

**IMPORTANT NOTICE REGARDING
CITY OF ORANGE COVE PUBLIC MEETINGS
COUNCIL MEETING – SEPTEMBER 9, 2020 AT 6:30 P.M.
TELECONFERENCE**

Based upon recommendations from the CDC regarding social distancing relative to COVID-19 (coronavirus) and in accordance with the applicable provisions of Executive Orders N-25-20 and N-29-20 issued by Governor Newsom (“EO”), all public meetings will be held via teleconference. The City will have available a free call-in conference call number for those who wish to listen and/or provide public comment during the public comment period of the agenda or on a specific agenda item.

Those wishing to join via call-in conference should call (US): (888) 204-5987 (Access Code: 8166599#). If you are intending to comment, we are asking you to please contact City Clerk June V. Bracamontes in advance of the meeting at jvb@cityoforange Cove.com, or by calling 559-393-3931. We are asking those to pre-register so that we can keep the meeting orderly, given everyone will be non-visible. There will still be time to provide public comment should you not pre-register. We will be asking all those interested to please call in 5 minutes prior to the regular meeting start time and keep their telephones on “mute” unless speaking during the public comment portion of the agenda or speaking on a specific agenda item after the Mayor requests public comment on the specific agenda item. If you would like to comment, please say your name clearly for the record.

If you need any special assistance or have questions please contact City Clerk June V. Bracamontes at jvb@cityoforange Cove.com, or by calling 559-393-3931.

For continual updates regarding COVID-19, visit the city’s website at cityoforange Cove.com.



AGENDA

Victor P. Lopez, Mayor

Diana Guerra Silva, Mayor Pro Tem

Roy Rodriguez, Council Member

Josie Cervantes, Council Member

Esperanza Rodriguez, Council Member

WEDNESDAY, SEPTEMBER 9, 2020 - 6:30 P.M.

TELECONFERENCE

(CALL 888-204-5987 ACCESS CODE 8166599#)

A. Call to Order/Welcome

Roll Call

B. Confirmation of Agenda

C. Consent Calendar

1. Council Minutes of August 26, 2020

D. Administration

City Engineer

2. **SUBJECT:** Presentation of monthly project update by City Engineer Alfonso Manrique.

Recommendation: Informational Item Only

3. **SUBJECT:** Water Storage Basin and HDPE Liner Project

Recommendation: Staff recommends City Council to adopt Resolution No. 2020-30 and authorize the City Manager to file and record a Notice of Completion with County of Fresno for the Water Storage Basin and HDPE Liner Project

4. **SUBJECT:** Update on the Park Boulevard Infrastructure Projects

Recommendation: Informational Item Only

Interim City Manager:

5. **SUBJECT:** Voting Delegates for the League of California Cities Annual Conference held Virtually October 7-8, 2020

Recommendation: Council to consider appointing a voting delegate for the League of California Cities Annual Conference held Virtually October 7-8, 2020

6. **SUBJECT:** Financial Update

Recommendation: Informational Item Only

E. Public Forum

Members of the public wishing to address the City Council on an item that is not on the agenda may do so now. No action will be taken by the City Council this evening. But items presented may be referred to the City Manager for follow up and a report. In order to allow time for all comments, each individual is limited to three minutes. When addressing the Council, you are requested to come forward to the speaker's microphone, state your name and address, and then proceed with your comments.

F. City Manager's Report

G. City Attorney's Report

H. City Council Communications

I. Adjournment

ADA Notice: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (559) 626-4488 ext. 214. Notification 48 hours prior to the meeting will enable the City to make arrangements to ensure accessibility to this meeting.

Documents: Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at front counter at City Hall and at the Orange Cove Library located at 815 Park Blvd., Orange Cove, CA during normal business hours. In addition, most documents are posted on City's website at cityoforange Cove.com.

STATEMENT ON RULES OF DECORUM AND ENFORCEMENT

The Brown Act provides that members of the public have a right to attend public meetings, to provide public comment on action items and under the public forum section of the agenda, and to criticize the policies, procedures, or services of the city or of the acts or omissions of the city council. The Brown Act also provides that the City Council has the right to exclude all persons who willfully cause a disruption of a meeting so that it cannot be conducted in an orderly fashion.

During a meeting of the Orange Cove City Council, there is a need for civility and expedition in the carrying out of public business in order to ensure that the public has a full opportunity to be heard and that the Council has an opportunity to conduct business in an orderly manner. The following is provided to place everyone on notice of the rules of decorum and enforcement.

