

# Memorandum

**Date:** March 6, 2023

**To:** Honorable Mayor and Members of City Council

**From:** Chris Constantin, City Manager

**Subject:** Continuance of MCTA 20-0005 Public Hearing

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At the regular City Council meeting of February 28, 2023, the City Council voted 5-0 to continue Municipal Code Text Amendment 20-0005. Staff's report was not presented to the Council; however, as required, the Council opened the public hearing and heard comments from the public. After taking public comments, the Council closed the public hearing and continued the item to the regular City Council meeting of March 14, 2023. The attached staff report will be presented to the Council for consideration.



## Agenda Item Staff Report

**To:** Honorable Mayor and Members of City Council  
*For the Meeting of February 28, 2023*

**From:** Chris Constantin, City Manager

**Prepared by:** Kenneth Fichtelman, Associate Planner

**Subject:** Municipal Code Text Amendment 20-0005  
Consideration of a Municipal Code Text Amendment of Title 18-Zoning, Chapter 18.518 Specific Plan 11 of the San Dimas Municipal Code, To Amend Grading Limits within Planning Area I and Make Various Clean-Up Text Amendments, and adoption of the associated Mitigated Negative Declaration.

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### SUMMARY

Municipal Code Text Amendment 20-0005 is a City Council initiated request to amend Chapter 18.518 Specific Plan 11 of the San Dimas Municipal Code with respect to grading limits within Planning Area I and various clean-up items.

On January 19, 2023, the Planning Commission voted 3-0-2, with Commissioners Davis and Ross recusing themselves, to adopt Resolution PC-1657 recommending approval of Municipal Code Text Amendment to the City Council, and recommended denial of Resolution PC-1658, which recommended adoption of the Mitigated Negative Declaration (MND), with a recommendation that the City Council direct Staff to seek a peer review of the biological analysis to validate the report and the proposed mitigation measures that appear to be onerous requirements on the residents.

### RECOMMENDATION

Staff and the Planning Commission recommend that the City Council open the public hearing, take public testimony, close the public hearing, and:

1. Continue this item to a date uncertain and direct Staff to seek a peer review of the biological analysis to validate the report and the proposed mitigation measures, and

2. Approve a budget amendment for an amount not to exceed \$50,000 from the General Fund to account 001.4308.020.000 and authorize the City Manager or his designee to execute any and all documents necessary to complete a peer review of the biological analysis.

### **ALTERNATIVES**

Should the City Council disagree with the Planning Commission and Staff recommendation and the City Council wishes to approve the MND and the MCTA as is, then the following actions shall be taken:

1. Adopt Resolution 2023-11, approving the Mitigated Negative Declaration (MND); and
2. Introduce Ordinance 1297, approving Municipal Code Text Amendment 20-0005,

Lastly, the City Council can deny the project and take the following actions:

1. Deny Resolution 2023-11, denying the Mitigated Negative Declaration (MND); and
2. Deny Ordinance 1297, denying Municipal Code Text Amendment 20-0005.

### **FISCAL IMPACT**

Should the City Council agree with Staff and the Planning Commission's recommendation to direct Staff to seek a peer review of the biological analysis to validate the report and the proposed mitigation measures, a budget amendment for an amount not to exceed \$50,000 from the General Fund to account 001.4308.020.000 is needed to complete the peer review of the biological analysis.

### **BACKGROUND**

In 1983, the City Council adopted Ordinance 786, creating Specific Plan 11 (SP-11), Areas I - IV. Since the time of adoption, the area has been developed with 250 single-family residences. As originally adopted in the San Dimas Municipal Code, no grading is to be performed within SP-11, Planning Area I, except as required for retaining-type building foundations and the driveway, with no visible signs of grading allowed beyond the structure's main walls (SDMC 18.518.170(B)(1)). In 1987, the Development Plan Review Board (DPRB) adopted a policy of allowing a maximum of two hundred cubic yards of grading, cut and fill, in excess of the grading necessary for the residence and driveway (See Attachment 6). Approval of the two hundred cubic yards was determined by the DPRB on a case-by-case basis. To allow for greater flexibility for owners, the grading associated with the construction of a pool and a five-foot perimeter deck was not counted towards the two hundred cubic yard grading limit. The DPRB, therefore, began approving grading for pools, decks and other features in SP-11 Planning Area I which was directly prohibited by the San Dimas Municipal Code.

