with meter.

#### **2.12.010 Service connections in public right-of-way or easements.**

All water service connections shall be in conformance with CMWD standard specifications and standard drawings in affect at the time the connection is installed; and all such connections must be inspected and approved by the Public Works Director or designated representative before water is admitted through meters. (Ord. 47 § IV.1, 2019; Ord. 45 § IV.1, 2009)

#### **2.12.020 Meter installation.**

All water and recycled water meters shall be new or be certified for accuracy to meet standards of the American Water Works Association through testing performed or approved by the CMWD before being installed. (Ord. 47 § IV.2, 2019; Ord. 45 § IV.2, 2009)

#### **2.12.030 Service connection and meter ownership.**

The water/sewer connection permit shall note the date of connection for all service connections, and upon this date the service connection will become the property of the CMWD and the CMWD's responsibility to maintain. The meter will become the property of the CMWD and the CMWD's responsibility to maintain upon its installation by CMWD or its authorized agent. (Ord. 47 § IV.3, 2019; Ord. 45 § IV.3, 2009)

**2.12.040 Charges for replacement, repairs, or adjustment caused by negligence of customer.**

Where replacement, repairs, or adjustments of any service connection or meter are deemed necessary by the act, negligence or carelessness of the customer, any expense caused the CMWD thereby, shall be charged against and collected from the customer. If the customer fails to pay such charges, water may be shut off until such charges are paid. (Ord. 47 § IV.4, 2019; Ord. 45 § IV.4, 2009)

**2.12.050 Examination of meters at customer's request.**

- A. Deposit. Any customer may request that the meter, through which water or recycled water is being delivered, be examined and tested by the CMWD or Maintenance and Operations Department of the City of Carlsbad for the purpose of ascertaining whether or not it is registering correctly the amount of water which is being delivered to it. Such request shall be accompanied by payment of a deposit fee as established by resolution of the Board. Upon receipt of such request, the Executive Manager will cause the meter to be examined and tested for the purpose of ascertaining whether or not it is registering correctly the water or recycled water being delivered through it.
- B. Replacement of Defective Meter—Forfeiture of Deposit. If, on examination and test, the meter shall be found to register a percentage of more or less than actually passes through it, than allowed by the tolerances for such a meter as established by the American Waterworks Association standards, another meter shall be substituted therefor. If the meter is determined to be registering more water than actually passes through it within the tolerances above set forth, the above deposit will be refunded to the customer, but in the event the meter shall be found to be accurate or registering less water than actually passes through it, the fee so deposited shall be forfeited to the CMWD. (Ord. 47 §§ IV.5, 6, 2019; Ord. 45 §§ IV.5, 6, 2009)

**2.12.060 Water meter permit.**

- A. It is unlawful for any person to connect to or use the CMWD's water system without first obtaining a water meter permit. That concurrently with issuance of a valid building permit for a new structure or for a mobile home, upon application and payment of the required fees, the CMWD's Executive Manager may authorize connection of the structure for which the building permit has been issued or the mobile home has been issued, to the water system. Every water meter permit issued shall be returned if the building permit for the structure to which the connection is being made or for the mobile home to be connected, expires by limitation or otherwise becomes null and void. If a water meter permit has expired, then before the connection for such structure or mobile home can be made, a new water meter permit shall be obtained and the fee shall be one-half of the required fee for the original water meter permit unless one year has passed since the expiration in which case the fee shall be the same as a new water meter permit. Water meter permits for the connection of an existing structure to the water system may be issued by the Executive Manager at any time upon proper application.
- B. Every water meter permit issued pursuant to this section shall expire by limitation and become null and void if work on the connection authorized by such permit is not completed

within 180 days from the date of issuance of such permit. Reasonable extensions may be granted by the Executive Manager in writing. (Ord. 47 § IV.7, 2019; Ord. 45 § IV.7, 2009)

**2.12.070 Water and recycled water connection fee.**

- A. Applicants for installation of a service connection(s) shall pay a water connection fee, and at locations where recycled water is to be used, a recycled water connection fee in the amount as set from time to time by a resolution of the Board. The recycled water connection fee shall be equal to the water connection fee for the same size meter; however, a recycled water connection is not required to pay San Diego County Water Authority's water connection fee. When a water meter for a single-family residential unit is required to provide standby capacity for a automatic fire extinguishing system, the water connection fee will be determined according to the size of the meter necessary to meet the water use requirements for the customer, as determined according to the rules of the CMWD, without consideration of additional size necessary to provide the delivery of water for the automated fire extinguishing system. The water connection fee and recycled water connection fee shall be adjusted annually by a resolution of the Board by the percentage change in the Engineering News Record Los Angeles Construction Cost Index with the base index in effect in December 2003, or subsequent resolution of the Board.
- B. For all residential units, the water connection fee shall be paid at the time of issuance of a building permit for the property. For commercial and industrial development projects the water connection fee shall be paid at the time of application for a water meter permit. The recycled water connection fee shall be paid at the time the recycled water irrigation system has been tested by the City of Carlsbad's cross connection specialist and recycled water can be supplied to the irrigation system. The customer shall provide CMWD a 24-hour notice for the recycled water irrigation meter.
- C. A credit on a water or recycled water connection fee will be made for the exchange of an existing meter service for a new meter service, or relocation of a meter service. The credit shall only apply to the water or recycled water connection fee. The credit amount shall be based on the connection fee amount in affect at the time the exchange is made. No credit shall be applied for exchange to a smaller meter. (Ord. 47 § IV.8, 2019; Ord. 45 § IV.8, 2009)

**2.12.080 Minimum water meter size for buildings.**

- A. Residential Unit. For residential units the minimum size meter shall be five-eighths inch, except where the residential unit is larger than 3,500 square feet or on a lot larger than one-quarter acre where the meter size shall be three-fourths inch. Where there is a residential automatic fire extinguishing system the minimum meter size shall be one inch.
- B. Commercial and Industrial. For a commercial building, office condominium, and industrial building an estimate shall be made of the supply demand in gallons per minute (gpm) as determined from the California Plumbing Code "Appendix A," latest adopted edition by the City of Carlsbad. In addition, for industrial buildings all process water demand, if applicable, shall be added to the supply demand determined above in "Appendix A" to determine the peak supply demand. The estimated peak supply demand shall be compared to the maximum rated capacity of each meter size and the capacity of the selected meter size shall be capable

of conveying the peak supply demand calculated in gpm for the building. (Ord. 47 § IV.9, 2019; Ord. 45 § IV.9, 2009)

**2.12.090 Irrigation water meters.**

- A. A meter and service connection used for landscape irrigation exclusively shall be installed in accordance with CMWD standard specifications and drawings in effect at the time the connection is made. The size of the irrigation water meter(s) and service connection shall be determined by the landscape architect based on the flow demand in gallons per minute (gpm) for the area to be irrigated. The minimum size meter(s) shall be capable of supplying the peak irrigation water demand determined.
- B. At locations where water is used for irrigation, then the water connection fees shall be based on the CMWD connection fee and charges, and also include the San Diego County Water Authority's connection fee applicable to the meter size. If recycled water is used, then only the CMWD connection fee and charges shall apply. The San Diego County Water Authority will refund their connection fee amount to the customer if recycled water is eventually supplied to the service connection and meter within one year of the original application for water meter permit. The customer must prepare and submit the San Diego County Water Authority's "Capacity Charge Refund Request" form to CMWD for verification to request the connection fee refund. (Ord. 47 § IV.10, 2019; Ord. 45 § IV.10, 2009)

**2.12.100 Maximum water meter size.**

No water meter larger than a 2-inch meter shall be installed on any lot, or to any customer, except upon approval and consent of the Public Works Director. (Ord. 47 § IV.11, 2019; Ord. 45 § IV.11, 2009)

**2.12.110 Construction meters.**

- A. Water or recycled water used for construction shall be metered. Recycled water shall be used when it is available. A construction meter is obtained by applying for a water meter permit. The CMWD may connect a construction meter to any fire hydrant, service connection upon proper application. The cost for a construction meter shall be comprised of a deposit fee and a rental fee. The deposit fee will be refunded after the meter is returned in good working order complete with fittings, and all bills pertaining thereto are paid. The meter will be installed and removed by authorized CMWD or City of Carlsbad employees. Any damage caused to the meter by the negligence or carelessness of any person to whom a meter is loaned must be paid on demand. Water delivered through a construction meter will be charged at the standard water rate, including delivery charges. An additional fee will be charged upon each request to have a construction meter relocated.
- B. The use of "jumpers" in place of a meter shall not be allowed on a temporary basis to test water pressure in the plumbing of a new building, residence, or other purpose. (Ord. 47 § IV.12, 2019; Ord. 45 § IV.12, 2009)

**2.12.120 Fire protection meters.**

A fire protection meter shall be installed on commercial and industrial buildings and when required by the City's Fire Marshal on residential units. The purpose of the fire protection meter is to monitor if any water has been used from the fire protection line. The fire protection meter is only charged a meter fee. No connection fees apply. (Ord. 47 § IV.13, 2019; Ord. 45 § IV.13, 2009)

**2.12.130 Meter installation charges.**

Applicants for installation of water meters shall pay installation charges as set from time to time by a resolution of the Board. In the event a customer has an installed meter but wishes to exchange it for another smaller size meter, he or she shall receive a rebate of the difference between the charges for the larger and smaller meter in effect at the time the original meter was installed; but, if he or she substitutes a larger meter for a smaller meter, he or she shall pay the difference between the current charges for the smaller meter and the larger meter. (Ord. 47 § IV.14, 2019; Ord. 45 § IV.14, 2009)

**2.12.140 Repairs by CMWD.**

All water and recycled water meters are the property of the CMWD and the CMWD will maintain and repair them when in its judgment such repairs are needed. (Ord. 47 § IV.15, 2019; Ord. 45 § IV.15, 2009)

**2.12.150 Transportation of water across property line.**

Water served through a meter shall not be transported through pipes or conduits across lot lines or property lines. (Ord. 47 § IV.16, 2019; Ord. 45 § IV.16, 2009)

**2.12.160 Connection.**

- A. Liability for Damage. When any person connecting a water service pipe to the property side of a meter uses water for testing the pipes, he or she must leave the service box in as good condition as found and shall leave the water shut off if found shut off, and shall in writing notify the CMWD or City of Carlsbad at the time the connection is made. Any damage caused by the negligence or carelessness of any person to any part of the meter box or connection, must be paid by the person to the CMWD on demand.
- B. Liability of Customer for Damages to Meter. After the water or recycled water meter is so connected to the service connection, any damage to such meter resulting from an intentional act, carelessness or negligence of the customer, or anyone employed by him or her, and any damage which may result from hot water or steam from a boiler, or otherwise, shall be paid for by such customer to the CMWD on presentation of a bill therefor; and in case such bill is not paid, the water shall be shut off from the premises without further notice, and the same shall not be turned on until all charges are paid. (Ord. 47 §§ IV.17, 18, 2019; Ord. 45 §§ IV.17, 18, 2009)



2.12.170

**2.12.170 Cutting off or interfering with meter.**

It is unlawful for any person to interfere with or cut off or remove a water or recycled water meter from any service connection where it has been installed, without first receiving written permission from the CMWD or City of Carlsbad's Maintenance and Operation Department. Such permission shall be granted only for the purpose of tests, replacements, repairs to meter or service pipes, re-adjustments of service, or similar emergency. (Ord. 47 § IV.19, 2019; Ord. 45 § IV.19, 2009)

## Chapter 2.16

### CONNECTIONS AND INSTALLATIONS OF SERVICE

#### Sections:

- 2.16.010 Shut off valve.**
- 2.16.020 Distance of sewer, gas, or other service pipe from water service.**
- 2.16.030 Repairs to water pipelines, meters, and service connections.**
- 2.16.040 Shutting off water or recycled water for repairs.**
- 2.16.050 Steam boilers, hydraulic elevators, power pumps, and similar apparatus.**
- 2.16.060 Right-of-way application for service—Form.**
- 2.16.070 Connection to water pipelines upon compliance.**
- 2.16.080 Multiple service connection and meter and multi-ownership building.**
- 2.16.090 Discontinuance of service upon written notice.**
- 2.16.100 Turning on of water or recycled water.**
- 2.16.110 Use of water by construction workers—Water meter permit.**
- 2.16.120 Supplying to other than occupant of premises.**
- 2.16.130 Customer to accept service conditions.**
- 2.16.140 Violations.**
- 2.16.150 Severability.**

#### **2.16.010 Shut off valve.**

- A. For CMWD. There shall be an angle meter stop valve installed on the immediate upstream side of the meter which angle meter stop valve shall be paid for by the customer but shall be the property of the CMWD, and shall be for exclusive use and under its exclusive control.
- B. For Customer. The water customer is hereby required, for their own protection, to provide, at their own expense, a shut off valve consisting of a ball valve to be connected to the meter immediately downstream of the meter and accessible to the employees of the CMWD or City of Carlsbad. (Ord. 47 §§ V.1, 2, 2019; Ord. 45 §§ V.1, 2, 2009)

#### **2.16.020 Distance of sewer, gas, or other service pipe from water service.**

No sewer pipe, gas pipe or any other service pipe shall be installed or maintained nearer than 10 feet parallel to any service connection, water pipeline or meter of the CMWD without obtaining prior approval from CMWD. Under no circumstance shall a sewer pipe or gas pipe or any other service pipe be installed closer than 2 feet clear from the service connection, water pipeline or meter. (Ord. 47 § V.3, 2019; Ord. 45 § V.3, 2009)

#### **2.16.030 Repairs to water pipelines, meters, and service connections.**

The CMWD shall, at its own expense, make all repairs necessary to water pipelines, meters, and service connections. The CMWD shall make no repair or do any work whatsoever on the service connection beyond the meter. Any repair, including parts and labor, made necessary by any acts of negligence or carelessness of the customer, or other persons, shall be charged to and collected from the customer, or the person responsible therefore. (Ord. 47 § V.4, 2019; Ord. 45 § V.4, 2009)

**2.16.040 Shutting off water or recycled water for repairs.**

The CMWD reserves the right to shut off the water or recycled water supply from any premises at any time without notice, for the purpose of making repairs, extensions or other necessary purposes, or for any infraction of this title. (Ord. 47 § V.5, 2019; Ord. 45 § V.5, 2009)

**2.16.050 Steam boilers, hydraulic elevators, power pumps, and similar apparatus.**

It is unlawful for any person to draw any water from any water pipeline or service connection of the CMWD, directly into any stationary steam boiler, hydraulic elevator, power pump, or similar apparatus. If a customer desires water from the CMWD to be used in any stationary steam boiler, hydraulic elevator, power pump, or similar apparatus, the customer must first apply therefor in writing to the CMWD, and if granted by the Board, such customer must provide a tank or reservoir of such capacity as is required by standard practice. No such tank or reservoir shall be installed or used unless and until the plans and specifications have been examined and approved in writing by the Public Works Director or designee. (Ord. 47 § V.6, 2019; Ord. 45 § V.6, 2009)

**2.16.060 Right-of-way application for service—Form.**

Before any water will be supplied by the CMWD to any person which requires a connection from the CMWD water pipeline on any real property, the owner or occupant of the property shall make a written application for such service and service connection, upon submittal of a right-of-way permit application provided by the CMWD at the City of Carlsbad's Engineering Department. (Ord. 47 § V.7, 2019; Ord. 45 § V.7, 2009)

**2.16.070 Connection to water pipelines upon compliance.**

Upon the applicant for water service having complied with all the requirements relating to written application for service, the CMWD will cause the property described to be connected with the water pipeline, subject to the provisions of this title and the rules and regulations of the Board. (Ord. 47 § V.8, 2019; Ord. 45 § V.8, 2009)

**2.16.080 Multiple service connection and meter and multi-ownership building.**

- A. No water shall be served to 2 or more parcels of property separately owned through a common service connection and meter.
- B. When more than one building is placed on the same parcel of property, then each building shall have at least one service connection and meter.
- C. When a multi-ownership residential, commercial, or industrial unit building is placed on the same parcel of property and each is conducting a separately established residence or business, a separate service connection and meter shall be required and installed for each ownership unit in the building. The cost of such service connection and meter installation shall be paid by the owner or party receiving water service. For good cause shown, the Public Works Director may allow one service connection and meter to a multi-ownership building to provide service to more than one residential, or commercial/office condominium on a case-by-case basis; provided, however, that the size of the service connection and meter shall be determined based on the combined fixture units of all residential or commercial/office condomini-

ums served by the meter, within the building. In cases where the Public Works Director allows one service connection and meter to a multi-ownership building, there shall be recorded a deed restriction or other such document as approved by the Public Works Director and General Counsel placing future unit owner's on notice that each and every residential or commercial/office unit in the building on the property is served by a single service connection and meter, and in the event that the water bill is not paid by the party or entity responsible for paying the monthly water service charges to the CMWD for the respective building occupied by the multi-ownership, the CMWD may at its discretion shut off the water service to such multi-ownership building in accordance with CMWD adopted rules and regulations. In addition, a multi-ownership building with a single service line and meter is required to install a private sub-meter for each separately established residence or business. (Ord. 47 § V.9, 2019; Ord. 45 § V.9, 2009)

**2.16.090 Discontinuance of service upon written notice.**

Service will be discontinued and water service shut off by the CMWD within 48 hours of receiving written notice to discontinue water service. (Ord. 47 § V.10, 2019; Ord. 45 § V.10, 2009)

**2.16.100 Turning on of water or recycled water.**

It is unlawful for any person to turn on the water or recycled water after the same has been turned off by CMWD or City of Carlsbad. (Ord. 47 § V.11, 2019; Ord. 45 § V.11, 2009)

**2.16.110 Use of water by construction workers—Water meter permit.**

Contractors or any person, desiring to use water in construction work where connections must be made other than through a meter, shall in each and every case make written application for, and obtain a written permit for, the same from the City of Carlsbad's Engineering Department before connecting to any water pipeline, fire hydrant or using water therefrom, and shall make the deposit required by the CMWD sufficient in its opinion to cover the estimated cost of the water to be used. Such water meter permit shall be exhibited upon the work for which it has been issued during the full-time the water is being used pursuant to such permit. (Ord. 47 § V.12, 2019; Ord. 45 § V.12, 2009)

**2.16.120 Supplying to other than occupant of premises.**

It is unlawful for any person to supply water to any other person other than the occupants of the premises of such customer without written approval of the Public Works Director. (Ord. 47 § V.13, 2019; Ord. 45 § V.13, 2009)

**2.16.130 Customer to accept service conditions.**

All applicants for service connections or water service shall be required to accept such conditions of pressure and service as are provided by the distributing system at the location of the proposed service connection, and to hold the CMWD or City of Carlsbad harmless from all damage arising from low pressure or high pressure conditions or interruptions of service. (Ord. 47 § V.14, 2019; Ord. 45 § V.14, 2009)

2.16.140

**2.16.140 Violations.**

It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any person violating any of the provisions or failing to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00 or by imprisonment in the County Jail for a period not exceeding 6 months, or by both. (Ord. 47 § V.15, 2019; Ord. 45 § V.15, 2009)

**2.16.150 Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof, is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The Board declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase, thereof, irrespective of the fact that any one or more sections, subsections, subdivision, paragraphs, sentences, clauses, or phrases be declared invalid. (Ord. 47 § V.16, 2019; Ord. 45 § V.16, 2009)

## Chapter 2.20

### EXTENSION OF PIPELINES AND OTHER FACILITIES

#### Sections:

- 2.20.010 Excess capacity.**
- 2.20.020 Application.**
- 2.20.030 Size of water pipeline extension.**
- 2.20.040 Determination of adequacy of size and necessity by Executive Manager—Contract between applicant and CMWD—Reimbursement of applicant for additional cost.**
- 2.20.050 Determination of materials to be used and of additional cost of pipelines.**
- 2.20.060 Payment of proportionate cost of water or recycled water pipeline prior to connection.**
- 2.20.070 Reimbursement agreement.**
- 2.20.080 Improvements constructed under the Improvement Act of 1911—CMWD’s participation.**
- 2.20.090 Payments—Time limit for recovery.**
- 2.20.100 Water or recycled pipeline extensions.**

#### **2.20.010 Excess capacity.**

Excess capacity for the purpose of this chapter, is defined to mean only that excess capacity resulting from the construction of pipelines or facilities larger than those required by the applicant for extension under existing CMWD standards now or hereafter adopted. (Ord. 47 § VI.1, 2019; Ord. 45 § VI.1, 2009)

#### **2.20.020 Application.**

- A. Generally. Any person may apply to the Executive Manager of the CMWD for the installation of water pipelines and fire hydrants and other appurtenant facilities to be constructed either in public streets, alleys or private property; however, nothing herein contained shall be construed to modify any provision of the subdivision section hereinafter set forth, which requires the subdivider to make certain improvements within a subdivision and bear the cost thereof.
- B. Contents. Prior to the applicant extending a water or recycled water pipeline or constructing a water or recycled water pipeline of excess capacity shall enter into a reimbursement agreement with CMWD, setting forth, among other things, a statement describing that which the applicant wishes to construct or have constructed, a map showing accurately the proposed route and size of such facility, the estimated cost of construction of such facility, payment schedule, auditing procedures, complete specifications as to the type of pipe and other appurtenances which the applicant desires to construct or have constructed, and applicant shall provide any and all additional information requested by the Executive Manager of the CMWD. In no event shall any water or recycled water facility be constructed unless the standard plans and specifications of the CMWD are observed and complied with. (Ord. 47 §§ VI.2, 3, 2019; Ord. 45 §§ VI.2, 3, 2009)

**2.20.030 Size of water pipeline extension.**

- A. All water pipeline extensions will be installed in sizes best suited to the requirements and full development of the CMWD water system as determined by the Public Works Director. In no event will a water pipeline or recycled water pipeline extension be less than 6 inches in diameter.
- B. No property shall be connected to a CMWD water or recycled water pipeline which is of inadequate size to meet the requirements and full development of the CMWD water system as determined by the Public Works Director. (Ord. 47 § VI.4, 2019; Ord. 45 § VI.4, 2009)

**2.20.040 Determination of adequacy of size and necessity by Executive Manager—Contract between applicant and CMWD—Reimbursement of applicant for additional cost.**

The Public Works Director for the CMWD shall determine if the size of such proposed water pipeline is adequate to serve the intended use of applicant; further, the Public Works Director shall determine if there is other property within the CMWD not being served with water or recycled water which could be served by the proposed water or recycled water pipeline, and if it appears to the Public Works Director that it is necessary that the proposed water or recycled water pipeline and appurtenant facilities should be constructed to a greater capacity than the immediate needs of the applicant so that other property in the CMWD may be supplied with water or recycled water through such pipeline, then the Executive Manager shall recommend to the Board that a reimbursement agreement be entered into between applicant and the CMWD providing for the construction of such water or recycled water pipeline with excess capacity and establishing a reimbursement procedure and schedule for the additional costs incurred by building such water or recycled water pipeline with such excess capacity. (Ord. 47 § VI.5, 2019; Ord. 45 § VI.5, 2009)

**2.20.050 Determination of materials to be used and of additional cost of pipelines.**

The quality of the materials of the water pipeline, hydrants, and other facilities in connection therewith shall be determined by the Public Works Director, who shall give due regard to the potential water service development in the territory that can reasonably be served by the extended water pipeline. The Executive Manager shall determine the amount of money necessary to cover the cost of construction of such water pipeline and shall determine the excess cost as herein below provided, if any, over and above the cost of a standard size water pipeline facility sufficient to serve applicant's immediate need and use. (Ord. 47 § VI.6, 2019; Ord. 45 § VI.6, 2009)

**2.20.060 Payment of proportionate cost of water or recycled water pipeline prior to connection.**

Whenever any person applies for a connection to a water or recycled water pipeline which has been installed in any manner other than by public improvement proceedings for which an assessment has been levied, and neither the person nor his predecessor in interest has paid the proportionate share of the cost of the water or recycled water pipeline, with respect to the property served, no application shall be acted upon, allowed, or approved by the CMWD, or any of its administrative employees until such person has paid to the CMWD his proportionate share of the

cost of the water or recycled water pipeline according to the terms, schedules, and conditions hereinafter set forth. (Ord. 47 § VI.7, 2019; Ord. 45 § VI.7, 2009)

**2.20.070 Reimbursement agreement.**

- A. Method of Determining Excess Cost for Reimbursement Agreement. In determining excess cost for a reimbursement agreement, the actual cost of construction, including necessary easement acquisitions, engineering and directly related incidental costs, shall be included plus any overhead for managing the construction contract. The Executive Manager shall make the final decision, subject to Board approval of the reimbursement agreement, in determining the pro rata cost share of the excess capacity. In all cases the minimum pipeline size for any property shall be at least 8 inches in diameter, and excess capacity shall be considered the difference in cost between the minimum pipe size or facility cost required for the property and the recommended size to meet CMWD system requirements. Any right to reimbursement hereunder, or pursuant to contract, shall expire in accordance with the time specified in the reimbursement agreement or 10 years after the pipeline or facility has been accepted by the CMWD; provided, however, payment shall only be made to the applicant, or designee, at such address as shall have been filed with the CMWD, by the applicant for such purpose. No interest shall accrue to applicant pursuant to this section, or under any contract entered into pursuant thereto. In no event shall the CMWD be liable or in any way responsible for failure to collect such connecting fees, or for failure to pay any money to applicant.
- B. Easements to be Provided—Title Insurance Policy—Construction Costs to be Deposited. If a reimbursement agreement is entered into between applicant and the CMWD, applicant shall provide easements in the event the water or recycled water pipeline or facilities lie outside public property, and shall provide a Title Insurance Policy showing that granter has the valid title to grant such an easement. Such easement shall be subject to the approval of the General Council for the CMWD for legal adequacy and shall be subject to the approval of the Public Works Director and Executive Manager in all other respects. If applicant desires that such water or recycled water pipeline be extended or such water or recycled water pipeline and facilities be constructed by the CMWD and the Executive Manager recommends that the CMWD construct such facilities, which recommendation is approved by the Board, then, in that event, applicant shall deposit with the CMWD such sum of money as the Executive Manager shall determine to be necessary in order to construct the improvements specified in the reimbursement agreement.
- C. Source of Reimbursement. The CMWD shall reimburse the applicant only from either the water connection fee fund or the water replacement fund, subject to availability of funds, and the CMWD's responsibility shall be no greater than as set forth in this title.
- D. Agreement between CMWD and Contributor for Repayment of Off-Site Improvement. The Executive Manager is empowered to prepare a reimbursement agreement to be entered into by the person who constructs off-site water or recycled water pipeline extensions and the CMWD. Such agreement shall provide that the CMWD will refund to the persons who paid for the cost of the water or recycled water pipeline extension all pipeline fees. The agreement shall be limited to a 15-year period from and after the date of signing. The CMWD shall not be liable to the subdivider for such moneys in the event that the collection of the charge is pre-



vented by judgment or order of court, or in the event that such moneys are not collected due to inadvertence or neglect of the officers or employees of the CMWD or City of Carlsbad. (Ord. 47 §§ VI.8—10, 13, 2019; Ord. 45 §§ VI.8—10, 13, 2009)

**2.20.080 Improvements constructed under the Improvement Act of 1911—CMWD’s participation.**

If any of the improvements, which would otherwise qualify as above set forth, are constructed through a 1911 Act of Improvement District as defined in the Improvement Act of 1911, Division 7 of the Streets and Highways Code, the CMWD will agree to pay to the owner or owners of the property assessed within the CMWD, said payments running with the land at all times mentioned herein, the sums it would otherwise pay to an individual applicant under the terms of this chapter. (Ord. 47 § VI.11, 2019; Ord. 45 § VI.11, 2009)

**2.20.090 Payments—Time limit for recovery.**

Any funds mailed to applicant or designee which are returned, or where the check, voucher, or other payment remains uncashed for one year after such mailing, shall revert to the CMWD’s water connection fee fund or water replacement fee fund as appropriate, and shall not be recoverable by applicant. (Ord. 47 § VI.12, 2019; Ord. 45 § VI.12, 2009)

**2.20.100 Water or recycled pipeline extensions.**

**A. Within Subdivisions.**

1. Subdividers shall be required to install water or recycled water pipeline extensions to all property within the subdivision. When such water or recycled water pipeline extensions are constructed by the subdivider, then no refund agreement shall be available to the subdivider for any portion of the water or recycled water pipeline constructed within the limits of the subdivision or in streets that are immediately adjacent to the external limits of such subdivision with the following exception:

When a subdivider is required to install a water or recycled water pipeline extension in excess of their requirements for continuity and full development of the CMWD water system, as determined by the Public Works Director, then the CMWD will contribute for the additional costs required to construct the water or recycled water pipeline in excess of 8 inches in diameter.

