

# **City of Hercules**

*111 Civic Drive  
Hercules, CA 94547*



## **Meeting Agenda**

**Tuesday, October 8, 2019**

**6:00 PM**

**Closed Session - 6:00 p.m.**

**Regular Session - 7:00 p.m.**

**Council Chambers**

### **City Council**

*Mayor Dan Romero  
Vice Mayor Roland Esquivias  
Council Member Chris Kelley  
Council Member Gerard Boulanger  
Council Member Dion Bailey*

*David Biggs, City Manager  
Patrick Tang, City Attorney  
Lori Martin, City Clerk*

*To view webcast of meetings, live or on demand, go to the City's website at [www.ci.hercules.ca.us](http://www.ci.hercules.ca.us)*

**I. SPECIAL MEETING - CLOSED SESSION – 6:00 P.M. CALL TO ORDER - ROLL CALL**

**II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS**

**III. CONVENE INTO CLOSED SESSION**

The Hercules City Council will meet in Closed Session regarding the following:

1. [19-739](#) Pursuant to Government Code Section 54957(b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Attorney
2. [19-740](#) Pursuant to Government Code Section 54956.9(a), Conference with Legal Counsel - Pending/Existing Litigation: Successor Agency to the Hercules Redevelopment Agency and City of Hercules v. California Department of Finance, et al, Sacramento Superior Court Case No. 34-2018-80003038
3. [19-741](#) Pursuant to Government Code Section 54956.9 (d)(1), Conference with Legal Counsel - Pending/Existing Litigation - Taylor Morrison of California, LLC, entitled *Taylor Morrison of California, LLC v. City of Hercules*, Superior Court for the County of Contra Costa, Case No. C19-00366.
4. [19-742](#) Pursuant to Government Code Section 54956.9, Conference with Legal Counsel - Pending/Existing Litigation: *Eva Rodum v. City of Hercules, et al.* Superior Court of California Case No. CIVMSC18-01148

**IV. REGULAR MEETING – 7:00 P.M. CALL TO ORDER - ROLL CALL**

**V. REPORT ON ACTION TAKEN IN CLOSED SESSION**

**VI. PLEDGE OF ALLEGIANCE**

**VII. MOMENT OF SILENCE**

**VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS**

**IX. AGENDA ADDITIONS/DELETIONS**

**X. PUBLIC COMMUNICATIONS**

This time is reserved for members of the public to address issues not included in the agenda. In accordance with the Brown Act, Council will refer to staff any matters brought before them at this time, and those matters may be placed on a future agenda.

Individuals wishing to address the City Council are asked to complete a form indicating the name and address of the speaker and the general topic to be addressed. Speakers must make their comments from the podium and will be allowed 3 minutes to discuss their concerns. All public comments are recorded and become part of the public record. A limit of 30 minutes will be devoted to taking public comment at this point in the agenda. If any speakers remain at the conclusion of the initial 30 minute period, time will be reserved at the conclusion of the meeting to take the remaining comments.

## **XI. PUBLIC HEARINGS**

## **XII. CONSENT CALENDAR**

1. [19-738](#) **Meeting Minutes**  
**Recommendation:** Approve the regular meeting minutes of September 24, 2019.

**Attachments:** [Minutes - 092419 - Regular](#)

2. [19-735](#) **Request for Reclassification of Cable/Communication Technician to Information Systems Specialist**  
**Recommendation:** Adopt a Resolution approving the reclassification of Cable/Communications Technician to Information Systems Specialist and authorize the Information Systems Specialist job description be added to the City's Classification Plan and approve the assigned salary range of Grade 148 to the new classification.

**Attachments:** [Staff Report - Reclassification - Information Systems Specialist](#)

[Attach 1 - Resolution - Reclassification - Information Systems Specialist](#)

[Attach 2 - Information Systems Specialist Job Description](#)

3. [19-736](#) **Amended Full-Time and Part-Time Salary Schedules and Amended Executive Level and Non-Represented Employee Pay and Benefit Plans for FY 2019-21**  
**Recommendation:** Adopt a Resolution approving the amended full-time and part-time salary schedules and the amended Executive Level and Non-Represented Employee Pay and Benefit Plans for FY 19-21.

**Attachments:** [Staff Report - Amended PT and FT Salary Schedules 102219](#)

[Attach 1 - Resolution](#)

[Attach 2 - FY 19-20 Part-Time Benefited Salary Schedule - Effective 09-08-19, Amended 091](#)

[Attach 3 - FY 19-20 Part-Time Non-Benefited Salary Schedule - Effective 09-08-19, Amended](#)

[Attach 4 - 2019-2020 Full-Time Salary Schedule - Amended Oct 8 2019](#)

[Attach 5 - Executive Level Pay and Benefit Plan 2019-21 - Final 071519, amended 100819](#)

[Attach 6 - Non-Represented Pay Plan 2019-21-Final 071519, amended 100819](#)

**XIII. DISCUSSION AND/OR ACTION ITEMS**

1. [19-733](#) **Update on Parking Enforcement**  
**Recommendation:** Receive report, discuss, and provide direction, if any.  
**Attachments:** [Staff Report - Parking Enforcement Update 10082019](#)
2. [19-743](#) **Sidewalk Ordinance Discussion**  
**Recommendation:** Receive report, discuss, and provide direction, if any.  
**Attachments:** [Staff Report - sidewalk liability ordinance 191008 dcb](#)  
[Attach 1- League of California Cities 2014 Sidewalk Liability Report](#)  
[Attach 2 - Article from Risk Management Monitor](#)
3. [19-734](#) **EV Chargers Discussion**  
**Recommendation:** Receive report, discuss, and provide direction, if any.  
**Attachments:** [Staff Report - EV Chargers 10082019](#)  
[Attach 1 - Greenlots Overview](#)  
[Attach 2 - BAAQMD Information](#)  
[Attach 3 - CEC Electric Vehicle Charging 101\\_CALeVIP](#)

**XIV. PUBLIC COMMUNICATIONS**

This time is reserved for members of the public who were unavailable to attend the Public Communications period during Section X of the meeting, or were unable to speak due to lack of time. The public speaker requirements specified in Section X of this Agenda apply to this Section.

**XV. CITY COUNCIL/CITY MANAGER/CITY ATTORNEY ANNOUNCEMENTS,  
COMMITTEE, SUB-COMMITTEE AND INTERGOVERNMENTAL COMMITTEE REPORTS  
AND FUTURE AGENDA ITEMS**

This is the time for brief announcements on issues of interest to the community. In accordance with the provisions of the Brown Act, matters which do not appear on this agenda but require City Council discussion may be either (a) referred to staff or other resources for factual information or (b) placed on a future meeting agenda.

**XVI. ADJOURNMENT**

The next Regular Meeting of the City Council will be held on Tuesday, October 22, 2019 at 7:00 p.m. in the Council Chambers.

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City website at [www.ci.hercules.ca.us](http://www.ci.hercules.ca.us) and can receive e-mail notification of agenda and staff report postings by signing up to receive an enotice from the City's homepage. Agendas and staff reports may also be obtained by contacting the Administrative Services Department at (510) 799-8215

(Posted: October 3, 2019)



**THE HERCULES CITY COUNCIL ADHERES TO THE FOLLOWING POLICIES,  
PROCEDURES AND REGULATIONS REGARDING CITY COUNCIL MEETINGS**

1. SPECIAL ACCOMODATIONS: In compliance with the Americans with Disabilities Act, if you require special accommodations to participate at a City Council meeting, please contact the City Clerk at 510-799-8215 at least 48 hours prior to the meeting.

2. AGENDA ITEMS: Persons wishing to add an item to an agenda must submit the final written documentation 12 calendar days prior to the meeting. The City retains the discretion whether to add items to the agenda. Persons wishing to address the City Council otherwise may make comments during the Public Communication period of the meeting.

3. AGENDA POSTING: Agendas of regular City Council meetings are posted at least 72 hours prior to the meeting at City Hall, the Hercules Swim Center, Ohlone Child Care Center, Hercules Post Office, and on the City's website ([www.ci.hercules.ca.us](http://www.ci.hercules.ca.us)),

4. PUBLIC COMMUNICATION: Persons who wish to address the City Council should complete the speaker form prior to the Council's consideration of the item on the agenda.

Anyone who wishes to address the Council on a topic that is not on the agenda and is relevant to the Council should complete the speaker form prior to the start of the meeting. Speakers will be called upon during the Public Communication portion of the meeting. In accordance with the Brown Act, the City Council may not take action on items not listed on the agenda. The Council may refer to staff any matters brought before them at this time and those matters may be placed on a future agenda.

In the interests of conducting an orderly and efficient meeting, speakers will be limited to three (3) minutes. Anyone may also submit written comments at any time before or during the meeting.

5. CONSENT CALENDAR: All matters listed under Consent Calendar are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless requested by a member of the Council or a member of the public prior to the time the City Council votes on the motion to adopt.

6. LEGAL CHALLENGES: If you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the meeting or in written correspondence delivered at, or prior to, the meeting. Actions challenging City Council decisions shall be subject to the time limitations contained in Code of Civil Procedure Section 1094.6.



# City of Hercules

111 Civic Drive  
Hercules, CA 94547

## Meeting Minutes

### City Council

*Mayor Dan Romero*  
*Vice Mayor Roland Esquivias*  
*Council Member Chris Kelley*  
*Council Member Gerard Boulanger*  
*Council Member Dion Bailey*

*David Biggs, City Manager*  
*Patrick Tang, City Attorney*  
*Lori Martin, City Clerk*

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Tuesday, September 24, 2019

6:00 PM

Council Chambers

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**Closed Session - 6:00 p.m.**

**Regular Session - 7:00 p.m.**

#### **I. SPECIAL MEETING - CLOSED SESSION – 6:00 P.M. CALL TO ORDER - ROLL CALL**

Mayor Romero called the meeting to order at 6:04 p.m.

**Present:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

#### **II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS**

None.

#### **III. CONVENE INTO CLOSED SESSION**

1. [19-721](#) Pursuant to Government Code Section 54957(b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Attorney
2. [19-724](#) Pursuant to Government Code Section 54956.9(a), Conference with Legal Counsel - Pending/Existing Litigation: Successor Agency to the Hercules Redevelopment Agency and City of Hercules v. California Department of Finance, et al, Sacramento Superior Court Case No. 34-2018-80003038
3. [19-725](#) Pursuant to Government Code Section 54956.9 (d)(1), Conference with Legal Counsel - Pending/Existing Litigation - Taylor Morrison of California, LLC, entitled *Taylor Morrison of California, LLC v. City of Hercules*, Superior Court for the County of Contra Costa, Case No. C19-00366.

#### **IV. REGULAR MEETING – 7:00 P.M. CALL TO ORDER - ROLL CALL**

Mayor Romero called the meeting to order at 7:07 p.m.

**Present:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

**V. REPORT ON ACTION TAKEN IN CLOSED SESSION**

City Attorney Tang announced that the City Council discussed existing litigation with Department of Finance and stated that the other two items listed on the agenda will be discussed at the conclusion of the City Council meeting.

**VI. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Mayor Romero.

**VII. MOMENT OF SILENCE**

Mayor Romero called for a moment of silence for two Hercules residents that passed away recently, Gina Diane Fullerton and Mario Zecchin.

**VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS**

1. [19-723](#) Proclamation Recognizing Dr. Phillip A. Howard, Founder and Senior Pastor of Valley Bible Church and Caroline Howard for 48 Years of Leadership to the People of Valley Bible Church and the Hercules Community  
  
Mayor Romero read aloud the Proclamation and presented it to Mr. and Mrs. Howard. Dr. and Mrs. Howard each spoke a few words and thanked the City Council. Members of the City Council congratulated the Howard's and wished them well in their future endeavors.

Mayor Romero called for a short recess at 7:23 p.m.

Mayor Romero reconvened the meeting at 7:38 p.m.

**IX. AGENDA ADDITIONS/DELETIONS**

City Manager Biggs stated there were no additions or deletions to the agenda and stated that copies of the Engie Powerpoint presentation are available on the side table for the public.

**X. PUBLIC COMMUNICATIONS**

Public Speakers: Lynne Noone; Pil Orbison.

**XI. PUBLIC HEARINGS**

None.

**XII. CONSENT CALENDAR**

**MOTION:** A motion was made by Council Member Boulanger, seconded by Council Member Kelley, to adopt the consent calendar. The motion carried by the following vote:

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

**1. [19-720](#)****Meeting Minutes**

**Recommendation:** Approve the regular meeting minutes of September 10, 2019.

Approved.

**2. [19-729](#)****Second Reading and Adoption of an Ordinance Approving Re-Zone #17-02 for the Sycamore Crossing Project (Assessor Parcel Numbers 404-020-094-3 and 404-020-095-00)**

**Recommendation:** Waive the second reading and adopt Ordinance 524 with modified diagram and findings with facts, changing the zoning district for the westerly portion of the Sycamore Crossing site, revising the zoning district designation from General Commercial (CG) to Planned Commercial Residential (PC-R) zoning for the approved hotel and multi-family residential parcels, and changing the open space area that traverses the site to Public/Quasi-Public-Open Space (P/QP-O).

Adopted.

**XIII. DISCUSSION AND/OR ACTION ITEMS****1. [19-726](#)****Memorandum of Understanding with Hercules Bayfront for Expanded Use of an Existing Public Access Easement to Facilitate Interim Bus Service to the Waterfront.**

**Recommendation:** Adopt a Resolution Approving a Memorandum of Understanding (MOU) with Hercules Bayfront for Expanded Use of an Existing Public Access Easement to Facilitate Interim Bus Service to the Waterfront.

City Manager Biggs introduced the item and provided a staff report. Mr. Anderson of WestCAT provided additional information. City Council asked questions and provided comments.

**MOTION:** A motion was made by Council Member Kelley, seconded by Council Member Bailey, to adopt Resolution 19-055. The motion carried by the following vote:

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

2. [19-727](#) **Streetlight Purchase for Landscaping and Lighting Citywide District 83-2 Zone 1 "Hercules by the Bay" and Zone 7 "The Heights"**

**Recommendation:** Adopt a Resolution authorizing the City Manager to sole source purchase 160 streetlights from Holophane in the amount of \$317,578 including sales tax.

City Manager Biggs introduced the item and Public Works Director Roberts provided a staff report. Mr. Heinz of Holophane provided additional information. City Council asked questions and provided comments.

**MOTION:** A motion was made by Vice Mayor Esquivias, seconded by Council Member Kelley, to adopt Resolution 19-056. The motion carried by the following vote:

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

3. [19-731](#) **2019 Streetlight Replacement Project Construction Contract with NEMA Construction**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with NEMA Construction for the 2019 Streetlight Replacement Project in the amount of \$168,400 and up to a 5% contingency of \$8,420 for a not to exceed amount of \$176,820 to replace a total of 160 streetlights in Landscaping & Lighting District (LLAD ) No. 83-2 Zones 1 "Hercules By The Bay" and Zone 7 "Heights".

Public Works Director Roberts introduced the item and provided a staff report. City Council asked questions and provided comments.

**MOTION:** A motion was made by Council Member Kelley, seconded by Council Member Boulanger, to adopt Resolution 19-057. The motion carried by the following vote:

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

4. [19-728](#) **Engie Service Company's Feasibility Assessment for Energy Conservation Facilities and Associated Program Development Agreement**

**Recommendation:** Receive report from staff and presentation on the feasibility assessment findings from Engie, discuss, provide direction to staff if any, approve Program Development Agreement if desired by adopting a Reolution Approving a Program Development Agreement with Engie.

City Manager Biggs introduced the item and Public Works Director Roberts provided a staff report. City Attorney Tang advised that if action is taken on the contract that the agreement be conformed to the City's

standard contract template. Ms. Kelly Ferguson of Engie provided a presentation on their feasibility assessment findings. Mr. Ramirez of Engie provided additional information.

City Council asked questions and provided comments. There was a consensus of City Council to expand the scope to include information on a EV charging station.

Public Speaker: Pil Orbison.

**MOTION: A motion was made by Vice Mayor Esquivias, seconded by Council Member Kelley, to adopt Resolution 19-058. The motion carried by the following vote:**

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

5. [19-730](#)

**Approve a Debt Issuance and Management Policy in Accordance with Senate Bill 1029**

**Recommendation:** Adopt a Resolution approving the Debt Issuance and Management Policy.

City Manager Biggs introduced the item and provided a staff report. Finance Director Gato provided additional information. City Council asked questions and provided comments.

**MOTION: A motion was made by Council Member Bailey, seconded by Vice Mayor Esquivias, to adopt Resolution 19-059. The motion carried by the following vote:**

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

6. [19-722](#)

**Update on Parking Considerations & Issues**

**Recommendation:** Receive report, discuss, and provide direction, if any.

City Manager Biggs introduced the item and provided a staff report. City Council asked questions and provided comments and gave direction to staff.

7. [19-719](#)

**League of California Cities Resolutions**

**Recommendation:** Discuss and consider two (2) Resolutions introduced by the League of California Cities and determine a City position that the voting delegate can represent at the Annual Business Meeting.

City Manager Biggs introduced the item and provided a staff report. City Council provided direction to the City's voting delegate.

**XIV. PUBLIC COMMUNICATIONS**

None.

**XV. CITY COUNCIL/CITY MANAGER/CITY ATTORNEY ANNOUNCEMENTS,  
COMMITTEE, SUB-COMMITTEE AND INTERGOVERNMENTAL COMMITTEE REPORTS  
AND FUTURE AGENDA ITEMS**

City staff and Council Members reported on attendance at events and community and regional meetings.

Future agenda items requested by City Council:

Council Member Boulanger requested a discussion on new bus routes in the City of Hercules. There was a consensus of City Council to add future local bus service routes at a future meeting.

Mayor Romero requested a discussion regarding the business license schedule of fees . There was a consensus of City Council to add this item to a future meeting.

Council Member Bailey requested a discussion item on EV charging stations. There was a consensus of City Council to add this item to a future meeting.

**XVI. ADJOURNMENT**

Mayor Romero recessed the meeting at 10:12 pm. City Council to reconvene closed session and adjourn the meeting immediately following closed session.

Mayor Romero adourned the City Council meeting at 10:50 p.m.

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Dan Romero, Mayor

Attest:

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Lori Martin, MMC  
Administrative Services Director/City Clerk



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of October 8, 2019

**TO:** Members of the City Council

**SUBMITTED BY:** Lori Martin, Administrative Services Director/City Clerk  
David Biggs, City Manager

**SUBJECT:** Request for Reclassification of Cable/Communication Technician to Information Systems Specialist

**RECOMMENDED ACTION:** Adopt a Resolution Approving the Reclassification of Cable Communications Technician to Information Systems Specialist.

**FISCAL IMPACT OF RECOMMENDATION:** The maximum additional cost is \$10,000 annually on a fully-loaded basis resulting from the recommendation to increase this vacant position by one salary grade. However it is likely the new hire will not be placed at the top of the range and therefore the overall costs will be within budgeted funds for this fiscal year.

**DISCUSSION:** City staff conducts reviews of its job classification plan and typically will update classifications as needed based on changes in the organization structure and service delivery needs. A classification and compensation study is currently underway where all job descriptions are being reviewed and updated to ensure they reflect current duties, responsibilities, and qualifications. The study is recommending a re-classification of the Cable/Communication Technician position to Information Systems Specialist. This position is responsible for a wide variety of information systems support duties for the Police Department as well as the audio/video control room in the Council Chambers. Staff is in support of this change as it more accurately reflects the broader scope of information systems support duties performed.

The Cable/Communications Technician position has been vacant since April 2019. The IT Department consists of two positions, the Information Systems Administrator and the Cable/Communications Technician. The Information Systems Administrator has been performing both of the Information Systems positions' duties with some assistance utilizing temporary help from Robert Half Technology. Due to the high volume workload in the Information Technology Department, staff is recommending the proposed change to this classification independent of the classification and compensation study so that staff can immediately recruit for a full time employee to fill the vacancy and eliminate the backlog of projects.

A job description for Information Systems Specialist is attached hereto and if approved would be a non-exempt professional level position represented by the Teamsters Local 315 Union. The



Cable/Communication Technician was assigned to Grade 147 of the Full-Time Salary Schedule and if approved the Information Systems Specialist would have a recommended assignment to Grade 148 of the Full-Time Salary Schedule.

The estimated annual cost, fully loaded assuming family level health insurance benefits are elected, would be \$121,711 at the entry level step. The FY 19-20 budget includes an amount equal to Grade 147, step 6 which likely will result in no additional impact to the FY 19-20 budget assuming an entry level starting wage in Grade 148.

Funding for the position would remain the same as follows:

- Information Systems Administration 75% Fund # 46044306011000
- General Fund – Cable TV 25% Fund # 10044236011000

**ATTACHMENTS:**

1. Resolution
2. Information Systems Specialist Job Description

**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES  
AUTHORIZING A RECLASSIFICATION OF THE CABLE/COMMUNICATIONS  
TECHNICIAN TO INFORMATION SYSTEMS SPECIALIST AND APPROVING THE  
PROPOSED NEW SALARY RANGE**

**WHEREAS**, City staff conducts reviews of its job classification plan and periodically will propose updates to classifications as needed based on changes in the organization structure and service delivery needs; and

**WHEREAS**, a classification and compensations study is currently underway where all job descriptions are being reviewed and updated to ensure they reflect current duties, responsibilities, and qualifications; and

**WHEREAS**, the Cable/Communications Technician position has been vacant since April 2019; and

**WHEREAS**, City staff is proposing a reclassification of Cable/Communications Technician to Information Systems Specialist independent of the classification and compensation study being prepared by the City's consultant so that staff can immediately recruit for a full time employee to fill the vacancy; and

**WHEREAS**, a new job description for Information Systems Specialist, attached hereto identifies the duties, responsibilities and qualifications of the position; and

**WHEREAS**, City staff is proposing that the Information Systems Specialist be assigned to Grade 148 of the full-time salary schedule; and

**WHEREAS**, the maximum additional cost is \$10,000 annually on a fully-loaded basis resulting from the recommendation to increase this vacant position by one salary grade and it is likely that the overall costs will be within budgeted funds for the 2019-20 fiscal year.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Hercules does hereby approve the reclassification of Cable/Communications Technician to Information Systems Specialist and authorizes the Information Systems Specialist job description, attached hereto be added to the City's Classification Plan and approves the assigned salary range of Grade 148 of the full-time salary schedule effective immediately after adoption of this Resolution.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 8th day of October, 2019 by the following vote of the Council:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

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Dan Romero, Mayor

ATTEST:

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Lori Martin, Administrative Services Director &  
City Clerk

**INFORMATION SYSTEMS SPECIALIST**

*Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are not intended to reflect all duties performed within the job.*

**DEFINITION**

Under general supervision, performs installations, configurations, troubleshooting and maintenance of hardware, software, peripheral, and related communication equipment; performs a variety of system administration duties for the Police Department; performs and coordinates technical and engineering functions relating to the production and operations of audio/visual programs; performs pre-production and post-production duties; receives and responds to requests for assistance from users; researches, analyzes, and provides solutions to information systems problems; and performs related duties as assigned.

**DISTINGUISHING CHARACTERISTICS**

This classification receives general supervision from the City Clerk/Administrative Services Director. Incumbents facilitate cable broadcasts, video and audio recording, cable and IT hardware and software installation, user support duties and acting as general production support. Incumbents are expected to have a high degree of technical expertise and to exercise considerable independence, judgment and discretion while providing service to the community and coordinating work processes.

**SUPERVISION RECEIVED AND EXERCISED**

Receives general supervision from the City Clerk/Administrative Services Director.

**ESSENTIAL FUNCTIONS** - *Essential and other important responsibilities and duties may include, but are not limited to, the following:*

- Assists with the administration, coordination and implementation of the operations, security and maintenance of assigned department's computer systems ensuring consistency and compatibility with other specialized systems required by specific departments.
- Performs a variety of system administration duties for the Police Department; creates and maintains hardware and software assets, computer hardware, mobile and portable radios and vehicle maintenance inventory; oversees inventory, maintenance and upkeep of digital mobile/portable radios.
- Performs production duties including technical directing, creating and producing electronic graphics, setting up cameras and operating cameras and audio equipment.
- Sets up, operates and maintains studio, control room and field production equipment.
- Develops and enters programming schedules into the automated playback system.
- Maintains videotape library control systems.
- Compiles and verifies necessary information to prepare announcements for the cable channels.
- Collects and enters new and updated alphanumeric messages for City's cable channel.
- Duplicates tapes and tapes in response to specific requests and for playback on the cable channels.
- Oversees the operation and maintenance of a variety of video equipment.
- Performs post-production duties of editing, dubbing and duplicating tapes.
- Assists in research of potential hardware and software upgrades and the evaluation of developing technologies with the intent of fulfilling existing and future needs by considering budgetary and time constraints.

- Installs new software releases and system upgrades; evaluates and installs patches; troubleshoots and resolves software related problems.
- Monitors day-to-day computer operations, including functionality of systems, internet, email, and network traffic logging; ensures daily and weekly backup of information systems and databases.
- Sets up meeting agenda access on Council laptops/tablets.
- Trains contracted audio/video operator personnel in the setup and operation of the City's audio/video broadcast equipment.
- Performs user training and technical support of existing and newly hired personnel in the operation and use of all Police Department computer related hardware/software assets.
- Creates, maintains and adds content for assigned social media pages.
- Configures, sets up and maintains network, video and computer related hardware assets for the City Emergency Operations Center (EOC) and EOC Van.
- Configures and sets up Body Worn Cameras and associated network and hardware related assets.
- Designs and lays out video surveillance cameras; installs and configures related hardware and software components; troubleshoots user reported surveillance camera issues.
- Performs related duties as required.

## **QUALIFICATIONS**

### **Knowledge of**

- Principles and operations of management information systems and peripheral equipment including computers, networks, phones, internet, software and hardware applications, cabling, printers, plotters, routers, data lines and modems.
- Operating procedures, maintenance and various types of video production equipment and audio-visual equipment.
- Principles of the operation of automated playback systems and alphanumeric display systems.
- State and federal laws and regulations concerning the operation of cable systems.
- New and emerging audio/video related technologies.
- Principles of HD/SDI video, digital video, and digital audio/mixing technology, Video over IP (NDI) technology, Video Master Controller hardware/software, Video messaging and video archiving, and Third-party video software.
- Office procedures, methods, and equipment including computers and applicable software applications such as word processing, spreadsheets, and databases.

### **Ability to**

- Using tape and tape editing techniques.
- Setting up, operating and maintaining video production equipment, including cameras, electronic graphics and audio.
- Directing multi-camera and single-camera productions.
- Interpreting, applying and explaining laws policies and regulations.
- Preparing effective and accurate reports, correspondence and other written materials.
- Representing the department and the City effectively with public and private organizations and the public.
- Install, configure and maintain management information technologies for the City including computers, networks, phones, voice mail, and internet.
- Observe and problem solve operational and technical deficiencies.
- Interpret and verbally explain technical concepts to less technical individuals.

- Manage multiple projects simultaneously and be sensitive to deadlines and changing priorities.
- Work flexible and irregular hours if necessary.
- Multitask and maintain focus during live broadcasts and recording sessions.
- Troubleshoot equipment/system anomalies during live broadcasts.
- Research, become knowledgeable and train users in the use of newly developed software system and applications.
- Operate office equipment including computers and supporting word processing, spreadsheet, and database applications.
- Communicate clearly and concisely, both orally and in writing.
- Establish and maintain effective working relationships with those contacted in the course of work.

**EXPERIENCE AND EDUCATION/TRAINING GUIDELINES**

*Any combination of experience and education/training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

**Experience**

One year of experience performing technical audio/visual work supplemented by one year of experience in troubleshooting, diagnosing, repairing and installing personal computers, printers and peripherals. Experience working with Windows and PCs is desirable.

**Education/Training**

Completion of an Associate's degree with major course work in information technology, computer science or a related field. Recent training, such as academic courses and/or certification programs relevant to this classification.

**Certificates / Licenses / Special Requirements**

Possession of a valid California Driver's License and a satisfactory driving record as determined by the City's policy.

**WORKING CONDITIONS**

**Environmental Conditions:**

Office environment; exposure to computer screens; exposure to electrical, coaxial, network and telephony cabling; exposure to dirty/dusty workspaces.

**Physical Conditions:**

Regularly required to sit for long periods of time; intermittently stand, walk, bend, climb, kneel and twist while working on computer equipment, peripherals, and ancillary equipment; perform simple grasping and fine manipulation; use telephones, write and use keyboards to communicate; discern wire colors and see small text and numbers on wiring and circuitry; routinely move equipment weighing up to 30 pounds; regularly required to use various hand tools and testing equipment in repair, adjustment and problem identification of personal computers and related equipment; read and interpret complex data, information and documents; analyze and solve problems; interact with City management, other governmental officials,

## CITY OF HERCULES

contractors, vendors, employees and the public; may be required to work evenings, weekends, holiday hours and overtime.

*Note: Accommodations may be made for some of the essential functions/requirements listed for qualified individuals who require and request such accommodation, due to a qualified disability.*

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date

Revised: July 2018

Unit:

FLSA/Position:



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of October 8, 2019

**TO:** Members of the City Council

**SUBMITTED BY:** Lori Martin, Administrative Services Director/City Clerk

**SUBJECT:** Amended Part-Time and Full-Time Salary Schedules for FY 19-20 and amended Executive Level and Non-Represented Pay and Benefit Plans

**RECOMMENDED ACTION:** Adopt a Resolution approving the amended part-time and full-time salary schedules and the amended Executive Level and Non-Represented Pay and Benefit Plans.

**FISCAL IMPACT OF RECOMMENDATION:** None.

### **DISCUSSION:**

A minor amendment was made to the part-time salary schedule to correct a formula error. In addition, the newly added position of Management Analyst and Information Systems Specialist was added to the full-time salary schedule. The attached updated salary schedules meet the requirements of California Code of Regulations section 570.5 to ensure the City remains in compliance with CalPERS regulations.

In addition a correction is needed to the Executive Level and Non-Represented Pay and Benefit Plans to the Longevity Pay for sworn positions to match the Longevity Pay language in the adopted MOU with the Hercules Police Officers Association.

