

Agenda Report Reviewed by:
City Manager: 

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM REPORT

Meeting Date: September 21, 2021
To: Honorable Mayor and City Councilmembers
From: City Administration
Subject: Discussion and Consideration of City Council Position on Resolution(s) for the League of California Cities Conference and Expo being held Wednesday, September 22 through Friday, September 24, 2021
Recommendation: Council Direction
Funding: Currently Budgeted: _____ Yes _____ No XX N/A
Net General Fund Cost:
Amount: \$ _____

Account Code/Costs authorized in City Approved Budget (if applicable) AK (verified by Administrative Services Department)
City Council Conferences

Purpose/Introduction:

This item requests City Council provide direction to voting delegate or alternate(s) in delegate’s absence regarding City’s position on Resolution Packet for the League of California Cities Conference and Expo being held Wednesday, September 22 through Friday, September 24, 2021.

Background

The League of California Cities (Cal Cities) 2021 Annual Conference is scheduled for Wednesday, September 22 through Friday, September 24, 2021 at the SAFE Credit Union Convention Center in Sacramento, California. The Annual Conference presents an opportunity for city officials to attend informative sessions, learn about the challenges that California’s cities face, collaborate on solutions, and celebrate the accomplishments of Cal Cities and member jurisdictions. The Annual Business Meeting occurs during the General Assembly on the last day of the conference, where member cities take action on conference resolutions – each member city has one Voting Delegate for this process.

On August 3, 2021, the City Council appointed Mayor Glass as the City’s primary voting delegate to represent the City at the League’s Annual Business meeting and Councilmember Slayter as the alternate. The League’s bylaws stipulate that each city is entitled to one vote on matters affecting League policy. The League encourages each City Council to consider the proposed resolution(s) and to determine a City position by providing voting direction to their appointed voting delegate in advance of the Annual Business Meeting.

Discussion:

To assist Council in providing direction regarding the City’s position on League business matters, the League’s proposed resolution(s) packet is attached for consideration. The resolutions packet can also be viewed on the Cal Cities web site: www.cacities.org/resolutions.

Resolutions serve as policy guidance for Cal Cities and are meant to improve the quality, responsiveness, and vitality of local government in California. This year, two resolutions have been submitted for consideration along with background materials, supporting letters, and analyses.

The First Resolution is a 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.

The proposed resolution was also referred to the Cal Cities Revenue and Taxation Policy Committee.

Per the sponsoring City, the City of Rancho Cucamonga, the impetus behind the Resolution is the concentration of sales tax revenue from in-state online sales in cities with fulfillment centers, which deprives neighboring jurisdictions of much needed revenue and subjects them to the impacts of these warehouses (increased traffic, air pollution, damaged roads, etc.) without the accompanying funds to address these concerns. Furthermore, the sponsoring city argues that some municipalities are "built out" without the commercial space or option to host a fulfillment center and are therefore immediately at a disadvantage to benefit from tax proceeds of in-state online sales.

The resolution is currently supported by the 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, and City of Sacramento.

It is difficult to determine the financial impacts on Sebastopol as it will depend on what is ultimately negotiated and what 'fair and equitable' translates to in terms of the policy ultimately passed by the Legislature. However, when our sales tax consultant looked at this issue several years back, based on demographics etc., they estimated that Sebastopol likely would see an increase in revenues with a change to point of destination (such as proposed by the resolution) from the existing county pool system.

League of California Cities Staff Analysis:

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. (See Appendix B of Attachment).

The Second Resolution is a Resolution that calls 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 addressing illegal dumping, graffiti and homeless encampments that degrade the quality of life and result in increased public safety concerns for communities and neighborhoods that abut the railroad right-of-way.

Per the sponsoring agency, the City of South Gate, the impetus behind the resolution is the lack of regulatory authority that local governments possess to conduct abatements along the railroad right-of-way, which classifies as private property, as well as the lack of oversight to require railroad operators to conduct maintenance and cleanups on a regular basis or in a timely manner.

The resolution is currently supported by the Cities of Bell Gardens, Bell, Commerce, Cudahy, El Segundo, Glendora, Huntington Park, La Mirada, Long Beach, Lynwood, Montebello, Paramount, and Pico Rivera.

League of California Cities Staff Analysis:

Upon review of the Resolution, Cal Cities staff recommends technical amendments to provide greater clarity. (See Appendix A of Attachment).

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.

On August 17, 2021, the League of California Cities (Cal Cities) Board of Directors (Board) voted to present proposed bylaws amendments to the General Assembly at the 2021 Cal Cities' Annual Conference. During a special board meeting on August 17, the LOCC Board of Directors approved proposed bylaws amendments to enhance Cal Cities' governance and effectuate technical changes. The proposed bylaws amendments will also go before the General Assembly for a vote at the Annual Business meeting on September 24. At least two-thirds of the General Assembly must vote in favor of the proposed bylaws amendments in order for them to take effect. It is recommended the City consider the proposed bylaws and provide direction to our voting delegates.

The Council may recommend that the Council's Voting Delegate support, oppose or take no position on the resolutions.

PUBLIC COMMENT:

As of the writing of this staff report, the City has not received any public comment. However, staff anticipates receiving public comment from interested parties following the publication and distribution of this staff report. Such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment portion of the agenda item.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to scheduled meeting date.

FISCAL IMPACT:

There is no fiscal impact to this item tonight as attendance at this conference is approved and allocated in the current fiscal year's budget.

RECOMMENDATION:

That the City Council Discuss and Consider direction to the voting delegate or alternate(s) for voting at the annual League of CA Cities Conference.

Attachment

2021 Annual Business Meeting Resolution Packet

2021 Special Board Meeting Packet



*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.

| Number | Key Word Index | Reviewing Body Action | | |
|--------|----------------|-----------------------|---|---|
| | | 1 | 2 | 3 |
| | | | | |

1 - Policy Committee Recommendation to General Resolutions Committee
 2 - General Resolutions Committee
 3 - General Assembly

HOUSING, COMMUNITY & ECONOMIC DEVELOPMENT POLICY COMMITTEE

| | | 1 | 2 | 3 |
|---|--|---|---|---|
| 2 | Securing Railroad Property Maintenance | | | |

REVENUE & TAXATION POLICY COMMITTEE

| | | 1 | 2 | 3 |
|---|-------------------------|---|---|---|
| 1 | Online Sales Tax Equity | | | |

TRANSPORTATION, COMMUNICATION & PUBLIC WORKS POLICY COMMITTEE

| | | 1 | 2 | 3 |
|---|--|---|---|---|
| 2 | Securing Railroad Property Maintenance | | | |

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

ACTION FOOTNOTES

- * Subject matter covered in another resolution
- ** Existing League policy
- *** Local authority presently exists

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 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 Information to Resolution

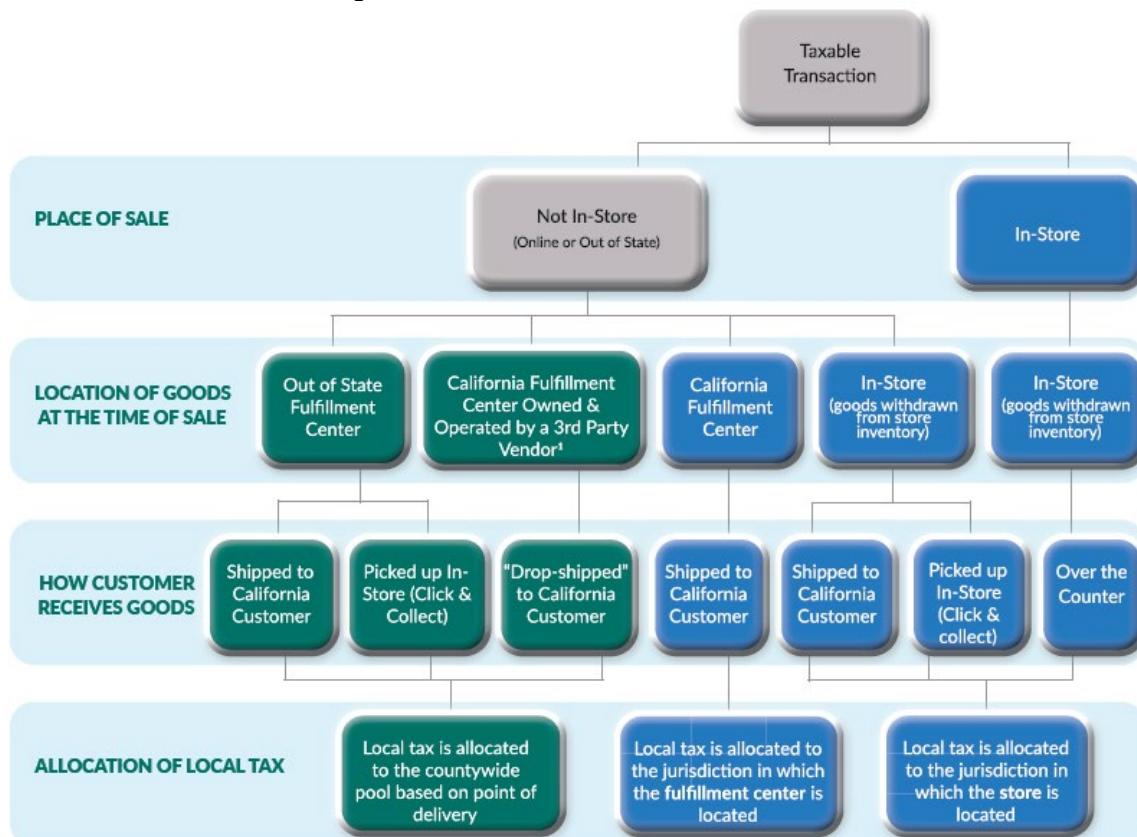
Source: City of Rancho Cucamonga

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:



¹ In this scenario the retailer does not own a stock of goods in California and sales orders are negotiated/processed out of state. An out of state company is not required to hold a seller's permit for an in-state third party warehouse if they do not own a stock of goods at the time of sale.

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 benefiting 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.

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:

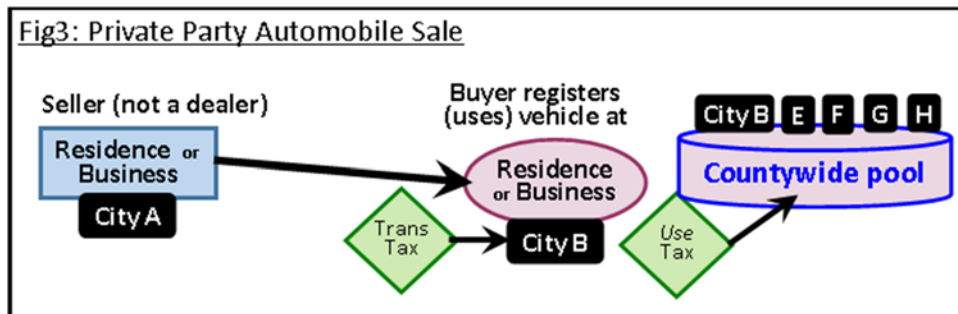
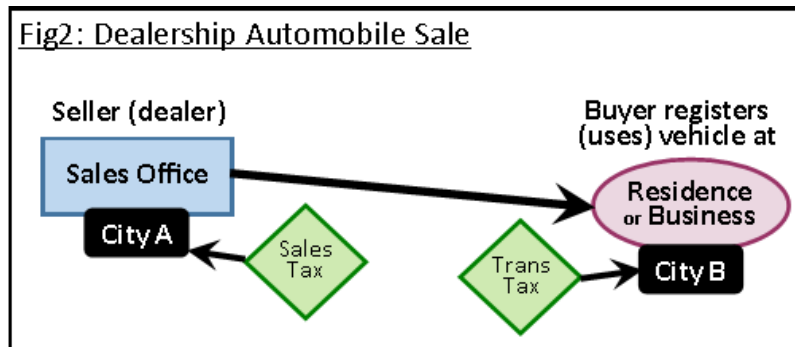
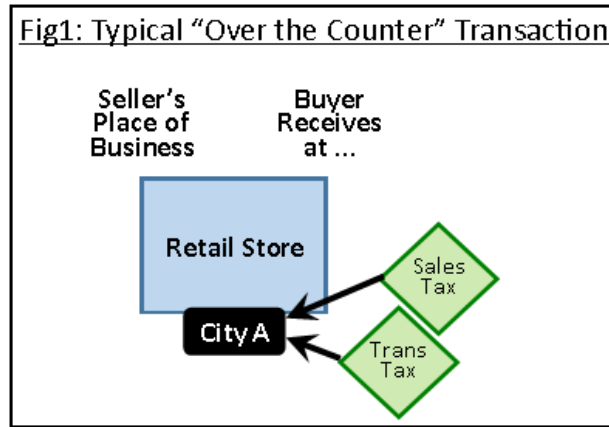
- Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.
- Support as Cal Cities policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the 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.

