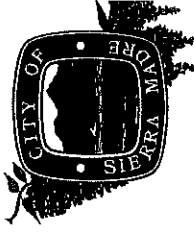


AGENDA
SIERRA MADRE CITY COUNCIL
SPECIAL MEETING

Monday, August 24, 2015
6:00 pm

City Hall Council Chambers
232 W. Sierra Madre Blvd.



John Capoccia, Mayor
Gene Goss, Mayor Pro Tem
Rachelle Arizmendi, Council Member
Denise Delmar, Council Member
John Harabedian, Council Member

Nancy Shollenberger, City Clerk
Richard Mays, City Treasurer

PUBLIC COMMENT

The Council will listen to the public on any item on the agenda. The City Council cannot legally take action on any item not scheduled on the agenda. Such items may be referred for administrative action or scheduled on a future agenda. Comments will generally be limited to three minutes per speaker.

PUBLIC COMMENT FOR ITEMS ON THE AGENDA

Persons wishing to speak on any item on the agenda will be called at the time the agenda item is brought forward. Persons wishing to speak on closed session items have a choice of doing so either immediately prior to the closed session or at the time for comments on items at the open session.

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

Time shall be devoted to audience participation early on the agenda. If additional time is needed, the Mayor will allow for same at the end of the agenda.

CALL TO ORDER/ROLL CALL

City Council Members:

Mayor John Capoccia, Mayor Pro Tem Gene Goss, Council Member Rachelle Arizmendi, Council Member Denise Delmar, and Council Member John Harabedian

PUBLIC COMMENT

Regarding items not on the Agenda.

ACTION ITEMS*

1. DISCUSSION

Implementation of Collection of Utility User Tax on Prepaid Wireless Service;
Consideration of Resolution 15-51
Authorizing the City Manager and City Attorney to Execute Certain Documents Required by the Board of Equalization to Collect the City's UUT on Prepaid wireless service, and
Resolution 15-52 Authorizing the Examination of Prepaid Mobile Telephony Services Surcharge and Local Charge Records

Recommendation: Approval of Resolution 15-51 authorizing the City of Sierra Madre to contract with the Board of Equalization (BOE) for the collection of Mobile Telephony (MTS) Surcharges and Resolution 15-52 authorizing the examination of prepaid mobile telephony services surcharge and local charge records by the City.

2. Consideration of Award of Construction Contract to Perry C. Thomas Construction in the Amount of \$28,250 for Emergency Repairs to the MWD Connection

Recommendation: Approval of an award of contract to Perry C. Thomas Construction in the amount of \$28,250 for emergency repairs to the MWD Connection, and the allocation of Water Funds Reserves for said repairs.

MEETING ASSISTANCE

The City Hall Council Chamber is physically accessible and assistive listening devices are available at the meeting. If you require special assistance to participate in this meeting, please call the City Manager's office at (626) 355-7135 at least 48 hours prior to the meeting.

Agenda
Special Meeting of the Sierra Madre City Council
Monday, August 24, 2015
6:00p.m.
City Hall Council Chambers, 232 W. Sierra Madre Blvd.

Mayor, John Capoccia, opened the Special Meeting of the Sierra Madre City Council at 6:12 p.m. The Mayor asked Melissa Thew to call the Roll. Ms. Thew called the Roll noting that all City Council Members were present except Council Member, Rachelle Arizmendi who was excused.

CALL TO ORDER / ROLL CALL:

Present: John Capoccia, Mayor; Gene Goss, Mayor Pro Tem, Council Members
Denise Delmar (15-20min. late) and John Harabedian

Absent: Council Member, Rachelle Arizmendi (Excused)

Also Present: Elaine Aguilar, City Manager
Teresa Highsmith, City Attorney
Bruce Inman, Director of Public Works
James Carlson, Management Analysis
Melissa Thew, Sitting in for the City Clerk

PUBLIC COMMENT: None

Action Items:

1.) DISCUSSION

Implementation of Collection of Utility User Tax on Prepaid Wireless Service; Consideration of Resolution No.15-51 Authorizing the City Manager and City Attorney To Execute Certain Documents Required by the Board of Equalization to Collect the City's UUT on Prepaid wireless service, and Resolution No. 15-52 Authorizing the Examination of Prepaid Mobile Telephony Services Surcharge and Local Change Records.

SUMMARY:

On January 1, 2016, the new Prepaid Mobile Telephone Services (MTS) Surcharge Becomes effective., This is pursuant to Assembly Bill 1717, which requires local Jurisdiction to contract with the Board of Equalization (BOE) in order to receive revenue from the City's Utilities Users Tax (UUT), or other local charges imposed on consumers of prepaid mobile services. This item is on the agenda for the City Council's consideration of Resolution No. 15-51, which authorizes the City Manager and City Attorney to execute documents required by the Board of Equalization to collect the City's Utility Tax on prepaid wireless service; and consideration of Resolution No. 15-52, which authorizes specified City representatives to examine prepaid mobile telephone services surcharge and local charges collected by the Board for the City.