### **ATTACHMENTS:**

1. Resolution
2. Part-time Benefited Salary Schedule, Amended 09/19/19
3. Part-time Unbenefited Salary Schedule, Amended 09/19/19
4. Full-Time Salary Schedule, Amended 10/22/19
5. Executive Level Pay and Benefit Plan, Final 071519, Amended 100819
6. Non-Represented Employees Pay and Benefit Plan, Final 071519, Amended 100819



**RESOLUTION NO. 19-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES APPROVING AMENDMENTS TO THE FULL-TIME AND PART-TIME SALARY SCHEDULES FOR FY 2019-20 AND APPROVING THE AMENDED EXECUTIVE LEVEL AND NON-REPRESENTED EMPLOYEE PAY AND BENEFIT PLANS**

**WHEREAS**, a minor amendment was made to the part-time salary schedule to correct a formula error; and

**WHEREAS**, amendments were made to the full-time salary schedule to include the new position of Management Analyst which was approved by City Council on February 26, 2019 and to add the reclassified position of Information Systems Specialist approved by City Council on October 8, 2019 and removing the Cable/Communication Technician position from the full-time salary schedule and assigning each to the approved salary grades; and

**WHEREAS**, an amendment was needed to the Executive Level and Un-Represented Employees Pay and Benefit Plans to the longevity pay for sworn positions to match the longevity pay language in the adopted MOU with the Hercules Police Officers Association which became effective on July 1, 2019; and

**WHEREAS**, pursuant to CalPERS and 2 CCR 570.5 and 571(b) any amendments to the salary schedule must be formally approved by the City Council; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Hercules approves the amended full-time and part-time salary schedules and the amended Executive Level and Un-Represented Employees Pay and Benefit Plans, attached hereto and effective immediately and shall remain in effect unless or until amended by Resolution of the City council of the City of Hercules.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 8<sup>th</sup> day of October, 2019 by the following vote of the Council:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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Dan Romero, Mayor

**ATTEST:**

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Lori Martin, MMC  
Administrative Services Director/City Clerk

**Part-Time Salary Schedule Effective September 08, 2019 3.5% COLA**  
**Part-Time Benefited Employees**  
**Amended 09/19/2019**

GRADE	PT1		GRADE	P2A		GRADE	PT3		GRADE	PT4	
	Annual	Hourly		Annual	Hourly		Annual	Hourly		Annual	Hourly
Step 1	Not in use		Step 1	23,979.30	12.1353	Step 1	23,889.98	12.0901	Step 1	25,801.66	13.0575
Step 2			Step 2	25,178.26	12.7420	Step 2	25,084.67	12.6947	Step 2	27,091.75	13.7104
Step 3			Step 3	26,437.17	13.3791	Step 3	26,339.11	13.3295	Step 3	28,446.33	14.3959
Step 4			Step 4	27,759.03	14.0481	Step 4	27,655.86	13.9959	Step 4	29,868.45	15.1156
Step 5			Step 5	29,146.98	14.7505	Step 5	29,038.66	14.6957	Step 5	31,361.88	15.8714
Step 6			Step 6	30,604.53	15.4881	Step 6	30,490.59	15.4305	Step 6	32,930.37	16.6652
GRADE	P5A		GRADE	P6A		GRADE	P7A		GRADE	P8A	
	Annual	Hourly		Annual	Hourly		Annual	Hourly		Annual	Hourly
Step 1	28,422.61	14.3839	Step 1	30,696.77	15.5348	Step 1	33,152.55	16.7776	Step 1	35,804.77	18.1198
Step 2	29,843.74	15.1031	Step 2	32,223.70	16.3075	Step 2	34,810.18	17.6165	Step 2	37,595.01	19.0258
Step 3	31,335.93	15.8583	Step 3	33,843.39	17.1272	Step 3	36,550.69	18.4973	Step 3	39,474.96	19.9772
Step 4	32,902.73	16.6512	Step 4	35,535.36	17.9835	Step 4	38,378.22	19.4222	Step 4	41,448.31	20.9759
Step 5	34,547.86	17.4837	Step 5	37,311.93	18.8826	Step 5	40,297.13	20.3933	Step 5	43,520.92	22.0248
Step 6	36,275.25	18.3579	Step 6	39,177.92	19.8269	Step 6	42,311.79	21.4129	Step 6	45,696.97	23.1260
GRADE	P9A		GRADE	PT10		GRADE	P11		GRADE	PT12	
	Annual	Hourly		Annual	Hourly		Annual	Hourly		Annual	Hourly
Step 1	38,669.14	19.5694	Step 1	40,943.90	20.7206	Step 1	45,103.82	22.8258	Step 1	48,711.98	24.6518
Step 2	40,602.60	20.5479	Step 2	42,991.10	21.7566	Step 2	47,359.01	23.9671	Step 2	51,147.78	25.8845
Step 3	42,632.73	21.5753	Step 3	45,140.45	22.8444	Step 3	49,726.96	25.1655	Step 3	53,705.16	27.1787
Step 4	44,764.57	22.6541	Step 4	47,397.48	23.9866	Step 4	52,213.50	26.4238	Step 4	56,390.22	28.5376
Step 5	47,002.79	23.7868	Step 5	49,767.55	25.1860	Step 5	54,823.98	27.7449	Step 5	59,210.13	29.9646
Step 6	49,352.74	24.9761	Step 6	52,255.73	26.4452	Step 6	57,564.98	29.1321	Step 6	62,170.44	31.4628
GRADE	PT13		GRADE	PT14		GRADE	PT15		GRADE	PT16	
	Annual	Hourly		Annual	Hourly		Annual	Hourly		Annual	Hourly
Step 1	51,577.29	26.1019	Step 1	55,703.56	28.1901	Step 1	60,159.63	30.4452	Step 1	64,972.37	32.8808
Step 2	54,156.35	27.4071	Step 2	58,488.94	29.5997	Step 2	63,167.61	31.9674	Step 2	68,220.99	34.5248
Step 3	56,863.77	28.7772	Step 3	61,413.19	31.0795	Step 3	66,325.99	33.5658	Step 3	71,632.23	36.2511
Step 4	59,707.55	30.2164	Step 4	64,484.24	32.6337	Step 4	69,642.29	35.2441	Step 4	75,213.85	38.0637
Step 5	62,692.53	31.7270	Step 5	67,708.06	34.2652	Step 5	73,124.80	37.0065	Step 5	78,974.34	39.9668
Step 6	65,827.16	33.3133	Step 6	71,093.86	35.9787	Step 6	76,780.84	38.8567	Step 6	82,923.06	41.9651
GRADE	PT17		Part-time Positions:		Grade	Grade		Grade			
	Annual	Hourly									
Step 1	70,170.43	35.5114	Administrative Secretary		PT12	Intern Admin/Eng/Planning		PT4	Recreation Specialist	PT6A	
Step 2	73,679.35	37.2871	Aquatics Pool Manager		PT9A	Lifeguard/Swim Instructor I		PT3	Senior Lifeguard	PT6A	
Step 3	77,363.12	39.1514	Children's Program Aide		PT2A	Lifeguard/Swim Instructor II		PT5A	Senior Recreation Leader	PT4	
Step 4	81,231.47	41.1090	Children's Program Leader I		PT5A	Office Assistant I		PT3	Sports Coach/Referee	PT2A	
Step 5	85,292.85	43.1644	Children's Program Leader II		PT7A	Office Assistant II		PT5A	Swim Coach	PT7A	
Step 6	89,557.69	45.3227	Children's Program Leader III		PT8A	Parking Enforcement Officer		PT11			
			Facility Attendant		PT2A	Recreation Leader III		PT9A			

\*Rates based on 1,976 annual hours worked.

**Part-Time Salary Schedule Effective September 08, 2019 with 3.5% COLA increase**  
**Part-Time Non-Benefited Employees**  
**Amended 09/19/2019**

GRADE	PT1		GRADE	PT2		GRADE	PT3		GRADE	PT4	
	Annual	Hourly		Annual	Hourly		Annual	Hourly		Annual	Hourly
Step 1	Not in use		Step 1	23,509.11	11.8973	Step 1	23,889.98	12.0901	Step 1	25,801.66	13.0575
Step 2			24,684.57	12.4922	Step 2	25,084.67	12.6947	Step 2	27,091.75	13.7104	
Step 3			25,918.80	13.1168	Step 3	26,339.11	13.3295	Step 3	28,446.33	14.3959	
Step 4			27,214.74	13.7726	Step 4	27,655.86	13.9959	Step 4	29,868.45	15.1156	
Step 5			28,575.28	14.4612	Step 5	29,038.66	14.6957	Step 5	31,361.88	15.8714	
Step 6			30,004.44	15.1844	Step 6	30,490.59	15.4305	Step 6	32,930.37	16.6652	
GRADE	PT5		GRADE	PT6		GRADE	PT7		GRADE	PT8	
	Annual	Hourly		Annual	Hourly		Annual	Hourly		Annual	Hourly
Step 1	27,865.35	14.1019	Step 1	30,094.87	15.2302	Step 1	32,502.42	16.4486	Step 1	35,102.74	17.7645
Step 2	29,259.02	14.8072	Step 2	31,599.81	15.9918	Step 2	34,127.54	17.2710	Step 2	36,858.27	18.6530
Step 3	30,722.16	15.5477	Step 3	33,179.41	16.7912	Step 3	35,833.92	18.1346	Step 3	38,700.79	19.5854
Step 4	32,258.27	16.3250	Step 4	34,838.38	17.6308	Step 4	37,625.81	19.0414	Step 4	40,635.83	20.5647
Step 5	33,871.19	17.1413	Step 5	36,580.50	18.5124	Step 5	39,506.71	19.9933	Step 5	42,667.62	21.5929
Step 6	35,564.35	17.9982	Step 6	38,409.13	19.4378	Step 6	41,482.44	20.9931	Step 6	44,801.00	22.6726
GRADE	PT9		GRADE	PT10		GRADE	PT11		GRADE	PT12	
	Annual	Hourly		Annual	Hourly		Annual	Hourly		Annual	Hourly
Step 1	37,911.01	19.1857	Step 1	40,943.90	20.7206	Step 1	44,219.56	22.3783	Step 1	48,711.98	24.6518
Step 2	39,806.56	20.1450	Step 2	42,991.10	21.7566	Step 2	46,430.14	23.4970	Step 2	51,147.78	25.8845
Step 3	41,797.09	21.1524	Step 3	45,140.45	22.8444	Step 3	48,751.65	24.6719	Step 3	53,705.16	27.1787
Step 4	43,887.34	22.2102	Step 4	47,397.48	23.9866	Step 4	51,189.03	25.9054	Step 4	56,390.22	28.5376
Step 5	46,081.11	23.3204	Step 5	49,767.55	25.1860	Step 5	53,748.49	27.2007	Step 5	59,210.13	29.9646
Step 6	48,385.36	24.4865	Step 6	52,255.73	26.4452	Step 6	56,436.11	28.5608	Step 6	62,170.44	31.4628
GRADE	PT13		GRADE	PT14		GRADE	PT15		GRADE	PT16	
	Annual	Hourly		Annual	Hourly		Annual	Hourly		Annual	Hourly
Step 1	51,577.29	26.1019	Step 1	55,703.56	28.1901	Step 1	60,159.63	30.4452	Step 1	64,972.37	32.8808
Step 2	54,156.35	27.4071	Step 2	58,488.94	29.5997	Step 2	63,167.61	31.9674	Step 2	68,220.99	34.5248
Step 3	56,863.77	28.7772	Step 3	61,413.19	31.0795	Step 3	66,325.99	33.5658	Step 3	71,632.23	36.2511
Step 4	59,707.55	30.2164	Step 4	64,484.24	32.6337	Step 4	69,642.29	35.2441	Step 4	75,213.85	38.0637
Step 5	62,692.53	31.7270	Step 5	67,708.06	34.2652	Step 5	73,124.80	37.0065	Step 5	78,974.34	39.9668
Step 6	65,827.16	33.3133	Step 6	71,093.86	35.9787	Step 6	76,780.84	38.8567	Step 6	82,923.06	41.9651
GRADE	PT17		Part-time Positions:		Grade	Grade		Grade			
	Annual	Hourly									
Step 1	70,170.43	35.5114	Administrative Secretary		PT12	Intern Admin/Eng/Planning		PT4	Recreation Specialist		PT6
Step 2	73,679.35	37.2871	Aquatics Pool Manager		PT9	Lifeguard/Swim Instructor I		PT3	Senior Lifeguard		PT6
Step 3	77,363.12	39.1514	Children's Program Aide		PT2	Lifeguard/Swim Instructor II		PT5	Senior Recreation Leader		PT4
Step 4	81,231.47	41.1090	Children's Program Leader I		PT5	Office Assistant I		PT3	Sports Coach/Referee		PT2
Step 5	85,292.85	43.1644	Children's Program Leader II		PT7	Office Assistant II		PT5	Swim Coach		PT7
Step 6	89,557.69	45.3227	Children's Program Leader III		PT8	Parking Enforcement Officer		PT11			
			Facility Attendant		PT2	Recreation Leader III		PT9			

\*Rates based on 1,976 annual hours worked.

Full-Time Salary Schedule Effective September 08, 2019 with 3.5% COLA increase  
Amended October 8, 2019

GRADE	140	
	Annual	Hourly
Step 1	38,743.41	19.6070
Step 2	40,680.78	20.5874
Step 3	42,714.22	21.6165
Step 4	44,850.13	22.6974
Step 5	47,092.64	23.8323
Step 6	49,447.47	25.0240

GRADE	141	
	Annual	Hourly
Step 1	41,842.90	21.1756
Step 2	43,934.85	22.2342
Step 3	46,131.79	23.3460
Step 4	48,438.58	24.5134
Step 5	50,860.11	25.7389
Step 6	53,402.92	27.0258

GRADE	142	
	Annual	Hourly
Step 1	45,190.58	22.8697
Step 2	47,449.92	24.0131
Step 3	49,822.21	25.2137
Step 4	52,313.33	26.4744
Step 5	54,928.99	27.7981
Step 6	57,675.44	29.1880

GRADE	143	
	Annual	Hourly
Step 1	48,805.34	24.6991
Step 2	51,245.60	25.9340
Step 3	53,807.88	27.2307
Step 4	56,498.48	28.5923
Step 5	59,323.00	30.0218
Step 6	62,289.55	31.5231

GRADE	144	
	Annual	Hourly
Step 1	52,710.22	26.6752
Step 2	55,345.33	28.0088
Step 3	58,112.80	29.4093
Step 4	61,018.04	30.8796
Step 5	64,069.14	32.4237
Step 6	67,272.60	34.0448

GRADE	145	
	Annual	Hourly
Step 1	56,926.79	28.8091
Step 2	59,773.13	30.2496
Step 3	62,761.78	31.7620
Step 4	65,899.87	33.3501
Step 5	69,195.06	35.0177
Step 6	72,654.62	36.7685

GRADE	146	
	Annual	Hourly
Step 1	61,480.66	31.1137
Step 2	64,554.89	32.6695
Step 3	67,782.44	34.3029
Step 4	71,171.76	36.0181
Step 5	74,730.35	37.8190
Step 6	78,466.47	39.7098

GRADE	147	
	Annual	Hourly
Step 1	66,399.39	33.6029
Step 2	69,718.97	35.2829
Step 3	73,205.70	37.0474
Step 4	76,865.20	38.8994
Step 5	80,708.85	40.8446
Step 6	84,744.50	42.8869

GRADE	148	
	Annual	Hourly
Step 1	71,710.98	36.2910
Step 2	75,296.92	38.1057
Step 3	79,061.57	40.0109
Step 4	83,014.65	42.0115
Step 5	87,165.58	44.1121
Step 6	91,523.86	46.3177

GRADE	149	
	Annual	Hourly
Step 1	77,448.02	39.1943
Step 2	81,320.81	41.1543
Step 3	85,386.46	43.2118
Step 4	89,655.58	45.3723
Step 5	94,138.36	47.6409
Step 6	98,845.87	50.0232

GRADE	150	
	Annual	Hourly
Step 1	83,644.25	42.3301
Step 2	87,826.27	44.4465
Step 3	92,217.58	46.6688
Step 4	96,828.06	49.0021
Step 5	101,669.86	51.4524
Step 6	106,753.35	54.0250

GRADE	151	
	Annual	Hourly
Step 1	90,335.72	45.7165
Step 2	94,852.30	48.0022
Step 3	99,594.52	50.4021
Step 4	104,574.45	52.9223
Step 5	109,803.37	55.5685
Step 6	115,293.73	58.3470

Full-time Positions:		Grade	Grade
Accounting Technician I		145	Permit Technician
Assistant Civil Engineer		150	Police Support Specialist
Assistant Planner		149	Recreation Coordinator
Information Systems Specialist		148	Recreation Supervisor
Information Systems Administrator		151	Recreation Technician
Maintenance Aide		141	Senior Clerk I
Maintenance Worker I		143	Sr. Office Clerk
Maintenance Worker II		146	Senior Planner
Management Analyst		147	

\*Rates based on 1976 annual hours worked



PAY & BENEFITS PLAN FOR  
EXECUTIVE LEVEL EMPLOYEES  
OF THE CITY OF HERCULES

**Effective July 1, 2019 through June 30, 2021  
City Council Resolution No. 19-048**

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\*NOTE: ARTICLE II, SECTION 1 (*Pay Plan- Exhibit A – Pg. 17-18*)

## **ARTICLE I. TERMS**

### **SECTION 1 - DEFINITION OF TERMS**

- 1.1 The following terms, whenever used in the Plan, shall have the meaning set forth in this Section:
- A. CITY: Shall mean the City of Hercules
  - B. CITY MANAGER: Shall mean the City Manager or his/her designee.
  - C. DAYS: Shall mean calendar days except where working days are expressly specified.
  - D. EMPLOYEE: Shall mean an individual who serves full-time and who is appointed to a full-time Management position.
  - E. EXECUTIVE LEVEL EMPLOYEE: Shall mean the City Manager, individual appointed to Executive Level employee level positions by the City Manager, and elected officials.
  - F. FISCAL YEAR: Shall mean the 12 month period from July 1 through June 30.
  - G. PUBLIC EMPLOYEES' PENSION REFORM ACT (PEPRA): Shall mean the California Public Employees' Pension Reform Act of 2013, including AB 340 (Furutani, Chapter 296, Statutes of 2012) and AB 197 (Buchanan, Chapter 297, Statutes of 2012) and all subsequent amendments.
  - H. PERS: Shall mean the California Public Employees' Retirement System.
  - I. PUBLIC AGENCY EXPERIENCE: shall mean full-time service in an agency that participates in a public retirement plan.
  - J. RETIREE: Shall mean a former employee of the City who has been granted and is receiving a regular service or disability retirement from PERS.
  - K. SERIOUS INJURY OR ILLNESS: Shall mean, for the purposes of benefits provided by Article V, Section 1.04 herein, an injury or illness certified by the City to require a recuperation period of 30 days or more.
  - L. WORK PERIOD: Shall mean seven consecutive, regular recurring 24 hour periods equal to 168 hours, designated by the City Manager.
  - M. YEAR: Shall mean fiscal year, except where calendar year is expressly specified.

## **ARTICLE II. COMPENSATION**

### **SECTION 1 - PAY PLAN**

- 1.1 Effective July 1, 2019 through June 30, 2021, the pay plan for Executive Level employees is set forth on Exhibit "A", attached hereto.

### **SECTION 2 - PAY RATE ADVANCEMENT WITHIN SALARY RANGE**

- 2.1 On the basis of the evaluation of an employee's performance, an employee shall be eligible for a pay rate advancement added to his/her base pay of an amount between zero and 10 percent, not to exceed the top of the salary range, effective at the beginning of the pay period following an employee's anniversary date.

### **SECTION 3 - OTHER PAY ADJUSTMENTS**

- 3.1 Retention Payment – In recognition of the financial sacrifices made by Executive Level employees who have stayed with the City and participated in the wage concessions that enabled the City to successfully navigate times of extreme economic distress, the City will pay a one-time non-PERSable retention payment of 2.0% of the employee's salary earned in FY 2018-19 payable with the first pay period in August 2019 and a one-time non-PERSable retention payment of 3.0% of the employees' salary earned in FY 2019-20 payable with the first pay period in August 2020. Employees can elect to direct retention payment to their 457 Deferred Compensation Plan if desired.
- 3.2 Bonus Pay – As recognition of a specific, non-permanent work effort or in recognition of ongoing job performance which has consistently exceeded the highest standards, Bonus Pay may be awarded to an Executive Level employee by the City Manager. The range of this Bonus Pay may be from 2% to 10% of the Executive Level employee's annual salary and be paid in one lump sum payment. Executive Level employees have the option of depositing any such bonus payment into their 457 Deferred Compensation Plan or 401A Plan, subject to plan limits.

*This benefit is suspended for the term of this Pay Plan.*

- 3.3 Assistant City Manager – The City Manager may designate one of the Executive Level employees to also serve as Assistant City Manager. Each Executive Level Employee will have a separate job classification for their current classification/Assistant City Manager. This separate classification for each Executive Level Employee will have a salary table associated with it to include a 5% salary increase to each step. When an Executive Level Employee is assigned the designation of Assistant City Manager that employee shall receive the pay rate listed in the Executive Level employees separate job classification and salary schedule that includes Assistant City Manager. If another Executive Level employee is designated to serve as Acting Assistant City Manager if the Assistant City Manager is unavailable for a full day or more, the designated Executive Level employee shall receive the pay rate listed in the Executive Level Employees separate job classification and salary schedule that includes Assistant City Manager at the same step they currently hold.



## **SECTION 4 - CREDIT TOWARD CITY SERVICES**

- 4.1 Each Executive Level employee shall receive up to \$300 per year non-cash credit which may be applied to the cost of any City program fees incurred by the Executive Level employee or immediate family member. Such credit is not transferable and cannot be converted to cash. This credit shall only apply to services provided directly by the City and not to any third party service provider.

*This benefit is suspended for the term of this Pay Plan.*

## **SECTION 5 - UNIFORM ALLOWANCE**

- 5.1 The Police Chief shall be entitled to an annual clothing allowance equal to the highest amount that is received by members of any Public Safety bargaining unit within the City.

## **SECTION 6 – MANAGEMENT INCENTIVE**

- 6.1 A Management Incentive of \$200 per month shall be provided to Employees appointed to Executive Level classes who are not assigned a City vehicle for use of their personal vehicle and for use of personal mobile phones to conduct City Business.
- 6.2 Any employee granted a City vehicle for his/her exclusive use shall not receive a car allowance or mileage reimbursement payments.

## **SECTION 7 - EDUCATION REIMBURSEMENT**

- 7.1 Executive Level employees shall be eligible to receive up to \$4,000 per fiscal year reimbursement of expenditures by the Executive Level employee on tuition, books, travel and any other costs associated with their successful completion of any professional or educational program approved by the City Manager. This benefit shall be funded at the rate of \$30,000 per year and is available to Executive Level employees on a first come, first served basis. Once the total annual benefit amount of \$30,000 is reached, the benefit is no longer available to any Executive Level employee until the next fiscal year.

## **SECTION 8 - LONGEVITY PAY**

- 8.1 Executive Level non-sworn employees are eligible to receive Longevity Pay based on number of years of service. In addition to an employee's base salary, exclusive of all premium and other pays, each employee shall receive a Longevity Pay added to the employee's base salary after the completion of:

At 7 years of service:	\$200 per month
At 10 years of service:	\$300 per month
At 14 years of service:	\$400 per month
At 16 years of service:	\$500 per month

Executive Level sworn employees are eligible to receive Longevity Pay calculated as a percentage of their salary and the city will make the payments in 26 bi-weekly installments. The calculations, based on total sworn public service time will be as follows:

At 5 years of service:	2% of salary
At 10 years of service:	4% of salary
At 15 years of service:	6% of salary
At 20 years of service:	8% of salary
At 25 years of service:	10% of salary

- 8.2 The effective date of a Longevity Pay increase shall be the beginning of the pay period following the date of eligibility. The computation of Longevity Pay increases shall not be cumulative.

## **SECTION 9 - CONVERSION OF ACCRUED LEAVE UPON SEPARATION**

- 9.1 Upon retirement or separation from City employment Executive Level employees shall receive cash out equivalent for any eligible unused leave balances. Separating Executive Level employees shall have the option of receiving cash out or depositing the unused leave balance into their 457 Deferred Compensation Plan, subject to Federal law plan limits.

## **SECTION 10 - COMPENSATORY TIME OFF**

- 10.1 Compensatory Time-Off (CTO) is normally not accrued for exempt employees; however, should CTO be on the employer's books for reasons such as change in position or a carryover from other terms and conditions with the employer, it will qualify as eligible for conversion to either the Executive Level employee's 401A or 457 Plan. Any such conversion must occur within 30 days of appointment.

## **SECTION 11 - SUPPLEMENTAL OPTIONAL MONIES ALLOWANCE FOR RETIREES (SOMAR)**

- 11.1 The City will provide an optional monetary allowance currently in the amount of \$344.74 per month for safety employees and \$259.37 per month for non-safety employees with an annual three percent adjustment on January 1<sup>st</sup> of each year to employees who retire as regulated by the Public Employee's Retirement System. To be eligible for the optional monies, an employee must retire as follows:
1. Service Retirement: Employees who have served the City for at least ten (10) consecutive years immediately prior to retirement and are at least fifty (50) years old when they separate service from the City.
  2. Disability Retirement: Employees who retire with a disability retirement are not required to be a certain age, but must have at least twenty (20) years of service with the City.

- 11.2 To be eligible for the optional money allowance, employees must also have the minimum amount of sick leave on the books, as outlined in the chart below. If an employee has below the amount of sick leave required for their years of service, then they will only be eligible for the percentage paid equivalent to the amount of sick leave they do have on the books.

Years of Service	Amount of sick leave hours on the books on the day employee separates service	Percentage of Optional Money Available
10	480	50
11	528	55
12	576	60
13	624	65
14	672	70
15	720	75
16	768	80
17	846	85
18	864	90
19	912	95
20	960	100
21	960	100
22	960	100
23	960	100
24	960	100
25	No minimum amount required	100

- 11.3 Employees must retire within one hundred twenty (120) days of separation from City employment to be eligible to receive the optional money allowance. In addition, employees who separate service from the City of Hercules, but do not retire as a PERS annuitant, shall not be eligible for medical retirement under this program.
- 11.4 Retiree Reaches Age 65 – The City will pay a portion of the optional money to a retiree until the retiree reaches age 65, upon which they are required to enroll in Medicare. At that time, the optional money will drop to an amount equivalent to the Kaiser Supplemental to Medicare rate through PERS. The retiree will be eligible for the same percentage of the Supplemental Optional Monies as they were eligible for under the Basic Optional Monies plan. Employees who are not eligible for Medicare must provide the City proof that they are not eligible for Medicare, either through their own employment history or their spouse's and after providing such proof, the city will continue to pay the percentage of the Basic Optional Monies Plan. If proof is not provided, the City will automatically begin paying the Supplemental Optional Monies Plan percentages.

This benefit, which is effective January 1, 2001, is expected to last into perpetuity. The funds being established for this program may not be used by the City or Executive Level employees for any purpose other than what is expressly stated in this section of the Pay Plan. If in the future the City and Executive Level employees mutually agree to end or modify this benefit, they can do so only for active employees. Any retiree who

is currently receiving this benefit will continue to receive the benefit as stated in the Pay Plan that was in effect at the time of their retirement. Conversely, if the City and Executive Level employees increase this benefit, they can do so only for active employees and retiree benefits will remain the same as it was when they retired.

The City shall provide to the Executive Level employees an annual statement of prior year balances in the medical retirement fund no later than December 31<sup>st</sup> of each year.

- 11.5 Payment will be made on a bi-annual basis. The optional money allowance for the months of January through June will be made the third week in July; July through December will be paid the third week in January of each year. Checks will be mailed to the address on file. Supplemental Optional Money payments are subject to applicable Federal and State Income Tax regulations.

## **SECTION 12 - COMPUTER LOAN PROGRAM**

- 12.1 Each employee is eligible to participate in the City of Hercules Loan Program for Employee Purchase of a Personal Computer, tablet, software or hardware. Maximum loan amount is \$2,500 and may not be more than one loan outstanding at any time. No interest will be charged by the City on loans under this program.

## **SECTION 13 – DEFERRED COMPENSATION**

- 13.1 401A Deferred Compensation Plan: All Executive Level employees shall receive an employer contribution equivalent to 4% of their salary from the City, deposited into the City sponsored 401A Deferred Compensation Plan, consistent with the limits, policies and conditions established by the ICMA-RC and Federal Tax Laws.
- 13.2 457 Deferred Compensation Plan: All Executive Level employees may make voluntary contributions to the ICMA 457 Deferred Compensation Plan through payroll deduction. In addition all Executive Level employees shall receive an employer contribution equivalent to 5% of their salary on a one-to-one match deposited into their ICMA 457 Deferred Compensation Plan through payroll deduction subject to the limits, policies and conditions established by the ICMA and Federal Tax laws.

## **ARTICLE III. RETIREMENT BENEFITS**

### **SECTION 1 - PUBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS) PLAN**

- 1.1 The City agrees to provide all Executive Level employees with retirement benefits under the terms of its current Retirement Plan with CalPERS.
- 1.2 All sworn personnel members hired on or prior to December 11, 2011 shall receive PERS retirement benefits computed at the highest formula, to include final year benefit formula, received by any public safety bargaining unit within the City. Those sworn personnel hired after December 11, 2011 and prior to January 1, 2014 shall receive the PERS benefit formula of 3%@55.
- 1.3 Unrepresented non-public safety employees hired prior to January 1, 2013 will pay

the 7% employee percentage of PERS contributions. The current total employee percentage is 7%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate. Unrepresented public safety employees hired prior to January 1, 2013 will pay the 9% employee percentage of PERS contributions. The current total employee percentage is 9%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate.

- 1.4 Non-public safety Executive Level employees hired prior to January 1, 2014 will pay the 7% employee percentage of PERS contributions. The current total employee percentage is 7%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate. Public safety Executive Level employees hired prior to January 1, 2014 will pay the 9% employee percentage of PERS contributions. The current total employee percentage is 9%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate.
- 1.5 The PERS benefit formula and percentages paid by any Executive Level employee will change for all newly hired Executive Level employees on or after January 1, 2014 who are not already in a PERS recognized retirement system, in accordance with AB 340, signed into law on September 12, 2012. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate.
- 1.6 Sworn personnel hired on or after January 1, 2014 shall receive the PERS benefit formula of 2.7%@57, shall contribute 50% of the total annual normal cost of their pension benefit to the pension plan as determined by the City's actuary and shall have their final compensation based on the employee's highest annual compensation earnable averaged over a consecutive 36-month period. The employee contribution rate for new sworn members is 11.50%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate.
- 1.7 Non-public safety personnel hired on or after January 1, 2014 shall receive the PERS benefit formula of 2%@62, shall contribute 50% of the total annual normal cost of their pension benefit to the pension plan as determined by the City's actuary and shall have their final compensation based on the employee's highest annual compensation earnable averaged over a consecutive 36-month period. The employee contribution rate for new non-sworn members is 6.25%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate.

## **ARTICLE IV. INSURANCE BENEFITS**

### **SECTION 1 - INSURANCE**

- 1.1 Active employees shall commence cost sharing starting in calendar year 2020 based on a dollar amount equal to the premium of the Kaiser Region 1 plan as follows:

#### 2020 Calendar Year

The City contribution shall be the 2019 Kaiser Region 1 plan rate plus the first 3% rate increase. The employee shall pay up to the next 3% of the rate increase, with the City responsible for any rate increase above 6%.