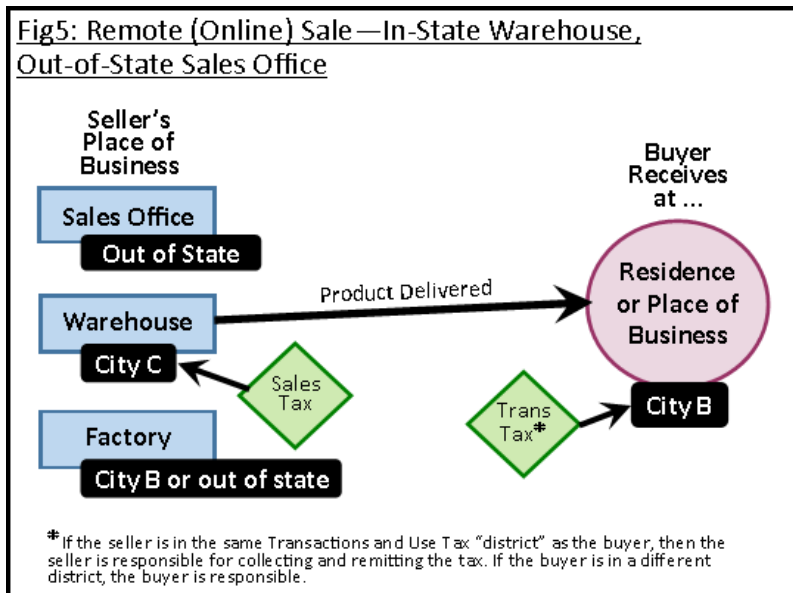
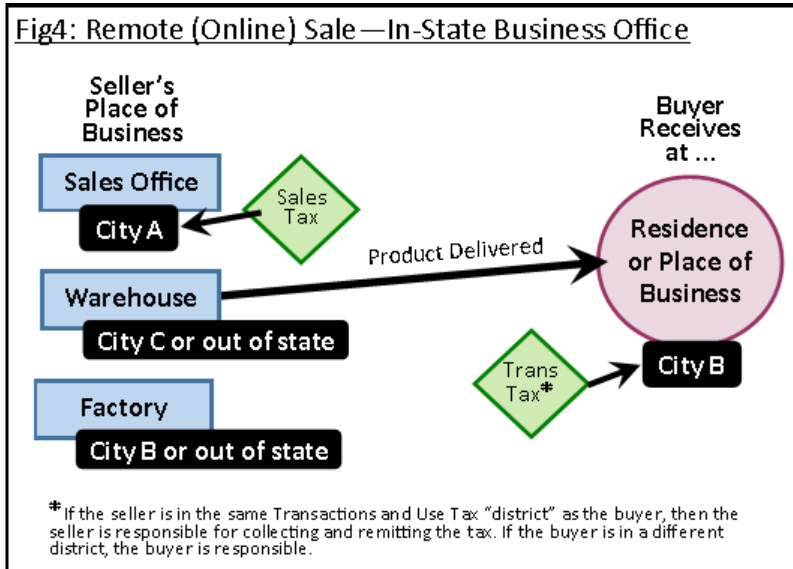
Support:

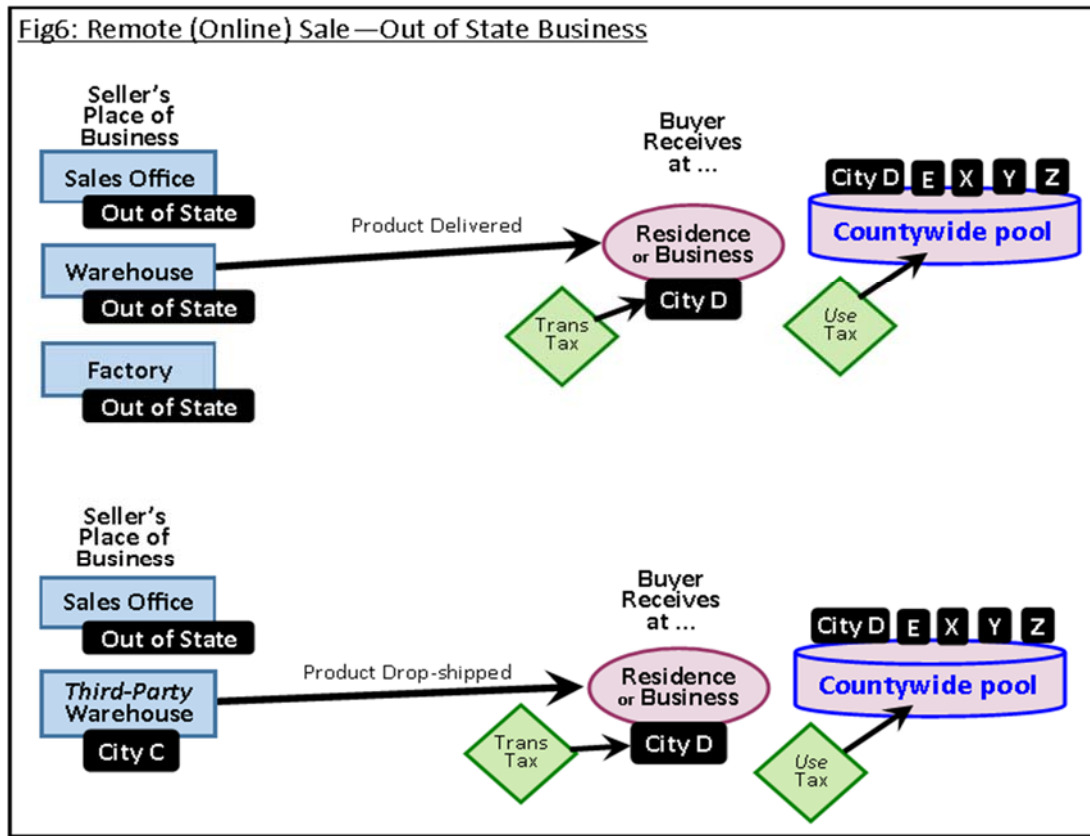
The following letters of concurrence were received:

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







| GUIDELINES FOR ALLOCATION OF LOCAL TAX - ONLINE AND IN-STORE | | | |
|--|--|--------------------------------------|---|
| Place of Sale | Location of Goods at the Time of Sale | How Customer Receives Goods | Allocation of Tax |
| Online – Order is placed or downloaded outside California | California Fulfillment Center | Shipped to California Customer | Local tax is allocated to the jurisdiction in which the fulfillment center is located |
| Online – Order is placed or downloaded in California | California Fulfillment Center | Shipped to California Customer | Per CDTFA Regulation 1802, local tax is allocated to the jurisdiction where the order is placed |
| Online | Out of State Fulfillment Center | Shipped to California Customer | Local tax is allocated to the countywide pool based on point of delivery |
| Online | Out of State Fulfillment Center | Picked Up In-Store (Click & Collect) | Local tax is allocated to the countywide pool based on point of delivery |
| Online | California Fulfillment Center Owned and Operated by Third Party Vendor | Drop-Shipped to California Customer | Local tax is allocated to the countywide pool based on point of delivery |
| Online | In-Store (Goods withdrawn from store inventory) | Shipped to California Customer | Local Tax is allocated to the jurisdiction where the store is located |
| Online | In-Store (Goods withdrawn from store inventory) | Picked Up In-Store (Click & Collect) | Local Tax is allocated to the jurisdiction where the store is located |
| In-Store | In-Store (Goods withdrawn from store inventory) | Over the Counter | Local Tax is allocated to the jurisdiction where the store is located |

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.

The Source of Origin Based Sourcing Problems

Where other than over-the-counter sales are concerned origin sourcing often causes a concentration of large amounts of tax revenue in one location, despite the fact that the economic activity and service impacts are also occurring in other locations.

The large amounts of revenue concentrated in a few locations by California’s “warehouse rule” origin sourcing causes a concentration of revenue far in excess of the service costs associated with the development.

In order to lure jobs and tax revenues to their communities, some cities have entered into rebate agreements with corporations. This has grown to such a problem, that 20% to 30% of total local taxes paid statewide are being rebated back to corporations rather than funding public services.

Moving to Destination Sourcing: The Concept⁷

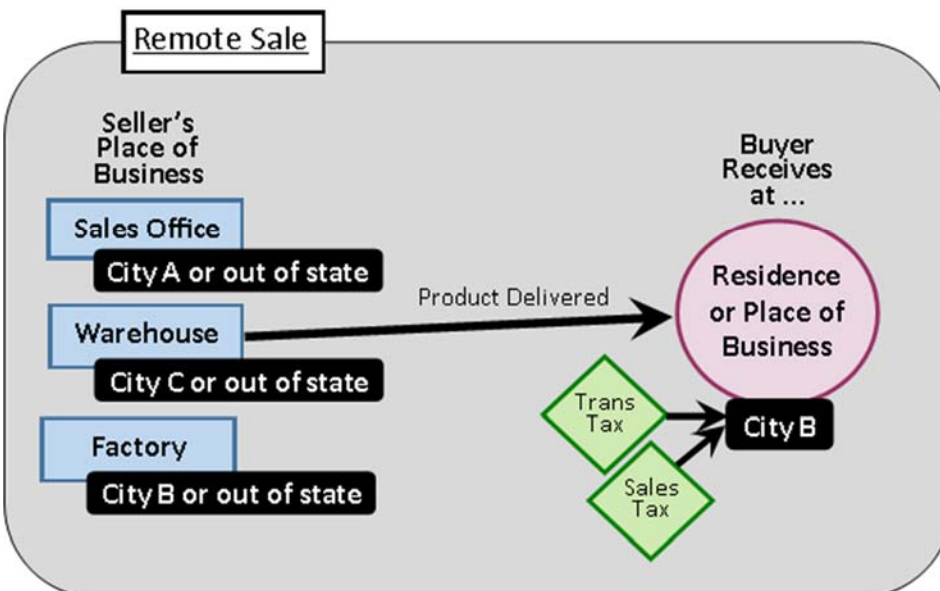
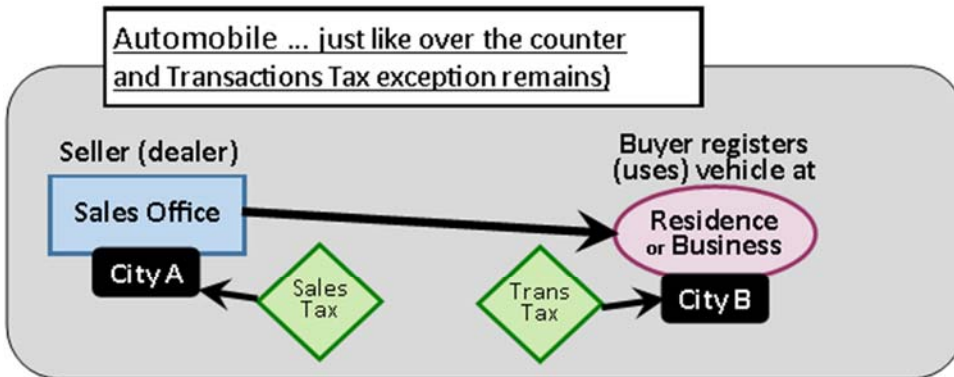
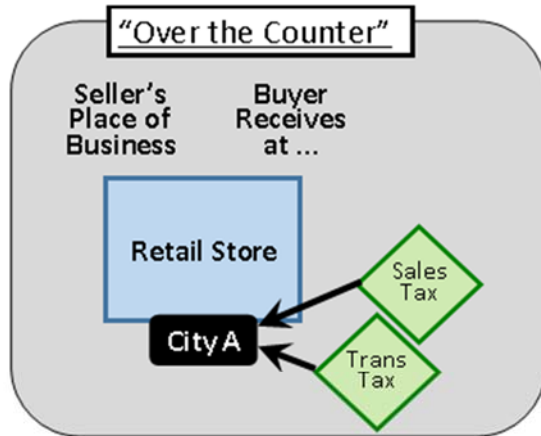
A change from origin sourcing rules to destination sourcing rules for the local tax component of California’s sales tax would improve overall revenue collections and distribute these revenues more equitably among all of the areas involved in these transactions.

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.

⁶ See Jennifer Carr, “Origin Sourcing and Tax Incentive Programs: An Unholy Alliance” Sales Tax Notes; May 27, 2013.

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.

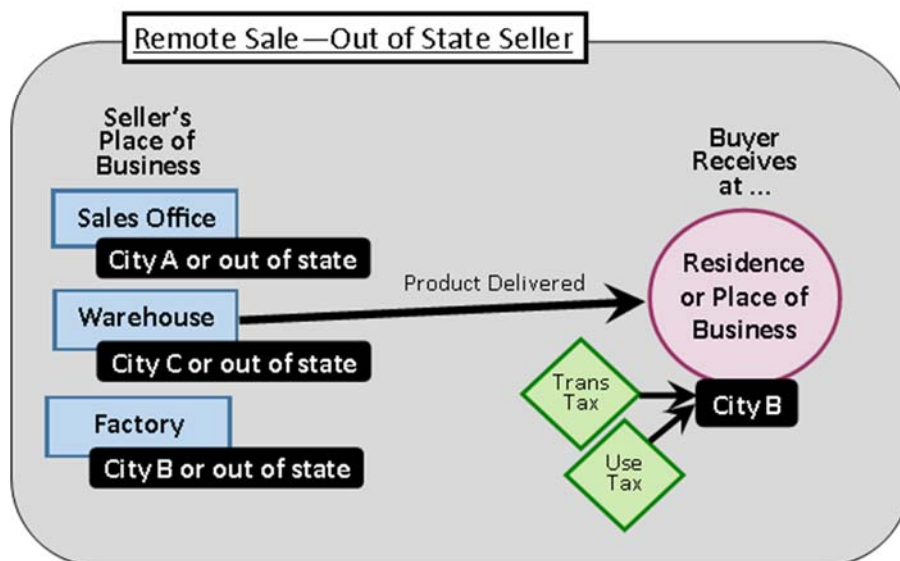
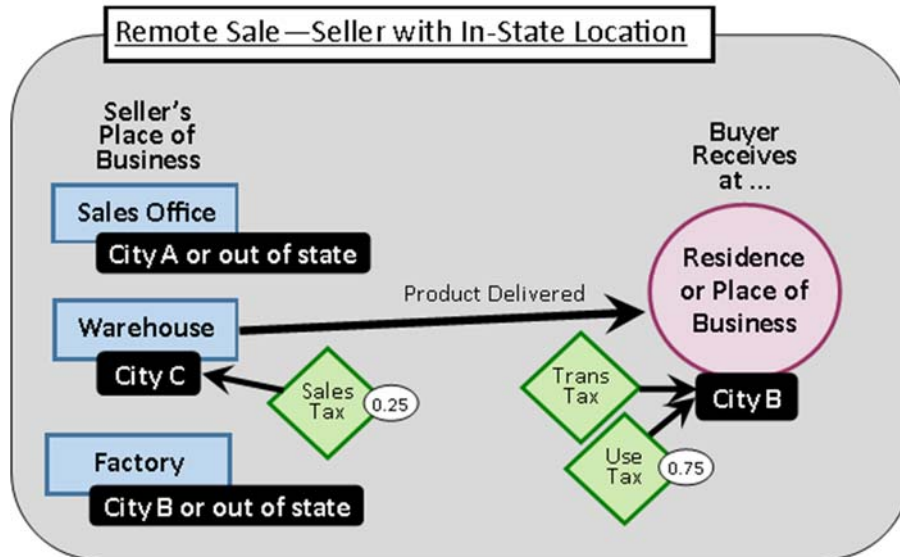
Destination Sourcing Scenario 1: Full-On



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.



mjgc

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 that centers now receive no Bradley Burns revenue ~~from the center's sales activity~~ despite also experiencing the impacts created by them 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 ADJACENT TO 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.



Agenda Item Number 9



*Agenda Item Number 9
City Council Meeting Packet of September 21, 2021
Page 34 of 97*

LETTERS OF CONCURRENCE
Resolution No. 2

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

[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

ATTACHMENT A

2. A RESOLUTION CALLING UPON THE GOVERNOR AND THE LEGISLATURE TO PROVIDE ~~NECCESARY~~ **NECESSARY** FUNDING FOR ~~CUPC~~ **THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)** TO FUFILL ITS OBLIGATION TO INSPECT RAILROAD LINES TO ENSURE THAT OPERATORS ARE REMOVING ILLEGAL DUMPING, GRAFFITI AND HOMELESS ENCAMPMENTS THAT DEGRADE THE ~~QAULTY~~ **QUALITY** OF LIFE AND RESULTS IN INCREASED PUBLIC ~~SAFETLY~~ **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

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.