2. Subdividers shall be required to extend to the external limits of the subdivision all water and recycled water pipelines placed in and about the subdivision by the subdivider. The subdividers may enter into a reimbursement agreement with the CMWD as outlined heretofore for such other off-site portions of the water or recycled water pipeline extensions they must install for the subdivision.

- B. For Length of Property Frontage.** A subdivider, contractor, or individual developer shall be required to install a water or recycled water pipeline extension to the external limits of his or her property line along the entire front of his or her property abutting upon the water or recycled water pipeline extension; except, when such person is the owner of a large undeveloped frontage, then in that event, the owner shall be required to install the water or recycled water

pipeline extension for a minimum frontage of 75 feet; provided, that all of the following conditions prevail:

1. That the portion of the property being connected to the water or recycled water pipeline shall totally contain the residence of the owner, together with sufficient side yard setbacks as required by applicable zoning law;
2. That sufficient area remains in the unconnected portion of the property in which to construct one or more living units in accordance with the applicable zoning laws. (Ord. 47 §§ VI.14, 15, 2019; Ord. 45 §§ VI.14, 15, 2009)

## Chapter 2.24

### ENGINEERING SERVICES FEES

#### Sections:

- 2.24.010**    **Established by resolution.**
- 2.24.020**    **Adjustment of fees by resolution.**
- 2.24.030**    **When paid.**

#### **2.24.010**    **Established by resolution.**

The engineering service fees shall be established by resolution of the Board of Directors of the CMWD and are for the purpose of defraying the cost of processing review, approval, and inspection of potable water and recycled water facilities, including pipeline and service line installation, replacement and relocation, easements and quitclaims in connection with the development review process of the City of Carlsbad:

- A. Policy. The City of Carlsbad's Engineering Department shall provide plan checking services for potable and recycled water facilities to be constructed and added to the systems of the CMWD at a charge of estimated cost of providing such services.
- B. Fees. The fees to review improvement plans related to CMWD facilities shall be charged based upon the estimated construction costs of the potable water and recycled water improvements, and all appurtenances only plus 15% contingency based on current City of San Diego Bond Unit Prices, as determined by the Public Works Director or designee upon review of the plans submitted in connection with any type of development within the CMWD. The fees shall be fixed and established by resolution of the Board of Directors of the CMWD.
- C. Private On-Site Irrigation System. The private on-site irrigation system for a proposed development shall be plan checked by the City's Planning Department and Engineering Department. A plan check fee shall be paid to cover the City's cost to review and approve the plans of the private on-site irrigation system. The County of San Diego Environmental Health Department also will review all private on-site irrigation plans where recycled water is proposed to be used for irrigation. A separate plan check fee shall be submitted to the County of San Diego, together with the landscape construction drawings and City's application form. (Ord. 47 § VII.1, 2019; Ord. 45 § VII.1, 2009)

#### **2.24.020**    **Adjustment of fees by resolution.**

The City of Carlsbad's Finance Department, on behalf of CMWD, shall periodically review the fees charged for engineering services to ensure that the fixed fees do not exceed the estimated costs of providing the services, and are fair and appropriate. Adjustments to the fixed fees may be made at any time by resolution, but shall be adjusted annually by a ratio using the Engineering News Record construction cost index for Los Angeles. (Ord. 47 § VII.2, 2019; Ord. 45 § VII.2, 2009)

#### **2.24.030**    **When paid.**

- A. All fees to review improvement plans, easements or quitclaims are paid upon initial submittal to the City of Carlsbad. For improvement plans, the applicant is responsible to pay an initial

plan check fee that is based on the cost estimate submitted (valuation) with the initial submittal. By the end of the plan check process of improvement plans, this valuation may increase or decrease from the initial valuation, thereby changing the plan check fee that would be due. Near the end of the plan check process and prior to the plan approval, the applicant is responsible to pay the balance of plan check fees or receive a refund for excess fee paid, depending on the valuation change.

- B. Prior to issuance of a right-of-way permit to construct the improvements, the applicant shall pay inspection fees that cover the inspection of CMWD improvements. (Ord. 47 § VII.3, 2019; Ord. 45 § VII.3, 2009)

**Chapter 2.28****FIRE HYDRANTS****Sections:**

- 2.28.010 Use of fire hydrants—Generally.**
- 2.28.020 Regulation of water supply from a fire hydrant.**
- 2.28.030 Replacing cap after use.**
- 2.28.040 Use of fire pipeline for other than fire purposes.**
- 2.28.050 Private fire lines, etc.—Service connections.**

**2.28.010 Use of fire hydrants—Generally.**

Fire hydrants are provided for the sole purpose of providing connections for the extinguishing of fires, and shall be opened and used only by the CMWD and City of Carlsbad Fire Department or such persons as shall be authorized to do so by the Executive Manager of the CMWD. (Ord. 47 § VIII.1, 2019; Ord. 45 § VIII.1, 2009)

**2.28.020 Regulation of water supply from a fire hydrant.**

Persons wishing to take a supply of water from a fire hydrant must make application to the City's Engineering Department for such service by applying for a water meter permit to obtain a construction meter. The CMWD will make the necessary connections and install a meter of required size upon payment of a deposit fee and a rental fee in effect at the time of issuance of water meter permit. (Ord. 47 § VIII.2, 2019; Ord. 45 § VIII.2, 2009)

**2.28.030 Replacing cap after use.**

Every person authorized to open a fire hydrant shall replace the cap on the outlet when the same is not in use, and leave the hydrant in as good condition as when found, and such officer or person shall report to the CMWD or the Fire Chief of the City of Carlsbad any leaks or breaks or damage to the fire hydrant immediately upon discovery. (Ord. 47 § VIII.3, 2019; Ord. 45 § VIII.3, 2009)

**2.28.040 Use of fire pipeline for other than fire purposes.**

No fire pipeline shall be used for any purpose other than for the extinguishment of fire, unless the same is equipped with a construction meter, in which event there shall be a charge for the water used, together with the cost of the construction meter. (Ord. 47 § VIII.4, 2019; Ord. 45 § VIII.4, 2009)

**2.28.050 Private fire lines, etc.—Service connections.**

Where a privately-owned fire line is used for fire purposes only, and is connected to an automatic fire extinguishing system or other standard fire hydrant, the owner shall pay for all service connections from the CMWD water pipeline to the above ground double check valve assembly or approved check valve and backflow preventer assembly. (Ord. 47 § VIII.5, 2019; Ord. 45 § VIII.5, 2009)

## Chapter 2.32

### CROSS-CONNECTION CONTROL PROGRAM

#### Sections:

- 2.32.010 Purpose of provisions.**
- 2.32.020 Adopted by reference.**
- 2.32.030 Backflow prevention assembly removal.**
- 2.32.040 Site supervisor.**
- 2.32.050 Water system survey.**
- 2.32.060 Customer notification.**
- 2.32.070 Retrofitting fire protection systems with backflow prevention assemblies.**
- 2.32.080 Water service termination.**
- 2.32.090 Requirements for backflow prevention assembly testers.**
- 2.32.100 Recycled water use.**
- 2.32.110 Fees.**
- 2.32.120 Violations.**
- 2.32.130 Severability.**

#### **2.32.010 Purpose of provisions.**

The purpose of this chapter is to:

- A. Protect the public water supply against actual or potential contamination through cross connections by containing within the customer's system, sources of contamination that may occur within a customer's premises because of some undiscovered or unauthorized cross-connection on the premises;
- B. To provide for the maintenance of a continuing program of cross-connection control which will systematically and effectively prevent the contamination or pollution of the District's potable and recycled systems. (Ord. 47 § IX.1, 2019; Ord. 45 § IX.1, 2009)

#### **2.32.020 Adopted by reference.**

- A. Article I of Group 4 of subchapter 1 of Chapter 5 of Title 17 of the California Administrative Code entitled "Drinking Water Supplies" (17 CAC Section 7583 et seq.) relating to the implementation of the cross-connection program and provisions for backflow protection, testing and maintenance of records of locations, tests and repairs of backflow prevention devices and its successor regulations within the code are adopted by reference and supplemented and implemented by this chapter.
- B. Backflow testing requirements and passing test criteria shall be determined in accordance with the most recent requirements and/or recommendations of the California Department of Public Health's approved laboratory.
- C. The California Regional Water Quality Control Board, San Diego Region, issues Orders that regulate recycled water use site conditions and inspection requirements within CMWD. All requirements of the current Order shall be deemed part of this chapter. (Ord. 47 § IX.2, 2019; Ord. 45 § IX.2, 2009)

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**2.32.030 Backflow prevention assembly removal.**

Approval must be obtained from the CMWD before a backflow prevention assembly is removed or relocated.

- A. The use of an assembly may be discontinued and the assembly removed from service upon presentation of sufficient evidence to the CMWD to verify that a hazard no longer exists or is not likely to be created in the future. The CMWD shall make the determination of whether a hazard exists.
- B. An assembly may be relocated following confirmation by the CMWD that the relocation will continue to provide the required protection and satisfy installation requirements. A retest, performed at the customer's cost, will be required following the relocation of the assembly.
- C. An assembly may be removed for repair, provided the water use is either discontinued until the repair is completed and the assembly is returned to service, or the service connection is equipped with other backflow protection approved by the CMWD. A retest, at the customer's cost, will be required following the repair of the assembly.
- D. An assembly may be removed and replaced provided the water use is discontinued until the replacement assembly is installed and retested at the customer's cost. All replacement assemblies must be approved by the CMWD. (Ord. 47 § IX.3, 2019; Ord. 45 § IX.3, 2009)

**2.32.040 Site supervisor.**

- A. At each premise where recycled water is used or where it is necessary in the opinion of the CMWD, a site supervisor shall be designated by and at the expense of the customer. This site supervisor shall be responsible for complying with applicable rules and regulations relating to recycled water use, monitoring of backflow prevention assemblies and for avoidance of cross connections.
- B. The site supervisor shall attend CMWD approved training in the use of recycled water. The site supervisor shall be responsible for monthly tailgate trainings as well as training of new employees prior to their assignment to a recycled water use site. Documentation of these trainings will be required to be available during the annual walk through inspection.
- C. In the event of the potential for contamination or pollution of the either the public or the customer's potable water system due to a cross-connection on the premises, the CMWD shall be immediately notified by the site supervisor so that appropriate measures may be taken to overcome the contamination.
- D. The customer shall inform the CMWD of the site supervisor's identity (name, address, and telephone number) on an annual basis and whenever a change occurs.
- E. Failure to comply with site supervisor requirements may result in discontinuance of water service. (Ord. 47 § IX.4, 2019; Ord. 45 § IX.4, 2009)

**2.32.050 Water system survey.**

- A. Backflow prevention assemblies will be required per the current edition of the City of Carlsbad Engineering Standards. These backflow assemblies shall be tested by a tester who meets the

requirements for a backflow assembly tester per this chapter upon installation at the customer's cost. The test must meet passing criteria as stated in Section 2.32.020.

- B. The CMWD may require an on-premises inspection to evaluate cross-connection hazards. The Public Works Director will transmit a written notice requesting an inspection appointment to each affected customer. Any customer who cannot or will not allow an on-premises inspection of their piping system shall be required to install the backflow prevention assembly the CMWD considers necessary.
- C. The Public Works Director may, at his or her discretion, require a re-inspection for cross connection hazards of any premise to which it serves water. The CMWD will transmit a written notice requesting an inspection appointment to each affected customer. Any customer who cannot or will not allow an on-premises inspection of their piping system shall be required to install the backflow prevention assembly the Public Works Director considers necessary. In addition, the CMWD may use any lawful procedure to enter and inspect any premises. (Ord. 47 § IX.5, 2019; Ord. 45 § IX.5, 2009)

### **2.32.060 Customer notification.**

#### **A. Assembly Installation.**

1. The Public Works Director will notify the customer of the survey findings, listing the corrective actions to be taken if any are required. A period of 30 days will be given to complete all corrective actions required including the installation of backflow assemblies and passing test results submitted to the CMWD. Backflow assembly installation standards will be in accordance with the current edition of the City of Carlsbad Engineering Standards.
2. A second notice will be sent to each customer who does not take the required corrective actions prescribed in the first notice within the 30 calendar days allowed. The second notice will give the customer a 2-week period to take the required corrective action.
3. A third and final notice shall be sent to each customer who does not take the required corrective action as prescribed in the first 2 notices. The final notice will give the customer 10 days to take the required action. If the customer fails to complete the corrective action within the 10-day period, the CMWD shall terminate water service to the affected customer until the required corrective actions are taken and the customer has paid all applicable fees associated with water service termination.

#### **B. Testing and Maintenance.**

1. The Public Works Director will notify each affected customer in writing 30 days prior to the due date that the backflow prevention assembly installed on their service connection must be tested, repaired if necessary and then retested. This written notice provides the customer with the necessary form to be completed and resubmitted to the CMWD. The customer shall have a certified tester perform the test and document the results of the testing on the prescribed form. The customer is responsible to ensure that the completed form is returned to the CMWD in the prescribed time frame. Tests that do not meet passing criteria will not be accepted.



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2. A second notice shall be sent to each customer who does not have the backflow prevention assembly tested as prescribed in the first notice within the 30-calendar-day period allowed. The second notice will give the customer a 2-week period to have the backflow prevention assembly tested with passing test criteria.
3. A third and final notice shall be sent to each customer who does not have the backflow prevention assembly tested as prescribed in the first 2 notices. The final notice will give the customer 10 days to have the backflow prevention assembly tested with passing criteria. If no action is taken within the 10-day period, the CMWD shall terminate water service to the affected customer. Water service shall not be reactivated until the customer has paid all applicable fees associated with water service termination and until the CMWD has been notified by an approved tester that they have been contracted to perform the backflow assembly test. The CMWD will make an appointment with the tester to restore water service so that the test may be performed. Any needed repairs and a passing re-test must be performed within 5 business days or water service will be discontinued, with all applicable fees being reapplied. (Ord. 47 §§ IX.6, 8, 2019; Ord. 45 §§ IX.6, 8, 2009)

### **2.32.070 Retrofitting fire protection systems with backflow prevention assemblies.**

- A. Upon any modification to existing fire protection systems that are not currently protected by either a reduced pressure principle detector assembly (RPDA) or a double check detector assembly (DCDA), the CMWD will require the fire service supply line be retrofitted with either a DCDA or an RPDA when any of the following occurs:
  1. Any change in the fire protection water supply that would require an upgraded increase in the fire service supply line;
  2. Any renovation work to a structure or structures, involving changes and/or additions to the fire sprinkler system, which require an increase in the minimum approved fire flow requirements from the underground fire service supply line;
  3. When a leak is detected in the underground backflow swing-check valve, requiring replacement;
  4. Any failure in the post indicator valve system, which would require more work than the standard maintenance procedures;
  5. Anytime a fire service supply line for an existing fire protection system fails, including maintenance, testing, and seismic failures, and the fire protection system shall be retrofitted with approved backflow prevention assemblies.
- B. In all cases of a retrofit, the fire protection system shall be hydraulically calculated to meet the minimum fire flow demand of the fire sprinkler system. This determination shall be based on compliance with the National Fire Protections Association's standard for minimum design and water flow requirements for sprinkler systems.
- C. The CMWD shall determine the degree of hazard to determine whether the fire service is retrofitted with a DCDA or an RPDA.
- D. Detector assemblies will be installed per the current edition of the City of Carlsbad Engineering Standards. (Ord. 47 § IX.7, 2019; Ord. 45 § IX.7, 2009)

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**2.32.080 Water service termination.**

- A. When the CMWD encounters water uses that represent a clear and immediate hazard to the potable water supply that cannot be immediately abated, the District shall institute the procedure for discontinuing the CMWD water service.
- B. Conditions or water uses that create a basis for water service termination shall include, but are not limited to the following items:
  - 1. Refusal to install a required backflow prevention assembly;
  - 2. Refusal to test a backflow prevention assembly;
  - 3. Refusal to repair a faulty backflow prevention assembly;
  - 4. Refusal to replace a faulty backflow prevention assembly;
  - 5. Direct or indirect connection between the public water system and a sewer line;
  - 6. Unprotected direct or indirect connection between the public water system and a system or equipment containing contaminants;
  - 7. Unprotected direct or indirect connection between the public water system and an auxiliary water system;
  - 8. A situation which presents an immediate health hazard to the public water system.
- C. For conditions 1, 2, 3 or 4, the CMWD will terminate service to a customer's premise after 3 written notices have been sent specifying the corrective action needed and the time period in which it must be done. If no action is taken within the allowed time period water service shall be terminated. The water service will remain inactive until correction of violations has been approved by the CMWD and payment received for all applicable fees associated with water service termination.
- D. For conditions 5, 6, 7 or 8, the CMWD will take the following steps:
  - 1. Make reasonable effort to advise customer of intent to terminate water service;
  - 2. Terminate water supply and lock service valve. The water service will remain inactive until correction of violations has been approved by the CMWD and payment received for all applicable fees associated with water service termination. (Ord. 47 § IX.9, 2019; Ord. 45 § IX.9, 2009)

**2.32.090 Requirements for backflow prevention assembly testers.**

- A. Competency in all phases of backflow prevention assembly testing and repair must be demonstrated by means of education and/or experience in order to obtain certification.
- B. The following are minimum requirements:
  - 1. Applicants shall hold and submit a copy to the CMWD of a valid backflow prevention assembly tester certificate from the American Water Works Association (AWWA) California-Nevada Section, American Backflow Prevention Association (ABPA), or have equivalent certification in the opinion of the CMWD and the California Department of Public Health.

## 2.32.100

2. All backflow testers shall submit to the CMWD current gauge calibration certificates for test kits to be used within the CMWD service area. Gauges must undergo an annual calibration check. The tester shall be responsible for the competency and accuracy of all tests and reports prepared by him or her.
- C. A tester may have his or her testing privileges revoked or suspended by the CMWD for improper testing, repairs and/or reporting. (Ord. 47 § IX.10, 2019; Ord. 45 § IX.10, 2009)

### **2.32.100 Recycled water use.**

- A. Recycled water use sites inspections will be performed per the requirements of the State of California Department of Public Health, County of San Diego Department of Environmental Health, California Regional Water Quality Control Board, San Diego Region, or other regulatory agency or as determined by the CMWD.
- B. The recycled water user shall provide the CMWD with an accurate set of controller charts. The chart is to be a reduced drawing of the as-built system. The chart shall use a different color to show the area of coverage for each station. (Ord. 47 § IX.11, 2019; Ord. 45 § IX.11, 2009)

### **2.32.110 Fees.**

Fees to implement, maintain, administer, and enforce this chapter shall be established by resolution of the CMWD Board.(Ord. 47 § IX.12, 2019; Ord. 45 § IX.12, 2009)

### **2.32.120 Violations.**

It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any person violating any of the provisions or failing to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00, or by imprisonment in the County Jail for a period not exceeding 6 months, or by both. (Ord. 47 § IX.13, 2019; Ord. 45 § IX.13, 2009)

### **2.32.130 Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof, is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The Board declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase, thereof, irrespective of the fact that any one or more sections, subsections, subdivision, paragraphs, sentences, clauses, or phrases be declared invalid. (Ord. 47 § IX.14, 2019; Ord. 45 § IX.14, 2009)

## Chapter 2.36

### PROCEDURES FOR WORK IN THE CMWD RIGHT-OF-WAY

#### Sections:

- 2.36.010** Title.
- 2.36.020** Definitions.
- 2.36.030** Public Works Director’s authority and responsibilities.
- 2.36.040** Permits—Required.
- 2.36.050** Application for right-of-way permit or encroachment permit.
- 2.36.060** Permits—Requirements of plans.
- 2.36.070** Commencement and completion of work.
- 2.36.080** Requirements for performance of work.
- 2.36.090** Acceptance of work.
- 2.36.100** Permit—Denial and revocation.
- 2.36.110** Appeal procedure.
- 2.36.120** Encroachment and right-of-way application and permit fees.
- 2.36.130** Performance deposits.
- 2.36.140** Placement of materials or obstruction of CMWD right-of-way.
- 2.36.150** Relocation of structures—Removal of encroachment.
- 2.36.160** Holding CMWD harmless—Insurance.
- 2.36.170** CMWD not liable for damage to encroachment or encroachment area.
- 2.36.180** Exemptions.

#### **2.36.010** Title.

This chapter may be cited as the “Right-of-Way Permit and Encroachment Agreement.” (Ord. 47 § X.1, 2019; Ord. 45 § X.1, 2009)

#### **2.36.020** Definitions.

The following words shall have the following meanings and set out in this chapter:

“Encroachment” means and includes any tower, pole, pole line, pipeline, fence, billboard, stand or building, or any structure, or pavement of any kind or character whether or not it is particularly mentioned in this subsection, which is placed in under or over any portion of a CMWD right-of-way.

“Plans” means the document developed and approved by the Public Works Director describing the nature and extent of works proposed to be constructed or carried out on a CMWD right-of-way.

“Right-of-way” means any CMWD real property easement, CMWD interest in real property or public utility easement used by the CMWD.

“Specification” means the Standard Specifications used for public works construction (current edition including supplements) written and promulgated by the Southern California Chapter of American Public Works Association and Southern California District Associated General Contractors or California Joint Cooperative Committee and published by Building News Incorporated or other such specifications noted on approved plans including CMWD standard drawings and specifications.