#### 2021 Calendar Year

The City contribution shall be its share of the 2020 Kaiser Region plan rate plus the first 3% rate increase. The employee shall pay up to the next 3% of the rate increase, with the City responsible for any rate increase above 6%.

- 1.2 If an Executive Level employee elects no health coverage, and can demonstrate to the City, on an annual basis or any other time upon request, that the Executive Level employee has alternative health care coverage, the Executive Level employee shall be entitled to any one of the following options:

1. The City will pay 50% of the eligible contribution into the Executive Level employee's 457 Plan account; or
2. The City will pay to the Executive Level employee directly 50% of the eligible contribution in cash; or
3. At the Executive Level employee's option, the City will pay a portion of the eligible contribution to increase the Executive Level employee's supplemental life insurance coverage and the Executive Level employee will receive the remainder of the eligible contribution under either option one or two above.

If an Executive Level employee's alternative health coverage is lost due to unforeseen circumstances, the Executive Level employee will upon request be covered by the City's health plan, subject to carrier approval.

- 1.3 Dental Insurance - For dental coverage the City shall pay 100 percent of the monthly premium through Delta Dental Plan of California for each Executive Level employee and qualified dependents up to \$2,500 per calendar year for each family member. The City shall provide orthodontia coverage 50 percent with a lifetime maximum of \$4,000 for each eligible family member.
- 1.4 Life Insurance and AD&D - The City agrees to provide Executive Level employees \$100,000 term life insurance and accidental death and dismemberment insurance at no cost to the Executive Level employee. Additional coverage on the same policy may be purchased by individual Executive Level employees through approved payroll deduction.
- 1.5 Short Term and Long Term Disability Insurance - Executive Level employees shall receive long-term disability insurance consistent with the highest level of similar coverage received by any bargaining unit in the City, at no cost to the Executive Level employee.
- 1.6 Employee Assistance Plan - The City agrees to continue an Employee Assistance Counseling Program for all Executive Level employees. Individuals eligible for

coverage include Executive Level employees and their household members. The term household members encompasses anyone living in the Executive Level employee's household and can include, as examples, spouse, domestic partners, grandparents, sister or grandchildren, and eligible dependents.

## **ARTICLE V. SICK LEAVE BENEFITS**

### **SECTION 1 - SICK LEAVE ACCRUAL PLAN**

- 1.1 The City shall provide paid sick leave benefits to all Executive Level employees which accrues at the rate of eight (8) hours per month. The maximum sick leave accrual for Executive Level employees is 2080 hours. If an Executive Level employee has 2080 hours (one year) of accrued unused sick leave, the Executive Level employee shall cease earning sick leave until such time as their unused balance falls below 2080 hours.
- 1.2 Executive Level employees are not subject to sick leave accrual deduction for absences of less than one (1) day for sickness or personal medical appointments. This section does not preclude the City Manager from requiring Executive Level employees to report absences due to sickness of less than one (1) day.

## **ARTICLE VI. HOLIDAYS, VACATION AND OTHER LEAVE BENEFITS**

### **SECTION 1 – HOLIDAYS**

- 1.1 Executive Level employees shall receive 13 designated holidays per year to be observed during each Fiscal Year (July 1-June 30). Executive Level employees normally scheduled to work on those days will be given nine and a half (9.5) hours off with pay provided they are eligible as set forth below. Floating Holidays may not be carried forward from one fiscal year to the next and are not compensable at the time of separation from City service.

The following days shall be recognized as holidays:

1. New Year's Day
2. Martin Luther King, Jr. Day
3. Presidents Day
4. Memorial Day
5. Independence Day
6. Labor Day
7. Veteran's Day
8. Thanksgiving
9. The day after Thanksgiving
10. Christmas Eve
11. Christmas Day
12. Two Floating Holidays

Executive Level employees on approved vacation or sick leave shall not be charged vacation or sick leave for the Holiday.

- 1.2 Additional Christmas Holidays - Executive Level employees shall receive paid leave during the Christmas week consistent with the highest amount received by any bargaining unit in the City and as specifically designated by the City Manager. To be eligible for the Additional Christmas Holidays, Executive Level employees must have either worked or have been in approved paid leave status the equivalent of 15 or more full workdays during the previous thirty (30) days, exclusive of overtime. An Executive Level employee on approved vacation or sick leave shall not be charged vacation or sick leave if these Holidays fall during their approved leave.

## **SECTION 2 - VACATION**

- 2.1 Except as otherwise provided in this Section, employees shall accrue vacation as follows:

<b>YEARS OF SERVICE COMPLETED</b>	<b>ANNUAL ACCRUAL RATE</b>
1 through 4	96 hours
5 through 9	120 hours
10 through 15	144 hours
16 through 19	160 hours
Beginning at 20 years	176 hours

- 2.2 Executive Level employees who reach 280 hours of accrued unused vacation shall cease earning any vacation until their vacation accrual falls below 280 hours.
- 2.3 On June 30 of each year the City shall automatically convert to cash all Executive Level employees' vacation leave accrual hours in excess of 240 and deposit the cash balance into the individual Executive Level employee's VantageCare Retiree Health Savings Program or into member's previously established City-sponsored investment account.
- 2.4 Consistent with City policy employees may sell back up to 40 hours of their accrued vacation annually, one time during the fiscal year.

## **SECTION 3 - RETIREMENT HEALTH SAVINGS PLAN**

- 3.1 VantageCare Retiree Health Savings (RHS) Program allows employees to accumulate assets to pay for health insurance and out-of-pocket expenses in retirement. The RHS Plan has a number of advantages including tax-deferred contributions, tax-deferred investment earnings, and tax-free withdrawals for eligible medical expenses for participants, their spouses and dependents.
- 3.2 The City shall automatically deposit 2% of each Executive Level employee's salary into the individual Executive Level employee's VantageCare Retiree Health Savings program. This benefit is paid from the Executive Level employee's salary and not by the City.
- 3.3 Executive Level employees will be permitted to cash out and deposit unused leave accruals in their Retiree Healthcare Savings Plan as described below.



On June 30 of each year the City shall automatically convert to cash, up to 40 hours each Executive Level employee's vacation leave accrual hours in excess of 240 and deposit the cash balance into the individual's VantageCare Retiree Health Savings Program.

On June 30 of each year the City shall automatically convert to cash up to 40 hours of Executive Level employee's unused Executive Leave and deposit the cash balance into the individual's VantageCare Retiree Health Savings program.

#### **SECTION 4 - BEREAVEMENT LEAVE**

- 4.1 Each employee shall receive 24 hours of bereavement leave per qualifying incident. A qualifying incident is defined as the death of an employee's parent, step-parent, parents-in-law, grandparent, child, step-child, grandchild, spouse, domestic partner, legal dependent, sister or brother, brother/sister-in-law, legal guardian or with approval by Human Resources, a substitute family member for a person defined above.
- 4.2 In addition to the 24 hours of bereavement leave, Executive Level employees may use accrued unused vacation or sick leave to extend their bereavement leave up to a total of forty hours.
- 4.3 At the discretion of the City Manager, or designee, additional time may be taken by the Executive Level employee using their accrued leave. City paid bereavement leave shall be limited to a maximum of 24 hours per incident. In special cases, the City Manager or designee may approve additional bereavement leave or a leave of absence for bereavement in other circumstances.

#### **SECTION 5 - ADDITIONAL LEAVES**

##### **5.1 Authorized Leaves of Absence without Pay**

Requesting Leave – Upon request, the City Manager may grant an Executive Level employee an unpaid leave of absence not to exceed three (3) months. Such leave shall be discretionary and based upon the needs of the City. Whenever possible, such request shall be submitted at least six (6) weeks in advance. Approval of the request may be with specific terms and conditions negotiated by the City Manager and the Executive Level employee.

Extension of Leaves – During the period of the Leave of Absence, an Executive Level employee may request that the leave be extended by submitting such a request in writing to the City Manager stating the reason for the extension. Such a request may be approved or disapproved by the City Manager as described in the above section. Under normal circumstances, no Leaves of Absence exceeding one (1) year will be granted.

- 5.2 Executive Leave – Executive Level employees shall receive 80 hours of Executive Leave on July 1 of each year as flexible compensation for the irregular duty periods, work in excess of 40 hours per week, and unpredictable demands on Executive Level employee's time. Executive Leave must be used prior to June 30 of the fiscal year it

was awarded or it is lost.

On June 30 of each year the City shall automatically convert to cash up to 40 hours of Executive Level employees unused Executive Leave and deposit the cash balance into the individual Executive Level employee's VantageCare Retiree Health Savings program.

New Executive Level employees shall receive the following bank of hours of Executive Leave based on hire date as follows:

<b><u>Date of Employment</u></b>	<b><u>Credit for Executive Leave</u></b>
July 1 through September 30	60 hours
Oct 1 through December 31	40 hours
Jan 1 through March 31	20 hours
April 1 through June 30	0 hours

- 5.3 Pregnancy Disability Leave - An Executive Level employee disabled due to pregnancy may be entitled to a leave of absence for the period of disability up to three months. Executive Level employees on Pregnancy Disability Leave may utilize accrued unused sick leave and vacation during the leave period.
- 5.4 Family and Medical Leave Act of 1993 – The parties acknowledge the applicability of the Family and Medical Leave Act and the California Family Rights Act and intend to apply and implement this Agreement so as to comply with both State and Federal Law.
- 5.5 Voting Leave – Consistent with the provisions of California law, Executive Level employees shall be granted sufficient time to vote during municipal, primary and general elections.
- 5.6 Military Leave – The City shall comply with all State and Federal requirements regarding military duty leave.
- 5.7 Sabbatical Leave is provided as a major means by which Executive Level employees may promote their professional competence and so improve the performance of the organization through continued learning through study, research, writing, and travel. Executive Level employees shall receive eighty (80) hours of Sabbatical Leave at the completion of seven years of service, which shall be on the eighth anniversary of their appointment as an Executive Level employee. Executive Level employees shall also receive eighty (80) hours of Sabbatical Leave upon the completion of fourteen years of service, which shall be on the fifteenth anniversary of their appointment as an Executive Level employee.

Executive Level employees may request and take Sabbatical Leave at any time after Sabbatical Leave Time has accrued, subject to prior approval by the City Manager. Sabbatical Leaves must be taken within one year of accrual of Sabbatical Leave Time. Sabbatical Leaves must be taken as a single period of ten consecutive business days or two periods of five consecutive business days each.

- 5.8 Supplemental Leave – The City Manager may award up to 40 hours of Supplemental Leave to any Executive Level employee each year, based on extended hours of work,

job performance or other circumstances. Supplemental leave must be used within one calendar year of the date awarded or it is lost.

- 5.9 Jury Leave – The City provides jury duty leave with pay for all Executive Level employees who are called upon to serve for court jury duty according to the following provisions:

An Executive Level employee called for jury duty shall immediately provide the City Manager with a copy of the jury summons. If the Executive Level employee is dismissed by the Court and three (3) hours or more remain in the workday, they are expected to report to work.

Executive Level employees' compensation for jury duty shall be limited to three months (63 work days). Executive Level employees whose jury service is in excess of three months (63 work days) may make a request to the City Manager or designee for continued payment. An Executive Level employee serving jury duty in excess of the above limit may use accrued unused vacation or other approved leave to continue pay.

## **ARTICLE VII. SEPARATION**

### **SECTION 1 – SEPARATION FROM CITY SERVICES**

- 1.1 Separation Notice Payment – Executive level employees who have more than three years of service and voluntarily separate from employment with the City and provide at least thirty (30) calendar days' notice of separation shall receive a Separation Notice Payment. The Separation Notice Payment will be a sum equaling the most recent two weeks' regular compensation received by the Executive Level employee, including longevity pay and all other monetary incentive compensation received immediately prior to the date of notice. Executive Level employees who separate as a result of medical or other retirement shall not be eligible to receive this benefit.

Executive Level employees who have more than three years of service and are involuntarily separated from their employment with the City shall receive twelve weeks separation pay. Such separation pay shall include longevity pay and all other monetary incentive compensation the Executive Level employee received while employed by the City.

- 1.2 Confidentiality – In the event of termination of employment, the Parties agree that neither the City nor Executive Level employee shall, for a period of six months, make any statement, orally, in writing or otherwise, regarding the reasons for or circumstances of termination, to any person or organization other than:

- a) In the case of the City: its legal counsel and/or City Council
- b) In the case of the Executive Level employee: to legal counsel and/or immediate family.

This provision shall expressly include communication to prospective future employers, unless otherwise required by law.

## **SECTION 2 – SAVINGS CLAUSE**

- 2.1 The provisions of the Resolution are declared to be severable and if any article, section, subsection, sentence, clause or phrase contained herein shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of the remaining articles, sections, subsections, sentences, clauses or phrases of this Resolution, but they shall remain in full force and effect. It is the intent of the City this Resolution stand notwithstanding the invalidity of any part hereof.

## **SECTION 3 - IMPLEMENTATION AND DURATION**

- 3.1 Except as otherwise provided herein, this Pay and Benefits Plan shall be in full force and effect beginning July 14, 2019 and shall remain in full force and effect until amended, repealed or superseded by action of the City Council through June 30, 2021.

## **EXHIBIT “A”**

The salaries in Table 1 below include a 3.5% Cost of Living Adjustment (COLA), effective July 14, 2019.

**TABLE 1**

**FY 2019-20**  
**3.5 % COLA**

TITLE	GRADE	ANNUAL SALARY	
		STEP 1	STEP 6
Chief of Police	057	\$158,931.10	\$202,841.09
City Clerk/Administrative Services Director	054	\$126,164.69	\$161,021.66
Finance Director	056	\$147,158.62	\$187,815.62
Parks & Recreation Director	054	\$126,164.69	\$161,021.66
Planning Director	056	\$147,158.62	\$187,815.62
Public Works Director	057	\$158,931.10	\$202,841.09

**TABLE 2**

The salaries in Table 2 below include a 3.0% Cost of Living Adjustment (COLA), effective July 11, 2020.

**FY 2020-21**  
**3.0% COLA**

TITLE	GRADE	ANNUAL SALARY	
		STEP 1	STEP 6
Chief of Police	057	\$163,699.03	\$208,926.32
City Clerk/Administrative Services Director	054	\$129,949.63	\$165,852.31
Finance Director	056	\$151,573.38	\$193,450.09
Parks & Recreation Director	054	\$129,949.63	\$165,852.31
Planning Director	056	\$151,573.38	\$193,450.09
Public Works Director	057	\$163,699.03	\$208,926.32

Note: Executive Level employees are positions in the Unclassified Service.

\*Rates based on 1976 annual hours worked

Executive Level employees shall work the number of hours necessary and sufficient to professionally discharge the duties and assignments. Executive Level employees are granted discretion regarding the times they start and finish their work days, as well as the days they work. The City may from time to time require specific work start or finish times or both. Executive Level employees shall work a minimum of thirty-eight (38) hours per week, except when vacation, sick or other approved leave is taken.

*The standard workweek shall be thirty-eight (38) hours per week, worked in units of nine (9-1/2) hours per day Monday through Thursday in a seven (7) day workweek which runs Saturday at midnight through the following Saturday at 11:59 p.m.*



PAY & BENEFITS PLAN FOR  
NON-REPRESENTED EMPLOYEES  
OF THE CITY OF HERCULES

**Effective July 1, 2019 through June 30, 2021  
City Council Resolution 2019-048**

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\*NOTE: ARTICLE II, SECTION 1 (Pay Plan- Exhibit A – Pg. 18)



## **ARTICLE I. TERMS**

### **SECTION 1 - DEFINITION OF TERMS**

- 1.1 The following terms, whenever used in the Plan, shall have the meaning set forth in this Section:
- A. CITY: Shall mean the City of Hercules
  - B. CITY MANAGER: Shall mean the City Manager or his/her designee.
  - C. DAYS: Shall mean calendar days except where working days are expressly specified.
  - D. EMPLOYEE: Shall mean an individual who serves full-time and who is appointed to a full-time Management or Confidential position.
  - E. EMPLOYEE: Shall mean the City Manager, individual appointed to Employee level positions by the City Manager, and elected officials.
  - F. FISCAL YEAR: Shall mean the 12 month period from July 1 through June 30.
  - G. PUBLIC EMPLOYEES' PENSION REFORM ACT (PEPRA): Shall mean the California Public Employees' Pension Reform Act of 2013, including AB 340 (Furutani, Chapter 296, Statutes of 2012) and AB 197 (Buchanan, Chapter 297, Statutes of 2012) and all subsequent amendments.
  - H. PERS: Shall mean the California Public Employees' Retirement System.
  - I. PUBLIC AGENCY EXPERIENCE: shall mean full-time service in an agency that participates in a public retirement plan.
  - J. RETIREE: Shall mean a former employee of the City who has been granted and is receiving a regular service or disability retirement from PERS.
  - K. SERIOUS INJURY OR ILLNESS: Shall mean, for the purposes of benefits provided by Article V, Section 1.04 herein, an injury or illness certified by the City to require a recuperation period of 30 days or more.
  - L. WORK PERIOD: Shall mean seven consecutive, regular recurring 24 hour periods equal to 168 hours, designated by the City Manager.
  - M. YEAR: Shall mean fiscal year, except where calendar year is expressly specified.

## **ARTICLE II. COMPENSATION**

### **SECTION 1 - PAY PLAN**

- 1.1 Effective July 1, 2019 through June 30, 2021, the pay plan for Non-Represented Employees is set forth on Exhibit "A", attached hereto.

### **SECTION 2 - PAY RATE ADVANCEMENT WITHIN SALARY RANGE**

- 2.1 On the basis of the evaluation of an employee's performance, an employee shall be eligible for a pay rate advancement added to his/her base pay of an amount between zero and 10 percent, not to exceed the top of the salary range, effective at the beginning of the pay period following an employee's anniversary date.

### **SECTION 3 - OTHER PAY ADJUSTMENTS**

- 3.1 Retention Payment – In recognition of the financial sacrifices made by Employees who have stayed with the City and participated in the wage concessions that enabled the City to successfully navigate times of extreme economic distress, the City will pay a one-time non-PERSable retention payment of 2.0% of the employee's salary earned in FY 2018-19 payable with the first pay period in August, 2019 and a one-time non-PERSable retention payment of 3.0% of the employees salary earned in FY 2019-20 payable with the 1<sup>st</sup> pay period in August 2020. Employees can elect to direct retention payment to Deferred Compensation Plan if desired.
- 3.2 Bonus Pay – As recognition of a specific, non-permanent work effort or in recognition of ongoing job performance which has consistently exceeded the highest standards, Bonus Pay may be awarded to an Employee by the City Manager. The range of this Bonus Pay may be from 2% to 10% of the Employee's annual salary and be paid in one lump sum payment. Employees have the option of depositing any such bonus payment into their 457 Deferred Compensation Plan or 401A Plan, subject to plan limits.

*This benefit is suspended for the term of this Pay Plan.*

- 3.3 Emergency Premium Pay – In an emergency preparedness situation, as designated by the City Manager or designee, all non-exempt employees required to work in excess of their regular assigned shift shall receive regular overtime pay as stated in Article 1.2. All exempt employees required to work in excess of their regular assigned shift shall receive premium pay at the rate of two (2) times the employee's regular base rate of pay for all hours worked in excess of assigned shift.

### **SECTION 4 - VEHICLE ASSIGNMENT**

- 4.1 The City shall provide an unmarked vehicle to the Police Department Command staff.

The Commanders shall adhere to all city policy and procedures when utilizing a city owned vehicle. The Chief of Police or the City Manager may at any time revoke the vehicle privilege if a violation is identified.

## **SECTION 5 - UNIFORM ALLOWANCE**

- 5.1 Sworn personnel shall be entitled to an annual clothing allowance equal to the highest amount that is received by members of any Public Safety bargaining unit within the City.

## **SECTION 6 – WORKING IN A HIGHER CLASSIFICATION**

- 6.1 Eligible employees who are authorized in writing by the department head to work in a higher classification and salary range than their own and who are required to temporarily perform substantial duties and assume the responsibilities of the position will receive out of class pay. To be eligible for out of class pay, employees assigned to work in a higher classification must meet the minimum qualifications of the assigned position. Employees will be eligible for work in a higher classification on the first workday in a higher classification.
- 6.2 Compensation for work in a higher class shall be at either five percent (5%) above said employees' existing salary rate or the hourly rate equal to the minimum rate as provided in the salary range for the designated position, whichever is higher. Any out of class work for which premium compensation is provided requires advance written approval by the City Manager or designee.
- 6.3 Unrepresented Employees who are working in a higher classification that is outside the scope of this Agreement shall be covered by the general terms and conditions of employment of the higher classification. All wages, including sick, vacation, comp time and holiday shall be paid at the out of class pay rate.
- 6.4 Additional Duties pay of 5% for when an employee assumes limited duties of a higher classification as approved by the City Manager.

## **SECTION 7 - EDUCATION REIMBURSEMENT**

- 7.1 Employees shall be eligible to receive up to \$4,000 per fiscal year reimbursement of expenditures by the Employee on tuition, books, travel and any other costs associated with their successful completion of any professional or educational program approved by the City Manager. This benefit shall be funded at the rate of \$30,000 per year and is available to Employees on a first come, first served basis. Once the total annual benefit amount of \$30,000 is reached, the benefit is no longer available to any Employee until the next fiscal year.

## **SECTION 8 - LONGEVITY PAY**

- 8.1 Non-sworn employees are eligible to receive Longevity Pay based on number of years of service. In addition to an employee's base salary, exclusive of all premium and other pays, each employee shall receive a Longevity Pay added to the employee's base salary after the completion of:

10 years of service:	\$125 per month
14 years of service:	\$175 per month
16 years of service:	\$225 per month
25 years of service:	\$275 per month

Sworn employees are eligible to receive Longevity Pay calculated as a percentage of their salary and the City will make the payments in 26 bi-weekly installments. The calculations, based on total sworn public service time, will be as follows:

At 5 years of service:	2% of salary
At 10 years of service:	4% of salary
At 15 years of service:	6% of salary
At 20 years of service:	8% of salary
At 25 years of service:	10% of salary

- 8.2 The effective date of a Longevity Pay increase shall be the beginning of the pay period following the date of eligibility. The computation of Longevity Pay increases shall not be cumulative.

## **SECTION 9 - CONVERSION OF ACCRUED LEAVE UPON SEPARATION**

- 9.1 Upon retirement or separation from City employment, Employees shall receive cash out equivalent for any eligible unused leave balances. Separating Employees shall have the option of receiving cash out or depositing the unused leave balance into their 457 Deferred Compensation Plan, subject to Federal law plan limits.

## **SECTION 10 - COMPENSATORY TIME OFF**

- 10.1 Compensatory Time Off (CTO) is normally not accrued for exempt employees, however should CTO be on the employer's books for reasons such as change in position or a carryover from other terms and conditions with the employer, after April 1, 2016, it will qualify as eligible for conversion to either the Employee's 401A or 457 Plan. Any such conversion must occur within 30 days of appointment.

## **SECTION 11 - SUPPLEMENTAL OPTIONAL MONIES ALLOWANCE FOR RETIREES**

**(SOMAR)**

11.1 The City will provide an optional monetary allowance currently in the amount of \$344.74 per month for safety employees and \$259.37 for non-safety employees with an annual three percent adjustment on January 1<sup>st</sup> of each year to employees who retire as regulated by the Public Employee's Retirement System. To be eligible for the optional monies, an employee must retire as follows:

1. Service Retirement: Employees who have served the City for at least ten (10) consecutive years immediately prior to retirement and are at least fifty (50) years old when they separate service from the City.
2. Disability Retirement: Employees who retire with a disability retirement are not required to be a certain age, but must have at least twenty (20) years of service with the City.

11.2 To be eligible for the optional money allowance, employees must also have the minimum amount of sick leave on the books, as outlined in the chart below. If an employee has below the amount of sick leave required for their years of service, then they will only be eligible for the percentage paid equivalent to the amount of sick leave they do have on the books.

Years of Service	Amount of sick leave hours on the books on the day employee separates service	Percentage of Optional Money Available
10	480	50
11	528	55
12	576	60
13	624	65
14	672	70
15	720	75
16	768	80
17	846	85
18	864	90
19	912	95
20	960	100
21	960	100
22	960	100
23	960	100
24	960	100
25	No minimum amount required	100

11.3 Employees must retire within one hundred twenty (120) days of separation from City employment to be eligible to receive the optional money allowance. In addition, employees who separate service from the City of Hercules, but do not retire as a PERS annuitant, shall not be eligible for medical retirement under this program.

11.4 Retiree Reaches Age 65 – The City will pay a portion of the optional money to a retiree until the retiree reaches age 65, upon which they are required to enroll in Medicare. At

that time, the optional money will drop to an amount equivalent to the Kaiser Supplemental to Medicare rate through PERS. The retiree will be eligible for the same percentage of the Supplemental Optional Monies as they were eligible for under the Basic Optional Monies plan. Employees who are not eligible for Medicare must provide the City proof that they are not eligible for Medicare, either through their own employment history or their spouse's and after providing such proof, the city will continue to pay the percentage of the Basic Optional Monies Plan. If proof is not provided, the City will automatically begin paying the Supplemental Optional Monies Plan percentages.

This benefit, which is effective January 1, 2001, is expected to last into perpetuity. The funds being established for this program may not be used by the City or Employees for any purpose other than what is expressly stated in this section of the Pay Plan. If in the future the City and Employees mutually agree to end or modify this benefit, they can do so only for active employees. Any retiree who is currently receiving this benefit will continue to receive the benefit as stated in the Pay Plan that was in effect at the time of their retirement. Conversely, if the City and Employees increase this benefit, they can do so only for active employees and retiree benefits will remain the same as it was when they retired.

The City shall provide to the Employees an annual statement of prior year balances in the medical retirement fund no later than December 31<sup>st</sup> of each year.

- 11.5 Payment will be made on a bi-annual basis. The optional money allowance for the months of January through June will be made the third week in July; July through December will be paid the third week in January of each year. Checks will be mailed to the address on file. Supplemental Optional Money payments are subject to applicable Federal and State Income Tax regulations.

## **SECTION 12 - COMPUTER LOAN PROGRAM**

- 12.1 To be eligible Employees must have completed their initial one year probation period with the City and must maintain a balance of up to 40 hours of vacation and/or compensatory time until the loan is paid in full. The hours employee must maintain will vary depending on the amount borrowed.
- 12.2 Each employee is eligible to participate in the City of Hercules Loan Program for Employee Purchase of a Personal Computer, tablet, software or hardware. Maximum loan amount is \$2,500 and may not be more than one loan outstanding at any time. No interest will be charged by the City on loans under this program.

## **SECTION 13 – DEFERRED COMPENSATION**

- 13.1 401A Deferred Compensation Plan: Police Command staff shall receive an employer contribution equivalent to 4% of their salary from the City, deposited into the City sponsored 401A Deferred Compensation Plan, consistent with the limits, policies and

conditions established by the ICMA-RC and Federal Tax Laws.

- 13.2 457 Deferred Compensation Plan: All Employees may make voluntary contributions to the ICMA 457 Deferred Compensation Plan through payroll deduction subject to the limits, policies and conditions established by the ICMA and Federal Tax laws. In addition, exempt classifications under the Non-Represented/Confidential Pay and Benefit Plan shall receive 2.5% of their salary on a one-to-one match deposited into the City sponsored 401A Deferred Compensation Plan, and non-exempt classifications under the Non-Represented/Confidential Pay and Benefit Plan shall receive 1% of their annual salary on a one-to-one match deposited into the City sponsored 401A Deferred Compensation Plan, consistent with the limits, policies and conditions established by the ICMA-RC and Federal Tax Laws.

### **ARTICLE III. RETIREMENT BENEFITS**

#### **SECTION 1 - PUBLIC EMPLOYEES' RETIREMENT SYSTEM (PERS) PLAN**

- 1.1 The City agrees to provide all Employees with retirement benefits under the terms of its current Retirement Plan with CalPERS.
- 1.2 All sworn personnel members hired on or prior to December 11, 2011 shall receive PERS retirement benefits computed at the highest formula, to include final year benefit formula, received by any public safety bargaining unit within the City. Those sworn personnel hired after December 11, 2011 and prior to January 1, 2014 shall receive the PERS benefit formula of 3%@55.
- 1.3 Unrepresented non-public safety employees hired prior to January 1, 2013 will pay the 7% employee percentage PERS contributions. The total employee percentage is 7%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate. Unrepresented public safety employees hired prior to January 1, 2013 will pay the 9% employee percentage of PERS contributions. The current employee percentage is 9%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate.
- 1.4 Non-public safety Employees hired prior to January 1, 2014 will pay the 7% employee percentage of PERS contributions. The current total employee percentage is 7%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate. Public safety Employees hired prior to January 1, 2014 will pay the 9% employee percentage of PERS contributions. The current total employee percentage is 9%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate.
- 1.5 The PERS benefit formula and percentages paid by any Employee will change for all newly hired Employees on or after January 1, 2014 who are not already in a PERS

recognized retirement system, in accordance with AB 340, signed into law on September 12, 2012.

- 1.6 Sworn personnel hired on or after January 1, 2014 shall receive the PERS benefit formula of 2.7%@57, shall contribute 50% of the total annual normal cost of their pension benefit to the pension plan as determined by the City's actuary and shall have their final compensation based on the employee's highest annual compensation earnable averaged over a consecutive 36-month period. The employee contribution rate for new sworn members is 11.50%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate.
- 1.7 Non-public safety personnel hired on or after January 1, 2014 shall receive the PERS benefit formula of 2%@62, shall contribute 50% of the total annual normal cost of their pension benefit to the pension plan as determined by the City's actuary and shall have their final compensation based on the employee's highest annual compensation earnable averaged over a consecutive 36-month period. The employee contribution rate for new non-sworn members is 6.25%. Effective October 21, 2018, employee to pay an additional 3% to be applied to the Employer CalPERS Contribution Rate.

#### **ARTICLE IV. INSURANCE BENEFITS**

##### **SECTION 1 - INSURANCE**

- 1.1 Active employees shall commence cost sharing starting in calendar year 2020 based on a dollar amount equal to the premium of the Kaiser Region 1 plan as follows:

###### 2020 Calendar Year

The City contribution shall be the 2019 Kaiser Region 1 plan rate plus the first 3% rate increase. The employee shall pay up to the next 3% of the rate increase, with the City responsible for anything above a total of 6%.

###### 2021 Calendar Year

The City contribution shall be its share of the 2020 Kaiser Region 1 plan rate plus the first 3% rate increase. The employee shall pay up to the next 3% of the rate increase, with the City responsible for anything above a total of 6%.

- 1.2 If an Employee elects no health coverage, and can demonstrate to the City, on an annual basis or any other time upon request, that the Employee has alternative health care coverage, the Employee shall be entitled to any one of the following options:
  - A. The City will pay 50% of the eligible contribution into the Employee's 457 Plan account; or
  - B. The City will pay to the Employee directly 50% of the eligible contribution in cash; or
  - C. At the Employee's option, the City will pay a portion of the eligible contribution to



increase the Employee's supplemental life insurance coverage and the Employee will receive the remainder of the eligible contribution under either option one or two above.