CITY OF EASTVALE

12363 Limonite Avenue | Suite 910 | Eastvale, CA 91752
951.361.0900

September 3, 2021

Subject: Don't Punt Local Sales Tax Allocation to Legislature

Dear City Manager:

We need your help to protect cities' local control over sales tax distribution – and possibly all types of tax distribution. A flawed resolution has been proposed at the *Cal Cities Annual Conference* in September that is billed as an attempt to bring equity to sales tax distribution, but it opens the door to Legislative meddling on this sensitive issue without the League first having an actual plan that has been vetted with its membership.

Please join our effort to *oppose the resolution unless it is amended to include the adoption of critical amendments to the Cal Cities' Online Sales Tax Equity Resolution* to ensure the League and its City Manager Department leads on this issue by first developing and vetting actual proposals within the membership.

The proposed resolution aims at cities that host Amazon fulfillment centers and asks the Legislature to devise a "fair and equitable reallocation plan." In theory, this may sound appealing to some, but after dealing with ERAF, Redevelopment elimination, VLF elimination, the Triple-Flip, and piles of unreasonable housing mandates, all cities should be concerned with the League asking the Legislature to engage in reallocating local revenues without having an actual plan based on data to allow an informed decision.

My city, and 16 others, have these large Amazon facilities that serve as regional distribution hubs. Many of these communities are located in inland areas, close to freeway networks, and lack economic advantages and opportunities that other cities have to generate revenue for police, fire, and other city services. We also bear major infrastructure and environmental burdens that other cities don't have to worry about. Still, Amazon is continuing to expand its network and has plans to build many smaller delivery hubs at the local level, which will allow more communities to also benefit.

In addition, most of the sales tax revenue from Amazon is still going to County pools and only a percentage is going to the host cities. This past year the success of the County pools went up significantly and benefitted many cities. The structural corporation change of Amazon is aligning them with other online fulfillment centers like eBay, Wayfair, Walmart, Target, and Costco to name a few. Dozens of cities have these online fulfillment centers as sales tax revenue generators.

Concerns about expanded internet purchases and sales tax allocation are not unique to Amazon facilities. The League has been discussing this evolving issue for nearly a decade and has adopted policies that include sales tax allocation that says: ***"Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood."***

The League's City Manager's Department also had a working group on sales tax allocation that last met in 2018. That group made numerous recommendations, but after considering various phase-in options for



CITY OF EASTVALE

12363 Limonite Avenue | Suite 910 | Eastvale, CA 91752
951.361.0900

destination sourcing and allocation of sales taxes from online purchases, the group decided that a more complete analysis was needed to sufficiently determine impacts, and should be revisited when better data was available.

It is time for the League to reconvene this group. We are certainly not opposed to a discussion on sales tax allocation; however, this massively complex issue needs to be looked at holistically – not just Amazon fulfillment warehouses. Our cities are all unique. Some cities are close to beaches, mountains or lakes, or parks that generate tourism sales tax revenue and transient occupancy tax.

Other cities have major brick-and-mortar destination retail-like Bass Pro Shop or auto malls that generate sales tax revenue for which other cities can't benefit from because not every city was in existence during the era of the regional auto mall land use development concept.

And equally as important, this critical policy area affecting city revenue needs to be driven first by an effort to secure internal consensus within the League instead of being turned over to the state to decide our fate.

The Legislature always looks out for their interests and has a track record of treating cities unfairly. If cities are not on the same page with a plan or are not at the table, then our budgets and revenues will be on a chopping block for special interests. ***If the Legislature is given free rein, likely, even the proponents of this resolution won't be satisfied with what develops.***

Let's work together to ***retain local control*** and come together to develop a ***comprehensive solution to this issue*** instead of asking the state to intervene when we are internally disorganized with no plan to address this complex issue.

There is a saying, 'What is popular and easy, is not always right. And what is right, is not always popular and easy.' The difference requires leadership. As City Manager's we provide leadership and expertise at the local level and this resolution as it is currently written is ***'punting' local expertise and experience to the state legislature.***

We encourage all of us to roll up our sleeves and utilize data to inform our decisions.

Thank you for your time and support. Please contact me directly if you would like to be part of our coalition.

Sincerely,

Bryan Jones
City Manager
City of Eastvale
(510) 789-5823
bjones@eastvaleca.gov

Attachment: Proposed Amended Resolution

Proposed Amendment to Resolution #1
All Proposed Amends are highlighted in Yellow.

Note: This document is taken directly from the League's resolution packet. The changes in the text below in red and blue are technical clarifications recommended in the Packet by League staff.

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 Eastvale

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 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 that** centers now receive no **Bradley Burns** revenue **from the center's sales activity** despite also experiencing the impacts created by the **m** 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

WHEREAS, the League of California Cities existing policy requires that specific proposals that would involve a change to sales tax allocation to destination allocation be carefully reviewed within the League's policy process so that the impacts of any changes are fully understood; and

WHEREAS, the League's City Manager Sales Tax Working Group, which met in 2017-18, made numerous recommendations, but after considering various phase-in options for destination sourcing and allocation of sales taxes from online purchases ultimately decided that a more complete analysis was needed to sufficiently determine impacts, and should be revisited when better data was available.

NOW, THEREFORE, BE IT RESOLVED that Cal Cities *believes that to avoid potential unworkable outcomes it is incumbent upon the organization to develop its own internal consensus solutions to this emerging issue of importance to all cities before seeking Legislative involvement; and therefore,* calls upon the *State Legislature to pass legislation League's City Manager's Department to reconvene its Sales Tax Working Group, with balanced and equitable representation from affected communities, to develop one or more proposals for consideration by the League's Revenue and Taxation Policy Committee and Board of Directors* 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 *warehouse and* 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 such facilities* within their jurisdiction.



LEAGUE OF
CALIFORNIA
CITIES

PROPOSED BYLAWS AMENDMENTS

***2021 Annual Conference
Sacramento, CA***

***General Assembly
September 24, 2021***

**2020-2021
CAL CITIES OFFICERS**

President

Cheryl Viegas Walker
Mayor,
El Centro

First Vice President

Cindy Silva
Council Member,
Walnut Creek

Second Vice President

Ali Taj
Council Member,
Artesia

Immediate Past President

John F. Dunbar
Mayor,
Yountville

**Executive Director
and CEO**

Carolyn M. Coleman

To: Cal Cities General Assembly
From: Cheryl Viegas Walker, President
Carolyn Coleman, Executive Director
Date: September 2021
Re: Proposed Cal Cities Bylaws Amendments

On August 17, 2021, the League of California Cities (Cal Cities) Board of Directors (Board) voted to present proposed bylaws amendments to the General Assembly at the 2021 Cal Cities' Annual Conference. This document describes the background of the proposed amendments, summarizes the proposed amendments, and explains the procedure for adopting amendments to the bylaws.

Background

Beginning in 2017, the Board directed Cal Cities to undertake a strategic planning process that resulted in the adoption of the "Powering Up for California Cities Strategic Growth Plan 2018-2021" (Strategic Growth Plan). The Strategic Growth Plan set forth goals to enhance Cal Cities' governance to: (a) achieve even higher levels of engagement and effectiveness; (b) ensure optimal engagement by members and their effectiveness in supporting fulfillment of Cal Cities' mission; and (c) ensure the pathway to leadership is transparent and inclusive.

In furtherance of its governance goals, the Board engaged an association governance consultant (Consultant) to evaluate the Cal Cities governance system and make recommendations for enhancing Cal Cities' governance. The Consultant gathered and considered input from more than 350 Cal Cities members through advisory groups, roundtable discussions, interviews, and surveys. On July 8, 2021, the Consultant produced a report (Governance Report) detailing 49 recommendations to the Board to deepen the engagement of Cal Cities' Member Cities and ensure Cal Cities' governance is operating at peak performance.

The Governance Report included findings indicating that Cal Cities is a strong organization, with a high level of member engagement, but also highlighted opportunities for Cal Cities to enhance its governance. The opportunities for enhancement included: (a) improving the clarity, ease, and consistency in how the governance system works; (b) clarifying the guidelines for position qualifications and performance expectations; (c) identifying ways to deepen member engagement and enhance the quality of the experience of involvement; and (d) ensuring Cal Cities has an intentional, consistent organizational culture at all levels of the governance system.

The findings and recommendations from the report were presented at the July Cal Cities Board meeting, and following a robust exchange of ideas and input, the Board decided to move forward with many of the recommendations, referred other recommendations to a Board subcommittee for further study, and deferred consideration of still other recommendations. Two of the approved recommendations adopted by the Board require bylaws amendments; specifically, the recommendations to adjust the composition of the Board, and fully recognize the Diversity Caucuses in the Cal Cities bylaws.¹

In addition to governance goals, the Strategic Growth Plan also set forth goals to increase the visibility of Cal Cities to: (a) ensure that Cal Cities conveys a strong and consistent brand to all audiences; and (b) elevate the voice of Cal Cities across all channels, including media, on priority issues for California cities. In furtherance of its visibility goals, Cal Cities adopted the abbreviated moniker “Cal Cities” to identify and differentiate Cal Cities as the voice of California cities on priority issues. To promote consistency, the Cal Cities bylaws should be amended to change the League of California Cities’ moniker to Cal Cities.

Finally, in reviewing the Cal Cities bylaws amendments staff identified various minor technical corrections to the bylaws.

Summary of Amendments

At this time, the Board recommends for adoption the following amendments to the bylaws:

1. Adjust the composition of the Board to achieve a higher impact and be more representative by adding Director seats to the Board for each of the five Diversity Caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Cal Cities Board.
2. Recognize the Cal Cities Diversity Caucuses in the Cal Cities bylaws to reflect the full contribution the caucuses make to Cal Cities’ mission and vision.
3. Update the League of California Cities’ moniker to Cal Cities.
4. Make various minor technical corrections.

While the work to enhance Cal Cities’ governance is a process that will be implemented in phases over several years, the Board believes these proposed amendments constitute an important first step towards ensuring Cal Cities’ governance is operating at peak performance.

¹ Cal Cities Diversity Caucuses are currently recognized through Board Policy. See page 35 of the Board Manual, available at [https://www.calcities.org/docs/default-source/default-document-library/2016-board-manual-\(b15\).pdf](https://www.calcities.org/docs/default-source/default-document-library/2016-board-manual-(b15).pdf).

Procedure for Amending the Cal Cities Bylaws

Amendments to the Cal Cities bylaws may be proposed by the Cal Cities Board and may be adopted: (a) by vote of the Cal Cities General Assembly, or (a) by mail ballot to member cities.² In this case, the amendments will be considered by the General Assembly. Bylaws amendments need to be approved by 2/3 of those voting,³ and the number that constitutes 2/3 of those voting (1) cannot be less than a majority of the voting delegates present if there is a quorum at the time the vote is taken;⁴ or (2) cannot be less than a majority of a quorum if the meeting started with a quorum but a quorum is not present when the vote is taken.⁵

If approved by the General Assembly, the amendments to the bylaws will go into effect after the expiration of a 60-day protest period.⁶ If, within 60 days after the adoption of the amendments, one-third or more of the Member Cities submit a written protest against the amendments, the amendments are automatically suspended until the next Annual Conference, when they may be taken up again for reconsideration and vote.⁷

² Article XVI, Section 1.

³ Article XVI, Section 2.

⁴ Cal. Corp. Code 7512, subd. (a).

⁵ Cal. Corp. Code 7512, subd. (d).

⁶ Article XVI, section 6.

⁷ Article XVI, section 7.

**RESOLUTION RELATING TO AMENDMENTS TO THE CAL CITIES BYLAWS
(2/3 vote at General Assembly required to approve)**

Source: *League of California Cities Board of Directors*

WHEREAS, the League of California Cities (Cal Cities) is a nonprofit mutual benefit corporation under California law and, as such, is governed by corporate bylaws; and

WHEREAS, the Cal Cities Board of Directors (Board) periodically reviews the Cal Cities bylaws for issues of clarity, practicality, compliance with current laws, and responsiveness to membership needs and interests; and

WHEREAS, beginning in 2017, the Board directed Cal Cities to undertake a strategic planning process that resulted in the adoption of the “Powering Up for California Cities Strategic Growth Plan 2018-2021” (Strategic Growth Plan); and

WHEREAS, the Strategic Growth Plan set forth goals to enhance Cal Cities’ governance to: (a) achieve even higher levels of engagement and effectiveness; (b) ensure optimal engagement by members and effectiveness in supporting fulfillment of the Cal Cities’ mission; and (c) ensure the pathway to leadership is transparent and inclusive; and

WHEREAS, in furtherance of its governance goals, the Board engaged an expert in association governance (Consultant) who gathered and considered input from more than 350 Cal Cities members through advisory groups, roundtable discussions, interviews, and surveys to evaluate the Cal Cities governance system and make recommendations for enhancing Cal Cities’ governance; and

WHEREAS, the Board approved certain recommendations made by the Consultant as a result of that governance assessment, which identified amendments to the bylaws that: (a) fully recognize the Cal Cities diversity caucuses; and (b) adjust the composition of the Board by adding Director seats to the Board for each of the five caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Board; and

WHEREAS, Corporations Code section 7222(c) provides that a bylaws amendment that reduces the number of directors or the number of classes of directors does not remove any director prior to the expiration of the director’s term of office; and

WHEREAS, the Directors currently serving as Directors of Cal Cities by virtue of their service as Directors on the National League of Cities Board will continue to serve on the Cal Cities Board until the expiration of their terms and the bylaws amendment providing for one non-voting advisor to the Cal Cities Board to be appointed if members of the National League of Cities Board of Directors hold an office in a Member City will not become effective until December 1, 2022; and

WHEREAS, the Strategic Growth Plan also set forth goals to increase the visibility of Cal Cities to: (a) ensure that Cal Cities conveys a strong and consistent brand to all audience; and (b) elevate the voice of Cal Cities across all channels, including media, on priority issues for California cities; and

WHEREAS, in furtherance of its visibility goals, the Board engaged a strategic communications expert to work alongside Cal Cities staff to assess the Cal Cities' brand; and

WHEREAS, that assessment indicated that numerous abbreviations for the "League of California Cities" were diluting its brand; and

WHEREAS, Cal Cities thus adopted the abbreviated moniker "Cal Cities" to identify and differentiate Cal Cities across all channels, including media, as the voice of California cities on priority issues; and

WHEREAS, the Cal Cities Board offers the following proposed amendments and additions to the bylaws, as summarized in the attached Summary of Proposed Bylaw Changes, and as set forth in full in the attached redlined version of the bylaws referenced below, both of which are hereby incorporated by reference, which (1) fully recognize the Cal Cities Diversity Caucuses in the Cal Cities bylaws; (2) adjust the composition of the Board by adding Director seats to the Board for each of the five caucuses, and transitioning members of the National League of Cities Board from Cal Cities Directors to one non-voting advisor to the Board; (3) change the League of California Cities' moniker to Cal Cities; and (4) make various minor technical corrections; and

now therefore, be it

RESOLVED, by the General Assembly of the League of California Cities assembled during the Annual Conference in Sacramento on September 24, 2021, that Cal Cities makes the specified changes to the Cal Cities bylaws set forth in full in the attached redlined version of the bylaws, and as summarized in the attached Summary of Proposed Bylaws Changes.