2.36.030

“Standard drawings” means the standard drawings of the Carlsbad Municipal Water District, adopted and revised by the Public Works Director and most recently adopted San Diego Regional Standard Drawings. (Ord. 47 § X.2, 2019; Ord. 45 § X.2, 2009)

**2.36.030 Public Works Director’s authority and responsibilities.**

This chapter shall be administered by the City of Carlsbad’s Public Works Director who shall have the responsibility and authority to:

- A. Establish the form and procedures for application for encroachment permits required pursuant to this title including the certification of completed applications, the approval of plans, the establishment of files, collection of fees and security deposits;
- B. Interpret provisions of this title and advise the public regarding requirements for plans, specifications, and special provisions for facilities or encroachments subject to the provisions of this title;
- C. Establish the format and content of plans and standards governing work on facilities or encroachments pursuant to the provision of this chapter;
- D. Issue permits upon such conditions as determined are reasonable and necessary to protect the public health, safety, and welfare;
- E. Amend any permit issued when determined that such amendment is necessary to provide for the safe and efficient movement of traffic, or protect CMWD facilities, persons, or property. (Ord. 47 § X.3, 2019; Ord. 45 § X.3, 2009)

**2.36.040 Permits—Required.**

No person shall do any of the following acts without first obtaining a valid right-of-way permit and encroachment agreement:

- A. Make or cause to be made excavation or opening, fill or obstruction in, over, along, across, or through any CMWD right-of-way for any purpose whatsoever;
- B. Construct or repair or cause to be constructed or repaired any curb, sidewalk, gutter, curb with integral gutter, drive approach, driveway, alley approach, spandrel and cross gutter, wheelchair ramp, structure, planter, wire, pipe, or vault over, along, across, overhanging, or through any CMWD right-of-way;
- C. Plant any tree, plant, shrub, or flower within any CMWD right-of-way;
- D. Construct or modify or cause to be constructed or modified, any storm drain or conveyor of drainage of waters and appurtenance items within a CMWD right-of-way, except for drainage by controlled surface flow;
- E. Modify, alter or deface any block wall on or adjacent to a CMWD right-of-way;
- F. Enter into or exit from any CMWD right-of-way at any location not approved and constructed as a driveway. (Ord. 47 § X.4, 2019; Ord. 45 § X.4, 2009)

**2.36.050 Application for right-of-way permit or encroachment permit.**

- A. Any person proposing to do any of the acts described in Section 2.36.040 of this chapter shall make an application for a: (1) right-of-way permit, and if required; (2) encroachment agreement to the Public Works Director.
- B. The following information shall be included in the application:
1. The location, nature, and extent of work to be performed;
  2. The proposed date when such work shall be commenced;
  3. The proposed date when the work shall be completed;
  4. Such other information as may be required by the Public Works Director.
- C. The Public Works Director may require the application to contain an encroachment agreement if deemed necessary due to the size duration, and/or nature of the encroachment. The encroachment agreement shall:
1. Require the encroachment to be placed and maintained in a safe and sanitary condition;
  2. Require removal of the encroachment by the permittee upon reasonable demand by the Public Works Director;
  3. Allow the CMWD to remove the encroachment and place a lien on the property if the permittee does not remove the encroachment in a reasonable time period;
  4. Allow for the removal of the encroachment by the CMWD during the performance of any emergency repairs without liability to the CMWD for damages;
  5. Require adequate security of performance of such promise;
  6. Require indemnification of the CMWD in accordance with Section 2.36.160;
  7. Be in a form acceptable to the General Counsel. (Ord. 47 § X.5, 2019; Ord. 45 § X.5, 2009)

**2.36.060 Permits—Requirements of plans.**

If, in the opinion of the Public Works Director, the work proposed to be done requires the making of plans or setting of stakes, or both, the Public Works Director may require the application to be accompanied by the necessary plans, which plans shall be prepared by a competent engineer licensed by the California Department of Consumer Affairs. The plans shall be reviewed by the Public Works Director or designee and shall pay the necessary fees in accordance with Chapter 2.24. The applicant shall bear all costs to prepare and process said plans. (Ord. 47 § X.6, 2019; Ord. 45 § X.6, 2009)

**2.36.070 Commencement and completion of work.**

Every permittee shall commence work as stipulated in the permit application and diligently pursue the work to completion without interruption within the time period specified in the permit. A permit issued under this title may be limited to a period of time as specified in the permit. (Ord. 47 § X.7, 2019; Ord. 45 § X.7, 2009)

**2.36.080 Requirements for performance of work.**

- A. The permittee shall perform the work in a timely manner, in accordance with applicable plans, specifications and CMWD standards to the satisfaction of the Public Works Director.
- B. No person shall cause any improvement or appurtenant work to be performed on any CMWD right-of-way by any person other than a licensed contractor or a public utility.
- C. All work shall be inspected by the representative as follows:
  - 1. No person shall prevent or obstruct the CMWD representative in making any inspection authorized by this title or in taking any sample or in making any test.
  - 2. Inspection requests must be made with 24-hour notice to the CMWD.
  - 3. All work not in conformance with approved plans and specifications is subject to rejection by the CMWD.
  - 4. Request for final inspection shall be made in writing.
- D. As the work progresses, the CMWD right-of-way shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All construction and maintenance work shall be done in a manner designed to leave the area clean of earth and debris and in a condition as nearly as possible to that which existing before such work began. All cleanup operations at the location of such work shall be accomplished at the expense of the permittee. Upon failure of the permittee to clean the area, the CMWD may proceed with cleanup and removal of the material or obstruction in accordance with procedures identified in Section 2.36.140 of this chapter. (Ord. 47 § X.8, 2019; Ord. 45 § X.8, 2009)

**2.36.090 Acceptance of work.**

If the Public Works Director, by survey or by inspection or by both, determines that the work has been completed according to the requirements of this title and the permit, he or she shall issue a certificate of acceptance, which shall contain a statement of the location, nature, and extent of the work performed under the permit. (Ord. 47 § X.9, 2019; Ord. 45 § X.9, 2009)

**2.36.100 Permit—Denial and revocation.**

- A. The CMWD may deny the issuance of a right-of-way permit to any person who refuses or fails to comply with the provision of this chapter, who is indebted to the CMWD for past permit violations, or who in the judgment of the Public Works Director has repeatedly violated permit procedures or failed to comply with conditions requiring protection of the public health and safety.
- B. The Public Works Director may deny the issuance of a right-of-way permit to any person who refuses to execute an encroachment agreement as required by Section 2.36.050.
- C. Any permittee found in violation of the conditions of permit or the provisions of this title shall be given a written notice to comply, stipulating the violation. Upon receipt of the notice to comply, the permittee shall take action to correct the condition of violation within the period stipulated in the notice. If, within the period, appropriate measures have not been implemented, the CMWD may revoke the permit and take any measures required to secure the

work site or return the work site to its original condition. The cost of such work may be collected from the permittee.

- D. A revoked permit may be reinstated if the permittee demonstrates to the satisfaction of the Public Works Director that work will be continued in conformance with the permit and the provisions of this chapter.
- E. The Public Works Director shall require, as a condition of the permit, reinstatement of payment of all charges incurred by the CMWD as a result of permit revocation including a \$500.00 penalty for violation of the provisions of this chapter. (Ord. 47 § X.10, 2019; Ord. 45 § X.10, 2009)

### **2.36.110 Appeal procedure.**

- A. Any person aggrieved by any decision of the Public Works Director with respect to the issuance, revocation, or refusal to issue a right-of-way permit may appeal to the Board of Directors by filing a notice of appeal with the Secretary of the Board within 10 calendar days after the date of the decision of the Public Works Director. Appeals shall be in writing and shall state the basis for the appeal. Fees for filing an appeal shall be in amount established by resolution of the Board of Directors. The decision of the Board of Directors shall be final.
- B. The Secretary shall thereupon fix a time and place for hearing such appeal. The secretary shall give notice to the appellant and applicant/permittee of the time and place of hearing by serving the notice personally or by depositing it in the United States Post Office postage prepaid, addressed to such persons at their last known address unless otherwise requested in the notice of appeal.
- C. The Board of Directors shall have the authority to determine all questions raised on such appeal. (Ord. 47 § X.11, 2019; Ord. 45 § X.11, 2009)

### **2.36.120 Encroachment and right-of-way application and permit fees.**

Encroachment application and right-of-way permit fees shall be charged by the CMWD for the processing of an encroachment application and the issuance of a right-of-way permit. The fees shall be established by resolution of the Board of Directors for the CMWD, for the purpose of defraying the cost of processing an application, issuing the requested permit, inspection of works completed under the permit, and other costs of administrating this title. The fees shall be paid at the time of application. (Ord. 47 § X.12, 2019; Ord. 45 § X.12, 2009)

### **2.36.130 Performance deposits.**

- A. As a condition of issuance of a right-of-way permit, the Public Works Director may require posting of a cash deposit or an equivalent security in a form acceptable to the General Counsel. The applicant shall post a security for 100% of the bond amount for performance and 50% of the bond amount for labor and materials, totaling 150% of bond amount. The cash deposit may be used at the discretion of the Public Works Director to provide for restoration of CMWD facilities or removal from the right-of-way of work, materials or equipment when permittee or the permittee's agent fails to act in a timely manner to provide for the public



health, safety, or welfare. The deposit shall otherwise be for the purpose of guaranteeing performance of work contemplated under the permit.

- B. The amount of the deposit shall be established by the Public Works Director.
- C. Upon completion and acceptance of work under permit, any funds unused shall be refunded to the applicant and any other bonds or security instruments shall be released.
- D. If, in the opinion of the Public Works Director, any deposit or security is not sufficient for the protection of the public interest in the public places, the Public Works Director may require an additional deposit or an increase in the security in such amount as he or she determines necessary. The permittee shall, upon demand, deposit the additional cash or security.
- E. Upon failure or refusal to pay, the Public Works Director may revoke the permit and/or recover the deficiency by appropriate action in any court of competent jurisdiction, until such deficiency is paid in full, no other permit shall be issued to such permittee. (Ord. 47 § X.13, 2019; Ord. 45 § X.13, 2009)

**2.36.140 Placement of materials or obstruction of CMWD right-of-way.**

- A. No person shall place or maintain any material or any obstruction or impediment to travel in or upon any CMWD right-of-way without a permit to do so.
- B. Persons violating provisions of this Section 2.36.080(D) or 2.36.150(A) shall be issued a notice of removal and given a specified time to remove such material, obstruction or impediment. Any failure to comply with the notice is unlawful and a public nuisance endangering the health, safety, and general welfare of the public. In addition to any other remedy provided by law for the abatement of such public nuisance, the Public Works Director may, after giving notice, cause the work necessary to accomplish the removal. The costs thereof may be assessed against the owner or owners of the project creating the obstruction.
- C. Notice of removal shall be in writing and mailed to all persons whose names appear on the last equalized assessment roll as owners of real property creating the obstruction at the address shown on the assessment roll. Notice shall also be sent to any person known to the Public Works Director to be responsible for the nuisance. The Public Works Director shall also cause at least one copy of such notice to be posted in a conspicuous place on the premises. No assessment shall be held invalid for failure to post or mail or correctly address any notice. The notice shall particularly specify the work required to be done and shall state that if the work is not commenced within 24 hours after receipt of such notice and diligently prosecuted (without interruption) to completion, the CMWD shall cause such work to be done, in which case the cost and expense of such work, including incidental expenses incurred by the CMWD, will be assessed against the property or against each separate lot and become a lien upon such property.
- D. If upon the expiration of the 24-hour period provided for in subsection C of this section, the work has not commenced or is not being performed with diligence, the Public Works Director shall proceed to do such work or cause such work to be done. However, the CMWD may proceed to remove the encroachment immediately and without notice to the owner if removal of the encroachment is necessary to make emergency repairs to CMWD facilities.

- E. Upon completion of such work, the Public Works Director shall file written report with the Board of Directors setting forth the fact that the work has been completed and the cost thereof, together with a legal description of the property against which cost is to be assessed. The Board of Directors shall thereupon fix a time and place for hearing protest against the assessment of the cost of such work. The Public Works Director or the Secretary of the Board, if so directed by the Board, shall thereafter give notice in writing to the owners of the project in the manner provided in subsection C of the hour and place that the Board of Directors will pass upon the Public Works Director's report and will hear protests against the assessments. Such notice shall also set forth the amount of the proposed assessment.
- F. Upon the date and hour set for the hearing of protests, the Board of Directors shall hear and consider the Public Works Director's report and all protests, if there are any, and then proceed to confirm, modify, or reject the assessments.
- G. A list of assessments as finally confirmed by the Board of Directors shall be sent to the City of Carlsbad Finance Department for collection. If any assessment is not paid within 10 days after its confirmation by the Board of Directors, the secretary shall cause to be filed in the office of the County Recorder a notice of lien, substantially in the following form:

**NOTICE OF LIEN**

Pursuant to Carlsbad Municipal Water District (Ordinance No. \_\_\_ ), the Carlsbad Municipal Water District did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, cause maintenance and report work to be done in the CMWD right-of-way for the purpose of abating a public nuisance caused by activities related to construction at the property described below. The Board of Directors of the Carlsbad Municipal Water District did on the \_\_\_\_\_ day of \_\_\_\_ 20\_\_, by its Resolution No. \_\_\_ assess the cost or portion of the cost thereof upon the real property hereinafter described, and the same has not been paid nor any part thereof, and the Carlsbad Municipal Water District does hereby claim a lien upon said real property until the same sum with interest thereon at the maximum rate allowed by law from the date of the recordation of this instrument has been paid in full and discharged of record. The real property herein before mentioned and upon which a lien is hereby claimed is that certain parcel of land in the City of Carlsbad, County of San Diego, State of California, particularly described as follows:

(Description of property)

\_\_\_\_\_

Dated this \_\_\_ day of \_\_\_, 20\_\_

\_\_\_\_\_

Secretary of the Board, Carlsbad Municipal Water District

- H. From and after the date of record at ion of such notice of lien, the amount of the unpaid assessment shall be a lien on the property against which the assessment is made, and such assessment shall bear interest at the maximum rate allowed by law until paid in full. The lien shall continue until the amount of the assessment and all interest thereon has been paid. The lien shall be subordinate to tax liens and all fixed special assessment items previously im-

posed upon the same property, but shall have priority over all contractual liens and all fixed special assessment liens, which may thereafter be created against the property. From and after the date of recordation of such notice of lien, all persons shall be deemed to have notice of the contents thereof. (Ord. 47 § X.14, 2019; Ord. 45 § X.14, 2009)

**2.36.150 Relocation of structures—Removal of encroachment.**

- A. The Public Works Director may require any permittee, who pursuant to a duly issued right-of-way permit under this title, has performed construction work or placed and maintained any encroachment, to remove or move the encroachment at the permittee's own cost and expense to such different location as is specified in a written demand of the Public Works Director, whenever such move is necessary to ensure the safety and convenience of the public or facilitate construction. The Public Works Director shall specify in the demand a reasonable time within which the work of relocation must be commenced, and the permittee must commence such relocation within the time specified in the demand and thereafter diligently prosecute the same to completion. If permittee fails to diligently remove the encroachment, the Public Works Director may proceed under Section 2.36.140.
- B. The CMWD shall have the right to relocate or remove any encroachment in response to an emergency condition requiring immediate repair, without the notification of the permittee or the owner of any encroachment into a CMWD right-of-way. (Ord. 47 § X.15, 2019; Ord. 45 § X.15, 2009)

**2.36.160 Holding CMWD harmless—Insurance.**

The applicant for a permit, as a condition to receiving a permit shall sign a statement that he agrees to indemnify and hold harmless the CMWD and each officer and employee thereof, from any liability or responsibility for death or injury to persons and loss or damage to property happening or occurring as a result of the design or performance of any work undertaken under any permit granted pursuant to the application. The applicant may be required to provide proof of liability insurance in an amount set by a resolution of the Board and may be requested to name the CMWD as an additional insured under the insurance policy. The insurance shall be provided by a company satisfactory to the Risk Manager. Any deductible or self-insured retention under the insurance policy shall be in amount acceptable to the Risk Manager. (Ord. 47 § X.16, 2019; Ord. 45 § X.16, 2009)

**2.36.170 CMWD not liable for damage to encroachment or encroachment area.**

The CMWD shall not be liable for any damages whatsoever to the encroachment facilities or encroachment area when the damages are related in any way to the District's continued use of the right-of-way, or are as a result of the CMWD's construction, use, repair, replacement or relocation of any CMWD facilities within the right-of-way. (Ord. 47 § X.17, 2019; Ord. 45 § X.17, 2009)

**2.36.180 Exemptions.**

The CMWD and its employees, acting in their official capacity, are exempt from the requirements set forth in this title. (Ord. 47 § X.18, 2019; Ord. 45 § X.18, 2009)

**Title 3**

**ENVIRONMENT**

**Chapters:**

- 3.04      Emergency Water Management Program**
- 3.08      Recycled Water**
- 3.12      Drought Response**

## Chapter 3.04

### EMERGENCY WATER MANAGEMENT PROGRAM

#### Sections:

- 3.04.010** Declaration of policy.
- 3.04.020** Findings.
- 3.04.030** CEQA exemption.
- 3.04.040** Application.
- 3.04.050** Authorization.
- 3.04.060** Water conservation stages.
- 3.04.070** Use of reclaimed water for greenbelt purposes.
- 3.04.080** Mandatory conservation phase implementation.
- 3.04.090** Penalty.

#### **3.04.010 Declaration of policy.**

California Water Code Section 375 et seq., permit public entities which supply water at retail to adopt and enforce a water conservation program to reduce the quantity of water used by the people therein for the purpose of conserving the water supplies of such public entity. The Board hereby establishes a comprehensive water conservation program pursuant to California Water Code Section 375 et seq., based upon the need to conserve water supplies and to avoid or minimize the effects of any future shortage. (Ord. 30 § 1, 1989)

#### **3.04.020 Findings.**

- A. The Board finds and determines that a water shortage could exist based upon the occurrence of one or more of the following conditions:
  - 1. A general water supply shortage due to increased demand or limited supplies.
  - 2. Distribution or storage facilities of San Diego County Water Authority or other agencies become inadequate.
  - 3. A major failure of the supply, storage and distribution facilities of the Metropolitan Water District of Southern California, the San Diego County Water Authority, or of the Carlsbad Municipal Water District occurs.
- B. The Board also finds and determines that the conditions prevailing in the San Diego County area require that the water resources available be put to maximum beneficial use to the extent to which they are capable, and that the waste or unreasonable use, or unreasonable method of use, of water be prevented and that the conservation of such water be encouraged with a view to the maximum reasonable and beneficial use thereof in the interests of the people of the Carlsbad Municipal Water District and for the public welfare. (Ord. 30 § 2, 1989)

#### **3.04.030 CEQA exemption.**

The Carlsbad Municipal Water District finds that this chapter and actions taken hereafter pursuant to this chapter are exempt from the California Environmental Quality Act as specific actions necessary to prevent or mitigate an emergency pursuant to Public Resources Code Section

### 3.04.040

21080(b)(4) and the California Environmental Quality Act Guidelines Section 15269(c). The Manager of the District is hereby authorized and directed to file a Notice of Exemption as soon as possible following adoption of the ordinance codified in this chapter. (Ord. 30 § 3, 1989)

#### **3.04.040 Application.**

The provisions of this chapter shall apply to all persons, customers, and property served by the Carlsbad Municipal Water District. (Ord. 30 § 4, 1989)

#### **3.04.050 Authorization.**

The Carlsbad Municipal Water District's General Manager, or a designated representative, is hereby authorized and directed to implement the provisions of this chapter. (Ord. 30 § 5, 1989)

#### **3.04.060 Water conservation stages.**

No customer of the Carlsbad Municipal Water District shall knowingly make, cause, use, or permit the use of water supplied by the District for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this chapter, in an amount in excess of the amounts authorized by this chapter, or during any period of time other than the periods of time specified in this chapter. At no time shall water be wasted or used unreasonably. The following stages shall take effect upon declaration as herein provided:

- A. Stage 1—Voluntary Compliance—Water Watch. Stage 1 applies during periods when the possibility exists that the Carlsbad Municipal Water District will not be able to meet all of the demands of its customers. During Stage 1, all elements of Stage 2 shall apply on a voluntary basis only.
- B. Stage 2—Mandatory Compliance—Water Alert. Stage 2 applies during periods when the probability exists that the Carlsbad Municipal water District will not be able to meet all of the water demands of its customers. During Stage 2, the following water conservation measures shall apply except when reclaimed water is used:
  - 1. Lawn watering and landscape irrigation, including construction meter irrigation, is permitted only between the hours of 3:00 p.m. and 9:00 a.m. the following morning, except when reclaimed water is used. Watering is permitted at any time if a hand-held hose equipped with a positive shut-off nozzle is used, a hand-held faucet-filled bucket of 5 gallons or less is used, or a drip irrigation system is used.
  - 2. Agricultural users and commercial nurseries as defined in the Metropolitan Water District Code are exempt from Stage 2 irrigation restrictions, but will be required to curtail all nonessential water use. The watering of livestock and irrigation of propagation beds are permitted at any time.
  - 3. Washing of autos, trucks, trailers, boats, airplanes, and other types of mobile equipment is prohibited except on designated irrigation days between the hours of 6:00 p.m. and 6:00 a.m. the following morning, except when reclaimed water is used. Such washing, when allowed, shall be done with a hand-held bucket, or a hand-held hose equipped with a positive shut-off nozzle for quick rinses. Washing is permitted at any time on the immediate premises of a commercial car wash. Further, such washings are exempted

from these regulations where the health, safety, and welfare of the public is contingent upon frequent vehicle cleaning such as garbage trucks and vehicles used to transport food and perishables.

4. Filling or refilling swimming pools, spas, ponds, and artificial lakes is permitted only on designated irrigation days between the hours of 6:00 p.m. and 6:00 a.m. the following morning, unless reclaimed water is available and its use permitted.
  5. Watering golf courses, parks, school grounds, and recreational fields is permitted only between the hours of 6:00 p.m. and 6:00 a.m. the following morning, except golf course greens, unless reclaimed water is available and its use permitted.
  6. The use of water from fire hydrants shall be limited to fire fighting and related activities, for construction activities, or other activities necessary to maintain the health, safety, and welfare of the public.
  7. Water shall not be used to wash down sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas, except to alleviate immediate fire or sanitation hazards, unless reclaimed water is available and its use permitted.
  8. Restaurants shall not serve water to their customers except when specifically requested.
  9. The operation of any ornamental fountain or similar structure is prohibited unless reclaimed water is available and its use permitted.
- C. Stage 3—Mandatory Compliance—Water Warning. Stage 3 applies during periods when the Carlsbad Municipal Water District will not be able to meet all of the water demands of its customers. During Stage 3, the following water conservation measures shall apply except when reclaimed water is used:
1. Lawn watering and landscape irrigation, including construction meter irrigation, is permitted only on designated irrigation days and only between the hours of 10:00 p.m. and 6:00 a.m. the following morning, except when reclaimed water is used. A “designated irrigation day” is determined by the last digit in the street address. Properties with addresses ending in an even number may use water on even-numbered days and addresses ending in an odd number may use water on odd-numbered days.
  2. Agricultural users and commercial nurseries shall use water only between the hours of 6:00 p.m. and 6:00 a.m. the following morning, unless reclaimed water is available and permitted. The watering of livestock and irrigation of propagation beds are permitted at any time.
  3. Washing of autos, trucks, trailers, boats, airplanes, and other types of mobile equipment is prohibited, except when reclaimed water is used. Washing is permitted at any time on the immediate premises of a commercial car wash. The use of water by all types of commercial car washes not using partially reclaimed or recycled water shall be reduced in volume by 20%. Further, such washings are exempted from these regulations where the health, safety, and welfare of the public is contingent upon frequent vehicle cleaning such as garbage trucks and vehicles used to transport food and perishables.
  4. Filling or refilling swimming pools, spas, ponds, and artificial lakes is permitted only on designated irrigation days between the hours of 10:00 p.m. and 6:00 a.m. the following morning, unless reclaimed water is available and permitted.

5. Watering golf courses, parks, school grounds, and recreational fields is permitted only between the hours of 10:00 p.m. and 6:00 a.m. the following morning, except golf course greens, unless reclaimed water is available and permitted.
  6. The use of water from fire hydrants shall be limited to fire fighting and related activities, or other activities necessary to maintain the health, safety, and welfare of the public.
  7. Water shall not be used to wash down sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas, except to alleviate immediate fire or sanitation hazards, unless reclaimed water is available and permitted.
  8. Restaurants shall not serve water to their customers except when specifically requested.
  9. The operation of any ornamental fountain or similar structure is prohibited, unless reclaimed water is available and permitted.
  10. New construction meters or permits for unmetered service will not be issued. Construction water shall not be used for earth work or road construction purposes, unless reclaimed water is available and permitted.
- D. Stage 4—Mandatory Compliance—Water Emergency. Stage 4 applies when a major failure of any supply or distribution facility, whether temporary or permanent, occurs in the water distribution system of the State Water Project, Metropolitan Water District, San Diego County Water Authority, or Carlsbad Municipal Water District facilities. During Stage 4, the following water conservation measures shall apply except when reclaimed water is used:
1. All outdoor irrigation of vegetation is prohibited, unless reclaimed water is available and permitted.
  2. Use of water for agricultural or commercial nursery purposes, except for livestock watering, is prohibited, unless reclaimed water is available and permitted.
  3. Washing of autos, trucks, trailers, boats, airplanes, and other types of mobile equipment is prohibited, except when reclaimed water is used. Washing is permitted at any time upon the immediate premises of a commercial car wash. The use of water by all types of commercial car washes shall be reduced in volume by 50%. Further, such washings are exempted from these regulations where the health, safety, and welfare of the public is contingent upon frequent vehicle cleaning such as garbage trucks and vehicles used to transport food and perishables.
  4. Filling, refilling or adding of water to swimming pools, spas, ponds, and artificial lakes is prohibited, unless reclaimed water is available and permitted.
  5. Watering of all golf course areas, except greens, is prohibited, except when reclaimed water is used. Watering of parks, school grounds, and recreation fields is prohibited (with the exception of plant materials classified to be rare, exceptionally valuable, or essential to the well being of rare animals), unless reclaimed water is available and permitted.
  6. The use of water from fire hydrants shall be limited to fire fighting or related activities necessary to maintain the health, safety and welfare of the public.