GENERAL RULES OF DECORUM

While any meeting of the City Council is in session, the following rules of decorum shall be observed:

1. All remarks shall be addressed to the City Council as a whole and not to any single member, unless in response to a question from a member of the City Council.
2. A person who addresses the City Council under public comment for a specific agenda item or under the Public Forum section of the agenda may not engage in speech or conduct (i) which is likely to provoke others to violent or riotous behavior, (ii) which disturbs the peace of the meeting by loud and unreasonable noise, (iii) which is irrelevant or repetitive, or (iv) which disrupts, disturbs, or otherwise impedes the orderly conduct of any City Council meeting.
3. A person, other than members of the Council and the person, who has the floor, shall not be permitted to enter into the discussion unless requested by the Mayor to speak.
4. Members of the City Council may not interrupt a person who has the floor and is making public comments. Members of the City Council shall wait until a person completes his or her public comments before asking questions or commenting. The Mayor shall then ask Councilmembers if they have comments or questions.
5. No person in the audience at a Council meeting shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening or abusive language, whistling, stamping of feet or other acts which disturb, disrupt or otherwise impede the orderly conduct of any Council meeting.

ENFORCEMENT OF DECORUM RULES

(Resolution No. 2012-16)

While the City Council is in session, all persons must preserve order and decorum. A person who addresses the City council under public comment for a specific agenda item or under the Public Forum section of the agenda may not engage in speech or conduct which is likely to provoke others to violent or riotous behavior, which disturbs the peace of the meeting by loud and unreasonable noise, which is irrelevant or repetitive, or which disrupts, disturbs, or otherwise impedes the orderly conduct of any City Council meeting.

The Mayor or other presiding officer shall request that a person who is breaching the rules of decorum cease such conduct. If after receiving such a warning, the person persists in breaching the rules of decorum, the Mayor or other presiding officer may order the person to leave the City Council meeting. If such person does not leave, the Mayor or presiding officer may request any law enforcement officer who is on duty at the meeting as sergeant-at-arms to remove the person from the Council Chambers. In the event there is no one from law enforcement present, the Mayor or presiding officer may direct the City Manager to contact law enforcement.

In accordance with the Point of Order Rule 4.6, the majority of the Council may overrule the Mayor if the majority of the Council believes the Mayor or other presiding officer is not applying the rules of decorum appropriately.



MINUTES

Victor P. Lopez, Mayor

Diana Guerra Silva, Mayor Pro Tem

Roy Rodriguez, Council Member

Josie Cervantes, Council Member

Esperanza Rodriguez, Council Member

WEDNESDAY, AUGUST 26, 2020 - 6:30 P.M.

TELECONFERENCE

(CALL 888-204-5987 ACCESS CODE 8166599#)

A. Call to Order/Welcome

COUNCIL PRESENT: Mayor Victor P. Lopez
Mayor Pro Tem Diana Guerra Silva (absent)
Councilmember Roy Rodriguez
Councilmember Josie Cervantes
Councilmember Esperanza Rodriguez (absent)

STAFF PRESENT: Financial Consultant/Interim City Manager Rudy Hernandez
Police Chief, Marty Rivera
City Attorney, Dan McCloskey
City Clerk June V. Bracamontes

B. Confirmation of Agenda

No Changes

C. Consent Calendar

1. Council Minutes of August 12, 2020
2. Council Minutes of August 17, 2020
3. City Warrants for the month July 2020
4. Emergency Air Conditioning Repair at the Julia A. Lopez Daycare Center

Upon the motion by Councilman Rodriguez and seconded by Councilwoman Cervantes, Council approved the Consent Calendar as presented.

Yes: Lopez, Rodriguez, Cervantes

No: None
Absent: Silva and Rodriguez
Abstain: None

D. Administration

City Engineer

5. **SUBJECT:** Update on the Grant Award Received from the San Joaquin Valley Air Pollution Control District for the Purchase of Five New Electric Utility Vehicles

Recommendation: Informational Item Only

Engineer, Alfonso Manrique gave an update report to the City Council on the grant award that the City has received through the San Joaquin Valley Air Pollution Control District (SJVAPCD) for the purchase of five new electric utility vehicles

6. **SUBJECT:** Proposition 68 Competitive Grant Program Round 4

Recommendation: Staff recommends that the City Council authorize the City Engineer to resubmit the Round 3 application for the Dianne Feinstein Park and Victor P. Lopez Community Center for Round 4 of the Proposition 68 Statewide Park Development and Community Revitalization Program. In addition, staff would like direction from City Council regarding the submission of a new application that would propose the creation of a new park.

Upon the motion by Councilman Rodriguez and seconded by Councilwoman Cervantes, Council approved to authorize the City Engineer to resubmit the Round 3 application for the Dianne Feinstein Park and Victor P. Lopez Community Center for Round 4 of Proposition 68 Statewide Park Development and Community Revitalization Program. In addition, staff would like direction from City Council regarding the submission of a new application that would propose the creation of a new park as presented.

