Beverly Hills City Council Liaison / Legislative/Lobby Committee

will conduct a Special Meeting, at the following time and place, and will address the agenda listed below:

CITY OF BEVERLY HILLS
455 N. Rexford Drive
Beverly Hills, CA 90210

TELEPHONIC VIDEO CONFERENCE MEETING

Beverly Hills Liaison Meeting
https://beverlyhills-org.zoom.us/my/bhliajson
Meeting ID: 312 522 4461
Passcode: 90210
You can also dial in by phone:
+1 669 900 9128 US
+1 888 788 0099

One tap mobile
+16699009128,,3125224461#,,,*90210#
+18887880099,,3125224461#,,,*90210# Toll-Free

Monday, August 30, 2021
2:00 PM

Pursuant to Executive Order N-25-20, members of the Beverly Hills City Council and staff may participate in this meeting via a teleconference. In the interest of maintaining appropriate social distancing, members of the public can view this meeting through live webcast at www.beverlyhills.org/live and on BH Channel 10 or Channel 35 on Spectrum Cable, and can participate in the teleconference/video conference by using the link above. Written comments may be emailed to mayorandcitycouncil@beverlyhills.org.

AGENDA

A. Oral Communications

1. Public Comment

Members of the public will be given the opportunity to directly address the Committee on any item listed on the agenda.

B. Direction

1. League of California Cities – Resolutions

Comment: This item requests the Legislative/Lobby Liaison Committee make a recommendation for two resolutions that will be voted on at the League of California Cities annual conference on Friday, September 24, 2021.

2. Assembly Bill 43 (Friedman) - Traffic safety

Comment: This item seeks direction on AB 43. This bill provides Caltrans and local authorities greater flexibility in setting speed limits based on recommendations the Zero Traffic Fatality Task Force made in January 2020.
3. Assembly Bill 117 - (Boerner Horvath) - Air Quality Improvement Program: electric bicycles

Comment: This item is a request by Councilmember Mirisch for the Legislative/Lobby Liaison Committee to consider taking a position on AB 117. This bill would add incentives for purchasing electric bicycles (e-bikes) as a category of projects eligible for funding under the Air Quality Improvement Program (AQIP), and require the California Air Resources Board (CARB) to establish the Electric Bicycle Incentives Project (EBIP) to provide incentives for the purchase of electric vehicles by July 1, 2022.

4. Assembly Bill 122 - (Boerner Horvath) - Vehicles: required stops: bicycles

Comment: This item seeks direction on AB 122. This bill permits a person riding a bicycle approaching a stop sign to yield the right-of-way, rather than stopping, to any vehicles that have entered the intersection or are approaching the intersection, and continue to yield the right-of-way until it is reasonably safe to proceed.

5. Assembly Bill 361 (Rivas, Robert) - Open meetings: local agencies: teleconferences

Comment: This item seeks direction on AB 361. This bill allows local agencies to use teleconferencing without complying with specified Brown Act restrictions in certain state emergencies.

6. Assembly Bill 602 (Grayson) - Development fees: impact fee nexus study

Comment: This item seeks direction on AB 602. This bill would require the Department of Housing and Community Development (HCD) to create an impact fee nexus study template for use by local jurisdictions by January 1, 2024. The bill would also impose new requirements on local agencies regarding the preparation of impact fee nexus studies.

7. Assembly Bill 718 (Cunningham) - Peace officers: investigations of misconduct

Comment: This item seeks direction on AB 718. This bill would require law enforcement agencies, or an oversight agency, to complete initiated administrative investigations of officer misconduct related to specified uses of force, sexual assault, and dishonesty allegations regardless of whether an officer leaves the employment of the agency.

8. Assembly Bill 773 (Nazarian) - Street closures and designations

Comment: This item seeks direction on AB 773. This bill authorizes local authorities to implement a "Slow Streets Program," as specified, to close or limit access to vehicular traffic on certain neighborhood local streets; and defines requirements for the program including public outreach and engagement.

9. Senate Bill 60 (Glazer) - Residential short-term rental ordinances: health or safety infractions: maximum fines

Comment: This item seeks direction on SB 60. This bill establishes enhanced fines for violations of short-term rental ordinances including 1) $1,500 for a first violation, 2) $3,000 for a second violation of the same ordinance within one year, and 3) $5,000 for each additional violation of the same ordinance within one year of the first violation.

10. Senate Bill 389 (Dodd) - Alcoholic beverages: retail off-sale license: retail off-sale delivery: retail on-sale license: off-sale privileges

Comment: This item seeks direction on SB 389, which would allow the holder of a retail on-sale license or a licensed beer manufacturer, licensed wine manufacturer, or craft distiller that
operates a bona fide public eating place to sell alcoholic beverages for off-sale consumption for which their license permits on-sale consumption. In this regard, the licensee would be able to sell alcoholic beverages for off-sale consumption for which their license permits on-sale consumption if the beverages are in manufacturer prepackaged containers. The licensee would also be allowed to sell alcoholic beverages, except beer, for off-sale consumption for which their license permits on-sale consumption when the beverages are not in manufacturer prepackaged containers if specified conditions are met.

11. Senate Bill 792 (Glazer) - Sales and use tax: returns: online transactions: local jurisdiction schedule

Comment: This item seeks direction on SB 792. This bill would, for reporting periods beginning January 1, 2022, require qualified retailers to report, for each local jurisdiction, the gross receipts from the sale of tangible personal property (TPP) shipped to a purchaser in that jurisdiction. The qualified retailer must include a schedule of the information with each tax return or be subject to a $5,000 penalty. A “qualified retailer” has sales of TPP transacted online in excess of $50 million in the preceding calendar year.

12. State and Federal Legislative Updates

Comment: The City’s state and federal lobbyists will provide a verbal update to the Liaisons on various legislative issues.

13. Future Agenda Items Discussion

C. Adjournment

Huma Ahmed
City Clerk

Posted: August 26, 2021

A DETAILED LIAISON AGENDA PACKET IS AVAILABLE FOR REVIEW AT WWW.BEVERLYHILLS.ORG

Pursuant to the Americans with Disabilities Act, the City of Beverly Hills will make reasonable efforts to accommodate persons with disabilities. If you require special assistance, please call (310) 285-1014 (voice) or (310) 285-6881 (TTY). Providing at least forty-eight (48) hours advance notice will help to ensure availability of services.
Item B-1
The League of California Cities (Cal Cities) Annual Business Meeting is scheduled for Friday, September 24, 2021, from Noon to 2:30 p.m. During this meeting, the Cal Cities membership considers and takes action on resolutions which establish Cal Cities policy. Voting delegates this year will take action on two general resolutions. One resolution addresses online sales tax equity while the other seeks to secure funding to assist cities with railroad security and maintenance. A brief summary of each resolution is below.

**Online Sales Tax Equity Resolution - Summary**

Sales tax is a major revenue source for most California cities. Since the 1950’s, cities have traditionally received one cent on every dollar of a sale made at a store, restaurant, car dealer, or other location within a jurisdiction’s boundaries. This is commonly known as the local percent of the Bradley-Burns tax.

With the exponential growth of online sales, and the corresponding lack of growth and decline of shopping at brick and mortar locations, cities are seeing much of their sales tax growth coming from the countywide sales tax pools since much of the sales tax is now funneled to the pools.

Current policies by the California Department of Tax and Fee Administration (CDTFA) require the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer.

Whereas, all sales tax revenue generated by this retailer’s sales previously went into a countywide pool, and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located as that is where the packages are shipped from. Cities that do not have a fulfillment center receive no revenue from this retailer’s online in-state sales transactions, even when the packages are delivered to locations within the cities’ borders and paid for by residents in these cities.

This change has created a situation where more than 90 percent of the cities in California are experiencing a sales tax revenue loss, which began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. This change will have long-term impacts on
revenues for all California cities as how the sales tax is distributed has been shifted to just a handful of cities and counties that are home to this retailer's fulfillment centers.

Many, if not most cities will never have the opportunity have a warehouse fulfillment center due to lack of space or not being situated along a major travel corridor. These policies favor retailers who may leverage current policy in order to negotiate favorable sales tax sharing agreements, providing more money back to the retailer at the expense of funding critical public services.

The proposed resolution sponsored by the City of Rancho Cucamonga calls on the Governor and the state legislature to pass legislation which provides for a fair and equitable distribution of the Bradley Burns one percent local sales tax from in-state online purchases, based on where packages are shipped to. Furthermore, the resolution calls on the state legislature to take into consideration the impacts fulfillment centers have on host cities but also provide a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Staff recommends the Legislative/Lobby Liaison Committee consider recommending the City support this resolution.

**Secure Funding to Assist Cities with Railroad Security and Maintenance**

This resolution directs Cal Cities to adopt a policy urging both the state and federal governments to increase oversight of the land maintenance and security of railroad lines by rail line operators.

The Federal Railroad Administration (FRA) has primary oversight of all rail operations; however, the FRA delegates this responsibility to the states. In California, the California Public Utilities Commission (CPUC) has the authority to oversee the security and maintenance of all rail lines present in the state. The CPUC has 41 inspectors covering over 6,000 miles of railroad lines in California. Their primary task is ensuring equipment, bridges and rail lines are operationally safe.

Per the City of South Gate, the right-of-way areas along rail lines are becoming increasingly used for illegal dumping, graffiti and homeless encampments. Rail operators have stated they have insufficient funds set aside to clean up or sufficiently police these right-of-way areas, despite reporting a net income of over $13 billion in 2020. Additionally, the CPUC budget does not provide the resources to oversee whether rail operators are properly managing these right-of-ways.

The proposed resolution sponsored by the City of South Gate calls for the Governor and the state legislature to work with Cal Cities and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with maintaining and security railroad right-of-way areas in order to adequately address illegal dumping, graffiti and homeless.

Staff recommends the Legislative/Lobby Liaison Committee consider recommending the City support this resolution.
Attachment 1
Annual Conference
Resolutions Packet

2021 Annual Conference Resolutions

September 22 - 24, 2021
INFORMATION AND PROCEDURES

RESOLUTIONS CONTAINED IN THIS PACKET: The League of California Cities (Cal Cities) 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, two resolutions have been introduced for consideration at the Annual Conference and referred to Cal Cities policy committees.

POLICY COMMITTEES: Three policy committees will meet virtually one week prior to the Annual Conference to consider and take action on the resolutions. The sponsors of the resolutions have been notified of the time and location of the meetings.

GENERAL RESOLUTIONS COMMITTEE: This committee will meet at 1:00 p.m. on Thursday, September 23, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of Cal Cities regional divisions, functional departments, and standing policy committees, as well as other individuals appointed by the Cal Cities president. Please check in at the registration desk for room location.

CLOSING LUNCHEON AND GENERAL ASSEMBLY: This meeting will be held at 12:30 p.m. on Friday, September 24, at the SAFE Credit Union Convention Center.

PETITIONED RESOLUTIONS: For those issues that develop after the normal 60-day deadline, a petition 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 Closing Luncheon & General Assembly. This year, that deadline is 12:30 p.m., Thursday, September 23. Resolutions can be viewed on Cal Cities Web site: www.cacities.org/resolutions.

Any questions concerning the resolutions procedures may be directed to Meg Desmond mdesmond@calcities.org.
GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS

Policy development is a vital and ongoing process within Cal Cities. The principal means for deciding policy on the important issues facing cities is through Cal Cities seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop Cal Cities policy. Resolutions should adhere to the following criteria.

Guidelines for Annual Conference Resolutions

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.

2. The issue is not of a purely local or regional concern.

3. The recommended policy should not simply restate existing Cal Cities policy.

4. The resolution should be directed at achieving one of the following objectives:

   (a) Focus public or media attention on an issue of major importance to cities.

   (b) Establish a new direction for Cal Cities policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.

   (c) Consider important issues not adequately addressed by the policy committees and board of directors.
KEY TO ACTIONS TAKEN ON RESOLUTIONS

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

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HOUSING, COMMUNITY & ECONOMIC DEVELOPMENT POLICY COMMITTEE

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REVENUE & TAXATION POLICY COMMITTEE

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TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

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KEY TO ACTIONS TAKEN ON RESOLUTIONS (Continued)

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

**KEY TO REVIEWING BODIES**

1. Policy Committee
2. General Resolutions Committee
3. General Assembly

**KEY TO ACTIONS TAKEN**

A Approve
D Disapprove
N No Action
R Refer to appropriate policy committee for study

**ACTION FOOTNOTES**

a Amend+
Aa Approve as amended+
Aaa Approve with additional amendment(s)+

* Subject matter covered in another resolution

** Existing League policy

Ra Refer as amended to appropriate policy committee for study+
Raa Additional amendments and refer+

Da Amend (for clarity or brevity) and Disapprove+

Na Amend (for clarity or brevity) and take No Action+

W Withdrawn by Sponsor

**Procedural Note:**
The League of California Cities resolution process at the Annual Conference is guided by the Cal Cities Bylaws.
1. RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES (“CAL CITIES”) CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

Source: City of Rancho Cucamonga
Concurrence of five or more cities/city officials:
Cities: Town of Apple Valley; City of El Cerrito; City of La Canada Flintridge; City of La Verne; City of Lakewood; City of Moorpark; City of Placentia; City of Sacramento
Referred to: Revenue and Taxation Policy Committee

WHEREAS, the 2018 U.S. Supreme Court decision in Wayfair v. South Dakota clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of “siting” the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines “out-of-state” online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale (“situs”) as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state’s largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being entirely allocated to the specific city where the warehouse fulfillment center is located as opposed to going into a countywide pool that is shared with all jurisdictions in that County, as was done previously; and

WHEREAS, this all-or-nothing change for the allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue from the retailer that was once spread amongst all cities in countywide pools is now concentrated in select cities that host a fulfillment center; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting a 1 million square foot fulfillment center, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and
WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their RHNA obligations that are being compelled by the State to rezone precious commercial parcels to residential; and

WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities’ proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering product from that center now receive no revenue from the center’s sales activity despite also experiencing the impacts created by the center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public’s shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightly takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.
Background Information to Resolution

Source: City of Rancho Cucamonga

Background:
Sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950’s, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction’s boundaries.

Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances. The California Department of Tax and Fee Administration (CDTFA) is responsible for administering this system and issuing rules regarding how it is applied in our state.

The following chart created by HdL Companies, the leading provider of California sales tax consulting, illustrates the complex structure of how sales and use tax allocation is done in California, depending on where the transaction starts, where the goods are located, and how the customer receives the goods:

With the exponential growth of online sales and the corresponding lack of growth, and even decline, of shopping at brick and mortar locations, cities are seeing much of their sales tax...
growth coming from the countywide sales tax pools, since much of the sales tax is now funneled to the pools.

Recently, one of the world’s largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated. Following the chart above, previously much of the sales tax would have followed the green boxes on the chart and been allocated to the countywide pool based on point of delivery. Now, much of the tax is following the blue path through the chart and is allocated to the jurisdiction in which the fulfillment center is located. (It should be noted that some of the tax is still flowing to the pools, in those situations where the fulfillment center is shipping goods for another seller that is out of state.)

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefitting all cities have shifted to just a handful of cities and counties that are home to this retailer’s fulfillment centers.

This has brought to light again the need to address the issues in how sales and use taxes are distributed in the 21st century. Many, if not most cities will never have the opportunity have a warehouse fulfillment center due to lack of space or not being situated along a major travel corridor. These policies especially favor retailers who may leverage current policy in order to negotiate favorable sales tax sharing agreements, providing more money back to the retailer at the expense of funding critical public services.

With that stated, it is important to note the many impacts to the jurisdictions home to the fulfillment centers. These centers do support the ecommerce most of us as individuals have come to rely on, including heavy wear and tear on streets – one truck is equal to about 8,000 cars when it comes to impact on pavement – and increased air pollution due to the truck traffic and idling diesel engines dropping off large loads. However, it is equally important that State policies acknowledge that entities without fulfillment centers also experience impacts from ecommerce and increased deliveries. Cities whose residents are ordering products that are delivered to their doorstep also experience impacts from traffic, air quality and compromised safety, as well as the negative impact on brick-and-mortar businesses struggling to compete with the sharp increase in online shopping. These cities are rightfully entitled to compensation in an equitable share of sales and use tax. We do not believe that online sales tax distribution between fulfillment center cities and other cities should be an all or nothing endeavor, and not necessarily a fifty-fifty split, either. But we need to find an equitable split that balances the impacts to each jurisdiction involved in the distribution of products purchased online.

Over the years, Cal Cities has had numerous discussions about the issues surrounding sales tax in the modern era, and how state law and policy should be revisited to address these issues. It is a heavy lift, as all of our cities are impacted a bit differently, making consensus difficult. We believe that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.

It is for these reasons, that we should all aspire to develop an equitable sales tax distribution for online sales.
LETTERS OF CONCURRENCE
Resolution No. 1
July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The Town of Apple Valley strongly supports the City of Rancho Cucamonga’s effort to submit a resolution for consideration by the General Assembly at Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer’s sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool. Now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer’s online in-state sales transactions, even when the packages are delivered to locations within the cities’ borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exacerbate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone’s residents.
We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the Town of Apple Valley concurs that the resolution should go before the General Assembly. If you have any questions regarding the Town’s position in this matter, please do not hesitate to contact the Town Manager at 760-240-7000 x 7051.

Sincerely,

Curt Emick
Mayor
July 21, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Letter of Support for the City of Rancho Cucamonga’s Resolution for Fair and Equitable Distribution of the Bradley Burns 1% Local Sales Tax

Dear President Walker:

The City of El Cerrito supports the City of Rancho Cucamonga’s effort to submit a resolution for consideration by the General Assembly at the Cal Cities 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Previously, all sales tax revenue generated by this retailer’s sales went into a countywide pool and was distributed amongst the jurisdictions in the pool; now the revenue from in-state sales goes entirely to the city where the fulfillment center is located and the packages are shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer’s online in-state sales transactions, even when the packages are delivered to locations within the cities’ borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities such as El Cerrito who have no chance of ever obtaining a fulfillment center as we are a built out, four square mile, small city. Additionally, cities not situated along major travel corridors and no/low property tax cities that rely on sales tax revenue are especially impacted, as well as cities struggling to build much needed affordable housing that may require rezoning commercial parcels in order to meet their RHNA allocations.
The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies serve to divide local agencies, exacerbate already difficult municipal finances, and in the end results in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone’s residents. We can do better, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of El Cerrito concurs that the resolution should go before the General Assembly.

Sincerely,

Paul Fadelli, Mayor
City of El Cerrito

cc: El Cerrito City Council
    City of Rancho Cucamonga
July 14, 2021

Ms. Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of La Cañada Flintridge strongly supports the City of Rancho Cucamonga's effort to introduce a resolution for consideration by the General Assembly at CalCITIES' 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1% Bradley Burns local tax revenue (sales tax) from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool, as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as an out-of-state online retailer. Whereas all sales tax revenue generated by this retailer's sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the jurisdiction where the fulfillment center is located and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state transactions even though their packages are delivered to locations within those cities' borders and paid for by residents in those locations. Cities that abut jurisdictions with fulfillment centers experience fulfillment centers' impacts just as much, such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers, that was once spread amongst all cities in countywide pools, is now concentrated in select cities fortunate enough to host a fulfillment center. This benefits only those few hosting jurisdictions and is particularly unfair to cities who have no chance of ever hosting a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely heavily on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably eager to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances and, in the end, result in a net loss of local government sales tax proceeds that simply serve to make private
sector businesses even more profitable at the expense of cities’ residents. We should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Cañada Flintridge concurs that the proposed resolution should go before the General Assembly.

Sincerely,

Terry Walker
Mayor
July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of La Verne strongly supports the City of Rancho Cucamonga’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer’s sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer’s online in-state sales transactions, even when the packages are delivered to locations within the cities’ borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities which have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are
especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exacerbate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end, result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone’s residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of La Verne concurs that the resolution should go before the General Assembly.

Sincerely,

[Signature]

Bob Russi
City Manager
City of La Verne
July 15, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Lakewood strongly supports the City of Rancho Cucamonga’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer’s sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer’s online in-state sales transactions, even when the packages are delivered to locations within the cities’ borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities that have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone’s residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Lakewood concurs that the resolution should go before the General Assembly.

Sincerely,

Jeff Wood
Mayor
July 14, 2021

Cheryl Viegas-Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Moorpark strongly supports the City of Rancho Cucamonga’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

Current policies of the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates both as an in-state online retailer and as an out-of-state online retailer. Whereas all sales tax revenues generated by this retailer’s sales previously went into countywide pools and were distributed amongst the jurisdictions in the pool, sales tax revenues from in-state sales now go entirely to the city where the fulfillment center is located and the package is shipped from. Cities that do not have a fulfillment center now receive no sales tax revenue from this retailer’s online in-state sales transactions, even when the packages are delivered to locations within the cities’ borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution, and deteriorating road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenues from large online retailers that were once spread amongst all cities in countywide pools are now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted, as well as
cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone limited commercial properties for residential land uses.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and ultimately result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses more profitable at the expense of everyone’s residents. We can do better than this, and we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Moorpark concurs that the resolution should go before the General Assembly at the 2021 Annual Conference in Sacramento.

Sincerely,

Janice S. Parvin
Mayor

cmp:  City Council
City Manager
Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Placentia strongly supports the City of Rancho Cucamonga’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the 1 percent (1%) Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas, all sales tax revenue generated by this retailer’s sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer's online in-state sales transactions, even when the packages are delivered to locations within the cities’ borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment center, such as those that are built out or are not situated along major travel corridors. No/low property tax cities that rely on sales tax revenue are especially impacted as well as cities struggling to meet their RHNA allocations that are being pressured by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide between the winners and losers. Ultimately, the real winners may be the retailers, who leverage these policies to negotiate favorable sales tax sharing agreements from a small group of select cities understandably wanting to host fulfillment centers. The
current online sales tax distribution policies unfairly divide local agencies, exacerbate already difficult municipal finances, and in the end result in a net loss of local government sales tax proceeds that simply serve to make private sector businesses even more profitable at the expense of everyone's residents. We can do better than this. And we should all aspire to develop an equitable sales tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Placentia concurs that the resolution should go before the General Assembly. Should you have any questions regarding this letter, please contact me at (714) 993-8117 or via email at administration@placentia.org.

Sincerely,

[Signature]

Damien R. Arrula
City Administrator
July 19, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Dear President Walker:

The City of Sacramento strongly supports the City of Rancho Cucamonga’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

Current policies by the California Department of Tax and Fees (CDTFA) require that the one percent Bradley Burns local tax revenue from in-state online retailers be allocated to the jurisdiction from which the package was shipped from, as opposed to going into a countywide pool as is the practice with out-of-state online retailers. Earlier this year, one of the largest online retailers shifted its ownership structure and now operates as an in-state online retailer as well as out-of-state online retailer. Whereas all sales tax revenue generated by this retailer’s sales previously went into a countywide pool and was distributed amongst the jurisdictions in the pool, now the revenue from in-state sales goes entirely to the city where the fulfillment center is located, and the packages shipped from. Cities that do not have a fulfillment center now receive no revenue from this retailer’s online in-state sales transactions, even when the packages are delivered to locations within the cities’ borders and paid for by residents in those locations. Cities that border jurisdictions with fulfillment centers also experience its impacts such as increased truck traffic, air pollution and declining road conditions.

This all-or-nothing practice has created clear winners and losers amongst cities as the online sales tax revenue from large online retailers that was once spread amongst all cities in countywide pools is now concentrated in select cities fortunate enough to host a fulfillment center. This has created a growing inequity amongst California cities, which only benefits some and is particularly unfair to cities who have no chance of ever obtaining a fulfillment
center, such as those that are built out or are not situated along major travel corridors. No/low
tax property cities that rely on sales tax revenue are especially impacted as well as cities
struggling to meet their Regional Housing Needs Allocation (RHNA) that are being pressured
by Sacramento to rezone precious commercial parcels to residential.

The current online sales tax distribution policies are inherently unfair and exasperate the divide
between the winners and losers. Ultimately, the real winners may be the retailers, who
leverage these policies to negotiate favorable sales tax sharing agreements from a small group
of select cities understandably wanting to host fulfillment centers. The current online sales tax
distribution policies unfairly divide local agencies, exacerbate already difficult municipal
finances, and in the end, result in a net loss of local government sales tax proceeds that simply
serve to make private sector businesses even more profitable at the expense of everyone’s
residents. We can do better than this. And we should all aspire to develop an equitable sales
tax distribution of online sales that addresses the concerns noted above.

For these reasons, the City of Sacramento concurs that the resolution should go before the
General Assembly.

Sincerely,

Leyne Milstein
Assistant City Manager

[Signature]

Leyne Milstein  [Jul 19, 2021 14:46 PDT]
League of California Cities Staff Analysis on Resolution No. 1

Staff: Nicholas Romo, Legislative Affairs, Lobbyist

Committee: Revenue and Taxation

Summary:
This Resolution calls on the League of California Cities (Cal Cities) to request the Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.

Background:
The City of Rancho Cucamonga is sponsoring this resolution to “address the issues in how sales and use taxes are distributed in the 21st century.”

The City notes that “sales tax is a major revenue source for most California cities. Commonly known as the local 1% Bradley-Burns tax, since the 1950’s, cities have traditionally received 1 cent on every dollar of a sale made at the store, restaurant, car dealer, or other location within a jurisdiction’s boundaries. Over the years, however, this simple tax structure has evolved into a much more complex set of laws and allocation rules. Many of these rules relate to whether or not a given transaction is subject to sales tax, or to use tax – both have the same 1% value, but each applies in separate circumstances.

Recently, one of the world’s largest online retailers changed the legal ownership of its fulfillment centers. Instead of having its fulfillment centers owned and operated by a third-party vendor, they are now directly owned by the company. This subtle change has major impacts to how the 1% local tax is allocated.

This change has created a situation where most cities in California – more than 90%, in fact – are experiencing a sales tax revenue loss that began in the fourth quarter of calendar year 2021. Many cities may not be aware of this impact, as the fluctuations in sales tax following the pandemic shutdowns have masked the issue. But this change will have long-term impacts on revenues for all California cities as all these revenues benefiting all cities have shifted to just a handful of cities and counties that are home to this retailer’s fulfillment centers.”

The City’s resolution calls for action on an unspecified solution that “rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction,” which aims to acknowledge the actions taken by cities to alleviate poverty, catalyze economic development, and improve financial stability within their communities through existing tax sharing and zoning powers.
Ultimately, sponsoring cities believe “that by once again starting the conversation and moving toward the development of laws and policies that can result in seeing all cities benefit from the growth taxes generated through online sales, our state will be stronger.”

Sales and Use Tax in California
The Bradley-Burns Uniform Sales Tax Act allows all local agencies to apply its own sales and use tax on the same base of tangible personal property (taxable goods). This tax rate currently is fixed at 1.25% of the sales price of taxable goods sold at retail locations in a local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Cities and counties use this 1% of the tax to support general operations, while the remaining 0.25% is used for county transportation purposes.

In California, all cities and counties impose Bradley-Burns sales taxes. California imposes the sales tax on every retailer engaged in business in this state that sells taxable goods. The law requires businesses to collect the appropriate tax from the purchaser and remit the amount to the California Department of Tax and Fee Administration (CDTFA). Sales tax applies whenever a retail sale is made, which is basically any sale other than one for resale in the regular course of business. Unless the person pays the sales tax to the retailer, they are liable for the use tax, which is imposed on any person consuming taxable goods in the state. The use tax rate is the same rate as the sales tax rate.