On May 12, 2020, during a regular City Council meeting, the Council requested that Staff prepare a presentation on the history and applicability of the grading limits set forth in San Dimas Municipal Code Section 18.518.170 (SP-11, Planning Area I grading limits) for City Council to discuss and consider a Municipal Code Text Amendment (MCTA) to amend these limits.

On July 14, 2020, the City Council heard a presentation from Staff regarding the history of the grading requirements within Chapter 18.518 Specific Plan 11: Planning Area 1 (SP-11, Area I). At that meeting, the City Council initiated the MCTA for SP-11, Area I and directed Staff to provide the City Council with options relating to grading standards within this zone.

On September 22, 2020, the City Council held a Study Session to hear a presentation from Staff regarding the various options regarding the grading standards within SP-11: Planning Area 1 and to provide direction to Staff regarding the MCTA. Due to the length of the meeting the City Council continued the item to October 13, 2020. At that meeting, the City Council continued the MCTA indefinitely due to COVID-19 gathering restrictions and to allow for in-person comments to be heard at a Public Meeting.

On March 9, 2021, the City Council provided Staff with direction regarding the MCTA, directing Staff to work towards codifying the previous DPRB policy, but with the grading allowance increased from 200 cubic yards to 1,000 cubic yards (See Attachment 5).

On June 3, 2021, the item was heard during a public hearing at a regular Planning Commission meeting. Due to concerns about the use of a CEQA categorical exemption, the item was continued to a later date to allow for a thorough review of the environmental determination.

On October 7, 2021, the item was brought back to the Planning Commission after a draft Mitigated Negative Declaration (MND) was prepared by City Staff. The Planning Commission heard from Staff and the public during a regular meeting and voted 3-0-0-2, with Commissioners Davis and Ross recusing themselves, to recommend approval of the MCTA and the MND to the City Council.

Following the October 7, 2021 Planning Commission meeting, the item was scheduled for the October 26, 2021 City Council meeting. Prior to the meeting, potential issues with the City prepared MND were raised in a letter prepared by the Via Verde Ridge Home Owners Association's (HOA) legal counsel. After consultation between Staff and the City's legal counsel, the decision was made to pull the item from the City Council calendar and have an environmental consultant prepare a new MND to study the environmental issues raised by the HOA's legal counsel.

On January 11, 2022, the City Council was presented a resolution, as a part of the Consent Calendar, to allow for an agreement with UltraSystems, an environmental consultant, to prepare a new MND for the project that would address the issues that were raised by the HOA's legal counsel. The item was pulled from the Consent Calendar for additional discussion. After discussion, the City Council voted 3-2 to authorize the City Manager to execute an agreement with UltraSystems to prepare an Initial Study/ MND (See Exhibit A to Attachment 1) for the MCTA.

On January 19, 2023, the Planning Commission heard the item and considered the draft MND prepared by UltraSystems (Attachment 4). The Planning Commission heard from Staff, representatives from UltraSystems and the public during the regular meeting. During the meeting the public raised concerns with the various biological mitigation measures required by the MND (See Table 4.4-2 of Exhibit A to Attachment 1), as it would require several surveys which could add unnecessary delays and increased costs to projects requiring any grading beyond what is currently allowed per the Code. After further discussion, and having raised the same concerns with the mitigation measures, the Commission voted 3-0-2, with Commissioners Davis and Ross recusing themselves, to adopt Resolution PC-1657 recommending approval of Municipal Code Text Amendment to the City Council, and denied Resolution PC-1658 recommending denial of the MND to the City Council, with a recommendation that City Council direct Staff to seek a peer

review of the biological analysis to validate the report and the proposed mitigation measures and if possible, to reduce the onerous mitigation measure requirements on the residents.

### **DISCUSSION/ANALYSIS**

Per the direction provided by the City Council at the March 9, 2021 meeting, Staff has developed code text to codify the previous grading policy, while increasing the grading limit to one thousand (1,000) cubic yards and providing standards for the grading, landscaping and any retaining walls that the additional grading would require. Along with these changes, Staff has completed a comprehensive clean-up of Chapter 18.518 Specific Plan 11, removing sections which dealt with the initial development of the area and codifying previous policies regarding Conditional Uses within the specific plan.