Yes: Lopez, Rodriguez, Cervantes
No: None
Absent: Silva and Rodriguez
Abstain: None

Interim City Manager:

7. **SUBJECT:** Update on Financial Issues

Recommendation: Informational Item Only

Interim City Manager presented to Council the following items:

- Update on Preparation of Fiscal Year 2020-21 Budget
- COVID-19/CARES ACT & FEMA Reimbursements and Financial Reporting

-Latest on Financial Assistance to State and Local Governments

E. Public Forum

Members of the public wishing to address the City Council on an item that is not on the agenda may do so now. No action will be taken by the City Council this evening. But items presented may be referred to the City Manager for follow up and a report. In order to allow time for all comments, each individual is limited to three minutes. When addressing the Council, you are requested to come forward to the speaker's microphone, state your name and address, and then proceed with your comments.

None.

F. City Manager's Report

No report

G. City Attorney's Report

8. **SUBJECT:** Resolution regarding the Findings, Decision and Declaration of Public Nuisance on the Val Mart Matter

Recommendation: Council to consider approving Resolution No. 2020-28

Upon the motion by Councilwoman Cervantes and seconded by Councilman Rodriguez, Council approved Resolution No. 2020-28

Yes: Lopez, Rodriguez, Cervantes
No: None
Absent: Silva and Rodriguez
Abstain: None

H. City Council Communications

No reports

I. Adjournment

Mayor Lopez adjourned the City Council meeting at 7:15 p.m.

PRESENTED TO COUNCIL:

DATE: _____
ACTION: _____

ENGINEER'S REPORT

TO: CITY MANAGER
FROM: ALFONSO MANRIQUE, PE
AM CONSULTING ENGINEERS, INC.
SUBJECT: PROJECT PROGRESS UPDATE
DATE: SEPTEMBER 9, 2020

This Engineer's Report provides an update on the progress made on the various projects since August 5, 2020 that we are currently working on:

1. D Street Sidewalk Improvements Project

The staff report and resolution awarding the construction of the project to Todd Companies is included in tonight's agenda.

2. Water Enterprise

a. Friant Kern Canal Shut Down - Water Storage Basin and HDPE Liner Project

The staff report and resolution recommending that City Council approve the filing of the Notice of Completion Companies is included in tonight's agenda.

b. Friant Kern Canal Shut Down – Temporary Cofferdam, Pump Station & Piping

AMCE has been notified by Floyd Johnson Construction that the pump and temporary piping will be installed on September 14th and the cofferdam will be delivered the project site on September 21st.

3. EDA Off-site Improvements at Northwest Corner of Park Blvd and Anchor Ave

Staff will be soliciting a Request for Proposal for the Design Engineering Services. An updated on this item is included in tonight's agenda.

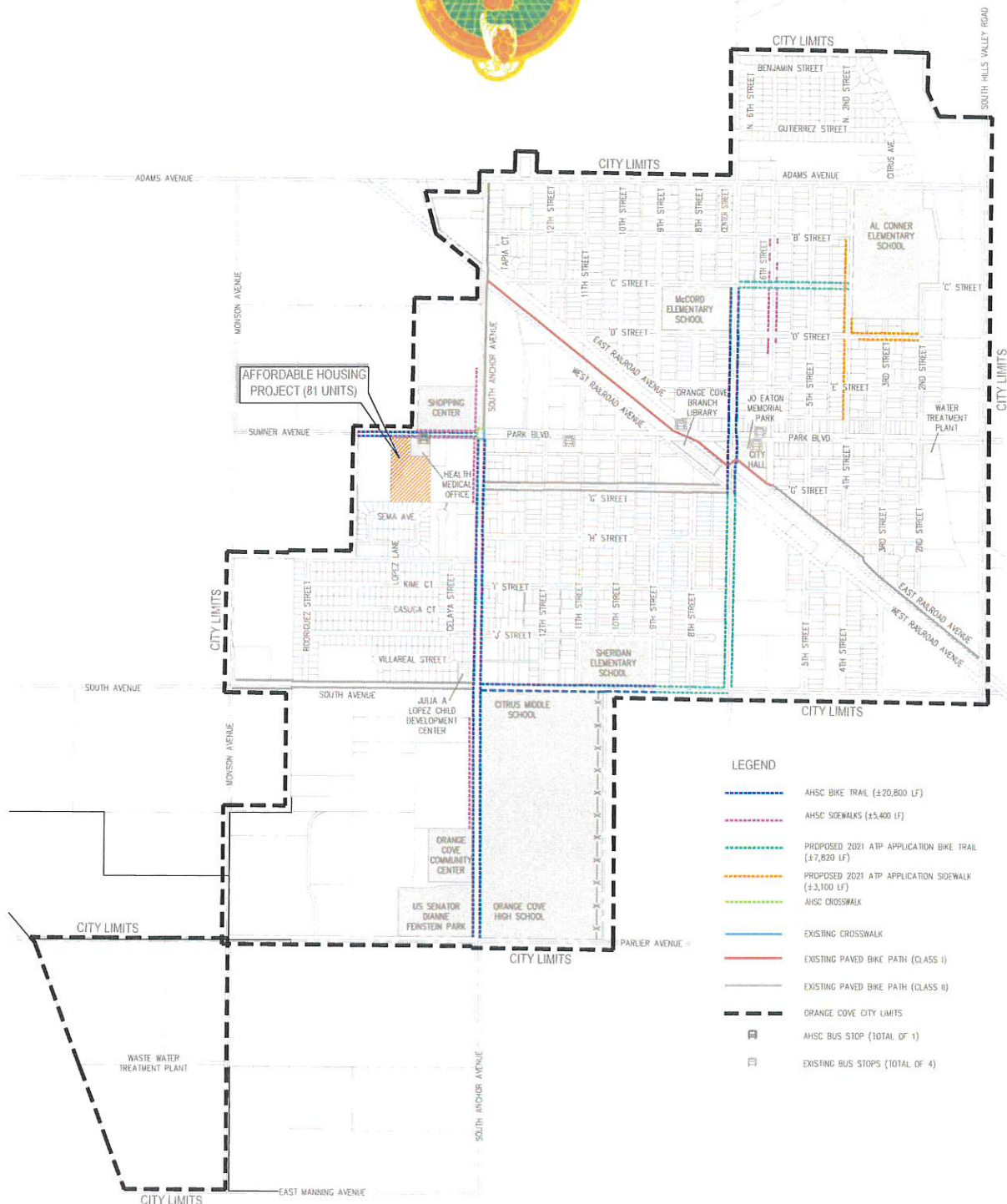
4. Proposition 68 – Round 4 – Statewide Park Development and Community Revitalization Program