See ATTACHMENT 1 for a summary of the proposed bylaws changes.

See ATTACHMENT 2 for full redlined version of the proposed changes to the bylaws.

ATTACHMENT 1
Summary of Proposed Bylaws Changes

Summary of Proposed Bylaws Changes

1. Fully Recognize the Cal Cities Diversity Caucuses in the Cal Cities Bylaws.

- Add a new Article XI, formally recognizing the caucuses in the bylaws consistent with how departments and divisions are recognized. Provide default rules for caucus structure and process where the caucuses do not have bylaws or where caucus bylaws are silent.
- Make conforming changes as follows:
 - Amend Article VI, Section 3, Subdivisions (a) and (b) to allow for one elected official from each caucus to be appointed to the resolutions committee by their respective caucus, or by the Cal Cities President in the event a caucus does not make its appointment.
 - Amend Article VII, Section 10, Subdivision (c) to provide that one member of each standing policy committee shall be appointed by each caucus president.
 - Amend new Article XII (formerly, Article XI), Section 1, Subdivision (a) to specify that a majority of the members of a caucus constitutes a quorum for the purpose of making decisions.
 - Amend new Article XII (formerly, Article XI), Section 2, Subdivision (a) to provide that all voting in a caucus meeting is by voice vote.
 - Amend new Article XII (formerly, Article XI), Section 4 to provide that representatives of each Member City present and in good standing at a caucus meeting collectively cast one vote, except as otherwise provided in caucus bylaws.
 - Amend new Article XII (formerly, Article XI), Section 5, Subdivision (d) to allow caucuses to use mail balloting as specified in their bylaws.
 - Amend Article XIII (formerly, Article XII), Section 1, Subdivision (a) to provide that persons must officially be in city service in a Member City in order to be eligible to hold office in a caucus.
 - Amend Article XIII (formerly, Article XII), Section 2, Subdivisions (c) and (d) to clarify the effective date of a caucus office resignation or vacancy.
 - Amend Article XIV (formerly, Article XIII), Section 2, Subdivision (b) to provide that a copy of Cal Cities' budget shall be sent to each caucus president who shall make it available to caucus members.

- Amend Article XVI (formerly, Article XV), Section 5 to provide that Robert's Rules of Order or other parliamentary rules adopted by the Cal Cities Board shall prevail at caucus meetings.

2. Adjust the Composition of the Board.

- **Add directors from each diversity caucus:**
 - Amend Article VII, Section 2, Subdivision (d) to add one director from each of the five caucuses to the Board for a term of two years.
 - Make conforming changes to the following sections:
 - Amend Article VII, Section 3, to stagger the terms of the caucus directors so that the terms of approximately one-half of the Board continue to expire each year. Provide that the terms for the directors from the African American, Asian Pacific Islander, and LGBTQ caucuses expire in even-numbered years, and terms of the directors from the Latino and Women's caucuses expire in odd-numbered years.
 - Amend Article VII, Section 4, Subdivision (c) to provide that the initial caucus director shall either be the caucus president or another caucus member appointed by the caucus president, and thereafter, that caucus directors are to be elected by their caucuses.
 - Amend Article VII, Section 4, new Subdivision (f) (formerly Subdivision (e)) to provide that newly created caucuses can elect a representative to the Board.
 - Amend Article VII, Section 6, Subdivision (c) to provide that, if a vacancy occurs in a caucus directorship, the caucus officers may elect a new director.
- **Transition members of the National League of Cities (NLC) Board of Directors from Cal Cities Directors to one non-voting advisor to the Board:**
 - Delete Article VII, Section 2, Subdivision (e) which provides that directors on the NLC Board who hold an office in a Member City are directors on the Cal Cities Board, and make a conforming change as follows:
 - Delete the language from Article VII, Section 2, Subdivision (g) which provides that directors that sit on the Cal Cities Board by virtue of their directorship on the NLC Board shall serve until their terms on the NLC Board conclude.

- Add new Section 17 to Article VII to provide that effective December 1, 2022 (after the terms of the currently serving NLC Board directors expire), if members of the NLC Board hold office in a Member City, no more than one such member shall be appointed by the Cal Cities President to serve as a non-voting advisor to the Cal Cities Board for a term that coincides with their service on the NLC Board. Provide further that such non-voting advisor shall be invited to attend regularly-scheduled Board meetings, but shall not attend emergency meetings and/or closed/executive sessions unless otherwise determined by the Board.
3. **Change the League of California Cities Moniker.** Amend Article I, Section 1 to read, “This corporation is the League of California Cities (~~the League~~) (Cal Cities)” and make conforming changes to replace “League” with “Cal Cities” throughout the entirety of the bylaws.
4. **Make Technical Corrections.**
- Amend the following sections of the bylaws to correct technical errors and typos:
 - Article I, Section 3: change “to” to “do”
 - Article II, Section 2(a): change “Advocate legislation” to “Advocate for legislation”
 - Article II, Section 2(g): change “member cities” to “Member Cities”
 - Article III, Section 3: change “state and federal laws” to “state or federal laws”
 - Article V, Section 3(b): changed “Designating” to “Designated”
 - Article VI: clarify that “Petitioned Resolutions” is a defined term in Section 2 and capitalize “Petitioned Resolutions” in Section 4(a), Section 5(f), and Section 5(g)
 - Article VI, Section 5(d): change “late” to “later”
 - Article VII, Section 4(d): change “organization” to “organizational”
 - Article VII, Section 4(f): add “the” before “nominating committee”
 - Article VII, Section 10(c)(ii): capitalize “President”
 - Article IX, Section 7(c)(ii): correct cross-reference from 4(d) to 4(e)
 - Article X, Section 2(c): change “two years established” to “two years as established”
 - Article X, Section 2(d): capitalize “Director”
 - Article XII, Section 4: change “representatives” to “representative” and “cast” to “casts”
 - Article XVI, Section 5: add “and applicable law”
 - Article XVIII, Section 3(c): correct cross-reference from “Article XI” to “Article XII”
 - Article XII, Section 2(b): change “three or Member Cities” to “three or more Member Cities”

ATTACHMENT 2
Full Redlined Version of Proposed Changes to Bylaws

Bylaws for the League of California Cities

Table of Contents

| | |
|--|---|
| Article I: General | 1 |
| Section 1: Corporation Name..... | 1 |
| Section 2: Offices..... | 1 |
| Section 3: Compliance with Governing Laws..... | 1 |
| Article II: Purpose and Objectives | 1 |
| Section 1: General..... | 1 |
| Section 2: Objectives..... | 1 |
| Article III: Membership..... | 2 |
| Section 1: Qualification..... | 2 |
| Section 2: Termination..... | 2 |
| Section 3: Honorary Members..... | 2 |
| Section 4: Non-Liability..... | 3 |
| Article IV: Dues | 3 |
| Section 1: Establishment..... | 3 |
| Section 2: Increase in Dues..... | 3 |
| Section 3: Delinquency..... | 4 |
| Article V: Membership Meetings..... | 4 |
| Section 1: Annual Conference..... | 4 |
| Section 2: Special Meetings..... | 4 |
| Section 3: City Delegates as General Assembly..... | 4 |
| Section 4: Notice of Meetings..... | 5 |
| Section 5: Parliamentarian..... | 5 |
| Section 6: Credentials..... | 5 |
| Article VI: Resolutions | 5 |
| Section 1: Role and Scope of Resolutions..... | 5 |
| Section 2: Origination..... | 6 |
| Section 3: Resolutions Committee for Annual Conference Resolutions..... | 6 |
| Section 4: Procedure for Resolution Review for the Annual Conference..... | 7 |
| Section 5: Resolutions Proposed by Petition for the Annual Conference..... | 7 |
| Section 6: Special Meeting Resolution Procedures..... | 8 |

Section 7: Full Debate..... 9

Article VII: Board of Directors 9

Section 1: Role and Powers; Board Diversity Policy. 9

Section 2: Composition. 9

Section 3: Staggered Terms. 10

Section 4: Election of Directors. 11

Section 5: Nomination Process. 12

Section 6: Vacancies. 13

Section 7: Resignation. 14

Section 8: Meetings and Meeting Notice..... 14

Section 9: Policies..... 15

Section 10: Committees. 15

Section 11: Compensation. 16

Section 12: Reports of Directors. 16

Section 13: Standard of Care..... 16

Section 14: Right to Inspect Records..... 17

Section 15: Policy Changes. 17

Section 16: Positions on Statewide Ballot Measures. 17

Section 17: Non-Voting Advisor to the Board..... 17

Article VIII: Officers..... 18

Section 1: Identity. 18

Section 2: Duties of Cal Cities Officers. 18

Section 3: Election. 18

Section 4: Vacancies. 18

Section 5: Executive Director and Cal Cities Employees. 19

Article IX: Regional Divisions 20

Section 1: Listing..... 20

Section 2: Purposes and Functions. 20

Section 3: Names of Divisions. 21

Section 4: Boundaries..... 21

Section 5. Membership. 21

Section 6: Voting..... 21

Section 7: Officers..... 21

Section 8: Resignation. 23

Section 9: Regional Division Bylaws. 23

Article X: Functional Departments 23

 Section 1: Listing..... 23

 Section 2: Officers..... 23

 Section 3: Voting..... 24

 Section 4: Department Meetings..... 24

 Section 5: Department Bylaws..... 24

Article XI: Caucuses 25

 Section 1: Listing..... 25

 Section 2: Purposes and Functions. 25

 Section 3: Names of Caucuses..... 26

 Section 4: Membership. 26

 Section 5: Voting..... 26

 Section 6: Officers..... 26

 Section 7: Resignation. 27

 Section 8: Caucus Bylaws..... 27

Article XII: Voting..... 27

 Section 1: Quorum. 27

 Section 2: Voting Methods. 28

 Section 3: Vote Threshold..... 28

 Section 4: One City One Vote..... 29

 Section 5: Mail Balloting..... 29

Article XIII: Qualifications to Hold Office and Vacancies 29

 Section 1: Eligibility to Hold Office. 29

 Section 2: Vacancies. 30

Article XIV: Finances 30

 Section 1: Fiscal Year..... 30

 Section 2: Budget..... 31

 Section 3: Limitation of Expenditures..... 31

 Section 4: Annual Audit..... 31

 Section 5: Special Assessment for Cal Cities Building..... 31

Article XV: Prohibited Transactions 31

 Section 1: Conflicts of Interest. 31

 Section 2: Loans. 32

Section 3: Self-Dealing and Common Directorship Transactions..... 32

Section 4: Ethical Considerations. 33

Article XVI: Miscellaneous..... 33

Section 1: Indemnification..... 33

Section 2: Insurance. 34

Section 3: Contracts and Execution of Instruments. 34

Section 4: Disposition of Assets Upon Dissolution..... 34

Section 5: Parliamentary Authority..... 35

Section 6: Seal..... 35

Section 7: Governing Law..... 35

Section 8: Litigation Authority..... 35

Article XVII: Amendments 35

Section 1: Consideration..... 35

Section 2: Vote Threshold..... 36

Section 3: Who May Propose..... 36

Section 4: Board Review..... 36

Section 5: Procedure for Consideration by General Assembly. 36

Section 6: Effective Date..... 36

Section 7: Protest and Suspension until Next Conference..... 36

Article XVIII: Establishment and Financing of Grassroots Network 36

Section 1: Enhancement of Advocacy Efforts. 36

Section 2: Dues Increase..... 37

Section 3: Accountability..... 37

Bylaws for the League of California Cities¹

Article I: General

Section 1: Corporation Name.

This corporation is the League of California Cities (~~Cal Cities~~~~the League~~).

Section 2: Offices.

The principal office of this corporation shall be located in Sacramento, California. The ~~League-Cal Cities~~ Board of Directors (~~League-Cal Cities~~ Board) may establish such other ~~League-Cal Cities~~ offices as it deems necessary to the effective conduct of ~~League-Cal Cities~~ programs.

Section 3: Compliance with Governing Laws.

In all matters not specified in these bylaws, or in the event these bylaws ~~do~~ not comply with applicable law, the California Nonprofit Corporation Law applies.

Article II: Purpose and Objectives

Section 1: General.

~~The League's~~~~Cal Cities'~~ purpose is to strengthen and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

Section 2: Objectives.

~~The League's~~~~Cal Cities'~~ objectives are the following:

- (a) Advocate ~~for~~ legislation that results in benefits to Member Cities,
- (b) Communicate to Member Cities and the public on issues related to the general welfare of citizens in California cities,
- (c) Pursue strong intergovernmental relationships to promote the well being of California cities,
- (d) Organize educational opportunities, such as conferences of city officials,

¹ Note: All footnotes are for reference and explanation only and are not part of the bylaws text.

- (e) Stimulate greater public interest and more active civic consciousness as to the importance of cities in California's system of government,
- (f) Collect and disseminate information of interest to Member Cities, and
- (g) Engage the membership in a continuing analysis of the needs of ~~M~~member ~~C~~ities.

Article III: Membership

Section 1: Qualification.

- (a) **Cities.** Any city, or city and county, in California may, by the payment of annual dues prescribed in Article IV, become a Member City and as such is entitled to ~~League~~Cal Cities services and privileges.
- (b) **Elected and Appointed Officials.** All elected and appointed officials in Member Cities are members of ~~the League~~Cal Cities.

Section 2: Termination.

- (a) **Grounds for Termination.** Membership is suspended or terminated whenever any of the following occurs:
 - (i) The Member City resigns by giving written notice to ~~the League~~Cal Cities;
 - (ii) The Member City does not pay dues, fees or assessments in the amounts and terms set by the ~~League~~Cal Cities Board; or
 - (iii) An event occurs that makes the Member City ineligible for membership.
- (b) **Procedures for Termination.** ~~The League~~Cal Cities shall give 15 days notice of any suspension or termination of membership and the reasons for such action, along with the opportunity to respond orally or in writing not less than five days before the effective date of the action.²

Section 3: Honorary Members.

Any person who has given conspicuous service for the improvement of city government may, by the vote of the ~~Cal Cities~~League Board, be granted an honorary membership

² See Cal. Corp. Code § 7341(c) (requiring termination procedures be included in bylaws and specifying what constitutes a fair and reasonable procedure).

in ~~Cal Cities~~the League. All ex-presidents of ~~the League~~Cal Cities are Honorary Members. Honorary Members as such do not have a voice or vote in any of the meetings of ~~the League~~Cal Cities and do not have membership status in Cal Cities ~~the League~~ for purposes of state ~~and-or~~ federal laws.

Section 4: Non-Liability.

No Member City is liable for the debts or obligations of Cal Cities~~the League~~.

Article IV: Dues

Section 1: Establishment.