Generally, CDTFA distributes Bradley-Burns tax revenue based on where a sale took place, known as a situs-based system. A retailer’s physical place of business—such as a retail store or restaurant—is generally the place of sale. “Sourcing” is the term used by tax practitioners to describe the rules used to determine the place of sale, and therefore, which tax rates are applied to a given purchase and which jurisdictions are entitled to the local and district taxes generated from a particular transaction.

California is primarily an origin-based sourcing state – meaning tax revenues go to the jurisdiction in which a transaction physically occurs if that can be determined. However, California also uses a form of destination sourcing for the local use tax and for district taxes (also known as “transactions and use taxes” or “add-on sale and use taxes”). That is, for cities with local add-on taxes, they receive their add-on rate amount from remote and online transactions.

Generally, allocations are based on the following rules:
- The sale is sourced to the place of business of the seller - whether the product is received by the purchaser at the seller’s business location or not.
- If the retailer maintains inventory in California and has no other in state location, the source is the jurisdiction where the warehouse is situated. This resolution is concerned with the growing amount of online retail activity being sourced to cities with warehouse/fulfillment center locations.
- If the business’ sales office is located in California but the merchandise is shipped from out of state, the tax from transactions under $500,000 is allocated...
via the county pools. The tax from transactions over $500,000 is allocated to the jurisdiction where the merchandise is delivered.

- When a sale cannot be identified with a permanent place of business in the state, the sale is sourced to the allocation pool of the county where the merchandise was delivered and then distributed among all jurisdictions in that county in proportion to ratio of sales. For many large online retailers, this has been the traditional path.

Online Sales and Countywide Pools
While the growth of e-commerce has been occurring for more than two decades, led by some of the largest and most popular retailers in the world, the dramatic increase in online shopping during the COVID-19 pandemic has provided significant revenue to California cities as well as a clearer picture on which governments enjoy even greater benefits.

In the backdrop of booming internet sales has been the steady decline of brick-and-mortar retail and shopping malls. For cities with heavy reliance on in-person retail shopping, the value of the current allocation system has been diminished as their residents prefer to shop online or are incentivized to do so by retailers (during the COVID-19 pandemic, consumers have had no other option but to shop online for certain goods). All the while, the demands and costs of city services continue to grow for cities across the state.

As noted above, the allocation of sales tax revenue to local governments depends on the location of the transaction (or where the location is ultimately determined). For in-person retail, the sales tax goes to the city in which the product and store are located - a customer purchasing at a register. For online sales, the Bradley Burns sales tax generally goes to a location other than the one where the customer lives – either to the city or county where an in-state warehouse or fulfillment center is located, the location of in-state sales office (ex. headquarters) or shared as use tax proceeds amongst all local governments within a county based on their proportionate share of taxable sales.

Under current CDTFA regulations, a substantial portion of local use tax collections are allocated through a countywide pool to the local jurisdictions in the county where the property is put to its first functional use. The state and county pools constitute over 15% of local sales and use tax revenues. Under the pool system, the tax is reported by the taxpayer to the countywide pool of use and then distributed to each jurisdiction in that county on a pro-rata share of taxable sales. If the county of use cannot be identified, the revenues are distributed to the state pool for pro-rata distribution on a statewide basis.

Concentration of Online Sales Tax Revenue and Modernization
Sales tax modernization has been a policy goal of federal, state, and local government leaders for decades to meet the rapidly changing landscape of commercial activity and ensure that all communities can sustainably provide critical services.
For as long as remote and internet shopping has existed, policy makers have been concerned about their potential to disrupt sales and use tax allocation procedures that underpin the funding of local government services. The system was designed in the early twentieth century to ensure that customers were paying sales taxes to support local government services within the community where the transactions occurred whether they resided there or not. This structure provides benefit to and recoupment for the public resources necessary to ensure the health and safety of the community broadly.

City leaders have for as long been concerned about the loosening of the nexus between what their residents purchase and the revenues they receive. Growing online shopping, under existing sourcing rules, has led to a growing concentration of sales tax revenue being distributed to a smaller number of cities and counties. As more medium and large online retailers take title to fulfillment centers or determine specific sales locations in California as a result of tax sharing agreements in specific cities, online sales tax revenue will be ever more concentrated in a few cities at the control of these companies. Furthermore, local governments are already experiencing the declining power of the sales tax to support services as more money is being spent on non-taxable goods and services.

For more on sales and use tax sourcing please see Attachment A.

State Auditor Recommendations
In 2017, the California State Auditor issued a report titled, “The Bradley-Burns Tax and Local Transportation Funds,” noting that:

“Retailers generally allocate Bradley Burns tax revenue based on the place of sale, which they identify according to their business structure. However, retailers that make sales over the Internet may allocate sales to various locations, including their warehouses, distribution center, or sales offices. This approach tends to concentrate Bradley Burns tax revenue into the warehouses’ or sales offices’ respective jurisdictions. Consequently, counties with a relatively large amount of industrial space may receive disproportionately larger amounts of Bradley Burns tax, and therefore Local Transportation Fund, revenue.

The State could make its distribution of Bradley Burns tax revenue derived from online sales more equitable if it based allocations of the tax on the destinations to which goods are shipped rather than on place of sale.”

The Auditor’s report makes the following recommendation:

“To ensure that Bradley-Burns tax revenue is more evenly distributed, the Legislature should amend the Bradley-Burns tax law to allocate revenues from Internet sales based on the destination of sold goods rather than their place of sale.”
In acknowledgement of the growing attention from outside groups on this issue, Cal Cities has been engaged in its own study and convening of city officials to ensure pursued solutions account for the circumstances of all cities and local control is best protected. These efforts are explored in subsequent sections.

Cal Cities Revenue and Taxation Committee and City Manager Working Group
In 2015 and 2016, Cal Cities’ Revenue and Taxation Policy Committee held extensive discussions on potential modernization of tax policy affecting cities, with a special emphasis on the sales tax. The issues had been identified by Cal Cities leadership as a strategic priority given concerns in the membership about the eroding sales tax base and the desire for Cal Cities to take a leadership role in addressing the associated issues. The policy committee ultimately adopted a series of policies that were approved by the Cal Cities board of directors. Among its changes were a recommended change to existing sales tax sourcing (determining where a sale occurs) rules, so that the point of sale (situs) is where the customer receives the product. The policy also clarifies that specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood. See “Existing Cal Cities Policy” section below.

Cal Cities City Manager Sales Tax Working Group Recommendations
In the Fall of 2017, the Cal Cities City Managers Department convened a working group (Group) of city managers representing a diverse array of cities to review and consider options for addressing issues affecting the local sales tax.

The working group of city managers helped Cal Cities identify internal common ground on rapidly evolving e-commerce trends and their effects on the allocation of local sales and use tax revenue. After meeting extensively throughout 2018, the Group made several recommendations that were endorsed unanimously by Cal Cities’ Revenue and Taxation Committee at its January, 2019 meeting and by the board of directors at its subsequent meeting.

The Group recommended the following actions in response to the evolving issues associated with e-commerce and sales and use tax:

Further Limiting Rebate Agreements: The consensus of the Group was that:
- Sales tax rebate agreements involving online retailers should be prohibited going forward. They are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one.
- Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward. Existing law already prohibits such agreements for auto dealers and big box stores.

Shift Use Tax from Online Sales, including from the South Dakota v. Wayfair Decision Out of County Pools: The Group’s recommendation is based first on the principle of “situs” and that revenue should be allocated to the jurisdiction where the use occurs. Each city and county in California imposed a Bradley Burns sales and use tax rate
under state law in the 1950s. The use tax on a transaction is the rate imposed where the purchaser resides (the destination). These use tax dollars, including new revenue from the South Dakota v. Wayfair decision, should be allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

- Shift of these revenues, from purchases from out of state retailers including transactions captured by the South Dakota v. Wayfair decision, out of county pools to full destination allocation on and after January 1, 2020.
- Allow more direct reporting of use taxes related to construction projects to jurisdiction where the construction activity is located by reducing existing regulatory threshold from $5 million to $100,000.

Request/Require CDTFA Analysis on Impacts of Sales Tax Destination Shifts: After discussion of numerous phase-in options for destination sourcing and allocation for sales taxes, the Group ultimately decided that a more complete analysis was needed to sufficiently determine impacts. Since the two companies most cities rely on for sales tax analysis, HdL and MuniServices, were constrained to modeling with transaction and use tax (district tax) data, concerns centered on the problem of making decisions without adequate information. Since the CDTFA administers the allocation of local sales and use taxes, it is in the best position to produce an analysis that examines:

- The impacts on individual agencies of a change in sourcing rules. This would likely be accomplished by developing a model to examine 100% destination sourcing with a report to the Legislature in early 2020.
- The model should also attempt to distinguish between business-to-consumer transactions versus business-to-business transactions.
- The model should analyze the current number and financial effects of city and county sales tax rebate agreements with online retailers and how destination sourcing might affect revenues under these agreements.

Conditions for considering a Constitutional Amendment that moves toward destination allocation: Absent better data on the impacts on individual agencies associated with a shift to destination allocation of sales taxes from CDTFA, the Group declined to prescribe if/how a transition to destination would be accomplished; the sentiment was that the issue was better revisited once better data was available. In anticipation that the data would reveal significant negative impacts on some agencies, the Group desired that any such shift should be accompanied by legislation broadening of the base of sales taxes, including as supported by existing Cal Cities policy including:

- Broadening the tax base on goods, which includes reviewing existing exemptions on certain goods and expanding to digital forms of goods that are otherwise taxed; and
- Expanding the sales tax base to services, such as those commonly taxed in other states.

This Resolution builds upon previous work that accounts for the impacts that distribution networks have on host cities and further calls on the organization to advocate for changes to sales tax distribution rules.
The Resolution places further demands on data collected by CDTFA to establish a “fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases.” Such data is proposed to be collected by **SB 792 (Glazer, 2021)**. More discussion on this topic can be found in the “Staff Comments” section.

**Staff Comments:**

**Proposed Resolution Affixes Equity Based, Data Driven Approach to Existing Cal Cities Policy on Sales Tax Sourcing**

The actions resulting from this resolution, if approved, would align with existing policy and efforts to-date to modernize sales tax rules. While not formalized in existing Cal Cities policy or recommendations, city managers and tax practitioners generally have favored proposals that establish a sharing of online sales tax revenues rather than a full destination shift. City leaders and practitioners across the state have acknowledged during Cal Cities Revenue and Taxation and City Manager’s working group meetings that the hosting of fulfillment centers and ancillary infrastructure pose major burdens on local communities including detrimental health and safety impacts. This acknowledgement has moved mainstream proposals such as this one away from full revenue shifts towards an equity-based, data driven approach that favors revenue sharing. This Resolution would concretely affix this approach as Cal Cities policy.

**More Data is Needed to Achieve Equity Based Approach**

A major challenge is the lack of adequate data to model the results of shifting in-state online sale tax revenues. Local government tax consultants and state departments have limited data to model the effects of changes to sales tax distribution because their information is derived only from cities that have a local transactions and use tax (TUT). Tax experts are able to model proposed tax shifts using TUTs since they are allocated on a destination basis (where a purchaser receives the product; usually a home or business). However, more than half of all cities, including some larger cities, do not have a local TUT therefore modeling is constrained and incomplete.

Efforts to collect relevant sales tax information on the destination of products purchased online are ongoing. The most recent effort is encapsulated in **SB 792 (Glazer, 2021)**, which would require retailers with online sales exceeding $50 million a year to report to CDTFA the gross receipts from online sales that resulted in a product being shipped or delivered in each city. The availability of this data would allow for a much more complete understanding of online consumer behavior and the impacts of future proposed changes to distribution. SB 792 (Glazer) is supported by Cal Cities following approval by the Revenue and Taxation Committee and board of directors.

**Impact of Goods Movement Must Be Considered**

As noted above, city leaders and practitioners across the state acknowledge that the hosting of fulfillment centers and goods movement infrastructure pose major burdens on local communities including detrimental health, safety, and infrastructure impacts. Not least of which is the issue of air pollution from diesel exhaust. According to California Environmental Protection Agency (Cal EPA):
“Children and those with existing respiratory disease, particularly asthma, appear to be especially susceptible to the harmful effects of exposure to airborne PM from diesel exhaust, resulting in increased asthma symptoms and attacks along with decreases in lung function (McCreanor et al., 2007; Wargo, 2002). People that live or work near heavily-traveled roadways, ports, railyards, bus yards, or trucking distribution centers may experience a high level of exposure (US EPA, 2002; Krivoshto et al., 2008). People that spend a significant amount of time near heavily-traveled roadways may also experience a high level of exposure. Studies of both men and women demonstrate cardiovascular effects of diesel PM exposure, including coronary vasoconstriction and premature death from cardiovascular disease (Krivoshto et al., 2008). A recent study of diesel exhaust inhalation by healthy non-smoking adults found an increase in blood pressure and other potential triggers of heart attack and stroke (Krishnan et al., 2013). Exposure to diesel PM, especially following periods of severe air pollution, can lead to increased hospital visits and admissions due to worsening asthma and emphysema-related symptoms (Krivoshto et al., 2008). Diesel exposure may also lead to reduced lung function in children living in close proximity to roadways (Brunekreef et al., 1997).”

The founded health impacts of the ubiquitous presence of medium and heavy-duty diesel trucks used to transport goods to and from fulfillment centers and warehouses require host cities to meet increased needs of their residents including the building and maintenance of buffer zones, parks, and open space. While pollution impacts may decline with the introduction of zero-emission vehicles, wide scale adoption by large distribution fleets is still in its infancy. Furthermore, the impacts of heavy road use necessitate increased spending on local streets and roads upgrades and maintenance. In addition, many cities have utilized the siting of warehouses, fulfillment centers, and other heavy industrial uses for goods movements as key components of local revenue generation and economic development strategies. These communities have also foregone other land uses in favor of siting sales offices and fulfillment networks.

All said, however, it is important to acknowledge that disadvantaged communities (DACs) whether measured along poverty, health, environmental or education indices exist in cities across the state. For one example, see: California Office of Environmental Health Hazard Assessment (OEHHA) CalEnviroScreen. City officials may consider how cities without fulfillment and warehouse center revenues are to fund efforts to combat social and economic issues, particularly in areas with low property tax and tourism-based revenues.

The Resolution aims to acknowledge these impacts broadly (this analysis does not provide an exhaustive review of related impacts) and requests Cal Cities to account for them in a revised distribution formula of the Bradley Burns 1% local sales tax from in-state online purchases. The Resolution does not prescribe the proportions.

Clarifying Amendments
Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. To review the proposed changes, please see Attachment B.
Fiscal Impact:
Significant but unknown. The Resolution on its own does not shift sales tax revenues. In anticipation and mitigation of impacts, the Resolution requests Cal Cities to utilize online sales tax data to identify a fair and equitable distribution formula that accounts for the broad impacts fulfillment centers involved in online retail have on the cities that host them. The Resolution does not prescribe the revenue distribution split nor does it prescribe the impacts, positive and negative, of distribution networks.

Existing Cal Cities Policy:
- Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.
- Support as Cal Cities policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood.
- Revenue from new regional or state taxes or from increased sales tax rates should be distributed in a way that reduces competition for situs-based revenue. (Revenue from the existing sales tax rate and base, including future growth from increased sales or the opening of new retail centers, should continue to be returned to the point of sale.)
- The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected.
- Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities, when the physical location of the affected businesses does not change. Sales tax rebate agreements involving online retailers are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one. Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward.
- Support Cal Cities working with the state California Department of Tax and Fee Administration (CDTFA) to update the county pool allocation process to ensure that more revenues are allocated to the jurisdiction where the purchase or first use of a product occurs (usually where the product is delivered). Use Tax collections from online sales, including from the South Dakota v Wayfair Decision, should be shifted out of county pools and allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

Support:
The following letters of concurrence were received:
- Town of Apple Valley
- City of El Cerrito
- City of La Canada Flintridge
- City of La Verne
- City of Lakewood
City of Moorpark
City of Placentia
City of Sacramento
Fig1: Typical “Over the Counter” Transaction

Seller’s Place of Business  Buyer Receives at ...

Retail Store

City A

Sales Tax

Trans Tax

Fig2: Dealership Automobile Sale

Seller (dealer)

Sales Office

City A

Sales Tax

Trans Tax

Buyer registers (uses) vehicle at

Residence or Business

City B

Fig3: Private Party Automobile Sale

Seller (not a dealer)

Residence or Business

City A

Trans Tax

Buyer registers (uses) vehicle at

Residence or Business

Countywide pool

City B

Use Tax

CaliforniaCityFinance.com
Fig 4: Remote (Online) Sale—In-State Business Office

- If the seller is in the same Transactions and Use Tax "district" as the buyer, then the seller is responsible for collecting and remitting the tax. If the buyer is in a different district, the buyer is responsible.

Fig 5: Remote (Online) Sale—In-State Warehouse, Out-of-State Sales Office

- If the seller is in the same Transactions and Use Tax "district" as the buyer, then the seller is responsible for collecting and remitting the tax. If the buyer is in a different district, the buyer is responsible.
Fig 6: Remote (Online) Sale—Out of State Business

![Diagram showing the flow of tax allocation for remote sales involving out-of-state businesses.

<table>
<thead>
<tr>
<th>Place of Sale</th>
<th>Location of Goods at the Time of Sale</th>
<th>How Customer Receives Goods</th>
<th>Allocation of Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online — Order is placed or downloaded outside California</td>
<td>California Fulfillment Center</td>
<td>Shipped to California Customer</td>
<td>Local tax is allocated to the jurisdiction in which the fulfillment center is located</td>
</tr>
<tr>
<td>Online — Order is placed or downloaded in California</td>
<td>California Fulfillment Center</td>
<td>Shipped to California Customer</td>
<td>Per CDTFA Regulation 1802, local tax is allocated to the jurisdiction where the order is placed</td>
</tr>
<tr>
<td>Online</td>
<td>Out of State Fulfillment Center</td>
<td>Shipped to California Customer</td>
<td>Local tax is allocated to the countywide pool based on point of delivery</td>
</tr>
<tr>
<td>Online</td>
<td>Out of State Fulfillment Center</td>
<td>Picked Up In-Store (Click &amp; Collect)</td>
<td>Local tax is allocated to the countywide pool based on point of delivery</td>
</tr>
<tr>
<td>Online</td>
<td>California Fulfillment Center Owned and Operated by Third Party Vendor</td>
<td>Drop-Shipped to California Customer</td>
<td>Local tax is allocated to the countywide pool based on point of delivery</td>
</tr>
<tr>
<td>Online</td>
<td>In-Store (Goods withdrawn from store inventory)</td>
<td>Shipped to California Customer</td>
<td>Local Tax is allocated to the jurisdiction where the store is located</td>
</tr>
<tr>
<td>Online</td>
<td>In-Store (goods withdrawn from store inventory)</td>
<td>Picked Up In-Store (Click &amp; Collect)</td>
<td>Local Tax is allocated to the jurisdiction where the store is located</td>
</tr>
<tr>
<td>In-Store</td>
<td>In-Store (Goods withdrawn from store inventory)</td>
<td>Over the Counter</td>
<td>Local Tax is allocated to the jurisdiction where the store is located</td>
</tr>
</tbody>
</table>

Courtesy of HdL Companies

CaliforniaCityFinance.com
Tax Incentive Programs, Sales Tax Sharing Agreements

In recent years, especially since Proposition 13 in 1978, local discretionary (general purpose revenues) have become more scarce. At the same time, options and procedures for increasing revenues have become more limited. One outcome of this in many areas has been a greater competition for sales and use tax revenues. This has brought a rise in arrangements to encourage certain land use development with rebates and incentives which exploit California’s odd origin sales tax sourcing rules.

The typical arrangement is a sales tax sharing agreement in which a city provides tax rebates to a company that agrees to expand their operations in the jurisdiction of the city. Under such an arrangement, the company generally agrees to make a specified amount of capital investment and create a specific number of jobs over a period of years in exchange for specified tax breaks, often property tax abatement or some sort of tax credit. In some cases, this has simply taken the form of a sales office, while customers and warehouses and the related economic activity are disbursed elsewhere in the state. In some cases the development takes the form of warehouses, in which the sales inventory, owned by the company, is housed.6

Current sales tax incentive agreements in California rebate amounts ranging from 50% to 85% of sales tax revenues back to the corporations.

Today, experts familiar with the industry believe that between 20% to 30% of local Bradley-Burns sales taxes paid by California consumers is diverted from local general funds back to corporations; over $1 billion per year.

Moving to Destination Sourcing: The Concept7

A change from origin sourcing rules to destination sourcing rules for the local tax component of California’s sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

A change from origin based sourcing to destination based sourcing would have no effect on state tax collections. However, it would alter the allocations of local sales and use tax revenues among local agencies. Most retail transactions including dining, motor fuel purchases, and in-store purchases would not be affected. But in cases where the property is received by the purchaser in a different jurisdiction than where the sales agreement was negotiated, there would be a different allocation than under the current rules.

7 The same issues that are of concern regarding the local sales tax do not apply to California’s Transactions and Use Taxes (“Add-on sales taxes”) as these transactions, when not over the counter, are generally allocated to the location of use or, as in the case of vehicles, product registration. There is no need to alter the sourcing rules for transactions and use taxes.
Destination Sourcing Scenario 1: Full-On

“Over the Counter”

```
Seller’s Place of Business  Buyer Receives at …
Retail Store
City A
```

```
Automobile ... just like over the counter and Transactions Tax exception remains)

Seller (dealer)  Buyer registers (uses) vehicle at
Sales Office  Residence or Business
City A  City B
```

```
Remote Sale

Seller’s Place of Business  Buyer Receives at …
Sales Office  Residence or Place of Business
City A or out of state  City B
Warehouse
City C or out of state
Factory  City B or out of state
```

CaliforniaCityFinance.com
Destination Sourcing Scenario 2: Split Source

- Same as now for “over the counter” and automobile.
- Leave 0.25% on current seller if instate (origin)
- Could be phased in.
RESOLUTION OF THE LEAGUE OF CALIFORNIA CITIES (“CAL CITIES”) CALLING ON THE STATE LEGISLATURE TO PASS LEGISLATION THAT PROVIDES FOR A FAIR AND EQUITABLE DISTRIBUTION OF THE BRADLEY BURNS 1% LOCAL SALES TAX FROM IN-STATE ONLINE PURCHASES, BASED ON DATA WHERE PRODUCTS ARE SHIPPED TO, AND THAT RIGHTFULLY TAKES INTO CONSIDERATION THE IMPACTS THAT FULFILLMENT CENTERS HAVE ON HOST CITIES BUT ALSO PROVIDES A FAIR SHARE TO CALIFORNIA CITIES THAT DO NOT AND/OR CANNOT HAVE A FULFILLMENT CENTER WITHIN THEIR JURISDICTION

WHEREAS, the 2018 U.S. Supreme Court decision in Wayfair v. South Dakota clarified that states could charge and collect tax on purchases even if the seller does not have a physical presence in the state; and

WHEREAS, California cities and counties collect 1% in Bradley Burns sales and use tax from the purchase of tangible personal property and rely on this revenue to provide critical public services such as police and fire protection; and

WHEREAS, in terms of “siting” the place of sale and determining which jurisdiction receives the 1% Bradley Burns local taxes for online sales, the California Department of Tax and Fee Administration (CDTFA) determines “out-of-state” online retailers as those with no presence in California that ship property from outside the state and are therefore subject to use tax, not sales tax, which is collected in a countywide pool of the jurisdiction where the property is shipped from; and

WHEREAS, for online retailers that have a presence in California and have a stock of goods in the state from which it fulfills orders, CDTFA considers the place of sale (“situs”) as the location from which the goods were shipped such as a fulfillment center; and

WHEREAS, in early 2021, one of the state’s largest online retailers shifted its ownership structure so that it is now considered both an in-state and out-of-state retailer, resulting in the sales tax this retailer generates from in-state sales now being entirely allocated to the specific city cities where the warehouse fulfillment centers is are located as opposed to going into a countywide pools that is are shared with all jurisdictions in those counties that County, as was done previously; and

WHEREAS, this all-or-nothing change for the allocation of in-state sales tax has created winners and losers amongst cities as the online sales tax revenue from the retailer that was once spread amongst all cities in countywide pools is now concentrated in select cities that host a fulfillment centers; and

WHEREAS, this has created a tremendous inequity amongst cities, in particular for cities that are built out, do not have space for siting a 1 million square foot fulfillment centers, are not located along a major travel corridor, or otherwise not ideally suited to host a fulfillment center; and

WHEREAS, this inequity affects cities statewide, but in particular those with specific circumstances such as no/low property tax cities that are extremely reliant on sales tax revenue as well as cities struggling to meet their Regional Housing Needs Allocation (RHNA) obligations that are being compelled by the State to rezone precious commercial parcels to residential; and
WHEREAS, the inequity produced by allocating in-state online sales tax revenue exclusively to cities with fulfillment centers is exasperated even more by, in addition to already reducing the amount of revenue going into the countywide pools, the cities with fulfillment centers are also receiving a larger share of the dwindling countywide pool as it is allocated based on cities’ proportional share of sales tax collected; and

WHEREAS, while it is important to acknowledge that those cities that have fulfillment centers experience impacts from these activities and deserve equitable supplementary compensation, it should also be recognized that the neighboring cities whose residents are ordering products from those centers now receive no Bradley Burns revenue from the center’s sales activity despite also experiencing the impacts created by the center, such as increased traffic and air pollution; and

WHEREAS, the COVID-19 pandemic greatly accelerated the public’s shift towards online purchases, a trend that is unlikely to be reversed to pre-pandemic levels; and

NOW, THEREFORE, BE IT RESOLVED that Cal Cities calls on the State Legislature to pass legislation that provides for a fair and equitable distribution of the Bradley Burns 1% local sales tax from in-state online purchases, based on data where products are shipped to, and that rightfully takes into consideration the impacts that fulfillment centers have on host cities but also provides a fair share to California cities that do not and/or cannot have a fulfillment center within their jurisdiction.
2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECESSARY FUNDING FOR CUPC TO FULFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate
Concurrence of five or more cities/city officials:
Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera
Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the California Public Utilities Commission for operational safety and maintenance; and

WHEREAS, the California Public Utilities Commission (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and
WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Annual Conference on September 24, 2021, in Sacramento, that the League calls for the Governor and the Legislature to work with the League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.
Background Information to Resolution

Source: City of South Gate

Background:
The State of California has over 6,000 miles of rail lines, with significant amount running through communities that are either economically disadvantaged and/or disadvantaged communities of color. While the Federal Railroad Administration (FRA) has primary oversight of rail operations, they delegate that obligation to the State of California for lines within our State. The administration of that oversight falls under the California Public Utilities Commission (CPUC). The CPUC has only 41 inspectors covering those 6,000 miles of railroad lines in the State of California. Their primary task is ensuring equipment, bridges and rail lines are operationally safe.

The right-of-way areas along the rail lines are becoming increasingly used for illegal dumping, graffiti and homeless encampments. Rail operators have admitted that they have insufficient funds set aside to clean up or sufficiently police these right-of-way areas, despite reporting a net income of over $13 billion in 2020. CPUC budget does not provide the resources to oversee whether rail operators are properly managing the right-of-way itself.