The draft code text language allows for up to one thousand (1,000) cubic yards of grading, cut and fill, beyond that grading necessary for the primary residence, driveway and garage. Per the previous DPRB policy, a swimming pool and five (5) feet of decking surrounding the pool were exempted from the additional grading. This allowance has also been added to the proposed code text language to codify the previous practice.

The proposed MCTA would allow for up to one thousand (1,000) cubic yards of grading, cut and fill, beyond that grading necessary for the primary residence, driveway and garage for properties located within SP-11 Planning Area 1 (36 residential lots, up to 36,000 CY grading). Per the previous DPRB policy, a swimming pool and five (5) feet of decking surrounding the pool were exempted from the additional grading calculations. The proposed MCTA would also include development standards for the grading, landscaping and any retaining walls that the additional grading would require. Additional clean-up items are proposed by removing sections which dealt with the initial development of the area and codifying previous policies regarding Conditional Uses within the specific plan.

Due to the potential large quantity of available grading (774,000 CY) allowed for the existing residential homes to expand their 1<sup>st</sup> floor building area, the proposed MCTA to allow for up to 36,000 CY of grading beyond the grading necessary for the primary residence, driveway and garage would be small by comparison.

To preserve the original intent of SP-11, minimize the visual impacts of potential grading and retaining walls, codify existing policies/practices and eliminate defunct sections of the code, the following code text amendment includes:

1. Requirements that any proposed grading and retaining walls follow the existing topographic contours present onsite. The proposed grading cuts and/or retaining walls should not cut directly across contour lines.
2. A limitation of retaining walls to a maximum exposed height of twelve (12) feet per wall and a maximum combined exposed height of twenty-four (24) feet. This language is consistent with existing retaining wall height limit standards used in other hillside areas within the City.
3. A requirement that if more than one retaining wall will be constructed directly adjacent to one another, the two walls must be separated by half (1/2) the height of the taller of the two adjacent walls.

4. Requirements to use gravity type retaining walls, unless onsite conditions prohibit their use.
5. Wall materials which must be either slump stone or split-face stone with a tan or earth tone color.
6. Landscape and irrigation standards which require the planting of trees at the base of the lowest retaining wall and drought tolerant shrubs at the base of every wall. Installation of permanent irrigation shall be required to ensure that the required landscaping survives and is healthy enough to provide screening.

At the request of Council, Staff also analyzed an exemption to allow unlimited grading for any grading, cut and fill, used to create a natural appearing slope that would be used in place of retaining walls. Per the City Engineer, the maximum slope that can be created without the use of retaining walls is a 2:1 slope, or a slope that falls one (1) vertical foot for every two (2) feet of horizontal distance. Due to this slope requirement, most properties in Planning Area I would be unable to create a 2:1 slope without significant amounts of grading, grading which would be far in excess of the proposed one thousand (1,000) cubic yard allowance. Due to the potential amount of grading which could be required, Staff has found it infeasible to achieve a natural appearing slope that could be used in place of retaining walls on most parcels. Staff has therefore not included language in the proposed code text amendment which would allow for an exemption to the grading limits in order to create a natural looking slope.

Staff believes that the above proposed amendments will assist in minimizing the potential impact of grading and retaining walls on the hillside vistas while allowing for up to one thousand (1,000) cubic yards of additional grading within SP-11, Planning Area 1.

For clarification, the proposed grading limits and associated mitigation measures found within the MND do not affect the construction of a new residence or addition, the garage and required driveways. These actions, which are allowed under the current Code were analyzed through an Environmental Impact Report that was prepared and certified when Specific Plan 11 was originally developed; thus they would not trigger any of the requirements or studies proposed by the new MND. In addition, per State law, accessory dwelling units must be allowed and are also exempt from the requirements or studies proposed by the new MND. The proposed mitigation measures would only be required for any additional grading beyond that required for the residence, accessory dwelling unit, garage and driveway, such as, but not limited to, a pool, a flat pad for a backyard or a cabana/pool house type structure.

On July 23, 1987, the DPRB adopted a policy allowing accessory structures (i.e. cabanas, decks, spas and pools, etc.) within SP-11, Planning Area 1 to be reviewed by Staff rather than requiring DPRB review and approval (See Attachment 6 – DPRB Policy Regarding Accessory Structures within the Specific Plans). These are being reclassified as accessory uses and would be reviewed at Staff level rather than requiring a Conditional Use Permit that is reviewed and approved by the DPRB.