The ~~League~~Cal Cities Board establishes ~~the League's~~Cal Cities' dues annually according to city population. The population of each city is the most current population as determined by the California Department of Finance, Demographic Research Unit, or its successor agency or unit. If no successor agency or unit is named, the most current population used to determine dues shall be used to determine future dues until such time as these bylaws are amended to designate a new source for determining city population.

Section 2: Increase in Dues.

(a) Board Vote Requirement. Any increase in dues must be approved by the ~~League~~Cal Cities Board by a two-thirds vote. The Cal Cities~~League~~ Board's approval shall be accompanied by an explanation of the need for the increase, including but not limited to:

- (i) Increases in ~~the League's~~Cal Cities' costs related to general increases in the consumer price index or other factors; and/or
- (ii) The expansion of existing programs or initiation of new programs.

(b) Member City Ratification Requirement. Any dues increase that exceeds either the "consumer price index" for the preceding twelve months or five percent (whichever is greater) requires Member City ratification. In no event, however, shall the ~~League~~Cal Cities Board approve a dues increase in excess of ten percent without Member City ratification.

(i) "Consumer Price Index" Defined. For purposes of this section, the consumer price index is the California consumer price index for all urban consumers calculated by the California Department of Industrial Relations or its state or federal successor.

(ii) Approval Threshold. Member City ratification requires a majority of Member Cities casting votes.

(iii) **Mechanism for Seeking Approval.** The ratification may occur at ~~the League's~~Cal Cities' General Assembly (see Article V) or by using the mail balloting procedure (see Article XI, section 5).

(c) **Dues Cap.** In no event will a Member City's dues increase by more than \$5,000 per year.

Section 3: Delinquency.

Any Member City of ~~the League~~Cal Cities who is delinquent in dues, fees or assessments may be suspended or have that member's membership terminated as provided in Article III, section 2.

Article V: Membership Meetings

Section 1: Annual Conference.

(a) **Time and Place.** ~~The League's~~Cal Cities' regular Annual Conference is held at the time and place as the League-Cal Cities Board determines. In case of any unusual conditions or extraordinary emergency, the League-Cal Cities Board may, at its discretion, change the time or place of the meeting.

(b) **Conference Program Planning.** The League-Cal Cities Board shall establish an Annual Conference program planning process that provides for input from representative segments of Cal Cities' ~~the League's~~ membership.

Section 2: Special Meetings.

Special meetings of Cal Cities ~~the League~~ may be called by the League-Cal Cities Board and shall be called by the League-Cal Cities Board upon the written request of five percent or more of the Member Cities.³ Any written request by Member Cities shall describe the general nature of the business to be transacted and the text of any proposed resolution(s).

Section 3: City Delegates as General Assembly.

(a) **Designation.** Each Member City may, with the approval of the city council, designate a city official as the city's designated voting delegate and, in the event that the designated voting delegate is unable to serve in that capacity, up to two alternate voting delegates.

³ See Cal. Corp. Code § 7510 ("special meetings of members for any lawful purpose may be called by 5 percent or more of the members").

(b) Membership Decision-making Body. Designated ~~ed~~ing voting delegates (or their alternates) constitute ~~the League's~~ Cal Cities' General Assembly.

(c) Registration for Annual Conference. For General Assemblies held in conjunction with the Annual Conference, designated voting delegates must register to attend the Annual Conference.

Section 4: Notice of Meetings.

(a) General. Notice shall be given to all Member Cities of the time and place of all regular and special meetings by faxing or mailing a written notice at least fifteen days prior to each meeting, or by publishing a notice of the meeting at least two weeks prior to the meeting in an official publication of Cal Cities~~the League~~; provided, however, that failure to receive such notice does not invalidate any proceedings at such meeting.

(b) Special Notice Requirements for Special Meetings. Any notice of the calling of a special meeting shall specify the purpose of the special meeting in such detail to enable Member Cities to determine whether they should attend. In the event a special meeting is requested by five percent or more of the Member Cities, the notice shall also set for the text of any proposed resolution(s).

Section 5: Parliamentarian.

The League-Cal Cities President shall appoint a Parliamentarian to resolve procedural issues at ~~the League's~~ Cal Cities' General Assembly and in Resolutions Committee meetings.

Section 6: Credentials.

Designated voting delegates must register with the Credentials Committee. The Cal Cities ~~League~~ President shall appoint a three-person Credentials Committee no later than the first day of the General Assembly. In case of dispute, this committee determines the right of a member to participate.

Article VI: Resolutions

Section 1: Role and Scope of Resolutions.

Resolutions adopted by ~~the League's~~ Cal Cities' General Assembly and such League Cal Cities Board policies as are not inconsistent with such resolutions constitute League Cal Cities policy. All resolutions shall be germane to city issues.

Section 2: Origination.

Resolutions may originate from city officials, city councils, regional divisions, functional departments, caucuses, policy committees, or the League-Cal Cities Board or by being included in a petition signed by designated voting delegates of ten percent of the number of Member Cities (Petitioned Resolutions). Except for Petitioned Resolutions, all other resolutions must be submitted to ~~the League-Cal Cities~~ with documentation that at least five or more cities, or city officials from at least five or more cities, have concurred in the resolution.

Section 3: Resolutions Committee for Annual Conference Resolutions.

(a) Resolutions Committee Composition. The League-Cal Cities President establishes a Resolutions Committee sixty days prior to each Annual Conference, which committee shall consist of:

- (i) One elected official from each regional division, appointed by the regional division;
- (ii) One elected official from each policy committee, appointed by the policy committee;
- (iii) One member from each functional department, appointed by the department;
- (iv) One elected official from each caucus, appointed by the caucus; and
- (iv) Up to ten additional members (at least five of whom are elected officials) as the League-Cal Cities President deems necessary to achieve geographic and population balance, as well as recognize the multiplicity of city functions not represented by the other appointments, including, but not limited to, the perspectives of board and commission members as well as professional staff.

(b) Presidential Appointments. In the event a regional division, policy committee, ~~or~~ functional department, or caucus does not make its appointment to the Resolutions Committee, the League-Cal Cities President may make the appointment on the regional division's, policy committee's, ~~or~~ functional department's, or caucus's behalf.

(c) Chair. The League-Cal Cities President shall also appoint to the Resolutions Committee a committee chair and vice chair.

(d) Minimum Committee Size and Composition. In the event the full committee is not in attendance at the Annual Conference, the League-Cal Cities President shall appoint a sufficient number of city officials in attendance

to achieve a total of thirty. No less than two-thirds of the members of the Resolutions Committee shall be elected officials.

- (e) Committee Consideration of Proposed Resolutions.** Except for resolutions of courtesy, commendation, appreciation or condolence, no resolution expressing the opinion or policy of ~~the League-Cal Cities~~ on any question may be considered or discussed by ~~the League's Cal Cities'~~ General Assembly, unless it has been first submitted to, and reported on, by the Resolutions Committee.

Section 4: Procedure for Resolution Review for the Annual Conference.

- (a) Timing.** Except for ~~P~~petitioned ~~R~~esolutions, all resolutions shall be submitted to the Resolutions Committee, at ~~the League's Cal Cities'~~ headquarters, not later than sixty days prior to the opening session of ~~the League's Cal Cities'~~ Annual Conference.

(b) Referral to Policy Committees.

- (i) Review and Recommendations.** Except for resolutions of courtesy, commendation, appreciation or condolence, all resolutions submitted to the Resolutions Committee shall be referred by the ~~League-Cal Cities~~ President to an appropriate policy committee for review and recommendation prior to the opening general session of the Annual Conference.
- (ii) Report to Resolutions Committee.** Policy committees shall report their recommendations on such resolutions to the Resolutions Committee. The inability of a policy committee to make a recommendation on any resolution does not preclude the Resolutions Committee from acting upon it.

Section 5: Resolutions Proposed by Petition for the Annual Conference.

- (a) Presentation by Voting Delegate.** A designated voting delegate of a ~~Member C~~ity may present by petition a resolution to the ~~League-Cal Cities~~ President for consideration by the Resolutions Committee and the General Assembly at the Annual Conference. These resolutions are known as "~~P~~petitioned ~~R~~esolutions."
- (b) Contents.** The petition shall contain the specific language of the resolution and a statement requesting consideration by ~~the League's Cal Cities'~~ General Assembly.

- (c) **Signature Requirements.** The petition shall be signed by designated voting delegates registered with the Credentials Committee who represent ten percent of the number of Member Cities.
- (d) **Time Limit for Presentation.** The signed petition shall be presented to the ~~League~~ Cal Cities President no later than twenty-four hours prior to the time set for convening ~~the League's~~ Cal Cities' General Assembly.
- (e) **Parliamentarian Review.** If the ~~League~~ Cal Cities President finds that the petition has been signed by designated voting delegates of ten percent of the number of Member Cities, the petition shall be reviewed by the Parliamentarian for form and substance. The Parliamentarian's report shall then be presented to the chair of the Resolutions Committee. Among the issues that may be addressed by the Parliamentarian's report is whether the resolution should be disqualified as being either:
- (i) Non-germane to city issues; or
 - (ii) Identical or substantially similar in substance to a resolution already under consideration.
- (f) **Disqualification.** The Resolutions Committee may disqualify a ~~P~~petitioned ~~R~~resolution as either being:
- (i) Non-germane to city issues; or
 - (ii) Identical or substantially similar in substance to a resolution already under consideration.
- (g) **Consideration by General Assembly.** The ~~P~~petitioned ~~R~~resolution and the action of the Resolutions Committee will be considered by ~~the League's~~ Cal Cities' General Assembly following consideration of other resolutions.
- (h) **Availability of List of Voting Delegates.** A list of voting delegates shall be made available during the Annual Conference to any designated voting delegate upon request.

Section 6: Special Meeting Resolution Procedures.

- (a) **Germane-ness.** All resolutions must be germane to the meeting purpose specified in the special meeting notice.
- (b) **Opportunity for Member Review.** All resolutions to be proposed during the General Assembly shall be available for membership review by electronic (for example, by posting on the ~~Cal Cities~~ League's website) or other means at least 24 hours prior to the beginning of the special meeting.

- (c) **Parliamentarian Review.** The Parliamentarian shall review all proposed resolutions for form and substance. The Parliamentarian's report shall be presented to the General Assembly.

Section 7: Full Debate.

The opportunity for full and free debate on each resolution brought before the General Assembly shall occur prior to consideration of a resolution.

Article VII: Board of Directors

Section 1: Role and Powers; Board Diversity Policy.

- (a) Subject to the provisions and limitations of California Nonprofit Corporation Law, any other applicable laws, and the provisions of these bylaws, Cal Cities' the League's activities and affairs are exercised by or under the direction of the League's Cal Cities Board of Directors. The League-Cal Cities Board is responsible for the overall supervision, control and direction of Cal Citiesthe League. The League-Cal Cities Board may delegate the management of the League's Cal Cities' affairs to any person or group, including a committee, provided the League-Cal Cities Board retains ultimate responsibility for the actions of such person or group.
- (b) The goal of the League Cal Cities is to ensure that the Board of Directors reflects the diverse ethnic and social fabric of California. As such, each Division, Department, Caucus, and Policy Committee should encourage and support members of every race, ethnicity, gender, age, sexual orientation and heritage to seek leadership positions within Cal Citiesthe League, with the ultimate goal of achieving membership on the Board of Directors.

Section 2: Composition.

The League's The Cal Cities Board is composed of the following:

- (a) A President, First Vice-President and Second Vice-President/Treasurer, who each serve a term of one year;
- (b) The Immediate Past President who serves for a term of one year, immediately succeeding his or her term as President;
- (c) Twelve Directors-at-Large,
- (i) Who serve staggered two-year terms, and

(ii) At least one of whom is a representative of a small city with a population of 10,000 or less;

(d) One Director to be elected from each of the regional divisions, ~~and~~ functional departments, and caucuses of Cal Cities~~the League~~, each of whom serves for a term of two years; and

~~(e) Members of the National League of Cities Board of Directors who hold an office in a Member City; and~~

~~(f)~~(e) Ten Directors that may be designated by the mayors of each of the ten largest cities in California to serve two-year terms.

~~(g)~~(f) For purposes of this section, the population of each city is the most current population as determined by the California Department of Finance, Demographic Research Unit, or its successor agency or unit. If no successor agency or unit is named, the most current population used to determine these dues shall be used to determine future dues until such time as these bylaws are amended to designate a new source for determining city population.

~~(h)~~(g) Directors hold office until their successors are elected and qualified ~~or, if they sit on the Cal Cities League Board by virtue of their membership on the National League of Cities Board of Directors, until their terms on the National League of Cities Board of Directors conclude.~~

Section 3: Staggered Terms.

The terms of the Directors are staggered, so that the terms of approximately one-half of the members of the ~~League~~ Cal Cities Board expire each year.

(a) Even-Numbered Year Terms. The following directorship terms expire in even-numbered years:

(i) Departments. Directors from the Fiscal Officers, Public Works Officers, Mayors and Council Members, Planning and Community Development, Fire Chiefs, and City Clerks departments;

(ii) Divisions. Directors from the Central Valley, Desert-Mountain, Imperial County, Monterey Bay, North Bay, Orange County, Redwood Empire, Sacramento Valley and San Diego County divisions; ~~and~~

(iii) Caucuses. Directors from the African American, Asian Pacific Islander, and LGBTQ caucuses; and

(iv) At Large. Directors from five of the ten at-large directorships.

(b) Odd-Numbered Year Terms. The following directorships expire in odd-numbered years:

- (i) **Departments.** Directors from the City Attorneys, City Managers, Police Chiefs, Recreation, Parks and Community Services, and Personnel and Employee Relations departments;
- (ii) **Divisions.** Directors from the Channel Counties, Inland Empire, East Bay, Los Angeles County, Peninsula, Riverside County and South San Joaquin Valley divisions; ~~and~~

(iii) **Caucuses.** Directors from the Latino and Women’s caucuses; and

(iv) **At Large.** Directors from five of the ten at-large directorships.

Section 4: Election of Directors.

(a) Functional Department Directors. Unless their respective functional department bylaws provide otherwise, Departmental Directors are elected by their respective departments at the Annual Conference.

(b) Regional Division Directors. Unless their respective regional division bylaws provide otherwise, Regional Directors are elected at the regional division meeting immediately preceding the Annual Conference.

~~(b)~~(c) **Caucus Directors.** The caucus presidents shall serve, or may appoint a member of their respective caucuses to serve, as the initial Caucus Directors for their respective caucuses. Thereafter, unless their respective caucus bylaws provide otherwise, Caucus Directors shall be elected by their respective caucuses at the Annual Conference.

~~(c)~~(d) **At-Large Directors.** Directors-at-Large are elected by the League-Cal Cities Board at its organizational meeting.

~~(d)~~(e) **Commencement of Terms.** The term of office of all newly elected Directors commences immediately on the adjournment of the Annual Conference; however, the newly constituted League-Cal Cities Board may meet prior to the adjournment of the Annual Conference for the purpose of organization.