The City of South Gate has three rail lines traversing through its city limits covering about 4 miles. These lines are open and inviting to individuals to conduct illegal dumping, graffiti buildings and structures along with inviting dozens of homeless encampments. As private property, Cities like ourselves cannot just go upon them to remove bulky items, trash, clean graffiti or remove encampments. We must call and arrange for either our staff to access the site or have the rail operator schedule a cleanup. This can take weeks to accomplish, in the meantime residents or businesses that are within a few hundred feet of the line must endure the blight and smell. Trash is often blown from the right-of-way into residential homes or into the streets. Encampments can be seen from the front doors of homes and businesses.

South Gate is a proud city of hard working-class residents, yet with a median household income of just $50,246 or 65% of AMI for Los Angeles County, it does not have the financial resources to direct towards property maintenance of any commercial private property. The quality of life of communities like ours should not be degraded by the inactions or lack of funding by others. Cities such as South Gate receive no direct revenue from the rail operators, yet we deal with environmental impacts on a daily basis, whether by emissions, illegal dumping, graffiti or homeless encampments.

The State of California has record revenues to provide CPUC with funding nor only for safety oversight but ensuring right-of-way maintenance by operators is being managed properly. Rail Operators should be required to set aside sufficient annual funds to provide a regular cleanup of their right-of-way through the cities of California.
LETTERS OF CONCURRENCE

Resolution No. 2
CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Bell Gardens supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

The City’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State’s freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Marco Barcena at 562-7761 if you have any questions.

Sincerely,

[Signature]

Marco Barcena
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacityes.org
CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

As a Councilwoman with the City of Bell Gardens, I support the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

The City of South Gate’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State’s freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Liseth Flores at (562) 806-7763 if you have any questions.

Sincerely,

Liseth Flores
Councilwoman

CC: Blanca Pacheco, President, Los Angeles County Division c/o
    Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org
CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 15, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The city of Bell supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

The City’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State’s freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population calls home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Paul Phillips, City Manager at 323-588-6211, if you have any questions.

Sincerely,

Alicia Romero
Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division,
July 20, 2021

Cheryl Viegas Walker  
President  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

RE: Railroad Oversight Annual Conference Resolution

President Walker:

The City of Commerce supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League of California Cities’ (“League”) 2021 Annual Conference in Sacramento.

The City’s resolution seeks to address a critical issue within communities, especially disadvantaged communities of color that are home to the State’s freight rail lines. While I am supportive of the economic base the railroad industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Edgar Cisneros, City Manager, via email at ecisneros@ci.commerce.ca.us or at 323-722-4805, should you have any questions.

Sincerely,

Mayor Leonard Mendoza

CC: Blanca Pacheco, President, Los Angeles County Division c/o  
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org
July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

Dear President Walker:

The City of Cudahy supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

The City of South Gate’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State’s freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. If you have any questions, please do not hesitate to call my office at 323-773-5143.

Sincerely,

Jose Gonzalez
Mayor

CC: Chris Jeffers, City Manager, City of South Gate
July 16, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of El Segundo supports the Los Angeles County Division’s City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

The City’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State’s freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact El Segundo Public Works Director Elias Sassoon at 310-524-2356, if you have any questions.

Sincerely,

Drew Boyles
Mayor of El Segundo

CC: City Council, City of El Segundo
Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cadities.org
Jeff Kiernan, League Regional Public Affairs Manager (via email)
July 14, 2021

Cheryl Viegas Walker, President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

SUBJECT: SUPPORT FOR THE CITY OF SOUTH GATE’S ANNUAL
CONFERENCE RESOLUTION

Dear President Walker:

The City of Glendora is pleased to support the City of South Gate’s effort to submit a resolution
for consideration by the General Assembly at the League of California Cities’ 2021 Annual
Conference in Sacramento.

The City of South Gate’s resolution seeks to address a critical issue that many communities, small
and large, are experiencing along active transportation corridors, particularly rail lines. Given the
importance and growth of the ports and logistics sector, and the economic support they provide,
we need to do more to ensure that conflicts are appropriately addressed and mitigated to ensure
they do not become attractive nuisances. Our cities are experiencing increasing amounts of illegal
dumping (trash and debris) and the establishment of encampments by individuals experiencing
homelessness along roadways, highways and rail lines. Such situations create unsafe conditions –
safety, health and sanitation – that impact quality of life even as we collectively work to address
this challenge in a coordinated and responsible manner.

As members of the League of California Cities, Glendora values the policy development process
provided to the General Assembly and strongly support consideration of this issue. Your attention
to this matter is greatly appreciated. Should you have any questions, please feel free to contact
Adam Raymond, City Manager, at araymond@cityofglendora.org or (626) 914-8201.

Sincerely,

Karen K. Davis
Mayor

C: Blanca Pacheco, President, Los Angeles County Division c/o
    Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

PRIDE OF THE FOOTHILLS

54
July 21, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Re: Resolution No. 2021-18 Supporting City of South Gate Annual Conference Resolution

President Walker:

The City of Huntington Park (City) supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento. Enclosed is Resolution No. 2021-18 adopted by the City Council of the City of Huntington Park.

The City’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State’s freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impacts of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively affect our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, Ricardo Reyes, at 323-582-6161, if you have any questions.

Sincerely,

Graciela Ortiz
Mayor, City of Huntington Park

CC: Blanca Pacheco, President, Los Angeles County Division c/o
    Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org

Enclosure(s)
July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

SUBJECT: LETTER OF SUPPORT FOR CITY OF SOUTH GATE’S PROPOSED RESOLUTION AT CALCITIES ANNUAL CONFERENCE

President Walker:

The City of La Mirada supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

The City of South Gate’s resolution seeks to address a critical issue within communities that are home to the State’s freight rail lines. While the City of La Mirada is supportive of the economic base the railroad industry serves to the State, the rail lines have become places where illegal dumping and a growing homeless population are significant problems. The negative impact of these illegal activities decreases the quality of life for the La Mirada community, increases blight and unhealthy sanitation issues, and negatively impacts the City’s ability to meet State water quality standards under the MS4 permits.

As members of the League, the City of La Mirada values the policy development process provided to the General Assembly. We appreciate your consideration on this issue. Please feel free to contact Assistant City Manager Anne Haraksin at (562) 943-0131 if you have any questions.

Sincerely,

CITY OF LA MIRADA

Ed Eng
Mayor

cc: Blanca Pacheco, President, Los Angeles County Division c/o Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org
July 22, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Support for City of South Gate Resolution—Cleanup Activities on Rail Operator Properties

Dear President Walker,

On behalf of the City of Long Beach, I write to support the City of South Gate’s proposed resolution for the League of California Cities’ (League) 2021 Annual Conference. This resolution seeks to direct the League to adopt a policy urging State and federal governments to increase oversight of rail operators’ land maintenance. The City is a proponent of increased maintenance along railways and believes a League advocacy strategy would help expedite regional responses.

The COVID-19 pandemic has exacerbated the public health and safety concerns on rail rights-of-way, as trash, debris, and encampments have increased exponentially. These challenges erode the quality of life for our communities, increase blight, and contribute to public health and sanitation issues. To address these concerns, the City has engaged directly with regional partners to prioritize ongoing maintenance and cleanups, and has invested $4 million in the Clean Long Beach Initiative as part of the City’s Long Beach Recovery Act to advance economic recovery and public health in response to the COVID-19 pandemic.

The City of South Gate’s proposed resolution would further advance these efforts for interjurisdictional coordination. The increased oversight proposed by the resolution will help support better coordination and additional resources to address illegal dumping and encampments along private rail operator property. This is a critical measure to advance public health and uplift our most vulnerable communities. For these reasons, the City supports the proposed League resolution.

Sincerely,

THOMAS B. MODICA
City Manager

cc: Blanca Pacheco, President, Los Angeles County Division c/o
Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org
CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 20, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Lynwood supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

The City’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State’s freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. These impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League our city values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Ernie Hernandez at (310) 603-0220 ext. 200, if you have any questions.

Sincerely,

Marisela Santana, Mayor

CC: Blanca Pacheco, President, Los Angeles County Division c/o Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org
July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: Resolution in Support of City of South Gate Annual Conference Resolution

President Walker:

The City of Montebello (City) supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento. Attached is the Resolution to be considered for adoption by the City Council of the City of Montebello at our July 28, 2021, City Council meeting.

The City’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State’s freight rail lines. While supportive of the economic base the industry serves to the State, their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact our City Manager, René Bobadilla, at 323-887-1200, if you have any questions.

Sincerely,

Kimberly Cobos-Cawthorne
Mayor, City of Montebello

CC: Blanca Pacheco, President, Los Angeles County Division c/o Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org
July 19, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: SUPPORT FOR ANNUAL LEAGUE OF CITIES CONFERENCE GENERAL ASSEMBLY RESOLUTION

President Walker:

The City of Paramount supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento. The proposed resolution is attached.

South Gate’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantage communities of color that are home to the State’s freight rail lines. While supportive of the economic boon the freight industry serves to the State, their rail line rights of way have often become places where illegal dumping is a constant problem and where our growing homeless populations reside. The impact of these activities further erode the quality of life for our communities, increase blight, increase unhealthy sanitation issues and negatively impact our ability to meet State water quality standards under the MS4 permits.

As a member of the California League of Cities, the City of Paramount values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact City Manager John Moreno at (562) 220-2222 if you have any questions.
CITY OF SOUTH GATE ANNUAL CONFERENCE RESOLUTION

July 14, 2021

Cheryl Viegas Walker
President
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

RE: City of South Gate Annual Conference Resolution

President Walker:

The City of Pico Rivera supports the City of South Gate’s effort to submit a resolution for consideration by the General Assembly at the League’s 2021 Annual Conference in Sacramento.

The City’s resolution seeks to address a critical issue within communities, especially those of economic disadvantage and disadvantaged communities of color that are home to the State’s freight rail lines. While supportive of the economic base the industry serves to the State; their rail lines have often become places where illegal dumping is a constant problem and our growing homeless population call home. The impact of these activities further erodes the quality of life for our communities, increases blight, increases unhealthy sanitation issues, and negatively impacts our ability to meet State water quality standards under the MS4 permits.

As members of the League, our City values the policy development process provided to the General Assembly. We appreciate your time on this issue. Please feel free to contact Steve Carmona at (562) 801-4405 if you have any questions.

Sincerely,

[Signature]

City Manager
City of Pico Rivera

CC: Blanca Pacheco, President, Los Angeles County Division c/o
    Jennifer Quan, Executive Director, Los Angeles County Division, jquan@cacities.org
League of California Cities Staff Analysis on Resolution No. 2

Staff: Damon Conklin, Legislative Affairs, Lobbyist
      Jason Rhine, Assistant Director, Legislative Affairs
      Caroline Cirrincione, Policy Analyst

Committees: Transportation, Communications, and Public Works
            Housing, Community, and Economic Development

Summary:
The City of South Gate submits this resolution, which states the League of California Cities
should urge the Governor and the Legislature to provide adequate regulatory authority and
necessary funding to assist cities with railroad right-of-way areas to address illegal dumping,
graffiti, and homeless encampments that proliferate along the rail lines and result in public
safety issues.

Background:
California Public Utilities Commission (CPUC) Railroad Oversight
The CPUC’s statewide railroad safety responsibilities are carried out through its Rail Safety
Division (RSD). The Railroad Operations and Safety Branch (ROSB), a unit of RSD, enforces
state and federal railroad safety laws and regulations governing freight and passenger rail in
California.

The ROSB protects California communities and railroad employees from unsafe practices on
freight and passenger railroads by enforcing rail safety laws, rules, and regulations. The ROSB
also performs inspections to identify and mitigate risks and potential safety hazards before they
create dangerous conditions. ROSB rail safety inspectors investigate rail accidents and safety-
related complaints and recommend safety improvements to the CPUC, railroads, and the
federal government as appropriate.

Within the ROSB, the CPUC employs 41 inspectors who are federally certified in the five
Federal Railroad Administration (FRA) railroad disciplines, including hazardous materials,
motive power and equipment, operations, signal and train control, and track. These inspectors
perform regular inspections, focused inspections, accident investigations, security inspections,
and complaint investigations. In addition, the inspectors address safety risks that, while not
violations of regulatory requirements, pose potential risks to public or railroad employee safety.

CPUC’s Ability to Address Homelessness on Railroads
Homeless individuals and encampments have occupied many locations in California near
railroad tracks. This poses an increased safety risk to these homeless individuals of being
struck by trains. Also, homeless encampments often create unsafe work environments for
railroad and agency personnel.

While CPUC cannot compel homeless individuals to vacate railroad rights-of-way or create
shelter for homeless individuals, it has the regulatory authority to enforce measures that can
reduce some safety issues created by homeless encampments. The disposal of waste materials
or other disturbances of walkways by homeless individuals can create tripping hazards in the
vicinity of railroad rights-of-way. This would cause violations of Commission GO 118-A, which
sets standards for walkway surfaces alongside railroad tracks. Similarly, tents, wooden
structures, and miscellaneous debris in homeless encampments can create violations of

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Commission GO 26-D, which sets clearance standards between railroad tracks, and structures and obstructions adjacent to tracks.

**Homelessness in California**
According to the 2020 Annual Homeless Assessment Report (AHAR) to Congress, there has been an increase in unsheltered individuals since 2019. More than half (51 percent or 113,660 people) of all unsheltered homeless people in the United States are found in California, about four times as high as their share of the overall United States population.

Many metro areas in California lack an adequate supply of affordable housing. This housing shortage has contributed to an increase in homelessness that has spread to railroad rights-of-way. Homeless encampments along railroad right-of-way increase the incidents of illegal dumping and unauthorized access and trespassing activities. Other impacts include train service reliability with debris strikes, near-misses, and trespasser injuries/fatalities. As of April 2021, there have been 136 deaths and 117 injuries reported by the Federal Railroad Administration over the past year. These casualties are directly associated with individuals who trespassed on the railroad.

Cities across the state are expending resources reacting to service disruptions located on the railroad’s private property. It can be argued that an increase in investments and services to manage and maintain the railroad’s right-of-way will reduce incidents, thus enhancing public safety, environmental quality, and impacts on the local community.

**State Budget Allocations – Homelessness**
The approved State Budget includes a homelessness package of $12 billion. This consists of a commitment of $1 billion per year for direct and flexible funding to cities and counties to address homelessness. While some details related to funding allocations and reporting requirements remain unclear, Governor Newsom signed AB 140 in July, which details key budget allocations, such as:

- $2 billion in aid to counties, large cities, and Continuums of Care through the Homeless Housing, Assistance and Prevention grant program (HHAP);
- $50 million for Encampment Resolution Grants, which will help local governments resolve critical encampments and transitioning individuals into permanent housing; and
- $2.7 million in onetime funding for Caltrans Encampment Coordinators to mitigate safety risks at encampments on state property and to coordinate with local partners to connect these individuals to services and housing.

The Legislature additionally provided $2.2 billion specifically for Homekey with $1 billion available immediately. This funding will help local governments transition individuals from Project Roomkey sites into permanent housing to minimize the number of occupants who exit into unsheltered homelessness.

With regards to this resolution, the State Budget also included $1.1 billion to clean trash and graffiti from highways, roads, and other public spaces by partnering with local governments to pick up trash and beautify downtowns, freeways, and neighborhoods across California. The program is expected to generate up to 11,000 jobs over three years.

**Cities Railroad Authority**
A city must receive authorization from the railroad operator before addressing the impacts made by homeless encampments because of the location on the private property. Additionally, the city
must coordinate with the railroad company to get a flagman to oversee the safety of the work crews, social workers, and police while on the railroad tracks.

A city may elect to declare the encampment as a public nuisance area, which would allow the city to clean up the areas at the railroad company’s expense for failing to maintain the tracks and right-of-way. Some cities are looking to increase pressure on railroad operators for not addressing the various homeless encampments, which are presenting public safety and health concerns.

Courts have looked to compel railroad companies to increase their efforts to address homeless encampments on their railroads or grant a local authority’s application for an Inspection and Abatement Warrant, which would allow city staff to legally enter private property and abate a public nuisance or dangerous conditions.

In limited circumstances, some cities have negotiated Memoranda of Understandings (MOU) with railroad companies to provide graffiti abatement, trash, and debris removal located in the right-of-way, and clean-ups of homeless encampments. These MOUs also include local law enforcement agencies to enforce illegally parked vehicles and trespassing in the railroad’s right-of-way. MOUs also detailed shared responsibility and costs of providing security and trash clean-up. In cases where trespassing or encampments are observed, the local public works agency and law enforcement agency are notified and take the appropriate measures to remove the trespassers or provide clean-up with the railroad covering expenses outlined in the MOU.

Absent an MOU detailing shared maintenance, enforcement, and expenses, cities do not have the authority to unilaterally abate graffiti or clean-up trash on a railroad’s right-of-way.

**Fiscal Impact:**
If the League of California Cities were to secure funding from the state for railroad clean-up activities, cities could potentially save money in addressing these issues themselves or through an MOU, as detailed above. This funding could also save railroad operators money in addressing concerns raised by municipalities about illegal dumping, graffiti, and homeless encampments along railroads.

Conversely, if the League of California Cities is unable to secure this funding through the Legislature or the Governor, cities may need to consider alternative methods, as detailed above, which may include significant costs.

**Existing League Policy:**
*Public Safety:*
*Graffiti*
The League supports increased authority and resources devoted to cities for abatement of graffiti and other acts of public vandalism.

*Transportation, Communications, and Public Works*
*Transportation*
The League supports efforts to improve the California Public Utilities Commission’s ability to respond to and investigate significant transportation accidents in a public and timely manner to improve rail shipment, railroad, aviation, marine, highway, and pipeline safety.
Housing, Community, and Economic Development

Housing for Homeless

Homelessness is a statewide problem that disproportionately impacts specific communities. The state should make funding and other resources, including enriched services, and outreach and case managers, available to help assure that local governments have the capacity to address the needs of the homeless in their communities, including resources for regional collaborations.

Homeless housing is an issue that eludes a statewide, one-size-fits-all solution, and collaboration between local jurisdictions should be encouraged.

Staff Comments:
Clarifying Amendments
Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. To review the proposed changes, please see Attachment A.

The committee may also wish to consider clarifying language around regulatory authority and funding to assist cities with these efforts. The resolution asks that new investments from the state be sent to the CPUC to increase their role in managing and maintaining railroad rights-of-ways and potentially to cities to expand their new responsibility.

The committee may wish to specify MOUs as an existing mechanism for cities to collaborate and agree with railroad operators and the CPUC on shared responsibilities and costs.

Support:
The following letters of concurrence were received:
City of Bell Gardens
City of Bell
City of Commerce
City of Cudahy
City of El Segundo
City of Glendora
City of La Mirada
City of Paramount
City of Pico Rivera
City of Huntington Park
City of Long Beach
City of Lynwood
City of Montebello
2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE NECESSARY FUNDING FOR THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) TO FULFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE QUALITY OF LIFE AND RESULTS IN INCREASED PUBLIC SAFETY CONCERNS FOR COMMUNITIES AND NEIGHBORHOODS THAT ABUT THE RAILROAD RIGHT-OF-WAY.

Source: City of South Gate
Concurrence of five or more cities/city officials
Cities: City of Bell Gardens; City of Bell; City of Commerce; City of Cudahy; City of El Segundo; City of Glendora; City of Huntington Park; City of La Mirada; City of Long Beach; City of Lynwood; City of Montebello; City of Paramount; City of Pico Rivera
Referred to: Housing, Community and Economic Development; and Transportation, Communications and Public Works

WHEREAS, ensuring the quality of life for communities falls upon every local government including that blight and other health impacting activities are addressed in a timely manner by private property owners within its jurisdictional boundaries for their citizens, businesses and institutions; and

WHEREAS, Railroad Operators own nearly 6,000 miles of rail right-of-way throughout the State of California which is regulated by the Federal Railroad Administration and/or the California Public Utilities Commission CPUC for operational safety and maintenance; and

WHEREAS, the California Public Utilities Commission (CPUC) is the enforcing agency for railroad safety in the State of California and has 41 inspectors assigned throughout the entire State to inspect and enforce regulatory compliance over thousands of miles of rail line; and

WHEREAS, areas with rail line right-of-way within cities and unincorporated areas are generally located in economically disadvantaged zones and/or disadvantaged communities of color where the impact of blight further lowers property values and increases the likelihood of unsound sanitary conditions and environmental impacts upon them; and

WHEREAS, many communities are seeing an increase in illegal dumping, graffiti upon infrastructure and homeless encampments due to the lax and inadequate oversight by regulatory agencies; and

WHEREAS, local governments have no oversight or regulatory authority to require operators to better maintain and clean their properties as it would with any other private property owner within its jurisdictional boundaries. Thus such local communities often resort to spending their local tax dollars on cleanup activities or are forced to accept the delayed and untimely response by operators to cleaning up specific sites, and;

WHEREAS, that railroad operators should be able to provide local communities with a fixed schedule in which their property will be inspected and cleaned up on a reasonable and regular schedule or provide for a mechanism where they partner with and reimburse local governments for an agreed upon work program where the local government is enabled to remove items like illegal dumping, graffiti and encampments; and

ATTACHMENT A
WHEREAS, the State has made it a priority to deal with homeless individuals and the impacts illegal encampments have upon those communities and has a budgetary surplus that can help fund the CPUC in better dealing with this situation in both a humane manner as well as a betterment to rail safety.

RESOLVED, at the League of California Cities, General Assembly, assembled at the League Cal Cities Annual Conference on September 24, 2021, in Sacramento, that the Cal Cities League calls for the Governor and the Legislature to work with the Cal Cities League and other stakeholders to provide adequate regulatory authority and necessary funding to assist cities with these railroad right-of-way areas so as to adequately deal with illegal dumping, graffiti and homeless encampments that proliferate along the rail lines and result in public safety issues. The Cal Cities League will work with its member cities to educate federal and state officials to the quality of life and health impacts this challenge has upon local communities, especially those of color and/or environmental and economic hardships.
Item B-2
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 43 (Friedman) - Traffic safety (AB 43) involves a policy matter that may have a nexus to the City’s adopted Legislative Platform language. Specifically, the following statements may apply to AB 43 as it relates to setting speed limits.

- Support legislation, which would repeal or modify existing law regarding how a local jurisdiction makes findings on setting a speed limit for a street. Specifically, modify the requirement that mandates City set an enforceable speed limit at the 85th percentile of a surveyed street speed.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 43 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 43, the Liaisons may recommend the following actions:

1) Oppose AB 43;
2) Support AB 43;
3) Support if amended AB 43;
4) Oppose unless amended AB 43;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position of support, then staff will prepare a letter for the Mayor to sign as the legislation appears to be consistent with the City’s Legislative Platform. Any other positions recommended by the Liaisons will require the concurrence of the City Council and staff will place this item on a future City Council agenda.
Attachment 1
August 24, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 43 (Friedman) Traffic Safety

Version: Amended in the Senate on August 23, 2021

Summary: Provides Caltrans and local authorities greater flexibility in setting and reducing speed limits.

Specifically, this bill would:

1) Authorize local authorities, when performing an engineering and traffic survey ("ETS"), to consider the safety of bicyclists and pedestrians, with increased consideration for vulnerable pedestrian groups.

2) Authorize Caltrans and local authorities, on streets where a 65-mph limit is applicable, to lower the speed limit to as low as 15 mph pursuant to an ETS. Current law permits the speed limit to be as low as 25 mph.

3) Authorize Caltrans or a local authority to round the 85th percentile speed either up or down to the nearest 5 mph. (e.g., if the 85th percentile speed is 43 mph the speed limit would be set at either 40 mph or 45 mph). Current law requires the 85th percentile speed to be rounded to the nearest 5 mph. (e.g., if the 8th percentile speed is 43 mph the speed limit could be set at 45 mph.)

4) Authorize a local authority who, after completing an ETS, finds that the speed limit is more than reasonable or safe, to reduce the speed limit by 5 mph by ordinance if the highway is designated as a high-injury street, as defined by Caltrans, or the portion of highway is adjacent to any land or facility that generates high concentrations of bicyclists or pedestrians, as determined by Caltrans.

5) Authorize a local authority who, after completing an ETS, finds that the resulting speed limit is higher than is reasonable or safe, to retain the current speed limit or restore the immediately prior speed limit if a registered engineer determines that no additional general-purpose lanes have been added to the roadway since completion of the ETS that established the prior speed limit.
6) Define a business activity district as a central or neighborhood downtown, urban village or zoning designation that prioritizes commercial land uses at the downtown or neighborhood scale and meets three of following four tests:

a) No less than 50% of the property fronting the highway is used either for retail or dining.
b) There is street parking.
c) Traffic control signals are no more than 600 feet apart.
d) Marked crosswalks are not controlled by a traffic control device.

7) Authorize a local authority by ordinance to declare a 25 mph or 20 mph speed limit in a business activity district when the highway has a maximum of four traffic lanes.

**Background**

Existing law prohibits driving at a speed greater than is reasonable or prudent having due regard for weather, visibility, traffic, and the surface and width of the highway, and in no event at a speed which endangers the safety of persons or property. This is known as California’s Basic Speed Law. Current speed limits on state highway typically cannot exceed 65 mph and can be set at lower limits under numerous specified conditions. Prohibits the use of speed traps, as defined, in arresting or prosecuting any violation of the Vehicle Code including speeding.

Caltrans and local authorities may establish a speed limit on most streets of between 25 mph and 60 mph in 5 mph increments because of an engineering and traffic survey (ETS). The ETS establishes the 85th percentile speed, which is rounded to the nearest 5 mph.

Under current law, speed limits can be set at 15 mph when traversing railroad crossings, at specified intersections, and in alleys, and of 25 mph in any business or residence district, near schools and near senior centers. These speed limits do not need to be justified by an ETS.

AB 43 (Freidman) provides flexibility in setting speed limits lower than what is otherwise determined by the mechanistic methodology in state law, on roads designated as safety corridors, in business activity districts, and near vulnerable populations such as senior centers. The bill would also allow the public to resist “speed creep” when new, higher speed limits otherwise called for by engineering and traffic surveys are unsafe.

**Prior Legislation**

In 2018 AB 2363 (Friedman, Chapter 650, Statutes of 2018) required the Secretary of the State Transportation Agency to convene a task force to develop policies for reducing traffic fatalities to zero. The task force commissioned research on speed setting from the UC Institute of Transportation Studies (UC ITS) and issued a report on its findings based on that research in January 2020 entitled "CalSTA Report of Findings; AB 2363 Zero Traffic Fatalities Task Force" (Task Force Report). The Task Force Report describes how speed limits are currently set, a practice known as the 85th percentile, which is based on an ETS:

“Drivers play an important role in how posted speed limits are set. Many U.S. states and California rely on a long-standing and widespread methodology known as the 85th percentile speed to establish speed limits. As its name implies, the 85th percentile speed is the velocity at which 85 percent of vehicles drive at or below on any given road. This approach was developed in the U.S. in the mid-20th century and is still the dominant factor in how speed limits are set in the U.S today. The 85th percentile methodology assumes that most drivers will drive at a safe and reasonable speed based on the road conditions. It is also based on the
idea that speed limits are safest when they conform to the natural speed driven by most drivers and that uniform vehicle speeds increase safety and reduce the risks for crashes.”