SP-11 has been fully subdivided and a majority of parcels have been developed, therefore the sections of the code pertaining to the creation of the various tracts, the infrastructure needed to support them and the various aspects that accompany new development are no longer relevant. Furthermore, Public Works has existing development standards for all proposed infrastructure which would be required to be complied with in the event of any proposed future development. Therefore, Staff is proposing to delete these sections of the Specific Plan.

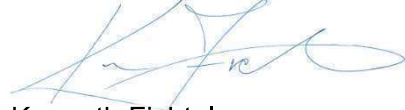
## **ENVIRONMENTAL REVIEW**

The MCTA is a project pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and an Initial Study was prepared to determine possible environmental impacts. On the basis of the Initial study, which indicated that all potential environmental impacts from the Project were less than significant or could be mitigated to a level of insignificance, an MND was prepared pursuant to CEQA Guidelines. Furthermore, to ensure that the mitigation measures are implemented, a Mitigation Monitoring and Reporting Program (See Attachment 3) has been prepared for the project pursuant to CEQA Guidelines Section 15097, which specifies responsible departments/parties, monitoring frequency, timing and method of verification and possible sanctions for non-compliance with mitigation measures.

As noted above, the City originally prepared an MND that was circulated for the required 20-day period and was recommended for City Council approval by the Planning Commission at the regularly scheduled Planning Commission meeting of October 7, 2021. The item was then scheduled for a public hearing before the City Council at their October 26, 2021 regular meeting. Prior to that meeting, potential issues with the City prepared MND were raised in a letter prepared by the Via Verde Ridge Home Owners Association's legal counsel. After consultation between Staff and the City's legal counsel, the decision was made to pull the item from the City Council calendar and have a private environmental consultant prepare a new Initial Study and MND to study the environmental issues raised by the HOA's legal counsel. The new Initial Study and MND was prepared by UltraSystems Environmental and was circulated for public review/comment from December 22, 2022, through 5:00 PM on January 18, 2023. Although the MND was required to be circulated for only 20 days, the City extended the period to allow for additional time for comments to be submitted due to City Hall being closed for the holidays. Staff received four comments during the comment period. Responses to these comments have been provided in Exhibit B to Attachment 1, Responses to Comments. Staff and UltraSystems have made minor revisions to the MND in response to the comments, which are attached as an errata (Exhibit C to Attachment 1). Because these are minor revisions which do not affect the substance of the MND, recirculation of the MND is not required.

In order to adopt the MCTA, the City Council must adopt mitigation measures, unless infeasible, that will reduce the environmental impacts of the MCTA to a less than significant level. Per the direction given by the Planning Commission at the January 19, 2023 meeting, Staff has looked into the possibility of revising the mitigation measures within the MND to lessen the requirements for property owners, while still reducing environmental impacts to a less than significant level. As Staff does not have the necessary knowledge or experience to properly review the mitigation measures within the context of the CEQA, Staff would need to hire a third-party environmental consultant with expertise in CEQA to conduct a peer review of the document in order to adequately assess whether the mitigation measures can be revised or changed and still reduce environmental impacts to a less than significant level. As previously mentioned, the hiring of a consultant would require that the Council approve a budget amendment for an amount not to exceed \$50,000 to carry out the peer review and, depending on the outcome of that review, incorporate any findings or recommendations into the MND. Should the mitigation measures be revised, recirculation of the MND for public comment will not be required if the revised mitigation measures will avoid or reduce the significant effect to at least the same degree as, or to a greater degree than, the original measures and will create no more adverse effect of its own than would have the original measures. However, a public hearing shall be required before the mitigation measures may be deleted and new mitigation measures adopted in their place.

Respectfully submitted,

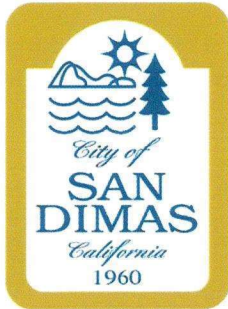
A handwritten signature in blue ink, appearing to read 'KF', with a stylized flourish extending to the right.