~~(e)~~(f) **Additional Directors.** In the event of the creation of additional regional divisions, ~~or~~ functional departments, ~~or~~ caucuses of Cal Cities the League, each regional division, ~~or~~ functional department, ~~or~~ caucus may elect a representative to the League-Cal Cities Board. When a new functional department, ~~or~~ regional division, ~~or~~ caucus is created at any Annual Conference, the League-Cal Cities Board may select a Director to represent

such functional department, ~~or~~ regional division, or caucus until the entity organizes and elects a Director in the regular manner. The ~~League-Cal Cities~~ Board may fix the initial term of any such Director from a new regional division, ~~or~~ functional department, or caucus at either one or two years, so as to keep the number of terms expiring on alternate years as nearly equal as possible.

Section 5: Nomination Process.

- (a) **Timing.** The ~~League-Cal Cities~~ President, with the concurrence of the ~~League-Cal Cities~~ Board, shall establish a nominating committee at the first Board meeting of the calendar year in which the election is to occur.
- (b) **Composition.** The nominating committee shall be comprised of eleven Board members. Two nominating committee members shall be At-Large Directors and one shall represent a functional department. Regional divisions shall be represented on the nominating committee on the following rotating basis:
- (i) **Even-Numbered Years:** In even-numbered years, the Central Valley, Imperial County, Monterey Bay, North Bay, Orange County, Redwood Empire, Sacramento Valley and San Diego County Regional Divisions shall be represented on the nominating committee.
 - (ii) **Odd-Numbered Years:** In odd-numbered years, the Channel Counties, Inland Empire, Desert-Mountain, East Bay, Los Angeles County, Peninsula, Riverside County, and South San Joaquin Regional Divisions shall be represented on the nominating committee.
- (c) **Nominating Committee Chair.** The ~~League-Cal Cities~~ President shall appoint the chair of the nominating committee.
- (d) **Candidates for Positions Ineligible.** Candidates for officer and at-large positions on the ~~League-Cal Cities~~ Board are not eligible to serve on the nominating committee. In the event a regional division representative on the nominating committee wishes to be a candidate for an officer or at-large position, the ~~League-Cal Cities~~ President will appoint a substitute nominating committee member from the same regional division, if available. If one is not available, the President shall appoint a substitute from a nearby regional division.
- (e) **Duties.** The duties of the nominating committee are to:
- (i) **Member Outreach.** Publicize the qualifications for the offices of Second Vice President/Treasurer and the at-large members of the ~~League-Cal Cities~~ Board to Cal Cities' ~~the League's~~ Member Cities;

(ii) **At-Large and Second Vice President Recommendations.** Make recommendations to the League-Cal Cities Board on the following year's League-Cal Cities officers and at-large board members; and

(iii) **President and First Vice President Recommendation.** Recommend whether the previous year's First Vice President becomes President and the previous year's Second Vice President/Treasurer becomes First Vice President.

(f) **Notice to Members.** An explanation of the nomination process and relevant deadlines for submitting nominations to the nominating committee shall be publicized in League-Cal Cities publications and communications throughout the year, along with the identity of nominating committee members once such members are appointed. In addition, the nominating committee shall inform the membership of the opening of the nominations for the following year when it makes its report to the general membership as provided in Article VI, Section 5(g) below.

(g) **Decision and Report.** The nominating committee's recommendations shall be communicated to the League-Cal Cities Board not later than 30 days prior to the date of Cal Cities' the League's Annual Conference and again at the Annual Conference. In addition, the nominating committee shall make its report to the membership at the opening general session of the Annual Conference.

(h) **Election.** The election of League-Cal Cities Board officers and Directors-at-Large shall occur at a League-Cal Cities Board meeting at the Annual Conference as provided in Article VII, Section 4(c) and Article VII, section 3.

Section 6: Vacancies.

(a) **Functional Departmental Directorships.** In the event of a vacancy in a functional departmental directorship, the president of the department may become a member of the League-Cal Cities Board or may appoint a member of his or her department to fill the vacancy.

~~(b)~~ **Regional Division Directorships.** If a vacancy occurs in the regional division directorship, the regional division in question may elect a new Director at the next regular meeting of the regional division.

~~(b)(c)~~ Caucus Directorships. If a vacancy occurs in a caucus directorship, the caucus officers may elect a new Director.

~~(c)(d)~~ **At-Large Directorships.** If a vacancy occurs in an at-large directorship, the League-Cal Cities Board may elect a new Director to fill the vacancy at

the next regular board meeting. The ~~League-Cal Cities~~ president may nominate individuals for consideration by the ~~League-Cal Cities~~ Board.

~~(d)~~**(e) Large City Directorships.** In the event of a vacancy in a large-city seat, that large city may designate a new representative.

~~(e)~~**(f) Terms.** The person elected or appointed to fill a vacancy holds office for the remainder of the term of the office in question (see Article VII, section 3).

~~(f)~~**(g) Grounds for Vacancy.** A vacancy in a directorship shall occur due to resignation, a vacancy in elective or appointed office held by the director, or if the ~~League-Cal Cities~~ Board determines the department, ~~or~~ division, ~~or~~ caucus that elected the director, or an appointed director, is not complying with these bylaws or the policies of the ~~League-Cal Cities~~ Board.

Section 7: Resignation.

Any Director resignation is effective upon receipt in writing by the ~~League's-Cal Cities~~ President or Executive Director, unless a later date is specified in the letter.

Section 8: Meetings and Meeting Notice.

(a) Regularly Scheduled Board Meetings. The ~~League-Cal Cities~~ Board shall meet no fewer than four times a year. Notice of regularly scheduled Board meetings shall be mailed to each Director at least 14 days before any such meeting.

(b) Emergency Board Meetings. A good faith effort shall be made to provide notice of any emergency board meetings (for example, by first-class mail, personal or telephone notification, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means).

(c) Telephonic or Electronic Participation. Members of the ~~League-Cal Cities~~ Board may participate in any meeting through the use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting by this means constitutes presence in person at such meeting.

(d) Notice Content. All meeting notices shall include the meeting date, place, time, and, as applicable, the means by which a ~~League-Cal Cities~~ Board member may participate electronically.

Section 9: Policies.

The ~~League-Cal Cities~~ Board may adopt such policies for its government as it deems necessary and which are not inconsistent with these bylaws. In the event of an inconsistency, these bylaws shall prevail.

Section 10: Committees.

(a) **General.** The ~~League-Cal Cities~~ Board may establish committees to study city problems, advise on ~~League-Cal Cities~~ educational efforts, make recommendations with respect to ~~League-Cal Cities~~ advocacy efforts, or to engage in other appropriate ~~Cal Cities League~~-service.

(b) Executive Committee.

(i) **Composition.** The Executive Committee of the ~~League-Cal Cities~~ Board consists of the following: the ~~League's-Cal Cities~~ President, First Vice-President, Second Vice-President/Treasurer, Immediate Past President and Executive Director.

(ii) **Authority.** The Executive Committee has authority to act for the ~~League-Cal Cities~~ Board between Board meetings, provided that no action of the Executive Committee is binding on the ~~League-Cal Cities~~ Board unless authorized or approved by the Board.

(c) Standing Policy Committees.

(i) **Charge.** ~~Cal CitiesThe League~~ shall have a series of standing policy committees, whose charge shall be to make recommendations to the ~~League-Cal Cities~~ Board on matters within the committees' jurisdiction, as well as fulfill other duties specified in these bylaws (see, for example, Article VI, section 4(b)).

(ii) **Membership.** Each ~~League-Cal Cities~~ Policy Committee shall be comprised of the following:

- Two members appointed by each regional division president;
- One member appointed by each functional department president;
- One member appointed by each caucus president;
- No more than 16 members appointed by the ~~League-Cal Cities~~ ~~Pp~~resident, to provide population and geographic balance, as well as expertise; and

- Such representatives of affiliate organizations in the capacity authorized by the League-Cal Cities Board.

(iii) Feedback. Policy committees shall receive information on actions taken on committee recommendations and the reasons for those actions.

(d) Committee Chairs and Vice Chairs. The League-Cal Cities President appoints the chair of all League-Cal-Cities-wide committees. The term of such appointments coincides with the League-Cal Cities President's term. The League-Cal Cities President may appoint vice chairs for such committees, as the League-Cal Cities President deems necessary.

Section 11: Compensation.

The Directors do not receive any compensation for their services, but, with League-Cal Cities Board approval, may be entitled to reimbursement for actual and necessary expenses incurred in the performance of their duties.

Section 12: Reports of Directors.

The League-Cal Cities Board's duties include providing an annual report to League-Cal Cities members at the regular Annual Conference showing the League's Cal Cities work, the League's Cal Cities financial condition, and a statement with respect to the League's Cal Cities' plans for further work and proposed policies.

Section 13: Standard of Care.⁴

(a) General. A Director shall perform the Director's duties, including duties on any committee on which the Director serves, in good faith, in a manner the Director believes to be in the best interests of the League-Cal Cities and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

(b) Reliance on Information. In performing the Director's duties, the Director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by:

- (i) One or more League-Cal Cities officers or employees whom the Director believes to be reliable and competent as to the matters presented;

⁴ See Cal. Corp. Code § 7231 (providing that a director who performs the director's duties according to these standards is not liable for any alleged failure to properly discharge the individual's obligations as a director).

- (ii) Counsel, independent accountants, or other persons as to matters which the Director believes to be within such person's professional or expert competence; or
- (iii) A League-Cal Cities Board committee upon which the Director does not serve, as to matters within the committee's designated authority, provided that the Director believes the committee merits confidence.

The Director may rely on such information, opinions, reports, or statements as long as the Director acts in good faith after reasonable inquiry (when the need for such inquiry is indicated by the circumstances) and as long as the Director has no knowledge that would suggest that such reliance is unwarranted.

(c) Non-Liability. An individual who performs the duties of a Director in accordance with this section will not be liable for any failure or alleged failure to discharge that person's obligations as a Director, including, without limiting the generality of the preceding, any actions or omissions which are inconsistent with the League's Cal Cities' nonprofit purposes.

Section 14: Right to Inspect Records.

Every Director has a right at any reasonable time to inspect and copy all League-Cal Cities books, records and documents of every kind and to inspect the League's Cal Cities' physical property.⁵

Section 15: Policy Changes.

Any policy established by the League's Cal Cities' General Assembly may be changed by the League's Cal Cities Board upon ratification of such proposed change by a majority of the regional divisions representing a majority of Member Cities within the time period specified by the League-Cal Cities Board.

Section 16: Positions on Statewide Ballot Measures.

Notwithstanding any other provision of these bylaws, the League-Cal Cities Board may take a position on a statewide ballot measure by a 2/3rd vote of those Directors present.

Section 17: Non-Voting Advisor to the Board.

Effective December 1, 2022, if members of the National League of Cities Board of Directors hold an office in a Member City, no more than one such member shall be appointed by the Cal Cities President to serve as a non-voting advisor to the Cal Cities Board, for a term that coincides with their term on the National League of Cities Board

⁵ See Cal. Corp. Code § 83343 (characterizing this right as absolute).

of Directors. Any such non-voting advisor shall be invited to attend all regularly-scheduled Board meetings. The non-voting advisor shall not attend emergency Board meetings and/or closed/executive sessions of the Board unless a determination is made by the Board to include the non-voting advisor in a particular emergency Board meeting and/or closed/executive session.

Article VIII: Officers

Section 1: Identity.

The officers of ~~the League-Cal Cities~~ are a President, a First Vice-President, a Second Vice-President/Treasurer, an Immediate Past President, and an Executive Director.

Section 2: Duties of ~~League-Cal Cities~~ Officers.

- (a) President.** The President presides at all ~~League-Cal Cities~~ Board meetings and all General Assemblies. The President has such other powers and duties as may be prescribed by these bylaws or the ~~League-Cal Cities~~ Board.
- (b) First Vice-President.** The First Vice-President carries on the duties of the President in the President's temporary absence or incapacity. The First Vice-President has such other powers and duties as may be prescribed by these bylaws or the ~~League-Cal Cities~~ Board.
- (c) Second Vice-President/Treasurer.** The Second Vice-President/Treasurer carries on the duties of the President in the President's and First Vice-President's temporary absence or incapacity. The Second Vice-President/Treasurer has such other powers and duties as may be prescribed by these bylaws or the ~~League-Cal Cities~~ Board.

Section 3: Election.

The ~~League-Cal Cities~~ Board elects the ~~League's-Cal Cities~~ President, First Vice-President and Second Vice-President for terms of one year.⁶ The election occurs at the ~~League-Cal Cities~~ Board's meeting at the Annual Conference.

Section 4: Vacancies.

A vacancy in the office of President is filled by the Immediate Past President who shall serve for the unexpired term of office and, upon election of a new President at the next Annual Conference, shall subsequently serve a full term as Immediate Past President. In the event the Immediate Past President is not available to fill the vacancy in the office of the President, or declines in writing, it shall be filled by the succession of the First

⁶ See Cal. Corp. Code § 7151(c)(5) (suggesting bylaws address this issue).

Vice-President to that office. A vacancy in the office of First Vice-President, or Second Vice-President/Treasurer, is filled for the un-expired term by appointment by the League Cal Cities Board of a member of the League Cal Cities Board. A vacancy in the office of the Immediate Past President is filled for the un-expired term by the last Past President continuing to hold a city office.

Section 5: Executive Director and League Cal Cities Employees.

(a) Employment. The League Cal Cities Board selects an Executive Director who employs, or causes to be employed, such other persons as may be necessary who need not be League Cal Cities members. The Executive Director and employees perform such duties and receive such compensation as the League Cal Cities Board may from time to time prescribe.

(b) Specific Duties. The Executive Director performs or causes to be performed the following functions:

(1) Corporate Secretary. These duties include:

- (i) Keeping a full and complete record of the proceedings of the League Cal Cities Board;
- (ii) Giving such notices as may be proper and necessary;
- (iii) Keeping minute books for Cal Cities~~the League~~;
- (iv) Communicating the League Cal Cities Board's actions to Member Cities;
- (v) Executing such instruments necessary to carry out Board directives and policies; and
- (vi) Complying with other record-keeping and reporting requirements of California Nonprofit Corporation Law.

(2) Chief Financial Officer. These duties include:

- (i) Having charge of and custody of and receiving, safeguarding, disbursing and accounting for all League Cal Cities funds;
- (ii) Depositing and investing such funds in such institutions and investments as approved by the League Cal Cities Board;
- (iii) Maintaining ~~the League's~~Cal Cities' financial books and records; and

(iv) Preparing and submitting such accounting and tax forms as may be required by local, state and federal law.

(c) **Insurance.** All employees handling the finances of ~~Cal Cities the League~~ shall be insured in such amount as the ~~League-Cal Cities~~ Board deems desirable or necessary, such insurance to be approved by the ~~League-Cal Cities~~ Board or a committee designated by the ~~League-Cal Cities~~ Board and the premiums paid by ~~Cal Cities the League~~.