Over the last several years, the conventional wisdom supporting the 85th percentile methodology has been criticized. The UC ITS report finds that the 85th percentile speed was intended to only be a starting point for setting speed limits, with subsequent adjustments made to account for safety concerns. The Task Force Report criticizes the 85th percentile methodology as privileging driver behavior, not requiring consideration of other road users such as pedestrians and bicyclists, and if drivers will choose reasonable speeds.

The author and supporters argue that speed limit reform is far overdue in California. Speed limits are based on the speed driver’s feel comfortable driving at, not safety. The 85th percentile is outdated and has led locals to increase speed limits at the same time traffic fatalities continue to increase. Implementation of AB 43 at the local level has the potential to save hundreds of lives. This bill is the culmination of the Zero Traffic Fatalities Task Force recommendations on speed setting, verified and contributed to by experts across the state.

This bill allows local governments to lower speed limits in an incremental way subject to a public process. However, significantly lowering actual driving speeds will also require stepped up enforcement and engineering changes to the roads. As noted above, engineering changes are the most important factor in reducing speeds. Stepping up enforcement, such as through video cameras, without engineering changes will result in many more citations issued, a concern raised by the opponents. This interaction should be a foremost consideration in any subsequent speed limit legislation.

**Arguments from Supporters**
The bill provides flexibility to lower speed limits, which will make streets safer for all road users, as 1/3 of traffic fatalities are speed related, and will help cities prevent and reverse speed creep. Speed limits should account for all road users, not just cars. Reducing speed even a little will reduce deaths and injuries substantially.

**Opponents from Opponents**
Studies demonstrate that lowering speed limits by itself will not reduce speed. It will criminalize normal behavior; result in many more issued citations and will not make streets safer.

**Status of Legislation**
This measure is currently pending on the Senate Floor.

**Support**
Active San Gabriel Valley  
Activesvg  
Alameda County Board of Supervisors  
Alameda County Transportation Commission  
Alameda-Contra Costa Transit District  
Asian Pacific Islander Forward Movement  
Association of Bay Area Governments  
Authority  
Bay Area Council  
CalBike  
California Bicycle Coalition  
California City Transportation Initiative  
California State Association of Counties  
California Walks  
Central City Association of Los Angeles  
Circulate San Diego  
City and County of San Francisco  
City and County of San Francisco, Board of Supervisors  
City of Alameda  
City of Berkeley
City of Chula Vista, Mayor Casillas Salas  
City of Downey  
City of Glendale  
City of Long Beach  
City of Los Angeles  
City of Novato  
City of Oakland  
City of Oakland Bicyclist and Pedestrian Advisory Commission  
City of Redondo Beach  
City of San Jose  
City of San Mateo  
City of Santa Barbara  
City of Thousand Oaks  
City/County Association of Governments of San Mateo County  
County of Santa Clara  
Day One  
Families on Fremont  
Fresno Metro Ministry  
Glendale Environmental Coalition  
Independent Hospitality Coalition  
Institute for Transportation & Development Policy  
League of California Cities  
Los Angeles County Bicycle Coalition  
Los Angeles County Metropolitan Transportation Authority  
Los Angeles Neighborhood Land Trust  
Los Angeles Police Department  
Los Angeles Walks  
Metropolitan Transportation Commission  
Move LA  
Nacto  
Napa County Transportation and Planning Agency/Napa Valley Transportation National Association of City Transportation Officials  
National Safety Council  
NRDC  
Pasadena Complete Streets Coalition  
Policylink  
Potrero Boosters Neighborhood Association  
Puente Latino Association  
Sacramento Area Council of Governments  
Safe Routes Partnership  
San Diego Association of Governments  
San Francisco Bay Area Families for Safe Streets  
San Francisco Bicycle Coalition  
San Francisco Board of Supervisors  
San Francisco County Transportation Authority  
San Francisco Municipal Transportation Agency  
Santa Cruz County Regional Transportation Commission  
Santa Monica Spoke  
Save Meridian Avenue for Its Residents Together Families  
Silicon Valley Leadership Group  
South Bay Bicycle Coalition  
Southern California Association of Governments  
SpurStop4aidan  
Street Racing Kills  
Streets are For Everyone  
Streets for All  
Sustainable Claremont  
The Happy City Coalition  
The League of American Bicyclists  
Transform  
Vision Zero Network  
Walk Oakland Bike Oakland  
Walk San Francisco  

**Oppose**  
ACLU California Action  
California Association of Highway Patrolmen  
California Traffic Defense Bar Association, a California Not for Profit  
Peace Officers Research Association of California  
Safer Streets LA  
Western Center on Law & Poverty
Attachment 2
ASSEMBLY BILL
No. 43

Introduced by Assembly Members Friedman, Gipson, Ting, Chiu, and Quirk
(Principal coauthor: Assembly Member Boerner Horvath)
(Coauthors: Assembly Members Gabriel, Medina, Nazarian, Ward, and Wicks)
(Coauthors: Senators Portantino and Rubio)

December 7, 2020

An act to amend Sections 627, 21400, 22352, 22354, 22358, and 40802 of, and to add Sections 22358.6, 22358.7, 22358.8, and 22358.9 to, the Vehicle Code, relating to traffic safety.

LEGISLATIVE COUNSEL’S DIGEST

AB 43, as amended, Friedman. Traffic safety.

(1) Existing law establishes various default speed limits for vehicles upon highways, as specified. Existing law authorizes state and local authorities to adjust these default speed limits, as specified, based upon certain findings determined by an engineering and traffic survey. Existing law defines an engineering and traffic survey and prescribes
specified factors that must be included in the survey, including prevailing speeds and road conditions. Existing law authorizes local authorities to consider additional factors, including pedestrian and bicyclist safety.

This bill would authorize local authorities to consider the safety of vulnerable pedestrian groups, as specified.

(2) Existing law establishes a prima facie speed limit of 25 miles per hour on any highway, other than a state highway, located in any business or residence district, as defined. Existing law authorizes a local authority to change the speed limit on any such highway, as prescribed, including erecting signs to give notice thereof.

This bill would establish a prima facie speed limit of 25 miles per hour on state highways located in any business or residence district and would authorize the Department of Transportation (Caltrans) to change the speed limit on any such highway, as prescribed, including erecting signs to give notice thereof.

(3) Existing law establishes a speed limit of 65 miles per hour on state highways, as specified. Existing law authorizes Caltrans to declare a speed limit on any such highway, as prescribed, of 60, 55, 50, 45, 40, 35, 30, or 25 miles per hour, including erecting signs to give notice thereof. Existing law also authorizes a local authority, on a section of highway, other than a state highway, where the speed limit is 65 miles per hour to declare a lower speed limit, as specified.

This bill would additionally authorize Caltrans and a local authority to declare a speed limit of 20 or 15 miles per hour, as specified, on these highways.

(4) Existing law authorizes a local authority, without an engineering and traffic survey, to declare a lowered speed limit on portions of highway, as specified, approaching a school building or school grounds. Existing law limits this authority to sections of highway meeting specified requirements relating to the number of lanes and the speed limit of the highway before the school zone.

This bill would similarly authorize a lowered speed limit on a section of highway contiguous to a business activity district, as defined.

(5) Existing law requires Caltrans, by regulation, to provide for the rounding up or down to the nearest 5 miles per hour increment of the 85th percentile speed of free-flowing traffic on a portion of highway as determined by a traffic and engineering survey.
This bill would authorize a local authority to further reduce the speed limit, as specified, and require Caltrans to accordingly revise the California Manual on Uniform Traffic Control Devices, as specified.

(6) Existing law defines a speed trap and prohibits evidence of a driver’s speed obtained through a speed trap from being admissible in court in any prosecution against a driver for a speed-related offense. Existing law deems a road where the speed limit is not justified by a traffic and engineering survey conducted within the previous 7 years to be a speed trap, unless the roadway has been evaluated by a registered engineer, as specified, in which case the speed limit remains enforceable for a period of 10 years. Existing law exempts a school zone, as defined, from certain provisions relating to defining a speed trap.

This bill would extend the period that a speed limit justified by a traffic and engineering survey conducted more than 7 years ago remains valid, for purposes of speed enforcement, if evaluated by a registered engineer, as specified, to 14 years.

This bill would also exempt a senior zone and business activity district, as defined, from those provisions.


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

SECTION 1. Section 627 of the Vehicle Code is amended to read:

627. (a) “Engineering and traffic survey,” as used in this code, means a survey of highway and traffic conditions in accordance with methods determined by the Department of Transportation for use by state and local authorities.

(b) An engineering and traffic survey shall include, among other requirements deemed necessary by the department, consideration of all of the following:

(1) Prevailing speeds as determined by traffic engineering measurements.

(2) Accident records.

(3) Highway, traffic, and roadside conditions not readily apparent to the driver.

(c) When conducting an engineering and traffic survey, local authorities, in addition to the factors set forth in paragraphs (1) to (3), inclusive, of subdivision (b) may consider all of the following:
Residential density, if any of the following conditions exist on the particular portion of highway and the property contiguous thereto, other than a business district:

(A) Upon one side of the highway, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 13 or more separate dwelling houses or business structures.

(B) Upon both sides of the highway, collectively, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 16 or more separate dwelling houses or business structures.

(C) The portion of highway is longer than one-quarter of a mile but has the ratio of separate dwelling houses or business structures to the length of the highway described in either subparagraph (A) or (B).

(2) Safety of bicyclists and pedestrians, with increased consideration for vulnerable pedestrian groups including children, seniors, persons with disabilities, users of personal assistive mobility devices, and the unhoused.

SEC. 2. Section 21400 of the Vehicle Code is amended to read:

21400. (a) The Department of Transportation shall, after consultation with local agencies and public hearings, adopt rules and regulations prescribing uniform standards and specifications for all official traffic control devices placed pursuant to this code, including, but not limited to, stop signs, yield right-of-way signs, speed restriction signs, railroad warning approach signs, street name signs, lines and markings on the roadway, and stock crossing signs placed pursuant to Section 21364.

(b) The Department of Transportation shall, after notice and public hearing, determine and publicize the specifications for uniform types of warning signs, lights, and devices to be placed upon a highway by a person engaged in performing work that interferes with or endangers the safe movement of traffic upon that highway.

(c) Only those signs, lights, and devices as are provided for in this section shall be placed upon a highway to warn traffic of work that is being performed on the highway.

(d) Control devices or markings installed upon traffic barriers on or after January 1, 1984, shall conform to the uniform standards and specifications required by this section.

SEC. 3. Section 22352 of the Vehicle Code is amended to read:
22352. The prima facie limits are as follows and shall be
applicable unless changed as authorized in this code and, if so
changed, only when signs have been erected giving notice thereof:
(a) Fifteen miles per hour:
(1) When traversing a railway grade crossing, if during the last
100 feet of the approach to the crossing the driver does not have
a clear and unobstructed view of the crossing and of any traffic on
the railway for a distance of 400 feet in both directions along the
railway. This subdivision does not apply in the case of any railway
grade crossing where a human flagperson is on duty or a clearly
visible electrical or mechanical railway crossing signal device is
installed but does not then indicate the immediate approach of a
railway train or car.
(2) When traversing any intersection of highways if during the
last 100 feet of the driver’s approach to the intersection the driver
does not have a clear and unobstructed view of the intersection
and of any traffic upon all of the highways entering the intersection
for a distance of 100 feet along all those highways, except at an
intersection protected by stop signs or yield right-of-way signs or
controlled by official traffic control signals.
(3) On any alley.
(b) Twenty-five miles per hour:
(1) On any highway, in any business or residence district unless
a different speed is determined by local authority or the Department
of Transportation under procedures set forth in this code.
(2) When approaching or passing a school building or the
grounds thereof, contiguous to a highway and posted with a
standard “SCHOOL” warning sign, while children are going to or
leaving the school either during school hours or during the noon
recess period. The prima facie limit shall also apply when
approaching or passing any school grounds which are not separated
from the highway by a fence, gate, or other physical barrier while
the grounds are in use by children and the highway is posted with
a standard “SCHOOL” warning sign. For purposes of this
subparagraph, standard “SCHOOL” warning signs may be placed
at any distance up to 500 feet away from school grounds.
(3) When passing a senior center or other facility primarily used
by senior citizens, contiguous to a street other than a state highway
and posted with a standard “SENIOR” warning sign. A local
authority may erect a sign pursuant to this paragraph when the
local agency makes a determination that the proposed signing should be implemented. A local authority may request grant funding from the Active Transportation Program pursuant to Chapter 8 (commencing with Section 2380) of Division 3 of the Streets and Highways Code, or any other grant funding available to it, and use that grant funding to pay for the erection of those signs, or may utilize any other funds available to it to pay for the erection of those signs, including, but not limited to, donations from private sources.

SEC. 4. Section 22354 of the Vehicle Code is amended to read:

22354. (a) Whenever the Department of Transportation determines upon the basis of an engineering and traffic survey that the limit of 65 miles per hour is more than is reasonable or safe upon any portion of a state highway where the limit of 65 miles is applicable, the department may determine and declare a prima facie speed limit of 60, 55, 50, 45, 40, 35, 30, 25, 20, or 15 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared prima facie speed limit shall be effective when appropriate signs giving notice thereof are erected upon the highway. (b) This section shall become operative on the date specified in subdivision (c) of Section 22366.

SEC. 5. Section 22358 of the Vehicle Code is amended to read:

22358. (a) Whenever a local authority determines upon the basis of an engineering and traffic survey that the limit of 65 miles per hour is more than is reasonable or safe upon any portion of any street other than a state highway where the limit of 65 miles per hour is applicable, the local authority may by ordinance determine and declare a prima facie speed limit of 60, 55, 50, 45, 40, 35, 30, 25, 20, or 15 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared prima facie limit shall be effective when appropriate signs giving notice thereof are erected upon the street. (b) This section shall become operative on the date specified in subdivision (c) of Section 22366.

SEC. 6. Section 22358.6 is added to the Vehicle Code, to read:

22358.6. The Department of Transportation shall, in the next scheduled revision, revise and thereafter maintain the California Manual on Uniform Traffic Control Devices to require the
Department of Transportation or a local authority to round speed limits to the nearest five miles per hour of the 85th percentile of the free-flowing traffic. However, in cases in which the speed limit needs to be rounded up to the nearest five miles per hour increment of the 85th-percentile speed, the Department of Transportation or a local authority may decide to instead round down the speed limit to the lower five miles per hour increment. A local authority may additionally lower the speed limit as provided in Sections 22358.7 and 22358.8.

SEC. 7. Section 22358.7 is added to the Vehicle Code, to read:

22358.7. (a) If a local authority, after completing an engineering and traffic survey, finds that the speed limit is still more than is reasonable or safe, the local authority may, by ordinance, determine and declare a prima facie speed limit that has been reduced an additional five miles per hour for either of the following reasons:

(1) The portion of highway has been designated as a high-injury street, safety corridor. A local authority shall not deem more than one-fifth of their streets as high-injury streets, safety corridors.

(2) The portion of highway is adjacent to any land or facility that generates high concentrations of bicyclists or pedestrians, especially those from vulnerable groups such as children, seniors, persons with disabilities, and the unhoused.

(b) (1) As used in this section, “high-injury street” “safety corridor” shall be defined by the Department of Transportation in the next revision of the California Manual on Uniform Traffic Control Devices. In making this determination, the department shall consider highways that have the highest number of serious injuries and fatalities based on collision data that may be derived from the Statewide Integrated Traffic Records System, Transportation Injury Mapping System, or a jurisdiction’s established database, from, but not limited to, the Statewide Integrated Traffic Records System.

(2) The Department of Transportation shall, in the next revision of the California Manual on Uniform Traffic Control Devices, determine what constitutes land or facilities that generate high concentrations of bicyclists and pedestrians, as used in paragraph (2) of subdivision (a). In making this determination, the department shall consider density, road use type, and bicycle and pedestrian infrastructure present on a section of highway.
SEC. 8. Section 22358.8 is added to the Vehicle Code, to read:

22358.8. (a) If a local authority, after completing an engineering and traffic survey, finds that the speed limit is still more than is reasonable or safe, the local authority may, by ordinance, retain the current speed limit or restore the immediately prior speed limit if that speed limit was established with an engineering and traffic survey and if a registered engineer has evaluated the section of highway and determined that no additional general purpose lanes have been added to the roadway since completion of the traffic survey that established the prior speed limit.

(b) This section does not authorize a speed limit to be reduced by any more than five miles per hour from the current speed limit nor below the immediately prior speed limit.

SEC. 9. Section 22358.9 is added to the Vehicle Code, to read:

22358.9. (a) (1) Notwithstanding any other law, a local authority may, by ordinance, determine and declare a 25 or 20 miles per hour prima facie speed limit on a highway contiguous to a business activity district when posted with a sign that indicates a speed limit of 25 or 20 miles per hour.

(2) The prima facie limits established under paragraph (1) apply only to highways that meet all of the following conditions:

(A) A maximum of four traffic lanes.

(B) A maximum posted 30 miles per hour prima facie speed limit immediately prior to and after the business activity district, if establishing a 25 miles per hour speed limit.

(C) A maximum posted 25 miles per hour prima facie speed limit immediately prior to and after the business activity district, if establishing a 20 miles per hour speed limit.

(b) As used in this section, a “business activity district” is that portion of a highway and the property contiguous thereto that includes central or neighborhood downtowns, urban villages, or zoning designations that prioritize commercial land uses at the downtown or neighborhood scale and meets at least three of the following requirements in paragraphs (1) to (4), inclusive:

(1) No less than 50 percent of the contiguous property fronting the highway consists of retail or dining commercial uses, including outdoor dining, that open directly onto sidewalks adjacent to the highway.
Parking, including parallel, diagonal, or perpendicular spaces located alongside the highway.

(3) Traffic control signals or stop signs regulating traffic flow on the highway, located at intervals of no more than 600 feet.

(4) Marked crosswalks not controlled by a traffic control device.

(c) A local authority shall not declare a prima facie speed limit under this section on a portion of a highway where the local authority has already lowered the speed limit as permitted under Sections 22358.7 and 22358.8.

SEC. 10. Section 40802 of the Vehicle Code is amended to read:

40802. (a) A “speed trap” is either of the following:

(1) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(2) A particular section of a highway with a prima facie speed limit that is provided by this code or by local ordinance under paragraph (1) of subdivision (b) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects. This paragraph does not apply to a local street, road, school zone, senior zone, or business activity district.

(b) (1) For purposes of this section, a local street or road is one that is functionally classified as “local” on the “California Road System Maps,” that are approved by the Federal Highway Administration and maintained by the Department of Transportation. It may also be defined as a “local street or road” if it primarily provides access to abutting residential property and meets the following three conditions:

(A) Roadway width of not more than 40 feet.

(B) Not more than one-half of a mile of uninterrupted length. Interruptions shall include official traffic control signals as defined in Section 445.

(C) Not more than one traffic lane in each direction.

(2) For purposes of this section, “school zone” means that area approaching or passing a school building or the grounds thereof.
that is contiguous to a highway and on which is posted a standard
“SCHOOL” warning sign, while children are going to or leaving
the school either during school hours or during the noon recess
period. “School zone” also includes the area approaching or passing
any school grounds that are not separated from the highway by a
fence, gate, or other physical barrier while the grounds are in use
by children if that highway is posted with a standard “SCHOOL”
warning sign.

(3) For purposes of this section, “senior zone” means that area
approaching or passing a senior center building or other facility
primarily used by senior citizens, or the grounds thereof that is
contiguous to a highway and on which is posted a standard
“SENIOR” warning sign, pursuant to Section 22352.

(4) For purposes of this section, “business activity district”
means a section of highway described in subdivision (b) of Section
22358.9 in which a standard 25 miles per hour or 20 miles per
hour speed limit sign has been posted pursuant to paragraph (1)
of subdivision (a) of that section.

(c) (1) When all of the following criteria are met, paragraph
(2) of this subdivision shall be applicable and subdivision (a) shall
not be applicable:

(A) When radar is used, the arresting officer has successfully
completed a radar operator course of not less than 24 hours on the
use of police traffic radar, and the course was approved and
certified by the Commission on Peace Officer Standards and
Training.

(B) When laser or any other electronic device is used to measure
the speed of moving objects, the arresting officer has successfully
completed the training required in subparagraph (A) and an
additional training course of not less than two hours approved and
certified by the Commission on Peace Officer Standards and
Training.

(C) (i) The prosecution proved that the arresting officer
complied with subparagraphs (A) and (B) and that an engineering
and traffic survey has been conducted in accordance with
subparagraph (B) of paragraph (2). The prosecution proved that,
prior to the officer issuing the notice to appear, the arresting officer
established that the radar, laser, or other electronic device
conformed to the requirements of subparagraph (D).
(ii) The prosecution proved the speed of the accused was unsafe for the conditions present at the time of alleged violation unless the citation was for a violation of Section 22349, 22356, or 22406.

(D) The radar, laser, or other electronic device used to measure the speed of the accused meets or exceeds the minimal operational standards of the National Highway Traffic Safety Administration, and has been calibrated within the three years prior to the date of the alleged violation by an independent certified laser or radar repair and testing or calibration facility.

(2) A “speed trap” is either of the following:

(A) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(B) (i) A particular section of a highway or state highway with a prima facie speed limit that is provided by this code or by local ordinance under paragraph (1) of subdivision (b) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within one of the following time periods, prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects:

(I) Except as specified in subclause (II), seven years.

(II) If an engineering and traffic survey was conducted more than seven years prior to the date of the alleged violation, and a registered engineer evaluates the section of the highway and determines that no significant changes in roadway or traffic conditions have occurred, including, but not limited to, changes in adjoining property or land use, roadway width, or traffic volume, 14 years.

(ii) This subparagraph does not apply to a local street, road, or school zone, senior zone, or business activity district.
Item B-3
MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: August 30, 2021

SUBJECT: Assembly Bill 117 - (Boerner Horvath) - Air Quality Improvement Program: electric bicycles

ATTACHMENTS: 1. Summary Memo – AB 117
               2. Bill Text – AB 117

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Councilmember John Mirisch has requested this item be considered by the Legislative/Lobby Liaisons. Assembly Bill 117 - (Boerner Horvath) - Air Quality Improvement Program: electric bicycles (AB 117) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 117 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 117, the Liaisons may recommend the following actions:

1) Support AB 117;
2) Support if amended AB 117;
3) Oppose AB 117;
4) Oppose unless amended AB 117;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 117, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
August 24, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 117 (Boerner-Horvath) Electric Bicycles: Air Quality Improvement Program

Version
As Amended on July 5, 2021

Summary

Establishes incentives for purchasing electric bicycles (e-bikes) as a category of projects eligible for funding under the Air Quality Improvement Program (AQIP), and require the California Air Resources Board (CARB) to establish the Electric Bicycle Incentives Project (EBIP) to provide incentives for the purchase of electric vehicles by July 1, 2022.

Specifically, this bill would:

1) Require CARB to provide incentives in the form of vouchers to income-eligible individuals for the purchase of e-bikes at participating retailers.

2) Authorize CARB to establish guidelines for the quality of e-bikes that qualify for an incentive, and also require CARB, when developing and administering the program, to do the following:
   a. Ensure that the incentives are based on a sliding scale, with the maximum incentive amount provided to individuals with an income of less than 80% of the average median income in the region, and the minimum amount provided to individuals with an income less than or equal to the maximum eligible income cap under the Clean Vehicle Rebate Program (CVRP) – see summary of this program below.
   b. Establish the maximum and minimum incentive amounts to maximize the effectiveness of the EBIP and the deployment of e-bike technology, and consider a maximum and minimum incentive amount of $600 and $100, respectively.
   c. Ensure that only one incentive is provided for each individual.
   d. Establish additional appropriate safeguards and protections to minimize fraud and abuse without rendering the EBIP cost prohibitive or ineffective.
   e. Establish a preapproval process to verify the income of individuals who qualify for an incentive.
   f. Authorize up to 10% of moneys appropriated for the EBIP to be used to support related programs, such as safety, educational, and promotional programs.
   g. Encourage the participation of local small businesses, retailers, and nonprofit organizations that provide services to e-bike users, such as retail bicycle shops and
nonprofit community bicycle projects, in the program.

3) The bill would also add incentives for purchasing e-bikes as a category of projects that is eligible for funding under the AQIP, as specified.

**Background**
Existing law establishes AQIP, which is administered by CARB in consultation with local air districts, to provide competitive grants to fund projects to reduce criteria air pollutants, improve air quality, and support research to improve the air quality impacts of alternative fuels and vehicles, vessels, and equipment technologies. AQIP encompasses several programs and it has historically been funded with surcharges on vehicle registration fees and a portion of the Smog Abatement Fee (paid to register vehicles less than six model years old and therefore exempt from smog check), as well as GGRF funds.

Existing law establishes the Clean Vehicle Rebate Program (CVRP), within the AQIP, to promote accelerated widespread commercialization of zero-emission vehicles by providing rebates of up to $7,000 for the purchase or lease of an eligible light-duty vehicle. This program was not created through statute, but developed and initiated by ARB pursuant to its existing statutory authority through AQIP. Specified income limits apply for applicants purchasing a vehicle. As of earlier this year 405,750 CVRP rebates had been issued since March 2010, at a cost of over $926 million. There is no cap on the number of rebates that may be issued, but rebates are subject to funding availability and the program has been oversubscribed in recent years. When funding is exhausted, applicants are placed on a wait list, and issued rebates in the order that they applied when funding is allocated in the next funding cycle.

E-bikes are a relatively new form of transportation which marries traditional bicycles with electric motors. While China, Japan and northern Europe are the leading e-bike nations, e-bike sales in the United States grew 145% from 2019 to 2020. The electric assist extends the range, speed and usefulness of the vehicle, though at a substantial price increase. The minimum price for an e-bike is about $600 though more typically $1000 and easily over $2000. California law limits the electric assist of an e-bike to a speed of 28 mph.

The 2021-22 Budget, specifically SB 129 (Budget and Fiscal Review Committee), Chap. 69/2021, a "Budget Bill Junior" associated with the Budget Act, provides a significant increase in funding for the CVRP program, including appropriations of $100 million from the GGRF and $425 million from the General Fund. Included in the General Fund appropriation is direction for CARB to allocate $10 million to establish an Electric Bicycle Incentives Project within CVRP by July 1, 2022, as specified.

**Status of Legislation**
This measure is currently pending in the Senate Appropriations Committee.

**Support**

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California Electric Transportation Coalition  
California Interfaith Power & Light  
Calstart  
Circulate San Diego  
City and County Association of Governments of San Mateo County  
City of Alameda  
City of Los Angeles  
Climate Resolve  
Day One  
East Bay for Everyone  
East Side Riders Bike Club  
Elders Climate Action, Norcal and Socal Chapters  
Glendale Environmental Coalition  
Inland Empire Biking Alliance  
Institute for Transportation & Development Policy  
League of American Bicyclists  
Local Government Commission  
Los Angeles County Bicycle Coalition  
Los Feliz Neighborhood Council  
Marin County Bicycle Coalition  
Move LA  
Napa County Bicycle Coalition (napa Bike)  
Natural Resources Defense Council (NRDC)  
Northern California Power Agency  
Oakland; City of  
Pasadena Complete Streets Coalition  
People for Bikes  
People for Mobility Justice  
Rails-to-trails Conservancy  
Sacramento Area Bicycle Advocates  
Safe Routes Partnership  
San Diego Association of Governments  
San Diego County Bicycle Coalition  
San Francisco Bicycle Coalition  
San Jose Bike Clinic  
San Jose; City of  
Shasta Living Streets  
Silicon Valley Bicycle Coalition  
Sonoma County Bicycle Coalition  
Streets are For Everyone (SAFE)  
Streets for All  
Walk Bike Berkeley  
Walk Bike Glendale  
1 individual  

**Opposition**  
None received
Attachment 2
Introduced by Assembly Member Boerner Horvath  
(Coauthor: Assembly Member Friedman)

December 18, 2020

An act to amend Section 44274 of, and to add Section 44274.8 to, the Health and Safety Code, relating to vehicular air pollution.