If an Employee's alternative health coverage is lost due to unforeseen circumstances, the Employee will upon request be covered by the City's health plan, subject to carrier approval.

- 1.3 Dental Insurance - For dental coverage the City shall pay 100 percent of the monthly premium through Delta Dental Plan of California for each Employee and qualified dependents as current practice dictates per fiscal year for each member. The City shall provide orthodontia coverage 50 percent with a lifetime maximum of \$4,000 for each eligible family member.
- 1.4 Life Insurance and AD&D - The City agrees to provide sworn personnel \$50,000 and non-sworn employees \$40,000 term life insurance and accidental death and dismemberment insurance at no cost to the Employee. Additional coverage on the same policy may be purchased by individual Employees through approved payroll deduction.
- 1.5 Short Term and Long Term Disability Insurance - Employees shall receive long-term disability insurance consistent with the highest level of similar coverage received by any bargaining unit in the City, at no cost to the Employee.
- 1.6 Employee Assistance Plan - The City agrees to continue an Employee Assistance Counseling Program for all Employees. Individuals eligible for coverage include Employees and their household members. The term household members encompasses anyone living in the Employee's household and can include, as examples, spouse, domestic partners, grandparents, sister or grandchildren, and eligible dependents.

## **ARTICLE V. SICK LEAVE BENEFITS**

### **SECTION 1 - SICK LEAVE ACCRUAL PLAN**

- 1.1 The City shall provide paid sick leave benefits to all Employees which accrues at the rate of eight (8) hours per month. The maximum sick leave accrual for Employees is 2080 hours. If an Employee has 2080 hours (one year) of accrued unused sick leave, the Employee shall cease earning sick leave until such time as their unused balance falls below 2080 hours.
- 1.2 Sick leave is to be used primarily for illness, injury or medical appointments for the employee or an immediate family member which requires an employee to be absent from work. The immediate family of an employee is defined as: parents, step-parents, parents-in-law, spouse, domestic partner, child, step-child, brother, sister, grandparents, grandchildren, brother/sister-in-law, son/daughter-in-law, or legal guardian.

- 1.3 After three consecutive sick days the City may require an employee to submit a doctor's statement and/or other reasonable verification for the sick leave request.
- 1.4 Exempt employees are not subject to sick leave accrual deduction for absences of less than one (1) day for sickness or personal medical appointments. This section does not preclude the City Manager from requiring Employees to report absences due to sickness of less than one (1) day.

## **ARTICLE VI. HOLIDAYS, VACATION AND OTHER LEAVE BENEFITS**

### **SECTION 1 - HOLIDAYS**

- 1.1 Employees shall receive 13 designated holidays per year to be observed during each Fiscal Year (July 1-June 30). Employees normally scheduled to work on those days will be given nine and one half (9.5) hours off with pay provided they are eligible as set forth below. Floating Holidays may not be carried forward from one fiscal year to the next and are not compensable at the time of separation from City service.

The following days shall be recognized as holidays:

1. New Year's Day
2. Martin Luther King, Jr. Day
3. Presidents Day
4. Memorial Day
5. Independence Day
6. Labor Day
7. Veteran's Day
8. Thanksgiving
9. The day after Thanksgiving
10. Christmas Eve
11. Christmas Day
12. Two Floating Holidays

Employees on approved vacation or sick leave shall not be charged vacation or sick leave for the Holiday.

- 1.2 Additional Christmas Holidays - Employees shall receive paid leave during the Christmas week consistent with the highest amount received by any bargaining unit in the City and as specifically designated by the City Manager. To be eligible for the Additional Christmas Holidays, Employees must have either worked or have been in approved paid leave status the equivalent of 15 or more full workdays during the previous thirty (30) days, exclusive of overtime. An Employee on approved vacation or sick leave shall not be charged vacation or sick leave if these Holidays fall during their

approved leave.

## **SECTION 2 - VACATION**

- 2.1 Except as otherwise provided in this Section, employees shall accrue vacation as follows:

<b>YEARS OF SERVICE COMPLETED</b>	<b>ANNUAL ACCRUAL RATE</b>
1 through 4	96 hours
5 through 9	120 hours
10 through 15	144 hours
16 through 19	160 hours
Beginning at 20 years	176 hours

- 2.2 Employees who reach 280 hours of accrued unused vacation shall cease earning any vacation until their vacation accrual falls below 280 hours.
- 2.3 On June 30 of each year the City shall automatically convert to cash all Employees' vacation leave accrual hours in excess of 240 and deposit the cash balance into the individual Employee's VantageCare Retiree Health Savings Program or into a member's previously established City-sponsored investment account.
- 2.4 Consistent with City policy employees may sell back up to 40 hours of their accrued vacation annually, one time during the fiscal year.

## **SECTION 3 - RETIREMENT HEALTH SAVINGS PLAN**

- 3.1 VantageCare Retiree Health Savings (RHS) Program allows employees to accumulate assets to pay for health insurance and out-of-pocket expenses in retirement. The RHS Plan has a number of advantages including tax-deferred contributions, tax-deferred investment earnings, and tax-free withdrawals for eligible medical expenses for participants, their spouses and dependents.
- 3.2 The City shall automatically deposit the following percentage of the employee's salary into the individual Employee's VantageCare Retiree Health Savings program. This benefit is paid from the Employee's salary and not by the City.
- Non-Exempt to contribute 1%

- Exempt Unrepresented hired prior to July 1, 2013 will contribute 20%
- Exempt Employees hired on or after July 1, 2013 will contribute 2%

3.3 Employees will be permitted to cash out and deposit unused leave accruals in their Retiree Healthcare Savings Plan as described below.

On June 30 of each year the City shall automatically convert to cash up to 40 hours of each Employee's vacation leave accrual hours in excess of 240 and deposit the cash balance into the individual's VantageCare Retiree Health Savings Program.

On June 30 of each year the City shall automatically convert to cash all up to 40 hours of employee's unused Executive Leave and deposit the cash balance into the individual's VantageCare Retiree Health Savings program.

## **SECTION 4 - BEREAVEMENT LEAVE**

- 4.1 Each employee shall receive 24 hours of bereavement leave per qualifying incident. A qualifying incident is defined as the death of an employee's parent, step-parent, parents-in-law, grandparent, child, step-child, grandchild, spouse, domestic partner, legal dependent, sister or brother, brother/sister-in-law, legal guardian or with approval by Human Resources, a substitute family member for a person defined above.
- 4.2 In addition to the 24 hours of bereavement leave, Employees may use accrued unused vacation or sick leave to extend their bereavement leave up to a total of forty hours.
- 4.3 At the discretion of the City Manager, or designee, additional time may be taken by the Employee using their accrued leave. City paid bereavement leave shall be limited to a maximum of 24 hours per incident. In special cases, the City Manager or designee may approve additional bereavement leave or a leave of absence for bereavement in other circumstances.

## **SECTION 5 - ADDITIONAL LEAVES**

### **5.1 Authorized Leaves of Absence without Pay**

Requesting Leave – Upon request, the City Manager may grant a Employee an unpaid leave of absence not to exceed three (3) months. Such leave shall be discretionary and based upon the needs of the City. Whenever possible, such request shall be submitted at least six (6) weeks in advance. Approval of the request may be with specific terms and conditions negotiated by the City Manager and the Employee.

Extension of Leaves – During the period of the Leave of Absence, a Employee may request that the leave be extended by submitting such a request in writing to the City Manager stating the reason for the extension. Such a request may be approved or disapproved by the City Manager as described in the above section. Under normal circumstances, no Leaves of Absence exceeding one (1) year will be granted.

- 5.2 Executive Leave – Exempt Employees shall receive 80 hours of Executive Leave on July 1 of each year as flexible compensation for the irregular duty periods, work in excess of 40 hours per week, and unpredictable demands on Employee's time. Executive Leave must be used prior to June 30 of the fiscal year it was awarded or it is lost.

On June 30 of each year the City shall automatically convert to cash up to 40 hours of Employees unused Executive Leave and deposit the cash balance into the individual Employee's VantageCare Retiree Health Savings program.

New Employees shall receive the following bank of hours of Executive Leave based on hire date as follows:

<b><u>Date of Employment</u></b>	<b><u>Credit for Executive Leave</u></b>
July 1 through September 30	60 hours
Oct 1 through December 31	40 hours
Jan 1 through March 31	20 hours
April 1 through June 30	0 hours

- 5.3 Pregnancy Disability Leave - An Employee disabled due to pregnancy may be entitled to a leave of absence for the period of disability up to three months. Employees on Pregnancy Disability Leave may utilize accrued unused sick leave and vacation during the leave period.
- 5.4 Family and Medical Leave Act of 1993 – The parties acknowledge the applicability of the Family and Medical Leave Act and the California Family Rights Act and intend to apply and implement this Agreement so as to comply with both State and Federal Law.
- 5.5 Voting Leave – Consistent with the provisions of California law, Employees shall be granted sufficient time to vote during municipal, primary and general elections.
- 5.6 Military Leave – The City shall comply with all State and Federal requirements regarding military duty leave.
- 5.7 Sabbatical Leave is provided as a major means by which Exempt Employees may promote their professional competence and so improve the performance of the organization through continued learning through study, research, writing, and travel.

Employees shall receive eighty (80) hours of Sabbatical Leave at the completion of seven years of service, which shall be on the eighth anniversary of their appointment as an Employee. Employees shall also receive eighty (80) hours of Sabbatical Leave upon the completion of fourteen years of service, which shall be on the fifteenth anniversary of their appointment as a Employee.

Employees may request and take Sabbatical Leave at any time after Sabbatical Leave Time has accrued, subject to prior approval by the City Manager. Sabbatical Leaves must be taken within one year of accrual of Sabbatical Leave Time. Sabbatical Leaves must be taken as a single period of ten consecutive business days or two periods of

five consecutive business days each.

- 5.8 Supplemental Leave – The City Manager may award up to 40 hours of Supplemental Leave to any Employee each year, based on extended hours of work, job performance or other circumstances. Supplemental leave must be used within one calendar year of the date awarded or it is lost.

- 5.9 Jury Leave – The City provides jury duty leave with pay for all Employees who are called upon to serve for court jury duty according to the following provisions:

An Employee called for jury duty shall immediately provide the City Manager with a copy of the jury summons. If the Employee is dismissed by the Court and three (3) hours or more remain in the workday, they are expected to report to work.

Employees' compensation for jury duty shall be limited to three months (63 work days). Employees whose jury service is in excess of three months (63 work days) may make a request to the City Manager or designee for continued payment. An Employee serving jury duty in excess of the above limit may use accrued unused vacation or other approved leave to continue pay.

## **ARTICLE VII. SEPARATION**

### **SECTION 1 – SEPARATION FROM CITY SERVICES**

- 1.1 Separation Notice Payment – Employees who have more than three years of service and voluntarily separate from employment with the City and provide at least thirty (30) calendar days' notice of separation shall receive a Separation Notice Payment. The Separation Notice Payment will be a sum equaling the most recent two weeks' regular compensation received by the Employee, including longevity pay and all other monetary incentive compensation received immediately prior to the date of notice. Employees who separate as a result of medical or other retirement shall not be eligible to receive this benefit.

Exempt Employees who have more than three years of service and are involuntarily separated from their employment with the City shall receive twelve weeks separation pay. Such separation pay shall include longevity pay and all other monetary incentive compensation the Employee received while employed by the City.

Non-Exempt Employees who have more than three years of service and are involuntarily separated from their employment with the City shall receive six week's separation pay. Such separation pay shall include longevity pay and all other monetary incentive compensation the Employee received while employed by the City.

- 1.2 Confidentiality – In the event of termination of employment, the Parties agree that neither the City nor Employee shall, for a period of six months, make any statement, orally, in writing or otherwise, regarding the reasons for or circumstances of termination, to any person or organization other than:

- a) In the case of the City: its legal counsel and/or City Council
  - b) In the case of the Employee: to legal counsel and/or immediate family.
- This provision shall expressly include communication to prospective future employers, unless otherwise required by law.

## **SECTION 2 – SAVINGS CLAUSE**

- 2.1 The provisions of the Resolution are declared to be severable and if any article, section, subsection, sentence, clause or phrase contained herein shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of the remaining articles, sections, subsections, sentences, clauses or phrases of this Resolution, but they shall remain in full force and effect. It is the intent of the City this Resolution stand notwithstanding the invalidity of any part hereof.

## **SECTION 3 - IMPLEMENTATION AND DURATION**

- 3.1 Except as otherwise provided herein, this Pay and Benefits Plan shall be in full force and effect beginning to July 14, 2019 and shall remain in full force and effect until amended, repealed or superseded by action of the City Council through June 30, 2021.

## **EXHIBIT “A”**

The salaries in Table 1 below include a 3.5% Cost of Living Adjustment (COLA), effective July 14, 2019.

**TABLE 1**

**FY 2019-20**  
**3.5 % COLA**

TITLE	GRADE	ANNUAL SALARY	
		STEP 1	STEP 6
Accountant	048	\$79,505.29	\$101,470.90
Accounting Technician II	046	\$68,162.95	\$86,995.31
Administrative Specialist	045	\$63,113.64	\$80,550.79
Human Resources Specialist	046	\$68,162.95	\$86,995.31
Police Commander	055	\$136,257.89	\$173,903.65

**TABLE 2**

The salaries in Table 2 below include a 3.0% Cost of Living Adjustment (COLA), effective July 11, 2020.

**FY 2020-21**  
**3.0% COLA**

TITLE	GRADE	ANNUAL SALARY	
		STEP 1	STEP 6
Accountant	048	\$81,890.45	\$104,515.03
Accounting Technician II	046	\$70,207.84	\$89,605.17
Administrative Specialist	045	\$65,007.05	\$82,967.31
Human Resources Specialist	046	\$70,207.84	\$89,605.17
Police Commander	055	\$140,345.63	\$179,120.76

Note: Non-Represented employees are positions in the Unclassified Service.

\*Rates based on 1976 annual hours worked

Unrepresented employees shall work the number of hours necessary and sufficient to professionally discharge the duties and assignments. Exempt Unrepresented employees shall work a minimum of thirty-eight (38) hours per week, except when vacation, sick or other approved leave is taken. Exempt Unrepresented employees are granted discretion regarding the times they start and finish their work days, as well as the days they work. However, the City may from time to time require specific start or finish work times or both.



*The standard workweek shall be thirty-eight (38) hours per week, worked in units of nine (9-1/2) hours per day Monday through Thursday in a seven (7) day workweek which runs Saturday at midnight through the following Saturday at 11:59 p.m. Overtime for full time non-exempt employees will begin after 38 hours.*



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of October 8, 2019

**TO:** Members of the City Council

**SUBMITTED BY:** David Biggs, City Manager  
Edwin Gato, Finance Director  
William Imboden, Police Chief  
Mike Roberts, Public Works Director  
Holly Smyth, Planning Director

**SUBJECT:** Update on Parking Enforcement

**RECOMMENDED ACTION:** Receive Report, Discuss, and Provide Direction, if any.

**FISCAL IMPACT OF RECOMMENDATION:** None as a result of this report. Parking enforcement does generate revenues to support the cost of parking enforcement.

**DISCUSSION:** Enforcement of parking laws and regulations continues to be a matter of community concern. This report is being provided to share information on the current status of the City's parking enforcement efforts, how parking enforcement works and is funded, our current priorities regarding parking enforcement, and opportunities to revise or enhance our parking enforcement efforts. In addition, there is some misunderstanding in the community as to how parking enforcement works and constraints associated with parking enforcement and these factors will be discussed in this report as well.

Given concerns about parking enforcement, the 2017/18 Budget included Decision Package 17-15 which was approved which funded a 20 hour per week Parking Enforcement Officer. The Decision Package as approved is set forth below:

Decision Package # 17-15: Parking Enforcement Officer P/T – The City currently relies on volunteers for parking enforcement. It is proposed to fund one part-time 20 hour per week parking Enforcement Officer to upgrade our parking enforcement activities. Increased revenues are expected to cover the increased costs. Revenue Increase: \$25,000; Expense Increase: \$19,750

The part-time Parking Enforcement Officer was designed to supplement the limited amount of parking enforcement undertaken by our Patrol Officers. Patrol Officers continue to a level of parking enforcement, with majority of parking enforcement being done by the part-time Parking Enforcement Officer. Since July, 2016, we have generally had the part-time parking Enforcement Officer position

filled, though there have been some periods where it has been vacant due to turnover. The position is currently filled.

	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Parking Fines	11,510.92	11,593.05	14,844.61	29,936.90	56,318.69	69,307.81
Police Services/Towed Vehicle Release Fees	46,354.13	39,967.93	33,311.16	28,148.82	29,395.30	24,990.84
Total	57,865.05	51,290.98	48,155.77	58,085.72	85,731.99	94,298.65

As you can see, parking fine revenue has increased by more than the annual amount anticipated in DP #17-15. Tow revenues have declined over this same period, as discussed further below, though the net revenue between parking and tows is overall higher. Though annual cost for the Parking Enforcement Officer is now approximately \$31,000, net revenues have increased by more than the cost of the Parking Enforcement Officer.

The ability to tow vehicles and the reduction in tow revenues has been directly impacted by what is referred to as the Community Caretaker Doctrine, which rises out of the Fourth Amendment. The courts have ruled that towing a vehicle is a seizure under the Fourth Amendment and that absent a warrant or exigent circumstances, it is illegal to tow a vehicle in conjunction with an arrest. The exception is if towing the vehicle is in the best interest of the owner, to prevent it from being damaged or stolen, or the vehicle is in a position to create a danger to the public (e.g. parked/stopped in an unsafe manner on the side of the road). Simply arresting the driver is no longer a valid reason for towing the vehicle. The Community Caretaker Doctrine as delineated by the courts has been codified under California law with the passage of AB 2876, which went into effect January 1, 2019 and amends California Vehicle Code 22650 to limit the City's authority to tow vehicles except under limited circumstances consistent with the Community Caretaker Doctrine.

Given the enforcement and financial success of the part-time parking enforcement officer as provided in DP 17-15, in future budgets, we may want to consider adding a second part-time parking enforcement officer if warranted.

The existing part-time Parking Enforcement Officer works Monday through Friday, and does flex his hours to address specific parking issues and for targeted enforcement activities as necessary. However, he does not generally work weekends.

Unfortunately, given limited staffing and higher priorities, the Police Department does not track the types of the parking citations issued, except on a very gross basis.

<b>FY 17/18</b>	Sworn: 1117	PEO: 1130	Total: 2247
<b>FY 18/19</b>	Sworn: 904	PEO: 1103	Total: 2007

Parking enforcement priorities for the Police Department change and are often impacted by outside forces, so the first directive to the Parking Enforcement Officer is to be flexible. The Department gives complaint driven enforcement the top priority, while also focusing on known or reported hot spots in town. The Parking Enforcement Officer's goal is to apply uniform enforcement throughout

town, but everyone who is authorized to issue parking tickets has been given the directive to “enforce it if they see it”. The expectation is that the Patrol Officers will issue parking citations if they see a violation and not rely on the Parking Enforcement Officer to handle it. The statistics for the prior two fiscal years bear out this commitment by Patrol.

The focus of the Parking Enforcement Officer has recently been west of San Pablo Ave, with lighter attention given to the older sections off Refugio Valley Road and Sycamore. In the last few weeks, he has been giving more attention to the Birds, the Trees, the Flowers, and the Gems in response to community concerns.

In addition, the Parking Enforcement Officer also undertakes additional duties of value to the Police Department including prison transport which allows Patrol Officers to remain on the streets to respond to calls and engage in pro-active patrol. He also responds to neighboring counties to pick up prisoners that have been arrested on our warrants, to bring them to our County Jail for prosecution. This can sometimes take his entire shift.

Parking enforcement on public streets, which is the role of our Parking Enforcement Officer and sworn Police Officers, is governed by two types of law. The California Vehicle Code is the main prescriber of parking regulations and rules. The main examples enforced here in Hercules are:

- Time Limits
- Parking in a Red, Yellow, or Blue Zone
- Parking on a corner
- Unregistered Vehicle
- Blocking the crosswalk
- Blocking a driveway

The City’s Municipal Code is also a source of certain local parking restrictions. These include the following prohibitions:

- No parking on a public street for more than 72 hours HMC 3-4.1005
- No parking of vehicles being advertised for sale HMC 3-4.1006
- No parking vehicles in the streets for the purpose of repairing, greasing, or dismantling HMC 3-4.1007
- No parking of Recreational Vehicles, trailers, or boats, unless actively loading/unloading and then for no more than 3 hours HMC 3-4.1018
- No commercial vehicle parking on public streets HMC 3-4.1019

There are also limitations on when and how vehicles can be towed for parking related matters.

In addition to the restrictions applied through the Community Caretaker Doctrine, the Hercules Municipal Code also specifies when a parked vehicle can be towed for violations of the code. The most common is the *Abandoned Vehicle Abatement* section (HMC 3-4.1005), most commonly referred to as a “72 hour tow”.

In order to meet the requirements of this towing authority, the vehicle has to be marked in such a way as to confirm it has not been moved when the officer returns in 72 hours. Additionally the vehicle has to have a warning tag placed on it each time the 72 hour clock is started, and it must be placed in a conspicuous manner to give the owner as much notice as possible regarding the violation. Many residents know this rule and once their vehicle has been tagged they move it just enough to avoid a ticket or they remove the markings.

The other more common towing authority for parked vehicles is found in the Vehicle Code under section 22651(o): Registration Expired over Six months. Any vehicle parked on public property is required to have current registration. If the registration is expired over 6 months the vehicle can be towed under this authority. However, because of inefficiencies in the DMV, the courts have established the following guideline for enforcing this law:

The vehicle cannot be towed until the registration is expired for 90 days past the first day of the next month after the registration expired. For example, if the registration expired February 20<sup>th</sup> the vehicle would not be eligible to be towed until November 29<sup>th</sup>. This is confusing as in reality a registration has to be expired for 9 months before it can be towed, but is enforceable.

There are also restrictions regarding parking of vehicles on private parking. These restrictions are not enforced by the City's Parking Enforcement Officer, and generally fall into the Code Compliance process. The City currently has a three-tier Code Compliance process in place, and which relies upon volunteers to identify and address issues, in addition to those complaints which are received from the public.

Examples of common parking restrictions found in the Municipal Code, and for which we get complaints include:

Inoperable or Unregistered Vehicles stored in front yards or driveways (inoperable or unregistered vehicles are required to be in the garage or behind a fence)  
Vehicles parked on front lawns/yards  
Trailers, boats, RV must be stored properly on private property, for example behind a fence

In addition, the formation of a Residential Preferential Parking District generates an additional set of regulations to be enforced. The City currently has one Parking District in place which is around the Aventine Building. This district has a combination of hour's restrictions and permit requirements. While the enabling law for the formation of these Districts is found in the Municipal Code, the enforcement of these restrictions does fall to the Parking Enforcement Officer or Patrol Officers since they apply on public streets. The Preferential Parking District has a higher fine than regular parking tickets of \$100 for first offense, \$200 for second offense, and \$500 for the third offense and each offense thereafter. This is compared to the normal parking tickets fines of \$57.50, though some offenses are significantly higher.

Parking and parking enforcement is an issue of concern in most communities. The City's current approach has evolved based on changes which have taken place in the community and will continue

to evolve. The City Council has recently engaged in an outreach effort to address specific parking concerns in select neighborhoods, and this report may be of use as part of those efforts.

**ATTACHMENTS:**

None.

<i>Financial Impact</i>			
<b>Description:</b>			
<b>Funding Source:</b>			
<b>Budget Recap:</b>			
Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change: Yes <input type="checkbox"/> No <input type="checkbox"/>			



## **REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of October 8, 2019

**TO:** Mayor Romero and Members of the City Council

**SUBMITTED BY:** David Biggs, City Manager  
Mike Roberts, Public Works Director  
Patrick Tang, City Attorney

**SUBJECT:** Presentation and Discussion of City Ordinances regarding Sidewalk Maintenance and Liability

**RECOMMENDED ACTION:** Receive Report, Discuss, and Provide Direction, if any.

### **FISCAL IMPACT OF RECOMMENDATION:**

No fiscal impact as a result of this action. Depending upon direction provided, there could be future cost reductions and impacts. If adopted by the City Council, a Sidewalk Liability Ordinance would likely reduce the City's pay-outs for sidewalk related injuries because (1) property owners would be more likely to maintain sidewalks in a safe condition if they are jointly liable for injuries due to damaged and neglected sidewalks adjacent to their property; and (2) the City would have the right to recover from property owners and their insurance companies a portion of the claims for injuries resulting from unsafe sidewalk conditions.

### **DISCUSSION:**

California Streets and Highways Code section 5610 requires property owners to "maintain any [adjacent] sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas." While this statute imposes a duty on the abutting property owner to repair any defects or hazards in the adjacent sidewalk, the statute does not actually hold property owners accountable for the failure to correct or repair dangerous conditions on those sidewalks. Accordingly, the City, rather than the property owner, is solely liable if an individual is injured on a damaged sidewalk that a property owner failed to repair.

Cities have the legal authority to enact ordinances that reaffirm the duty of property owners to maintain and repair adjacent sidewalks, and hold private property owners responsible for dangerous conditions on those sidewalks. The City's risk management pool, the Municipal Pooling Authority ("MPA"), has recommended that their client cities adopt this type of ordinance in order to increase the City's protection, and decrease the risk to the City of sidewalk related "trip-and-fall" cases. If this type of ordinance is adopted, the City could benefit from both a positive impact on insurance premiums related to MPA, and from a reduction in the number of incidents and payments resulting from sidewalk trip-and-fall claims.

As discussed in more detail in the several attachments to this staff report, State law allows the City to adopt an ordinance assigning responsibility for maintenance of sidewalks to the owner or person in possession of property adjacent to a sidewalk, and holding private property owners responsible for dangerous conditions on those adjacent sidewalks. Sidewalk liability ordinances are very common throughout California; the City of Oakland adopted such a measure in 2019, joining other Northern California cities including Albany, Concord, Emeryville, Larkspur, Lodi, Sacramento, Vacaville, Richmond, San Francisco, Tiburon, Mill Valley, Sausalito, Fairfax, Novato, Lafayette, Orinda, Gilroy, Walnut Creek, San Pablo, and Pleasant Hill, to name a few. Currently the cities of Pinole and Hercules are the only cities in Contra Costa County that do not have some form of sidewalk liability ordinance which would require property owners to maintain sidewalks fronting their properties, and hold private property owners responsible for dangerous conditions on those adjacent sidewalks. The Pinole City Council in 2018 received and discussed a presentation regarding the possibility of adopting a sidewalk liability ordinance, and directed that the matter be further studied by a council committee.

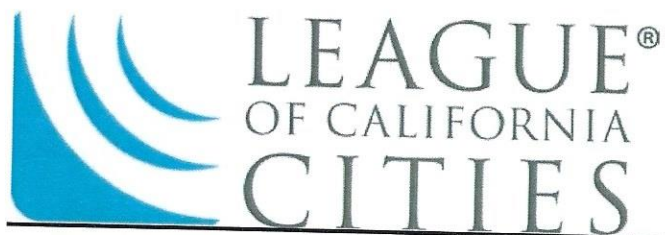
A sidewalk liability ordinance would affirm the existing statutory duty of the property owner to maintain and repair the sidewalk pursuant to California Streets and Highways Code section 5610, and establish that the failure to do so would be considered negligence on the part of the property owner. The property owner would be liable to members of the public injured as a result of such negligence. In addition, the sidewalk maintenance ordinance may also include a provision providing that, if the property owner fails to maintain and repair the sidewalk as necessary to create a safe condition, the City may perform any necessary work and invoice such costs to the property owner. If the property owner fails to pay the invoices, the City may record a lien on the property.

A sidewalk liability ordinance would limit the City's exposure to liability arising out of trip-and fall cases. However, the ordinance would not completely eliminate the City's potential liability for dangerous conditions on sidewalks. The City could still be liable to a plaintiff injured as a result of a dangerous condition on a City owned sidewalk if the property owner is unable to pay (which is likely to happen if the property owner does not have home owners insurance), if the City's actions caused the dangerous conditions, or if the City was aware of a dangerous condition and failed to act.

## **ATTACHMENTS:**

- 1- League of California Cities 2014 Sidewalk Liability Report
- 2- Article from Risk Management Monitor, "Defective Sidewalk Condition: Who is at Fault?" – September 10, 2015





## **But It's Your Sidewalk! Sidewalk Repair and Liability**

Thursday, May 8, 2014 General Session; 2:15 – 4:15 p.m.

Gerald C. Hicks, Supervising Deputy City Attorney, Sacramento



## **BUT IT'S YOUR SIDEWALK!**

This paper and presentation arose out of a desire to create a comprehensive summary of the law concerning an adjacent property owner's obligation to repair a defective sidewalk under Streets and Highways Code section 5610. This effort was motivated to address the numerous objections and threatened lawsuits from angry property owners upon receipt of a repair notice. The title was suggested by the oft heard property owners' mantra and perspective. Research into the history of sidewalk repair for purposes of the paper led to research into the general history of sidewalks and research concerning repair naturally delved into research concerning the interplay between sidewalk repair and liability for unrepaired sidewalks. In sum, the paper and presentation deal with various issues concerning the most pedestrian of infrastructure – sidewalks. Because understanding some of the issues concerning sidewalk repair and liability may best be understood in a historical context, I begin with a brief history of sidewalks.

## **I**

### **A Brief History of Sidewalks**

Sidewalks, perhaps the most ubiquitous yet inconspicuous of critical infrastructure, have a long history. The first evidence of paved pedestrian paths dates from ancient Greece and Rome.<sup>1</sup> Sidewalks, as walkways separated from roads, disappeared during the Middle Ages. They reappeared during the seventeenth century when the first governmental acts calling for the paving of pedestrian paths were passed by Parliament a few years after the 1666 Great Fire of London, apparently as part of Christopher Wren's rebuilding and organization of the City of London.

In the nineteenth century, sidewalks were often constructed by adjacent property owners and businesses and by the end of that century sidewalks had become an important aspect of urban

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<sup>1</sup> Loukaitou-Sideris and Ehrenfeucht, *Sidewalks: Conflict and Negotiation over Public Space* (2009) p. 15

infrastructure. Because sidewalks were often the only paved aspect of streets, they were the easiest place to walk, shop and carry out various economic and social activities. "In commercial areas, sidewalks extended the realm of adjacent shops; shopkeepers displayed their merchandise on sidewalks and stored deliveries and overstock on them as well. Street peddlers made a living outdoors while street speakers and newsboys conveyed information to passersby. Sidewalks were also a realm for social encounters where friends, acquaintances, and strangers mixed. The sidewalks were thus both a route and a destination; a way to move through the city, but also a place of commerce, social interaction, and civic engagement."<sup>2</sup> Sidewalks were also critical to the safety of a city and to establishing a sense of community.