7. Water shall not be used to wash down sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas, except to alleviate immediate fire or sanitation hazards, unless reclaimed water is available and permitted.
8. Restaurants shall not serve water to their customers except when specifically requested.
9. The operation of any ornamental fountain or similar structure is prohibited, unless reclaimed water is available and permitted.
10. New construction meters or permits for unmetered service will not be issued. Construction water shall not be used for earth work or road construction purposes, except when reclaimed water is used.
11. The use of water for commercial, manufacturing or processing purposes shall be reduced in volume by 50%, except when reclaimed water is used.
12. No water shall be used for air conditioning purposes, unless reclaimed water is available and permitted. (Ord. 34 § 1, 1990; Ord. 30 § 6, 1989)

**3.04.070 Use of reclaimed water for greenbelt purposes.**

- A. No customer of the District shall make, cause, use, or permit the use of water supplied by the District for greenbelt uses, including, but not limited to, cemeteries, golf courses, parks, and highway landscaped areas, when, following notice and a hearing, the District finds that reclaimed water is available under the following conditions:
  1. The reclaimed water is of adequate quality and is available for use;
  2. The reclaimed water may be furnished to such areas at a reasonable cost, comparable to or less than the cost of supplying potable domestic water;
  3. The State Department of Health Services has determined that such use would not be detrimental to public health; and
  4. The use of reclaimed water will not adversely affect downstream water rights, will not degrade water quality.
- B. Following such a determination, the District may assist the customer in obtaining any permits or approvals required for the use of reclaimed water. (Ord. 32 § 2, 1990)

**3.04.080 Mandatory conservation phase implementation.**

The Carlsbad Municipal Water District shall monitor the projected supply and demand for water by its customers on a daily basis. The Manager shall determine the extent of the conservation required through the implementation and/or termination of particular conservation stages in order for the Carlsbad Municipal Water District to prudently plan for and supply water to its customers. Thereafter, the Manager may order that the appropriate stage of water conservation be implemented or terminated in accordance with the applicable provision of this chapter. The declaration of any stage beyond Stage 1 shall be made by public announcement and notice shall be published a minimum of 3 consecutive times in a newspaper of general circulation. The stage designated shall become effective immediately upon announcement. The declaration of any stage beyond Stage 1 shall be reported to the Board of Directors at its next regular meeting. The Board of Direc-

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tors shall thereupon ratify the declaration, rescind the declaration, or direct the declaration of a different stage. (Ord. 30 § 7, 1989)

**3.04.090 Penalty.**

As provided in Water Code Section 377, any violation of this chapter is a misdemeanor. Upon conviction thereof such person shall be punished by imprisonment in the County Jail for not more than 30 days, or by fine not exceeding \$1,000.00, or by both. In addition to any other remedies which the Carlsbad Municipal Water District may have for the enforcement of this chapter, service of water shall be discontinued or appropriately limited to any customer who willfully uses water in violation of any provision hereof. (Ord. 30 § 8, 1989)

## Chapter 3.08

### RECYCLED WATER

#### Sections:

- 3.08.010 Findings.**
- 3.08.020 Water reclamation policy.**
- 3.08.030 Definitions.**
- 3.08.040 Water Reclamation Master Plan.**
- 3.08.050 Procedures.**
- 3.08.060 Regulation of brine discharge to sewage systems.**
- 3.08.070 Sanctions.**
- 3.08.080 Validity.**

#### **3.08.010 Findings.**

The State policies described in the California Water Code Sections 461, 13550 and 13551 are in the best interest of the District. The majority of jurisdictions in San Diego County have adopted measures to promote water reclamation. This chapter is necessary to protect the common water supply of the region which is vital to public health and safety, and to prevent endangerment of public and private property. San Diego County is highly dependent on limited imported water for domestic, agricultural, and industrial uses. The reliability of the supply of imported water is uncertain. By developing and utilizing recycled water, the need for additional imported water can be reduced. In light of these circumstances, certain uses of potable water may be considered unreasonable or to constitute a nuisance where recycled water is available or production of recycled water is unduly impaired. Recycled water would be more readily available in seasons of drought when the supply of potable water for nonessential uses may be uncertain. (Ord. 43 § 1, 2005)

#### **3.08.020 Water reclamation policy.**

It is the policy of the District that recycled water shall be used within the jurisdiction wherever it has determined that its use is economically justified, financially and technically feasible, and consistent with legal requirements, preservation of public health, safety and welfare, and the environment. (Ord. 43 § 2, 2005)

#### **3.08.030 Definitions.**

The following terms are defined for purposes of this chapter:

**AGRICULTURAL PURPOSES:** Agricultural purposes include the growing of field and nursery crops, row crops, trees, and vines and the feeding of fowl and livestock.

**ARTIFICIAL LAKES:** A human-made lake, pond, lagoon, or other body of water that is used wholly or partly for landscape, scenic, or noncontact recreational purposes.

**COMMERCIAL OFFICE BUILDINGS:** Any building for office or commercial uses with water requirements which include, but are not limited to, landscape irrigation, toilets, urinals, and decorative fountains.

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**COVERAGE TEST:** The coverage test means a field investigation by a cross-connection control specialist to verify that there is no overspray, misting, ponding, and runoff occurring when the irrigation system is in operation, and that proper color coding and signage is in place for the on-site facilities.

**CROSS-CONNECTION TEST:** A cross-connection test means to verify that the potable and recycled water supplies are not connected to each other by shutting down the recycled water supply to the on-site facilities for 24 hours and determining that the on-site facilities do not become pressurized by the potable water supply at any location. The purpose for the test is to demonstrate that at the time of the test there are no discoverable cross-connections between the site's potable and recycled systems.

**GREENBELT AREAS:** A greenbelt area includes, but is not limited to, golf courses, cemeteries, parks, and landscaping.

**INDUSTRIAL PROCESS WATER:** Water used by any industrial facility with process water requirements which include, but are not limited to, rinsing, washing, cooling and circulation, or construction, including any facility regulated by the Industrial Waste Discharge Ordinance regulated by Chapter 13.16 of the Carlsbad Municipal Code.

**OFF-SITE FACILITIES:** Water facilities from the source of supply to the point of connection with the on-site facilities, normally up to and including the water meter.

**ON-SITE FACILITIES:** Water facilities under the control of the owner, normally downstream from the water meter.

**POTABLE WATER:** Water which conforms to the Federal, State, and local standards for human consumption.

**RECYCLED WATER:** Recycled water means water which, as a result of treatment of wastewater, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource. (See California Water Code Section 13050(n).)

**RECYCLED WATER DISTRIBUTION SYSTEMS:** A piping system intended for the delivery of recycled water separate from and in addition to the potable water distribution system.

**WASTE DISCHARGE:** Waste discharge means water deposited, released, or discharged into a sewer system from any commercial, industrial, or residential source which contains levels of any substance or substances which may cause substantial harm to any water treatment or reclamation facility or which may prevent any use of recycled water authorized by law. (Ord. 43 § 3, 2005)

#### **3.08.040 Water Reclamation Master Plan.**

- A. General. Upon adoption of this ordinance, the District shall prepare and adopt by resolution a Water Reclamation Master Plan to define, encourage, and develop the use of recycled water within its boundaries. The Master Plan shall be updated not less often than every five years.
- B. Contents of the Water Reclamation Master Plan. The Water Reclamation Master Plan (Master Plan) will include the following:

1. **Plants and Facilities.** Evaluation of the location and size of present and future reclamation treatment plants, distribution pipelines, pump stations, reservoirs, and other related facilities, including cost estimates and potential financing methods.
2. **Recycled Water Service Areas.** A designation of the lands within the District service area that can or may in the future use recycled water in lieu of potable water. Recycled water uses may include, but are not limited to, the irrigation of greenbelt and agricultural areas, filling of artificial lakes, and appropriate industrial and commercial uses.
3. **Quality of Water to Be Reclaimed.** For each water reclamation treatment facility, an evaluation of water quality with respect to the effect on anticipated uses of recycled water to be served by each treatment facility.
4. **Water Quality Protection Measures.** Recommend control measures and management practices to maintain or improve the quality of recycled water.
5. **Mandatory Recycled Water Use.** Within the recycled water service area, a description shall be prepared of where greenbelt irrigation, agricultural irrigation, commercial office buildings, filling of artificial lakes, or industrial processes can be limited to the use of recycled water. This information shall be used by District officials to mandate construction of recycled water distribution systems or other facilities in new and existing developments for current or future recycled water use as a condition of any development approval or continued water service if future reclamation facilities are proposed in the Master Plan that could adequately serve the development.
6. **Rules and Regulations for Recycled Water Use.** Establish by resolution, general rules and regulations governing the use and distribution of recycled water.
7. **Coordination Among Agencies for Recycled Water Use.** An examination shall be made of the potential for initiating a coordinated effort between the Carlsbad Municipal Water District and other regional agencies to share in the production and utilization of recycled water. (Ord. 43 § 4, 2005)

### **3.08.050 Procedures.**

#### **A. Existing Potable Water Service.**

1. **Preliminary Determination.** Based upon the Master Plan, and upon the designation of each recycled water service area or the commencement of the design of new recycled water facilities, the District shall make preliminary determinations as to which existing potable water customers shall be converted to the use of recycled water. Each water customer shall be notified of the basis for a determination that conversion to recycled water service will be required, as well as the proposed conditions and of the need for a plan of implementation for such conversion.
2. **Notice.** The notice of the preliminary determination, including the proposed conditions and time schedule for compliance, shall be sent to the water customer by certified mail.
3. **Implementation.**

- a. The water customer shall be required to submit a plan of implementation to the Carlsbad Municipal Water District's Executive Manager or designee within 90 days after receipt of the notice of preliminary determination.
  - b. The plan of implementation shall describe in detail how the water customer intends to retrofit the water facilities to use recycled water in accordance with all Federal, State, and local laws and public health guidelines. The District shall provide the water customer upon request a copy of its "Rules and Regulations for Recycled Water Use" to be a reference for water customer's in preparing the required plan of implementation for their on-site facilities. All costs for preparation of the plan of implementation are the responsibility of the water customer. Carlsbad Municipal Water District's Executive Manager or designee shall have the authority to approve the water customer's plan of implementation within 30 days after it is submitted to the District. As an option, the District will prepare the "plan of implementation" at the District's cost for the water customer, provided the water customer signs an acknowledgement to install and accept the proposed improvements shown on the District approved plan of implementation.
  - c. Once approved, the plan of implementation must be implemented within 6 months by the water customer including completion of all coverage and cross connection tests and payment of any plan check and inspection fees if applicable. All costs for implementation of the improvements on the plan of implementation are the responsibility of the water customer. If more than 6 months is required for the implementation, an appeal may be made for additional time to the Carlsbad Municipal Water District's Board of Directors by submitting such appeal in writing to the Executive Manager of the District.
4. Objections—Appeals. The water customer may file a notice of objection with the District within 30 days after any notice of determination to comply is delivered or mailed to the customer, and may request reconsideration of the determination or modification of the proposed conditions or schedule for conversion. The objection must be in writing and specify the reasons for the objection. The preliminary determination shall be final if the customer does not file a timely objection. The Executive Manager or designee shall review the objection with the objector, and shall confirm, modify, or abandon the preliminary determination, or submit the objection to the District's Board of Directors. The Board, at its sole discretion may confirm, modify, or abandon the preliminary determination or establish an alternative program intended to facilitate the orderly development of the recycled water system.
- B. New Development and Water Service Approvals.
1. Conditions. Upon application by a developer, owner or water customer (herein referred to as "applicant") for a tentative map, subdivision map, land use permit, or other development project as defined by Government Code Section 65928, staff shall review the Master Plan and make a preliminary determination whether the current or proposed use of the subject property is required to be served with recycled water or to include facilities designed to accommodate the use of recycled water in the future. Based upon such determination, use of recycled water and provision of recycled water distribution systems

- or other facilities for the use of recycled water, and such use may be required as a condition of approval of any such application, in addition to any other conditions of approval.
2. Alterations and Remodeling. On a case-by-case basis, upon application for a permit for the alteration or remodeling of multifamily, commercial, or industrial structures (including, for example, hotels), staff shall review the Master Plan and make a preliminary determination whether the subject property shall be required to be served with recycled water or to include facilities designed to accommodate the use of recycled water in the future. Based upon such determination, use of recycled water and provision of recycled water distribution systems or other facilities for the use of recycled water, and application for a permit for such use, may be required as a condition of approval of the application.
  3. Notice of Determination. A notice of the basis for the preliminary determination, proposed conditions of approval and schedule for compliance shall be provided to the applicant prior to approval of the development application.
  4. Requested Service. On a case-by-case basis, to use recycled water on a property not covered by subsection (A)(1), (B)(1), or (B)(2), the District shall review the Master Plan and make a determination whether the subject property shall be served with recycled water. Based upon such determination, a written Notice of Determination will be provided to the water customer by the District.
  5. Plan Approval. Plans for the recycled and non-recycled water distribution systems for the parcel shall be reviewed and approved by the District before on-site facilities are constructed. A recycled water number will be assigned by the District and this number shall be placed on the plans for record purposes.
  6. Field Inspection. Prior to the use of recycled water, the District will perform a coverage test and cross-connection test of the constructed on-site facilities to verify that they are in compliance with the approved plan and meet all California State Department of Health Services requirements for use of recycled water. Upon approval of the coverage test, the water customer will be required to fill out a Notice of Appointment of Site Supervisor form, and will be provided Rules and Regulations for Recycled Water Use. The water customer's site supervisor will also be required to attend the San Diego County Water Authority's training class on use and handling of recycled water, or other approved training class. The coverage test will take place after the recycled water meter is installed. The District and the City of Carlsbad has no required fees for this work but the water customer is responsible for paying San Diego County Department of Environmental Health applicable fees associated with this work.
- C. Temporary Use of Potable Water. At the discretion of the Executive Manager or designee, potable water may be made available on a temporary basis until recycled water is available. Before the applicant receives temporary potable water, the on-site facilities must be constructed in accordance with the plan of implementation and field inspected by the staff for new on-site distribution facilities. Prior to commencement of recycled water service, a coverage and cross-connection test of the on-site facilities will be conducted to verify that the facilities have been maintained and are in compliance with the recycled water irrigation system Plan of Implementation and current requirements for service. Upon verification of compliance, recycled water shall be served to the parcel for the intended use. The District shall provide

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written notice if the facilities are not in compliance, and the applicant shall be notified of the corrective actions necessary and shall have 60 days to take such actions prior to initiation of enforcement proceedings. The water customer will be required to fill out the form described in subsection (B)(6), and the site supervisor will be required to attend the San Diego County Water Authority's class on use and handling of recycled water or other approved training class.

- D. Recycled Water Rate. The rate charged for reclaimed water shall be established by resolution of the Board of Directors. (Ord. 43 § 5, 2005)

**3.08.060 Regulation of brine discharge to sewage systems.**

- A. Intent. The Carlsbad Municipal Water District recognizes that to maintain adequate wastewater quality for water reclamation treatment processes, and to protect public and private property, restrictions may be required on certain industrial, commercial, and residential waste discharges to a sewerage system that is located within a designated tributary area of an existing or planned reclamation facility.
- B. Adopted Tributary Protection Measures. Waste discharges to the sewage system from any industrial, commercial, or residential source, may be restricted or prohibited upon a finding, following a noticed public hearing, that the type or class of discharge involved is capable of causing or may cause substantial damage or harm to any sewage treatment or reclamation facility or to any significant user or users or potential user or users of reclaimed water within an area which has been planned for reclaimed water services. (Ord. 43 § 6, 2005)

**3.08.070 Sanctions.**

- A. Public. Discharge by any person or entity of wastes or the use of recycled water in any manner in violation of this chapter or of any permit issued hereunder is subject to prosecution for a misdemeanor.
- B. Injunction. Whenever a discharge of wastes or use of recycled water is in violation or threatens to cause a violation of this chapter, the District's attorney may seek injunctive relief as may be appropriate to enjoin such discharge or use.
- C. Revocation. In addition to any other statute or rule authorizing termination of water service, the District may revoke the use of recycled water if a violation of any provision of this chapter is found to exist or if a discharge of wastes or use of recycled water causes or threatens to cause violation of this chapter.
- D. Penalty. Except as provided in subsection A, any owner and/or operator who violates this chapter shall be subject to:
  - 1 A fine not exceeding \$100.00 for the first violation;
  - 2 A fine not exceeding \$200.00 for the second violation within one year;
  - 3 A fine not exceeding \$500.00 for the third violation within one year;
  - 4 A fine not exceeding \$1,000.00 for the fourth and each additional violation within one year.



Each and every day during any portion of which any violation of this chapter is committed, continued, or permitted shall be a separate offense. In addition, potable water service to the property may be discontinued. (Ord. 43 § 7, 2005)

**3.08.080 Validity.**

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provisions to other persons or circumstances shall not be affected thereby. (Ord. 43 § 8, 2005)

## Chapter 3.12

### DROUGHT RESPONSE

#### Sections:

- 3.12.010 Declaration of necessity and intent.**
- 3.12.020 Definitions.**
- 3.12.030 Water waste prohibitions.**
- 3.12.040 Application.**
- 3.12.050 Authorization.**
- 3.12.060 Drought Response Level 1.**
- 3.12.070 Drought Response Level 2.**
- 3.12.080 Drought Response Level 3.**
- 3.12.090 Drought Response Level 4.**
- 3.12.100 Drought Response Level 5.**
- 3.12.110 Drought Response Level 6.**
- 3.12.120 Correlation between Drought Management Plan and drought response levels.**
- 3.12.130 Procedures for determination and notification of each drought response level.**
- 3.12.140 Hardship variance.**
- 3.12.150 Violations and penalties.**

#### **3.12.010 Declaration of necessity and intent.**

- A. This chapter establishes water management requirements necessary to accomplish the following:
  - 1. conserve water;
  - 2. enable effective water supply planning;
  - 3. assure reasonable and beneficial use of water;
  - 4. prevent waste of water;
  - 5. prevent unreasonable use of water;
  - 6. prevent unreasonable method of use of water within the CMWD in order to assure adequate supplies of water to meet the needs of the public; and
  - 7. further the public health, safety, and welfare, recognizing that water is a scarce natural resource that requires careful management not only in times of drought, but at all times.
- B. This chapter establishes regulations to be implemented during times of declared water shortages, or declared water shortage emergencies. It establishes 6 levels of drought response actions to be implemented in times of shortage, with increasing restrictions on water use in response to worsening drought conditions and decreasing available supplies.
- C. Level 1 condition drought response measures are voluntary and will be reinforced through local and regional public education and awareness measures that may be funded in part by, CMWD.
- D. During drought response condition Levels 2 through 6, all conservation measures and water-use restrictions are mandatory and become increasingly restrictive to attain escalating conservation goals.

- E. During a drought response condition Level 2 or higher, the water conservation measures and water use restrictions established by this chapter are mandatory and violations are subject to criminal, civil, and administrative penalties and remedies specified in this chapter and as provided in this code. (Ord. 48 § 1; 2022; Ord. 44 § 1, 2009)

### **3.12.020 Definitions.**

The following words and phrases whenever used in this chapter shall have the meaning defined in this section:

“District” or “CMWD” means the Carlsbad Municipal Water District.

“Grower” refers to those engaged in the growing or raising, in conformity with recognized practices of husbandry, for the purpose of commerce, trade, or industry, or for use by public educational or correctional institutions, of agricultural, horticultural, or floricultural products, and produced: (1) for human consumption or for the market; or (2) for the feeding of fowl or livestock produced for human consumption or for the market; or (3) for the feeding of fowl or livestock for the purpose of obtaining their products for human consumption or for the market. “Grower” does not refer to customers who purchase water subject to the Metropolitan Interim Agricultural Water Program or the Water Authority Special Agricultural Rate programs.

“Metropolitan” or “MWD” means the Metropolitan Water District of Southern California.

“Person” means any natural person, corporation, public or private entity, public or private association, public or private agency, government agency or institution, school district, college, university, or any other user of water provided by the CMWD.

“Water Authority” or “CWA” means the San Diego County Water Authority.

“WSCP” means the Water Authority’s Water Shortage Contingency Plan or CMWD’s Water Shortage Contingency Plan, as specified, in existence on the effective date of this ordinance and as readopted or amended from time to time, or an equivalent plan of the Water Authority to manage or allocate supplies during shortages. (Ord. 48 § 2, 2022; Ord. 44 § 2, 2009)

### **3.12.030 Water waste prohibitions.**

The following water conservation measures will be in effect at all times:

- A. Stop washing down paved surfaces, including, but not limited to, sidewalks, driveways, parking lots, tennis courts, or patios except when it is necessary to alleviate safety or sanitation hazards.
- B. Stop water waste resulting from inefficient landscape irrigation, such as runoff, low head drainage, or overspray, etc. Similarly, stop water flows onto non-targeted areas, such as adjacent property, non-irrigated areas, hardscapes, roadways, or structures.
- C. Use a hand-held hose equipped with a positive shut-off nozzle or bucket to water landscaped areas, including trees and shrubs located on residential and commercial properties that are not irrigated by a landscape irrigation system.
- D. Use re-circulated water to operate ornamental fountains.

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- E. Wash vehicles using a bucket and a hand-held hose with positive shut-off nozzle, mobile high pressure/low volume wash system, or at a commercial site that re-circulates (reclaims) water on-site. Avoid washing during hot conditions when additional water is required to due to evaporation.
- F. Serve and refill water in restaurants, bars, and other food service establishments only upon request.
- G. Offer guests in hotels, motels, and other commercial lodging establishments the option of not laundering towels and linens daily.
- H. Use recycled or non-potable water for construction purposes when available and economically feasible. (Ord. 48 § 3; 2022; Ord. 44 § 3, 2009)

#### **3.12.040 Application.**

- A. The provisions of this chapter apply to any person in the use of any water provided by the CMWD.
- B. This chapter is intended solely to further the conservation of water. It is not intended to implement any provision of federal, state, or local statutes, ordinances, or regulations relating to protection of water quality or control of drainage or runoff. Please refer to the City of Carlsbad or the Regional Water Quality Control Board for information on any stormwater ordinances and stormwater management plans.
- C. Nothing in this chapter is intended to affect or limit the ability of the CMWD to declare and respond to an emergency, including an emergency that affects the ability of the CMWD to supply water.
- D. The provisions of this chapter do not apply to use of water from private wells or to recycled water.
- E. Nothing in this chapter shall apply to use of water that is subject to a special supply program, such as the Water Authority's Special Agricultural Water Rate Program. Violations of the conditions of special supply programs are subject to the penalties established under the applicable program. A person using water subject to a special supply program and other water provided by the CMWD is subject to this chapter in the use of the other water. (Ord. 48 § 4, 2022; Ord. 44 § 4, 2009)

#### **3.12.050 Authorization.**

The CMWD General Manager, or a designated representative, is hereby authorized and directed to implement the provisions of this chapter. (Ord. 48 § 5, 2022; Ord. 44 § 5, 2009)

#### **3.12.060 Drought Response Level 1.**

- A. Drought Response Level 1 applies when the Water Authority notifies its member agencies, or the Executive Manager, upon recommendation of the General Manager, otherwise declares, that, due to drought or other supply reductions, there is a reasonable probability there will be

supply shortages and that a consumer demand reduction of up to 10% is required in order to have sufficient supplies available to meet anticipated demands. The Executive Manager, upon recommendation of the General Manager, shall declare the existence of a Drought Response Level 1 and take action to implement the Level 1 conservation practices identified in this chapter.

- B. During a Drought Response Level 1 condition, CMWD will increase its public education and outreach efforts to emphasize increased public awareness of the need to implement the following water conservation practices. The same water conservation practices become mandatory if CMWD declares a Level 2 Drought Condition:
  - 1. Irrigate residential and commercial landscape before 10:00 a.m. and after 6:00 p.m. only. Watering is permitted at any time when a drip/micro-irrigation system/equipment is used.
  - 2. Irrigate nursery and commercial grower's products before 10:00 a.m. and after 6:00 p.m. only. Watering is permitted at any time with a hand-held hose equipped with a positive shut-off nozzle, a bucket, or when a drip/micro-irrigation system/equipment is used. Irrigation of nursery propagation beds is permitted at any time. Watering of livestock is permitted at any time.
  - 3. Repair all water leaks within five days of notification by the CMWD unless other written arrangements are made with the General Manager or designee.
- C. During a Drought Response Level 2 condition or higher, all persons shall be required to implement the conservation practices established in Drought Response Level 1 condition. (Ord. 48 § 6, 2022; Ord. 44 § 6, 2009)

### **3.12.070 Drought Response Level 2.**

- A. A Drought Response Level 2 applies when the Water Authority notifies its member agencies, or the CMWD Board of Directors otherwise declares that due to cutbacks caused by drought or other reduction in supplies, a consumer demand reduction of up to 20% is required in order to have sufficient supplies available to meet anticipated demands. The CMWD Board of Directors shall declare the existence of a Drought Response Level 2 condition and implement the mandatory Level 2 conservation measures identified in this chapter.
- B. All persons using CMWD water shall comply with Level 1 water conservation practices during a Drought Response Level 2 condition, and shall also comply with the following additional conservation measures:
  - 1. Limit residential and commercial landscape irrigation to no more than three assigned days per week on a schedule established by the General Manager and posted by the CMWD. This subsection shall not apply to commercial growers and nurseries.
  - 2. Limit lawn watering and landscape irrigation using sprinklers to no more than 10 minutes per watering station per assigned day. This provision does not apply to landscape irrigation systems using water efficient devices, including, but not limited to: weather-based controllers, drip/micro-irrigation systems, and stream rotor sprinklers.
  - 3. Water landscaped areas, including trees and shrubs located on residential and commercial properties, and not irrigated by a landscape irrigation system governed by Section 3.12.060(B)(1), on the same schedule set forth in Section 3.12.060(B)(1) by using a bucket, hand-held hose with positive shut-off nozzle, or low-volume non-spray irrigation.