LEGISLATIVE COUNSEL’S DIGEST

AB 117, as amended, Boerner Horvath. Air Quality Improvement Program: electric bicycles.  
Existing law establishes the Air Quality Improvement Program that is administered by the State Air Resources Board for the purposes of funding projects related to, among other things, the reduction of criteria air pollutants and improvement of air quality. Pursuant to its existing statutory authority, the state board has established the Clean Vehicle Rebate Project, as a part of the Air Quality Improvement Program, to promote the production and use of zero-emission vehicles by providing rebates for the purchase of new zero-emission vehicles. Existing law specifies the types of projects eligible to receive funding under the program.  
This bill would specify projects providing incentives for purchasing electric bicycles, as defined, as projects eligible for funding under the program.  The bill would require the state board, no later than July 1, 2022, to establish an Electric Bicycle Incentives Project to provide
incentives, in the form of vouchers, to income-qualified individuals for the purchase of electric bicycles, as provided.


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

SECTION 1. Section 44274 of the Health and Safety Code is amended to read:

44274. (a) The Air Quality Improvement Program is hereby created. The program shall be administered by the state board, in consultation with the districts. The state board shall develop guidelines to implement the program. Prior to the adoption of the guidelines, the state board shall hold at least one public hearing. In addition, the state board shall hold at least three public workshops with at least one workshop in northern California, one in the central valley, and one in southern California. The purpose of the program shall be to fund, upon appropriation by the Legislature, air quality improvement projects relating to fuel and vehicle technologies. The primary purpose of the program shall be to fund projects to reduce criteria air pollutants, improve air quality, and provide funding for research to determine and improve the air quality impacts of alternative transportation fuels and vehicles, vessels, and equipment technologies.

(b) The state board shall provide preference in awarding funding to those projects with higher benefit-cost scores that maximize the purposes and goals of the Air Quality Improvement Program. The state board also may give additional preference based on the following criteria, as applicable, in awarding funding to projects:

(1) Proposed or potential reduction of criteria or toxic air pollutants.

(2) Contribution to regional air quality improvement.

(3) Ability to promote the use of clean alternative fuels and vehicle technologies as determined by the state board, in coordination with the commission.

(4) Ability to achieve climate change benefits in addition to criteria pollutant or air toxic emissions reductions.

(5) Ability to support market transformation of California’s vehicle or equipment fleet to utilize low-carbon or zero-emission technologies.
(6) Ability to leverage private capital investments.

(c) The program shall be limited to competitive grants, revolving loans, loan guarantees, loans, and other appropriate funding measures that further the purposes of the program. Projects to be funded shall include only the following:

(1) Onroad and off-road equipment projects that are cost effective.

(2) Projects that provide mitigation for off-road gasoline exhaust and evaporative emissions.

(3) Projects that provide research to determine the air quality impacts of alternative fuels and projects that study the life-cycle impacts of alternative fuels and conventional fuels, the emissions of biofuel and advanced reformulated gasoline blends, and air pollution improvements and control technologies for use with alternative fuels and vehicles.

(4) Projects that augment the University of California’s agricultural experiment station and cooperative extension programs for research to increase sustainable biofuels production and improve the collection of biomass feedstock.

(5) Incentives for small off-road equipment replacement to encourage consumers to replace internal combustion engine lawn and garden equipment.

(6) Incentives for medium- and heavy-duty vehicles and equipment mitigation, including all of the following:

(A) Lower emission schoolbus programs.

(B) Electric, hybrid, and plug-in hybrid onroad and off-road medium- and heavy-duty equipment.

(C) Regional air quality improvement and attainment programs implemented by the state or districts in the most impacted regions of the state.

(7) Workforce training initiatives related to advanced energy technology designed to reduce air pollution, including state-of-the-art equipment and goods, and new processes and systems. Workforce training initiatives funded shall be broad-based partnerships that leverage other public and private job training programs and resources. These partnerships may include, though are not limited to, employers, labor unions, labor-management partnerships, community organizations, workforce investment boards, postsecondary education providers including community colleges, and economic development agencies.
(8) Incentives to identify and reduce emissions from high-emitting light-duty vehicles.

(9) Incentives for purchasing electric bicycles, as defined in Section 312.5 of the Vehicle Code.

(d) (1) Beginning January 1, 2011, the state board shall submit to the Legislature a biennial report to evaluate the implementation of the Air Quality Improvement Program established pursuant to this chapter.

(2) The report shall include all of the following:

(A) A list of projects funded by the Air Quality Improvement Account.

(B) The expected benefits of the projects in promoting clean, alternative fuels and vehicle technologies.

(C) Improvement in air quality and public health, greenhouse gas emissions reductions, and the progress made toward achieving these benefits.

(D) The impact of the projects in making progress toward attainment of state and federal air quality standards.

(E) Recommendations for future actions.

(3) The state board may include the information required to be reported pursuant to paragraph (1) in an existing report to the Legislature as the state board deems appropriate.

SEC. 2. Section 44274.8 is added to the Health and Safety Code, to read:

44274.8. (a) For purposes of this section, the following definitions apply:

(1) “Electric bicycle” has the same meaning as set forth in Section 312.5 of the Vehicle Code and includes, but is not limited to, electric bicycles designed for people with disabilities, utility bicycles for carrying equipment or passengers, including children, and folding bicycles.

(2) “Project” means the Electric Bicycle Incentives Project established under subdivision (b).

(b) The state board shall, no later than July 1, 2022, establish the Electric Bicycle Incentives Project, in conjunction with the Clean Vehicle Rebate Project, to provide incentives, in the form of vouchers, to income-eligible individuals for the purchase of electric bicycles at participating retailers.

(c) (1) The incentives provided under the project shall be based on a sliding scale, with the maximum incentive amount provided
to an income-eligible individual with an income that is less than 80 percent of the average median income in the region in which that individual resides and the minimum incentive amount provided to an income-eligible individual with an income less than or equal to the maximum eligible income cap under the Clean Vehicle Rebate Project.

(2) The state board shall establish the maximum and minimum amount of the incentive provided under the project to maximize the effectiveness of the project and the deployment of electric bicycle technology within appropriation deadlines. The state board shall consider setting the maximum amount of the incentive at six hundred dollars ($600) and the minimum amount of the incentive at one hundred dollars ($100).

(d) (1) Only one incentive shall be provided for each individual. 
(2) The state board shall establish additional appropriate safeguards and protections to minimize fraud and abuse without rendering the project cost prohibitive or ineffective.

(e) The state board shall establish a preapproval process to income verify individuals who qualify for an incentive under the project.

(f) The state board may establish project guidelines for the quality of the electric bicycles that qualify for an incentive under the project.

(g) Up to 10 percent of the moneys appropriated for the project may be used to support related programs, such as safety, educational, and promotional programs.

(h) The state board shall encourage the participation of local small businesses, retailers, and nonprofit organizations that provide services to individuals who use electric bicycles, such as retail bicycle shops and nonprofit community bicycle shops, in the project.
Item B-4
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: August 30, 2021
SUBJECT: Assembly Bill 122 - (Boerner Horvath) - Vehicles: required stops: bicycles
ATTACHMENTS: 1. Summary Memo – AB 122
2. Bill Text – AB 122

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 122 - (Boerner Horvath) - Vehicles: required stops: bicycles involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 122 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 122, the Liaisons may recommend the following actions:

1) Support AB 122;
2) Support if amended AB 122;
3) Oppose AB 122;
4) Oppose unless amended AB 122;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 122, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
August 23, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 122 (Boerner-Horvath) Vehicles: required stops: bicycles

Version
As Amended in the Senate on July 8, 2021

Summary
Permits a person riding a bicycle approaching a stop sign to yield the right-of-way, rather than stopping, to any vehicles that have stopped at the intersection, entered the intersection, or are approaching the intersection, and continue to yield the right-of-way until it is reasonably safe to proceed. Additionally, a person riding a bicycle must also yield to pedestrians crossing the roadway.

Specifically, the bill does the following:

1) Permits a person riding a bicycle approaching a stop sign at the entrance to, or within, an intersection, upon arriving at the sign, to yield the right-of-way, rather than stopping, to any vehicles that have stopped at the entrance to the intersection, have entered the intersection, or are approaching the intersection on the intersecting highway close enough to constitute an immediate hazard. A person riding a bike must also yield to pedestrians and continue to yield the right-of-way to those vehicles and pedestrians until it is reasonably safe to proceed.

2) Requires the driver of a vehicle approaching an intersection to yield the right-of-way to a bicycle that has entered the intersection, after yielding pursuant to this bill, from a different highway.

3) Requires the Commissioner of the California Highway Patrol (CHP) to submit report to the Legislature, on or before January 1, 2027, about the effects of bicycles operating under the provisions of this bill. The report must include information about statewide injury and fatal crash data and any associated traffic-related safety issues, including but not limited to, a detail analysis of: changes in the frequency of collisions; changes in the severity of collisions; causes of and contributing factors in collisions; location of collisions, including an analysis of collision data; time of day of collisions; ages of bicyclists involved, including a breakdown of minors versus adults; and types of bicycles involved in collisions, specifically differences between traditional bicycles and electric bicycles.

4) Declares that the provisions of this bill do not impact the liability of a driver of a motor vehicle because of the driver’s negligent or wrongful act or omission in the operation of a motor vehicle.
5) Requires the provisions of this bill to sunset on January 1, 2028.

**Background**

Bicycling is on the rise in California. According to the California Transportation Plan 2050 (CTP 2050), a long-range transportation plan developed by the California Department of Transportation (Caltrans) that provides a blueprint for the future of California transportation, “in the months following the outbreak of COVID-19, more Americans embraced active travel. California cities that typically have low bicycle ridership, such as Riverside and Oxnard, experienced a 90% to 125% increase in bicycle miles traveled. Stockton, Bakersfield, Fresno, Sacramento, and San Diego also experienced increases of more than 50%. Trends suggest that travelers shifted from transit to active travel when risks increased. In San Francisco, many residents who needed to make essential trips opted to walk or bike. Recreational biking and walking have also skyrocketed. The Rails-to-Trails Conservancy observed a 110% increase in trail use compared to the same period in 2019.”

Looking back, pre-COVID, at official travel data included in the CTP 2050, “in 2015, Californians took more than 13 million trips by biking or walking, making up nearly eight percent of total travel. Commuting by active modes has been slowly increasing since 2006, with about four percent of commuters now biking or walking to work. The rapid expansion of bike sharing programs starting in 2010 has contributed to the increase by providing residents with flexible, low-cost access to biking. E-bikes, which require less effort than a traditional bicycle and provide more range, are also contributing to growth. U.S. e-bike sales grew by 90 percent in the first quarter of 2019 compared to the previous year.”

Looking to the future, the CTP 2050 estimates that bicycle and pedestrian travel could increase by 45% by 2050. The Plan goes on to note that this increase only represents a half percent mode shift away from auto use, and that, “if we are to achieve our climate goals and improve public health and quality of life in California communities, we must do more to make active transportation a viable and competitive mode of transportation.”

State policies support more active transportation. The state and regions continue to work toward reducing greenhouse gas emissions and other forms of air pollution by increasing the mode shift from single occupant car trips to other forms of transportation, such as bicycling and walking. The state is making significant investments in bicycling and pedestrian infrastructure through the Active Transportation Program (ATP). Furthermore, state and local jurisdictions are putting local dollars into building “complete streets” with bikeways and pedestrian facilities.

AB 122 creates a statewide five-year pilot program for the use of a Delaware yield on all roads in California by permitting a bicyclist to treat a stop sign as a yield. Specifically, this bill requires the bicyclist to yield the right-of-way to any vehicles that are stopped at an intersection, have entered the intersection, or are approaching the intersection on the intersecting highway close enough to constitute an immediate hazard. Additionally, bicyclists will also be required to yield for pedestrians at the intersection and will only be allowed to continue through the intersection when it is reasonably safe to proceed. The pilot will sunset on January 1, 2028.

It is unclear whether the Idaho stop/Delaware yield is safer for bicyclists and motorists. Lack of hard data has been an issue raised by both sides of this debate. Since the passage of the Delaware law in 2017, Bike Delaware, a cycling advocacy group behind the Delaware yield, collected data from the Delaware State Police both 30 months before and 30 months after the law’s passage. Both prior to and after the change, zero cyclists were involved in fatal crashes at a stop sign-controlled intersection. In addition, injury crashes involving cyclists at a stop sign-
controlled intersection decreased by 23%, helping contribute to an 11% decrease overall for all crashes involving cyclists.

This bill requires CHP to submit a report to the Legislature by January 2027 that details the statewide injury and fatal traffic crash data and other related traffic safety issues. The report will break down frequency and severity of collisions, including cases, locations, time of day, age of the bicyclist, and types of bicycles.

According to the CHP, in a letter of concerns, “although the CHP has not taken a formal position on this bill, our mission makes it incumbent to highlight potential safety issues and foreseeable impacts of this bill.” Further, “permitting bicycles to stop-as-yield would put a high level of reliance on each bicyclist’s judgement, as well as perception and reaction time, to make a safe determination of right-of-way. However, differences in age, skill, and riding experience would create a safety risk that could increase crashes, injuries, and fatalities.”

**Arguments in Support**
Proponents argue that “as bicycling continues to grow as everyday transportation for Californians, the main barrier people face is traffic danger on the road.” Further, “the Safety Stop does not change the normal rules of yielding at an intersection. People on bikes will still be required to yield to pedestrians and to other traffic in the intersection or approaching the intersection with the right-of-way.

It simply legalizes common practice, which is to slow down as they approach an intersection, check for traffic, proceed if it is safe, and stop if it is not. In fact, drivers of vehicles often deliberately encourage people on bikes to continue past a stop sign without stopping. People on bikes are often prepared to stop, but the driver waves them through inappropriately. While polite, this leads to confusion that can be dangerous. It is better to change and clarify the law to reflect practice so that everyone knows what to expect for safety purposes.

“A full stop on a bicycle requires significant extra work for the person bicycling to pedal back up to a normal riding speed. Therefore, a typical person bicycling safely will use reasonable judgment when there is no oncoming or crossing traffic at an intersection, and often roll through stop signs on side streets to maintain their momentum. Penalizing this safe bicycling practice with unnecessary enforcement at stop signs is counterproductive to the larger goal of increasing bicycling and discourages people bicycling from using side streets if they are required to come to a full stop every block.”

**Arguments in Opposition**
Opponents argue that current law requires the driver of any vehicle, including a person riding a bicycle, when approaching a stop sign at the entrance of an intersection, to stop before entering the intersection. A violation of this requirement is an infraction. AB 122 would remove that requirement and instead only require the bicycles to yield to oncoming traffic. There is a lot going on at intersections. Allowing bicyclists to simply yield rather than stop will create a public safety risk. In addition, the bill includes a sunset date of 2028 and is not limited to certain cities; it is statewide. The sunset date should be shorter and that the bill should be limited to a few localities rather than statewide.

Opponents argue further that this traffic safety change is inherently dangerous to all bicycle riders, but especially dangerous for California’s millions of bicycle riding children, and those who have never driven a car and do not know how to judge vehicle speed, distance to stop, nor having an
understanding what distracted driving means.” Further, “it takes a car two to three seconds to travel a quarter of a city block going 35 miles an hour – around 196 feet.

It takes a bicycle club group of riders that slows a bit but continues riding and does not stop at a Stop sign 4-6 seconds to enter and clear an intersection. It takes a child 5-10 seconds or longer to pedal across an intersection. Stop sign protected intersections create traffic safety and predictability for all vehicles, motorcycle riders, pedestrians, and bicycle riders. Most crashes happen at intersections. AB 122 removes predictability from intersections putting everyone at risk. If AB 122 passes and allows children and adults riding bicycles to go through Stop signs without stopping, everyone on the road will be at greater risk.”

Status of Legislation
This measure is currently pending on the Senate Floor.

Support
California Bicycle Coalition (source)  League of American Bicyclists
Active San Gabriel Valley  Local Government Commission
Adventure Cycling Association  Los Angeles County Bicycle Coalition
Asian Pacific Islander Forward Movement  Los Angeles Walks
Better World Group  Los Feliz Neighborhood Council
Bicycle Kitchen/La Bicicocina  Marin County Bicycle Coalition
Bike Bakersfield  Merced Bicycle Coalition
Bike East Bay  Move LA
Bike Lodi  Napa County Bicycle Coalition
Bike Santa Cruz County Education Fund  Natural Resources Defense Council
Bike SLO County  Pasadena Complete Streets Coalition
Bike Ventura  People for Mobility Justice
BikeSD  Peopleforbikes
Breathe California  Planning and Conservation League
California Association of Bicycling Organizations  Policylink
California Mountain Biking Coalition  Prevention Institute
California Walks  Public Health Advocates
City Council Member, City of Gilroy  Sacramento Air Quality Management District
City Heights Community Development Corporation  Sacramento Area Bicycle Advocates
City of Berkeley  Sacramento Bike Hikers
City of Emeryville  Sacramento Trailnet
City of Encinitas  Safe Routes Partnership
City of Los Angeles  San Carlos Bikes
City of Sacramento  San Diego Climate Action Campaign
City of Woodland  San Diego County Bicycle Coalition
Climate Action Campaign  San Francisco Bicycle Coalition
Climate Resolve  San Jose Bike Clinic
Coalition for Clean Air  Santa Barbara Bicycle Coalition
Coalition for Sustainable Transportation  Santa Monica Safe Streets Alliance
Community Environmental Council  Santa Monica Spoke
Day One  Shasta Living Streets
East Side Riders Bike Club  Streets are For Everyone
Fresno Cycling Club  Streets for All
Inland Empire Biking Alliance  Streets for People Bay Area
Institute for Transportation & Development Policy  Supervisor Warren Slocum
Investing in Place  Transform
Leadership Counsel for Justice & Accountability  Trust for Public Land
Vision Zero Network
Walk Bike Berkeley
Walk Bike Glendale
Walk Long Beach
Walk Sacramento
Yolo-Solano Air Quality Management District

Arguments in Opposition
Advocates for Highway and Auto Safety
California Association of Highway Patrolmen
California Coalition for Children's Safety and Health
California Police Chiefs Association
City of Torrance
Del Norte Local Transportation Commission
Impact Teen Drivers
Valley Children's Healthcare
Attachment 2
ASSEMBLY BILL No. 122

Introduced by Assembly Members Boerner Horvath, Friedman, and Ting  
(Coauthors: Assembly Members Lorena Gonzalez, Santiago, Ward, and Wicks)  
(Coauthors: Senators Becker and Wiener)

December 18, 2020

An act to amend, repeal, and add Sections 21800, 21802, and 22450 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL’S DIGEST


Existing law requires the driver of any vehicle, including a person riding a bicycle, when approaching a stop sign at the entrance of an intersection, to stop before entering the intersection. A violation of this requirement is an infraction.

This bill would, until January 1, 2028, require a person riding a bicycle, when approaching a stop sign at the entrance of an intersection, to yield the right-of-way to any vehicles that have either stopped at or
entered the intersection, or that are approaching on the intersecting highway close enough to constitute an immediate hazard, and to pedestrians, as specified, and continue to yield the right-of-way to those vehicles and pedestrians until reasonably safe to proceed. The bill would require other vehicles to yield the right-of-way to a bicycle that, having yielded as prescribed, has entered the intersection. *The bill would state that these provisions do not affect the liability of a driver of a motor vehicle as a result of the driver’s negligent or wrongful act or omission in the operation of a motor vehicle.*

The bill would also require the Commissioner of the California Highway Patrol to submit a report to the Legislature, as specified, regarding the effects of this bill.

By changing the elements of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.


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

1. **SECTION 1.** Section 21800 of the Vehicle Code is amended to read:

   21800. (a) The driver of a vehicle approaching an intersection shall yield the right-of-way to any vehicle that has entered the intersection from a different highway, including a bicycle that has entered the intersection after yielding as required by subdivision (d) of Section 22450.

   (b) (1) When two vehicles enter an intersection from different highways at the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on their immediate right, except that the driver of any vehicle on a terminating highway shall yield the right-of-way to any vehicle on the intersecting continuing highway.

   (2) For the purposes of this section, “terminating highway” means a highway—*which that* intersects, but does not continue
beyond the intersection, with another highway—which that does continue beyond the intersection.

(c) When two vehicles enter an intersection from different highways at the same time and the intersection is controlled from all directions by stop signs, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on their immediate right.

(d) (1) The driver of any vehicle approaching an intersection which that has official traffic control signals that are inoperative shall stop at the intersection, and may proceed with caution when it is safe to do so.

(2) When two vehicles enter an intersection from different highways at the same time, and the official traffic control signals for the intersection are inoperative, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on their immediate right, except that the driver of any vehicle on a terminating highway shall yield the right-of-way to any vehicle on the intersecting continuing highway.

(e) This section does not apply to any of the following:

(1) Any intersection controlled by an official traffic control signal or yield right-of-way sign.

(2) Any intersection controlled by stop signs from less than all directions.

(3) When vehicles are approaching each other from opposite directions and the driver of one of the vehicles intends to make, or is making, a left turn.

(f) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

SEC. 2. Section 21800 is added to the Vehicle Code, to read:

21800. (a) The driver of a vehicle approaching an intersection shall yield the right-of-way to any vehicle that has entered the intersection from a different highway.

(b) (1) When two vehicles enter an intersection from different highways at the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on their immediate right, except that the driver of any vehicle on a terminating highway shall yield the right-of-way to any vehicle on the intersecting continuing highway.

(2) For the purposes of this section, “terminating highway” means a highway that intersects, but does not continue beyond the
intersection, with another highway that does continue beyond the
intersection.
(c) When two vehicles enter an intersection from different
highways at the same time and the intersection is controlled from
all directions by stop signs, the driver of the vehicle on the left
shall yield the right-of-way to the vehicle on their immediate right.
(d) (1) The driver of any vehicle approaching an intersection
that has official traffic control signals that are inoperative shall
stop at the intersection, and may proceed with caution when it is
safe to do so.
(2) When two vehicles enter an intersection from different
highways at the same time, and the official traffic control signals
for the intersection are inoperative, the driver of the vehicle on the
left shall yield the right-of-way to the vehicle on their immediate
right, except that the driver of any vehicle on a terminating highway
shall yield the right-of-way to any vehicle on the intersecting
continuing highway.
(e) This section does not apply to any of the following:
(1) Any intersection controlled by an official traffic control
signal or yield right-of-way sign.
(2) Any intersection controlled by stop signs from less than all
directions.
(3) When vehicles are approaching each other from opposite
directions and the driver of one of the vehicles intends to make,
or is making, a left turn.
(f) This section shall become operative on January 1, 2028.
SEC. 3. Section 21802 of the Vehicle Code is amended to read:
21802. (a) The driver of any vehicle approaching a stop sign
at the entrance to, or within, an intersection shall stop as required
by Section 22450, or, in the case of a bicycle, yield as required by
subdivision (d) of that section. The driver shall then yield the
right-of-way to any vehicles which that have approached from
another highway, or which that are approaching so closely as to
constitute an immediate hazard, and shall continue to yield the
right-of-way to those vehicles until they can proceed with
reasonable safety.
(b) A driver having yielded as prescribed in subdivision (a) may
proceed to enter the intersection, and the drivers of all other
approaching vehicles shall yield the right-of-way to the vehicle
entering or crossing the intersection.
(c) This section does not apply where stop signs are erected upon all approaches to an intersection.

(d) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.

SEC. 4. Section 21802 is added to the Vehicle Code, to read:

21802. (a) The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection shall stop as required by Section 22450. The driver shall then yield the right-of-way to any vehicles that have approached from another highway, or that are approaching so closely as to constitute an immediate hazard, and shall continue to yield the right-of-way to those vehicles until they can proceed with reasonable safety.

(b) A driver having yielded as prescribed in subdivision (a) may proceed to enter the intersection, and the drivers of all other approaching vehicles shall yield the right-of-way to the vehicle entering or crossing the intersection.

(c) This section does not apply where stop signs are erected upon all approaches to an intersection.

(d) This section shall become operative on January 1, 2028.

SEC. 5. Section 22450 of the Vehicle Code is amended to read:

22450. (a) Except as otherwise provided in subdivision (d), the driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection shall stop at a limit line, if marked, otherwise before entering the crosswalk on the near side of the intersection.

If there is no limit line or crosswalk, the driver shall stop at the entrance to the intersecting roadway.

(b) The driver of a vehicle approaching a stop sign at a railroad grade crossing shall stop at a limit line, if marked, otherwise before crossing the first track or entrance to the railroad grade crossing.

(c) Notwithstanding any other provision of law, a local authority may adopt rules and regulations by ordinance or resolution providing for the placement of a stop sign at any location on a highway under its jurisdiction where the stop sign would enhance traffic safety.

(d) A person riding a bicycle approaching a stop sign at the entrance to, or within, an intersection shall, upon arriving at the sign, yield the right-of-way to any vehicles that have stopped at the entrance to the intersection, have entered the intersection, or that are approaching on the intersecting highway close enough to
constitute an immediate hazard, and to pedestrians as required by
Section 21950, and shall continue to yield the right-of-way to those
vehicles and pedestrians until it is reasonably safe to proceed.
(e) (1) The Commissioner of the California Highway Patrol
shall submit a report to the Legislature, on or before January 1,
2027, about the effects of bicycles operating under the provisions
of subdivision (d), subdivision (a) of Section 21800, and
subdivision (a) of Section 21802. The report shall include, without
limitation, information about statewide injury and fatal traffic crash
data and any associated traffic-related safety issues, including, but
not limited to, a detailed analysis of the following issues:
(A) Changes in the frequency of collisions.
(B) Changes in the severity of collisions.
(C) Causes of and contributing factors in collisions.
(D) Location of collisions, including an analysis of collision
data.
(E) Time of day of collisions.
(F) Ages of bicyclists involved, including a breakdown of minors
versus adults.
(G) Types of bicycles involved in collisions, specifically
differences between traditional bicycles and electric bicycles.
(2) The report required by this subdivision shall be submitted
in compliance with Section 9795 of the Government Code.
(f) This section does not affect the liability of a driver of a motor
vehicle as a result of the driver’s negligent or wrongful act or
omission in the operation of a motor vehicle.
(g) This section shall remain in effect only until January 1, 2028,
and as of that date is repealed.
SEC. 6. Section 22450 is added to the Vehicle Code, to read:
22450. (a) The driver of any vehicle approaching a stop sign
at the entrance to, or within, an intersection shall stop at a limit
line, if marked, otherwise before entering the crosswalk on the
near side of the intersection.
If there is no limit line or crosswalk, the driver shall stop at the
entrance to the intersecting roadway.
(b) The driver of a vehicle approaching a stop sign at a railroad
grade crossing shall stop at a limit line, if marked, otherwise before
crossing the first track or entrance to the railroad grade crossing.
(c) Notwithstanding any other provision of law, a local authority may adopt rules and regulations by ordinance or resolution providing for the placement of a stop sign at any location on a highway under its jurisdiction where the stop sign would enhance traffic safety.