As sidewalks became more prevalent, cities moved to standardize their dimensions and the material used to construct them. With standardization came a contraction of their use as cities focused on a singular purpose for sidewalks – to move people. As a result, many cities imposed sidewalk regulations with respect to the storage of material or products; public speaking; vending; and loitering. Jane Jacobs lamented the reduction in value and physical contraction of sidewalks in her 1961 book, *The Death and Life of Great American Cities*, "Sidewalk width is invariably sacrificed for vehicular width, partly because city sidewalks are conventionally considered to be purely space for pedestrian travel and access to buildings and go unrecognized and unrespected as the uniquely vital and irreplaceable organs of city safety, public life, and child rearing that they are."<sup>3</sup> In her book, Jacobs relates numerous examples of how a busy and vibrant sidewalk, even in the less affluent parts of a city, can decrease crime and promote social discourse.

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<sup>2</sup> Loukaitou-Sideris and Renia Ehrenfeucht, *Vibrant Sidewalks in the United States: Reintegrating Walking and a Quintessential Social Realm* (Access Magazine Spring 2010), p. 24

<sup>3</sup> Jacobs, *The Death and Life of Great American Cities* (1961)

In recent years, sidewalks have gained renewed respect as planners seek to restore their status as “public space” as opposed to a simple mode of transportation. The health benefits of walking are patent but have been extolled by the Surgeon General and numerous health professionals as a means to combat obesity, diabetes, and other diseases. In addition, as a result of concerns with climate change, energy conservation and congestion, transportation planners view sidewalks as an important component of sustainable and healthy communities and walking as an inexpensive and enjoyable activity that reduces congestion and conserves energy.<sup>4</sup>

## II

### Sidewalk repair

#### A. Approaches to Sidewalk Repair and Maintenance

Despite their long history and ubiquity, sidewalks are often overlooked as non-critical infrastructure. While listing bridges, dams, levees, ports, rails and roads, the American Society of Civil Engineers’ Report Card for America’s Infrastructure does not mention sidewalks. While it is true that the catastrophic failure of a dam or bridge would undoubtedly have calamitous results, the cumulative injuries and consequent expenditure of municipal funds from the incremental decay of sidewalks can be equally substantial.

The legal and fiscal impact of broken or displaced sidewalks and the responsibility for their repair has been a constant, if inconspicuous, issue in many California cities for some time. The issue of repair responsibility has obvious legal implications: liability for the existence of a dangerous condition and the requirement to maintain an accessible sidewalk under the Americans with Disabilities Act and California

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<sup>4</sup> Loukaitou-Sideris and Renia Ehrenfeucht, *Vibrant Sidewalks in the United States: Reintegrating Walking and a Quintessential Social Realm* (Access Magazine Spring 2010); American Planning Association, *The Importance of Sidewalks* (The New Planner, Fall 2013)



disability access laws. The repair obligation also creates political difficulties - both for those cities which maintain an ordinance placing the repair obligation on property owners (and who consistently deal with surprised and disgruntled property owners) and those cities that have not enacted such an ordinance because of public opposition and which face a steady increase in damaged sidewalks and the potential liability arising from those sidewalks.

Los Angeles provides a singular example. In 1974, as a result of a grant of federal funds, Los Angeles passed an ordinance placing the obligation to repair sidewalks on the City. Since the federal funds dried up a few years later, the City has had difficulty enacting legislation to place the repair obligation back on the property owners. As of 2010, approximately 4,700 of the Los Angeles' 11,000 linear miles of sidewalk (approximately 43%) were in disrepair. The City estimated spending between 4 and 6 million dollars in liability claims and the cost estimate to repair the sidewalks was between 1.2 and 1.5 billion dollars.<sup>5</sup> Los Angeles has been considering repealing the 1974 ordinance to shift responsibility back to the homeowners. This effort has faced opposition from the homeowners and even unsuccessful efforts in the State Legislature to require a public vote prior to placing the obligation back on the homeowner. Sacramento also experimented with assuming the repair obligation. From 1943 through mid-1973, the City's policy was that property owners were responsible for the cost of all repairs except those caused by City street tree roots for which the City shared responsibility. In mid-1973, the City adopted a new policy making the City responsible for all sidewalk repairs. Not surprisingly, sidewalk repair requests increased substantially. In mid-1976, finding the existing policy unworkable, the City elected to adopt a policy making property owners responsible for all sidewalk repairs, including those repairs necessitated by damage caused by City street trees. Other cities have backed away from an ordinance placing the

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<sup>5</sup> Brasuell, *Where the Sidewalk Ends ... In a Tree Root-Related Lawsuit*, (Oct. 20, 2011)

<[http://la.curbed.com/archives/2011/10/where\\_the\\_sidewalk\\_endsin\\_a\\_tree\\_rootrelated\\_lawsuit.php](http://la.curbed.com/archives/2011/10/where_the_sidewalk_endsin_a_tree_rootrelated_lawsuit.php)>

obligation of sidewalk repair on the property owner after a public outcry. Those cities that do have sidewalk repair ordinances in place nonetheless face fairly consistent questions from the public as to the fairness and legality of asking a property owner to repair the “public” sidewalk.

California, like numerous states, has provisions allowing municipalities to impose a repair obligation for damaged sidewalks on adjacent property owners.<sup>6</sup> Pursuant to these provisions, virtually every major United States city has a sidewalk repair program that places a repair obligation on adjacent property owners to varying degrees. For example, New York, Philadelphia, Phoenix and Cincinnati make the adjoining property owners fully responsible for adjacent sidewalks. Atlanta also makes the adjacent property owner responsible and just faced a public backlash for sending out a number of repair notices prompted by disability access pressures.<sup>7</sup> Chicago operates a “shared cost” responsibility program by limiting the repair cost to a set price per square foot and subsidizing any remainder. Washington D.C. is responsible for repairing the sidewalks but “permanent repairs” may be subject to “available funding.”

California’s sidewalk repairs provisions are set forth in Streets and Highways Code sections 5600 *et seq.* In 1935, Assembly Bill 1194 amended section 31 of the Improvement Act of 1911 to provide for the repair and maintenance of sidewalks, curbing, parking strips and retaining walls by adjacent property owners. Although the legislative history of Assembly Bill 1194 is no longer available, some possible context for the measure may be gleaned from the time period of its passage. In his Inaugural Address of January 8, 1935, California Governor Merriam, in speaking of the economic upheavals of the Great Depression, said:

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<sup>6</sup> See *Schaefer v. Lenahan*, 63 Cal.App.2d 324 327-328 (1944), and cases cited therein. Research into the statutes referenced in the twenty cited cases (a small and completely unscientific sample) revealed that the earliest enactment date was 1856, the latest was 1937 and the average enactment date was 1903.

<sup>7</sup> <http://archive.11alive.com/news/local/story.aspx?storyid=277146> (2/11/13)

But as fondly as some may believe, and as earnestly as others may hope, government itself cannot indefinitely assume the responsibility for meeting all the demands of this depression and this emergency.

\* \* \*

Of primary importance at this time, from the standpoint of an efficient administration of State functions, is the need for placing the government of California on a sound financial basis. This we must do without imposing intolerable taxes upon the people and without undertaking obligations not absolutely essential to the public service. As the first step in such a direction, we must adopt a program that will enable us to keep out expenditures below our income.

Assembly Member Lyons presented Assembly Bill 1194 a little over two weeks later. Though the Governor's message does not explicitly reference an effort to place the sidewalk repair obligation on adjacent property owners, it is consistent with the tone and content of the Inaugural Address.

The primary provision requiring a property owner to repair a defective sidewalk is Streets and Highways Code section 5610.

§5610. Maintenance by lot owners

The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public



convenience in the use of those works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under alike duty in relation thereto.

Pursuant to the authority of section 5610, the majority of cities in California have passed ordinances imposing the obligation for sidewalk repair on adjacent property owners. However, there is some diversity as to the extent of the obligation and how it is imposed. Some cities, like Sacramento, impose the entire repair cost on the property owner regardless of the cause of any damage or displacement. Many cities exempt damage caused by city trees from the repair obligation. Another option followed by many cities is a 50/50 sharing of repair costs.<sup>8</sup> Some cities, in addition to a general sidewalk repair program, have instituted a program which requires a defective sidewalk to be repaired upon the sale of the property.<sup>9</sup> This has the benefit of allowing the cost of repair to be recovered or paid as part of the price of the property. One means of imposing such a requirement is to require that the escrow documents include a certificate of compliance with the sidewalk ordinance. In addition, some cities require the sidewalk to be repaired as a condition of the issuance of a building permit above a set value.

One issue often overlooked is the secondary obligation of section 5610. After setting forth the obligation of adjacent property owners to maintain the sidewalk "in such condition that the sidewalk will not endanger persons or property . . . [or] interfere with the public convenience," section 5610 "except[s] . . . those conditions created or maintained in, upon,

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<sup>8</sup> This diversity appears to be present throughout the nation. A survey of 82 cities in 45 states found that 40 percent of the cities required property owners to pay the full cost of repairing sidewalks, 46 percent share the cost with property owners, and 13 percent pay the full cost of repair. Shoup, *Fixing Broken Sidewalks* (Access, No.36, Spring 2010) pp. 30-36

<sup>9</sup> Both Pasadena and Piedmont have such programs in place.

along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof , and such persons shall be under a like duty in relation thereto.”

There are no reported cases interpreting or applying this language. The purpose appears to be to impose on utilities which maintain facilities (poles, guide wires, vaults, etc.) in or on the sidewalk, the same obligation as imposed on adjacent property owners. This is a somewhat different conceptual obligation than that imposed on adjacent property owners because the source of any defect or interference with the public convenience would be the utility facility, not the sidewalk itself. Potentially, the primary importance of this aspect of section 5610 would be with respect to accessibility issues. In many cities, utility entities maintain facilities, particularly poles, which reduce the sidewalk width below the required three feet of the California Building Code<sup>10</sup> and the four feet required by the ADA draft Public Right-of-Way Guidelines.<sup>11</sup>

## **B. Legal Issues Involving Sidewalk Maintenance Obligation**

One issue that adjacent property owners charged for sidewalk repairs often raise is whether the sidewalk repair obligation of section 5610 applies where the sidewalk is displaced or damaged due to trees located in the public right of way.<sup>12</sup> Though no statistics exist, tree roots are

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<sup>10</sup> Title 24 2013 California Building Code, section 11B-403.5.1 **Clear Width – “Exception 3.** The clear width for sidewalks and walks shall be 48 inches minimum. When, because of right of way restrictions, natural barriers or other existing conditions, the enforcing agency determines that compliance with the 48-inch clear sidewalk width would create an unreasonable hardship, the clear width may be reduced to 36 inches.”

<sup>11</sup> <http://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines-R302.3> – “Continuous Width. Except as provided in R302.3.1, the continuous clear width of pedestrian access routes shall be 1.2 m (4.0 ft.) minimum, exclusive of the width of the curb.”

<sup>12</sup> The issue is one of substantial importance to the City of Sacramento - one of many cities claiming the moniker: “City of Trees.” According to some estimates, as of 2005, Sacramento had more trees per capita than any city except Paris. Jason Margolis, *California’s Capital Sees Big Benefits in More Trees* (11/25/05) <<http://www.npr.org/templates/story/story.php?storyId=5027514>>.

undoubtedly the predominate cause of damage to sidewalks.<sup>13</sup> As noted above, many cities do not impose the sidewalk repair obligation on adjacent property owners where trees located in the right of way have damaged the sidewalk. Many do, including those with a 50/50 sharing program.

Though there is a great deal of visceral appeal to the argument that an adjacent property owner should not bear responsibility to repair a sidewalk caused by a tree in the right of way when the property owner has no control over the tree's roots, the statutory language and the reported cases do not support this position.<sup>14</sup>

Initially, it should be noted that section 5610 makes no distinction as to the cause of a damaged sidewalk in imposing a mandatory repair obligation on the adjacent property owner. Though not expressly addressing the issue, *Jones v. Deeter* (1984) 152 Cal.App.3d 798, supports the proposition that the adjacent property owner is responsible where damage is caused by a tree located in the right-of-way. In *Jones*, the plaintiff was injured when she tripped on a break in the sidewalk caused by a Magnolia tree located in the "parkway."<sup>15</sup> The plaintiff brought suit against both the property owner and the city. The plaintiff appealed a judgment for the property owner. The Court, in affirming the judgment, held that while the property owner had a duty of repair, even though the sidewalk had been damaged by a tree in the right-of-way (parkway), liability could not be imposed against the property owner on this basis. "Under section 5610 the abutting owner bears the duty to repair defects in the

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<sup>13</sup> Randup, McPherson and Costello, *A Review of Tree Root Conflicts with Sidewalk, Curbs and Roads*, (Kluwer Academic Publishers) 2003

<sup>14</sup> In *Jordan v. City of Sacramento* (2007) 148 Cal.App.4<sup>th</sup> 1487, at page 1492 footnote 2, the court questioned the legality of imposing repair responsibility on property owners for damage caused by city trees and suggested the "City might wish to revisit its ordinance ..."

<sup>15</sup> The *Jones* court defined "parkway" as the area "between the sidewalk and the public street." Streets and Highways Code section 5600 defines "sidewalk" to include "a park or parking strip maintained in the area between the property line and the street line and also includes curbing, bulkheads, retaining walls or other works for the protection of any sidewalk or of any such park or parking strip." This portion of the right of way is also sometimes referred to as a "mow strip."



sidewalk, *regardless of whether he has created these defects*. It was felt, however, that it would be unfair for such an owner to be held liable to travelers injured as a result of sidewalk defects which were not of the owner's making." (*Id.* at 827, italics added.) Thus, the case highlights the absolute nature of the repair obligation (even when caused by trees located in the right-of-way) by contrasting it with the absence of any liability exposure unless the defect is caused by the owner. Putting aside the legal arguments, not all of the equities for imposing the cost of repair on adjacent property owners where damage is caused by a tree in the right of way are on the side of the property owner. While property owners may argue that they have no control over the direction of tree roots; neither does the city. In addition, city trees typically provide great benefits to homeowners and for many the presence of large trees is a factor in the purchase of their home. The trees are aesthetically pleasing and provide shade which cools the home and helps keep other vegetation alive. They also enhance the monetary value of the home. While obtaining these benefits, the homeowners do not incur the costs of maintaining the trees (such as watering, trimming or fertilizing) or suffer the potential of liability for injuries caused by the tree itself (falling limbs; low hanging branches; branches obscuring traffic signs or lights, etc.).

### III

#### Sidewalk Liability

##### A. Tort Liability for Defective Sidewalks

Nine years after the passage of the predecessor to section 5610, the First Appellate District decided *Schaefer v. Lenahan* (1944) 63 Cal.App. 2d 324 . Florence Schaeffer stepped in a hole in the sidewalk in front of property owned by J.W. Lenahan. Lenahan was notified by the City and County of San Francisco to repair the sidewalk but did not do so. The common law rule was that, in the absence of statute, the owner or occupant of premises abutting a public street had no duty to repair the sidewalk and consequently, no liability to those injured as a result of a

defective sidewalk. Schaefer argued that the predecessor to section 5610 (as it existed in 1944) imposed a duty of repair and a violation of that duty gave rise to a cause of action for those injured by a defective sidewalk. The court rejected the argument, finding that the "obvious purpose of the statute was to provide a means of reimbursing the city for the cost of the repairs. To impose a wholly new duty upon the property owner in favor of third persons would require clear and unambiguous language." (*Id.* at p. 332.)

The limitation on liability to third parties for a defective sidewalk is commonly referred to as the "Sidewalk Accident Decisions Doctrine." (*Contreras v. Anderson* (1997) 59 Cal.App.4<sup>th</sup> 188, 195 fn.6.) As noted by *Lenahan*, a liability obligation may be imposed on property owners by "clear and ambiguous language."

An ordinance with such language was approved by the Court in *Gonzales v. San Jose* (2004) 125 Cal.App.4<sup>th</sup> 1127. The San Jose ordinance approved by *Gonzales* provides that if an abutting property owner fails to maintain a sidewalk in a non-dangerous condition and any person suffers injuries as a result, the property owner is responsible to the person for the resulting damage and injury. (*Gonzales, supra*, 125 Cal.App.4<sup>th</sup> at p. 1134 citing San Jose Municipal Code §§ 14.16.220 and 14.16.2205.) However, it is important to note the limits of sidewalk liability ordinances. Because municipal liability for torts is a matter of statewide concern, such liability "may not be regulated by local ordinances inconsistent with state law as established by the Tort Claims Act." (*City of Ontario v. Superior Court* (1993) 12 Cal.App.4<sup>th</sup> 894, 899-900 citing *Societa per Azioni de Navigazione Italia v. City of Los Angeles* (1982) 31 Cal.3d 446, 463.) This precludes a city from absolving itself of liability but does allow concurrent liability of adjacent property owners. Sidewalk liability ordinances "provide[] an additional level of responsibility for the maintenance of safe sidewalks on the owners whose property is adjacent to and abuts the

sidewalk.” (*Gonzales, supra* at 1139.) “These owners are often in the best position to quickly identify and address potentially dangerous conditions that might occur on the sidewalks, as opposed to [the city].” (*Id.*) Moreover, as the *Gonzales* court noted, in order to fully protect its citizens, a city would have to have sidewalk inspectors circulating the city, day and night. (*Id.*)

#### **B. Liability for Defective or Narrowed Sidewalks under the ADA and California Disability Access**

##### **Laws:**

In 2002, in *Barden v. City of Sacramento* (9<sup>th</sup> Cir. 2002) 292 F.3d 1073, the Ninth Circuit, relying in large part on statutory and regulatory interpretation by the United States Department of Justice, determined that sidewalks constituted “programs” under the ADA. While the matter was pending in the United States Supreme Court on a *writ of certiorari*, the parties settled the case and conveyed this information to the Court. *Certiorari* was subsequently denied leaving the Ninth Circuit opinion intact. The legal effect of the decision was that because maintaining sidewalks was a “program” under the ADA and its implementing regulations, sidewalks needed to be made maintained to be immediately accessible. According to the United States Solicitor General, interpreted the holding and the Title II regulations to “require only that the City’s system of public sidewalks – when viewed “in its entirety” – be generally accessible to and usable by individuals with disabilities.”<sup>16</sup>

Subsequent to the *Barden* decision, federal agencies, particularly the United States Access Board (the entity charged with creating public right of way guidelines) has taken the position in

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<sup>16</sup> Brief for the United States as Amicus Curiae of the United States Solicitor General in *City of Sacramento, et al. v. Barden, et al.* (Filed May 2003).

numerous publications, that sidewalks are “facilities.”<sup>17</sup> This is also the conclusion reached by the Fifth Circuit in *Frame v. Arlington*, 657 F.3d 215 (5<sup>th</sup> Cir. 2011 – cert denied 2012).

The drift from sidewalks as “programs” to sidewalks as “facilities” is notable. Under the ADA, “programs” must be made immediately accessible; conversely, “facilities” are subject to a new construction/alteration standard – in essence meaning that only newly constructed or altered sidewalks must be made “accessible.” This is also the framework adopted by the ADA draft Public Right of Way Guidelines. Though cities within the Ninth Circuit remain subject to the *Barden* decision, the *Frame* decision, as well as the position taken by federal agencies, may form the basis for a reexamination of the *Barden* decision.

Of course, it is important to recognize that California law has required that new constructed sidewalks, whether constructed using private or public funds, have been required to be accessible since 1971. (Government Code section 4450 and Health and Safety Code section 19956.5). Presumably, this has somewhat softened the impact of the 2003 *Barden* holding.

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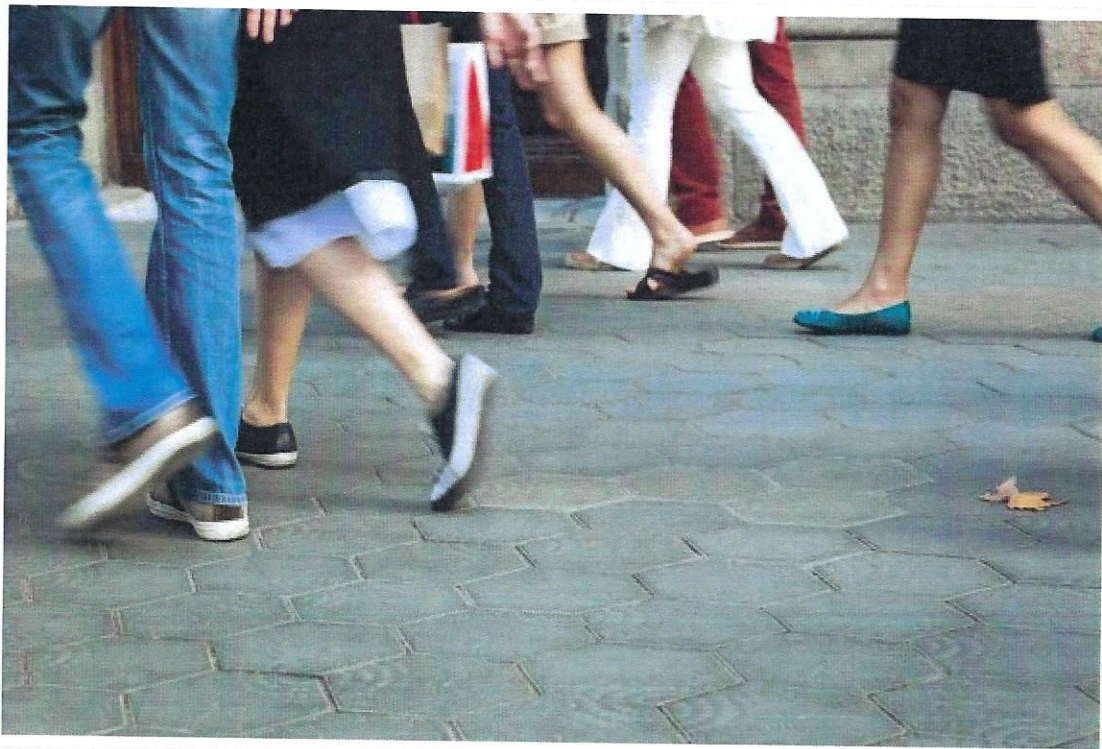
<sup>17</sup> See e.g. United States Access Board, Proposed Rights-of-way Guideline, Part 1900. “The accessibility guidelines for pedestrian facilities in the public right-of-way are set forth in the appendix to this part.” < <http://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines/part-1190-accessibility-guidelines-for-pedestrian-facilities-in-the-public-right-of-way>>

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# Defective Sidewalk Conditions: Who is at Fault?

Posted on **September 10, 2015** by **Barry D. Brown**



Liability between municipalities and landowners for injuries sustained by pedestrians due to defective sidewalk conditions has been the subject of lawsuits and statutory enactments for years. In California, municipalities generally own the sidewalks adjacent to private property owners' land, but state law provides that the landowners are responsible for maintaining the sidewalk fronting their property in a safe and usable manner. According to Streets and Highways Code 5610:

"The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a parking or a parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience..."

California state law provides that a municipality may assess landowners for the cost the municipality incurs to maintain sidewalks if the landowner fails to perform his/her duty. Although state law provides that abutting landowners are responsible for sidewalk maintenance and may be assessed the cost of repairs, they may not be liable for injuries or damages to third persons who use the sidewalk, unless the municipality enacts an ordinance that addresses liability. *Williams v. Foster* (1989). *Williams* arose after the plaintiff, Dennis Williams, tripped on a raised portion of the sidewalk in the City of San Jose, and thereafter sued the City. In its defense, San Jose argued that under 5610, the owner of the property fronting the sidewalk in question was solely liable. Rejecting this contention, the court held that Foster (landowner) owed no legal duty at all to the injured plaintiff.

In reaching the *Williams* decision, the court held that imposing upon abutting owners a duty of care in favor of third persons "would require clear and unambiguous language," which according to the court, is not contained in 5610. Notably, the court went on to state that the City "could have enacted an ordinance which expressly made abutting owners liable to members of the public for failure to maintain the sidewalk, but did not." Following the *Williams* decision, the City of San Jose amended its sidewalk ordinance to include language similar to that suggested by the *Williams* Court.

In 2001, after adopting a sidewalk liability ordinance that addressed the issues raised in *Williams*, San Jose was sued by Joanne Gonzalez, who alleged she was injured when she tripped and fell over a raised portion on a public sidewalk. Gonzalez also sued Charles Huang, who owned the property adjacent to the sidewalk on which she fell. Huang was sued on the theory that he had a common law duty to the plaintiff to maintain the sidewalk in a non-dangerous condition, as well as a duty under the San Jose Municipal Code.

The City of San Jose argued that the adjacent property owner was partially liable because he had not maintained the sidewalk as required by the local ordinance. Huang filed a motion for summary judgment arguing in part that the sidewalk liability ordinance enacted by the City of San Jose was unconstitutional. The trial court agreed with Huang and granted his Motion for Summary Judgment. Both Gonzalez and the City of San Jose appealed.

The case proceeded to the Court of Appeal which in 2004 ruled in San Jose's favor. (*Gonzales v. City of San Jose* (2004.)) The primary issue before the court was whether the state law preempted the local measure. The court found that the ordinance was constitutional and was not preempted by state law.

In its holding, the *Gonzales* court noted that cities are empowered under the California Constitution to enact ordinances and regulations deemed necessary to protect the public health, safety, and welfare, and that the City of San Jose's ordinance was a permissible exercise of that power. Without such an ordinance, the court noted, landowners would have no incentive to maintain adjacent sidewalks in a safe manner.

The court emphasized that the ordinance did not serve to absolve the city of liability for dangerous conditions on city-owned sidewalks when the city created the dangerous condition, knew of its existence and failed to remedy it. Since the *Gonzales* ruling, many municipalities have considered liability shifting ordinances. Some have enacted such ordinances while others have not, oftentimes on public policy concerns.



Note that even in jurisdictions which have enacted liability shifting ordinances, one must determine the cause of the defective sidewalk condition. In many ordinances, liability does not shift to the landowner if the landowner did not cause the defective condition to exist.

Thus, in analyzing liability in a case involving an allegedly defective sidewalk condition, a major issue will be whether the municipality has a liability shifting ordinance. If such an ordinance exists, it must be read carefully to determine its scope, as each ordinance differs from municipality to municipality.



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of October 8, 2019

**TO:** Members of the City Council

**SUBMITTED BY:** David Biggs, City Manager

**SUBJECT:** EV Chargers Discussion

**RECOMMENDED ACTION:** Receive Report, Discuss, and Provide Direction, if any.

**FISCAL IMPACT OF RECOMMENDATION:** None as a result of this action. Proceeding with the installation of EV Chargers at a public facility may result in some capital and annual operating cost expense.

**DISCUSSION:** On September 24, 2019, the City Council requested an opportunity to discuss the possibility of installing EV Chargers at a City facility or facilities. The purpose of the report is to provide a high level of information on EV Chargers and approaches to securing funding and operating EV Chargers available to public agencies.

It is important to note that City staff has limited knowledge and experience with EV Chargers and that we have done a base level of research to provide the City Council with information as shared in this report in an endeavor to assist the City Council in their initial review and consideration of the idea of adding EV Chargers at a City facility.

Also, as part of researching this report regarding EV Chargers, it was learned there were two chargers installed in front of City Hall during the HMU days by HMU. Apparently, the charger stations were never connected to the grid due to the demise of HMU. The charger units themselves were on some type of lease-purchase agreement, and as such they were removed as the vendor who wasn't being paid anymore wanted them back.

It should be noted that previously, on June 11, 2019, the City Council received a presentation on EV Chargers from a firm called Green Lots and that presentation is attached (Attachment 1). Also, the request for this item arose out of the City's pending energy efficiency and upgrade project with Engie for which a Project Development Agreement was approved on September 24, 2019, and the proposed components being considered are expected to result in energy savings and cost reduction. While the addition of EV Chargers would be a service to the community, the addition of EV Chargers to the project is not anticipated to enhance the financial results of this effort and may diminish the anticipated savings, though may still be the most cost effective way to provide for EV Chargers. Based on Council

direction at that time, Engie and staff will also be doing an initial exploration of including EV Chargers in the planned Engie project and will present that as an option when the Project Development Agreement Phase is complete.

In doing our initial research, staff reached out to other California cities via a tool available through the League of California Cities called a ListServe. Through that vehicle, an enquiry was made to all cities regarding their experiences with EV Chargers and information which may be illustrative to our initial review was requested. At the time this report was prepared, we had received more than 20 responses. Most were from cities who shared their experiences regarding the installation of EV Chargers, though a great many also indicated they were starting to look at the possibility and asked that Hercules share what information we were able to glean.

In summary, the following are highlights from what was shared by other cities:

- There are commercial entities like Tesla and Electrify America who are installing and operating EV Chargers at public facilities at no cost to those agencies and many cities are hosting those facilities.
- There are grant sources available to cities from Air Quality Boards, PG & E, and others, which can fund the capital cost for the installation of EV Chargers, though there may be some local match requirements.
- Operating and maintenance costs for the non-commercial EV Chargers can be partially recovered by charger users, though they are often not full cost recovery.
- The installation of EV Chargers are undertaken often through efforts such as the one we are undertaking with Engie, though there are other providers, and the EV Charger component is done to support the City's own electric vehicle fleet or as part of broader public policy objective.
- There seems to be an unresolved issue in that if you do not charge public users, and some cities do not; is that a gift of public funds, or what is the policy basis to avoid that concern.
- Another policy consideration which has been raised is that if cities provide the EV Chargers does that result in the private sector not providing charging stations (with the exception of Tesla and Electrify America (which is only doing so as a result of a mandate) so long as public agencies are providing charging stations free of charge.
- Often, you need a minimum amount of usage and/or number of chargers to qualify for grants and/or to support the on-going operating costs which often have a minimum base management and operation fee.
- Permit fees and staff time are generally not recoverable from grants.

Information provided by the responding cities and other sources allowed us to identify some key resources we are now able to share with the City Council.

The Bay Area Air Quality Management District does offer a grant program to public agencies for EV Chargers. Their website has good background information on EV Chargers generally and their specific grant programs and that information is attached (Attachment 2). That information also includes links to other funding providers like PG & E. In addition, information from a California Energy Commission program is also provided (Attachment 3). Unfortunately, at this time according

to the information available on these websites, all current program funding is committed and no applications are being submitted, through we did request to be notified by these providers if additional funding becomes available.

Based on prior interest expressed by the City Council earlier in the year, the City Manager has reached out to Tesla, Electrify America, and others providers of free EV Chargers stations and offered sites public facility sites in Hercules as possible locations for their EV Chargers though that outreach has not yet resulted in an expression of interest in Hercules.