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4. Repair all leaks within 72 hours of notification by the CMWD unless other written arrangements are made with the General Manager or designee.
5. Stop operating ornamental fountains or similar decorative water features unless re-circulated water is used. (Ord. 48 § 7, 2022; Ord. 46 § 2, 2009; Ord. 44 § 7, 2009)

**3.12.080 Drought Response Level 3.**

- A. A Drought Response Level 3 condition applies when the Water Authority notifies its member agencies, or the CMWD Board of Directors otherwise declares, that due to increasing cutbacks caused by drought or other reduction of supplies, a consumer demand reduction of up to 30% is required in order to have sufficient supplies available to meet anticipated demands. The CMWD Board of Directors shall declare the existence of a Drought Response Level 3 condition and implement the Level 3 conservation measures identified in this chapter.
- B. All persons using CMWD water shall comply with Level 1 and Level 2 water conservation practices during a Drought Response Level 3 condition and shall also comply with the following additional mandatory conservation measures:
  1. Limit residential and commercial landscape irrigation to no more than two assigned days per week on a schedule established by the General Manager and posted by the CMWD. This subsection shall not apply to commercial growers or nurseries.
  2. Water-landscaped areas, including trees and shrubs located on residential and commercial properties, and not irrigated by a landscape irrigation system governed by Section 3.12.070(B)(2), on the same schedule set forth in Section 3.12.070(B)(1) by using a bucket, hand-held hose with a positive shut-off nozzle, or low-volume non-spray irrigation.
  3. Stop washing vehicles except at commercial carwashes that re-circulate water, or by high pressure/low volume wash systems.
  4. Repair all leaks within 48 hours of notification by the CMWD unless other written arrangements are made with the General Manager or designee.
- C. Upon the declaration of a Drought Response Level 3 condition, the CMWD will suspend consideration of annexations to its service area.
- D. The CMWD Board of Directors may establish a water allocation for property served by the CMWD using a method that does not penalize persons for the implementation of conservation methods or the installation of water saving devices. If the CMWD Board of Directors establishes a water allocation it shall provide notice of the allocation by including it in the regular billing statement for the fee or charge or by any other mailing to the address to which the CMWD customarily mails the billing statement for fees or charges for on-going water service. Following the effective date of the water allocation as established by the CMWD Board of Directors, any person that uses water in excess of the allocation shall be subject to a penalty in the amount equal to the penalty rate established by the Metropolitan Water District of Southern California for each billing unit of water in excess of the allocation. The penalty for excess water usage shall be cumulative to any other remedy or penalty that may be imposed for violation of this chapter. (Ord. 48 § 8, 2022; Ord. 46 § 2, 2009; Ord. 44 § 8, 2009)

**3.12.090 Drought Response Level 4.**

- A. A Drought Response Level 4 condition applies when the Water Authority notifies its member agencies or the CMWD Board of Directors otherwise declares, that due to increasing cutbacks caused by drought or other reduction of supplies, a consumer demand reduction of up to 40% is required in order to have sufficient supplies available to meet anticipated demands. The CMWD Board of Directors shall declare the existence of a Drought Response Level 4 condition and implement the Level 4 conservation measures identified in this chapter.
- B. All persons using CMWD water shall comply with Level 1, Level 2, and Level 3 water conservation practices during a Drought Response Level 4 condition and shall also comply with the following additional mandatory conservation measures:
  - 1. Stop filling or re-filling lakes or ponds, except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to the declaration of a drought response level under this ordinance. (Ord. 48 § 9, 2022; Ord. 44 § 9, 2009)

**3.12.100 Drought Response Level 5.**

- A. A Drought Response Level 5 condition applies when the Water Authority notifies its member agencies, or the CMWD Board of Directors otherwise declares, that due to increasing cutbacks caused by drought or other reduction of supplies, a consumer demand reduction of up to 50% is required in order to have sufficient supplies available to meet anticipated demands. The CMWD Board of Directors shall declare the existence of a Drought Response Level 5 condition and implement the Level 5 conservation measures identified in this ordinance.
- B. All persons using CMWD water shall comply with conservation measures required during Level 1, Level 2, Level 3, and Level 4 conditions and shall also comply with the following additional mandatory conservation measures:
  - 1. Stop all landscape irrigation, except crops and landscape products of commercial growers and nurseries. This restriction shall not apply to the following categories of use unless the CMWD has determined that recycled water is available and may be lawfully applied to the use.
    - a. Maintenance of trees and shrubs that are watered on the same schedule set forth in section 3.12.080(B)(1) by using a bucket, hand-held hose with a positive shut-off nozzle, or low-volume non-spray irrigation;
    - b. Maintenance of existing landscaping necessary for fire protection as specified by the Fire Marshal of the local fire protection agency having jurisdiction over the property to be irrigated;
    - c. Maintenance of existing landscaping for erosion control;
    - d. Maintenance of plant materials identified to be rare or essential to the wellbeing of rare animals;
    - e. Maintenance of landscaping within active public parks and playing fields, day care centers, schools' grounds, cemeteries, and golf course greens, provided that such

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irrigation does not exceed 2 days per week according to the schedule established under section 3.12.080(B)(1)

- f. Watering of livestock; and
  - g. Public works projects and actively irrigated environmental mitigation projects.
2. Repair all water leaks within 24 hours of notification by the CMWD unless other arrangements are made with the General Manager or designee.
- C. The CMWD Board of Directors may establish a water allocation for property served by the CMWD. If the CMWD Board of Directors establishes a water allocation it shall provide notice of the allocation by including it in the regular billing statement for the fee or charge or by any other mailing to the address to which the CMWD customarily mails the billing statement for fees or charges for on-going water service. Following the effective date of the water allocation as established by the CMWD Board of Directors, any person that uses water in excess of the allocation shall be subject to a penalty in the amount equal to the penalty rate established by the Metropolitan Water District of Southern California for each billing unit of water in excess of the allocation. The penalty for excess water usage shall be cumulative to any other remedy or penalty that may be imposed for violation of this ordinance.
- D. Upon the declaration of a Drought Response Level 5 condition, no new potable water service shall be provided, no new temporary meters or permanent meters shall be provided, and no statements of immediate ability to service or provide potable water service (such as, will serve letters, certificates, or letters of availability) shall be issued, except under the following circumstances:
- 1. A valid, unexpired building permit has been issued for the project;
  - 2. The project is necessary to protect the public's health, safety, and welfare; or
  - 3. The applicant provides substantial evidence of an enforceable commitment that water demands for the project will be offset prior to the provision of a new water meter(s) to the satisfaction of CMWD.

Nothing in this section shall be construed to preclude the resetting or turn-on of meters to provide continuation of water service or to restore service that has been interrupted for a period of one year or less. (Ord. 48 § 10, 2022)

**3.12.110 Drought Response Level 6**

- A. A Drought Response Level 6 condition applies when the Water Authority, or the CMWD Board of Directors, declares a water shortage emergency pursuant to California Water Code Section 350 and that Level 6 requires a demand reduction of more than 50% in order for the CMWD to have maximum supplies available to meet anticipated demands. The CMWD shall declare the existence of a Drought Emergency in the manner and on the grounds provided in California Water Code Section 350.
- B. All persons using CMWD water shall comply with conservation measures required during Level 1, Level 2, Level 3, Level 4, and Level 5 conditions and shall also comply with the following additional mandatory conservation measures:



1. Stop all landscape irrigation, except crops and landscape products of commercial growers and nurseries. This restriction shall not apply to the following categories of use unless the CMWD has determined that recycled water is available and may be lawfully applied to the use.
  - a. Maintenance of existing landscaping necessary for fire protection as specified by the Fire Marshal of the local fire protection agency having jurisdiction over the property to be irrigated;
  - b. Maintenance of existing landscaping for erosion control;
  - c. Maintenance of plant materials identified to be rare or essential to the well-being of rare animals;
  - d. Watering of livestock; and
  - e. Public works projects and actively irrigated environmental mitigation projects. (Ord 48 § 11, 2022)

**3.12.120 Correlation between Drought Management Plan and drought response levels.**

- A. The correlation between the Water Authority’s WSCP shortage levels and the CMWD’s drought response levels identified in this chapter is described in this Section. Under WSCP Shortage Level 1, the CMWD would implement Drought Response Level 1 actions. Under WSCP Shortage Level 2, the CMWD would implement Drought Response Level 1 and Level 2 actions. Under WSCP Shortage Level 3, the CMWD would implement Drought Response Level 1, Level 2 and Level 3 actions. Under WSCP Shortage Level 4, the CMWD would implement Drought Response Level 1, Level 2, Level 3, and Level 4 actions. Under WSCP Shortage Level 5, the CMWD would implement Drought Response Level 1, Level 2, Level 3, Level 4, and Level 5 actions. Under WSCP Shortage Level 6, the CMWD would implement Drought Response Level 1, Level 2, Level 3, Level 4, Level 5 and Level 6 actions.
- B. The drought response levels identified in this chapter correspond with the Water Authority WSCP as identified in the following table:

<b>Drought Response/WSCP Shortage Levels</b>	<b>Use Restrictions</b>	<b>Conservation Target</b>
1	Voluntary	Up to 10%
2	Mandatory	Up to 20%
3	Mandatory	Up to 30%
4	Mandatory	Up to 40%
5	Mandatory	Up to 50%
6	Mandatory	Above 50%

(Ord. 48 § 12, 2022; Ord. 44 § 10, 2009)

**3.12.130 Procedures for determination and notification of each drought response level.**

- A. The existence of a Drought Response Level 1 may be declared by the Executive Manager upon a written determination of the existence of the facts and circumstances supporting the determination. A copy of the written determination shall be filed with the Secretary of the CMWD and provided to the CMWD Board of Directors. The CMWD may publish a notice of the determination of existence of Drought Response Level 1 condition in one or more newspapers, including a newspaper of general circulation within the CMWD. The CMWD may also post notice of the condition on their website.
- B. The existence of Drought Response Level 2, Level 3, Level 4 or Level 5 conditions may be declared by resolution of the CMWD Board of Directors adopted at a regular or special public meeting held in accordance with state law. The mandatory conservation measures applicable to Drought Response Level 2, Level 3, Level 4 or Level 5 conditions shall take effect on the tenth day after the date the response level is declared. Within 5 days following the declaration of the response level, the CMWD shall publish a copy of the resolution in a newspaper of general circulation used for publication of official notices. If the CMWD establishes a water allocation, it shall provide notice of the allocation by including it in the regular billing statement for the fee or charge or by any other mailing to the address to which the CMWD customarily mails the billing statement for fees or charges for on-going water service. Water allocation shall be effective of the 5<sup>th</sup> day following the date of mailing or at such later date as specified in the notice.
- C. The existence of a Drought Response Level 6 condition may be declared in accordance with the procedures specified in California Water Code Sections 351 and 352. The mandatory conservation measures applicable to Drought Response Level 6 conditions shall take effect on the tenth day after the date the response level is declared. Within 5 days following the declaration of the response level, the CMWD shall publish a copy of the resolution in a newspaper of general circulation used for publication of official notices.
- D. The CMWD Board of Directors may declare an end to a drought response level by the adoption of a resolution at any regular or special meeting held in accordance with state law. (Ord. 48 § 13, 2022; Ord. 44 § 11, 2009)

**3.12.140 Hardship variance.**

- A. If, due to unique circumstances, a specific requirement of this chapter would result in undue hardship to a person using agency water or to property upon which agency water is used, that is disproportionate to the impacts to CMWD water users generally or to similar property or classes of water uses, then the person may apply for a variance to the requirements as provided in this section.
- B. The variance may be granted or conditionally granted, only upon a written finding of the existence of facts demonstrating an undue hardship to a person using agency water or to property upon which agency water is used, that is disproportionate to the impacts to CMWD water users generally or to similar property or classes of water use due to specific and unique circumstances of the user or the user's property. Hardship variances shall also be subject to the following requirements:
  - 1. Application. Application for a variance shall be on a form prescribed by the CMWD General Manager and shall be accompanied by a non-refundable processing fee in an amount set by resolution of the CMWD Board of Directors.

### 3.12.010

2. Supporting Documentation. The application shall be accompanied by photographs, maps, drawings, and other information, including a written statement of the applicant.
3. Required Findings for Variance. An application for a variance shall be denied unless the General Manager finds, based on the information provided in the application, supporting documents, or such additional information as may be requested, and on water use information for the property as shown by the records of the CMWD, all of the following:
  - a. That the variance does not constitute a grant of special privilege inconsistent with the limitations upon other CMWD customers.
  - b. That because of special circumstances applicable to the person, property or its use, the strict application of this chapter would have a disproportionate impact on the person, property or use that exceeds the impacts to customers generally.
  - c. That the authorizing of such variance will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the CMWD to effectuate the purpose of this chapter and will not be detrimental to the public interest.
  - d. That the condition or situation of the subject person, property or the intended use of the property for which the variance is sought is not common, recurrent or general in nature.
4. Approval Authority. The General Manager or designee shall exercise approval authority and act upon any completed application no later than 10 calendar days after submittal. The General Manager or designee may approve, conditionally approve, or deny the variance. The applicant requesting the variance shall be promptly notified in writing of the action taken in response to the application. Unless otherwise specified at the time a variance is approved, the variance applies to the subject property during the term of the mandatory drought response level.
5. Appeals to CMWD Executive Manager or designee(s). An applicant may appeal a decision or condition of the General Manager on a variance application to the CMWD Executive Manager or designee(s). An appeal requesting a hearing may only be filed within 10 calendar days of the date of the General Manager's written decision. The request shall state the grounds for the appeal. At the appeal hearing, the CMWD Executive Manager or designee(s) shall act as the approval authority and review the appeal de novo by applying the regular variance requirements described in Section 3.12.140(A) and (B)(1)-(4). The decision of the CMWD Executive Manager or designee(s) is final. (Ord. 48 § 14, 2022; Ord. 44 § 12, 2009)

### **3.12.150 Violations and penalties.**

- A. Any person, who uses, causes to be used, or permits the use of water in violation of this chapter is guilty of an offense punishable as provided in this section.
- B. Each day that a violation of this chapter occurs is a separate offense.
- C. Administrative fines may be levied for each violation of a provision of this chapter as follows:
  1. For the first violation by any customer of any of the provisions of this ordinance the CMWD shall verbally notice the fact of such violation to the customer.
  2. For a second violation by any customer of any of the provisions of this ordinance the CMWD shall issue a written notice of the fact of such violation to the customer.

3. For a third violation by a customer of any provision of this chapter the CMWD may install a flow-restricting device of one gallon per minute (1 GPM) capacity for services of up to one and one-half inch (1-1/2") size. CMWD may also install a restricting device of comparatively sized restrictors for larger services upon a prior determination that the customer has repeatedly violated the provisions of this chapter regarding the conservation of water and that such action is reasonably necessary to assure compliance with this chapter regarding the conservation of water. In addition, the CMWD may levy an administrative fine of one hundred dollars for a third violation of this chapter.
  4. Two hundred dollars for a fourth violation of any provision of this chapter within one year.
  5. Five hundred dollars for each additional violation of this chapter within one year.
- D. If determined by the CMWD's General Counsel to be necessary and appropriate, in lieu of administrative remedies above, each violation of this chapter may be prosecuted as a misdemeanor punishable by imprisonment in the county jail for not more than thirty days or by a fine not exceeding \$1,000, or by both as provided in Water Code section 377.
- E. Willful violations of the mandatory conservation measures and water use restrictions as set forth in Section 3.12.110 and applicable during a Drought Response Level 6 condition may be enforced by discontinuing service to the property at which the violation occurs as provided by Water Code section 356.
- F. All remedies provided for in this Section shall be cumulative and not exclusive.
- G. Any customer against whom a penalty is levied pursuant to this section shall have the right to appeal as follows:
1. The request must be in writing and received by the General Manager within ten (10) calendar days of the postmark mailing of the notice of the action to the customer. Any determination not timely appealed shall be final. The written request shall include:
    - a. A description of the issue,
    - b. Evidence supporting the claim, and
    - c. A request for resolution of the dispute.The General Manager will review the material submitted and make an independent determination of the issue, which shall be mailed out within fifteen (15) calendar days of receipt of the appeal.
  2. The General Manager's determination may be appealed in writing within ten (10) calendar days of the postmark mailing of the notice of determination to the Board of Directors of the CMWD by filing with the Secretary of the CMWD a written notice of such appeal. The Secretary shall set the matter for a hearing before the Board of Directors at an upcoming Board meeting. Notice of the hearing shall be mailed out to the person appealing the decision at least ten calendar days before the date of the appeal hearing. The Board may, in its discretion, affirm, reverse or modify the determination.
  3. Fees for filing an appeal under this section shall be established by a resolution of the Board of Directors of the CMWD. (Ord. 48 § 15, 2022; Ord. 44 § 130, 2009)

**CMWD ORDINANCE LIST**

<b>Ord. No.</b>	<b>Description</b>	<b>Adoption Date</b>
1	Providing for the calling and holding of regular and special meetings of the board of directors, determining the time and place, how records to be kept, establishing rules and regulations, and prescribing the official seal (1.08)	3/24/54
2	Changing regular meeting date to the second Thursday of each month at 7:30 p.m. (1.08)	9/2/54
3	Amending § 1 of Ord. No. 1, changing the regular meeting date to the first Thursday of each month at 7:30 p.m. (1.08)	10/21/54
4	Providing for the exclusion of certain uninhabited territory pursuant to petition filed under Section 27.3 of the Municipal Water District Act of 1911 (1.12)	10/6/55
5	Amending § 1 of Ord. No. 1 as amended by Ord. No. 3, changing the address of regular meetings to the Carlsbad City Hall at 2960 Pio Pico Blvd. (1.08)	11/3/55
6	Amending § 1 of Ord. No. 1 as amended by Ord. Nos. 3 and 5 changing the date of regular meetings to the first Wednesday of each month (1.08)	3/1/56
7	Providing for the exclusion of certain uninhabited territory pursuant to proceedings initiated by the board under Section 27.3 of the Municipal Water District Act of 1911 (1.12)	9/5/65
8	Establishing and fixing rates and charges for all water sold, distributed and delivered; establishing the time, method, manner, payment and penalties for nonpayment thereof; prescribing the terms and conditions upon which the district will install and maintain temporary service connections and permanent service connections; providing rules and regulations governing service connections, the sale, delivery, transportation and use of water within CMWD and the use of district's facilities (Repealed by 9)	5/15/57
9	Establishing and fixing rates and charges for all water sold, distributed and delivered; repealing Ordinance No. 8; establishing the time, method, manner, payment and penalties for nonpayment thereof; prescribing the terms and conditions upon which the district will install and maintain temporary service connections and permanent service connections; providing rules and regulations governing service connections, the sale, delivery, transportation and use of water within CMWD and the use of district's facilities (Repealed by 10)	6/5/57
10	Establishing and fixing rates and charges for all water sold, distributed and delivered; repealing Ord. No. 9; establishing the time, method, manner, payment and penalties for nonpayment thereof; prescribing the terms and Conditions upon which the district will install and maintain temporary service connections and permanent service connections; providing rules and regulations governing service connections, the sale, delivery, transportation and use of water within CMWD and the use of district's facilities rules and regulations to implement Ordinance No. 10 regarding line extensions (Repealed by 26)	6/4/58
11	Amending § 1 of Ordinance No. 1 as amended by Ord. Nos. 3, 5, and 6, changing the date, time and place of regular meetings of the of the board	7/2/58

TABLES

<b>Ord. No.</b>	<b>Description</b>	<b>Adoption Date</b>
	(1.08)	
12	Amending Section 6 of Ord. No. 10 to provide that the rates for all water sold and delivered shall be fixed by resolution (Repealed by 26)	9/10/58
13	Amending § 1 of Ord. No. 1 as amended by Ord. Nos. 3, 5, 6 and 11, changing the time of regular meetings to the second Tuesday of each month at 1:00 p.m. at 601 Elm Avenue (1.08)	10/14/58
14	Amending § 17b(2)(a) of Ord. No. 10 to provide that annual payments to owners under line extension agreements or to owners of line extensions under Improvement Act of 1911 shall not exceed 20% of the actual costs of installation and construction (Repealed by 26)	10/28/58
15	Amending § 1 of Ord. No. 1 as amended by Ord. Nos. 3, 5, 6, 11, and 13 changing the time of regular meetings to the third Tuesday of each month at 2:00 p.m. at 601 Elm Avenue (1.08)	2/10/59
16	Amending § 17(b)(1) of Ord. No. 10 to provide the procedure for design and construction of permanent pipeline extensions (Repealed by 26)	3/10/59
17	Amending § 1 of Ord. No. 1 as amended by Ord. Nos. 3, 5, 6, 11, 13 and 15 changing the address of regular meetings (1.08)	11/24/59
18	Amending § 1 of Ord. No. 1 as amended by Ord. Nos. 3, 5, 6, 11, 13, 15 and 17 changing the date, time and place of regular meetings (1.08)	7/5/60
19	Establishing holidays	1/2/63
20	Amending § 1 of Ord. No. 1 as amended by Ord. Nos. 3, 5, 6, 11, 13, 15, 17 and 18 changing the place of regular meetings (1.08)	11/19/63
21	Establishing standard requirements for wholesale connections to the distribution system and to repeal § 4 of Ord. No. 10 (Repealed by 26)	6/16/64
22	Establishing and defining types and conditions of water delivery; providing a method of establishing and fixing rates and charges for water delivered; providing a method for extension of facilities; and to partially repeal Ord. Nos. 10, 12, 14, 16 and 21 (Repealed by 26)	6/15/65
23	Annexing certain uninhabited territory, to be known as the "Squires Dam - Tank Site annexation" pursuant to the provisions of the Municipal Water District Act of 1911 (Special)	9/21/65
24	Dissolves Improvement District No. U-7 (Special)	10/18/66
25	Amending § 1 of Ord. No. 1 as amended by Ord. Nos. 3, 5, 6, 11, 15, 17, 18 and 20 changing the time of regular meetings (1.08)	4/5/67
26	Establishes and defining procedures and conditions of water delivery; providing a method of establishing and fixing rates and charges for water delivered; providing a method for extension of district's facilities; repeals Ord. Nos. 10, 12, 14, 16, 21 and 22 (Repealed by 40)	5/15/68
27	Authorizing emergency purchasing procedures (1.16)	3/18/87
28	Relating to water conservation (Repealed by 30)	7/29/87
29	Establishing fees for engineering services (Repealed by 45)	6/15/88
30	Finding the necessity for and adopting an emergency water management pro-	12/6/89

<b>Ord. No.</b>	<b>Description</b>	<b>Adoption Date</b>
	gram to replace Ord. No. 28 (3.04)	
31	Mandating the use of reclaimed water (Repealed by 43)	5/8/90
32	Amending emergency water management program by requiring use of reclaimed water for greenbelt purposes (3.04)	5/8/90
33	Establishing a water commission (Dissolved by 41)	1/2/90
34	Amending stage 2 watering schedule in Ord. No. 30 (3.04)	11/13/90
35	Finding the necessity for and adopting a water conservation program (Repealed by 44)	3/5/91
36	(Number not used)	
37	Regulating the issuance of water meters (Repealed by 45)	3/5/91
38	Incorporating certain provisions of Titles 1 and 19 of the Carlsbad Municipal Code establishing time limits for judicial review, penalty provisions for violation of district ordinances and environmental protection procedures (1.20)	8/6/91
39	Establishing procedures for work in district right-of-way (Repealed by 45)	9/1/92
40	Repealing Ord. No. 29 and establishing fees for engineering services (Repealed by 45)	9/1/92
41	Dissolution of water commission effective January 1, 1998	3/26/96
42	Amending Division 1, §§ 5 and 7 of Ord. No. 26 (Repealed by 45)	3/26/02
43	Mandating use of recycled water and rescinding Ord. No. 31 (3.08)	6/14/05
44	Adoption of a drought response plan and water preservation program; repeals Ord. No. 35 (3.12)	1/09/09
45	Defining and establishing process and conditions of water delivery; providing method of establishing and fixing rates and charges for water delivery; providing method for extension of CMWD facilities; regulating the issuance of water meters; establishing process and fees for engineering services related to land development; defining meters and fire hydrants, water efficient landscaping; cross connection control program; establishing procedures for work in CMWD right-of-way; repeals Ord. Nos. 26, 29, 37, 39, 40, and 42 (2.04, 2.08, 2.12, 2.16, 2.20, 2.24, 2.28, 2.32, 2.36)	6/3/09
46	Amending Ord. No. 44 to authorize the general manager to set watering schedules (3.12)	12/2/09
47	Defining and establishing process and conditions of water delivery; providing method of establishing and fixing rates and charges for water delivery; providing method for extension of CMWD facilities; regulating the issuance of water meters; establishing process and fees for engineering services related to land development; defining meters and fire hydrants, water efficient landscaping; cross connection control program; establishing procedures for work in CMWD right-of-way; repeals Ord. Nos. 26, 29, 37, 39, 40, and 42 (2.04, 2.08, 2.12, 2.16, 2.20, 2.24, 2.28, 2.32, 2.36)	12/17/19
48	Mirroring the San Diego County Water Authority's 2020 Model Drought Ordinance and establishing six water shortage levels; amends Ord. Nos. 44 and 46.	6/7/22

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CARLSBAD MUNICIPAL WATER DISTRICT OF THE CITY OF CARLSBAD, CALIFORNIA, TO REPEAL THE ADMINISTRATIVE CODE FOR THE CARLSBAD MUNICIPAL WATER DISTRICT

WHEREAS, the Board of Directors of the Carlsbad Municipal Water District, or CMWD Board, of the City of Carlsbad, California, has determined that it is necessary, desirable and in the public interest to repeal the Administrative Code for the Carlsbad Municipal Water District; and

WHEREAS, Carlsbad Municipal Water District, hereinafter referred to as CMWD, is organized under the Municipal Water District Law of 1911, Division 20 (commencing with Section 71000) of the California Water Code; and

WHEREAS, pursuant to Water Code Section 71278, the board of a municipal water district must act by ordinance, motion, or resolution; and

WHEREAS, on Dec. 12, 1983, the Costa Real Municipal Water District, the predecessor in interest to the CMWD, adopted Resolution No. 444, establishing an Administrative Code for the Costa Real Municipal Water District, or Administrative Code; and

WHEREAS, the Administrative Code provides that any changes or additions be approved by the Board of Directors of the CMWD at a duly constituted meeting, through the adoption of a resolution by majority vote, and effective upon adoption; and

WHEREAS, in 1985 and 1987, the Board of Directors of the Costa Real Municipal Water District amended the Administrative Code with the adoption of Resolution No. 465, 473, 530, and 531, to make various changes to district staffing and Board committee policies and procedures; and

WHEREAS, on April 25, 1989, the Board of Directors of the Costa Real Municipal Water District approved Resolution No. 1, consenting to the establishment of the Costa Real Municipal Water District as a subsidiary district of the City of Carlsbad, consistent with the approved proposal of the San Diego Local Agency Formation Commission, to integrate the planning and management of water resources within the City of Carlsbad and revert the name back to the Carlsbad Municipal Water District; and

WHEREAS, on Jan. 1, 1990, the CMWD became a subsidiary district of the City of Carlsbad; and



WHEREAS, on June 25, 1991, the Board of Directors of the CMWD adopted Resolution No. 741, approving an Operating Agreement between the CMWD and the City of Carlsbad, or Operating Agreement, calling for the City of Carlsbad to provide the administrative services necessary to carry out the administrative functions of the CMWD, including accounting, cash management, human resources, risk management, purchasing, inspection and contract management, and all employees of the CMWD became city employees; and

WHEREAS, on Oct. 15, 1991, the Board of Directors of the CMWD repealed Title 9 of the Administrative Code entitled “Conflict of Interest” and in its place substituted the Conflict of Interest Code of the Carlsbad Municipal Water District and the Appendix to that Code setting forth the designated positions and disclosure categories consistent with the requirements of the California Political Reform Act; and

WHEREAS, the Conflict of Interest Code for the CMWD has subsequently been amended and approved by the CMWD Board of Directors, most recently on Sept. 27, 2022, by Resolution No. 1683 for the City of Carlsbad, City Council as Successor Agency to the Redevelopment Agency, Community Development Commission, Carlsbad Municipal Water District, and Public Financing Authority reflecting the changed circumstances in positions and disclosure categories since the last amendment was approved; and

WHEREAS, the Board of Directors of the CMWD now desire to repeal the Administrative Code, as initially adopted in 1983, and subsequently amended, in its entirety because the administrative functions described in the Administrative Code are now governed by the City of Carlsbad’s policies and procedures, consistent with the Operating Agreement, and the Administrative Code is obsolete; and

WHEREAS, the City Planner has determined that the resolution to repeal the administrative code is exempt from the California Environmental Quality Act, or CEQA, pursuant to the common sense exemption, Section 15061(b)(3) of the CEQA Guidelines, since there would be no possibility of a significant effect on the environment; the City Planner issued a CEQA Determination of Exemption notice. The notice was issued for public review on May 23, 2024, with the appeal period ending on June 1, 2024. No appeals of the determination were filed.