Per City Council's recommendation, staff is proceeding with the re-submittal of the will be application for the for the Dianne Feinstein Park and Victor P. Lopez Community Center and submitting an application for the creation of a new park. The City will need to hold five public meeting to receive feedback for the community. The first public meeting will be held on September 22nd at 6 pm at the Community Center.

5. 2021 Active Transportation Program Cycle 5 Application


The Active Transportation Program (ATP) was created by Senate Bill 99 and Assembly Bill 101 to encourage increased use of active modes of transportation, such as biking and walking. Staff is preparing an application requesting funding for the construction of bike trails and pedestrian sidewalk. As shown in the attached Figure 1, the proposed bike trails will be connected to the City's existing bike trails and those that will be constructed with AHSC grant funds. The proposed pedestrian sidewalk will be located along 4th Street from B Street to Park Boulevard and along D Street from 2nd Street to 4th Street. This is a competitive grant and applications are due by September 15.

CITY OF ORANGE COVE





CITY OF ORANGE COVE REPORT TO THE CITY COUNCIL

To: Orange Cove City Council
From: Alfonso Manrique, City Engineer 
Subject: Authorize the City Manager to file and record with the County of Fresno a Notice of Completion for the Water Storage Basin and HDPE Liner Project
Attachments: Resolution 2020-

RECOMMENDATION:

Staff recommends that the City Council adopt the attached Resolution and authorize the City Manager to file and record a Notice of Completion with County of Fresno for the Water Storage Basin and HDPE Liner Project.

BACKGROUND:

The City was awarded \$2,149,000.00 in grant funds through the State Water Resource Control Board pursuant to Assembly Bill 72 (AB 72) for the Emergency Cofferdam and Water Storage Basin Lining Project. On March 11, 2020, the City Council awarded the Water Storage Basin and HDPE Liner Project (Project)- to Cal Valley Construction for a total bid of \$1,125,434.06. The Project consisted of lining the three raw water storage basins with a high-density polyethylene (HDPE) material to store water during the upcoming Friant Kern Canal Shutdown.

On July 10, 2020, staff and Cal Valley Constructed conducted a walk though of the project site. Following the walk through, staff provided Cal Valley Constructed with a "punch-list" of items that needed to be addressed. Staff conducted a final walk though on August 21st and confirmed that all items on the punch-list had been addressed and the Project has been completed according to the plans and technical specifications. Based on the findings of the final walkthrough, the Project can be accepted and deemed complete.

Prepared by: AM Consulting Engineers _____

Approved by: Alfonso Manrique _____

REVIEW: City Manager: _____

Finance: _____

City Attorney: _____

TYPE OF ITEM:

COUNCIL ACTION: APPROVED DENIED NO ACTION

____ Consent
____ Info Item
X Action Item
____ Department Report
____ Redevelopment Agency

____ Public Hearing
____ Matter Initiated by a Council Member
____ Other
____ Continued to: _____

FISCAL IMPACT:

There is no Fiscal Impact associated with filing the Notice of Completion. The project was completed using AB 72 grant funds provided by the SWRCB.

CONFLICT OF INTEREST:

None.