(d) This section shall become operative on January 1, 2028.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
Item B-5
TO:                  City Council Liaison/Legislative/Lobby Committee
FROM:                Cynthia Owens, Policy and Management Analyst
DATE:                August 30, 2021
SUBJECT:             Assembly Bill 361 (Rivas, Robert) - Open meetings: local agencies: teleconferences
ATTACHMENTS:         1.  Summary Memo – AB 361
                      2.  Bill Text – AB 361

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 361 (Rivas, Robert) - Open meetings: local agencies: teleconferences (AB 361) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 361 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 361, the Liaisons may recommend the following actions:

1) Support AB 361;
2) Support if amended AB 361;
3) Oppose AB 361;
4) Oppose unless amended AB 361;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 361, then staff will place the item on a future City Council Agenda for concurrence.
August 23, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 361 (Rivas, Robert) Open meetings: local agencies teleconferences

As Amended on July 6, 2021.

Summary
This bill allows local agencies to use teleconferencing without complying with specified Brown Act restrictions in certain state emergencies.

Specifically, this bill:
1. Allows local agencies to use teleconferencing without complying with certain Brown Act teleconferencing requirements, including to (a) provide a teleconference location accessible to the public, (b) have at least a quorum of members participating within the jurisdiction, and (c) provide an opportunity for the public to address the legislative body at each teleconference location, if:
   a. State or local officials have imposed or recommended measures to promote social distancing;
   b. The legislative body is meeting for purpose of determining, by majority vote, that meeting in person would present imminent risks to the health or safety of attendees as a result of the emergency; or
   c. The legislative body has already determined, by majority vote, that meeting in person would present imminent risks to the health or safety of attendees as a result of the emergency.
2. Provides that, if a local legislative body determines that it is entitled to use this bill’s exemption to the Brown Act, the local legislative body must:
   a. Notice the meeting and post agendas as the Brown Act requires;
   b. Allow the public to access the meeting, and require that the agenda provide an opportunity for the public to directly address the legislative body pursuant to the Brown Act’s other teleconferencing provisions;
   c. In each instance when the local agency provides notice of the teleconferenced meeting or posts its agenda, give notice for how the public can access the meeting and provide public comment;
   d. Identify and include in the agenda an opportunity for all persons to attend via a call-in or an internet-based service option; the legislative body need not provide a physical location for the public to attend or provide comments;
   e. Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the public;
   f. Stop the meeting until public access is restored in the event of a service disruption that (i) prevents the local agency from broadcasting the meeting to the public using
the call-in or internet-based service option, or (ii) is within the local agency’s control and prevents the public from submitting public comments. Any actions taken during such a service disruption can be challenged under the Brown Act’s existing challenge provisions;

g. Not require comments be submitted in advance (though the legislative body may provide that as an option), and provide the opportunity to comment in real time; and

h. Provide adequate time for public comment, either by establishing a timed public comment period or by allowing a reasonable amount of time to comment. If the legislative body uses a third-party website or platform to host the teleconference, and the third-party service requires users to register to participate, the legislative body must provide adequate time during the comment period for users to register, and may not close the registration comment period until the comment period has elapsed.

3. Provides that, if the state emergency remains active for more than 30 days, a local agency must make the following findings by majority vote every 30 days to continue using the bill’s exemption to the Brown Act teleconferencing rules:

a. The legislative body has reconsidered the circumstances of the emergency;

b. Either of the following circumstances exist:

   i. The state of emergency continues to directly impact the ability of members to meet safely in person.

   ii. State or local officials continue to impose or recommend social distancing measures.

4. Provides that the bill’s provisions sunset on January 1, 2024

SYASL will note that the author intents to add an urgency clause to this measure.

**Background**

In March 2020, the Governor issued Executive Order N-29-20, which stated that:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived…All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

On June 11, the Governor issued Executive Order N-08-21 notifying local agencies and the public that previous executive orders concerning the conduct of public meetings apply through September 30, 2021.

**Status of Legislation**
The bill will be heard in Assembly Appropriations Committee on August 26.
**Arguments in Support**

According to the author, “When the COVID-19 pandemic started, local agency boards struggled to conduct their meetings in compliance with the Brown Act’s requirements while still abiding by stay-at-home orders. As a result, Governor Newsom issued an executive order (EO) to grant local agencies the flexibility to meet remotely during the pandemic. However, once the Governor’s EO expires, these flexibilities will not apply to future emergencies like wildfires, floods, toxic leaks, or other events that make in-person gatherings dangerous. Local agencies will again struggle to provide essential services like water, power, and fire protection at a time when constituents will need those services the most. AB 361 will guarantee that local boards do not have to rely on an executive order from the Governor to serve their communities remotely during future emergencies. This bill will also provide the opportunity for public to join via telephone or video conference to ensure that all members of the public can participate safely.”

**Arguments in Opposition**

According to a coalition letter including ACLU California, Californians Aware, and others, stated in their letter, “We appreciate that under circumstances like the recent public health emergency accommodations may temporarily be needed to allow local governments to conduct necessary business. Nevertheless, deleting fundamental and longstanding public protections should be extremely rare and highly circumscribed. Unfortunately, AB 361 goes too far by exempting local governments from simple and important obligations to identify the location of each teleconference location, to make the teleconference locations accessible to the public, and to require that a quorum participate within the geographic boundaries of the body’s jurisdiction. Moreover, the conditions under which these obligations would be canceled are far too lax.”

**Support**

California Special Districts Association (source)
Alameda County Mosquito Abatement District
Alpine Fire Protection District
Association of California Healthcare Districts
Association of California Water Agencies
Auburn Area Recreation and Park District
Big Bear Area Regional Wastewater Agency
Big Lagoon Community Services District
Biola Community Services District
Cal Voices
Calaveras Public Utility District
California Association of Joint Powers Authorities
California Association of Public Authorities for IHSS
California Downtown Association
California Municipal Utilities Association
California State Association of Counties
California Travel Association
Cameron Estates Community Services District
Cameron Park Community Services District
City of Carlsbad
City of Foster City
City of Lafayette
City of Redwood City
City of Walnut Creek
Coachella Valley Mosquito and Vector Control District
Costa Mesa Sanitary District
County of Monterey
Cucamonga Valley Water District
Disability Rights California
Eastern Municipal Water District
Ebbetts Pass Fire District
Eden Township Healthcare District dba Eden Health District
El Dorado Hills Community Services District
Elsinore Valley Municipal Water District
Fallbrook Regional Health District
Fresno Mosquito and Vector Control District
Grizzly Flats Community Services District
Honey Lake Valley Resource Conservation District
Hornbrook Community Services District
Humboldt Bay Municipal Water District
Humboldt Community Services District
Jackson Valley Irrigation District
Keyes Community Service District  
Kinneola Irrigation District  
League of California Cities  
Los Angeles County Sanitation Districts  
Mammoth Community Water District  
Meeks Bay Fire Protection District  
Mesa Water District  
Metropolitan Water District of Southern California  
Mountain Counties Water Resources Association  
Mt. View Sanitary District  
Murphys Fire Protection District  
Napa County Regional Park and Open Space District  
North County Fire Protection District  
North Tahoe Fire Protection District  
Olivenhain Municipal Water District  
Orange County Employees Association  
Orange County Local Agency Formation Commission  
Orange County Water District  
Palmdale Water District  
Palos Verdes Library District  

Reclamation District No. 1000  
Rural County Representatives of California  
Sacramento Suburban Water District  
San Diego County Water Authority  
Saratoga Fire District  
Southern California Regional Rail Authority  
Southern California Water Coalition  
Stege Sanitary District  
Tahoe Resource Conservation District  
Templeton Community Services District  
Three Valleys Municipal Water District  
Town of Discovery Bay Community Services District  
Truckee Fire Protection District  
Urban Counties of California  
Valley-Wide Recreation and Park District  
Vista Fire Protection District  
Vista Irrigation District  
Water Replenishment District of Southern California  
Western Municipal Water District  
Zach Hilton, Member, Gilroy City Council

Opposition
ACLU California Action  
ACT for Women and Girls  
California Environmental Justice Alliance  
Californians Aware  
First Amendment Coalition  
Howard Jarvis Taxpayers Association  
Together We Will/Indivisible – Los Gatos
Attachment 2
An act to amend, repeal, and add Section 54953 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 361, as amended, Robert Rivas. Open meetings: local agencies: teleconferences.

Existing law, the Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act contains specified provisions regarding the timelines for posting an agenda and providing for the ability of the public to directly address the legislative body on any item of interest to the public. The act generally requires all regular and special meetings of the legislative body be held within the boundaries of the territory over which the local agency exercises jurisdiction, subject to certain exceptions. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location,
that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency’s jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined. The act authorizes the district attorney or any interested person, subject to certain provisions, to commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that specified actions taken by a legislative body are null and void.

Existing law, the California Emergency Services Act, authorizes the Governor, or the Director of Emergency Services when the governor is inaccessible, to proclaim a state of emergency under specified circumstances, and authorizes a specified legislative body or an official designated to proclaim a local emergency. Existing law allows a local health officer to declare a local public health emergency, which, after 7 days, must be ratified by the county board of supervisors, or city council, as applicable, in order to remain in place.

Executive Order No. N-29-20 suspends the Ralph M. Brown Act’s requirements for teleconferencing during the COVID-19 pandemic provided that notice and accessibility requirements are met, the public members are allowed to observe and address the legislative body at the meeting, and that a legislative body of a local agency has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 1, 2024, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting for the purpose of declaring or ratifying a local emergency, during a declared state of emergency or local emergency, as those terms are defined, when state or local health officials have imposed or recommended measures to promote social distancing, and during a declared local proclaimed state of emergency, held for the purpose of determining, by majority vote, that whether meeting in person would present imminent risks to the health or safety of attendees, The attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided.

This bill would require legislative bodies that hold teleconferenced meetings under these abbreviated teleconferencing procedures to give
notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body. The bill would require the legislative body to take no further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency’s control which prevents members of the public from submitting offering public comments, until public access is restored. The bill would specify that actions taken during the disruption are subject to challenge proceedings, as specified.

This bill would prohibit the legislative body from requiring public comments to be submitted in advance of the meeting and would specify that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time. The bill would prohibit the legislative body from closing the public comment period and the opportunity to register to provide public comment, until the public comment period has elapsed or until a reasonable amount of time has elapsed, as specified. When there is a continuing state of emergency, local emergency, or when state or local officials have imposed or recommended measures to promote social distancing, the bill would require a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting pursuant to these provisions, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures.

Existing law prohibits a state body from requiring, as a condition to attend a meeting, a person to register the person’s name, or to provide other information, or to fulfill any condition precedent to the person’s attendance.

This bill would exclude from that prohibition, a registration requirement imposed by a third-party internet website or other online platform not under the control of the legislative body.

This bill would declare the Legislature’s intent, consistent with the Governor’s Executive Order No. N-29-20, to improve and enhance public access to local agency meetings during the COVID-19 pandemic and future emergencies by allowing broader access through teleconferencing options.
The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.


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

SECTION 1. Section 54953 of the Government Code is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory.
over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or
from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting for the purpose of proclaiming or ratifying a local emergency.

(B) The legislative body holds a meeting during a proclaimed state of emergency or declared local emergency, emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(C) The legislative body holds a meeting during a declared local proclaimed state of emergency and the legislative body determines by majority vote that, for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:
(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency’s control which prevents members of the public from submitting offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative
body, that requires registration to log in to a teleconference may
be required to register as required by the third-party internet
website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment
period for each agenda item shall not close the public comment
period for the agenda item, or the opportunity to register, pursuant
to subparagraph (F), to provide public comment until that timed
public comment period has elapsed.
(ii) A legislative body that does not provide a timed public
comment period, but takes public comment separately on each
agenda item, shall allow a reasonable amount of time per agenda
item to allow public members the opportunity to provide public
comment, including time for members of the public to register
pursuant to subparagraph (F), or otherwise be recognized for the
purpose of providing public comment.
(iii) A legislative body that provides a timed general public
comment period that does not correspond to a specific agenda
item shall not close the public comment period or the opportunity
to register, pursuant to subparagraph (F), until the timed general
public comment period has elapsed.

(3) If a state of emergency or local emergency remains active,
or state or local officials have imposed or recommended measures
to promote social distancing, in order to continue to teleconference
without compliance with paragraph (3) of subdivision (b), the
legislative body shall, not later than 30 days after teleconferencing
for the first time pursuant to subparagraph (A), (B), or (C) of
paragraph (1), and every 30 days thereafter, make the following
findings by majority vote:

(A) The legislative body has reconsidered the circumstances of
the state of emergency or local emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the
ability of the members to meet safely in person.

(ii) The local emergency continues to present risks to the health
or safety of members or the public if one or more members of the
legislative body were to attend the meeting in person.

(iii) State or local officials continue to impose or recommend
measures to promote social distancing.
For the purposes of this subdivision, the following definitions shall apply:

(A) “State of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(B) “Local emergency” means an emergency proclaimed by the governing body of a county or city and county, or by an official designated by ordinance adopted by that governing body pursuant to Section 8630 of the California Emergency Services Act (Article 14 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2) as a result of conditions existing in all or a portion of the jurisdiction of the local agency. Local emergency refers only to local emergencies in the jurisdiction in which the legislative body is located.

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

SEC. 2. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.
Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the
number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 3. It is the intent of the Legislature in enacting this act to improve and enhance public access to local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options consistent with the Governor’s Executive Order No. N-29-20 dated March 17, 2020, permitting expanded use of teleconferencing during the COVID-19 pandemic.

SEC. 4. The Legislature finds and declares that Section 1 of this act, which amends Section 54953 of the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:
This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings during applicable emergencies.
Item B-6
TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: August 30, 2021
SUBJECT: Assembly Bill 602 (Grayson) - Development fees: impact fee nexus study
ATTACHMENTS: 1. Summary Memo – AB 602
2. Bill Text – AB 602

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 602 (Grayson) - Development fees: impact fee nexus study (AB 602) involves a policy matter that may have a nexus to the City’s adopted Legislative Platform language. Specifically, the following statements may apply to AB 602:

- Oppose legislation that would preempt the City’s authority over local taxes and fees.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 602 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 602, the Liaisons may recommend the following actions:

1) Oppose AB 602;
2) Support AB 602;
3) Support if amended AB 602;
4) Oppose unless amended AB 602;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position of oppose, then staff will prepare a letter for the Mayor to sign as the legislation appears to be consistent with the City’s Legislative Platform. Any other positions recommended by the Liaisons will require the concurrence of the City Council and staff will place this item on a future City Council agenda.
Attachment 1
August 19, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 602 (Grayson) Development fees: impact fee nexus study

As Amended on July 5, 2021

Introduction and Background
AB 602 (Grayson) would require the Department of Housing and Community Development (HCD), by January 1, 2024, to create an impact fee nexus study template for use by local jurisdictions that includes a method of calculating the feasibility of housing being built with a given fee level. The bill would authorize HCD to contract with nonprofit or academic institutions to complete the template. AB 602 would also require, on or after January 1, 2022, a city, county, or special district that conducts an impact fee nexus study to conduct that study before adopting the associated development fee and to follow all of the following standards and practices:

Specifically, this bill would:

1. Require HCD, on or before January 1, 2024, to create an impact fee nexus study template that local jurisdictions may use. The template shall include a method of calculating the feasibility of housing being built with a given fee level. Authorizes HCD to contract with nonprofit or academic institutions to complete the template.

2. Require a city, county, or special district to post a written fee schedule, or a link directly to the written fee schedule, on its website.

3. Require a city or county to request from a development proponent, upon issuing a certificate of occupancy or the final inspection, whichever occurs last, the total amount of fees and exactions associated with the project. Requires the city or county to post this information on its website and update it at least twice per year. Allows a city or county to post a disclaimer regarding the accuracy of this information.

4. Require a city, county, or special district that conducts an impact fee nexus study on or after January 1, 2022, to adopt the nexus fee study before adopting the associated development fee. Requires the nexus fee study to:

   a. Include the existing level of service for each public facility, the proposed new level of service, and an explanation of why the new level of service is appropriate.

   b. Include information supporting the local agency’s actions.
c. Review the assumptions supporting the original fee and evaluate the amount collected under the initial fee if the study supports increasing an existing fee.

5. Require a nexus fee study adopted after July 1, 2022, to calculate a fee imposed on a housing development project proportionately to the square footage of the proposed units in the development. This fee shall be deemed to bear a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

6. Provide that an agency is not prohibited from establishing different fees for different types of developments. Exempts a nexus fee study from the previous requirement if the city, county, or special district makes a finding that includes:
   a. An explanation of why square footage is not an appropriate metric to calculate fees imposed on the housing development project.
   b. An explanation that an alternative basis for calculating the fee bears a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.
   c. A finding that other policies in the fee structure support smaller developments or otherwise ensure that smaller developments are not charged excessive fees.

7. Require all nexus studies to be adopted at a public hearing with at least 30 days' notice. It also requires the local agency to notify any member of the public that requests it of the date of the hearing at which it will begin the study.

8. Require all nexus studies to be updated at least every eight years, from the period beginning January 1, 2022.

9. Provide that this bill does not apply to water or sewer connection or capacity charges.

10. Authorize any member of the public, including an applicant for a development project, to submit evidence to the city, county, or other local agency that its findings are insufficient or that the local agency otherwise failed to comply with this bill. It also requires the legislative body of a city, county, or other local agency to consider any such evidence and authorizes the legislative body to change or adjust the proposed fee or fee increase if it deems necessary.

**Status of Legislation**
The bill is pending on the Senate Appropriations Committee’s Suspense File.

**Arguments in Support**
The author states, “Local jurisdictions levy development fees to pay for the services needed to support new housing and to offset the impacts of growth in a community. These fees can make up a substantial portion of the cost to build new housing in California cities. In a March 2018 report, UC Berkeley’s Terner Center for Housing Innovation found that development fees can amount to anywhere from 6-18% of the median price of a home depending on the location. In order for impact fees to be legally valid, they must comply with the rules and regulations established by the Mitigation Fee Act and be justified through the use of a ‘nexus study’ which illustrates the relationship between new development and its incremental impacts on
infrastructure. In November of 2020, the Terner Center released a report which stressed the need for additional guidance on how local jurisdictions conduct nexus studies, which are currently governed by an opaque and informal patchwork of guidelines and common practices. AB 602 establishes basic transparency and accountability standards for nexus studies, and tasks HCD with developing a template for nexus studies that local governments can use.

**Arguments in Opposition**
A coalition of local government organizations, including The League of California Cities, city planners, and counties, object to the bill’s requirement for HCD to develop a nexus fee template. The coalition states that HCD does not have the needed expertise and that the bill does not require HCD to consult with stakeholders in developing the template. The coalition also opposes the requirement for capital improvement planning. It states it will create additional costs for local agencies that would most likely be passed on to development proponents in the form of higher fees.

**Support**
- California YIMBY (Co-Sponsor)
- Habitat for Humanity California (Co-Sponsor)
- Bay Area Council
- California Association of Realtors
- California Building Industry Association
- Casita Coalition
- Council of Infill Builders
- Greenbelt Alliance
- Hello Housing
- Habitat for Humanity Coalition
- LISC San Diego
- San Francisco Bay Area Planning and Research Association (SPUR)
- Silicon Valley @ Home
- The Two Hundred
- TMG Partners

**Opposition**
- American Planning Association, California Chapter
- California State Association of Counties
- City of Fremont
- League of California Cities
- Rural County Representatives of California
- Urban Counties of California
Attachment 2
An act to amend Sections 65940.1 and 66019 of, and to add Section 66016.5 to, the Government Code, and to add Section 50466.5 to the Health and Safety Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST


(1) Existing law, the Permit Streamlining Act, which is part of the Planning and Zoning Law, requires each public agency to provide a development project applicant with a list that specifies the information that will be required from any applicant for a development project. The Mitigation Fee Act requires a local agency that establishes, increases, or imposes a fee as a condition of approval of a development project to, among other things, determine a reasonable relationship between the fee’s use and the type of development project on which the fee is imposed. Existing law requires a city, county, or special district that
has an internet website to make available on its internet website certain information, as applicable, including its current schedule of fees and exactions.

This bill, among other things, would require, on and after January 1, 2022, a city, county, or special district that conducts an impact fee nexus study to follow specific standards and practices, including, but not limited to, (1) that prior to the adoption of an associated development fee, an impact fee nexus study be adopted, (2) that the study identify the existing level of service for each public facility, identify the proposed new level of service, and include an explanation of why the new level of service is necessary, and (3) if the study is adopted after July 1, 2022, either calculate a fee levied or imposed on a housing development project proportionately to the square footage of the proposed units, or make specified findings explaining why square footage is not an appropriate metric to calculate the fees. The bill would also require a city, county, or special district to post a written fee schedule or a link directly to the written fee schedule on its internet website. The bill would require a city or county to request the total amount of fees and exactions associated with a project upon the issuance of a certificate of occupancy, occupancy or the final inspection, whichever occurs last, and to post this information on its internet website, as specified. By requiring a city or county to include certain information in, and follow certain standards with regard to, its impact fee nexus studies and to include certain information on its internet website, the bill would impose a state-mandated local program.

(2) Existing law requires the Department of Housing and Community Development to develop specifications for the structure, functions, and organization of a housing and community development information system for this state. Existing law requires the system to include statistical, demographic, and community development data that will be of assistance to local public entities in the planning and implementation of housing and community development programs.

This bill would require the department, on or before January 1, 2024, to create an impact fee nexus study template that may be used by local jurisdictions. The bill would require that the template include a method of calculating the feasibility of housing being built with a given fee level.

(3) The Mitigation Fee Act requires notice of the time and place of a meeting regarding any fee, that includes a general explanation of the matter to be considered, be mailed at least 14 days before the first
meeting to an interested party who files a written request with the city or county for mailed notice of a meeting on a new or increased fee.

This bill would authorize any member of the public, including an applicant for a development project, to submit evidence that the city, county, or other local agency has failed to comply with the Mitigation Fee Act. The bill would require the legislative body of the city, county, or other local agency to consider any timely submitted evidence and authorize the legislative body to change or adjust the proposed fee or fee increase, as specified.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.


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

SECTION 1. Section 65940.1 of the Government Code is amended to read:

65940.1. (a) (1) A city, county, or special district that has an internet website shall make all of the following available on its internet website, as applicable:

(A) (i) A current schedule of fees, exactions, and affordability requirements imposed by that city, county, or special district, including any dependent special districts, as defined in Section 56032.5, of the city or county applicable to a proposed housing development project.

(ii) The city, county, or special district shall present the information described in clause (i) in a manner that clearly identifies the fees, exactions, and affordability requirements that apply to each parcel and the fees that apply to each new water and sewer utility connection.

(iii) The city, county, or special district shall post a written fee schedule or a link directly to the written fee schedule on its internet website.

(B) All zoning ordinances and development standards adopted by the city or county presenting the information, which shall
specify the zoning, design, and development standards that apply
to each parcel.

(C) The list required to be compiled pursuant to Section 65940
by the city or county presenting the information.

(D) The current and five previous annual fee reports or the
current and five previous annual financial reports, that were
required pursuant to subdivision (b) of Section 66006 and
subdivision (d) of Section 66013.

(E) An archive of impact fee nexus studies, cost of service
studies, or equivalent, conducted by that city, county, or special
district on or after January 1, 2018. For purposes of this
subparagraph, “cost of service study” means the data provided to
the public pursuant to subdivision (a) of Section 66016.

(2) A city, county, or special district shall update the information
made available under this subdivision within 30 days of any
changes.

(3) (A) A city or county shall request from a development
proponent, upon issuance of a certificate of occupancy, occupancy
or the final inspection, whichever occurs last, the total amount of
fees and exactions associated with the project for which the
certificate was issued. The city or county shall post this information
on its internet website, and update it at least twice per year.

(B) A city or county shall not be responsible for the accuracy
for the information received and posted pursuant to subparagraph
(A). A city or county may include a disclaimer regarding the
accuracy of the information posted on its internet website under
this paragraph.

(b) For purposes of this section:

(1) “Affordability requirement” means a requirement imposed
as a condition of a development of residential units, that the
development include a certain percentage of the units affordable
for rent or sale to households with incomes that do not exceed the
limits for moderate-income, lower income, very low income, or
extremely low income households specified in Sections 50079.5,
50093, 50105, and 50106 of the Health and Safety Code, or an
alternative means of compliance with that requirement including,
but not limited to, in-lieu fees, land dedication, off-site
construction, or acquisition and rehabilitation of existing units.

(2) (A) “Exaction” means any of the following:

(i) A construction excise tax.
(ii) A requirement that the housing development project provide public art or an in-lieu payment.
(iii) Dedications of parkland or in-lieu fees imposed pursuant to Section 66477.
(iv) A special tax levied on new housing units pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).

(B) “Exaction” does not include fees or charges pursuant to Section 66013 that are not imposed (i) in connection with issuing or approving a permit for development or (ii) as a condition of approval of a proposed development, as held in Capistrano Beach Water Dist. v. Taj Development Corp. (1999) 72 Cal.App.4th 524.

(3) “Fee” means a fee or charge described in the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020)).

(4) “Housing development project” means a use consisting of any of the following:
(A) Residential units only.
(B) Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.
(C) Transitional housing or supportive housing.

(c) This section shall not be construed to alter the existing authority of a city, county, or special district to adopt or impose an exaction or fee.

SEC. 2. Section 66016.5 is added to the Government Code, to read:

66016.5. (a) On and after January 1, 2022, a city, county, or special district that conducts an impact fee nexus study shall follow all of the following standards and practices:
(1) Before the adoption of an associated development fee, an impact fee nexus study shall be adopted.
(2) When applicable, the nexus study shall identify the existing level of service for each public facility, identify the proposed new level of service, and include an explanation of why the new level of service is appropriate.
(3) A nexus study shall include information that supports the local agency’s actions, as required by subdivision (a) of Section 66001.

(4) If a nexus study supports the increase of an existing fee, the city, county, or special district shall review the assumptions of the nexus study supporting the original fee and evaluate the amount of fees collected under the original fee.

(5) (A) A nexus study adopted after July 1, 2022, shall calculate a fee imposed on a housing development project proportionately to the square footage of proposed units of the development. A fee imposed proportionately to the square footage of the proposed units of the development shall be deemed to bear a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(B) A nexus study is not required to comply with subparagraph (A) if the city, county, or special district makes a finding that includes all of the following:

(i) An explanation as to why square footage is not appropriate metric to calculate fees imposed on housing development project.

(ii) An explanation that an alternative basis of calculating the fee bears a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

(iii) That other policies in the fee structure support smaller developments, or otherwise ensure that smaller developments are not charged disproportionate fees.

(B)

(C) This paragraph does not prohibit an agency from establishing different fees for different types of developments.

(6) A nexus study adopted after July 1, 2022, shall consider targeting fees geographically. If the city, county, or special district does not target the fees geographically, it shall adopt a finding explaining why the adoption of geographically specific fees is not appropriate.

(7) Large jurisdictions shall adopt a capital improvement plan as a part of the nexus study.

(8)

(7) All studies shall be adopted at a public hearing with at least 30 days’ notice, and the local agency shall notify any member of
the public that requests notice of intent to begin an impact fee
nexus study of the date of the hearing.