**ATTACHMENTS:**

1. Green Lots Presentation
2. BAAQMD Information
3. CEC Information

<i>Financial Impact</i>			
<b>Description:</b>			
<b>Funding Source:</b>			
<b>Budget Recap:</b>			
Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change: Yes <input type="checkbox"/> No <input type="checkbox"/>			



6/6/2019

# Greenlots Overview

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Unlocking the possibilities of the new mobility future



Confidential



**greenlots**  
A Member of the Shell Group



Founded in **2008**  
with over a decade of  
experience



Headquartered in  
**Los Angeles,**  
California



Global footprint with  
offices throughout the US  
and in Canada, India,  
Singapore, and Southeast  
Asia



Over **150**  
**Employees**  
and contractors  
worldwide



Working with  
utilities, cities,  
automakers and C&I  
customers across the US  
and the world



Acquired by **Shell**  
in February 2019



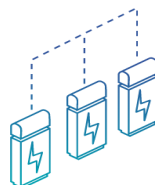
# Greenlots is powering the future of electric transportation with industry-leading EV charging software and services



**greenlots**  
A Member of the Shell Group

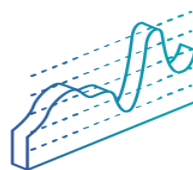
## EV Charging Network Software

Operate & monitor your  
network of charging  
stations



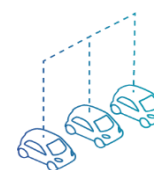
## Smart Charging Optimization

Get more power usage from  
your facility and easily manage  
energy bills



## Digital Mobility Solutions

Digital platforms for fleets and  
auto OEMs to expand their  
mobility offering



## Grid Balancing Services

Aggregate and leverage  
EV load to maintain grid  
reliability and efficiency



## Our turnkey approach to charging infrastructure



Choice of  
hardware



Program management



Engineering & Commissioning



Software & Mobile  
App

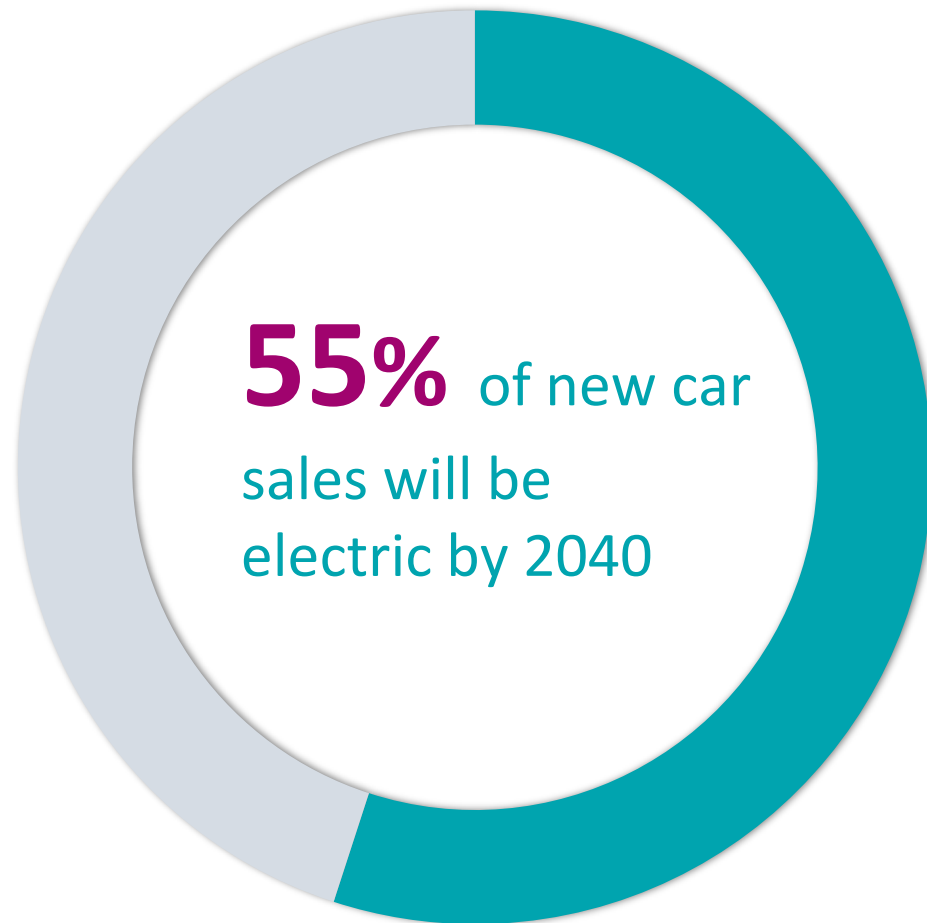


Customer Support and  
O&M



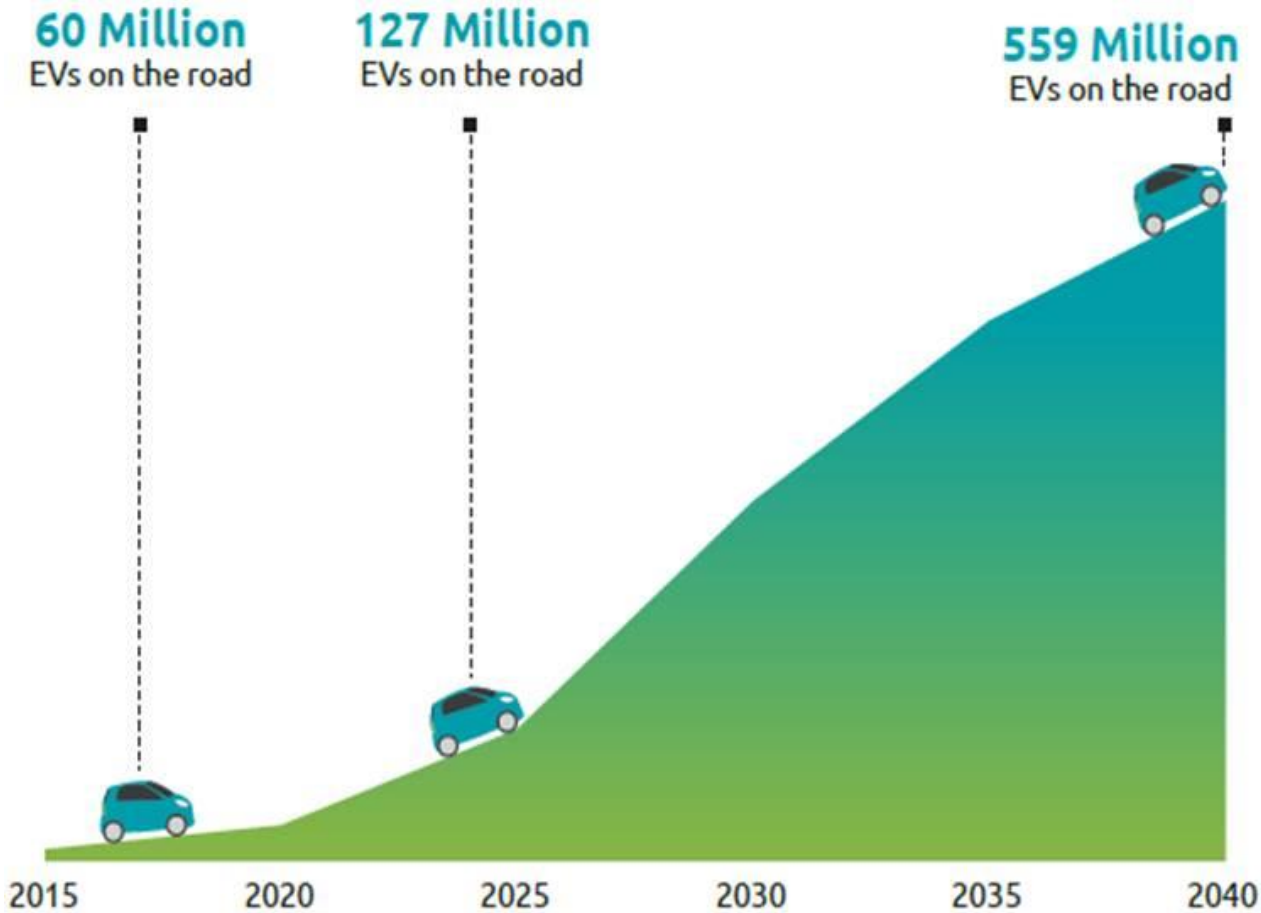
# Over half of new cars will be electric worldwide

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Source: "Long-Term Electric Vehicle Outlook 2018," [Bloomberg New Energy Finance](#) (May 2018).

This means nearly 560 million EVs will be on the road



Source: "Long-Term Electric Vehicle Outlook 2018," [Bloomberg New Energy Finance](#) (May 2018).



“FORD plans \$11bn investment, 40 electrified vehicles by 2020”

“GM is targeting to spend \$8bn on electrification and automation over the next several years.”

“VW will spend \$34bn on e-mobility initiatives through 2025.”




We deliver turnkey solutions  
for any EV charging application




# Our turnkey approach

We work with all EV charging types from residential to high power charging



## Level 1 Charging

Range per hour of charge	5 miles
Electric and power spec	120 Volt, 12-16 Amp circuit
Maximum Charging Capacity (kW)	1.44 kW
Charger connector	 Port J1772
Charger cost	None
Application	Suitable for home overnight charging, not suitable for on-the-go or commercial charging

## Level 2 Charging

Range per hour of charge	25 – 70 miles
Electric and power spec	208 – 240 Volt, 30 - 80 Amp circuit
Maximum Charging Capacity (kW)	7.2 – 19.2 kW
Charger connector	 Port J1772
Charger cost	Approx. \$1,000 – \$6,000
Application	Common in public or workplaces charging where people will stay for an hour or more

## Level 3 Fast Charging

Range per hour of charge	175 – 525 miles
Electric and power spec	208 – 240 Volt, 180 Amp circuit (22kW) 480 Volt 3-phase 80 – 240 Amp circuit (50kW – 150kW)
Maximum Charging Capacity (kW)	22 – 50 kW for DCFC 50 – 150 kW for High Power Stations
Charger connector	  CHAdeMO SAE Combo CCS
Charger cost	Approx. \$25,000 – \$100,000
Application	Perfect for short-time parking places, retail stores, freeway corridors, roadways

# Our turnkey approach

We provide a wide range of EV charging hardware options

## Level 2

BTCPower



Efacec



EVoCharge



Novacharge



EVBox



CMI



## DCFC

BTCPower



Efacec



ABB



Tritium



## High Power Chargers

Efacec



ABB



BTCPower





# Our turnkey approach

We design, build and maintain so you don't have to

## Engineering



Use our experts to provide the electrical load assessment and engineering services

## Installation



From charging hardware to electrical equipment we ensure reliable and complete installation of your charging system

## Commissioning



We make sure your new chargers are up and running to verify proper connection and functionality

## O&M



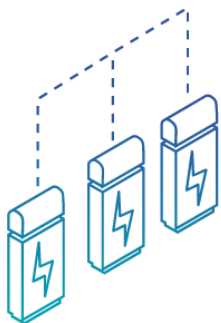
We provide the training, station support, and driver support needed to operate and maintain your charging stations



# Our turnkey approach

## Cloud-based EV Charging Network Software to easily manage operations

### Remote monitoring



Get real-time status of your EV chargers and alerts

### Customizable pricing



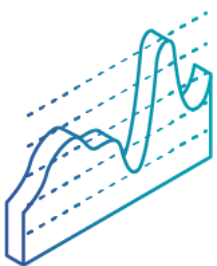
Change and customize pricing of EV Charging to reflect your business needs

### Customer billing



Multiple payment options with secure processing

### Advanced reporting



Get charger utilization data to understand your customer's needs





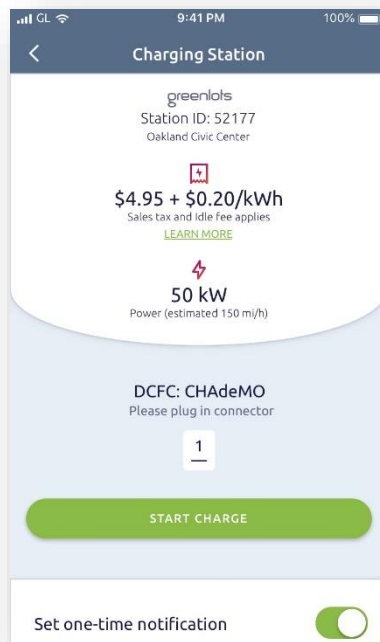
# Our turnkey approach

A driver-friendly mobile app that makes charging on the go easy



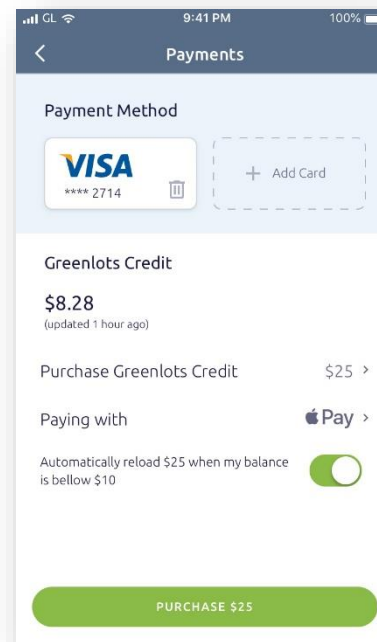
## Find the nearest station

Locate a charging station near you that's open, available, and ready to be used



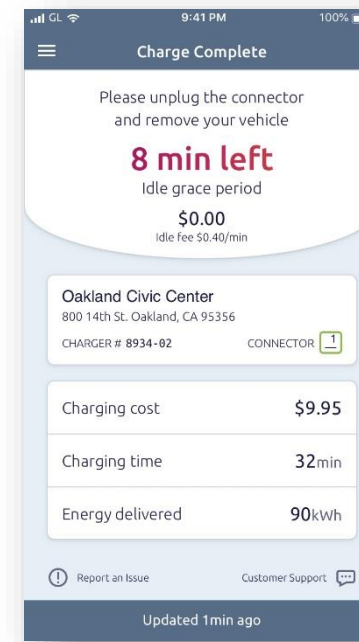
## Start and end charging

From your mobile app you can start and end a charge while receiving notifications on charging status



## Easily make payments

Pay for your charging session right from our mobile app.



## Real-time notifications

Stay up to date with your charging status by receiving notifications direct to your phone

# Our turnkey approach

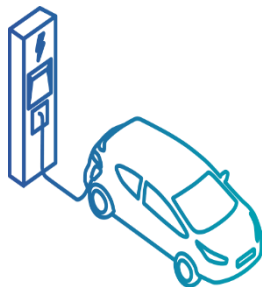
Customer support throughout the driver and customer journey

## Training



We will provide hardware and software training during commissioning

## Station Support



Operational support for managing your charging stations

## Direct Support

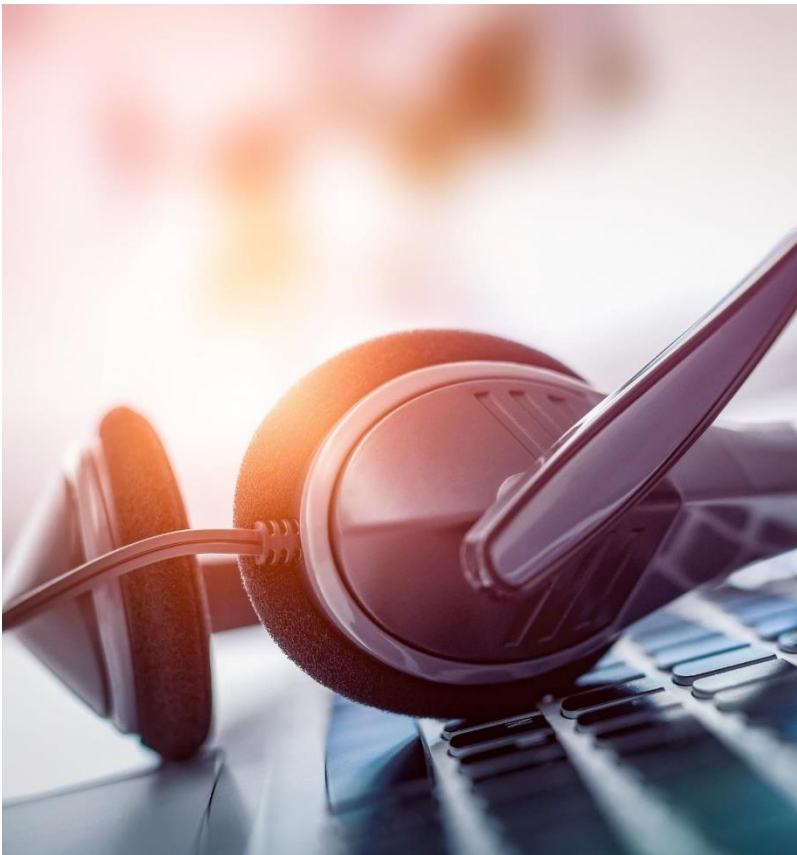


Access our experts during business hours

## Driver Support



We provide 24/7/365 customer support for drivers



We offer the latest in EV  
Charging Network Software.





# Greenlots SKY™ EV Charging Network Software

## Manage your charging stations:

- Control sessions in a real-time
- View status and performance of each station
- Receive fault notifications

## Set up pricing to reflect your business model:

- Set charging fees based on usage, time, or session
- Assign different pricing rates
- Establish a flat monthly rate or connection fee

## Integrated billing and payment systems :

- Drivers can easily make payments by using our mobile app, credit card, RFID card, or calling customer support
- Drivers can track payment and billing history and manage their accounts

## Get advanced analytics and reporting:

- View charging utilization data by port, charger, or location
- Create and download customizable reports
- Track key operational performance indicators and schedule maintenance activities

## Control and optimize EV Charging load:

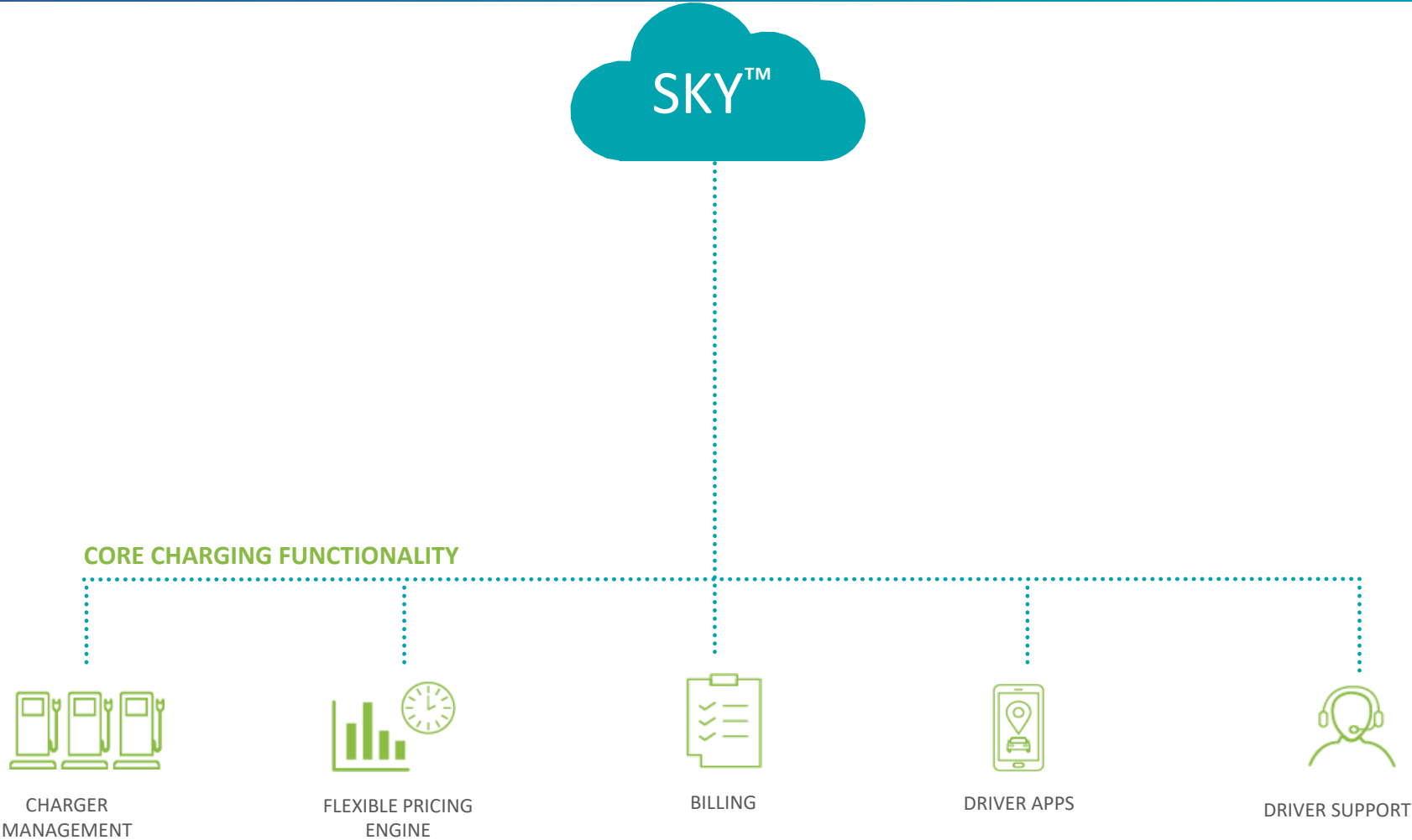
- Automatically prioritize and adjust charging speed
- Deploy flexible pricing to incentivize off-peak charging
- Prioritize building energy load

## Engage Drivers with a Mobile App:

- Remotely start and stop a charging session
- Pay for charging directly from smart phone
- Get real time charging updates and check progress

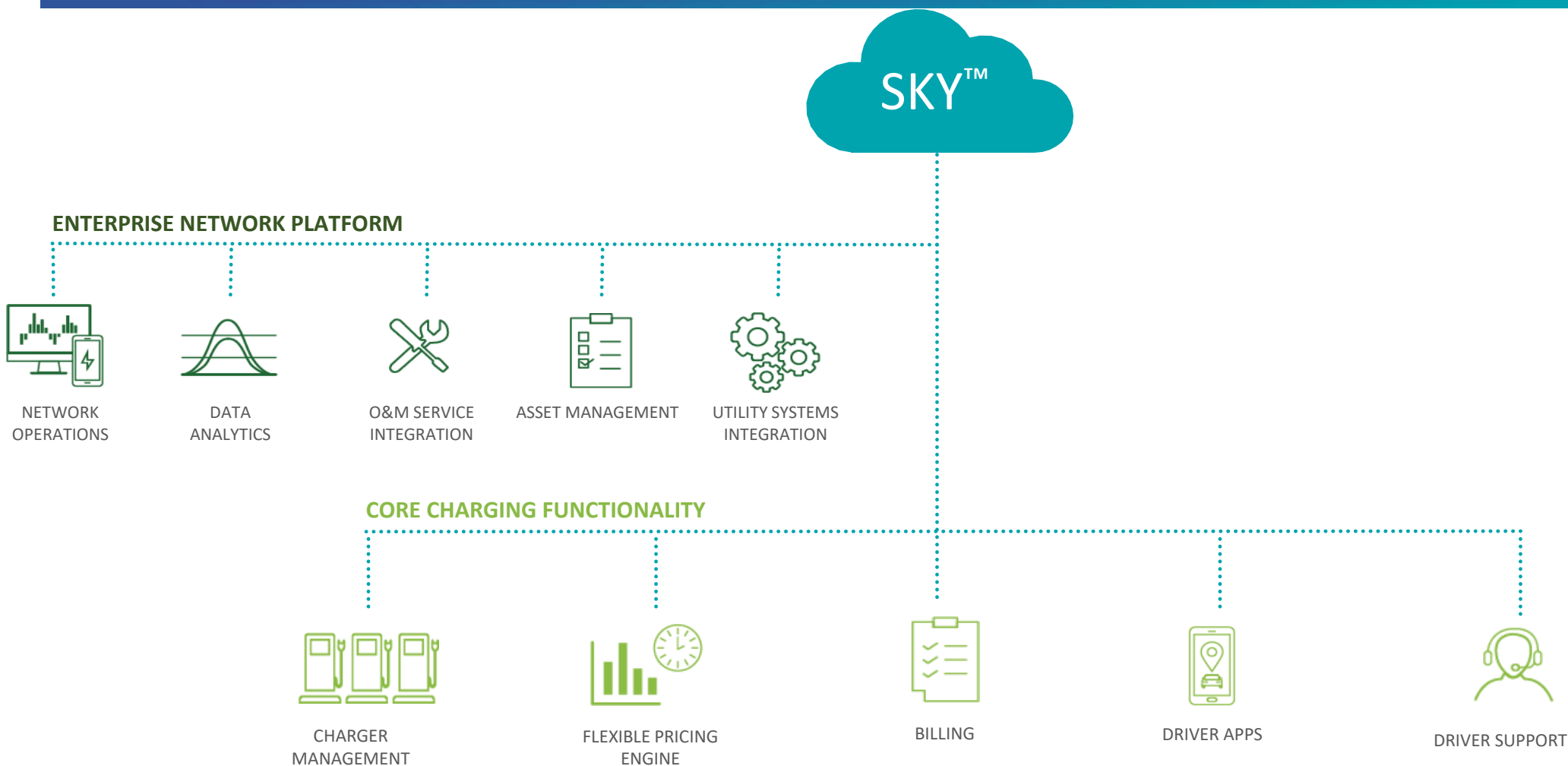
# EV Charging Network Software

## Core charging functionality



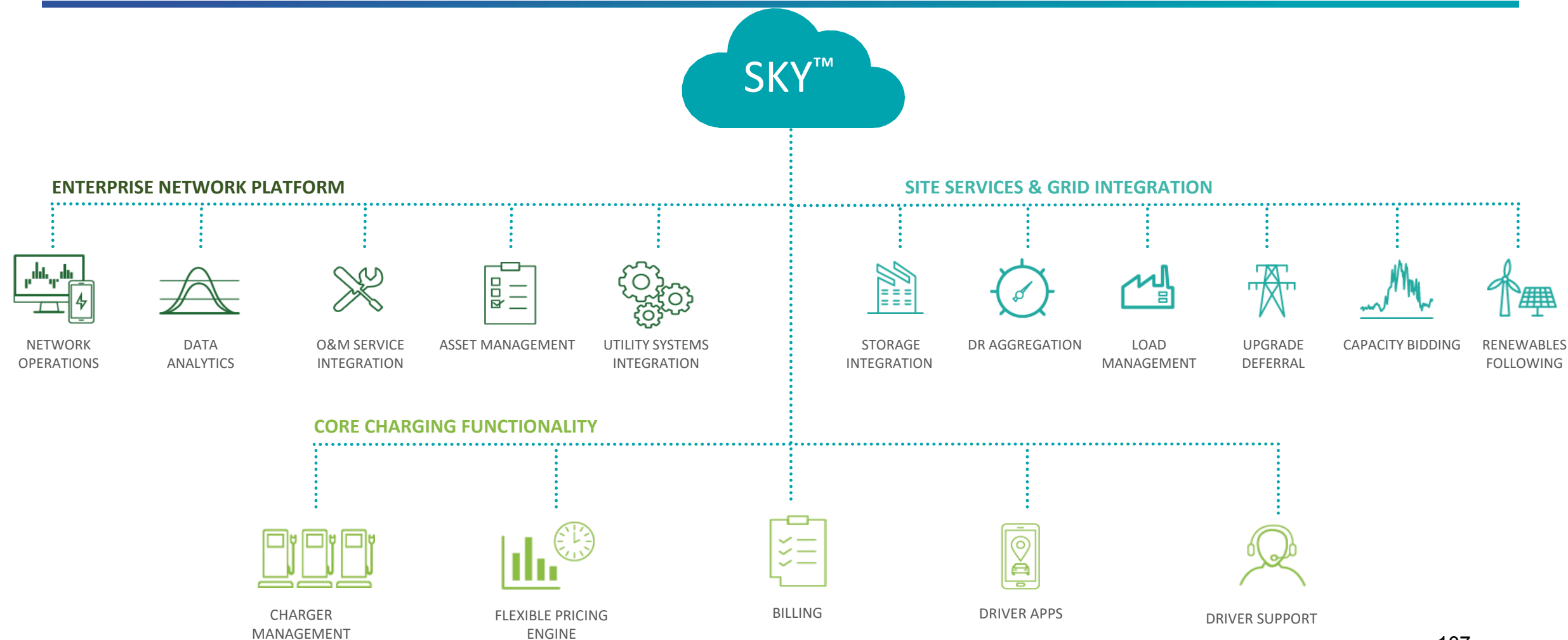
# EV Charging Network Software

Enterprise solution for large scale EV charging operations



# EV Charging Network Software

Energy management and grid integration capabilities



# EV Charging Network Software

SKY™ Insights for charging utilization data and analytics

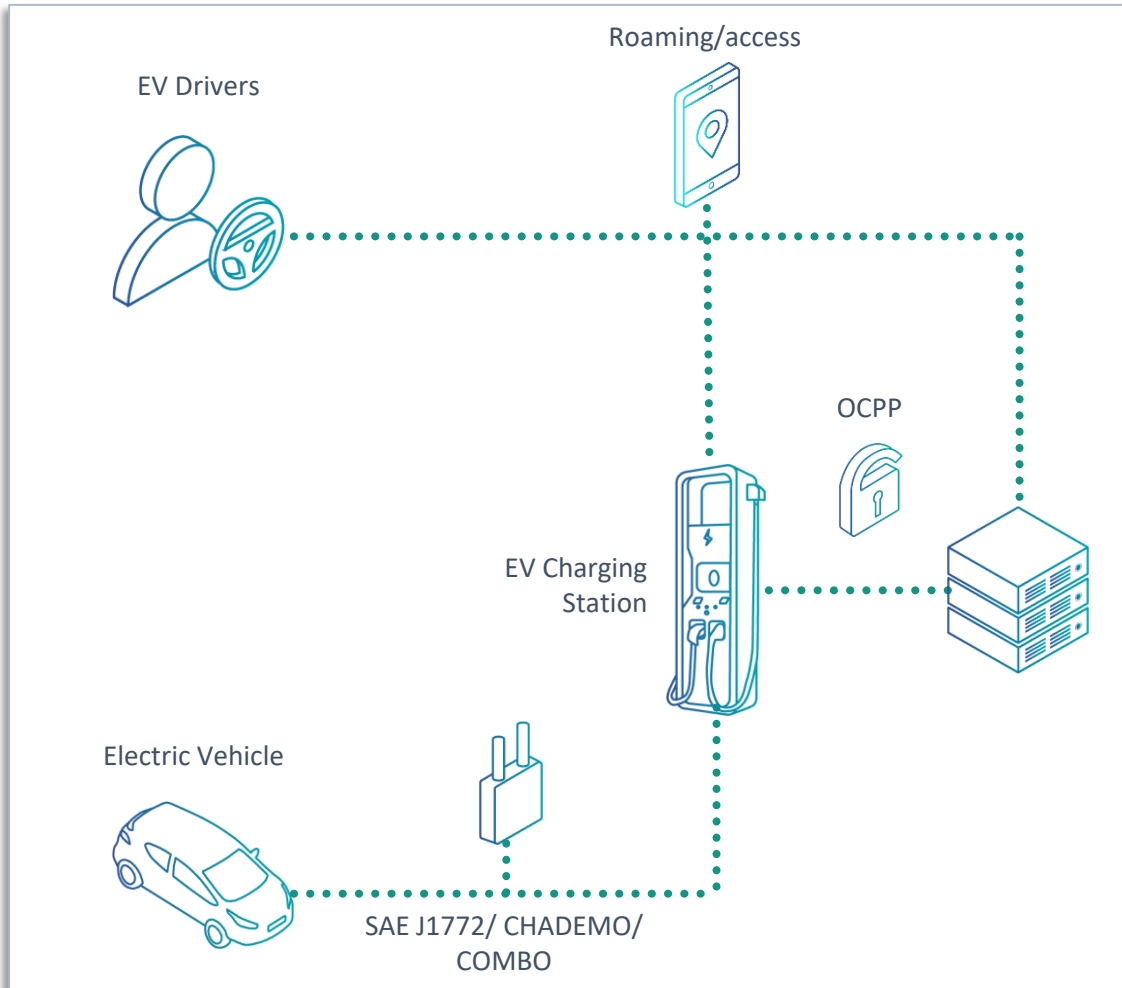


- Real-time status of all charging events
- Error / fault notification and automated ticket creation
- Real-time service level agreements management
- View weekly energy utilization rates to better plan for investment
- Predictive analytics for asset reliability optimization



# EV Charging Network Software

Built on open standards



**Greenlots SKY Network Software is built on open standards and utilizes the Open Charge Point Protocol (OCPP).**

Our software provides you great flexibility, as it supports a wide range of charging hardware options regardless of the vendor, can communicate with other software platforms, and integrate into utility demand response programs.