RESOLUTION NO. 2020-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE COVE
ACCEPTING THE CONSTRUCTION IMPROVEMENTS FOR THE WATER STORAGE
BASIN AND HDPE LINER PROJECT AND AUTORIZING THE CITY MANAGER TO FILE
A NOTICE OF COMPLETION WITH THE COUNTY OF FRESNO'S RECORDER'S
OFFICE

WHEREAS, the City of Orange Cove's Water Storage Basin and HDPE Liner Project has been completed per the plans and specifications; and

WHEREAS, there are no outstanding matters with the contractor; and

WHEREAS, it is necessary and desirable that the Notice of Completion be filed with the Fresno County's Recorder Office.

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

1. The above recitals are true and correct and are adopted as the findings of the City Council.
2. The City Council using their independent judgment, hereby accepts the subject project; and
3. The City Council hereby accepts the subject project for maintenance in accordance with the provisions of the contract and applicable policies; and
4. The City Council approves the Notice of Completion for the construction improvements for the Water Storage Basin and HDPE Liner Project and hereby authorizes the City Manager to transmit the attached Notice of Completion to the Fresno County Recorder's Office; and
5. This Resolution shall take effect from and after the date of its adoption.

This resolution was adopted at a Regular Meeting of the City Council of the City of Orange Cove held on September 9, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Victor P. Lopez, Mayor

ATTEST:

June Bracamontes, City Clerk



CITY OF ORANGE COVE REPORT TO THE CITY COUNCIL

To: Orange Cove City Council
From: Alfonso Manrique, City Engineer
Subject: Update on the Park Boulevard Infrastructure Project
Attachments: Figure 1 – Park Boulevard Infrastructure Project Scope of Work

RECOMMENDATION:

There is no recommendation under this agenda item. This item is intended to update the City Council on the Park Boulevard Infrastructure Project.

BACKGROUND:

This past year, the City of Orange Cove has been awarded two separate grants for the construction of various public infrastructure along Park Boulevard and Anchor Avenue. In March, the City was awarded \$3,045,000 through the Affordable Housing Sustainable Communities (AHSC) Program for the construction of bike trails, pedestrian sidewalk, curb and gutter, a new bus station, streetlights, and other transit related amenities. In July, the City was awarded \$2,428,500 through the U.S. Economic Development Administration (EDA) for construction of a sewer main, storm drain pipeline, irrigation pipeline, widening of the street, pedestrian sidewalk, curb and gutter, driveway approaches, a traffic signal, street lights, a median island, and fire hydrants. Since both projects include construction activities along Park Boulevard and Anchor Avenue, staff has decided to combine a portion of the AHSC Project with EDA project.

Staff has been informed by the U.S. EDA that the design work to be fund with EDA grant funds must be completed by an engineering firm that is selected in accordance with the procurement standards set forth in 2 CFR Part 200. To ensure that the design work meets the EDA's procurement standards, staff has decided to solicit a Request for Proposal (RFP) for engineering services for the design of the Park Boulevard Infrastructure Project (Project). The Project will

Prepared by: AM Consulting Engineers

Approved by: Alfonso Manrique

REVIEW: City Manager: _____

Finance: _____

City Attorney: _____

TYPE OF ITEM:

COUNCIL ACTION: APPROVED DENIED NO ACTION

☐ Consent
☒ Info Item
☐ Action Item
☐ Department Report
☐ Redevelopment Agency

☐ Public Hearing
☐ Matter Initiated by a Council Member
☐ Other
☐ Continued to: _____

include the construction of entire scope of work to be funded through EDA grant, in addition to the following scope of work to be funded through the AHSC grant:

- Construction of approximately 1,270 linear feet of concrete curb & gutter on the south side of Park Boulevard and the west side of Anchor Avenue.
- Construction of approximately 5,050 square feet of concrete sidewalk on the south side of Park Boulevard and the west side of Anchor Avenue.
- Construction of approximately 2,480 linear feet of Class II bicycle lane along the north and south side of Park Boulevard.
- Installation of one rapid flashing beacon at the intersection of Anchor Avenue.
- Installation of five streetlights along the north and south side of Park Boulevard and the west side of Anchor Avenue.
- Construction of a new bus stop equipped with a bus shelter and bench on the south side of Park Boulevard.
- Construction of a pedestrian crosswalk across at the intersection of Park Boulevard and Anchor Avenue (north and west side only).

The attached Figure displays the scope of work to be included in the construction of the Park Boulevard Infrastructure Project.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

CONFLICT OF INTEREST:

None.



SUMNER AVE

SHOPPING CENTER

ANCHOR AVE

PARI



August 21, 2020

To: Mayors, City Managers and City Clerks

From: Melanie Perron, Deputy Executive Director, Advocacy and Public Affairs

Re: League's 2020 Annual Conference Resolution Packet

Please find an enclosed copy of the 2020 Resolution Packet for the League of California Cities' 2020 Annual Conference and Expo being held virtually October 7 – 8. The conference announcement has previously been sent to all cities and we hope that you and your colleagues will be able to join us. More information about the conference is available on the League's Web site at www.cacities.org/ac.