NOW, THEREFORE, BE IT RESOLVED by the Carlsbad Municipal Water District Board of Directors of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. That the Carlsbad Municipal Water District Administrative Code is hereby repealed in its entirety.

PASSED, APPROVED AND ADOPTED at a Special Meeting of the Board of Directors of the Carlsbad Municipal Water District on the \_\_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

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KEITH BLACKBURN, President

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SHERRY FREISINGER, Secretary  
(SEAL)



CITY COUNCIL  
**Staff Report**

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Jason Haber, Intergovernmental Affairs Director  
Jason.haber@carlsbadca.gov, 442-339-2958

**Subject:** North County Transit District Update

**Districts:** All

**Recommended Action**

Receive an update from North County Transit District Chief Executive Officer Shawn Donaghy and provide feedback.

**Executive Summary**

The North County Transit District's mission is to operate an environmentally sustainable and fiscally responsible transit network that provides seamless mobility for all while achieving organizational and operational excellence.

NCTD's vision envisions a comprehensive transit and mobility system that connects all North County San Diego residents and visitors to a healthy, economically vibrant, and thriving region.

North County Transit District CEO Shawn Donaghy will provide the City Council with an update on the District's priority projects and strategic initiatives, including railroad safety, double tracking and real estate development projects.

**Fiscal Analysis**

No city funding is being requested.

**Next Steps**

None.

**Environmental Evaluation**

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

**Exhibits**

None



## CITY COUNCIL Staff Report

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Mandy Mills, Housing & Homeless Services Director  
mandy.mills@carlsbadca.gov, 442-339-2907  
Chris Shilling, Homeless Services Manager  
chris.shilling@carlsbadca.gov, 442-339-2284

**Subject:** Homelessness Action Plan Fiscal Year 2023-24 Semi-Annual Report and 2024 Point-in-Time Count Data

**Districts:** All

### Recommended Action

Receive a report and provide direction to staff as necessary on the semi-annual Homelessness Action Plan data and the latest 2024 Point-in-Time Count results.

### Executive Summary

This report provides an update on the City of Carlsbad's ongoing efforts to reduce homelessness and its effects on the community, which are top priorities for the City Council. The city continues to make steady progress toward the City Council's homelessness goal, implementing the actions in the City Council-approved Homelessness Action Plan.

This report presents the semi-annual data covering the period from July 1, 2023, to Dec. 31, 2023, along with the results of the 2024 Point-in-Time Count of the local homeless population. The semi-annual report and the annual Point-in-Time Count in tandem provide the multiple data points necessary for a broad assessment of the city's progress in its efforts to help people experiencing homelessness.

### Explanation & Analysis

#### **Background**

The City Council has prioritized homelessness as one of its top city goals:

- In March 2021, the City Council established a priority goal for fiscal year 2021-22 of reducing the unsheltered homeless population in Carlsbad.
- The City Council then included an updated goal to reduce homelessness and its impacts on the community in the city's five-year Strategic Plan.
- More recently, the City Council approved an updated Homelessness Action Plan on Feb. 7, 2023, which includes a comprehensive package of strategies and initiatives that the city plans to carry out over the next five years to support this effort.

City staff present periodic reports to keep the City Council and the community updated on the city's efforts to reach its goal, using multiple measurements to evaluate effectiveness. In these updates, staff provide information on the number of individuals experiencing homelessness in Carlsbad, performance metrics and outcomes, and updates on the Homelessness Action Plan and program expenses.

These updates are intended to provide the City Council and the community with an opportunity to monitor and evaluate the effectiveness of the city's homelessness initiatives and discuss any potential concerns or adjustments.

### **Semi-annual report**

The full report, attached as Exhibit 1, provides the semi-annual data for July 1, 2023, to Dec. 31, 2023. The report includes data for programs either contracted for or administered by the City of Carlsbad.

### **Report highlights**

- City of Carlsbad programs saw an 8% reduction in the number of unduplicated individuals experiencing homelessness when compared to the first six months of the previous fiscal year. Programs funded by the city interacted with 352 unduplicated persons during the first six months of fiscal year 2023-24, compared to 381 unduplicated persons during the same period in the previous fiscal year.
- The city's programs helped transition 37 homeless individuals into permanent housing during the first six months of fiscal year 2023-24.
- City programs provided homelessness prevention assistance to 19 households during the first six months of fiscal year 2023-24. These prevention services were paid for with Community Development Block Grant funding, which was included in the Homelessness Action Plan Funding Plan starting in fiscal year 2023-24.
- The data show continued improvements in reducing the impacts of homelessness on the community when comparing the same period from the last two fiscal years.
  - The Police Department has seen a 46% decline in dispatched calls for service relating to homelessness between fiscal year 2022-23 and fiscal year 2023-24. Dispatched calls for service include times a community member calls the Police Department to report an issue related to homelessness. It does not include proactive calls for service, when a police officer initiates an interaction without a community member calling.
  - There were 1,232 dispatched calls for service during the first six months of fiscal year 2023-24 compared to 2,276 calls for service for the same period in the previous fiscal year.
  - The number of proactive calls for service increased by 20% from 2,129 from the first six months of fiscal year 2022-23 to 2,553 in the first six months of fiscal year 2023-24.
  - Overall, the number of total calls for service decreased by 14%, from 4,405 calls for service in fiscal year 2022-23 to 3,785 calls for service in fiscal year 2023-24.

### **By-name list data**

To better understand who is experiencing homelessness in Carlsbad and coordinate efforts with community partners, the city maintains a comprehensive database that lists all individuals by name who are enrolled in homeless services programs operating within the city. This list includes all homeless-dedicated programs and is not limited to programs funded directly by the city.

The list is used during case conferencing meetings to help the city better coordinate the efforts of all partners. Data from the list also provides additional insight into the scope of homelessness in Carlsbad. Using a by-name list has been a transition for all partners and city staff continue to streamline processes for utilizing the data.

Carlsbad is currently the only jurisdiction in the county using a by-name list generated from the county's Homeless Management Information System enrollment data. Many of the city's community partners have not historically used the system as the main database for their programs, so improving the quality and timeliness of the data in the Homeless Management Information System has been an ongoing point of emphasis. The better the community partners become at ensuring all people experiencing homelessness in the city have an up-to-date record in the Homeless Management Information System, the better the by-name list will be as a coordination and data tracking tool. The list is only used internally and is not publicly available.

The following is a summary of the data from the by-name list for the first six months of fiscal year 2023-24:

- All programs operating in Carlsbad interacted with 485 unduplicated individuals experiencing homelessness from July 1, 2023, to Dec. 31, 2023. This is higher than the 352 unduplicated clients served by City of Carlsbad-administered and contracted programs because it also includes those provided services funded by other sources, such as the County of San Diego social worker in Carlsbad, the People Assisting the Homeless program behavioral health outreach worker and the YMCA transitional age youth program.
- The La Posada de Guadalupe shelter provided shelter to 103 unduplicated individuals experiencing homelessness.
- Fifty-five individuals transitioned into permanent housing with the support of one or more programs in Carlsbad. This is more than the 37 unduplicated clients who transitioned to permanent housing with the help of Carlsbad funded programs because this total includes services funded by other sources such as the County of San Diego social worker and the People Assisting the Homeless behavioral health outreach worker.
- Eighty-eight people who became homeless in Carlsbad during this period were new to the Homeless Management Information System, with no previous enrollments in a homeless services program.

### **2024 Point-in-Time Count data**

The Point-in-Time Count is conducted annually to collect an unduplicated count of sheltered and unsheltered individuals and families experiencing homelessness across the United States.

The count is conducted over a four-hour period in the early morning to collect data on homelessness in the region. This year the count was conducted on Jan. 25, 2024. The annual count is just one data source to gauge the year-over-year trends and approximate the number of people experiencing homelessness in Carlsbad. While it cannot provide a complete picture on how many people experience homelessness in Carlsbad throughout the year, it does provide a snapshot of the minimum number of homeless persons there are in Carlsbad on a given day.

The 2024 Point-in-Time Count data, which was released May 22, 2024, is provided as Exhibit 2. The following chart displays pertinent information for Carlsbad from the 2024 count.

2024 Point-in-Time Count					
Data	2022	2023	2024	Change from 2022 to 2023	Change from 2023 to 2024
Carlsbad sheltered*	43	43	38	0%	-11%
Carlsbad unsheltered	75	60	112	-20%	87%
<b>Carlsbad total</b>	<b>118</b>	<b>103</b>	<b>150</b>	<b>-13%</b>	<b>47%</b>
North County coastal sheltered	276	360	230	30%	-36%
North County coastal unsheltered	469	423	596	-10%	41%
<b>North County coastal total</b>	<b>745</b>	<b>783</b>	<b>826</b>	<b>5%</b>	<b>5%</b>
San Diego County region sheltered	4,321	5,093	4,495	18%	-12%
San Diego County region unsheltered	4,106	5,171	6,110	26%	18%
<b>San Diego County region total</b>	<b>8,427</b>	<b>10,264</b>	<b>10,605</b>	<b>22%</b>	<b>3%</b>

\* The number of sheltered homeless persons in Carlsbad only counts beds at the La Posada de Guadalupe emergency shelter available for homeless men, because 50 of the 100 beds are restricted for farmworkers as regulated by state funding that was received when the shelter was developed.

Additional context:

- The Point-in-Time Count is one data source to gauge the year-over-year trends and provides a snapshot of the minimum number of homeless persons there are in Carlsbad on a given day. The By-Name List also provides data trends for the approximate number of people experiencing homelessness in Carlsbad during specific points in time. We can track increases and decreases throughout the year and year over year.
- The North County Coastal unsheltered population increased from 423 individuals in 2023 to 596 individuals in 2024, an increase of 41%.
- The North County overall area experienced a 47% increase in the unsheltered population. The North County region, including inland areas, accounts for approximately 16% of the homeless population in San Diego County for the 2024 count.
- While Carlsbad makes up approximately 3.5% of the region’s population, it has less than 1.8% of the region’s unsheltered population.
- Carlsbad makes up approximately 16% of North County’s population, but Carlsbad’s unsheltered population makes up just 9% of the total North County overall unsheltered population.

While the Point-in-Time Count data is useful to point out year-over-year regional trends, it only provides a snapshot of information, which may or may not accurately reflect the size of the city's homeless population over a sustained period of time. For this reason, the count does not provide enough conclusive evidence to measure progress toward the City Council's goal of reducing homelessness in Carlsbad. Staff will continue to report on a variety of data points in alignment with the Homelessness Action Plan to inform the City Council and the public about the progress the city is making toward its goal to reduce homelessness in Carlsbad.

This count is a requirement of the Department of Housing and Urban Development for all continuums of care that receive federal funding. It is one of the tools used nationally to assess the scope of homelessness and is often used to inform decisions. A continuum of care is a regional or local planning body that coordinates housing and services funding for homeless families and individuals. In San Diego County, the continuum of care is managed by the Regional Task Force on Homelessness, which oversees the annual count.

### **Data coordination**

Housing & Homeless Services staff and the Carlsbad Police Department are piloting a joint effort to cross reference data. This could identify opportunities to focus resources on those individuals who place some of the heaviest burdens on public services and resources, such as emergency room visits and arrests. This also aligns with the upcoming launch of the city's Substance Abuse Outreach and Education Program, which is funded by the National Opioid Settlement. This program can provide additional support to people struggling with substance abuse issues. This coordinated effort is aimed at helping the most vulnerable individuals as well as decreasing impacts to the community.

### **Fiscal Analysis**

An overview of semi-annual Fiscal Year 2023-2024 spending associated with the homelessness goal is included in the attached report, Exhibit 1.

### **Next Steps**

Staff will present the annual report, covering the period from Jan. 1, 2024, to June 30, 2024, to the City Council in fall 2024.

### **Environmental Evaluation**

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

### **Exhibits**

1. FY 2023-24 Semi-Annual Homelessness Action Progress Report
2. 2024 Point-in-Time Count Data



During the first half of FY 2023-24, the City of Carlsbad achieved several important milestones towards its goal of reducing homelessness and its impacts on the community, which are detailed in this report.

In February 2023, the City Council approved an updated Homelessness Action Plan, which includes the programs and initiatives the city will carry out over the next five years and the measures that will be used to track progress.

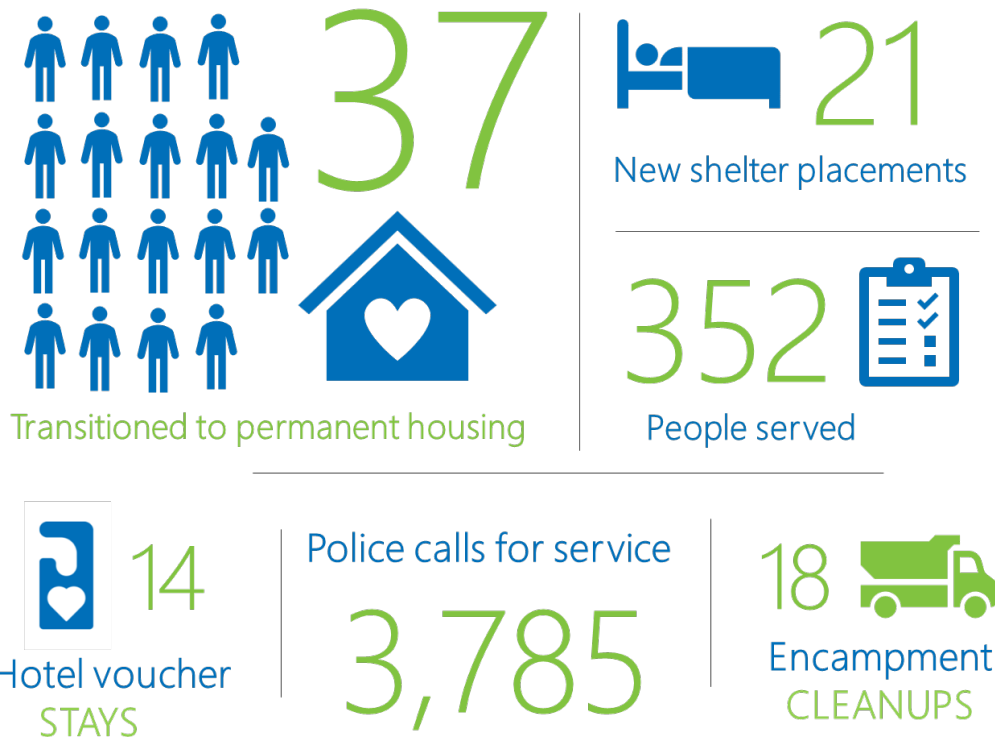
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### City Council Goal

*Enhance the quality of life for everyone in Carlsbad by adopting and implementing an updated Homelessness Response Plan that addresses the complex needs of individuals experiencing or at risk of experiencing homelessness in a compassionate and effective manner and reduces the impacts of homelessness on the community.*

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## SUMMARY OF CITY-FUNDED PROGRAMS



## Carlsbad's Homeless Population

The city uses a variety of data points to measure and track progress on efforts to reduce homelessness. The data captured below is a summary from the Homeless Management Information System of clients enrolled in services provided by city-funded contracts during the time period of July 1 to Dec. 31, 2023.



**352**  
People served

**8 Families**  
**18 Children**



**40% Aged**  
**55+**



**5.4%**  
Veterans



**27% Chronically\***  
**homeless**

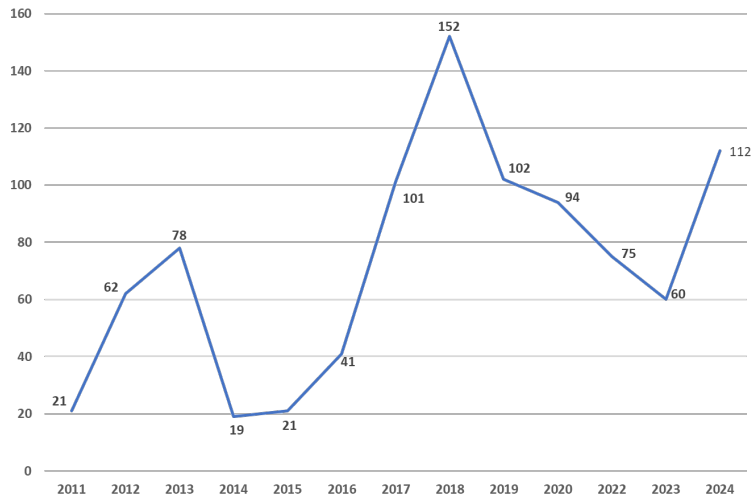


*\*Reported a permanent disability  
and 1 year+ experiencing  
homelessness*

## Point-in-Time Count\*

### POINT-IN-TIME COUNT UNSHELTERED DATA

The Point-in-Time Count is an unduplicated count of sheltered and unsheltered individuals experiencing homelessness across the United States, normally conducted during the last week in January. Since 2005, the Department of Housing and Urban Development has required all Continuums of Care who receive federal funding to provide a bi-annual count. The San Diego County Region typically exceeds this requirement by conducting a count every year.









\*The Point-in-Time Count did not take place in 2021 due to COVID-19 precautions.

2024 Point-in-Time Count					
Data	2022	2023	2024	Change from 2022 to 2023	Change from 2023 to 2024
Carlsbad sheltered*	43	43	38	0%	-11%
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<b>North County coastal total</b>	<b>745</b>	<b>783</b>	<b>826</b>	<b>5%</b>	<b>5%</b>
San Diego County Region sheltered	4321	5093	4495	18%	-12%
San Diego County Region unsheltered	4106	5171	6110	26%	18%
<b>San Diego County Region total</b>	<b>8427</b>	<b>10264</b>	<b>10605</b>	<b>22%</b>	<b>3%</b>

## City Programs Data by Quarter

The table below shows how data compare between each quarter, along with cumulative data since July 2022. The same individual may have received more than one service and is reflected under each service category that applies to them (for example, the same individual may have received both a motel voucher and later placed into permanent housing).

	Fiscal Year	Q1	Q2	Q3	Q4	YTD
 Households transitioned to permanent housing	2022-23	35	31	19	20	105
	2023-24	14	23			37
 Total persons receiving services <sup>1</sup>	2022-23	247	184	236	183	565
	2023-24	266	234			352
 Police calls for service <sup>2</sup>	2022-23	2,548	1,857	1,953	1,964	8,322
	2023-24	1,928	1,857			3,785
 New shelter placements	2022-23	21	17	21	7	66
	2023-24	10	11			21
 Shopping carts collected	2022-23	31	13	3	35	44
	2023-24	73	53			126
 Hotel voucher stays <sup>3</sup>	2022-23	10	13	10	15	48
	2023-24	9	5			14

<sup>1</sup>Total persons receiving services include the total number of people enrolled in a city-funded program during the time period of this report. Annual and YTD numbers are deduplicated for individuals served over multiple quarters.

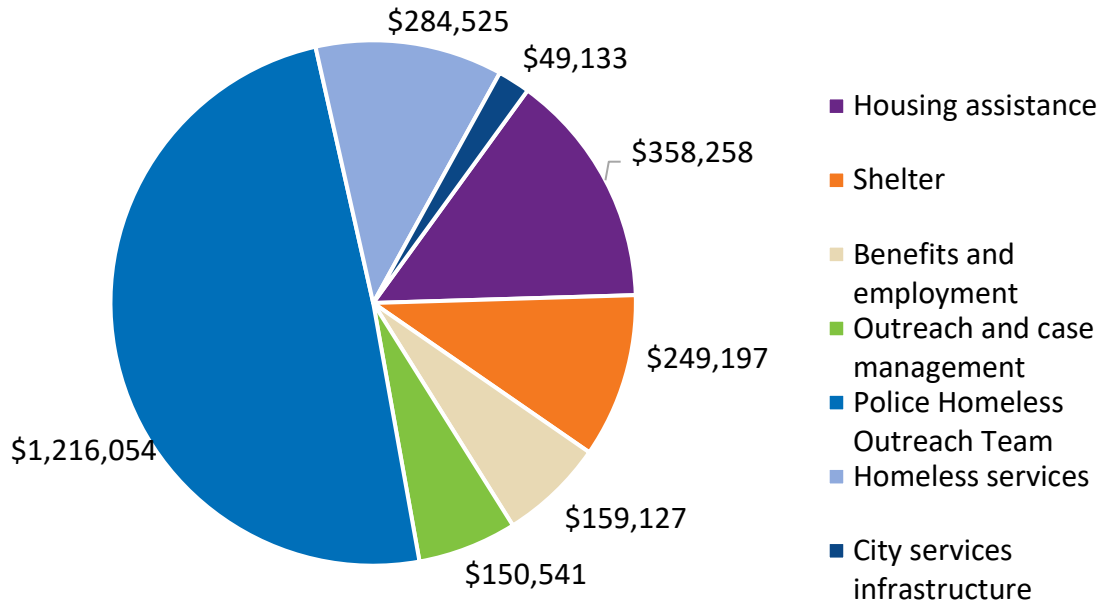
<sup>2</sup>Carlsbad Police officers went into the field for 3,785 homeless-related calls for service during the first two quarters, of which 1,232 calls were in response to a specific request or complaint and 2,553 were proactive department-initiated calls for service to help carry out city homelessness goals and enforce applicable laws.

<sup>3</sup>This number indicates unduplicated households served, as some stays overlapped fiscal quarters.

## Expenditures

The total expenditures for the first half of fiscal year 2023-24 to support the homelessness goal were \$2,466,835.

### TOTAL BUDGET EXPENDITURES BY CATEGORY FY 2023-24 for July 1 to Dec. 31



# HOMELESSNESS ACTION PLAN

## Areas of Focus

Homelessness is a complex issue that requires the resources, expertise and cooperation of many different entities. The city’s efforts are concentrated within three key areas it can influence and programs that will make the biggest impact for Carlsbad. These areas comprise “what” the city is focusing on.



Shelter and housing



Outreach and access to services



Public safety



## Shelter and Housing



37

People transitioned to permanent housing



19

Households provided with prevention services

14



Hotel voucher STAYS



21

New shelter placements

### PERMANENT HOUSING

City-funded programs transitioned 37 people into permanent housing. Many of these placements were assisted by multiple programs both city and non-city funded. In addition to city-funded programs, non-city funded programs housed an additional 18 individuals for a total of 55 people moving from homelessness in Carlsbad to permanent housing during the first half of fiscal year 2023-24.

### PREVENTION

Limited funds are available from Community Development Block Grant and the General Fund to assist households at risk of entering homelessness. Between July 1 to Dec. 31, 2023, Interfaith Community Services, Community Resource Center, and Brother Benno's assisted 19 households, preventing them from entering homelessness.

### LIMITED TERM HOTEL VOUCHER PROGRAM

From July 1, 2023, to Dec. 31, 2023, 14 households utilized the homeless services and police department hotel voucher program. Of the 14 households assisted, 8 were able to move on to permanent housing or were otherwise sheltered following their hotel voucher stay.



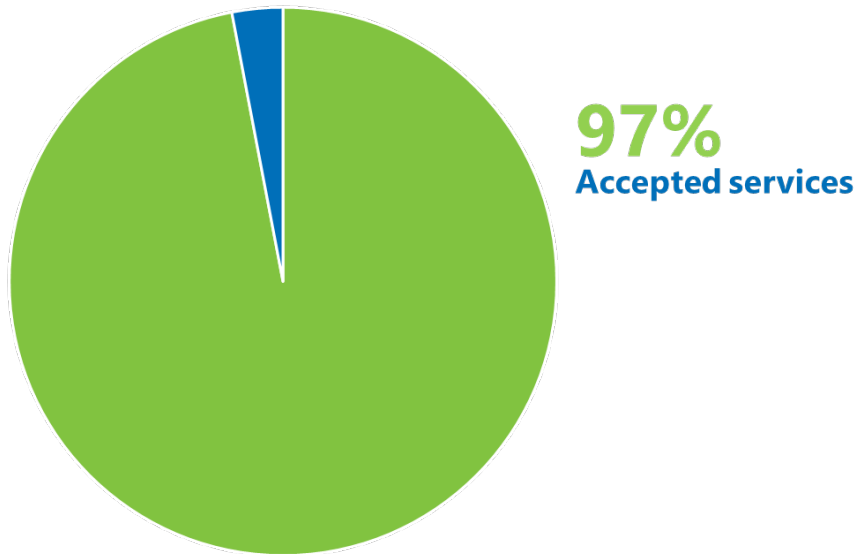
## Outreach and Access to Services

### ENCAMPMENT RESOLUTION FUNDING

The City of Carlsbad applied for and received \$2,358,408.94 from the State of California to focus outreach and housing services on the Carlsbad Village area. Between July 1, 2023, to Dec. 31, 2023, contracts were executed with Interfaith Community Services, Community Resource Center, Whole Person Care Clinic and Catholic Charities (for La Posada). This grant provides additional outreach services, rapid re-housing, street-based medical services and additional services at the La Posada de Guadalupe Men's shelter. Data and outcomes for this grant will be shared in the annual report.

















### INTERFAITH COMMUNITY SERVICES OUTREACH AND CASE MANAGEMENT

During the first half of fiscal year 2023-24, 97% of homeless persons contacted by the outreach social workers accepted some form of clinical intervention. This includes case management, assessment, care coordination, crisis intervention, program information, diversion and treatment planning.