With OCPP you:

- are not locked into one charging network
- can flexibly add or switch to another network
- get technology best practices from around the world
- can easily integrate your EV charging system with other apps, including from other vendors

# Smart EV charging and energy optimization

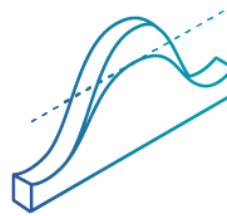


# Smart EV charging and energy optimization

## Unmanaged EV charging can have significant impacts

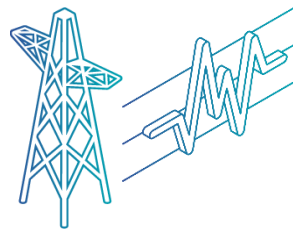
### PEAK DEMAND

- System not designed to withstand increase in power demand from EV load
- Incur high energy costs due to peak demand charges
- Expanding electrical infrastructure can be costly or not possible



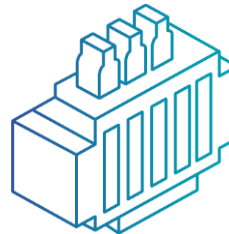
### GRID CONGESTION

- Misalignment in power supply & demand leads to changes in voltage & frequency
- Causing rolling brownouts and blackouts



### EQUIPMENT FAILURES

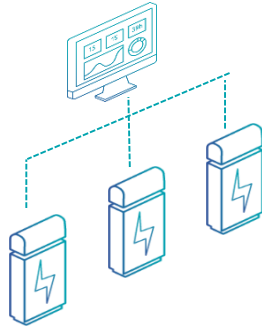
- System not built for new EV load
- New power demand can overload critical assets leading to unplanned outages



# Smart EV charging and energy optimization

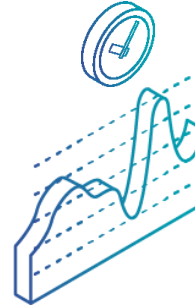
Greenlots offers smart charging solutions to optimize energy usage

## EV Charging Load Sharing



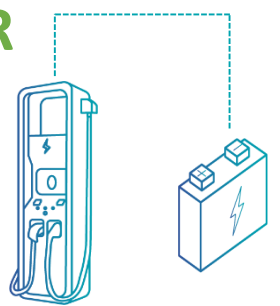
- Our algorithms enable customers to set a maximum charging load limit
- Allowing for automatic sharing of available power between EV chargers when charging load is expected to go beyond its limit.
- Power between the chargers can be distributed evenly or based on charger priority.

## EV Charging Load Scheduling



- Load scheduling enables site hosts to prevent or curtail charging sessions during hours when the cost of electricity is high
- This feature is highly beneficial for site hosts with unpredictable loads at their location
- As well as for fleet owners who need vehicles fully charged by a specific time without exceeding load limits

## Integrated DER & Storage



- Distributed energy resources (DER), such as energy storage or PV solar systems, provide sites with additional power that can be used when electricity prices are higher than normal.
- Greenlots can easily integrate DER into charging systems, enabling site owners to minimize costs during peak demand by pulling energy from the DER, rather than the grid



# Charging hubs with integrated storage and DERs

## Making charging on-the-go fast, reliable, and affordable

### Fast and affordable charging for drivers

Allow drivers to fully charge in 30 minutes and offer consistent and affordable pricing by pulling power from onsite storage.

### Avoid peak demand charges

Automatically discharge power from onsite storage when energy consumption exceeds the maximum power demand set by your energy provider.

### Load shifting for lower energy bills

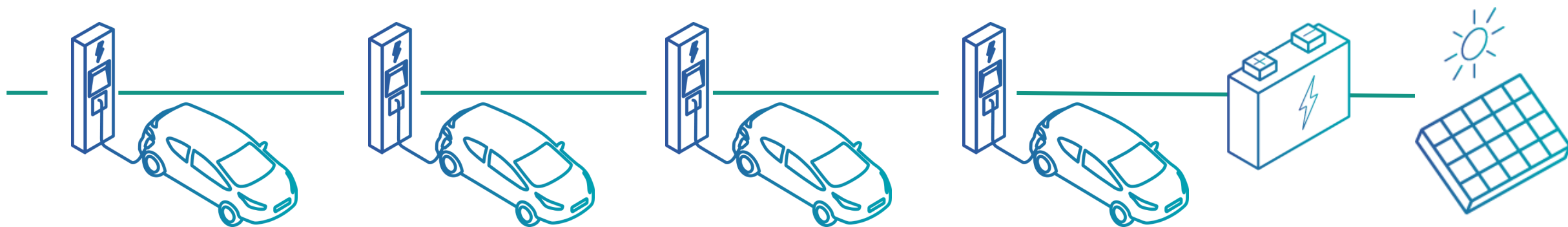
Avoid paying high energy prices and the need to upgrade electrical infrastructure by using onsite storage during periods when electricity prices are high.

### Participate in DR while offering full charging services

Allow station owners to participate in DR programs while still offering fast charging for drivers.

### Leverage clean energy sources

Provide dispatchable EV charging load during solar over generation, helping increased renewable penetration in the grid.



# Success stories and use cases





# Our customers & partners

## UTILITIES



## GOV'TS & BUSINESSES

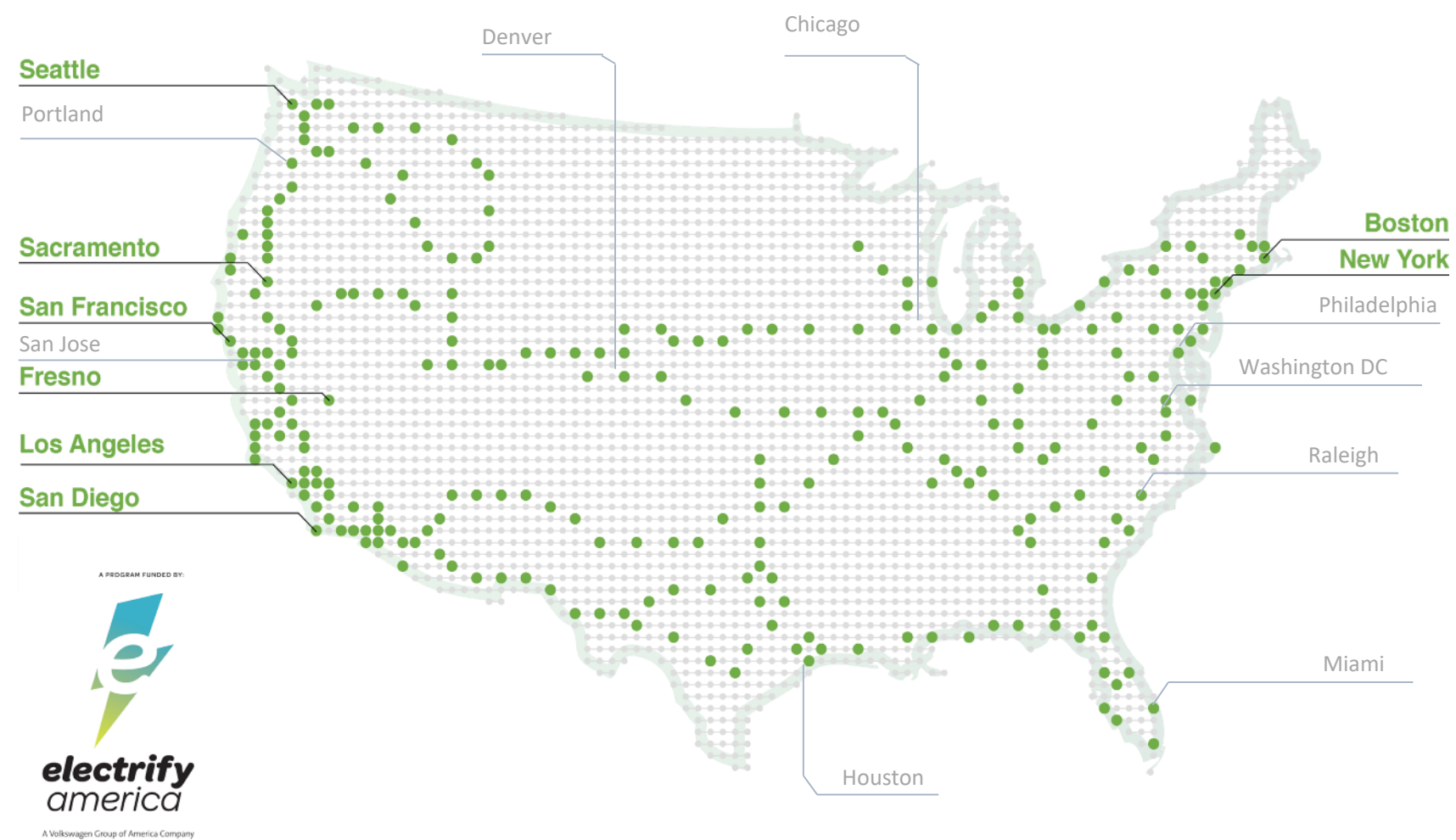



## AUTOMAKERS/FLEETS



# Success stories


## Electrify America: \$2bn investment in EV charging infrastructure





### Nationwide Fast Charging Network

Greenlots selected as **sole software provider** to manage **2,500+** high-power fast chargers at **250+** sites along major highways and linked to **17** metropolitan areas in **38** states



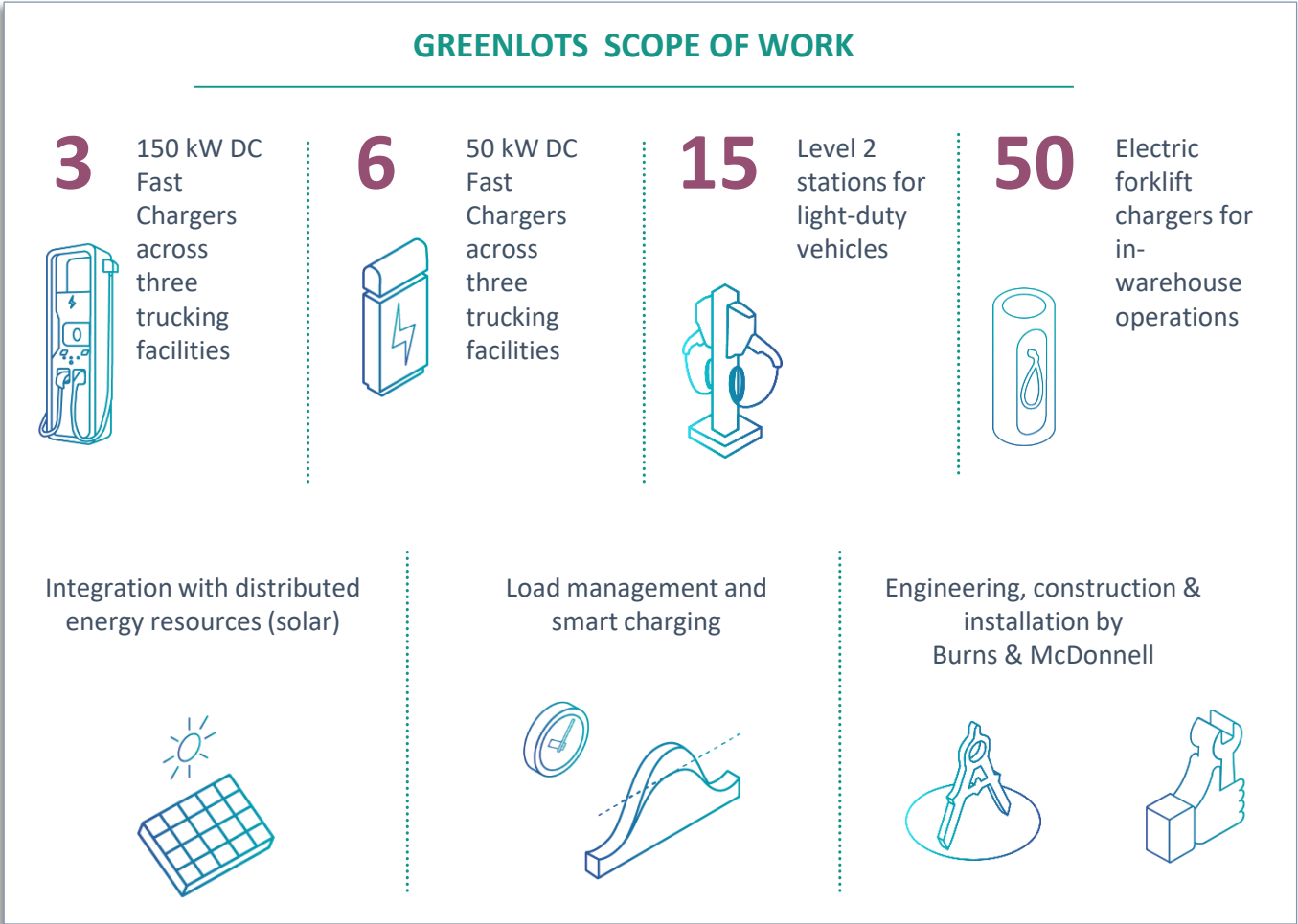
### Community-based Charging

Greenlots selected to deploy **900** Level 2 stations at more than **140** workplace and multi-unit dwelling sites in **8** metropolitan areas



# Success stories

## Heavy-duty electrification with Volvo Trucks



# Success stories

## LAPD: Fleet charging and load management

### Project Overview

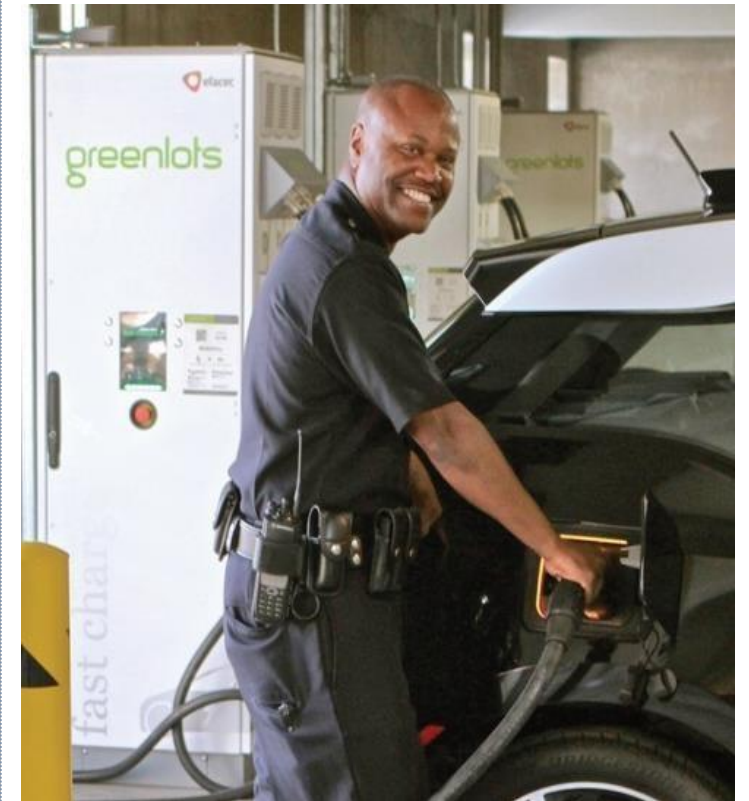
City of Los Angeles has a target of 50% of new city fleet vehicles to be electric by 2017 and 80% by 2025.

- LAPD is largest fleet in the city and first department to go electric with the first 100 BMW i3s out of 500 EVs in total
- Building on open standards allows HW to be selected based on specific site requirements
- Greenlots was selected to provide 100 L2 and 4 DC Fast Chargers at one location with DR capabilities

### Key Benefits

Load management avoids electrical infrastructure upgrades and reduces demand charges.

- Responds to real-time electricity demand of building
- Charge optimization and prioritization ensures vehicles are charged when they are needed
- Reporting tracks fleet data, operating cost and efficiencies of an all-electric fleet
- Rolling out charging infrastructure to 25 facilities across city



# Success stories

## Avista Utilities: Industry-leading pilot for EV deployment

### Project Overview

In the state of Washington, Avista partnered with Greenlots to deploy the EV charging infrastructure in residential and workplace areas.

- \$3M pilot project to install EV charging stations in public, residential and workplace areas
- Level 2 and DC fast charging stations
- Greenlots' turnkey solution included site development, installation, branding, billing, analytics and demand response

### Key Benefits

Our turnkey EV charging program allowed Avista to install and manage EV charging stations throughout its network.

- Multiple subscription and charging models
- Centralized purchasing, installation and warranty of equipment
- White labeling of customer portal, mobile app and hardware
- Demand response capability



# Success stories

## BC Hydro: Fast charging network in Vancouver

### Project Overview

Launched in 2013, BC Hydro project has deployed 29 DCFC (50kW).

- Greenlots was selected to provide network management capabilities
- Largest multi-manufacturer DCFC network in Canada (mix of ABB, Eaton, Efacec)
- Seamless user experience through mobile app and RFID
- BC Hydro owns the asset and leases it to municipalities, who can opt to collect revenue for charging

### Key Benefits

Multiple hardware providers connected to one network management solution using OCPP.

- No monthly subscription for customers
- Supports multiple payment options
- Credit cards via mobile app
- Optional RFID cards
- Phone payments



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# Success stories

## California Energy Commission: DC fast charging project

### Project Overview

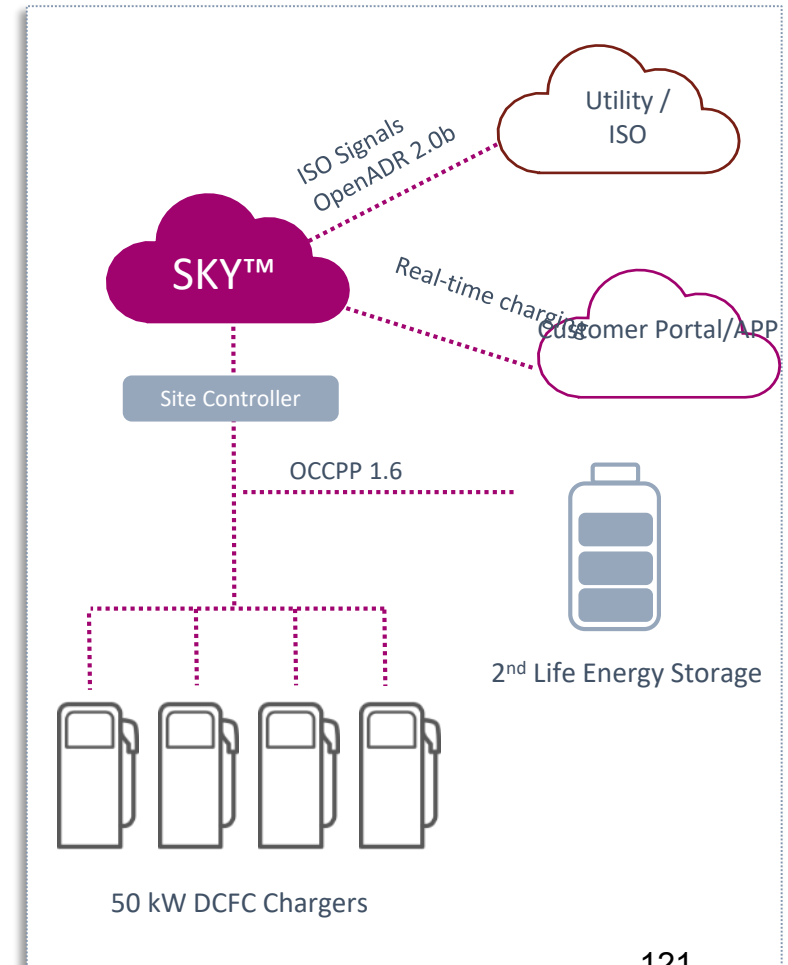
In 2016, the California Energy Commission announced the Advanced Vehicle-Grid Integration Research and Demonstration project.

- Greenlots selected to develop an integrated hardware + software platform to control distributed DC fast chargers and energy storage
- Evaluate grid services potential from the aggregated DCFC loads to offer utility on-peak demand response, renewable integration and fleet scheduling

### Key Benefits

Evaluate the benefits and potential of integrating energy storage and EV fast charging in the following applications:

- Site demand-charge reduction
- Demand response
- Renewable integration
- Fleet scheduling
- Second-life battery evaluation



# Success stories

## Hawaiian Electric: DCFC + Storage

### Project Overview

Provided the network management and software integration, including monitoring of battery data.

- Deploy a storage-supported 50kW DCFC with max 23kW grid demand
- Observe performance of DCFC under real-world use
- Assess applicability of overall solution as strategy for demand charge reduction
- Operational since 2015

### Key Benefits

DCFC with behind-the-meter storage limits the demand placed on the grid.

- Reduces peak-demand charges for the site hosts
- Delays or eliminates the need for electrical upgrades at site host
- Can provide ancillary services to maintain grid reliability
- Keeps charging costs low for EV drivers



# Success stories

## Germany: Piloting use of EVs for wind energy storage

### Project Overview

German Ministry of Energy funded Project for Smart Charging to integrate wind power.

- Greenlots was selected in 2011 to work with Vattenfall, BMW and Daimler
- Using EV battery capacity to absorb excess wind power at night, using 65 Daimler Vito E-Cell and 25 BMW
- Provided the HomePlug AV-enabled EVSE and played an integral part in system integration and testing

### Key Benefits

Take unused wind power during low-demand periods to power electric vehicles.

- Increase utilization of wind energy
- Enhance grid reliability by preventing excess wind power from being dispatched to the grid
- Project contributed to the formation of the HP-GP (HomePlug GreenPHY) standard now used for the CCS connector standard and ISO/IEC 15118



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# Thank you!

Matthew John Miller

Regional Sales Manager / Bay Area

[mmiller@Greenlots.com](mailto:mmiller@Greenlots.com)

510.871.9220



**greenlots**  
A Member of the Shell Group





BAY AREA AIR QUALITY MANAGEMENT DISTRICT

# CHARGE!

PROGRAM

GRANTS TO INSTALL ELECTRIC VEHICLE CHARGING IN  
YOUR COMMUNITY



At workplaces, apartments,  
parks, stores, transit hubs,  
and more



\$5 million available for  
2018 - 2019



Parking lot structures, or on  
the curb

125

## FUNDING

Charger Type	Funding
Level 1	Up to \$750
Level 2 (Low)	Up to \$1,500
Level 2 (High)	Up to \$3,000
DC Fast	Up to \$18,000

## Additional funding to boost your award!

Plus-Up Type	Eligible funding
<b>Solar</b>	\$1 per Watt installed, up to \$4,000
<b>Level 2 Charger Multi-port</b>	Up to \$1,000 for each additional port
<b>Transportation Corridor</b>	Up to \$7,000 for DC Fast chargers installed within 1 mile of a heavy volume highway and available 24/7
<b>Multi-dwelling Unit (MDU)</b>	Up to \$4,000 per charger for projects at MDU facilities

## ELIGIBILITY

- Chargers must be publicly accessible\*
- Private or public organizations (not open to individual residents)
- Must operate chargers for a minimum of 3 years and meet a minimum usage requirement
- Projects must qualify for a minimum of \$10,000 in grant funding

*\*Chargers that are not publicly accessible may apply as case-by-case applications.*

**Consult the Charge!**  
**Program Guidance for a**  
**full list of eligibility and**  
**requirements.**

**WWW.BAAQMD.GOV/CHARGE**

QUESTIONS? CONTACT MARK TANG  
(415)749-4778 ♦ MTANG@BAAQMD.GOV

# Charge! 2019

Charge! is a grant program that helps offset a portion of the cost of purchasing and installing new publicly available charging stations for electric vehicles (EV).

## GRANT AWARD:

\$10,000-\$500,000

## FUNDING:

Awards are based on number and type of chargers proposed and installed.



## BASE FUNDING:

Charging Station Type	Level 1	Level 2 (low)	Level 2 (high)	DC Fast
Max. Base Funding per Station	\$750	\$1,500	\$3,000	\$18,000
Output Rating Requirement	1.4 KW	3.3-6.6 KW	6.6+ KW	40+ KW

## PLUS-UP FUNDING:

Additional Plus-Up funding available for projects that include:

- Multi-port Level 2 charging stations: \$1,000 per additional connector
- Solar power installation: \$1 per watt of solar capacity added, up to \$4,000
- Transportation corridor facilities: Up to \$7,000 for each DC Fast charger
- Multi-Dwelling Units (MDUs): Up to \$4,000, depending on charger type

## PROGRAM REQUIREMENTS:

- Eligible applicants include businesses, non-profits, and public agencies
- Projects must be voluntary (not required by regulation, ordinance, or legal obligation)
- Charging stations must be new, installed in Bay Area Air Quality Management District's jurisdiction, available to general public\*, operate for minimum of 3 years, and achieve minimum usage requirement
- Applicants must attend pre-application webinar before submitting application.

\* MDU's and businesses may still be eligible. Please contact program staff before applying.



**APPLICATION DEADLINE: 4PM, JUNE 30, 2019**

**APPLY/REGISTER FOR WEBINAR ONLINE**

<http://www.baaqmd.gov/charge>

Questions? Contact Mark Tang at [mtang@baaqmd.gov](mailto:mtang@baaqmd.gov)  
(Subject "RE: Charge! Program") or call (415) 749-4994



# Bay Area Air Quality Management District

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*Application Guidance for*

## *Charge!*

For Fiscal Year Ending (FYE) 2019

[www.baaqmd.gov/charge](http://www.baaqmd.gov/charge)

*Charge!* is a grant program that helps offset a portion of the cost of purchasing and installing new publicly available charging stations at qualifying facilities within the Bay Area Air Quality Management District's (Air District) jurisdiction. This grant program is funded by the Air District's Transportation Fund for Clean Air (TFCA).

**The deadline for receiving applications for *Charge!* is 4 PM, June 30, 2019.**

*Applications may be submitted online after attending at least one of the pre-application webinars and reviewing this guidance document.*

*Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105*

[climatetech@baaqmd.gov](mailto:climatetech@baaqmd.gov)  
*(415) 749-4994*

*November 2018*

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**OTHER AIR DISTRICT GRANT & INCENTIVE PROGRAMS**

In addition to the *Clean Fleets* Program, the Bay Area Air Quality Management District offers grant funding to incentivize emissions reductions to improve air quality in the region. Funds are available for the following project categories:

On and Off-Road Heavy-Duty Diesel Vehicles	Shuttle, Ridesharing, and Vanpools
Locomotives	Light-Duty Vehicles
Marine Vessels	Bikeways and Bike Parking
Lower-Emission School Buses	Alternative Fuel Vehicles and Infrastructure

The Air District also offers grant funding for Heavy-Duty Vehicles through the Carl Moyer Program. For more information on other Air District Grants and Incentives contact us:

Website: <http://www.baaqmd.gov/grants>

Email: [grants@baaqmd.gov](mailto:grants@baaqmd.gov)

Grants Information Request Line: (415) 749-4994

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**OTHER FUNDING OPPORTUNITIES FOR PEV**

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In addition to the *Charge!* program, other opportunities for funding charging stations may be available. Applicants are encouraged to explore all opportunities and select the one(s) that works best for them. In some cases, *Charge!* funding may be combined with funding from other grant programs.

- **PG&E Electric Vehicle Charge Network:** Customers of Pacific Gas and Electric who are interested in installing charging stations at workplaces, apartments, and condominium buildings may be eligible to receive discounts of 25 – 100% on charging equipment, depending on facility type and location. For more information, please visit [www.pge.com/evcharge](http://www.pge.com/evcharge).
- **Tesla Destination Charging:** If you are interested in hosting Tesla charging stations, please visit <https://www.tesla.com/charging-partners>.
- **Community Choice Aggregation (CCA):** CCA's may offer rate payers incentives for both electric vehicles and charging stations. Please contact your local CCA. You may find a list of California CCA's here: <http://leanenergyus.org/cca-by-state/california/>
- **Low Carbon Fuel Standard (LCFS):** Project sponsors may qualify for LCFS credits to help offset the cost of operating the charging stations. For more information, please visit <https://www.arb.ca.gov/fuels/lcfs/electricity/electricityh2.htm>.

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**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

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The California Legislature created the Bay Area Air Quality Management District (Air District) in 1955 as the first regional air pollution control agency in the country, recognizing that air pollution transcends political boundaries. The Air District is the public agency entrusted with regulating, measuring, and reducing sources of air pollution in the nine counties that surround San Francisco Bay: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, southwestern Solano, and southern Sonoma counties.

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**TRANSPORTATION FUND FOR CLEAN AIR (TFCA)**

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Tailpipe emissions from on-road motor vehicles account for more than 40% of the criteria air pollutants and about 41% of the green-house gases (GHG) emitted<sup>1,2</sup> and contribute to unhealthy levels of ozone ("smog") and particulate matter in the Bay Area. Significant emissions reductions from the on-road transportation sector are needed to attain State and Federal ambient air quality standards and GHG emission reduction targets.

In 1991, the California State Legislature authorized the Air District to impose a \$4 surcharge on motor vehicles registered within its jurisdiction to fund projects that reduce on-road motor vehicle emissions. These funds support the Transportation Fund for Clean Air (TFCA) Program, which provides funding to qualifying trip reduction and alternative fuel vehicle projects.