(9) Studies shall be updated at least every eight years, from the
period beginning on January 1, 2022.

(10) The local agency may use the impact fee nexus study
template developed by the Department of Housing and Community
Development pursuant to Section 50466.5 of the Health and Safety
Code.

(b) This section does not require any study or analysis as a
prerequisite to impose apply to any fee fees or charges pursuant
to Section 66013.

(c) For purposes of this section:

(1) “Development fee” shall have the same meaning as
subdivision (b) of Section 66000.

(2) “Large jurisdiction” shall have the same meaning as
subdivision (d) of Section 53559.1 of the Health and Safety Code.

(3) “Public facility” has the same meaning as defined in
subdivision (d) of Section 66000.

SEC. 3. Section 66019 of the Government Code is amended
to read:

66019. (a) As used in this section:

(1) “Fee” means a fee as defined in Section 66000, but does not
include any of the following:

(A) A fee authorized pursuant to Section 66013.

(B) A fee authorized pursuant to Section 17620 of the Education
Code, or Sections 65995.5 and 65995.7.

(C) Rates or charges for water, sewer, or electrical services.

(D) Fees subject to Section 66016.

(2) “Party” means a person, entity, or organization representing
a group of people or entities.

(3) “Public facility” means a public facility as defined in Section
66000.

(b) For any fee, notice of the time and place of the meeting,
including a general explanation of the matter to be considered, and
a statement that the data required by this subdivision is available
shall be mailed at least 14 days prior to the first meeting to an
interested party who files a written request with the city, county,
or city and county for mailed notice of a meeting on a new or
increased fee to be enacted by the city, county, or city and county. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body of the city, county, or city and county may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service. The legislative body may send the notice electronically. At least 10 days prior to the meeting, the city, county, or city and county shall make available to the public the data indicating the amount of cost, or the estimated cost, required to provide the public facilities and the revenue sources anticipated to fund those public facilities, including general fund revenues. The new or increased fee shall be effective no earlier than 60 days following the final action on the adoption or increase of the fee, unless the city, county, or city and county follows the procedures set forth in subdivision (b) of Section 66017.

(c) If a city, county, or city and county receives a request for mailed notice pursuant to this section, or a local agency receives a request for mailed notice pursuant to Section 66016, the city, county, or city and county or other local agency may provide the notice via electronic mail for those who specifically request electronic mail notification. A city, county, city or county, or other local agency that provides electronic mail notification pursuant to this subdivision shall send the electronic mail notification to the electronic mail address indicated in the request. The electronic mail notification authorized by this subdivision shall operate as an alternative to the mailed notice required by this section.

(d) (1) Any member of the public, including an applicant for a development project, may submit evidence that the city, county, or other local agency’s determinations and findings required pursuant to subdivision (a) of Section 66001 are insufficient or that the local agency otherwise failed to comply with this chapter. Evidence submitted pursuant to this subdivision may include, but is not limited to, information regarding the proposed fee calculation, assumptions, or methodology or the calculation, assumptions, or methodology for an existing fee upon which the proposed fee or fee increase is based.

(2) The legislative body of the city, county, or other local agency shall consider any evidence submitted pursuant to paragraph (1)
that is timely submitted under this chapter. After consideration of
the evidence, the legislative body of the city, county, or other local
agency may change or adjust the proposed fee or fee increase if
deemed necessary by the legislative body.
SEC. 4. Section 50466.5 is added to the Health and Safety
Code, to read:
50466.5. (a) On or before January 1, 2024, the department
shall create an impact fee nexus study template that may be used
by local jurisdictions. The template shall include a method of
calculating the feasibility of housing being built with a given fee
level.
(b) The department may contract with nonprofit or academic
institutions to complete the template.
SEC. 5. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
a local agency or school district has the authority to levy service
charges, fees, or assessments sufficient to pay for the program or
level of service mandated by this act, within the meaning of Section
Item B-7
CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: August 30, 2021
SUBJECT: Assembly Bill 718 (Cunningham) - Peace officers: investigations of misconduct

ATTACHMENTS: 1. Summary Memo – AB 718
                2. Bill Text – AB 718

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 718 (Cunningham) - Peace officers: investigations of misconduct (AB 718) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 718 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 718, the Liaisons may recommend the following actions:

1) Support AB 718;
2) Support if amended AB 718;
3) Oppose AB 718;
4) Oppose unless amended AB 718;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 718, then staff will place the item on a future City Council Agenda for concurrence.
August 19, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 718 (Cunningham) Peace officers: investigations of misconduct

As Introduced on February 16, 2021

Introduction and Background
When a peace officer is accused of misconduct, whether a violation of agency policy, state law, or both, the agency or an independent third-party investigator will investigate if the underlying allegations are true by a preponderance of the evidence (i.e., more likely than not). Investigators will usually interview witnesses and review documents to determine if allegations against an officer are sustained (allegation is true by a preponderance), not sustained (insufficient evidence to sustain the allegation), exonerated (untrue by a preponderance), or unfounded (no evidence of any violation of law or policy). In some cases, officers will resign or retire before an investigation is completed to avoid being found liable for misconduct. However, completing investigations even if the accused employee retires may identify issues previously unknown but possibly injurious to the agency and create a record of misconduct that may be useful to future employers.

AB (718 (Cunningham) would require, starting on January 1, 2022, a law enforcement agency or oversight agency, despite a peace officer’s or custodial officer’s voluntary separation from the employing agency, to complete its investigation into an allegation of any of the following conduct:

- The use of force resulting in death or great bodily injury.
- Sexual assault.
- Discharge of a firearm.
- Dishonesty relating to the reporting, investigation, or prosecution of a crime or misconduct by another peace officer or custodial officer.

It also would require the investigation to result in a finding that the allegation is sustained, not sustained, unfounded, or exonerated. If an agency other than an officer’s employing agency investigates these allegations, that agency would be required to disclose its findings with the employing agency no later than the conclusion of the investigation.

Status of Legislation
The bill is pending on the Senate Appropriations Committee’s Suspense File.

Arguments in Support
According to the California State Sheriffs’ Association, “There are cases in which a peace officer accused of misconduct resigns during an investigation, or before an investigation is ever conducted. AB 718 will require a completed investigation into an officer’s alleged misconduct.”
This bill will help to ensure that officers who engage in serious acts of misconduct are held accountable to their actions and provide employing agencies with the necessary information about peace officer candidates.”

**Arguments in Opposition**
There is no formally registered opposition to the bill.

**Support**
California Attorneys for Criminal Justice  
California District Attorneys Association  
California Public Defenders Association  
California State Sheriffs’ Association  
City of Carlsbad  
League of California Cities  
League of Women Voters of California  
City of Thousand Oaks  
Santa Barbara County District Attorney  
National Association of Social Workers – California Chapter  
California News Publishers Association
Attachment 2
An act to amend Section 832.8 of, and to add Section 832.75 to, the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL’S DIGEST

AB 718, as introduced, Cunningham. Peace officers: investigations of misconduct.

Existing law requires a department or agency that employs peace officers to establish a procedure to investigate complaints by members of the public against those officers. Existing law authorizes a department or agency that employs custodial officers to establish a similar procedure for its officers. Existing law requires the department or agency to provide written notification to the complaining party of the disposition of a complaint made pursuant to those provisions within 30 days of the disposition. Existing law also makes the investigation records for specified complaints subject to disclosure under the California Public Records Act.

This bill would require a law enforcement agency or oversight agency to complete its investigation into an allegation of the use of force resulting in death or great bodily injury, sexual assault, discharge of a firearm, or dishonesty relating to the reporting, investigation, or prosecution of a crime or misconduct by another peace officer or custodial officer, despite the peace officer’s or custodial officer’s voluntary separation from the employing agency. The bill would require the investigation to result in a finding that the allegation is either...
sustained, not sustained, unfounded, or exonerated, as defined. The bill would also require an agency other than an officer’s employing agency that conducts an investigation of these allegations to disclose its findings with the employing agency no later than the conclusion of the investigation. By imposing additional duties on local law enforcement agencies, the bill would impose a state-mandated local program.

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

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.


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

SECTION 1. Section 832.75 is added to the Penal Code, immediately following Section 832.7, to read:

832.75. (a) Commencing January 1, 2022, if a law enforcement agency or oversight agency initiates an administrative investigation into an allegation of an incident involving the discharge of a firearm at a person by a peace officer or custodial officer, or an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury, the agency shall complete its investigation and reach a finding, either sustained, not sustained, exonerated, or unfounded, regardless of whether the officer voluntarily separates from the agency before the investigation is completed.

(b) Commencing January 1, 2022, if a law enforcement agency or oversight agency initiates an administrative investigation into an allegation of sexual assault as defined in this chapter, the agency shall complete its investigation and reach a finding, either sustained, not sustained, exonerated, or unfounded, regardless of whether the officer voluntarily separates from the agency before the investigation is completed.

(c) Commencing January 1, 2022, if a law enforcement agency or oversight agency initiates an administrative investigation into an allegation of dishonesty by a peace officer or custodial officer
directly relating to the reporting, investigation, or prosecution of
a crime, or directly relating to the reporting of, or investigation of
misconduct by, another peace officer or custodial officer, including,
but not limited to, any sustained finding of perjury, false
statements, filing false reports, destruction, falsifying, or concealing
of evidence, the agency shall complete its investigation and reach
a finding, either sustained, not sustained, exonerated, or unfounded,
regardless of whether the officer voluntarily separates from the
agency before the investigation is completed.
(d) If any agency other than an officer’s employing agency
conducts an investigation into an alleged incident described in this
section, that agency shall disclose its investigative findings with
the employing agency no later than the conclusion of the
investigation.
SEC. 2. Section 832.8 of the Penal Code is amended to read:
832.8. As used in Section 832.7, Sections 832.7 and 832.75,
the following words or phrases have the following meanings:
(a) “Exonerated” means that the investigation clearly
established that the actions of the peace officer or custodial officer
that formed the basis for the complaint are not violations of law
or department policy.
(b) “Not sustained” means an investigation failed to produce
sufficient evidence to prove or disprove the allegations made in
the complaint.
(c) “Personnel records” means any file maintained under that
individual’s name by his or her the individual’s employing agency
and containing records relating to any of the following:
(1) Personal data, including marital status, family members,
educational and employment history, home addresses, or similar
information.
(2) Medical history.
(3) Election of employee benefits.
(4) Employee advancement, appraisal, or discipline.
(5) Complaints, or investigations of complaints, concerning an
event or transaction in which he or she the individual participated,
or which he or she the individual perceived, and pertaining to the
manner in which he or she the individual performed his or her their
duties.
(6) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

(b) “Sustained” means a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer or custodial officer were found to violate law or department policy.

(e) “Unfounded” means that an investigation clearly establishes that the allegation is not true.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
Item B-8
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 773 (Nazarian) - Street closures and designations (AB 773) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwi Schmelzer & Lange, provided a summary memo for AB 773 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 773, the Liaisons may recommend the following actions:

1) Support AB 773;  
2) Support if amended AB 773;  
3) Oppose AB 773;  
4) Oppose unless amended AB 773;  
5) Remain neutral; or  
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on AB 773, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 773 (Nazarian) Street closures and designations

As Amended on July 5, 2021

Summary
AB 773 (Nazarian) authorizes local authorities to implement a “Slow Streets Program,” as specified, to close or limit access to vehicular traffic on certain neighborhood local streets; and defines requirements for the program including public outreach and engagement.

Specifically, the bill does the following:

- Authorizes a local authority to implement a Slow Streets program by adopting an ordinance that provides for the closing of streets to vehicular traffic or limiting access and speed on a street using roadway design features, including, but not limited to, islands, curbs, or traffic barriers.
- Requires a local authority to meet the following requirements to implement a Slow Streets program:
  - Conduct an outreach and engagement process that includes notification to residents and owners of property abutting any street being considered for inclusion in the program.
  - Determine that the closure or traffic restriction leaves a sufficient portion of the streets in the surrounding area for other public uses, including vehicular, pedestrian, and bicycle traffic.
  - Provide advance notice of the closure or traffic restriction to residents and owners of property abutting the street.
  - Clearly designate the street closure or traffic restriction with signage in compliance with the California Manual on Uniform Traffic Control Devices.
  - Determine that the closure or traffic restriction is necessary for the safety and protection of persons who are to use that portion of the street during the closure or traffic restriction.
  - Maintain a publicly available internet website with information about its Slow Streets program, including a list of streets that are included in the program or are being evaluated for inclusion in the program, and instructions for participating in the public engagement process.

Background
According to the National Association of City Transportation Officials (NACTO), slow streets reduce traffic volume and speed to a minimum so that people can walk, bike, and run safely. Slow
streets typically involve the installation of temporary traffic barriers and “Local Traffic Only” signs or similar signage at main vehicle entry points, and the identification of stewards to take care of and monitor barricades. Slow streets allow local access, deliveries, and emergency vehicles. Both before and especially during the COVID-19 pandemic, cities globally as well as in California have initiated Slow Streets programs, which are generally focused on providing safe places for people to walk, cycle, skate, or otherwise get outside and exercise without having to worry about vehicular traffic at high speeds.

According to the California Transportation Plan 2050 (CTP 2050), a long range transportation plan developed by the California Department of Transportation (Caltrans) that provides a blueprint for the future of California transportation, “in the months following the outbreak of COVID-19, more Americans embraced active travel. California cities that typically have low bicycle ridership, such as Riverside and Oxnard, experienced a 90% to 125% increase in bicycle miles traveled. Stockton, Bakersfield, Fresno, Sacramento, and San Diego also experienced increases of more than 50%. Trends suggest that travelers shifted from transit to active travel when risks increased. In San Francisco, many residents who needed to make essential trips opted to walk or bike. Recreational biking and walking have also skyrocketed. The Rails-to-Trails Conservancy observed a 110% increase in trail use compared to the same period in 2019.”

In 2020, after Governor Newsom issued an emergency stay-at-home order for the state and required social distancing measures for protection from COVID-19, many cities in California moved to implement temporary Slow Streets programs to help facilitate alternative mobility and outdoor activity. These cities include Los Angeles, Sacramento, Oakland, and San Francisco, to name a few. Each city developed a unique program with common elements including a focus on neighborhood local streets and establishing network connections for better mobility. Local authorities either identified streets for possible inclusion in the program or asked for public nomination and input of streets to include. The local authorities would erect temporary barriers and signage on the slow streets to restrict them from traffic or through traffic and lower vehicle speeds.

**Status of Legislation**
The bill passed off the Senate Floor on August 23. The bill is currently pending on the Assembly Floor for a concurrent vote.

**Arguments in Support**
According to Los Angeles Mayor Eric Garcetti, the sponsor of the bill, “the City’s program launched in May 2020 and now has more than 50 miles of temporary Slow Streets across 30 neighborhoods. Each Slow Street is a partnership between the City and a local sponsor, with many Slow Streets located in low-income communities with dense housing and poor access to parks. The largest Slow Streets installation is in Koreatown, the densest neighborhood with the lowest park access per capita. Providing Angelenos access to safe spaces for fresh air has been essential to mental and physical health throughout the COVID-19 pandemic and community response to our program has been extremely positive. The Slow Streets installations have been imperative in reducing the spread of COVID-19 and ensuring community well-being

“Under current law, Slow Streets programs must be temporary. However, due to the overwhelming demand for the installations, a permanent program would allow the City to develop a plan to reach more residents while still prioritizing their safety. Furthermore, the ability to restrict vehicle access, which requires authorization from the California Vehicle Code, would calm neighborhood-level traffic and improve safety. This bill would support our most vulnerable
communities at this critical time without any fiscal impact on the State. AB 773 simply provides cities the opportunity to exercise traffic control actions at their discretion and expense."

Support
Mayor Eric Garcetti, City of Los Angeles (source)
Active SGV
City of Long Beach
City of San Carlos
Climate Resolve
Destination: Pico
Independent Hospitality Coalition
League of California Cities
Los Angeles Walks
Move LA
National Resources Defense Council
Streets Are For Everyone

Arguments in Opposition
There is no formally registered opposition to the bill.
Attachment 2
ASSEMBLY BILL

No. 773

Introduced by Assembly Member Nazarian

February 16, 2021

An act to amend Section 21101 of the Vehicle Code, relating to streets.

LEGISLATIVE COUNSEL’S DIGEST

AB 773, as amended, Nazarian. Street closures and designations.

Existing law authorizes local authorities to adopt rules and regulations by ordinance or regulation for highways under their jurisdiction if specified criteria are met. Under existing law, authorized actions by local authorities include permanent or temporary highway or street closures under certain conditions and the designation of a highway as a through highway.

This bill would authorize a local authority to adopt a rule or regulation to close a portion of a street under its jurisdiction to through vehicular traffic if it determines closure is necessary for the safety and protection of persons who are to use that portion of the street during the closure. The bill would also authorize a local authority to adopt a rule or regulation to designate a local street within its jurisdiction as a slow street by ordinance to implement a slow street program, which may include closures to vehicular traffic or through vehicular traffic of neighborhood local streets with connections to citywide bicycle networks, destinations that are within walking distance, or green space. The bill would require the local authority to meet specified conditions to implement a slow street, including a determination that closure or traffic restriction is necessary for the safety and protection of persons...
using the closed or restricted portion of the street, conducting an outreach and engagement process, and clearly designating the closure or traffic restriction with specific signage.


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

SECTION 1. Section 21101 of the Vehicle Code is amended to read:

21101. Local authorities, for those highways under their jurisdiction, may adopt rules and regulations by ordinance or resolution, except as provided in subdivision (f), on the following matters:

(a) Closing any highway to vehicular traffic when, in the opinion of the legislative body having jurisdiction, the highway is either of the following:

(1) No longer needed for vehicular traffic.

(2) The closure is in the interests of public safety and all of the following conditions and requirements are met:

(A) The street proposed for closure is located in a county with a population of 6,000,000 or more.

(B) The street has an unsafe volume of traffic and a significant incidence of crime.

(C) The affected local authority conducts a public hearing on the proposed street closure.

(D) Notice of the hearing is provided to residents and owners of property adjacent to the street proposed for closure.

(E) The local authority makes a finding that closure of the street likely would result in a reduced rate of crime.

(b) Designating any highway as a through highway and requiring that all vehicles observe official traffic control devices before entering or crossing the highway or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to the intersection.

(c) Prohibiting the use of particular highways by certain vehicles, except as otherwise provided by the Public Utilities Commission pursuant to Article 2 (commencing with Section 1031) of Chapter 5 of Part 1 of Division 1 of the Public Utilities Code.
(d) Closing particular streets during regular school hours for the purpose of conducting automobile driver training programs in the secondary schools and colleges of this state.

(e) Temporarily closing a portion of any street for celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having jurisdiction or a public officer or employee that the local authority designates by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of the street during the temporary closing.

(f) Closing a portion of any street to through vehicular traffic if local authorities determine that the closing is necessary for the safety and protection of persons who are to use that portion of the street during the closing.

(f) Implementing a slow streets program. For purposes of this section, a “slow streets program” may include closures to vehicular traffic or through vehicular traffic of neighborhood local streets with connections to citywide bicycle networks; destinations, such as a business district, that are within walking distance; or green space. A local authority may implement a slow streets program by adopting an ordinance that provides for the closing of streets to vehicular traffic or limiting access and speed on a street using roadway design features, including, but not limited to, islands, curbs, or traffic barriers. A local authority may implement a slow streets program if it meets all of the following requirements:

(1) Conducts an outreach and engagement process that includes notification to residents and owners of property abutting any street being considered for inclusion in the slow streets program.

(2) Determines that the closure or traffic restriction leaves a sufficient portion of the streets in the surrounding area for other public uses, including vehicular, pedestrian, and bicycle traffic.

(3) Provides advance notice of the closure or traffic restriction to residents and owners of property abutting the street.

(4) Clearly designates the street closure or traffic restriction with signage in compliance with the California Manual on Uniform Traffic Control Devices.

(5) Determines that the closure or traffic restriction is necessary for the safety and protection of persons who are to use that portion of the street during the closure or traffic restriction.
(6) Maintains a publically available internet website with information about its slow streets program, a list of streets that are included in the program or are being evaluated for inclusion in the program, and instructions for participating in the public engagement process.

(g) Prohibiting entry to, or exit from, or both, from any street by means of islands, curbs, traffic barriers, or other roadway design features to implement the circulation element of a general plan adopted pursuant to Article 6 (commencing with Section 65350) of Chapter 3 of Division 1 of Title 7 of the Government Code. The rules and regulations authorized by this subdivision shall be consistent with the responsibility of local government to provide for the health and safety of its citizens.

(h) Designating particular streets as slow streets. For purposes of this section, “slow streets” may include local neighborhood streets with network connections to citywide bicycle networks and green space, prioritized in neighborhoods with the lowest access to parks and highest air pollution burdens.
Item B-9
CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: August 30, 2021
SUBJECT: Senate Bill 60 (Glazer) - Residential short-term rental ordinances: health or safety infractions: maximum fines

ATTACHMENTS: 1. Summary Memo – SB 60
2. Bill Text – SB 60

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 60 (Glazer) - Residential short-term rental ordinances: health or safety infractions: maximum fines (SB 60) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language. However, in the City’s current Economic Sustainability Plan the following action item is listed:

- Action 3.C.3: Consult with short-term rental enforcement providers to evaluate potential short-term rental (e.g., Airbnb) code enforcement programs that would establish appropriate fines and penalties to deter illegal short-term rental operations.

SB 60 appears to align with this action item in that it establishes higher fines and penalties for illegal short-term rental operations.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 60 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 60, the Liaisons may recommend the following actions:
1) Oppose SB 60;
2) Support SB 60;
3) Support if amended SB 60;
4) Oppose unless amended SB 60;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 60, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
August 19, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
       Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
       Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 60 (Glazer) Residential short-term rental ordinances: health or safety infractions: maximum fines

As Amended on March 4, 2021

Introduction and Background
California has seen a rise in the home-sharing industry, with companies such as Airbnb, Expedia, and Vacation Rentals by Owner (VRBO) gaining popularity due to their short-term rental practice. Short-term rentals, also known as vacation rentals, are usually an individual's residential property, such as a home, room, apartment, or condominium rented out to a visitor for fewer than 30 consecutive days.

Generally, the home-sharing industry involves three primary participants: 1) the home-sharing platforms, such as Airbnb, that advertise residential property offered for temporary rental and facilitates connecting renters with hosts for a fee, 2) the consumer who is often referred to as the "renter," "guest," or "visitor" of the residential property, and 3) the supplier, owner, operator, or "host" of the residential property. Short-term rentals are not a new practice, but the development of online hosting platforms, bookings, advertisements, and payments has increased the level and popularity of short-term rentals usage.

By some reports, there were 1.8 million short-term rental listings in the United States in 2018. California’s 235,000 short-term rental listings are second in the nation (Florida being first). The popularity of short-term rentals could be attributed to their tourist and economic benefits. Homeowners utilizing online home-sharing platforms, like Airbnb, can provide an opportunity to earn additional income to offset the cost of maintaining their residential property. For travelers, online rental platforms offer a streamlined online approach to obtaining booking instead of traditional booking of motels or hotels.

Generally, most of the current short-term rental ordinances include regulations on permitting, tax compliance, noise, parking, and occupancy, as well as host and platform obligations and responsibilities. For instance, most short-term rental ordinances require short-term rentals to limit the number of occupants per bedroom in the residential property and require the host to be physically present to monitor and regulate activity during the short-term rental for a specified number of days. However, short-term rental ordinances’ regulations and requirements vary from jurisdiction to jurisdiction.
Violating a short-term rental ordinance usually results in a penalty. However, each city and county that has a short-term rental ordinance has different fine amounts and schedules and may or may not specify whether the penalty is imposed on the host, guest, or platform.

SB 60 (Glazer) would establish enhanced fines for violations of short-term rental ordinances.

Specifically, this bill would:

1) Provide that the violation of a short-term rental ordinance that is an infraction is punishable by the following:
   a) A fine not exceeding $1,500 for a first violation.
   b) A fine not exceeding $3,000 for a second violation of the same ordinance within one year.
   c) A fine not exceeding $5,000 for each additional violation of the same ordinance within one year of the first violation.

2) Specify that the penalty limits set by this bill apply only to infractions that pose a threat to public health and safety and shall not apply to a first-time offense of failure to register or pay a business license fee.

3) Require a county or city levying a fine pursuant to this bill to establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by a responsible party that the responsible party has made a bona fide effort to comply after the first violation, and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

Status of Legislation
The bill is pending on the Assembly Floor.

Arguments in Support
The League of California Cities states, "Under existing law, a fine may not exceed $1,300 for each additional violation of the same ordinance within one year. For many cities this limit is not effective. The fines cities can levy under current law are often too low to deter violations and at times are considered a part of doing business for those who set out to violate local short-term rental ordinances.

"The rise in the use of short-term rentals necessitates the need for cities to have an effective tool to deter habitual violations of short-term rental ordinances. Recent cases demonstrate the importance of this tool for the safety and wellbeing of communities across the state. This measure would increase the effectiveness of the current penalty structure with the intent of deterring violations of short-term rental ordinances that have in the worst circumstances led to unauthorized mass gatherings, underage drinking, brawls, noise complaints, violence, and tragically even death."

Statements of Concern
The Southern California Rental Housing Association expresses concerns that, "Currently, the bill is unclear as to who the fine would be levied against. If the bill is clarified to ensure any fine being levied is levied on the person hosting the short-term rental, the SCRHA would support the bill. Subletting your rental unit is usually a violation of ones lease agreement. However, there are
renters that still list their rental unit on hosting platforms unbeknownst to the property owner. Should the person listing the unit on one of these platforms be found in violation of a city’s short-term rental ordinance, any fine should be to the person listing the unit on the hosting platform, not the owner of the property.”

**Support**
California Hotel & Lodging Association
California Travel Association (CALTIA)
City of Alameda
City of Dana Point
City of Murrieta
City of Orinda
City of Santa Monica
Community Associations Institute - California Legislative Action Committee
Expedia
League of California Cities

**Concerns**
Southern California Rental Housing Association

**Opposition**
There is no formally registered opposition to this bill.
Attachment 2
AN ACT TO AMEND SECTIONS 25132 AND 36900 OF THE GOVERNMENT CODE, RELATING TO LOCAL GOVERNMENT, AND DECLARING THE URGENCY THEREOF, TO TAKE EFFECT IMMEDIATELY.

LEGISLATIVE COUNSEL'S DIGEST


Existing law authorizes the legislative body of a city or a county to make, by ordinance, any violation of an ordinance subject to an administrative fine or penalty and limits the maximum fine or penalty amounts for infractions, to $100 for the first violation, $200 for a 2nd violation of the same ordinance within one year of the first violation, and $500 for each additional violation of the same ordinance within one year of the first violation. Existing law also sets specific monetary limits on the fines that may be imposed by city or county authorities for any violation of local building and safety codes that is an infraction, as prescribed. Existing law requires a city or county levying fines pursuant to these provisions to establish a process for granting a hardship waiver in certain cases.

This bill would, notwithstanding those provisions and with certain exceptions, raise the maximum fines for violation of an ordinance.
relating to a residential short-term rental, as defined, that is an infraction and poses a threat to health or safety, to $1,500 for a first violation, $3,000 for a 2nd violation of the same ordinance within one year, and $5,000 for each additional violation of the same ordinance within one year of the first violation. The bill would make these violations subject to the process for granting a hardship waiver.