## INTERFAITH OUTREACH CASE MANAGEMENT SERVICES PROVIDED

Services accepted	Q1	Q2	Q3	Q4	YTD
 Case management sessions	742	519			1261
 Emergency shelter referral	33	18			51
 Mail delivery	7	2			9
 Transportation to services	1	0			1
 Police transportation	11	1			12
 Substance abuse treatment	11	7			18
 Document assistance (ID, birth certificates, etc.)	40	15			55
 Permanent or bridge housing referral	105	53			158
 Employment & benefits access (medical insurance, CalFresh, employment, VA benefits, etc.)	49	25			74
 Information only	82	19			101
 Food assistance	18	3			21
 Hospital transport	1	0			1
 Referrals to mental & physical health care	31	17			48
 Personal needs assistance (clothing, phone, prescriptions, etc.)	20	10			30
 Reunification travel assistance	27	26			53
 Other (appointment coordination, blankets, etc.)	91	44			135
<b>TOTAL</b>	<b>1,274</b>	<b>752</b>			<b>2,026<sup>1</sup></b>

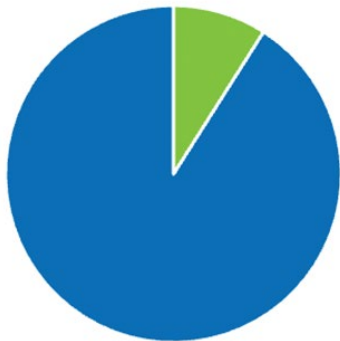
<sup>1</sup>all numbers indicate services provided, not individuals served, individuals may receive multiple services within each category



## HOMELESS-RELATED CALLS FOR SERVICE

During the first half of fiscal year 2023-24, Carlsbad Police went into the field for 3,785 homeless-related calls for service, which made up 7% of all calls for service. Of those, 1,232 calls were in response to a specific request or complaint and 2,553 were proactive department-initiated calls for service to help carry out city homelessness goals and enforce applicable law.





## PERCENTAGE OF CALLS FOR HOMELESS-RELATED SERVICES



**7%**  
Related to  
homelessness

## HOMELESS-RELATED STATISTICS BY CATEGORY

*\*These are the statistics related to the homeless population compared to the general population in Carlsbad. Mental health holds refer to incidents when an individual experiencing a mental health crisis is hospitalized for 72-hour psychiatric care after they are determined by the police to be a danger to themselves or others.*

Percentage of all calls for services	Q1	Q2	Q3	Q4
 Homeless-related calls for services	7%	7%		
 Homeless-related arrests	14.5%	13.6%		
 Homeless-related citations	3%	8%		
 Homeless-related mental health holds	4%	2%		

## ENCAMPMENT AND ABANDONED LITTER CLEANUP

57.5 

Cubic yards of trash removed

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 57

Cleanup  
DAYS

18 

Encampment  
CLEANUPS

## City Programs and Partnerships

The City of Carlsbad coordinates efforts and administers programs to address and reduce homelessness within the community. The following programs and partnerships have been developed as part of the city's Homelessness Action Plan to help those experiencing homelessness obtain housing and reduce the impacts of homelessness on the community.



### Community Resource Center

The city partners with the Community Resource Center to operate its **rapid re-housing, employment and benefits specialist** and **homelessness prevention** contracts. These contracts provide case management, emergency rental assistance, security deposit support, ongoing rental assistance, landlord advocacy, financial education, stabilization support, referrals to higher levels of care, benefits enrollment, job readiness support, resume building and employment connection. During the first half of fiscal year 2023-24, Community Resource Center assisted 8 households with emergency rental assistance for homelessness prevention purposes and the employment & benefits program enrolled 18 individuals in services. Rapid re-housing had a total enrollment across the first half of the fiscal year of 60 individuals, 14 of whom were able to secure a permanent place to live as of Dec. 31, 2023.



### Interfaith Community Services

The city partners with Interfaith Community Services to provide **outreach case management**, operate the **hiring/service center** and provide **homelessness prevention** services within the city. The current outreach and case management contract provides two licensed or master's level clinicians and one part-time licensed program manager. They provide coverage throughout the week offering outreach and case management in the field to individuals experiencing homelessness in Carlsbad. The clinicians engage, assess, plan and refer individuals to resources like shelter, housing, medical care, public benefits, mental health assistance, substance use treatment and basic needs supports. During the first half of FY 2023-24, Interfaith Community Services through the outreach and case management program engaged with 179 unduplicated clients experiencing homelessness. Interfaith Community Services also operates the Carlsbad Service Center which provides temporary job placement through the hiring center, housing case management and homelessness prevention services. From July 1, 2023, through Dec. 31, 2023, prevention services kept nine households from experiencing homelessness in Carlsbad.



### San Diego Humane Society

The purpose of the San Diego Humane Society contract is to provide individuals experiencing homelessness with a safe place to temporarily board their animals when they are not able to bring them to treatment facilities or services. The contract provides **short-term emergency pet boarding** and emergency medical care for approximately 25 animals of persons experiencing homelessness – free of charge – so homeless individuals can access care and resources.



### Catholic Charities

The Catholic Charities Diocese of San Diego operates the **La Posada de Guadalupe men’s shelter** in Carlsbad. The shelter has the capacity to serve 50 single men experiencing homelessness. The city provides funding for staff, operations, training and technical assistance. It is a priority of the city to help Catholic Charities expand the shelter to include space for single women and families. Catholic Charities provided shelter to 103 individual homeless men during the first half of FY 2023-24.



### Women’s Resource Center

The city partners with Women’s Resource Center to provide **domestic violence services** for Carlsbad residents. The organization assists with shelter, hygiene kits, bus passes, food, clothing, counseling and wrap-around services. Women’s Resource Center supported 44 clients from Carlsbad during the first half of FY 2023-24.



### Brother Benno Foundation

The city partners with the Brother Benno Foundation to provide **emergency rental assistance, utility assistance, motel vouchers** and **recovery services** for people experiencing or at risk of homelessness in the City of Carlsbad. During the first six months of FY 2023-24 the organization supported 28 people in 11 households with utility or rental assistance to prevent them falling into homelessness.



### Alliance for Regional Solutions

The city contributes annually to the Alliance for Regional Solutions **Bridge to Housing Network**. The Alliance distributes funding to North County homeless shelters including Haven House, Operation Hope, La Posada de Guadalupe, Interfaith Family Shelter and the Interfaith Shelter Network. The city’s contribution helps the shelters support operations and serve Carlsbad residents. The city continues to rely on the shelter network to provide space for single women and families.



### Urban Corps

The city contracts with Urban Corps of San Diego for **trash abatement, litter and encampment cleanup** related to persons experiencing homelessness. Urban Corps works very closely with the city’s Public Works Department and the Homeless Outreach Team. They are responsible for responding to and triaging any incoming cleanup requests based on health and safety. This contract provides cleanup services 3 days per week, 52 weeks a year, often including encampment cleanups. During the first half of fiscal year 2023-24, Urban Corps completed 18 encampment cleanups. When encampment cleanups are not needed, the team provides regular cleaning services to areas commonly known to have abandoned trash and a high prevalence of homelessness related debris.



### Rocket John Portable Restrooms and Handwashing Stations

The Rocket John contract provides three **portable restrooms** and **handwashing stations** and routine cleaning and maintenance in Carlsbad. Two are located in Carlsbad Village and one is at the Cole library.



### Non-City Funded Homeless Outreach

The **County of San Diego** and **People Assisting the Homeless (PATH)** each have a full-time **outreach worker** dedicated to Carlsbad. The PATH outreach worker is specially trained in working with individuals or households with behavioral health needs. In addition, the county provides benefits enrollment services at the Harding Community Center (bi-weekly) and at the Carlsbad Service Center (weekly) to assist people with enrolling in MediCal, CalFresh and General Relief programs. The **YMCA Transitional Age Youth** program provides outreach and rapid re-housing for transitional age youth (ages 18-24). Their programs include services for youth experiencing homelessness in Carlsbad.



### Case Collaboration/Care Conferencing

City staff work closely with staff from city-funded programs and other partners working in homeless services. Staff facilitate a monthly Carlsbad collaboration meeting and a monthly case conferencing meeting to ensure all outreach efforts are effectively administered and coordinated, so that the most complex cases are prioritized and served. The Carlsbad collaboration meeting provides training and resource coordination. Trainings and coordination have included: affordable housing training, shared housing, mental health resources, senior housing resources, homelessness specific housing resources, and the San Diego Humane Society programs. The case conferencing meeting is attended by direct service providers within Carlsbad that are a part of the Homeless Management Information System so that coordination of the most acute cases can be supported effectively by all participating providers. Community partners report appreciation for the level of cohesion and collaboration that exists within the agencies working on homelessness issues in Carlsbad.



### By-Name List

To better understand homelessness in Carlsbad and coordinate efforts, the city maintains a comprehensive list of all individuals enrolled in homeless services programs within the city. The list is generated directly from the Homeless Management Information System and is used by the city to coordinate the work of all partners providing homeless services in Carlsbad. The list has had 485 unique individuals enrolled in services within the first 6 months of fiscal year 2023-24. This number includes enrollments in all city-funded or administered programs and non-city funded programs (County of San Diego, People Assisting the Homeless (PATH) and the YMCA Transitional Age Youth program). During the first half of fiscal year 2023-24, eighty-eight (88) individuals entered the list for the first time who had not previously been enrolled in any homeless services program within the San Diego County Homeless Management Information System.



## Additional Collaboration

The city collaborates with many stakeholders in the community to reduce homelessness. Homelessness impacts all aspects of a community, so it truly takes a village to solve it.



## Success Stories

The following success stories are real people who were experiencing homelessness in Carlsbad and connected to community services and housing as a result of the city's homelessness efforts. These are their stories, which they have given the city permission to share. Their names have been changed to protect their confidentiality.

### Meet Carol and her son

Female and Male: 57 and 18

Permanently housed: November 2023

Carol and her son had been residents of Carlsbad for many years. In 2023, Carol lost her job due to health issues. This led to them not being able to afford their rent and needing to leave their apartment. Around this same time, Carol and her son received a Housing Choice Voucher, a rental subsidy that covers housing costs. However, Carol and her son had nowhere to stay while they were looking for an apartment. The City of Carlsbad provided assistance for Carol and her son to stay in a hotel through the city's hotel voucher program, allowing Carol a safe place to address her health issues and allowing the son to continue working. Carol was having difficulties finding an apartment. A social worker from Interfaith Community services and the City of Carlsbad Housing Navigator worked closely with Carol to locate an apartment, apply for it and get approved. Once Carol and her son had been approved for the apartment, Interfaith Community Services provided assistance to cover the move-in costs. Since moving in, Carol has been able to address some of her health concerns and begin working part-time. Her son has also been able to continue growing in his job, with a safe place to call home.

#### What worked

- **Interfaith Community Services** and the **City of Carlsbad Housing Navigator** worked closely together to provide Carol and her son with the wrap-around support that they needed to find an apartment.
- Carol and her son were provided with a hotel voucher, giving them the stability needed to look for housing and for her son to continue working.
- **Interfaith Community Services** was able to step in to assist with move-in costs.



### Meet Jeff

Male: 46

Permanently housed: September 2023

Jeff grew up in the north coastal area and graduated from a high school here in Carlsbad. He had a lot of trauma during his childhood and experienced more when he had a family of his own. He ended up alone and on the streets for years experiencing debilitating mental health barriers. He didn't trust the government or any resources available. City staff continued meeting with him week after week to build trust and eventually were able to help him access the hotel voucher program and ultimately find an apartment through the Housing Choice Voucher program. He is beginning to reconnect with family and starting to stabilize inside his permanent housing.

#### What worked

- Housing Navigation through the [City of Carlsbad](#) continued to engage over time to build trust
- The [City of Carlsbad's](#) hotel voucher program gave Jeff time to stabilize and take the next step towards housing
- The Housing Choice Voucher provided by the [Carlsbad Housing Agency](#) provided rental assistance for an apartment

## Overcoming Challenges

Staff have experienced some challenges around the implementation of the City Council's goal to reduce homelessness and its impacts on the community. Some of these include:

### Staffing

Staffing in the field of homeless services continues to be a challenge. High rates of turnover and vacancy tend to lead to temporary decreases in effectiveness of programs as new staff are trained and become proficient at their roles. New social workers for both city-funded outreach positions began just before the new fiscal year, the housing navigator position was filled in August 2023, La Posada was experiencing staffing shortages and Community Resource Center onboarded new case management staff in conjunction with the expansion of the rapid re-housing program.

### Limited shelter and housing resources

There is limited emergency shelter, permanent supportive housing, available affordable housing and general housing options in North County and San Diego.

### Limited options for women and seniors

Outreach workers, police homeless outreach officers and city staff have experienced an influx in single females over the age of 60 experiencing homelessness for the first time. Staff are collaborating to identify accessible shelter and housing options for this population. General communal shelters are not always an option due to extremely limited availability, health risks and mobility needs. The Haven House shelter in Escondido has merged with Interfaith Community Services' recuperative care program, reducing shelter beds in the region by 49, including the majority of the available beds for single women. Staff across multiple agencies report difficulty securing shelter options for seniors and single women.

## Upcoming Work

City staff have several projects on the horizon:

- The Department of Housing & Homeless Services is continuing to provide support and monitor the progress on the La Posada de Guadalupe shelter expansion.
- Staff will be moving forward with expending the National Opioid Settlements funding per the recommendation of City Council through a Substance Abuse Outreach and Education program.
- Staff will begin utilizing new Resolution Strategies funding from the Regional Task Force on Homelessness which is a flexible funding source to help divert people away from homelessness.
- Staff will continue to coordinate community efforts to better implement shared housing strategies for people experiencing homelessness.
- Staff will be bringing forward an MOA with the City of Oceanside for Encampment Resolution Funding to address encampments along the 78 corridor.

# San Diego CoC Region

## 2024 Point-in-Time Count Data

San Diego Region			
Emergency Shelter	Safe Haven	Transitional Housing	Unsheltered
3,177	60	1,258	6,110*
<b>Total: 10,605</b>			

\* Includes Caltrans Count of 592

Homeless Profile	% of Unsheltered Persons*	# of Homeless Persons	% Sheltered Persons*	# Sheltered Persons
Veteran	9%	544	7%	321
Female	28%	661	41%	1,858
Families	2%	142	32%	1,421
Youth	8%	465	30%	1,330
Chronically Homeless	44%	2,686	24%	1,072

\*Percentages rounded to nearest whole number

Housing Inventory	Beds	Utilization
Emergency Shelter	3,900	81%
Safe Haven	73	82%
Transitional Housing	1,921	65%
Permanent Supportive Housing	7,287	82%
Rapid Re-Housing	2,383	100%
Other Permanent Housing	1,988	89%

# 2023-2024

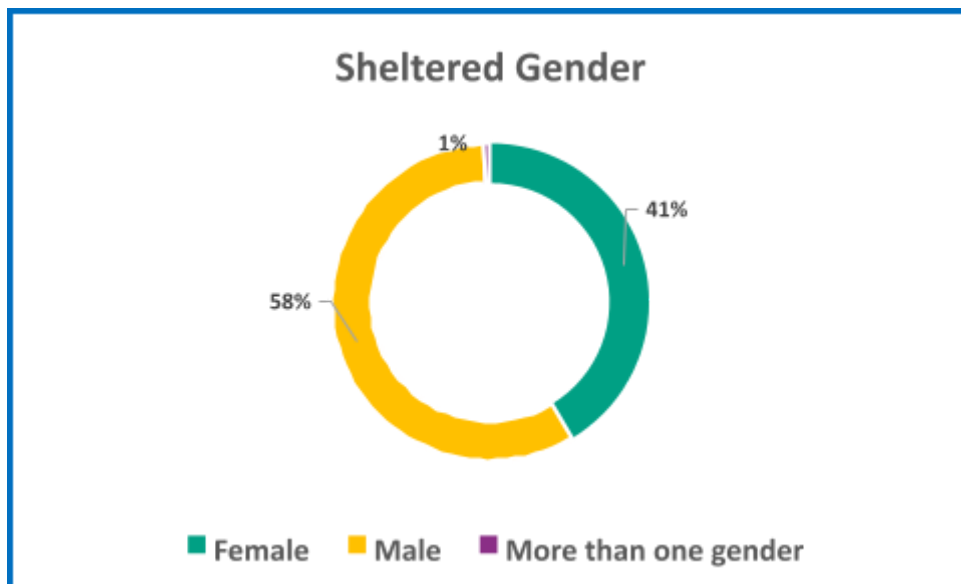
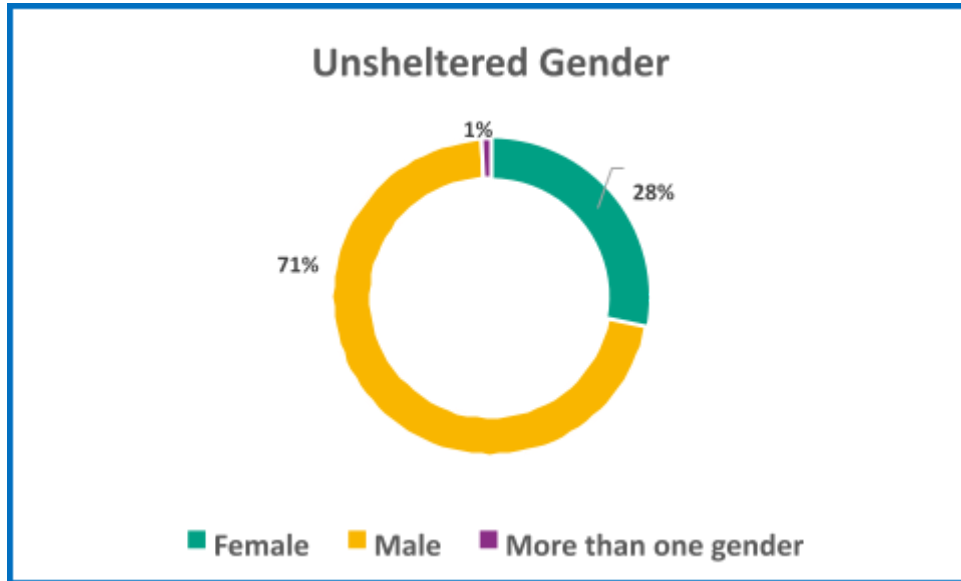
## Year Comparisons

	2023 Total	2024 Total	2023-2024 Overall Change
<b>Region</b>	<b>Total</b>	<b>Total</b>	<b>% of Total</b>
San Diego Region	10,264	10,605	3%

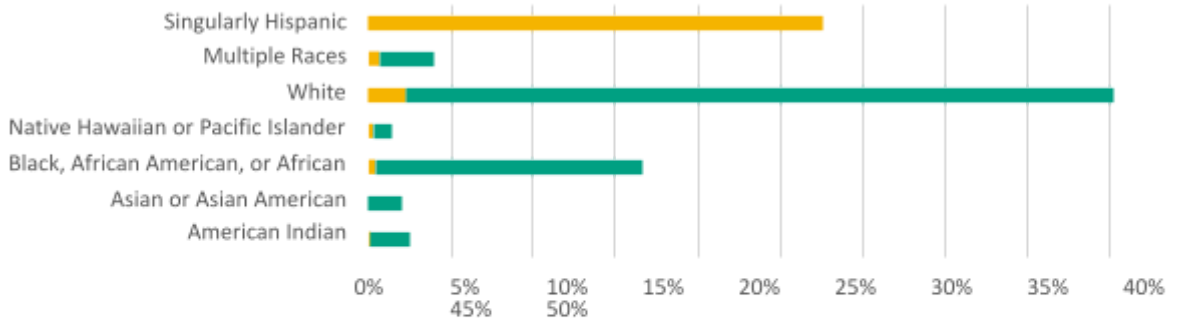
	2023 Unsheltered	2024 Unsheltered	2023-2024 Unsheltered Change
<b>Region</b>	<b>Count</b>	<b>Count</b>	<b>% of Total</b>
San Diego Region	5,171	6,110	18%

	2023 Sheltered				2024 Sheltered	2023-2024 Sheltered Change
<b>Region</b>	<b>ES</b>	<b>TH</b>	<b>SH</b>	<b>Total</b>	<b>Total</b>	<b>% of Total</b>
San Diego Region	3,895	1,148	50	5,093	4,495	-12%
<b>2024 Sheltered Count breakdown by Project Type</b>						
<b>ES</b>	<b>TH</b>		<b>SH</b>			
3,177	1,258		60			

# 2024 San Diego Region Demographics



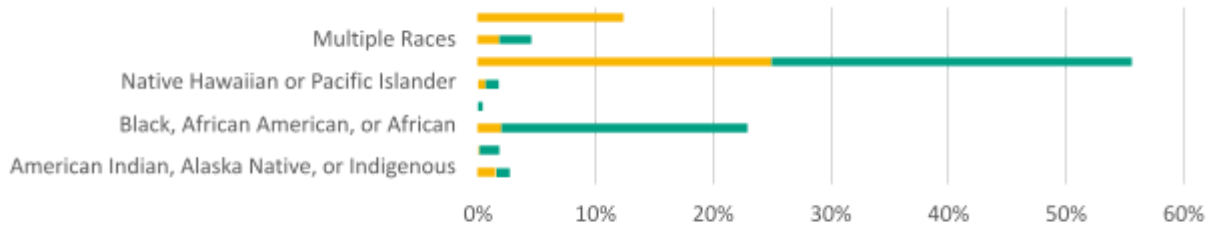
### Unsheltered Race



	American Indian	Asian or Asian American	Black, African American, or African	Native Hawaiian or Pacific Islander	White	Multiple Races	Singularly Hispanic
Hispanic	0%	0%	0%	0%	2%	1%	28%
Non-Hispanic	2%	2%	16%	1%	43%	3%	0

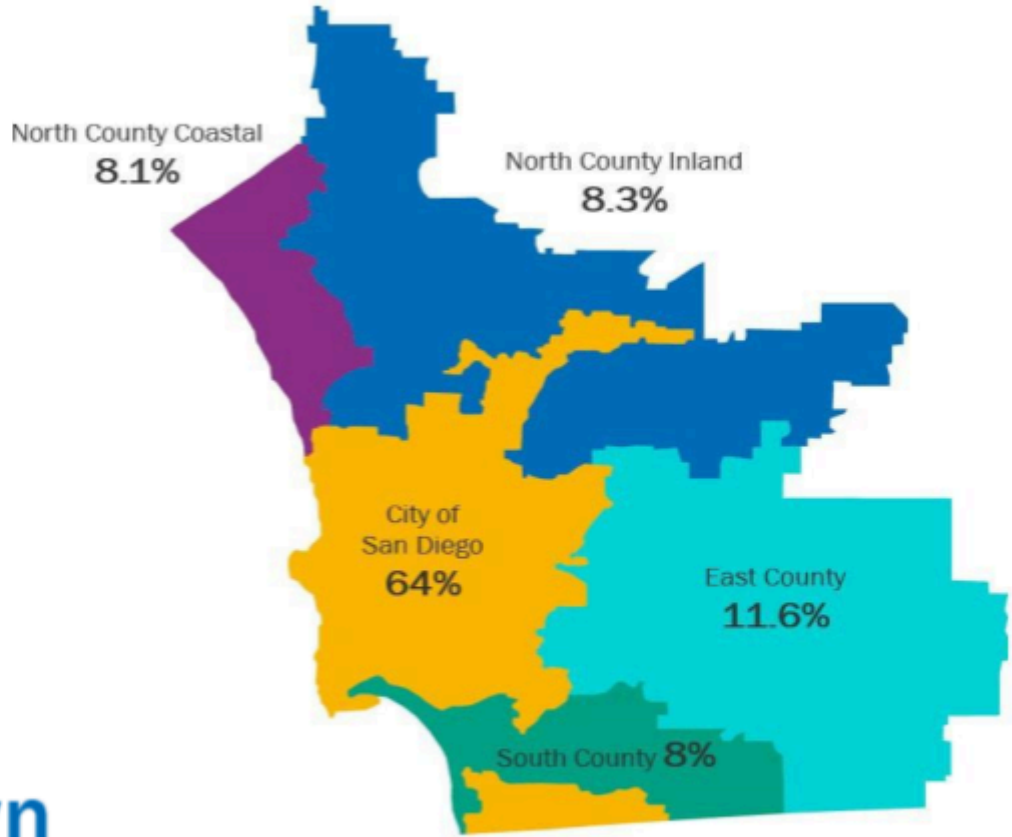
■ Hispanic ■ Non-Hispanic

### Sheltered Race



	American Indian, Alaska Native, or Indigenous	Asian or Asian American	Black, African American, or African	Middle Eastern or North African	Native Hawaiian or Pacific Islander	White	Multiple Races	Singularly Hispanic
Hispanic	2%	0%	2%	0%	1%	25%	2%	12%
Non-Hispanic	1%	2%	21%	0%	1%	31%	3%	0

■ Hispanic ■ Non-Hispanic



# Regional Breakdown

SHELTERED + UNSHELTERED

	% of the Region	Total Homeless Persons
City of San Diego	64%	6,783
North County Inland	8.3%	876
North County Coastal	8.1%	865
South County	8%	849
East County	11.6%	1,232

## 2024 PITC-Regional and Cities Breakdown

		2024 Sheltered				2024 Unsheltered	2023 Unsheltered	2023-24 Unsheltered Change
Region	City	ES	TH	SH	Total	Total Unsheltered	Total Unsheltered	% Change
Central Region	San Diego City	2,650	588	56	3,294	3,489	3,285	6.2%
North Coastal Region	Carlsbad	38**	0	0	38	112	60	86.6%
	Oceanside	90	71	0	161	361	290	24.5%
	Encinitas (San Dieguito, Solana Beach & Del Mar)	14	17	0	31	123	73	68.5%
South Region	Coronado	0	0	0	0	0	1	-100.0%
	National City	0	5	0	5	174	159	9.4%
	Chula Vista (Sweetwater)	72	75	0	147	503	318	58.2%
	Imperial Beach	0	0	0	0	20	19	5.3%
East Region	El Cajon	160	357	0	517	283	203	39.4%
	La Mesa	8	6	0	14	53	36	47.2%
	Lemon Grove	0	0	0	0	111	60	85.0%
	Santee	0	0	0	0	73	76	-3.9%
	Alpine (Crest-Dehesa)*	0	0	0	0	0	4	-100.0%
	Lakeside*	0	0	0	0	52	78	-33.3%
	Spring Valley (Casa de Oro)*	0	0	0	0	129	71	81.7%
North Inland Region	Escondido (NC Metro & Hidden Meadows)	121**	62	4	187	401	304	31.9%
	Vista (Bonsall)	24	77	0	101	170	88	93.2%
	Poway	0	0	0	0	1	2	-50.0%
	Fallbrook*	0	0	0	0	7	19	-63.2%
	San Marcos	0	0	0	0	35	2	1,650.0%
	Ramona*	0	0	0	0	13	23	-43.5%
<b>TOTAL</b>		<b>3,177</b>	<b>1,258</b>	<b>60</b>	<b>4,495</b>	<b>6,110</b>	<b>5,171</b>	<b>18.2%</b>

\*Regions with an asterisk represent unincorporated regions. \*\* Correction made 6/6/2024, updated information from ICS





## 2024 Point-in-Time Count Data

City of Carlsbad			
Emergency Shelter	Safe Haven	Transitional Housing	Unsheltered
38*	0	0	112
<b>Total: 150</b>			

\*correction made 6/6/2024, updated information from ICS

Homeless Profile	% Unsheltered Persons	# Unsheltered Persons	% Sheltered Persons	# Sheltered Persons
Veteran	9%	10	8%	3
Female	27%	16	0%	0
Families	0%	0	0%	0
Youth	4%	4	0%	0

Housing Inventory	Beds	Utilization
Emergency Shelter	51	75%
Safe Haven	-	-
Transitional Housing	-	-
Permanent Supportive Housing	42	76%
Rapid Re-Housing	13	100%
Other Permanent Housing	-	-

# 2023-2024

## Year Comparisons

	2024 Total	2023 Total	2023 -2024 Overall Change
<b>City</b>	<b>Total</b>	<b>Total</b>	<b>% of Total</b>
City of Carlsbad	150	103	47%

	2024 Unsheltered	2023 Unsheltered	2023-2024 Unsheltered Change
<b>City</b>	<b>Count</b>	<b>Count</b>	<b>% of Total</b>
City of Carlsbad	112	60	87%

	2023 Sheltered				2024 Sheltered	2023-2024 Sheltered Change
<b>City</b>	<b>ES</b>	<b>TH</b>	<b>SH</b>	<b>Total</b>	<b>Total</b>	<b>% of Total</b>
City of Carlsbad	43	0	0	43	38	-12%
<b>2024 Sheltered Count breakdown by Project Type</b>						
	<b>ES</b>	<b>TH</b>		<b>SH</b>		
	38	0		0		



CITY COUNCIL  
**Staff Report**

**Meeting Date:** June 25, 2024

**To:** Mayor and City Council

**From:** Scott Chadwick, City Manager

**Staff Contact:** Jason Haber, Intergovernmental Affairs Director  
Jason.haber@carlsbadca.gov, 442-339-2958

**Subject:** Memorandum of Understanding between the City of Carlsbad, the San Diego Association of Governments, and the North County Transit District regarding the Pursuit of Grant Funding for the Carlsbad Village Railroad Trench Project

**Districts:** All

**Recommended Action**

Adopt a resolution authorizing the City Manager to execute a memorandum of understanding between the San Diego Association of Governments, the City of Carlsbad and the North County Transit District regarding the pursuit of grant funding for the Carlsbad Village Railroad Trench Project.