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**PURPOSE OF THE CHARGE! PROGRAM**

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The Air District views deployment of zero-emission vehicles (ZEVs) as a promising means to reduce criteria and greenhouse gas emissions from the transportation sector. For fiscal year ending 2019 (FYE 2019) the Air District has committed over \$10 million for clean vehicle projects.

To ensure that TFCA investments in PEVs are well coordinated and effectively reduce mobile source emissions, the [Bay Area PEV Readiness Plan](#) (Plan) was completed in December 2013 by the Air District in partnership with the Metropolitan Transportation Commission (MTC), Association of Bay Area Governments (ABAG), Bay Area local government agencies, and other PEV-stakeholders. This comprehensive regional Plan outlines a series of strategies and best practices for

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<sup>1</sup> BAAQMD, [Bay Area Emissions Inventory Summary Report: Criteria Air Pollutants Base Year 2011](#), May 2014.

<sup>2</sup> BAAQMD, [Bay Area Air Quality Management District, Clean Air Plan 2017](#), April 2017.

accelerating the adoption of PEVs, and also established adoption goals of 110,000 PEVs on Bay Area roads by 2020, and 247,000 by 2025.

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### CHARGE! PROGRAM SUMMARY

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*Charge!* is a TFCA-funded grant program that helps offset up to 75% of the cost of purchasing and installing new publicly available charging stations at qualifying facilities within the Air District's jurisdiction. Funding is available on a first-come, first-served basis to public agencies and private businesses *and is paid to grantees ("Project Sponsors") on a reimbursement basis after the charging stations are placed into service*. Awards are based on the anticipated electricity that a station can deliver to PEVs, and hence its potential to shift drivers away from petroleum-fueled vehicles and reduce petroleum use (and air pollution). The minimum amount of funding available for a single *Charge!* project is \$10,000, which typically can be achieved by deploying at least one DC Fast charging station or at least three level 2 (6.6KW or higher) dual port charging stations.

The Air District reserves the right to modify this solicitation at its sole discretion. *Please read this package completely before filling out an application; incomplete applications may be rejected.*

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### DEFINITIONS

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**Charging Station:** Also known as electric vehicle supply equipment (EVSE), consists of the conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of delivering energy from the premises wiring to the electric vehicle. ([http://www.psrc.org/assets/3729/A\\_NEC\\_625\\_2008.pdf](http://www.psrc.org/assets/3729/A_NEC_625_2008.pdf)). Charging stations fall into one of three types:

- **Direct Current (DC) Fast Charging Station:** Uses an external charger, and supplies electricity in the form of direct current, typically at a rate of 40 KW or higher.
- **Level 1 Charging Station:** Supplies electricity to a PEV's onboard charger in the form of alternating current. Level 1 charging stations use a 120V AC connection.
- **Level 2 Charging Station:** Supplies electricity to a PEV's onboard charger in the form of alternating current. Level 2 charging stations require a 208/240V AC connection.

**Executed Funding Agreement:** Contract that has been signed by both the project sponsor and the Air District and contains all terms and conditions for the approved project. *Funding agreements are typically sent to the project sponsor for execution within one month following the Notice of a Proposed Award. Any work performed prior to the full execution of a funding agreement is not eligible for funding or reimbursement.*

**Plug-in Electric Vehicle (PEV):** A vehicle that is propelled in part or solely by an electric motor, is capable of being recharged from an external source of electricity that meets the Society of Automotive Engineers and/or CHAdeMO protocol standard, and meets the California Air Resources Board fuel standard of Plug-in Gasoline Electric Hybrid or Li+.

**Project Term:** The Project Term commences on the date the Funding Agreement is executed and continues until the Grantee/Project Sponsor has completed all contractual obligations.

**Usage Requirement:** Electricity that each proposed charging station needs to deliver to PEVs over the 3-year operation period. Usage is evaluated in aggregate on a project basis by averaging the kWh delivered by each funded charging station during the whole operation period. Usage requirements are listed in Table 1.

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### MANDATORY PRE-APPLICATION WEBINAR AND WEBINAR SCHEDULE

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Applicants must attend at least one pre-application webinar before submitting an application. Each webinar will be held online and is limited to 100 attendees. Registration is required. The webinars will cover *Charge!* Program Requirements, the application process and evaluation criteria, and grantee/project sponsor's administrative requirements. The following webinars have been scheduled:



- Thursday, October 25, 2018  
10:00 to 11:00 AM ([Register](#))
- Tuesday, December 11, 2018  
10:00 to 11:00 AM ([Register](#))
- Thursday, November 29, 2018  
1:00 to 2:00 PM ([Register](#))
- Tuesday, January 8, 2019  
1:00 to 2:00 PM ([Register](#))

Based on demand, additional webinars may be scheduled in the future. Notices about additional pre-application webinars will be sent via e-mail to parties that have signed up to receive free Charge! email alerts. Interested parties may visit the Charge! website at [www.baaqmd.gov/charge](http://www.baaqmd.gov/charge) to sign up for email alerts and for Program updates.

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## PROGRAM REQUIREMENTS

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### GENERAL REQUIREMENTS

**Eligible applicants include businesses, non-profits, and public agencies** who either own the property where the proposed charging stations will be installed, or who provide evidence (e.g., lease agreement) from the property owner allowing the applicant to install and operate charging stations for the duration of the Project Term.

**Projects must be voluntary and surplus**—charging stations that are required to be installed by a regulation, local ordinance, or other legal obligations (e.g., legal settlement, condition of lease agreement or use permit, EV-readiness ordinance) are NOT eligible.

**Projects must qualify for at least \$10,000 in Charge! funding**—which typically can be achieved by deploying at least one DC Fast or at least three level 2 (6.6KW or higher) dual port charging stations. Grantees who modify the scope of their project post-award in any way that reduces their award to below the \$10,000 threshold will have their entire project and award cancelled.

**Applicants must be in “good standing” with the Air District**, i.e., in compliance with all Air District, State, and Federal air quality regulations. Also, applicants who were previously awarded an Air District grant, must not have failed a fiscal audit in the past 5 years and must be in compliance with all contractual obligations of that grant.

**Applicants may submit multiple applications; however, no single applicant may receive more than \$500,000 in Charge! funding per fiscal year.**

### FACILITY REQUIREMENTS

Applicants may apply for funding to install qualifying equipment at an existing or new facility located within the Air District’s jurisdiction. For this solicitation, a “Facility” is any designated area or public parking lot/structure that has a distinct location (e.g., parcel number or physical address) where Charge!-funded charging stations will be installed. *Curb-side parking spots and private residential garages that are not for a multi-dwelling unit are not eligible facilities.* Facilities may fall into one or more of the following categories:

- **Destination Facility:** Activity center, such as a library, park, or shopping center. Proposed charging station(s) will be located at or within close proximity to the activity center and are accessible to customers and visitors.
- **Multi-Dwelling Units (MDUs) Facility:** A dwelling consisting of 5 or more residential units. Proposed charging station(s) will be located at or within close proximity to the MDU and are accessible to MDU residents and their guests. Projects located within non-publicly accessible facilities are eligible and subject to case-by-case project requirements. *Single-family (household) residences and MDUs with less than five residential units are NOT eligible.*
- **Transit Parking Facility:** Parking facility available at a transit station, airport long-term parking, or a park-and-ride location. Proposed charging station(s) will provide access to users of these forms of transit.
- **Transportation Corridors Facility:** Proposed charging station(s) will provide to fast charging for PEV drivers making long trips, and are located in close proximity to freeways and highways, e.g., a rest area. *Transportation Corridors Facilities must include at least one DC Fast Charging Station.*

- **Workplace Facility:** Proposed charging station(s) will provide access to charging for fleets, employees, and visitors and is located at, or within close proximity, to an employment center.

## CHARGING STATION REQUIREMENTS

**Charging stations must be new and installed within the [Air District's jurisdiction](#)**—this grant is not retroactive, so applicants are not eligible for award if any of the proposed equipment is ordered, purchased, or installed before a Notice of Proposed Award is issued AND the Funding Agreement has been executed.

**Public Availability:** Charging stations must be available to the general public, operate for a minimum of 3 years, and achieve a minimum usage requirement (Table 1). All funded charging stations must be available for use by the general public at least 250 days per year, for at least 8 hours per day during normal business hours with the exception of MDU facilities which are subject to case-by-case projects;

**Safety Certification:** Charging stations must be certified by the Underwriters Laboratories, Inc. (UL), or equivalent safety standard.

**Stationary and Grid Connected:** Charging stations must be installed at a stationary location (e.g., not on a mobile platform), and must be connected to the electric grid.

**Level 1:** All Level 1 charging stations must be able to deliver electricity to PEVs at minimum rate of 1.4 KW. Eligible Level 1 charging stations are at:

- MDU, Transit Parking, or Workplace facilities with either the SAE standard J1772 connector or a NEMA 5-15 or 5-20 receptacle.
- Any other facility must have the SAE standard J1772 connector.

**Level 2 (low):** Level 2 (low) charging stations must be able to deliver electricity to PEVs at a minimum rate of 3.3 KW and must have the SAE standard J1772 connector.

**Level 2 (high):** Level 2 (high) charging stations must be able to deliver electricity to PEVs at a minimum rate of 6.6 KW and must have the SAE standard J1772 connector.

**DC Fast:** DC Fast charging stations must be able to deliver electricity to PEVs at a minimum rate of 40 KW and must have both the CHAdeMO and SAE Combo connectors. In addition, each DC Fast charging station installed must be paired with either a new or existing Level 2 charging station within 1 mile of the proposed project location.

## GRANTEE/PROJECT SPONSOR OBLIGATIONS

Grantees ("Project Sponsors") must agree to and do all the following:

- Cover 100% of up-front costs (prior to reimbursement), cover all costs in excess of the grant amount, and provide at least 25% of eligible project costs in matching funds after all applicable manufacturer and local/state/federal rebates and discounts are applied;
- Sign (Execute) the Funding Agreement and return to the Air District within 60 days of receiving it;
- Purchase, install, and place into service all approved equipment within 12 months from the date the Funding Agreement is executed;
- Ensure that any work performed with *Charge!* funding is done by a contractor licensed in the State of California. *To check whether a contractor has a valid license, visit the Contractors [State License Board website](#).* The Air District does not require, endorse or recommend which contractor shall be used for a project;
- Obtain and maintain liability and any other necessary insurance for the duration of the "Project Term" (see Appendix A);

- Operate and maintain each funded charging station for a minimum period of three years, and ensure that the project achieves the Charge! Program's Facility, Charging Station, and Usage Requirements. If a Project Sponsor does not fulfill the usage or operational requirements at the end of 3-year operation period, the Project Sponsor may seek to amend the Funding Agreement to extend the operation period, or the Air District will proportionally reduce the amount of TFCA Funds Awarded;
- Ensure that all locations where charging stations are installed are well-lit, secure, and in compliance with all Local, State, and Federal regulations and/or requirements;
- Submit reports on each charging station's status and usage to the Air District:
  - Reports every 6 months during the installation phase,
  - Report after all charging stations are placed into service, and
  - Reports every year while the charging stations are in operation, for the duration of the Project Life;
- List the funded charging stations on the US Department of Energy's Alternative Fueling Station Locator website;
- Acknowledge the Air District as a funding source in a visible location at the facility and in communications promoting the facility; and
- Allow Air District staff or its authorized representatives to inspect the project and conduct financial audits and agree to make available to the Air District all records relating to project performance and expenses incurred.

#### **AWARD AMOUNTS (MAXIMUM AND MINIMUM) AND MATCH FUNDING**

*Charge!* funding is paid on a reimbursement basis, so Project Sponsors are required to pay for all equipment and installation costs up-front. Project Sponsors are also required to provide match funding to cover at least 25% of eligible project costs after all other applicable manufacturer and local/state/federal rebates and discounts are applied.

Award funding is paid to Project Sponsors in two installments: 85% of the award after the charging stations are installed and placed into service, and 15% of the award after the charging stations have completed their operational and usage requirements. For more information on the process, see Program Process and Schedule.

##### **Minimum funding:**

- \$10,000. Project Sponsors who modify their project's scope of work post-award to below this \$10,000 threshold will have the entire project and award cancelled.

##### **Maximum funding:**

- 75% of eligible costs incurred by the Project Sponsor, and
- \$500,000 for each applicant in FYE 2019.

The number and type of chargers that are proposed to be installed will determine the Base award amount. Additional "Plus-Up" funding may be available to projects that meet certain criteria.

#### **BASE FUNDING**

Each eligible charging station in a *Charge!* project can receive a pre-determined Base amount of funding specified in Table 1 below (e.g., a project proposing to install two level 2 (high) charging stations is eligible for \$6,000 (\$3,000 x 2) in Base funding).

Table 1: Base Award Amount for Each Charger-Type and Key Charger Requirements

Charging Station Type:	Level 1	Level 2 (low)	Level 2 (high)	DC Fast*
Max. Base Funding per Station:	\$750	\$1,500	\$3,000	\$18,000
Connector Requirement:	NEMA** 5-15, 5-20 or J1772	J1772		CHAdemo & SAE Combo
Output Rating Requirement:	1.4 kW	3.3 - 6.6 kW	6.6+ kW	40+ kW
Usage Requirement (over 3 years) per Station:	3,750 kWh	7,350 kWh	14,700 kWh	90,000 kWh

\* Each DC Fast charging station installed must be paired with either a new or existing level 2 charging station within 1 mile of the proposed project location.

\*\* NEMA 5-15 or 5-20 receptacles are acceptable only for level 1 charging stations installed at MDU, Transit parking, and workplace facilities. Level 1 charging stations installed at other facilities must have the SAE J1772 connector.

### PLUS-UP FUNDING

Charge! also offers Plus-Up funding, on top of Base funding, for projects who meet one or more of the following:

- **Multi-port Level 2s:** Level 2 charging stations with more than one J1772 connector are eligible for up to \$1,000 per additional connector. *Note: to be eligible for this Plus-Up, each additional port must deliver a minimum of 5,100 kWh of electricity to PEVs over three years, which is added to the usage requirement for each station. For example, a dual-port level 2 (high) charging station will have a usage requirement of 19,800 kWh over 3 years. Depending on the charging station model, additional ports may affect the electricity output rating requirement for each port and could affect the base funding per station.*
- **Solar Power:** Charging stations that are installed with a new solar power installation at the same physical location are eligible for up to \$1 of funding for every watt of solar capacity added, up to a maximum amount of \$4,000.
- **Transportation Corridor Facilities:** Facilities that are available for public use 24 hours per day, 7 days per week, that are located within one-mile driving distance from the closest exit point of a heavy volume expressway, conventional highway, or freeway are eligible for up to \$7,000 of Plus-Up funding for each qualifying DC Fast charging station installed.
- **Multi-Dwelling Units (MDU):** Charging stations installed at MDU facilities are eligible for an additional Plus-Up funding for each qualifying charger installed as detailed in Table 2:

Table 2: Plus-Up Award Amount for MDU Facilities

Charging Station Type:	Level 1	Level 2 (low)	Level 2 (high)	DC Fast*
Max. Base Funding per Station:	\$750	\$1,500	\$3,000	\$18,000
MDU Plus-Up Available per Station:	\$750	\$2,600	\$4,000	\$4,000
Total MDU Plus-Up + Base Funding per Station:	\$1,500	\$4,100	\$7,000	\$25,000

Note: MDU Plus-Up cannot be combined with Solar Power Plus-Up.

Note: the total award (Base and Plus-Ups) may be reduced to meet the maximum funding requirements above.

### ELIGIBLE PROJECT COSTS

Charge! funds may only be used to reimburse for the costs of the items listed below:

- Charging station hardware, including tax and shipping fees;

- Installation, including labor, materials (e.g., trenching, wiring, signage, and conduit), and necessary electrical upgrades to meet the demands of the charging station (i.e., electrical panels, and transformers);
- Permit fees; and
- Hardware equipment separate from the charging station used to record the kWh dispensed from the equipment to PEVs (e.g., separate meter, data logger).

For projects that qualify for solar power Plus-Up funding (see above), costs for the following items are also eligible:

- Solar panels, inverters, and battery storage hardware, including tax and shipping fees;
- Labor and materials directly related to the installation of power generation and battery storage equipment.

#### INELIGIBLE COSTS

Charge! funds may not be used to reimburse for the following costs:

- Consultant fees;
- Maintenance, repairs and operations, such as cost of electricity (utility) and network fees;
- Administrative costs, including accounting for Program funds and fulfilling contractual obligations, including, but not limited to audits, reporting and record-keeping requirements specified in the Funding Agreement; and
- Costs to improve parking area that are not directly related to the project.

#### CASE-BY-CASE PROJECTS

Applicants who are considering projects that do not meet all the requirements above may request a case-by-case evaluation. The Air District will determine whether the project qualifies for an award, and if so, how much funding it is eligible for. Case-by-case projects will be evaluated quarterly and if there are funds available after all eligible projects have been awarded. The Air District may request additional information in order to evaluate case-by-case projects.

Some examples of projects that request case-by-case evaluation include:

- Projects with charging stations that are not open to the general public (limited to employees or residents only). Projects located at MDU facilities that are not open to the general public must provide documentation detailing the vehicles that will access the proposed chargers to ensure the usage requirement will be met;
- Projects that request a lower usage requirement; and
- Projects that are co-located with wind power instead of solar power.

#### PROGRAM PROCESS AND SCHEDULE



Each Charge! Program project contains four phases. The activities and milestones for each of the phases are described below.

#### APPLICATION PHASE

During this phase, the applicant prepares necessary documents (listed below) and submits an application online at [www.baaqmd.gov/charge](http://www.baaqmd.gov/charge) after attending at least one of the pre-application webinars.:

- Evidence of Authority to Apply and Implement the Project:
  - a) a signed letter of commitment from the applicant's representative with authority (e.g., Chief Executive or Financial Officer, Executive Director, or City Manager); or
  - b) a signed resolution from the governing body (e.g., City Council, Board of Supervisors, or Board of Directors).
- Proof of property ownership (e.g. titles, deeds, leases, or property tax documents that clearly indicate the property owner)

- If applicant is not the property owner, written permission (legally binding agreement) must be submitted from property owner allowing applicant to install and operate PEV charging stations
- A map showing where the charging stations will be located (including proximity to activity center, major roadways, and nearest charging station), and
- A line-item cost quote for each facility from a licensed contractor. This quote will be used during the evaluation phase. Project Sponsors may select a different vendor after a funding award is made, as long as there is no change to the Project Scope.
- Send W-9 form to:
  - Bay Area Air Quality Management District, ATTN: Finance/Charge!, 375 Beale Street Suite 600, San Francisco, CA 94105.

## EVALUATION PROCESS

With the exception of case-by-case projects, all applications will be reviewed on a first-come, first-served basis. If the Program is oversubscribed, the Air District will prioritize projects located in [Highly Impacted Communities](#).

DATE	ACTIVITY
October 25, 2018	Program solicitation released
June 30, 2019 (unless fund exhausted sooner)	Application deadline (solicitation closes)
<ul style="list-style-type: none"> <li>• <b>Projects that request \$10,000 - \$100,000</b>, within 60 days from the date a complete application is submitted</li> <li>• <b>Projects that request greater than \$100,000</b>, have a longer approval process since they require Air District Board approval</li> </ul>	<ul style="list-style-type: none"> <li>• Air District notifies applicant about its determination (Notice of Proposed Award) and a <b>proposed Funding Agreement is sent for the Project Sponsor's signature</b></li> <li>• Applicants that are not selected for award are notified and provided an explanation of why their project was not selected or found to be ineligible</li> </ul>

Once the Funding Agreement is fully executed (signed by both the Applicant/Project Sponsor and the Air District), a Notice to Proceed will be issued, and the project moves to the Installation Phase.

**Projects that commence (e.g., pre-order equipment, begin construction) prior to receiving the Notice to Proceed will be disqualified and cancelled.**

## INSTALLATION PHASE

During this phase, the Project Sponsor is given a maximum of twelve months to purchase and install the charging stations. The Project Sponsor is required to report on the status of the project every six months to the Air District. The Installation Phase ends on the date that **ALL** charging stations are installed and open for use by the general public. The Air District will release the first installment of the grant funds to the Project Sponsor (85% of the award) upon successful completion of the Installation Phase and Air District's approval of Project Sponsor's reimbursement request.

DATE	ACTIVITY
Within 12 months of the Funding Agreement being executed	All charging stations must be installed and operating
Every March 1 and October 1 during the Installation Phase	Project Sponsor submits reports to the Air District
Within 2 months of the completion of the Installation Phase	<ul style="list-style-type: none"> <li>• Project Sponsor submits report documenting equipment has been installed and is operational</li> <li>• Project Sponsor submits Invoice to the Air District</li> <li>• Air District releases first installment (85% of award) to Project Sponsor</li> </ul>



**OPERATION PHASE**

During this phase, the Project Sponsor will operate and maintain the charging stations for a minimum of three years, and until the usage requirement is met. The Project Sponsor is required to report on the status of the project annually to the Air District, to maintain the required insurance, and to cooperate with the Air District and its designees on fiscal audits and inspections of the project.

Project Sponsors may charge reasonable usage fees to help defray their on-going costs associated with use of electricity, and operations & maintenance.

DATE	ACTIVITY
During Operation Phase	<ul style="list-style-type: none"> <li>Project Sponsor must maintain and operate the charging stations</li> <li>Air District may conduct inspections and/or fiscal audits</li> </ul>
Every March 1 during the Operation Phase	Project Sponsor submits annual reports to the Air District
Upon completion of the Operation Phase	Air District releases second installment (15% of award) to Project Sponsor

**RECORDS RETENTION PHASE**

*The Project Term extends for three additional years after the end of the Operation Phase.* During this phase, the Project Sponsor is required to maintain all Project records in a centralized location for three additional years after the end of the Operation Phase. The Project Sponsor is encouraged to continue maintaining and operating the charging stations, although it is no longer a contractual requirement to do so.

DATE	ACTIVITY
For 3 years beginning upon completion of the Operation Phase	Project Sponsor must maintain all records in a centralized location

**ADDITIONAL INFORMATION AND QUESTIONS**

Responses to questions, program materials, and program updates will be posted on the Program website at: <http://www.baaqmd.gov/charge>.

If you have questions, please contact Mark Tang, Staff Specialist by email at [mtang@baaqmd.gov](mailto:mtang@baaqmd.gov) (subject "RE: Charge! Program") or by mail to 375 Beale Street, Suite 600, San Francisco, CA 94105.

**APPENDIX A: INSURANCE GUIDELINES**

Project Sponsors who are selected for award must obtain and maintain the required insurance coverage for the duration of their Project's Term. The typical funding agreement requires that each Project Sponsor provide documentation showing that the Project Sponsor meets the following requirements for each of its projects.

- A. Liability Insurance with a limit of not less than \$1,000,000 per occurrence, of the type usual and customary to the business of the Project Sponsor, and to the operation of any portion of the Project.
- B. Property Insurance in an amount of not less than the insurable value of Project equipment funded under the Agreement, and covering all risks of loss, damage or destruction of such equipment.

Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

The Air District reserves the right to specify different types or levels of insurance in the funding agreement. The Air District may, at its sole discretion, waive or alter this requirement or accept self-insurance in lieu of any required policy of insurance.

# Electric Vehicle Charging 101

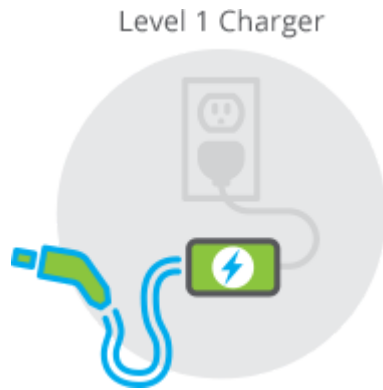
Learn more about different charging options for electric vehicles (EVs).



## Level 1, 2 and DC Fast Electric Vehicle Chargers

EV chargers are classified into three categories: Level 1, Level 2 and direct current (DC) fast charging. One distinction between these three levels is the input voltage, Level 1 uses 110/120 volts, Level 2 uses 208/240 volts and DC fast chargers use between 200 and 600 volts. Numerous manufacturers produce chargers, with a variety of products and varying prices, applications and functionality.

### Level 1 Charging



J1772



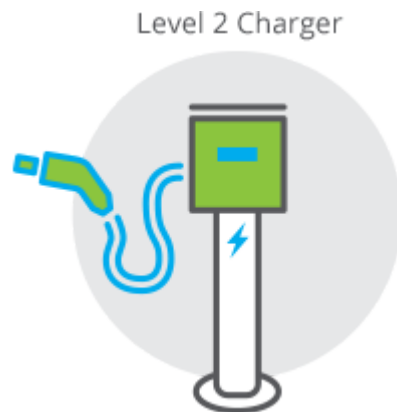
Level 1 charging is cost-efficient – it uses a standard 110-V outlet, enabling EV drivers to use the charging cord set provided with most electric vehicles almost anywhere. This charging takes the longest and is used primarily as an additional, emergency or backup charging solution.

Level 1 charging can be a viable solution in multi-unit dwellings (MUDs), like apartment complexes or condominiums, and some workplaces. In MUD settings, most Level 1 charging is conducted from existing 110-V outlets in the parking lot or personal garages/carports of residents. When new charging installations are planned, a higher output 240-V circuit is often more cost-effective as it offers greater charging capacity for an equivalent installed price.

Level 1 charging power output varies slightly, but is typically between 12 amps and 16 amps of continuous power. At these levels of output, a Level 1 charger is estimated to deliver between 3.5 and 6.5 miles of range per hour of charging. These charging rates can be satisfactory for drivers who do not drive more than 30-40 miles daily and who can use the charger overnight.

Most electric vehicles come with a manufacturer branded Level 1 cord set in the trunk. There are only a few third-party manufacturers of Level 1 chargers and most are designed for residential use.

## Level 2 Charging



Level 2 chargers are typical solutions for residential and commercial/workplace settings. Most offer higher power output than Level 1 chargers and have additional functionality that is not available with Level 1 chargers. In general, Level 2 chargers are distinguished between non-networked chargers and networked chargers.

### Non-networked Level 2 Chargers

Non-networked Level 2 chargers are used both in single-family residences and MUDs. They may be designed for indoor or outdoor use (e.g., NEMA 3R, NEMA 6P, NEMA 4x rated) and typically produce between 16 and 40 amps of power output, which can deliver between 14 and 35 miles of electric range per hour of charging. These serve a similar function as Level 1 chargers, however, if an electrical permit is going to be pulled to install a dedicated circuit for EV charging, it is most often a better value to have a 240-volt circuit installed for Level 2 charging.



Non-networked Level 2 chargers are useful for installations at MUDs or commercial sites that are powered by the residents' or tenants' subpanels. In this case, any electricity used by the chargers will be charged to the individual's electricity bill, thus eliminating the need to separately meter the chargers. Further, when electrical capacity is available, non-networked Level 2 chargers are useful for site hosts that need higher power than Level 1 charging but do not have a large budget.

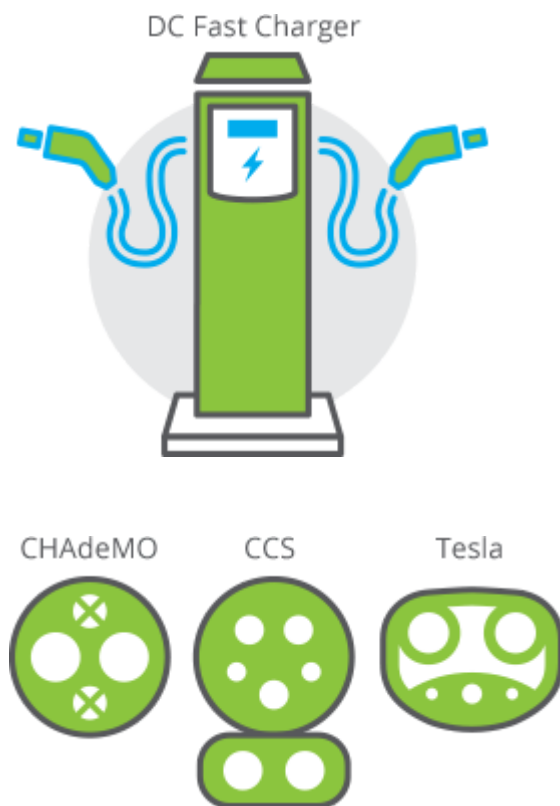
Level 2 chargers are available with a variety of power outputs from 16-40 amps, with non-networked chargers at a slightly lower cost than networked chargers. Therefore, if the resident/property owner doesn't need networked chargers functionality (described in next section), non-networked chargers will suffice.

## Networked Chargers

While networked chargers are sometimes used in single-family residences, they are more common in commercial/workplace settings where payments are required or at MUDs where the property's electricity bill is shared by multiple residents. They may be designed for indoor or outdoor use (e.g., NEMA 3R, NEMA 6P, NEMA 4x rated). Networked Level 2 chargers, like non-networked chargers, typically produce between 16 and 40 amps of power output, which can deliver between 14 and 35 miles of electric range per hour of charging, and their power output is sometimes adjustable. Some of the enhanced features include remote access/control via Wi-Fi or cellular connection, access control/ability to accept multiple forms of payment, load balancing across multiple chargers and more.

Networked chargers are useful for sites that need to monitor electricity usage across multiple chargers, have multiple drivers sharing a single charger or require payment for use of chargers as well as for sites that have little electrical capacity and therefore need to balance their load. Some models of networked chargers also can limit charging to certain hours, which allows the operator to maximize a time-of-use (TOU) electricity rate structure and only allow charging when electricity is the cheapest (usually sometime between 9 p.m. and 6 a.m.). This type of control also increases the likelihood of participating in utility demand response programs. Therefore, while networked chargers are more expensive than non-networked chargers, they have much more functionality and can provide more options for a workplace, commercial site or MUD.

## DC Fast Charging



DC fast chargers are the highest-powered EV chargers on the market. They often are used as range extenders along major travel corridors for long-distance trips and in urban environments to support drivers without home charging or very high mileage drivers. Most DC fast chargers on the market charge at rates of 25-50 kW. At current charging speeds, they are ideal for places where a person would spend 30 minutes to an hour, such as restaurants, recreational areas and shopping centers.

Currently available DC fast chargers require inputs of 480+ volts and 100+ amps (50-60 kW) and can produce a full charge for an EV with a 100-mile range battery in slightly more than 30 minutes (178 miles of electric drive per hour of charging). However, new generations of DC fast chargers are gaining traction and can produce 150-350 kW of power.

It is important to note that not every EV model is capable of DC fast charging, and therefore, they cannot be utilized by every EV driver. In addition, installations require a commercial electrician from the initial planning phase due to the electrical load and wiring requirements. Further, DC fast chargers have multiple standards for connectors, whereas there is only one common standard for Level 1 and 2 charging (SAE J1772). DC

fast chargers have three types of connectors: CHAdeMO, CCS or Tesla.

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