Article IX: Regional Divisions

Section 1: Listing.

(a) **Existing Regional Divisions.** ~~Cal Cities The League~~ is comprised of the following regional divisions:

| | |
|--------------------|--------------------------|
| Central Valley | North Bay |
| Channel Counties | Orange County |
| Desert-Mountain | Peninsula |
| East Bay | Redwood Empire |
| Imperial County | Riverside County |
| Inland Empire | Sacramento Valley |
| Los Angeles County | San Diego County |
| Monterey Bay | South San Joaquin Valley |

(b) **New Divisions.** Additional divisions may be formed through an amendment to these bylaws (Article XVI).

Section 2: Purposes and Functions.

The purposes and functions of regional divisions of ~~Cal Cities the League~~ are as follows:

- (a) To promote interest in the problems of city government and administration among city officials within such divisions.
- (b) To assist ~~League-Cal Cities~~ officials in formulating policies by expressing, through resolutions duly adopted, the recommendations of the regional divisions. Resolutions adopted by regional divisions to be considered at the Annual Conference shall be submitted in the manner provided by Article VI.
- (c) To take action consistent with general ~~League-Cal Cities~~ policy as duly adopted by ~~Cal Cities' the League's~~ General Assembly or by the ~~League's Cal Cities~~ Board. Regional divisions may take no action in conflict with such policies. Nothing in the foregoing limits or restricts regional division activities in matters of purely local interest and concern.

- (d) To meet not less than once every three months, provided that ~~the League~~Cal Cities' Annual Conference may be considered one such meeting of a regional division.

Section 3: Names of Divisions.

Each regional division will identify itself as a division of the League of California Cities.

Section 4: Boundaries.

The territorial boundaries of each regional division may be fixed by each division subject to the approval of ~~the League's~~Cal Cities' General Assembly.

Section 5. Membership.

All cities within the boundaries of a regional division may become members of and participate in the activities of that division. A city may join a different regional division with the approval of both the existing and proposed division, and the ~~League's~~Cal Cities Board of Directors.

Section 6: Voting.

Unless otherwise provided in a regional division's bylaws, the representatives of each Member City may cast collectively one vote on division matters, and a majority of the votes cast is necessary for a decision.

Section 7: Officers.

(a) Identity. Each regional division elects a President, a Vice-President, and a representative on the ~~League~~Cal Cities Board of Directors, and such other officers as any regional division bylaws may establish.

(b) Election Timing. Each regional division elects its officers at the regional division meeting immediately preceding ~~the League's~~Cal Cities' Annual Conference, unless another date is provided by any regional division's bylaws.

(c) Terms.

(i) Officers' Terms and Commencement Dates. Except as provided below, the term of office of all newly elected officers is one year, commencing immediately upon election unless another date is

provided by the regional division's bylaws.⁷ A majority of the members may amend any regional division bylaws to provide for two-year terms for regional division officers.

(ii) **Directors' Terms and Commencement Dates.** The term of office and commencement date for regional division representatives on the League-Cal Cities Board are established in Article VII, section 2(d) (term length) and 4(~~ee~~) (term commencement).

(d) **Vacancies.** In the event of a vacancy in any regional division office, such vacancy is filled by election at the next regular meeting of such division for the unexpired term of that office. The fact that such a vacancy will be so filled shall be included in the notice of such meeting. This requirement also applies to a vacancy in the office of regional division director, as provided in Article VII, section 6(b).

(e) **Duties.**

(i) **President.** The President presides at all regional division meetings and has such other powers and duties as may be prescribed by any division bylaws.

(ii) **Vice-President.** The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by any division bylaws.

(iii) **Secretary.** The Secretary a) immediately notifies ~~the LeagueCal~~ Cities of any change in the regional division officers, b) records the minutes of all division meetings and sends one copy to League-Cal Cities headquarters, and c) prepares and mails all notices of the meetings of the division and sends a copy to the League-Cal Cities headquarters.

(iv) **Director.** The regional division Director shall represent the regional division on the League-Cal Cities Board and shall keep the division membership apprised of ~~League-the Cal Cities~~ Board's activities. The Director serves as a liaison between the regional division and the League-Cal Cities Board.

⁷ Note that this term commencement is different than that for the League-Cal Cities board (whose terms commence upon adjournment of the Annual Conference) and than that for department officers (also upon adjournment of the Annual Conference).

Section 8: Resignation.

Except as provided in Article VII, section 7 for members of the League-Cal Cities Board, a regional division officer's resignation is effective upon receipt in writing by the division's President or Secretary, unless a later date is specified in the letter.

Section 9: Regional Division Bylaws.

Regional divisions may adopt their own bylaws. Division bylaws may not conflict with ~~the League's Cal Cities'~~ bylaws. In the event of a conflict between a division's bylaws and League-Cal Cities' bylaws, ~~the League's Cal Cities'~~ bylaws will prevail; ~~the League's Cal Cities'~~ bylaws also prevail when the division does not have bylaws or the division's bylaws are silent.

Article X: Functional Departments

Section 1: Listing.

(a) Existing Departments. ~~The League Cal Cities~~ includes the following functional departments:

| | |
|------------------------------------|----------------------------------|
| Mayors and Council Members | Police Chiefs |
| City Attorneys | Fire Chiefs |
| Fiscal Officers | Community Services |
| Public Works Officers | City Clerks |
| City Managers | Personnel and Employee Relations |
| Planning and Community Development | |

(b) New Departments. Additional functional departments may be formed through an amendment to these bylaws (Article XVI).

Section 2: Officers.

(a) Identity. Each functional department elects a President, a Vice-President, a representative on the Board, and such other officers as the department's bylaws may establish.

(b) Election Timing. Each functional department elects its officers at the department's business session at ~~the League's Cal Cities'~~ Annual Conference, unless the department's bylaws provide otherwise.

(c) Terms. The term of office for functional department officers is one year, commencing immediately upon the adjournment of the Annual Conference. The exception is the functional department representatives of the League-Cal Cities Board, whose term is two years as established in Article VII, section 2(d).

(d) Vacancies. A vacancy in the office of President is filled for the unexpired term by the succession of the Vice-President. A vacancy in the office of the Vice-President or any other office of the functional department is filled by appointment by the department President for the unexpired term. The person so appointed shall be a member of such department. A vacancy in the office of department ~~De~~director is filled as provided in Article VII, section 6(a) for the unexpired term.

(e) Duties.

(i) President. The President presides at functional department meetings and has such other powers and duties as may be prescribed by any department bylaws.

(ii) Vice-President. The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by any department bylaws.

(iii) Director. The department Director shall represent the functional department on the ~~League-Cal Cities~~ Board and shall keep the department membership apprised of ~~League-the Cal Cities~~ Board's activities. The Director serves as a liaison between the department and the ~~League-Cal Cities~~ Board.

(f) Resignation. Except as provided in Article VII, section 7 for members of the ~~League-Cal Cities~~ Board, a functional department officer's resignation is effective upon receipt in writing by the department's President or Vice-President, unless a later date is specified in the letter.

Section 3: Voting.

Except as otherwise provided in a functional department's bylaws, the representatives of each Member City may cast collectively one vote on functional department matters. A majority of the votes cast is necessary for a decision.

Section 4: Department Meetings.

Functional departments meet at the Annual Conference and at other times and places as they find necessary.

Section 5: Department Bylaws.

Functional departments may adopt their own bylaws. Such bylaws may not conflict with ~~the League's Cal Cities'~~ bylaws. In the event of a conflict between a department's

bylaws and ~~League-Cal Cities'~~ bylaws, ~~Cal Cities' the League's~~ bylaws will prevail; ~~Cal Cities' the League's~~ bylaws also prevail when the department does not have bylaws or the department's bylaws are silent.

Article XI: Caucuses

Section 1: Listing.

(a) Existing Caucuses. Cal Cities includes the following caucuses:

African American Caucus
Asian Pacific Islander Caucus
Lesbian Gay Bisexual Transgender Queer (LGBTQ) Caucus
Latino Caucus
Women's Caucus

(b) New Caucuses. Additional caucuses may be formed through an amendment to these bylaws (Article XVI).

Section 2: Purposes and Functions.

The purposes and functions of the caucuses are as follows:

- (a) To promote within Cal Cities the active involvement and full participation of a wide spectrum of city officials reflecting the diversity of California's cities, so as to enhance responsive city government.
- (b) To facilitate the sharing of information between city officials who share characteristics such as nationality, race, ethnicity, gender, sexual orientation, age, or religion, and to provide educational and leadership development opportunities to such city officials.
- (c) To promote interest in, and advocate for, issues relating to city government and administration that are of concern to caucus members to enhance the quality of life for their diverse constituencies.
- (d) To assist Cal Cities officials in formulating policies by expressing, through resolutions duly adopted, the recommendations of the caucuses. Resolutions adopted by caucuses to be considered at the Annual Conference shall be submitted in the manner provided by Article VI.
- (e) To take action consistent with general Cal Cities policy as duly adopted by Cal Cities' General Assembly or by the Cal Cities Board. Caucuses may take no action in conflict with such policies.

(f) To meet at the Annual Conference and at other times and places as they find necessary.

Section 3: Names of Caucuses.

Each caucus will identify itself as a caucus of the League of California Cities.

Section 4: Membership.

All elected and appointed officials in Member Cities may apply to become members of a caucus in accordance with such caucus's bylaws or procedures.

Section 5: Voting.

Unless otherwise provided in caucus bylaws, each caucus member may cast one vote on caucus matters, and a majority of the votes cast is necessary for a decision.

Section 6: Officers.

(a) Identity. Each caucus elects a President, a Vice-President, and a representative on the Cal Cities Board of Directors, and such other officers as caucus bylaws may establish.

(b) Election Timing. Each caucus elects its officers at the caucus meeting at the Cal Cities Annual Conference, unless another date is provided by caucus bylaws.

(c) Terms.

(i) Officers' Terms and Commencement Dates. Except as provided below, the term of office of all newly elected officers is one year, commencing immediately upon election, unless another term length or commencement date is provided by caucus bylaws.⁸

(ii) Directors' Terms and Commencement Dates. The term of office and commencement date for caucus representatives on the Cal Cities Board are established in Article VII, section 2(d) (term length) and 4(c) (term commencement).

(d) Vacancies. Unless otherwise provided in caucus bylaws, a vacancy in the office of President is filled for the unexpired term by the succession of the Vice-President. A vacancy in the office of the Vice-President or any other

⁸ Note that this term commencement is different than that for the Cal Cities board (whose terms commence upon adjournment of the Annual Conference) and than that for department officers (also upon adjournment of the Annual Conference).

office of the caucus is filled by appointment by the caucus President for the unexpired term. The person so appointed shall be a member of such caucus. A vacancy in the office of caucus Director is filled as provided in Article VII, section 6(c) for the unexpired term.

(e) Duties.

- (i) President.** The President presides at all caucus meetings and has such other powers and duties as may be prescribed by caucus bylaws.
- (ii) Vice-President.** The Vice-President carries on the duties of the President in the President's temporary absence or incapacity and has such other powers and duties as may be prescribed by caucus bylaws.
- (iii) Director.** The caucus Director shall represent the caucus on the Cal Cities Board and shall keep the caucus membership apprised of the Cal Cities Board's activities. The Director serves as a liaison between the caucus and the Cal Cities Board.

Section 7: Resignation.

Except as provided in Article VII, section 7 for members of the Cal Cities Board, a caucus officer's resignation is effective upon receipt in writing by the caucus's President, unless a later date is specified in the resignation letter or provided by caucus bylaws.

Section 8: Caucus Bylaws.

Caucuses may adopt their own bylaws. Such bylaws may not conflict with Cal Cities' bylaws. In the event of a conflict between a caucus's bylaws and Cal Cities' bylaws, Cal Cities' bylaws will prevail; Cal Cities' bylaws also prevail when the caucus does not have bylaws or the caucus's bylaws are silent.

Article XII: Voting

Section 1: Quorum.

- (a) In General.** A majority of the members of the League's Cal Cities Board, functional department, regional division, caucus, committee or other kind of subsidiary body constitutes a quorum for the purpose of making decisions.⁹

⁹ See Cal. Corp. Code § 7211(a)(8) (noting that a board meeting may continue to transact business after a quorum is lost as long as items approved receive a majority of the quorum, unless a higher approval threshold exists for approval of a certain type of action).

(b) General Assembly. The presence, at the General Assembly, of credentialed voting delegates (or alternates) representing a majority of Member Cities, constitutes a quorum.¹⁰

(c) Failure to Achieve Quorum. In the event that a body other than the League Cal Cities Board of directors lacks a quorum, all votes taken by that body will be advisory to the League Cal Cities Board, which shall be advised that a quorum was not present. In the event that the League's Cal Cities Board is unable to achieve a quorum, the League Cal Cities Board will adjourn until such time as a quorum can be achieved.

Section 2: Voting Methods.

(a) General Assembly. All voting in meetings of the General Assembly of Cal Cities~~the League~~, its regional divisions, functional departments, caucuses, committees, and other kinds of subsidiary bodies is by voice vote.

(b) Alternative Methods. If the presiding official cannot determine the outcome of the voice vote or three or more Member Cities request, an alternative method of voting may be used. An alternative voting method may be by any means (show of hands, written ballot, display of voting cards, etc.) which allows the presiding official to accurately determine the outcome of the vote.

(c) Roll Call Vote. A roll call may be demanded by representatives of ten percent or more of the voting body.

(d) Voting Cards. A voting card will be issued to each Member City's designated voting delegate upon presentation of evidence of the delegate's designation by the Member City.

(e) Proxy Voting. Proxy voting is not allowed.

Section 3: Vote Threshold.

Except as otherwise provided in these bylaws (see, for example, Article XVI, section 2), a majority vote of approval of those voting is necessary for decision.

¹⁰ See Cal. Corp. Code § 7512(c) (noting that a membership meeting may continue to transact business after a quorum is lost as long as items approved receive a majority of the quorum, unless a higher approval threshold exists for approval of a certain type of action—for example, bylaws approval).

Section 4: One City One Vote.

Except as otherwise provided in a functional department's, ~~or~~ a regional division's, or caucus's bylaws, the representatives of each Member City present and in good standing collectively cast s one vote. A majority of the votes cast is necessary for a decision.

Section 5: Mail Balloting.

In addition to voting at League-Cal Cities meetings, Cal Cities~~the League~~ may solicit member input by mail ballot.

- (a) **Mailing.**¹¹ The question(s) to be voted upon, along with explanatory materials and a ballot, shall be mailed by first class mail to each Member City for consideration and action.
- (b) **Time Frame for Action.** Member Cities shall have at least 45 days to cast their vote. Ballots shall be cast by returning the Member City's ballot to Cal Cities' the League's principal office in Sacramento.
- (c) **Ballot Tabulation and Results Announcement.** The League-Cal Cities President will appoint a counting committee of three board members to count the votes cast by mail ballot. The counting committee will submit its count to the League-Cal Cities Board, which shall canvass the vote and announce the results.
- (d) **Functional Departments, and Regional Divisions, and Caucuses.** Departments, ~~and~~ divisions, and caucuses may also use mail balloting under procedures specified in their respective ~~department and division~~ bylaws.