One resolution has been submitted. The attached packet contains the proposed resolution, background materials supplied by the sponsors, supporting letters from cities and city officials, and League staff analyses for the resolution. The packet also includes detailed information on the League's resolution process. A copy of the resolution packet is posted on the League's website for your convenience: www.cacities.org/resolutions.

Voting Delegates: In order to vote during the General Assembly, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity. If your city has not already done so, Please complete the Voting Delegate form and return it to the League's office no later than Wednesday, September 30. This will allow us time to establish voting delegate/alternate records prior to the conference. The General Assembly will be held virtually on Friday, October 9 at 11:00 a.m. (subject to change).

We encourage each city council to consider the resolution and to determine a city position so that your voting delegate can represent your city's position on the resolution. Should you have any questions regarding the attached material, please contact Meg Desmond at mdesmond@cacities.org or by phone 916-837-6822.



*Annual Conference
Resolutions Packet*

2020 Annual Conference Resolutions



October 7 – 9, 2020

INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, one resolution has been introduced for consideration at the Annual Conference and referred to League policy committees.

POLICY COMMITTEES: Two policy committees will meet virtually at the Annual Conference to consider and take action on the resolution referred to them. The committees are: Governance, Transparency & Labor Relations and Public Safety. These committees will meet virtually on Tuesday, September 29, with the Governance, Transparency and Labor Relations Policy Committee meeting from 9:30 – 11:30 a.m. and the Public Safety Policy Committee meeting from 1:00 – 3:00 p.m. The sponsor of the resolution has been notified of the time and location of the meeting.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet virtually at 1:00 p.m. on Thursday, October 8, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president.

GENERAL ASSEMBLY: This meeting will be held virtually at 11:00 a.m. on Friday, October 9.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Meeting of the General Assembly. This year, that deadline is 12:30 p.m., Thursday, October 8.

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: mdesmond@cacities.org or (916) 658-8224

KEY TO ACTIONS TAKEN ON RESOLUTIONS

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action		
		1	2	3
		1 - Policy Committee Recommendation to General Resolutions Committee		
		2 - General Resolutions Committee		
		3 - General Assembly		

GOVERNANCE, TRANSPARENCY & LABOR RELATIONS POLICY COMMITTEE

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			

PUBLIC SAFETY POLICY COMMITTEE

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			

1. A RESOLUTION OF THE GENERAL ASSEMBLY OF THE LEAGUE OF CALIFORNIA CITIES CALLING FOR AN AMENDMENT OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996 TO REQUIRE SOCIAL MEDIA COMPANIES TO REMOVE MATERIALS WHICH PROMOTE CRIMINAL ACTIVITIES

Source: City of Cerritos

Concurrence of five or more cities/city officials

Cities: City of Hawaiian Gardens, City of Lakewood, City of Ontario, City of Rancho Cucamonga, City of Roseville

Referred to: Governance, Transparency and Labor Relations and Public Safety Policy Committees

WHEREAS, local law enforcement agencies seek to protect their communities' residents, businesses, and property owners from crime; and

WHEREAS, increasingly, criminals use social media platforms to post notices of places, dates and times for their followers to meet to commit crimes; and

WHEREAS, Section 230 of the Communications Decency Act of 1996 currently provides online platforms (including social media platforms) immunity from civil liability based on third-party content and for the removal of content; and

WHEREAS, in the 25 years since Section 230's enactment, online platforms no longer function simply as forums for the posting of third-party content but rather use sophisticated algorithms to promote content and to connect users; and

WHEREAS, the United States Department of Justice, in its June 2020 report, "Section 230 — Nurturing Innovation or Fostering Unaccountability?," concluded the expansive interpretation courts have given Section 230 has left online platforms immune from a wide array of illicit activity on their services, with little transparency or accountability, noting it "makes little sense" to immunize from civil liability an online platform that purposefully facilitates or solicits third-party content or activity that violates federal criminal law; and

WHEREAS, current court precedent interpreting Section 230 also precludes state and local jurisdictions from enforcing criminal laws against such online platforms that, while not actually performing unlawful activities, facilitate them; and

WHEREAS, amendment of Section 230 is necessary to clarify that online platforms are not immune from civil liability for promoting criminal activities; and

NOW, THEREFORE, BE IT RESOLVED at the League General Assembly, assembled at the League Annual Conference on October 9, 2020 in Long Beach, California, that the League calls upon the U.S. Congress to amend Section 230 of the Communications Decency Act of 1996 to condition immunity from civil liability on the following:

Background Information to Resolution

Source: City of Cerritos

Background:

Social media platforms are now used as a primary means of communication, including by criminals who use them to advertise locations, dates, and times where the criminal acts will take place. Such communications, because they occur online, render the online platform immune from any civil liability for the costs incurred by law enforcement agencies that respond under Section 230 of the Communications Decency Act of 1996. Immunity from civil liability extends even to injunctive relief, thus preventing local governments from merely seeking an injunction against the online platform to have such a post removed.