Kenneth Fichtelman  
Associate Planner

Attachments:

1. Resolution 2023-11
2. Ordinance 1297
3. Mitigation Monitoring and Reporting Program
4. Planning Commission Staff Report from January 19, 2023
5. City Council Staff Report from March 9, 2021
6. DPRB Policy Regarding Accessory Structures within the Specific Plan





## CITY COUNCIL ACTION SUMMARY MINUTES

MARCH 14, 2023

Council Members Present: Mayor Emmett Badar, Mayor Pro Tem John Ebner, Councilmember Eric Nakano, Councilmember Ryan A. Vienna, Councilmember Eric Weber

Staff: City Manager Chris Constantin, Assistant City Manager Brad McKinney, Director of Public Works Shari Garwick, Director of Administrative Services Michael O'Brien, Director of Parks and Recreation Scott Wasserman, Director of Community Development Henry Noh, City Attorney Jeff Malawy, City Clerk Debra Black

CONSENT ITEMS	COMMENTS/RECOMMENDATIONS
<ol style="list-style-type: none"><li>1. Approve RESOLUTION 2023-13, A Resolution of the City Council of the City of San Dimas, California, Approving Warrant Register for February 24th, 2023, in the of \$435,733.08 and Warrant Register for February 28th, in the amount of \$136,502.20.</li><li>2. Approve Minutes of the February 28, 2023 City Council Special Meeting, February 28th, 2023 City Council Study Session and February 28th, 2023 City Council Regular Meeting</li><li>3. Adoption of Amendments to the City's Boards, Commissions, and Committees Handbook Relating To Terms of Office, Appointment Procedures, Removal of Commissioners, Eliminating City Council liaisons on Commissions, and Other Various Amendments</li><li>4. Approval of Awarding and Entering into a Custodial Maintenance Agreement with Guaranteed Janitorial Services in the amount of \$236,550 for April 1, 2023 through June 30, 2024 with Renewal Options for Two Additional Years at the City's Option and Subject to Future Budget Appropriation for Maintenance at City Facilities</li></ol>	<p>Item 3 was removed from consideration until a future meeting.</p> <p><b>MOTION:</b> Motion/seconded by Mayor Pro Tem Ebner/Councilmember Vienna to approve the consent calendar items 1, 2, and 4. Motion carried 5-0.</p> <p><b>YES:</b> Badar, Ebner, Nakano, Vienna Weber <b>NOES:</b> None <b>ABSENT:</b> None <b>ABSTAIN:</b> None</p>

OTHER BUSINESS	COMMENTS/RECOMMENDATIONS
<p>1. Resolution Approving Engineer's Report on the Boulevard Assessment District, Declaring Intention to Levy and Collect an Increased Assessment, and Fixing a Time and Place for a Public Hearing for Boulevard Open Space Maintenance District No. 1, Tract 32818, Boulevard</p>	<p><b>MOTION:</b> Motion/seconded by Councilmembers Vienna/Weber to adopt Resolution 2023-15, approving the Engineer's Report and declare an intent to levy and collect an increased Assessment for the Fiscal Year 2023-24, and conduct a Public Hearing on May 23, 2023. Motion carried 5-0.</p> <p><b>YES:</b> Badar, Ebner, Nakano, Vienna, Weber  <b>NOES:</b> None  <b>ABSENT:</b> None  <b>ABSTAIN:</b> None</p>
<p>2. Resolution Approving Engineer's Report, on the Northwoods Assessment District, Declaring Intention to Levy and Collect an Assessment, and Fixing a Time and Place for a Public Hearing for a District No. 1 Annexation No. 3, Tract 32841</p>	<p><b>MOTION:</b> Motion/seconded by Councilmembers Vienna/Weber to adopt Resolution 2023-15, approving the Engineer's Report and declare an intent to levy and collect an increased Assessment for the Fiscal Year 2023-24, conduct a Public Hearing on May 9, 2023, direct staff to conduct educational outreach with the residents no later than two weeks before the public hearing, and to amend attachment 3 to include the increased rates, and exploration and inclusion of language to establish mechanism for Consumer Price Index increases or full cost recovery. Motion carried</p> <p><b>YES:</b> Badar, Nakano, Vienna, Weber  <b>NOES:</b> Ebner  <b>ABSENT:</b> None  <b>ABSTAIN:</b> None</p> <p><b>Recess 9:14 pm – 9:27 PM</b></p>
<p>3. Discussion and Possible Direction Regarding the Revenues and Expenditures of the Landscape Parcel Tax (Fund 8) and General Fund Subsidy Resulting from Activity</p>	<p><b>MOTION:</b> Motion/seconded by Councilmembers Vienna/Nakano to receive and file. Motion carried 5-0.</p> <p><b>YES:</b> Badar, Ebner, Nakano, Vienna, Weber  <b>NOES:</b> None  <b>ABSENT:</b> None  <b>ABSTAIN:</b> None</p>
PUBLIC HEARING	COMMENTS/RECOMMENDATIONS
<p>1. Introduction of Ordinance 1298, Approving Municipal Code Text Amendment No. 23-0001 to Amend Title 18-Zoning, Chapter 18.136 A-P</p>	<p><b>Public Hearing</b> opened 9:49 pm.</p> <p><b><u>Speakers</u></b></p>