Article XIII: Qualifications to Hold Office and Vacancies

Section 1: Eligibility to Hold Office.

- (a) **In General.** Excepting the office of the Executive Director, no person shall be eligible to hold office in ~~the League~~Cal Cities or any League-Cal Cities division, ~~or~~ department, or caucus unless the individual is officially in city service in a Member City at the time of the person's election or appointment. Regional divisions, ~~and~~ functional department, and caucus bylaws may specify additional eligibility requirements for their respective officeholders.

¹¹ The Administrative Services Committee recommends ~~the League~~Cal Cities also include notice of the upcoming ballot in a variety of League-Cal Cities communications to alert Member Cities to make inquiry in the event a city's ballot is lost in the mail.

(b) Length of Service. An individual who has occupied an elected League-Cal Cities Board office (as defined in Article VIII, section 1) for nine months (275 days) or more is ineligible to stand for election for that same office again.

Section 2: Vacancies.

(a) Vacancy Defined. A League-Cal Cities office becomes vacant when an individual resigns, misses three consecutive convened meetings or leaves city service.¹²

(b) Effective Date of Vacancy Caused by Leaving City Service. The effective date of a vacancy caused by a departure from city service is the date an individual ceases to occupy the same or comparable city office as the individual had when the individual was elected or appointed to League-the Cal Cities office. Upon written request of the individual, the League-Cal Cities Board may allow the individual to continue in the League-Cal Cities office for a period not to exceed 3 months from the effective date of the vacancy, which time period may be extended by the Board upon finding of good cause.

(c) Effective Date of Resignations. For the effective dates of resignations, see Article VII, section 7 (effective date of League-Cal Cities Board resignations), Article IX, section 8 (effective date of regional division officer resignations), and Article X, section 2(f) (effective date of department officer resignations), and Article XI, section 7& (effective date of caucus officer resignations).

(d) Filling Vacancies. Vacancies will be filled as provided in these bylaws; see Article VII, section 6 (filling League-Cal Cities Board vacancies), Article IX, section 7(d) (filling regional division officer vacancies), and Article X, section 2(d) (filling functional department officer vacancies), and Article XI, section 67(di) (filling caucus officer vacancies).

(e) Successor Terms. An individual filling a vacancy serves the unexpired term of his or her predecessor.

Article ~~XIV~~**III: Finances**

Section 1: Fiscal Year.

The fiscal year of ~~the League-Cal Cities~~ is the calendar year.

¹² See also Cal. Corp. Code § 7221 (board may declare a director's seat vacant if a court declares the director of unsound mind or the director has been convicted of a felony).

Section 2: Budget.

- (a) **Preparation and Approval.** Not less than fifteen days prior to the budget meeting of the League-Cal Cities Board, the Executive Director shall distribute to the Board a detailed budget describing the estimated revenues and expenditures for the ensuing budgetary period for the Cal Cities League Board's consideration and approval.
- (b) **Dissemination.** Upon approval, a copy of ~~the League's-Cal Cities'~~ budget shall be sent to each regional division, ~~and~~ functional department ~~president,~~ and caucus president, who shall make it available to division, ~~and~~ department, and caucus members.

Section 3: Limitation of Expenditures.

The League-Cal Cities Board may not incur indebtedness in excess of the estimated or actual revenues for the ensuing fiscal year, without the approval of ~~the League's~~Cal Cities' General Assembly.

Section 4: Annual Audit.

~~The League's~~Cal Cities' accounts shall be audited by a certified public accountant after the close of each fiscal year.

Section 5: Special Assessment for League-Cal Cities Building.

By resolution approved by a majority of those cities present and voting thereon at an Annual Conference, a special assessment may be levied for a permanent headquarters office building in Sacramento as specified in the resolution.

Article XIV: Prohibited Transactions

Section 1: Conflicts of Interest.

General Principle. Members of the League-Cal Cities Board as well as members of League-Cal Cities policy committees, and members of any standing or ad hoc committees and task forces consisting of members of the League-Cal Cities Board or League-Cal Cities policy committees, are expected to make decisions in the best overall interests of cities statewide, as opposed to narrow parochial, personal, or financial interests. This is analogous to city officials being expected to make decisions in the best overall interests of the community as opposed to narrow private or self-interests.

Section 2: Loans.

Except as permitted by California Nonprofit Corporation Law,¹³ ~~the League~~Cal Cities may not make any loan of money or property to, or guarantee the obligation of, any director or officer. This prohibition does not prohibit ~~the League~~Cal Cities from advancing funds to a ~~League~~Cal Cities director or officer for expenses reasonably anticipated to be incurred in performance of their duties as an officer or director, so long as such individual would be entitled to be reimbursed for such expenses under ~~League~~Cal Cities Board policies absent that advance.

Section 3: Self-Dealing and Common Directorship Transactions.¹⁴

(a) Self-Dealing Transactions. A self-dealing transaction is a transaction to which ~~the League~~Cal Cities is a party and in which one or more of its directors has a material financial interest.

(b) Common Directorships. “Common directorships” occur when ~~the League~~Cal Cities enters into a transaction with an organization in which one of ~~the League~~Cal Cities’ directors also serves on the organization’s board.

(c) Pre-Transaction Approval. To approve a transaction involving either self-dealing or a common directorship, the ~~League~~Cal Cities Board shall determine, before the transaction, that

- (i) ~~Cal Cities~~The League is entering into the transaction for its own benefit;
- (ii) The transaction is fair and reasonable to ~~the League~~Cal Cities at the time; and
- (iii) After reasonable investigation, the ~~League~~Cal Cities Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

Such determinations shall be made by the ~~League~~Cal Cities Board in good faith, with knowledge of the material facts concerning the transaction and the director’s interest in the transaction, without counting the vote of the interested director or directors.

(d) Post-Transaction Approval. When it is not reasonably practicable to obtain Board approval before entering into such transactions, a Board committee may approve such transaction in a manner consistent with the requirements

¹³ See Cal. Corp. § 7235.

¹⁴ See generally Cal. Corp. Code § 7233. Note that interested or common directors may be counted in determining the existence of a quorum in a board or committee meeting that approves such transactions. See Cal. Corp. Code § 7234.

in the preceding paragraph, provided that, at its next meeting, the full Board determines in good faith that the League-Cal Cities Board committee's approval of the transaction was consistent with such requirements and that it was not reasonably practical to obtain advance approval by the full Board, and ratifies the transaction by a majority of the directors then in office without the vote of any interested director.¹⁵

Section 4: Ethical Considerations.

These restrictions, of course, represent the floor, not the ceiling, for ethical conduct as a League-Cal Cities board member or policy committee member. If a board member or policy committee member believes that there are circumstances under which ~~the~~ League's-Cal Cities' members might reasonably question the board member's or policy committee member's ability to act solely in the best interests of Cal Cities the League and its member cities, the prudent course is to abstain. As an example, typically League-Cal Cities board members have abstained from participating in decisions on legislation that would affect organizations for which they work. Another example is legislation that would uniquely benefit a board member's city. Policy committee members should also consider abstaining in similar circumstances.

Article XVI: Miscellaneous

Section 1: Indemnification.

(a) Indemnity Authorized. To the extent allowed by California Nonprofit Corporation Law,¹⁶ ~~the League~~Cal Cities may indemnify and advance expenses to its agents in connection with any proceeding, and in accordance with that law. For purposes of this section, "agent" includes directors, officers, employees, other League-Cal Cities agents, and persons formerly occupying these positions.

(b) Approval of Indemnity. An individual seeking indemnification shall make a written request to the League-Cal Cities Board in each case.

(i) Success on the Merits. To the extent that the individual has been successful on the merits, the League-Cal Cities Board will promptly authorize indemnification in accordance with California Nonprofit Corporation Law.¹⁷

¹⁵ See Cal. Corp. Code § 7233 (specifying under what circumstances a self-dealing transaction is void or voidable).

¹⁶ See Cal. Corp. Code § 7237.

¹⁷ See Cal. Corp. Code § 7237(d).

(ii) **Other Instances.** Otherwise, the League-Cal Cities Board shall promptly determine, by a vote of a majority of a quorum consisting of directors who are not parties to the proceeding, whether, in the specific case, the agent has met the applicable standard of conduct under California law,¹⁸ and, if so, will authorize indemnification to the extent permitted.

(c) **Advancing Expenses.** To the extent allowed under California Nonprofit Corporation Law,¹⁹ the League-Cal Cities Board may authorize an advance of expenses incurred by or on behalf of an agent of this corporation in defending any proceeding prior to final disposition. The League-Cal Cities Board shall find that:

(i) the requested advances are reasonable; and

(ii) before any advance is made, the agent will submit a written undertaking satisfactory to the League-Cal Cities Board to repay the advance unless it is ultimately determined that the agent is entitled to indemnification for the expenses under this section.

Section 2: Insurance.²⁰

The League-Cal Cities Board may authorize the purchase of insurance on behalf of any agent against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, and such insurance may provide for coverage against liabilities beyond Cal Cities' the League's corporation's authority to indemnify an agent under law.

Section 3: Contracts and Execution of Instruments.

All contracts entered into on behalf of Cal Cities the League shall be authorized by the League-Cal Cities Board, or by the person or persons upon whom the League-Cal Cities Board confers such power from time to time. Except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of Cal Cities the League shall be signed by the persons authorized to do so by the Cal Cities League Board.

Section 4: Disposition of Assets Upon Dissolution.

~~The League's~~Cal Cities' properties and assets are irrevocably dedicated to the fulfillment of ~~the League's~~Cal Cities' purposes as described in Article II. No part of ~~the~~

¹⁸ See Cal. Corp. Code § 7237(b) and (c) (with exceptions).

¹⁹ See Cal. Corp. Code § 7237(fa).

²⁰ See also Cal. Corp. Code § 7237(i) (authorizing insurance).

~~Cal Cities' League's~~ net earnings, properties and assets, on dissolution or otherwise, may inure to the benefit of any private person. On liquidation or dissolution, Cal Cities'~~the League's~~ net assets shall be distributed to ~~the League's~~ Cal Cities' Member Cities consistent with the provisions of the California Nonprofit Corporation Law relating to mutual benefit corporations then in effect.

Section 5: Parliamentary Authority.

Subject to the provisions of these bylaws and applicable law, Robert's Rules of Order or other such parliamentary rules as may be adopted by the League-Cal Cities Board shall prevail at all meetings of ~~the League~~Cal Cities, the League-Cal Cities Board, and in all functional departments, ~~and~~ regional divisions, and caucuses.

Section 6: Seal.

The League-Cal Cities Board has provided a suitable seal for ~~the League-Cal Cities~~ which is circular and which contains the following inscription:

"LEAGUE OF CALIFORNIA CITIES
INCORPORATED NOVEMBER 4, 1932, CALIFORNIA"

The seal may be affixed to corporate instruments, but any failure to affix it does not affect the instrument's validity.

Section 7: Governing Law.

In all matters not specified in these bylaws, or in the event these bylaws are inconsistent with applicable law, the provisions of California Nonprofit Corporation Law then in effect apply.

Section 8: Litigation Authority.

Member Cities authorize ~~the League~~Cal Cities to initiate or respond to litigation on their collective behalf when the League-Cal Cities Board determines such litigation is necessary to protect Member Cities' shared vital interests.

Article XVII: Amendments

Section 1: Consideration.

These bylaws may be amended by ~~the League's~~Cal Cities' General Assembly (see Article XVII, section 5 for procedures) or by a mail ballot to Member Cities (see Article XI, section 5 for procedures).

Section 2: Vote Threshold.

A two-thirds vote of approval of those voting is necessary to amend these bylaws.

Section 3: Who May Propose.

Amendments may be proposed by the ~~League-Cal Cities~~ Board or by petition of ten percent of Member Cities. The proponent may specify whether the amendment is to be considered at the General Assembly or by mail ballot.

Section 4: Board Review.

Any amendment proposed by petition shall be submitted to the ~~League-Cal Cities~~ Board in writing for its review. The ~~League-Cal Cities~~ Board's recommendation and reasons following its review shall accompany all materials relating to the proposed amendment.

Section 5: Procedure for Consideration by General Assembly.

(a) Notice. The meeting notice required by Article V, section 4 for ~~League-Cal Cities~~ meetings shall include notice of any proposal to amend ~~the League's Cal Cities'~~ bylaws, along with the subject of the proposed amendment(s).

(b) Consideration by General Assembly. The proposed amendment, along with any action by the ~~League-Cal Cities~~ Board pursuant to section 4 of this Article, shall be considered by the General Assembly along with any resolutions presented pursuant to Article VI.

Section 6: Effective Date.

After approval, amendments go into effect after the expiration of the protest period (see Article XVII, section 7) unless otherwise specified in the amendment.

Section 7: Protest and Suspension until Next Conference.

If, within sixty days after the adoption of any amendment, one-third or more of the Member Cities submit a written protest against such amendment, the amendment is automatically suspended until the next Annual Conference, when it may be taken up again for reconsideration and vote.

Article XVII: Establishment and Financing of Grassroots Network

Section 1: Enhancement of Advocacy Efforts.

To enhance ~~the League's Cal Cities'~~ advocacy efforts on behalf of cities, ~~Cal Cities the League~~ hereby establishes a Grassroots Network. The Grassroots Network consists of

a series of field offices throughout California, responsible for coordinating city advocacy efforts and promoting statewide League-Cal Cities policy priorities.

Section 2: Dues Increase.

(a) Initial Financing. The dues increase approved concurrently with the addition of this article shall finance ~~the League's~~Cal Cities' Grassroots Network for the second half of 2001 and 2002. The increase shall be used exclusively to finance the Grassroots Network.

(b) Continued Financing. Any subsequent dues increases shall occur in accordance with Article IV.

Section 3: Accountability.

(a) Annual Goal-Setting and Performance Assessment. The League-Cal Cities Board shall set long-term goals and annual objectives for Cal Cities'~~the League's~~ Grassroots Network. The League-Cal Cities Board shall periodically report to ~~the League's~~Cal Cities' Member Cities on the Grassroots Network's performance in meeting those goals and objectives.

(b) Board Discontinuance. If at any time the League-Cal Cities Board finds the Grassroots Network is not meeting its objectives on behalf of cities, the League-Cal Cities Board may discontinue the Grassroots Network.

(c) Membership Vote on Program Continuation. On or before December 31, 2007, Member Cities shall vote (see Article XI, section 5 for procedures) on whether to continue the Grassroots Network beyond December 31, 2008.²¹

²¹ At its meeting of September 8, 2007, the General Assembly of the League of California Cities adopted Resolution #1 that the Grassroots Network Program be continued and operated in accordance with these bylaws.