The City of Cerritos supports the rights of free speech and assembly guaranteed under the First Amendment, but believes cities should have the ability to hold social media companies liable for their role in promoting criminal acts. Recently, the City suffered thousands of dollars in damages to respond to online threats that the Cerritos Mall would be looted. Anonymous posts on Instagram.com invited followers to “work together to loot Cerritos [M]all” only several days after the Lakewood Mall had been looted, causing thousands of dollars in damages. The posts were made under the names “cerritosmalllooting” and “cantstopusall,” among others. The City of Cerritos had no choice but to initiate response to protect the Mall and the public from this credible threat.

At the same time local governments face historic shortfalls owing to the economic effects of COVID-19, the nation’s social media platforms are seeing a record rise in profits. The broad immunity provided by Section 230 is completely untenable. Online platforms should be held responsible—and liable—for the direct harm they facilitate. Local governments are in no position to bear the costs of the crimes facilitated by these companies alone.

Congress is currently reviewing antitrust legislation and by extension, Section 230’s immunity provisions. The League urges Congress to amend Section 230 to limit the immunity provided to online platforms when they promote criminal activity to provide local governments some measurable form of relief.

While social media allows people to connect in real time with others all over the world, organized illegal activity using social media is made easier by the anonymous nature of virtual interactions.

Nation's Reaction to the Murder of George Floyd:

Shortly after the senseless killing of George Floyd by law enforcement on May 26, 2020, civil unrest began as local protests in the Minneapolis–Saint Paul metropolitan area of Minnesota before quickly spreading nationwide to more than 2,000 cities and towns across the United States, and in approximately 60 countries in support of the Black Lives Matter movement. Protests unfolded across the country throughout the entire month of June and into July, and persisted in a handful of cities such as Portland and Seattle into the month of August.

Although the majority of protests were peaceful, some demonstrations in cities escalated into riots, looting, and street skirmishes with police. While much of the nation's focus has been on addressing police misconduct, police brutality, and systemic racism, some have used demonstrators' peaceful protests on these topics as opportunities to loot and/or vandalize businesses, almost exclusively under the guise of the "Black Lives Matter" movement. It has been uncovered that these "flash robs"¹ were coordinated through the use of social media. The spontaneity and speed of the attacks enabled by social media make it challenging for the police to stop these criminal events as they are occurring, let alone prevent them from commencing altogether.

As these events started occurring across the country, investigators quickly began combing through Facebook, Twitter, and Instagram seeking to identify potentially violent extremists, looters, and vandals and finding ways to charge them after — and in some cases before — they sow chaos. While this technique has alarmed civil liberties advocates, who argue the strategy could negatively impact online speech, law enforcement officials claim it aligns with investigation strategies employed in the past.

Section 230 and other Constitutional Concerns

At its core, Section 230(c)(1) of the CDA provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by third-party users. Essentially, this protects websites from lawsuits if a user posts something illegal, although there are exceptions for copyright violations, sex work-related material, and violations of federal criminal law.

Protections from Section 230 have come under more recent scrutiny on issues related to hate speech and ideological biases in relation to the influence technology companies can hold on political discussions.

Setting aside Section 230, there are some potential constitutional issues one could raise, should there be an attempt to implement such a resolution into statute.

¹ The "flash robs" phenomenon—where social media is used to organize groups of teens and young adults to quickly ransack and loot various retail stores—began to occur sporadically throughout the United States over the past ten years.

“The growth of online platforms in recent years raises important questions about applying the ideals of the First Amendment to modern communications technology. Today, many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other online platforms. As a result, these platforms function in many ways as a 21st century equivalent of the public square.

Twitter, Facebook, Instagram, and YouTube wield immense, if not unprecedented, power to shape the interpretation of public events; to censor, delete, or disappear information; and to control what people see or do not see.”

Ultimately the President implores the U.S. Attorney General to develop a proposal for federal legislation that “would be useful to promote the policy objectives of this order.” The President is not subtle in communicating his desire to ultimately see legislation heavily slanted toward the preservation of free speech on social media, which some interpret as a maneuver to preempt Twitter and Facebook from regulating speech they otherwise deem as hateful or demonstrably false.

Considerations for Congress

Courts have generally construed Section 230 to grant internet service providers broad immunity for hosting others’ content. Many have claimed that Section 230’s immunity provisions were critical to the development of the modern internet, and some continue to defend Section 230’s broad scope. But simultaneously, a variety of commentators and legislators have questioned whether those immunity provisions should now be narrowed, given that the internet looks much different today than it did in 1996 when Section 230 was first enacted.