<p>Administrative Professional Zone of the San Dimas Municipal Code to allow single-family residences that were established prior to 1970 and have been continuously used for residential purposes, as a primary use in the A-P Zone, along with associated clean up amendments; Pursuant to CEQA guidelines Section 15061 (b)(3), CEQA does not apply to this item because there is no potential for causing a significant effect on the environment.</p>	<p>Elizabeth Anaya, resident spoke in support of this MCTA.</p> <p>Public Hearing closed 9:51 pm.</p> <p><b>MOTION:</b> Motion/seconded by Mayor Pro Tem Ebner/Councilmember Vienna to introduce Ordinance 1298, approving municipal code text amendment 23-0001. Motion carried 5-0.</p> <p><b>YES:</b> Badar, Ebner, Nakano, Vienna, Weber  <b>NOES:</b> None  <b>ABSENT:</b> None  <b>ABSTAIN:</b> None</p>
<p>2. Introduction of Ordinance 1297, Approving Municipal Code Text Amendment 20-005, an Amendment to Grading Limits within Specific Plan 11 – Planning Area I; and Adoption of a Mitigated Negative Declaration under CEQA</p>	<p><b>Recess 10:07 pm – 10:11 pm</b></p> <p><b>Recess: 11:40 pm – 11:47 pm</b></p> <p><b>MOTION:</b> Motion/seconded by Councilmembers Vienna/Weber to continue to a date uncertain and to direct to seek a peer review of the biological analysis to validate the report and the proposed mitigation measured and to approve a budget amendment for an amount to not exceed \$50,000 and authorize the City Manager or his designee to execute any and all documents necessary to complete a peer review of the biological analysis. Motion carried 5-0.</p> <p><b>YES:</b> Badar, Ebner, Nakano, Vienna, Weber  <b>NOES:</b> None  <b>ABSENT:</b> None  <b>ABSTAIN:</b> None</p>
<p><b>STAFF AND CITY COUNCIL REPORTS</b></p>	<p><b>COMMENTS/RECOMMENDATIONS</b></p>
<p>a. City Manager</p>	<p>None</p>
<p>b. City Attorney</p>	<p>None</p>
<p>c. Members of the City Council</p> <ul style="list-style-type: none"> <li>• Reports on Meetings Attended AB 1234 (G.C. 53232(d))</li> </ul>	<p>None</p>
<p><b>CITY COUNCIL REQUESTS FOR FUTURE ITEMS</b></p>	<p><b>COMMENTS/RECOMMENDATIONS</b></p>
	<p><b>Mayor Pro Tem Ebner</b>  Request by Mayor Pro Tem Ebner supported by Councilmember Nakano to agendize a</p>

	discussion related to the conversion of a senior only mobile home park into an all ages park at Cienega Valley Estates Mobile Home Park .
<b>CLOSED SESSION ITEMS</b>	<b>COMMENTS/RECOMMENDATIONS</b>
<b>PUBLIC EMPLOYEE PERFORMANCE EVALUATION</b> Title: City Manager  <b>CONFERENCE WITH LABOR NEGOTIATORS</b> Agency designated representative: Jeff Malawy, City Attorney Unrepresented employee: City Manager	Following the closed sessions, the City Attorney made a public announcement that the City Council met and discussed the two closed session items listed on the agenda, that the City Council gave direction to staff on the items, and that no reportable action was taken.

Adjourned: 1:45 AM

I, Debra Black, City Clerk attest that these minutes are accurate and reflective of the actions taken by the City Council.



Debra Black, City Clerk