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


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

SECTION 1. Section 25132 of the Government Code is amended to read:

25132. (a) Violation of a county ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a county ordinance may be prosecuted by county authorities in the name of the people of the State of California, or redressed by civil action.

(b) Every violation that is an infraction is punishable by the following:

1. A fine not exceeding one hundred dollars ($100) for a first violation.
2. A fine not exceeding two hundred dollars ($200) for a second violation of the same ordinance within one year of the first violation.
3. A fine not exceeding five hundred dollars ($500) for each additional violation of the same ordinance within one year of the first violation.

(c) Notwithstanding any other law, a violation of local building and safety codes that is an infraction is punishable by the following:

1. A fine not exceeding one hundred thirty dollars ($130) for a first violation.
2. A fine not exceeding seven hundred dollars ($700) for a second violation of the same ordinance within one year of the first violation.
3. (A) A fine not exceeding one thousand three hundred dollars ($1,300) for each additional violation of the same ordinance within one year of the first violation.
(B) A fine not exceeding two thousand five hundred dollars ($2,500) for each additional violation of the same ordinance within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

(d) (1) Notwithstanding any other law, including subdivisions (b), (c), and (e), a violation of an event permit requirement that is an infraction is punishable by the following:

(A) A fine not exceeding one hundred fifty dollars ($150) for the first violation of an event permit requirement.

(B) A fine not exceeding seven hundred dollars ($700) for a second occurrence of the same violation of an event permit requirement by the same owner or operator within three years of the first violation.

(C) A fine not exceeding two thousand five hundred dollars ($2,500) for each additional occurrence of the same violation of an event permit requirement by the same owner or operator within three years of the first violation.

(2) (A) For purposes of this subdivision, “violation of an event permit requirement” means failure to obtain a permit required for a professionally organized special event on private property that is commercial in nature, or from which the owner or operator derives a commercial benefit.

(B) For purposes of this paragraph, the following definitions apply:

(i) “Commercial in nature” means that a primary purpose of the special event is to derive an economic benefit resulting from the holding of the event through admission charges or sales of merchandise that occur as part of the event.

(ii) “Commercial benefit” means any remuneration received in exchange for allowing the property upon which the event occurs to be used for the event, including any remuneration that results from the rental of the property for a term of less than 31 consecutive days.

(e) (1) Notwithstanding any other law, including subdivisions (b), (c), and (d), the violation of a short-term rental ordinance that is an infraction is punishable by the following:

(A) A fine not exceeding one thousand five hundred dollars ($1,500) for a first violation.
(B) A fine not exceeding three thousand dollars ($3,000) for a second violation of the same ordinance within one year.
(C) A fine not exceeding five thousand dollars ($5,000) for each additional violation of the same ordinance within one year of the first violation.

(2) For purposes of this section, “short-term rental” means a residential dwelling, or any portion of a residential dwelling, that is rented to a person or persons for 30 consecutive days or less.

(3) For purposes of this section, “residential dwelling” means a private structure designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals. “Residential dwelling” does not include a commercially operated hotel, motel, bed and breakfast inn, or time-share property as defined by subdivision (aa) of Section 11212 of the Business and Professions Code.

(4) The fine limits set by this subdivision apply only to infractions that pose a threat to public health or safety. The fines described in this subdivision shall not apply to a first time offense of failure to register or pay a business license fee. Nothing in this subdivision limits the authority of a county, or city and county, to establish lower fines for specific violations by ordinance.

(f) A county levying a fine pursuant to paragraphs (2) and (3) of subdivisions (b) and (c), and paragraph (1) of subdivision (e), shall establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by a responsible party that the responsible party has made a bona fide effort to comply after the first violation, and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

SEC. 2. Section 36900 of the Government Code is amended to read:

36900. (a) Violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. The violation of a city ordinance may be prosecuted by city authorities in the name of the people of the State of California, or redressed by civil action.

(b) Every violation determined to be an infraction is punishable by the following:

(1) A fine not exceeding one hundred dollars ($100) for a first violation.

(2) A fine not exceeding two hundred dollars ($200) for a second violation of the same ordinance within one year.
A fine not exceeding five hundred dollars ($500) for each additional violation of the same ordinance within one year.

(c) Notwithstanding any other law, a violation of local building and safety codes determined to be an infraction is punishable by the following:

(1) A fine not exceeding one hundred thirty dollars ($130) for a first violation.

(2) A fine not exceeding seven hundred dollars ($700) for a second violation of the same ordinance within one year.

(3) (A) A fine not exceeding one thousand three hundred dollars ($1,300) for each additional violation of the same ordinance within one year of the first violation.

(B) A fine not exceeding two thousand five hundred dollars ($2,500) for each additional violation of the same ordinance within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

(d) (1) Notwithstanding any other law, including subdivisions (b) and (c), the violation of a short-term rental ordinance that is an infraction is punishable by the following:

(A) A fine not exceeding one thousand five hundred dollars ($1,500) for a first violation.

(B) A fine not exceeding three thousand dollars ($3,000) for a second violation of the same ordinance within one year.

(C) A fine not exceeding five thousand dollars ($5,000) for each additional violation of the same ordinance within one year of the first violation.

(2) For purposes of this section, “short-term rental” means a residential dwelling, or any portion of a residential dwelling, that is rented to a person or persons for 30 consecutive days or less.

(3) For purposes of this section, “residential dwelling” means a private structure that is designed and available, pursuant to applicable law, for use and occupancy by one or more individuals. “Residential dwelling” does not include a commercially operated hotel, motel, bed and breakfast inn, or a time-share property as defined by subdivision (aa) of Section 11212 of the Business and Professions Code.

(4) The fine limits set by this subdivision apply only to infractions that pose a threat to public health or safety. The fines
described in this subdivision shall not apply to a first time offense of failure to register or pay a business license fee. Nothing in this subdivision limits the authority of a city, or city and county, to establish lower fines for specific violations by ordinance.

(e) A city levying a fine pursuant to paragraphs (2) and (3) of subdivisions (b) and (c), and paragraph (1) of subdivision (d), shall establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by the responsible party that the responsible party has made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are: Due to the severe strain on public resources as restrictions related to COVID-19 are lifted statewide, it is necessary that this act take effect immediately.
Item B-10
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City’s location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 389 (Dodd) - Alcoholic beverages: retail off-sale license: retail off-sale delivery: retail on-sale license: off-sale privileges (SB 389) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City’s state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 389 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 389, the Liaisons may recommend the following actions:

1) Oppose SB 389;
2) Support SB 389;
3) Support if amended SB 389;
4) Oppose unless amended SB 389;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 389, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
August 24, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
       Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
       Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange


As Amended on August 16, 2021

Summary
SB 389 codifies the Department of Alcoholic Beverage Control’s (ABC) notice of regulatory relief authorizing a specified licensee with a bona fide public eating place to sell alcoholic beverages for off-sale consumption and specifies how delivery of alcoholic beverages to a consumer away from the licensed premises must occur.

Specifically, this bill:
1. Requires the delivery to be made by a licensee with off-sale retail privileges or the holder of a consumer delivery service permit and by a person at least 21 years old who has completed an ABC-approved responsible beverage service (RBS) training course for delivery personnel.
2. Requires ABC to issue a consumer delivery service permit to a service that pays the required application and annual fee, whose owners and officers have not been convicted of any crimes of moral turpitude.
3. Provides that a licensee is not subject to discipline for selling, delivering or furnishing an alcoholic beverage to an obviously intoxicated person or a minor, if the purchaser affirmed to the licensee that the purchaser is of age and the licensee informs the consumer delivery service that the order contains alcoholic beverages.
4. Allows ABC to impose specified administrative penalties against the holder of a consumer delivery service permit for violations.
5. Allows, until December 31, 2026, an on-sale, beer manufacturer, wine manufacturer or craft distiller licensee operating a bona fide public eating place to sell alcoholic beverages for off-sale consumption under specified conditions. The licensee must notify ABC of intent to sell drinks for off-sale consumption.

Background
After the Governor issued a statewide stay-at home order on March 19, 2020, ABC issued the first of many regulatory relief notices to help restaurants crippled by serving only takeout or delivery meals. The first notice allows licensees with on-sale privileges the right to sell alcoholic beverages for off-sale consumption in manufacturer pre-packaged containers, or if not in manufacturer’s containers, in a container with a fully sealed and secured lid or cap sold in conjunction with a meal. This policy was intended to be temporary, providing immediate relief
during the crisis, and is set to expire at the end of the year. SB 389 continues the policy until December 31, 2026.

**Status of Legislation**
The bill will be heard in Assembly Appropriations Committee on August 26.

**Arguments in Support**
According to the California Downtown Association (CDA), “the COVID-19 pandemic has devastated small businesses — particularly in the hospitality industry — throughout the state at an alarming rate. Since the first stay-at-home order, the hospitality industry has sustained the biggest economic hit, and continues to struggle to regain all that has been lost. Even now with the recently announced reopening plan, restaurants and bars struggle to resume business and many are still months away from being able to reopen. Small businesses are a critical part of the fabric of our state because of their impact on our economy, the services they provide, and the number of workers they employ. Countless locally owned businesses have closed their doors permanently due to the losses they’ve suffered since the pandemic began, and believe it’s critical to avoid any further business losses in the restaurant and bar sector. This bill will provide a critical lifeline for many small businesses as the state fully reopens for business and tourism.”

**Arguments in Opposition**
Alcohol Justice is opposed to the bill because “cocktails-to-go are a bad idea that benefit a licensee’s bottom line while threatening public health and safety. Cocktails-to-go have been wisely prohibited since the link to death and injury from drinking and driving became evident. The alcohol industry, constantly seeking opportunities to relax restrictions, have used the COVID-19 pandemic as an excuse to demand this change. It will always be a bad idea and should never become a permanent privilege.”

**Support**
7-Eleven, Inc.
American Petroleum and Convenience Store Association
California Artisan Distillers Guild
California Craft Brewers Association
California Downtown Association
California Restaurant Association
California Retailers Association
Diageo
Distilled Spirits Council of the United States
Family Winemakers of California
City of San Diego

**Opposition**
Alcohol Justice
Asian American Drug Abuse Program, Inc.
Beach Cities Prevention Community Council
Behavioral Health Services, Inc.
California Alcohol Policy Alliance
California Council on Alcohol Problems (CCAP)
Future Leaders of America
Paso Por Paso, the Language of Recovery
Pueblo Y Salud, Inc.
San Diego County Alcohol Policy Panel
The Women’s Christian Temperance Union of Southern California
Attachment 2
An act to add Sections 23394.6 and 23401.5 to, and to add and repeal Section 23401.5 of, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL’S DIGEST


(1) Existing law, the Alcoholic Beverage Control Act, which is administered by the Department of Alcoholic Beverage Control, regulates the application, issuance, and suspension of alcoholic beverage licenses. Under existing law, a retail package off-sale beer and wine license authorizes the sale, to consumers and not for resale, of beer in containers, and wine in packages, as specified, for consumption off the premises where sold. Existing law prohibits the exercise of off-sale license privileges at a customer-operated checkout stand located on the licensee’s physical premises.

This bill would authorize a licensee with off-sale retail privileges to deliver alcoholic beverages to consumers away from the licensed...
premises if specified requirements are met. The bill would except common carries from the application of its provisions. The bill would require, among other things, that the licensee be authorized to sell alcoholic beverages for off-sale consumption, to determine which alcoholic beverages are available for delivery, and to set the prices for these beverages. The bill would require a licensee to be responsible for accepting or rejecting the delivery order and, prior to acceptance, the purchaser to affirm that both the purchaser and the recipient are not under 21 years of age. The bill would prescribe requirements for consumer delivery services operating in this context and would require the Department of Alcoholic Beverage Control to issue a consumer delivery service permit to a service that satisfies specified requirements.

The bill, in context of the authorization described above, would exempt a licensee from discipline for the sale, delivery, or furnishing of an alcoholic beverage to an obviously intoxicated person, or to a person under 21 years of age, if certain requirements are met. The bill would authorize the Department of Alcoholic Beverage Control to impose administrative penalties, as specified, against the holder of a consumer delivery service permit that violates its provisions.

(2) Existing law authorizes a person holding an on-sale general license, with respect to beer and wine, and any on-sale license, with respect to the particular beverage or beverages mentioned in the license, to exercise the rights and privileges granted by an off-sale beer and wine license.

This bill would, until December 31, 2026, authorize the holder of an on-sale license for a bona fide public eating place, or a licensed beer manufacturer, licensed wine manufacturer, or craft distiller that operates a bona fide public eating place, to exercise additional off-sale rights and privileges, subject to specified requirements. In this regard, the bill would authorize the licensee to sell alcoholic beverages for off-sale consumption for which their license permits on-sale consumption if the beverages are in manufacturer prepackaged containers. Additionally, the bill would authorize a licensee to sell the alcoholic beverages, except beer, for off-sale consumption for which their license permits on-sale consumption when the beverages are not in manufacturer prepackaged containers if specified conditions are met, including, among other things, that the beverages be packaged in a container with a secure lid or cap sealed in a manner designed to prevent consumption without removal of the lid or cap by breaking the seal.
The people of the State of California do enact as follows:

SECTION 1. Section 23394.6 is added to the Business and Professions Code, to read:

23394.6. (a) A licensee with off-sale retail privileges may deliver an alcoholic beverage to a consumer away from the licensed premises only if all of the following requirements are met:

(1) The licensee shall be authorized to sell the alcoholic beverage for off-sale consumption. The licensee shall determine which alcoholic beverages are available for delivery and set the prices for these beverages.

(2) The delivery shall be made by the licensee or the holder of a consumer delivery service permit.

(3) The licensee shall be responsible for accepting or rejecting the delivery order, and the purchaser shall pay the licensee prior to delivery, directly or through a payment processor. Prior to the licensee accepting a delivery order, the purchaser shall affirm that both the purchaser and the recipient of the order are not under 21 years of age.

(4) Any alcoholic beverage to be delivered shall be removed from the licensed premises during the hours in which the licensee is permitted to sell, and the delivery shall be complete no later than 60 minutes after the time the licensee is required to end sales.

(5) The delivery shall be made by a person who is at least 21 years of age. The person to whom the alcoholic beverages are delivered shall be at least 21 years of age.

(6) The delivery shall be made by a person who has completed a responsible beverage service training course for delivery personnel, using materials approved by the department, that covers the following subjects:

(A) The social impact of alcohol.

(B) The impact of alcohol on the body.

(C) State law and regulations relating to alcoholic beverage control.

(D) Intervention techniques to prevent the service or sale of alcoholic beverages to underage persons or intoxicated persons.
If the licensee uses a consumer delivery service, the following shall apply:

(A) The service shall be provided pursuant to a valid, written contract between the licensee and the consumer delivery service that acknowledges the requirements of this section.

(B) The licensee shall disclose to the consumer delivery service if an order to be delivered contains alcoholic beverages.

(b) The department shall issue a consumer delivery service permit to a service that satisfies the following:

(1) The service pays the required application and annual fee.

(2) The owners and officers of the service have not been convicted of any crimes of moral turpitude, as that term is applied to licensees under subdivision (d) of Section 24200.

(c) (1) A licensee is not subject to discipline for the sale, delivery, or furnishing of an alcoholic beverage to an obviously intoxicated person, if the delivery of the alcoholic beverage is made by the holder of a consumer delivery service permit acting for the licensee and the licensee did not have notice that the person was obviously intoxicated on or before the time that the consumer delivery service picked up the order.

(2) A licensee is not subject to discipline for the sale, delivery, or furnishing of an alcoholic beverage pursuant to the authorization granted by this section to a person under 21 years of age if both of the following conditions are met:

(A) Prior to the licensee accepting the order, the purchaser affirms that both the purchaser and the recipient are not under 21 years of age.

(B) The licensee identifies to the consumer delivery service that the order to be delivered contains alcoholic beverages.

(d) (1) The department may impose the following administrative penalties against the holder of a consumer delivery service permit who violates any provision of this section:

(A) A fine of up to $500 one thousand dollars ($1,000) for a first violation.

(B) A fine of up to $1,000 one thousand five hundred dollars ($1,500) for a second violation within 12 months of a previous violation.
(C) A fine of up to $2,500 (two thousand five hundred dollars ($2,500)) for a third or subsequent violation within 12 months of a previous violation, or for any subsequent violation thereafter.

(2) This subdivision shall not be construed to limit the department’s authority and discretion to suspend or revoke a consumer delivery service permit when the circumstances warrant such discipline.

(3) Any fines collected by the department pursuant to this subdivision shall be treated in the same manner as payments in compromise pursuant to Section 23096.

(e) This section does not apply to the delivery of alcoholic beverages by common carrier.

SEC. 2. Section 23401.5 is added to the Business and Professions Code, to read:

23401.5. (a) Notwithstanding any other law to the contrary, the holder of a retail on-sale license for a bona fide public eating place, or a licensed beer manufacturer, licensed wine manufacturer, or craft distiller that operates a bona fide public eating place, may exercise the following rights and privileges subject to the requirements of this section:

(1) The licensee may sell the alcoholic beverages for off-sale consumption for which their license permits on-sale consumption provided the beverages are in manufacturer prepackaged containers.

(2) In addition to the privilege provided by subdivision (a), paragraph (1), the licensee may sell the alcoholic beverages, except beer, for off-sale consumption for which their license permits on-sale consumption when the beverages are not in manufacturer prepackaged containers if the following conditions are met:

(A) The alcoholic beverages are packaged in a container with a secure lid or cap sealed in a manner designed to prevent consumption without removal of the lid or cap by breaking the seal.

(B) Wine is sold only in single-serve containers.
(C) Mixed drinks and cocktails sold for off-sale consumption pursuant to the authorization granted by this section shall not exceed four and one-half ounces of distilled spirits.

(D) Mixed drinks and cocktails that are ordered for off-sale consumption shall be sold in conjunction with a bona fide meal, and shall be limited to two such drinks per bona fide meal ordered.

(E) The container is clearly and conspicuously labeled or otherwise identified as containing an alcoholic beverage.

(F) (i) The following warning sign is posted in a manner that notifies consumers of restrictions regarding open container laws:

“Alcoholic beverages that are packaged by this establishment are open containers and shall not be transported in a motor vehicle except in the vehicle’s trunk or, if there is no trunk, the containers shall be kept in some other area of the vehicle that is not normally occupied by the driver or passengers. This does not include a utility compartment or glove compartment (See Vehicle Code Section 23225). Additionally, these beverages shall not be consumed in public or in any other area where open containers are prohibited by law.”

(ii) For purposes of this paragraph, subparagraph, “post” means to prominently display on the premises, post online, or present in whatever manner is necessary to ensure that the consumer purchasing, or delivery person transporting, the beverages to which this section applies is given notice of this warning.

(3) Nothing in this section shall require a licensee to sell alcoholic beverages for off-sale consumption whether or not the alcoholic beverage is in a manufacturer-sealed prepackaged container or otherwise.

(b) Prior to exercising the privileges authorized in subdivision (a), the licensee shall notify the department in writing of its intent to do so.
(c) This section shall be operative until December 31, 2026, and as of that date is repealed.
Item B-11
The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 792 (Glazer) - Sales and use tax: returns: online transactions: local jurisdiction schedule (SB 792) involves a policy matter that is not specifically addressed within the adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwi Schmelzer & Lange, provided a summary memo for SB 792 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 792, the Liaisons may recommend the following actions:

1) Oppose SB 792;
2) Support SB 792;
3) Support if amended SB 792;
4) Oppose unless amended SB 792;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend the City take a position on SB 792, then staff will place the item on a future City Council Agenda for concurrence.
Attachment 1
August 19, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 792 (Glazer) Sales and use tax: returns: online transactions: local jurisdiction schedule

As Amended on July 8, 2021

Introduction and Background
Local tax allocation is based on whether the transaction is subject to sales tax or use tax. The transaction is subject to sales tax if the retailer’s place of business in California participates in the sale and title to the goods passes to the customer in California. Unless both of these conditions are met, the use tax applies.

The local sales tax is allocated to the place of sale. If a retailer has only one place of business in California, all California retail sales in which that place of business participates occur at that place of business. If a retailer has more than one place of business in California participating in the sale, the place of sale is where the principal negotiations occur. If an out-of-state retailer does not have a permanent place of business in California other than an inventory of TPP, the place of sale is the city, county, or city and county from which delivery or shipment is made.

These sourcing rules have given many retailers a powerful negotiating tool vis-à-vis local governments. For example, a large online retailer without a place of business in California may decide to open a distribution center in California to facilitate same-day or expedited deliveries. Before deciding where to open this distribution center, which will serve as the retailer’s “place of sale” for Bradley-Burns purposes, the retailer can negotiate with an array of cities to see which is willing to rebate the most significant percentage any new Bradley-Burns revenues back to the retailer. Many cities have reportedly offered large corporations over one-half of their new revenues in such negotiations in the hopes of bringing jobs and economic development to their regions. Retailers are the obvious beneficiaries of such arrangements. However, it is less clear whether cities similarly benefit given the nature of the jobs created and the revenues siphoned from essential public services. However, the biggest losers are the many local agencies throughout California that previously received Bradley-Burns use taxes from the retailer’s sales based on where the products were shipped.

SB 792 (Glazer) would require any “qualified retailer” to include with each tax return filed pursuant to Revenue and Taxation Code Section 6452 a schedule, in a form prescribed by the California Department of Tax and Fee Administration (CDTFA), that reports for each “local jurisdiction” the gross receipts from the “qualified sale” of tangible personal property (TPP) shipped or delivered to a purchaser in that jurisdiction.
Specifically, this bill would:

1) Apply to reporting periods beginning on or after January 1, 2022.

2) Define a “qualified retailer” as a retailer that had “qualified sales” of TPP “transacted online” that exceeded $50 million in the preceding calendar year.

3) Define “local jurisdiction” as the city or city and county in which the shipment or delivery address of the purchaser is located. Suppose the purchaser’s shipment or delivery address is not located within a city or city and county. In that case, “local jurisdiction” means the county in which the shipment or delivery address of the purchaser is located.

4) Define a “qualified sale” as a retail sale of TPP “transacted online,” the gross receipts from which are subject to both the sales tax and a local sales tax imposed in accordance with the Bradley-Burns Uniform Local Sales and Use Tax (SUT) Law.

5) Provide that a qualified sale is “transacted online” if all of the following conditions are met:
   a) The qualified retailer processed the purchaser’s order and payment for the qualified sale of TPP on an internet website or web-based application;
   b) The qualified retailer did not process the purchaser’s order and payment for the qualified sale of TPP at the qualified retailer’s physical location that is open to the public; and,
   c) The qualified retailer shipped or delivered the TPP to an address provided by the purchaser, other than a location of the qualified retailer, pursuant to a contract of sale.

6) Specify that a “qualified retailer” who fails or refuses to timely furnish a schedule required to be filed pursuant to this bill shall pay a penalty of $5,000.

7) Specify that, except for the above penalty, a violation of this bill shall not subject a person to any civil or criminal penalties pursuant to the SUT Law.

**Status of Legislation**
This bill is currently pending on the Assembly Floor.

**Arguments in Support**
The League of California Cities states that “This measure aims to better inform the public’s understanding of online transactions and the flow [of] goods across the state. The new reporting requirement will support the study of the impact of booming online sales on sales tax allocations across the state. Today, any analysis of online sales taxes is constrained to modeling with transaction and use tax (district tax) data from about half of California’s 482 cities.”

**Arguments in Opposition**
The City of Cupertino states that “We understand that the growing dependence on online and remote transactions introduces a unique change to existing local tax structures and tax revenue opportunities. However, we believe that any attempt to remove local discretion as it pertains to tax incentives threatens the vitality of communities like ours that have worked to craft these contracts as fair considerations balanced between community sacrifices and economic incentives.”
Support
City of Camarillo
City of Moorpark
City of Rancho Cucamonga
City of Thousand Oaks
City of Ventura
League of California Cities
Rural County Representatives of California
SEIU California
Town of Apple Valley
Tri-Valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and the Town of Danville

Opposition
California Retailers Association
California Taxpayers Association
City of Cupertino
City of Fresno
City of Perris
Attachment 2
An act to add Section 6452.5 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 792, as amended, Glazer. Sales and use tax: returns: online transactions: local jurisdiction schedule.

The Sales and Use Tax Law, administered and enforced by the California Department of Tax and Fee Administration, imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. Existing law authorizes the department to require the filing of reports by any person or class of persons with information relating to sales of tangible personal property, the storage, use, or other consumption of which is subject to the use tax, as specified. Existing law requires a retailer or purchaser subject to the sales and use tax to file, on or before the last day of the month following each quarterly period, a return for the preceding quarterly period.

This bill, for reporting periods beginning on or after January 1, 2022, would require a qualified retailer, defined as a retailer whose

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annual qualified sales of tangible personal property transacted online exceeded $1,000,000 to $50,000,000 for the previous calendar year. To include with each tax return a schedule that reports for each local jurisdiction the gross receipts from the qualified sale of tangible personal property shipped or delivered to a purchaser in that jurisdiction. The bill would subject a qualified retailer who fails or refuses to timely furnish that schedule to a penalty of $5,000. The bill would define terms for its purposes.


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

SECTION 1. Section 6452.5 is added to the Revenue and Taxation Code, to read:

6452.5. (a) For purposes of this section, the following definitions shall apply:

(1) “Local jurisdiction” means the city or city and county in which the shipment or delivery address of the purchaser is located. If the purchaser’s shipment or delivery address is not located within a city or city and county, then “local jurisdiction” means the county in which the shipment or delivery address of the purchaser is located.

(2) “Qualified retailer” means a retailer that had qualified sales of tangible personal property transacted online that exceeded one fifty million dollars ($1,000,000) ($50,000,000) in the preceding calendar year.

(3) “Qualified sale” means a retail sale of tangible personal property transacted online, the gross receipts from which are subject to both the sales tax imposed pursuant to Chapter 2 (commencing with Section 6051) and a local sales tax imposed in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)).

(b) For reporting periods beginning on or after January 1, 2022, a qualified retailer shall include with each tax return required to be filed pursuant to Section 6452 a schedule, in a form prescribed by the department, that reports for each local jurisdiction the gross receipts from the qualified sale of tangible personal property shipped or delivered to a purchaser in that jurisdiction.
A qualified sale is “transacted online” if all of the following conditions are met:

(1) The qualified retailer processed the purchaser’s order and payment for the qualified sale of tangible personal property on an internet website or web-based application.

(2) The qualified retailer did not process the purchaser’s order and payment for the qualified sale of tangible personal property at the qualified retailer’s physical location that is open to the public.

(3) The qualified retailer shipped or delivered the tangible personal property to an address provided by the purchaser, other than a location of the qualified retailer, pursuant to a contract of sale.

(d) A qualified retailer who fails or refuses to timely furnish a schedule required to be filed pursuant to subdivision (b) shall pay a penalty of five thousand dollars ($5,000).

(e) Except as provided in subdivision (d), a violation of this section shall not subject a person to any civil or criminal penalties pursuant to this part.

REVISIONS:
Heading—Line 4.
Item B-12
Verbal updates on legislative issues will be presented by the City’s state and federal lobbyists.
Item B-13
CITY OF BEVERLY HILLS
POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee
FROM: Cynthia Owens, Policy and Management Analyst
DATE: August 30, 2021
SUBJECT: Future Agenda Items Discussion
ATTACHMENTS: None

The Legislative/Lobby Liaison Committee may request items related to the purview of the Committee be placed on the next agenda.