One way for Congress to narrow Section 230’s liability shield would be to create additional exceptions, as it did with FOSTA and SESTA². If a lawsuit does not fall into one of the express exceptions contained in Section 230(e)³, courts may have to engage in a highly fact-specific inquiry to determine whether Section 230 immunity applies: Section 230(c)(1) immunity will be inapplicable if the provider itself has developed or helped to develop the disputed content, while Section 230(c)(2) immunity may not apply if a service provider’s decision to restrict access to content was not made in good faith.

Date Storage and Usage Considerations for Cities

Section 2 of the conditions the resolution applies to civil immunity requires that online platforms provide relevant information to law enforcement to assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity. This section would most likely require the development of new procedures and protocols that govern law enforcements usage and retention of such information. Those new policies and procedures would undoubtedly raise privacy concerns depending on how wide the latitude is for law

² The Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA) create an exception to Section 230 that means website publishers *would* be responsible if third parties are found to be posting ads for prostitution — including consensual sex work — on their platforms.

³ Section 230(e) says that Section 230 will not apply to: (1) federal criminal laws; (2) intellectual property laws; (3) any state law that is “consistent with” Section 230; (4) the Electronic Communications Privacy Act of 1986; and (5) civil actions or state prosecutions where the underlying conduct violates federal law prohibiting sex trafficking.

Questions to Consider:

Many cities obviously believe that creating civil liability for social media platforms—due to their role in providing the communication mediums for those who organize looting attacks— is key to deterring this organized criminal activity.

If such a change was actually passed by Congress, it would force social media to essentially police every conversation on stakeholders' respective platforms, putting immense pressure on the industry to make subjective determinations about what conversations are appropriate and what are unacceptable.

At the end of the day, there are a few questions to consider in assessing this proposed resolution:

- 1) *What would this resolution's impact be on free speech and government censorship?*
- 2) *What are the expectations for cities when they receive information from a social media platform about a potentially credible threat in their respective communities? Does a city become liable for having information from a social media platform and the threat occurs?*
- 3) *What would the costs be to develop and maintain new data governance policies, including data infrastructure, to store this information?*
- 4) *What is the role of the League in engaging in issues relating to someone's privacy?*

Support:

The following letters of concurrence were received:

City of Hawaiian Gardens

City of Lakewood

City of Ontario

City of Rancho Cucamonga

City of Roseville



CITY OF HAWAIIAN GARDENS

"Our Youth - Our Future"

August 7, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social media platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

The public safety efforts in the City of Hawaiian Gardens would certainly benefit from such legislation. This letter serves to support the City of Cerritos in their efforts to submit of the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,



Ernie Hernandez
City Manager

cc Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Mag Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us

CITY OF

303 EAST "B" STREET, CIVIC CENTER

ONTARIO



ONTARIO

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PAUL S. LEON
MAYOR

DEBRA DORST-PORADA
MAYOR PRO TEM

ALAN D. WAPNER
JIM W. BOWMAN
RUBEN VALENCIA
COUNCIL MEMBERS

SCOTT OCHOA
CITY MANAGER

SHEILA MAUTZ
CITY CLERK

JAMES R. MILMISER
TREASURER

August 6, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

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This letter serves to support the City of Cerritos in their efforts to submit the above-mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Alan D. Wapner
Council Member
League of California Cities Board Member

c: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us



City Council
311 Vernon Street
Roseville, California 95678

August 7, 2020

John Dunbar, President
jdunbar@yville.com
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

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On behalf of the City of Roseville, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

A handwritten signature in black ink, appearing to read "John B. Allard II", written over a horizontal line.

John B. Allard II,
Mayor

Cc: Blanca Pacheco, President, LA County Division/League of California Cities - bpacheco@downeyca.org
Meg Desmond, League of California Cities - mdesmond@cacities.org
Kristine Guerrero, LA County Division/League of California Cities - kguerrero@cacities.org
Kathy Matsumoto, Assistant City Manager, City of Cerritos - kmatsumoto@cerritos.us
Jason Gonsalves, Joe A. Gonsalves and Son



Date: September 9, 2020
To: Mayor and City Council
From: Rudy Hernandez, Interim City Manager
Subject: Update on Financial Issues
Attachments: None.

Background

- Update on Parcel Tax Ballot Measure
- Update on FY 2018-19 & 2019-20 Audits
- Latest on Financial Assistance to State and Local Governments

RECOMMENDATION:

For Information Only.

Prepared by: _____

Approved by:  _____

REVIEW: City Manager: ☒ _____

Finance: _____

City Attorney: _____

TYPE OF ITEM:

COUNCIL ACTION: APPROVED DENIED NO ACTION

☒ Consent
☐ Info Item
☐ Action Item
☐ Department Report
☐ Redevelopment Agency

☐ Public Hearing
☐ Matter Initiated by a Council
Member
☐ Other
☐ Continued to: _____