**Executive Summary**

The Carlsbad Strategic Plan for 2023-2027 identifies the city's intent to work with San Diego Association of Governments, and the North County Transit District to prioritize, determine costs, and work with state and federal representatives to seek funding for preliminary design and technical studies for lowering the railroad tracks in the village.

This memorandum of understanding will establish a framework for the city, the San Diego Association of Governments and NCTD to work collaboratively to identify and pursue state, federal, and non-governmental grant opportunities to fund the completion of preliminary – that is, 30% complete – design, technical studies and environmental clearance for the Carlsbad Village Double Track Trench Project – Long Trench Alternative.

SANDAG is responsible for planning, programming, and implementing regional transportation infrastructure projects in San Diego County. NCTD owns and operates the railroad segment that passes through Carlsbad Village and the Barrio neighborhood of Carlsbad. The city, SANDAG and NCTD all support lowering the railroad tracks through this segment, and SANDAG and NCTD are both prepared to execute the proposed memorandum of understanding.

The memorandum of understanding provides that:

- SANDAG will lead the preparation and submittal of grant applications and serve as the lead agency when deemed appropriate.
- The City of Carlsbad will provide up to \$5,220,000 to be used as a local match for federal and state grants.
- NCTD will support SANDAG in advancing the design and environmental phases of the project, among other provisions.

### **Explanation & Analysis**

The Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor, which runs through Carlsbad, is the second busiest intercity rail corridor in the nation, playing a critical role in the movement of people and goods in Southern California. The rail corridor currently operates at or near its design capacity, resulting in rail congestion. Improvements to the corridor are needed to accommodate regional transportation capacity needs. Adding a second track has been identified as the primary means of increasing capacity throughout the corridor.

The U.S. Department of Transportation's Federal Railroad Administration approved the proposed rail corridor improvements program proposed by the California Department of Transportation in 2009, at the initial programmatic phase of environmental review.

One component of the approved corridor improvements program, the Carlsbad Village Double Track Project, encompasses the rail segment between Oceanside, just south of Eaton Street, over the Buena Vista Lagoon and through Carlsbad Village and the Barrio. The project consists of installing double tracks in this segment, along with improvements to the Carlsbad Village Coaster Station necessary to accommodate the second track and the building of a new bridge over the Buena Vista lagoon.

The Railroad Administration's decision identified two potential alignment options for this segment, including double-tracking the current tracks or lowering them below the street level in a trench. The decision stated that all alignment options should be carried forward for project-level analysis before any final alignment decisions are made.

Thirty percent of the design for the street-level option has been completed and Federal Railroad Administration completed environmental review for that alignment in 2019.

Ten percent of the design for the lowered tracks option, the long trench alternative, has been completed, and additional funding is needed to complete the recommended project-level analysis, including continuing the project's design to 30% complete and completing the environmental review phase.

The city, SANDAG and NCTD are interested in completing the recommended project-level analysis for the Long Trench Alternative to address safety, traffic, environmental, economic, and quality of life concerns throughout the railroad segment.

### **Fiscal Analysis**

The City Council authorized an appropriation of \$5,220,000 from the General Fund Reserve to be utilized as a local match to secure grants to fund the Carlsbad Village Railroad Trench project on June 13, 2023. (Resolution No. 2023-161). The proposed memorandum of understanding states that the city agrees to provide up to \$5,220,000 in funding from the Carlsbad General Fund Reserve to be used as a local match for federal and state grant opportunities for the project. Carlsbad will retain exclusive control over appropriated funds, until such time as the funding is ready to be spent on approved project costs.

### **Next Steps**

If the City Council adopts the resolution, the City Manager will execute a memorandum of understanding with SANDAG and NCTD regarding the pursuit of grant funding for the Carlsbad Village Railroad Trench project. Once the necessary grant funding is secured, SANDAG will engage a consultant to complete the preliminary engineering, technical studies and environmental clearance in preparation for future construction.

### **Environmental Evaluation**

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

### **Exhibit**

1. City Council resolution

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN DIEGO ASSOCIATION OF GOVERNMENTS, THE CITY OF CARLSBAD AND THE NORTH COUNTY TRANSIT DISTRICT REGARDING THE PURSUIT OF GRANT FUNDING FOR THE CARLSBAD VILLAGE RAILROAD TRENCH PROJECT

WHEREAS, the Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor is transitioning to a double-track corridor to address growing congestion and regional transportation capacity needs; and

WHEREAS, the Los Angeles To San Diego Proposed Rail Corridor Improvements Program includes constructing 1.1 miles of a second main railroad track in the segment from southern Oceanside through Carlsbad Village and the Barrio neighborhood of Carlsbad; and

WHEREAS, the San Diego Association of Governments (SANDAG) is responsible for planning, programming, and implementing regional transportation infrastructure projects in San Diego County; and

WHEREAS, the North County Transit District (NCTD) owns and operates the railroad segment that passes through Carlsbad Village and the Barrio neighborhood of Carlsbad; and

WHEREAS, Resolution No. 2014-268, updated the city's legislative platform to support double tracking of the rail corridor within city limits in a way that minimizes impacts to the environment and the community, improves coastal access and neighborhood connections and enhances local economic vibrancy by eliminating or reducing at-grade rail crossings within the corridor; and

WHEREAS, the Carlsbad Strategic Plan (2023-2027) includes a strategic objective to: Work with the San Diego Association of Governments (SANDAG) and the North County Transit District (NCTD) to prioritize, determine costs, and work with state and federal representatives to seek funding for preliminary design and technical studies for lowering the railroad tracks in the Village; and

WHEREAS, Resolution No. 2023-161 authorized an appropriation of \$5,220,000 from the General Fund Reserve to be utilized as a local match to secure grants to fund the Carlsbad Village Railroad Trench project; and

WHEREAS, the City of Carlsbad, SANDAG, and NCTD wish to work collaboratively to identify and secure grant funds to complete the project's preliminary (30%) design, technical studies and environmental review.

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

1. That the above recitations are true and correct.
2. That the City Manager is authorized to execute the Memorandum of Understanding between San Diego Association of Governments, the City of Carlsbad, and North County Transit District regarding the pursuit of grant funding for the Carlsbad Village Railroad Trench project (Attachment A).

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the \_\_ day of \_\_\_\_\_, 2024, by the following vote, to wit:

AYES:

NAYS:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
KEITH BLACKBURN, Mayor

\_\_\_\_\_  
SHERRY FREISINGER, City Clerk  
(SEAL)

**MEMORANDUM OF UNDERSTANDING  
BETWEEN SAN DIEGO ASSOCIATION OF GOVERNMENTS, CITY OF CARLSBAD,  
AND NORTH COUNTY TRANSIT DISTRICT  
REGARDING THE PURSUIT OF GRANT FUNDING FOR THE CARLSBAD VILLAGE  
RAILROAD TRENCH PROJECT**

**SANDAG CONTRACT NO. S1262829**

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This Memorandum of Understanding (MOU) is made and entered into effective as of the last signature date below, by and between the San Diego Association of Governments ("SANDAG"), the City of Carlsbad ("Carlsbad"), and North County Transit District ("NCTD"), collectively referred to as the "Parties".

**RECITALS**

WHEREAS, the Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor has served the region for over 130 years as a single-track corridor; and

WHEREAS, the LOSSAN rail corridor is transitioning to a double-track corridor to address growing congestion and regional transportation capacity needs; and

WHEREAS, the preferred alternative evaluated in the Los Angeles To San Diego Proposed Rail Corridor Improvements Program Environmental Impact Report and Environmental Impact Statement (PEIR/EIS, 2009) includes two rail improvement and alignment options for constructing 1.1 miles of a second main railroad track in the segment from southern Oceanside through Carlsbad Village and the Barrio neighborhood; and

WHEREAS, the two options include double-tracking through Carlsbad in the existing rail alignment either at-grade or grade-separated in a trench; and

WHEREAS, the Record of Decision regarding the PEIR/EIS states that all the projects and alignment options listed in the Summary of Final Rail Improvements Options should be carried forward for project-level analysis prior to making alignment option decisions; and

WHEREAS, SANDAG and Carlsbad completed the Carlsbad Village Double Track – Railroad Trench Alternative Economic Analysis and Feasibility Study in January 2017, which considered two design alternatives for the grade-separated alignment option, referred to as the Short Trench Alternative and Long Trench Alternative; and

WHEREAS, SANDAG and Carlsbad completed the Final Alternative Analysis Report in April 2020, which compared the two grade-separated design alternatives and concluded that the Long Trench Alternative scored highest because it provided the most benefit based on the analysis criteria developed by the project team, which included the Parties' representatives; and

WHEREAS, the design for the segment's at-grade alignment option has been completed to 30% and federal environmental review for that alignment has been completed through the issuance of a Finding of No Significant Impact by the Federal Railroad Administration in May 2019; and

WHEREAS, the design for the Long Trench Alternative - grade-separated alignment option for the railroad segment that passes through Carlsbad Village and the Barrio neighborhood of Carlsbad -



("Project") has been completed to 10%, and additional funding is needed to complete the recommended project-level analysis, including continuing the Project's design to 30% and completing the environmental review phase of the Project; and

WHEREAS, the Parties are interested in completing the recommended project-level analysis for the Project to address safety, traffic, environmental, economic, and quality of life concerns throughout the railroad segment; and

WHEREAS, the Project is located in the NCTD-owned and operated railroad right-of-way; and

WHEREAS, the Carlsbad Strategic Plan for 2023-2027 identifies Carlsbad's intent to work with SANDAG and NCTD to prioritize, determine costs, and work with state and federal representatives to seek funding for preliminary design and technical studies for the Project as a strategic objective; and

WHEREAS, the Parties wish to memorialize their agreement in this MOU to carry out the purposes set forth above.

## **AGREEMENT**

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Parties agree as follows:

### **SANDAG AGREES:**

1. To coordinate with NCTD and Carlsbad on the project-level analysis of the Project and to pursue environmental clearance for the Project consistent with local, state and federal environmental laws, as applicable.
2. To lead the preparation and submittal of federal, state, and non-governmental grant applications, and to serve as lead agency when deemed appropriate by the Parties, for grants to be pursued for the Project.
3. Neither Carlsbad nor NCTD, nor any officer thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by SANDAG under or in connection with any work, authority or jurisdiction delegated to SANDAG under this MOU. It is understood and agreed that, pursuant to Government Code Section 895.4, SANDAG shall fully defend, indemnify and save harmless Carlsbad and NCTD, all officials (appointed and elected), officers and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as that term is defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SANDAG under or in connection with any work, authority, or jurisdiction delegated to SANDAG under this MOU.

### **CARLSBAD AGREES:**

4. To provide up to \$5,220,000 in funding from the Carlsbad General Fund Reserve to be used as a local match for federal and state grant opportunities for the Project. Carlsbad will retain exclusive control over appropriated funds, until such time as the funding is ready for disbursement to a third-party for approved Project costs.
5. To support SANDAG with the design and environmental phases of the Project.

6. Neither SANDAG nor NCTD, nor any officer thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Carlsbad under or in connection with any work, authority, or jurisdiction delegated to Carlsbad under this MOU. It is understood and agreed that, pursuant to Government Code Section 895.4, Carlsbad shall fully defend, indemnify, and save harmless SANDAG and NCTD, all officials (appointed and elected), officers, and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as that term is defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by Carlsbad under or in connection with any work, authority, or jurisdiction delegated to Carlsbad under this MOU.

**NCTD AGREES:**

7. To support SANDAG with the design and environmental phases of the Project.
8. Neither SANDAG nor Carlsbad, nor any officer thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by NCTD under or in connection with any work, authority, or jurisdiction delegated to NCTD under this MOU. It is understood and agreed that, pursuant to Government Code Section 895.4, NCTD shall fully defend, indemnify, and save harmless SANDAG and Carlsbad, all officials (appointed and elected) officers, and employees from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as that term is defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by NCTD under or in connection with any work, authority, or jurisdiction delegated to NCTD under this MOU.

**THE PARTIES MUTUALLY AGREE:**

9. To work collaboratively to identify potential grant opportunities, including participation in meetings to discuss identified grants for the Project and designate the appropriate lead agency for the grant application.
10. To provide full access to and opportunity to provide comments, information, and suggestions on all grant applications, including working documents and final versions. The final grant application and supporting materials shall be provided by the lead agency to the other agencies.
11. That when additional funding for the Project is secured, to develop another agreement that outlines roles and responsibilities between the Parties for the next phase of Project development and how funding will be utilized.
12. That all obligations of the Parties under the terms of this MOU are subject to the appropriation of the required resources by their respective governing bodies.
13. Any notice required or permitted under this MOU may be personally served on the other party, by the party giving notice, or may be served by certified mail, return receipt requested, to the following addresses:

For SANDAG

401 B Street, Suite 800

San Diego, CA 92101

Attn: Danny Veeh

For Carlsbad

1200 Carlsbad Village Drive

Carlsbad, CA 92008

Attn: Jason Haber

For NCTD

810 Mission Avenue

Oceanside, CA 92054

Attn: Mary Dover

14. That unless it is amended by the Parties in writing, this MOU shall terminate on June 30, 2026, or on such earlier or later date as the Parties may agree to in writing.
15. In accordance with Public Utilities Code section 132354.1(b)(4), the California Public Records Act, and/or Carlsbad's Records Retention Schedule, as is relevant to the local agency, the Parties shall maintain and make available for inspection all books, documents, papers, accounting records, emails and other records pertaining to the performance of the Agreement. All Parties shall make such materials available at their respective offices at all reasonable times during the MOU period and for three years from the date of final payment under the MOU.
16. The indemnification provisions of this MOU shall survive termination of the MOU.
17. This MOU shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this MOU, the action shall be brought in a state or federal court situated in the County of San Diego, State of California.
18. All terms, conditions, and provisions hereof shall inure to and shall bind each of the Parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.
19. For purposes of this MOU, the relationship of the Parties is that of independent entities and not as agents of each other or as joint ventures or partners. The Parties shall maintain sole and exclusive control over their personnel, agents, consultants, and operations.
20. No alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by the Parties, and no oral understanding or agreement not incorporated into the MOU shall be binding on any of the Parties.
21. Nothing in the provisions of this MOU is intended to create duties or obligations to or rights in third parties to this MOU or affect the legal liability of the Parties to this MOU.
22. This MOU may be executed in any number of identical counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each party has signed one such counterpart.
23. This MOU may be executed and delivered by electronic signature.

[signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this MOU effective as of the last date a party provides an electronic signature below.

SAN DIEGO ASSOCIATION OF  
GOVERNMENTS

CITY OF CARLSBAD

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**OMAR ATAYEE**  
Director of Engineering and Construction

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**SCOTT CHADWICK**  
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

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**Office of General Counsel**

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**City Attorney**

NORTH COUNTY TRANSIT DISTRICT

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**SHAWN M. DONAGHY**  
Chief Executive Officer

APPROVED AS TO FORM:

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**Office of General Counsel**



MUNICIPAL WATER DISTRICT

# Staff Report

**Meeting Date:** June 25, 2024

**To:** President and Board Members

**From:** Scott Chadwick, Executive Manager

**Staff Contact:** Dave Padilla, Interim General Manager  
dave.padilla@carlsbadca.gov, 442-339-2356

Shoshana Aguilar, Senior Management Analyst  
shoshana.aguilar@carlsbadca.gov, 760-814-0241

**Subject:** Proposal from the San Diego County Water Authority for prepayment of fixed charges

**Districts:** All

## Recommended Action

Receive a report on the proposal from the San Diego County Water Authority for prepayment of fixed charges and provide direction to staff on how to proceed with the proposal.

## Executive Summary

The San Diego County Water Authority has invited its member agencies to prepay fixed charges for water purchases for a period of 12 months, as part of an effort to lower the proposed rate increases for calendar year 2025. In exchange for prepayment, the Water Authority would provide a 4% to 6% discount on fixed charges, the exact amount depending on the timeframe for prepayment.

According to the Water Authority, if every member agency participated, the prepayment discount may reduce the projected regional effective rate increase for 2025 by nearly 1.5%. While the Water Authority Board has not yet made a final decision on 2025 rates, this may result in a Carlsbad Municipal Water District-specific reduction in its effective rate from 18.7% to 17.36%, with the benefit of the 4% discount on fixed charges. The Water Authority Board is expected to consider rates at its meeting on June 27, 2024.

The CMWD annual fixed rate cost to purchase water for the CMWD customers in 2024 is \$7.2 million, or about 20% of total payments to the Water Authority. For calendar year 2025, that amount is projected to increase by 25%, to \$9 million.

The other 80% of the CMWD water budget is for variable costs based on the amount of water purchased and for desalinated ocean water.

The discount that the Water Authority has offered is comparable to the expected return on investments under the city’s normal cash investment practices. However, as detailed below, there are additional potential benefits to the Water Authority for the prepayment plan.

**Explanation & Analysis**

The Water Authority has and continues to see significant reductions in the demand for water because of water reuse projects, conservation and the recent rains, as well as higher costs due to inflation and charges from the Metropolitan Water District. These factors cause volatility in the rates charged to the CMWD. The anticipated increases in the Water Authority’s rates over the next two years are expected to be significantly higher than in the past and are difficult to predict precisely. The Water Authority Board is considering rate increases of approximately 18% for calendar year 2025.

The prepayment discount options the Water Authority is offering are only being offered by the Water Authority as a one-time, short-term option.

The table below details the three prepayment options and corresponding rate and service period compared to the discount received and estimated interest earned plus the amount of potential savings.

Payment due	Discount rate	Fixed charges service period	Estimated payment	Estimated discount	Estimated interest for retained funds <sup>1</sup>	Estimated savings
July 2024	6%	Calendar year 2025	\$9,029,988	\$541,799	\$534,706	\$7,094
January 2025	4%	Calendar year 2025	\$9,029,988	\$361,200	\$292,918	\$68,281
July 2024	4%	Fiscal year 2024-25	\$8,132,994	\$325,320	\$275,317	\$50,002

However, there are additional potential benefits to the Water Authority for prepayment:

- The one-time prepayment would increase the cash on hand that the Water Authority can invest and potentially reduce the cost of any new debt incurred in fiscal year 2026.
- It may lower the effective rate increase, which could help the entire region with water affordability. For the CMWD, the effective rate may decrease from 18.7% to 17.36% which results in a fixed charge reduction ranging between \$325,320 and \$541,799. However, there is no guarantee on the total reduction amount.
- Extra cash on hand may allow the Water Authority to cover the upfront costs of negotiated sales of surplus water rights, similar to the landmark water exchange designed to boost water levels in Lake Mead announced in December 2023. That deal was expected to save the Water Authority a projected \$15 million to \$20 million.

Each member agency is currently considering the proposal. A few agencies have indicated that they are not supporting the Water Authority’s proposal. The City of San Diego, the largest member agency, has not yet announced a decision.

## Options

Staff request the Board's direction on next steps. Based on the options provided by the Water Authority, staff have identified the following options for consideration:

1. Direct the Executive Manager to sign an agreement with the Water Authority, when approved as to form by the General Counsel or designee, to execute one of the following options:
  - A. Make July 2024 fixed charges payment for calendar year 2025 (Jan. 1, 2025-Dec. 31, 2025)  
Under this option, the Water Authority would provide a 6% discount to the CMWD for calendar year 2025 fixed charges. The estimated savings to the CMWD is the least of the three pre-payment options, primarily due to the timing of the pre-payment. Payment to the Water Authority for calendar year 2025 would be due July 12, 2024.
  - B. Make January 2025 fixed charges payment for calendar year 2025  
The Water Authority would provide a 4% discount to the CMWD. The estimated savings to the CMWD are the greatest among the three pre-payment options. Payment for calendar year 2025 to the Water Authority would be due Jan. 3, 2025.
  - C. Make July 2024 fixed charges payment for fiscal year 2025 (July 1, 2024-June 30, 2025)  
The Water Authority would provide a 4% discount to the CMWD. The estimated savings to the CMWD is comparable to Option 1b. Payment to the Water Authority would be due July 12, 2024.

If any of those options are selected, the potential risks to the CMWD may include a reduction in the estimated savings from potentially higher yields on the city's investments. Further, any benefit to the Water Authority's credit rating may not be realized as anticipated if any of the member agencies decline to participate in the proposal, potentially increasing future water rates.

2. Take no action to authorize approval of an agreement for prepayment of fixed charges.

Staff will inform the Water Authority that the CMWD will not participate in the prepayment plan and the district will continue to pay monthly fixed charges to the Water Authority as usual.

## Fiscal Analysis

### **Savings**

The Water Authority proposal does not provide considerable savings or costs over the CMWD's estimated investment income. The other potential benefits to prepayment would ultimately be passed through to the CMWD ratepayers, as Carlsbad continues to purchase water from the Water Authority.

### **Reserves**

The Utilities Reserve Policy, City Council Policy 96, approved by the CMWD Board on March 7, 2023, established reserve requirements for the water funds. Based on the Standard and Poor's

2021 Sector Summary for Municipal Water and Wastewater Utilities, agencies with ratings of BBB+ and above held average cash on hand at a minimum of approximately 200 days. A component of this rating is days of operating costs, which, for the reserve policy, is a target of 120 days. While the prepayment temporarily reduces the cash balance, the days of operating costs are still above the target of 120 days of operating costs, as shown below:

Estimated operating expense <sup>1</sup>	\$48,148,866	Prepayment	\$9,029,988
Cash balance	\$31,279,221	Cash balance, adjusted	\$22,249,233
<b>Days of operating costs</b>	<b>237</b>	<b>Days of operating costs, adjusted</b>	<b>169</b>

1) Based on fiscal year 2024-25 requested budget, excluding depreciation.

The overall fund balance and debt ratio is not impacted because the cash converts to a prepaid balance. Funds are available in the Water Operations Fund to cover any of the prepayment options offered, and paying the Water Authority's fixed charges under these options would not require use of reserves.

#### **Budget authorization across fiscal years**

Staff have analyzed the impact of the CMWD Board authorizing a prepayment option that extends beyond fiscal year 2024-25. The CMWD potable water budget will have sufficient appropriations in fiscal year 2024-25 to cover the accounting for the prepayment during that time. The balance of the prepayment that will be accounted for as an expense in the subsequent fiscal year would be authorized by the Board as part of the fiscal year 2025-26 budget.

#### **Fiscal stewardship**

The CMWD purchases all its potable water from the Water Authority and rate increases are passed on to the CMWD customers. The fiscal health of the Water Authority directly impacts all of its member agencies, and the prepayment options may enhance the Water Authority's ability to engage in future water exchanges, float debt and provide flexibility for funding capital improvement program projects that enhance regional supply reliability.

As for the CMWD rates, staff are currently updating the cost-of-service studies and anticipate returning to the Board to consider rate increases between late November 2024 and January 2025.

#### **Next Steps**

Staff will implement the Board's direction. If the Board decides to move forward with prepayment, a motion authorizing the Executive Manager to sign an agreement with the Water Authority, subject to approval as to form by the General Counsel or designee, to execute a specific option would be required. If the General Counsel or designee cannot reach agreement on terms with the Water Authority, then staff will return to the Board for further direction.



### Environmental Evaluation

This action does not require environmental review because it does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

### Exhibits

None