Analysis:

Traditionally, a city's utility users tax (UUT) is collected by wireless service providers who include the charge on their customer's monthly invoices. In contrast to this arrangement, customers who purchase prepaid wireless services usually avoid paying any UUT due to collection complications. With prepaid wireless, there is no contract, no monthly invoices, and the prepaid wireless services are usually sold by retailers, not service providers themselves. It is estimated that approximately 70% of all prepaid wireless services are sold by retailers. Since these transactions bypass local UUT, the cities experience a loss of revenue. Additionally, traditional phone plan users are treated disparately and the burden of the UUT is not equally shared among all telephone users.

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Beginning January 1, 2016, AB 1717 will take effect and solve the collection problem by requiring California retailers and on-line sellers to collect the local UUT at the same time it collects sales tax on its other retail products, based on the point of sale (for retail stores in our City). Under this new law, all local jurisdictions have to contract with the California State Board of Equalization (BOE) in order to receive UUT imposed on consumers of prepaid wireless phone services.

Resolution No. 15-51 authorizes the City Manager and the City Attorney to execute certain documents required by the State Board of Equalization to collect the City's UUT on prepaid wireless service. Resolution No. 15-52 authorizes the City Manager, or other officer or employee designed in writing by the City Manager to examine the local charge records and surcharges on prepaid mobile telephone services.

Also attached to the Agenda was the Agreement between the City and the BOE for collection of local charges by the State, a copy of the City Attorney's certification and a copy of the current UUT Ordinance.

If the Board of Equalization receives the City's documentation before September 1, 2015, collection will begin as of January 1, 2016. The next deadline for submission of documentation is by December 1, 2015 for collection beginning April 1, 2016.

There are no financial estimates regarding the amount of UUT that Sierra Madre will receive from prepaid wireless services. The board of Equalization estimates that local revenue will total \$35M statewide through the collection and distribution of locally imposed surcharges.

The Board of Equalization will remit one payment annually to the City. Staff will notify the Council of the amount remitted, and an adjustment to the FY 2015-2016 Budget can be made at a later date if necessary.

Alternatives:

The alternatives are:

- 1) The council could approve Resolutions 15-51 and 15-52 and authorize staff to submit the required documentation to the BOE before September 1, 2015, to begin UUT collection on prepaid wireless service as of January 1, 2016.
- 2) The City Council could direct staff to return prior to December 1, 2015 for UUT collection on prepaid wireless service to begin on April 1, 2016.
- 3) The City Council could take no action.
- 4) The City Council could request additional information and direct that this matter Return to a future agenda.

Staff Recommendation:

It is recommended that the City Council adopt Resolution No. 15-51 authorizing the City Manager and the City Attorney to execute certain documents required by the State Board of Equalization to collect the City's UUT on prepaid wireless service, including authorizing the City Manager to enter into an agreement with the California State Board of Equalization in order To receive UUT imposed on consumers of prepaid mobile services; and Resolution No. 15-52 Authorizing the examination of prepaid mobile telephony services surcharge and local charge records by the City.

Elaine Aguilar, City Manager, gave the staff report.

First I want to apologize because normally the City doesn't meet in August.

The city was notified approximately two weeks ago about the implementation by the State that if the city did not take action by September 1st it would then delay the city possibly receiving UUT revenue. This item pertains to collecting UUT tax on prepaid services which includes prepaid cell phones, Trac phones and any prepaid services, I would like to emphasize the City Council is not modifying the current UUT ORDINANCE that was voter approved, any action Council takes tonight would not in any way shape or form impact change or affect the UUT Ordinance it is merely implementing that Ordinance.

I will read for the benefit of the public, there's actually a section of the ordinance it is page 6 of the ordinance line 18. It talks about when this was placed on the ballot in 2008, it is even in the heading of the voter approved ordinance to modernize the UUT tax, one area that things were modernized had to do with telephone service verses telephonic services because things had changed so much our original UUT ordinance which was put in place before prepaid cell phones so part of modernizing it brought it to today's current technology. Line 18 actually says that the UUT should be collected on prepaid services; the reality is there was no mechanism for us to collect the UUT on prepaid services. So the state in an effort to help cities (for once) recently passed assembly bill 1771, I believe was the number put in place, a mechanism for cities to collect UUT on prepaid services. Tonight there is a resolution that authorizes the city manager and city attorney to submit the paperwork necessary for the city to collect on these services, there is a second resolution 15-52 that gives the city the right if we want to go in and audit to see how the state came up with the numbers and how they are sending it to us. This required a second resolution to authorize the city to do that if we decide to in the future. I also provided a copy of the actual agreement with the BOE, a copy of certification the City Attorney is signing. I want to mention briefly this city attorney certification, that is if you read it actually has a rate in there of 7% in there, our current UUT rate is 8%, what the state did since every city has a different UUT rate was create a range so if ours is at 8% we would collect the 7.5%. so it was based on a chart which we have been provided that was included in the legislation, if you notice that .5% difference there. I also provided a copy of our actual UUT Ordinance, a resolution for the city manager and city attorney to collect UUT on services.

We don't know how much money this is going to bring into our city, the state gave an estimate of \$35M state wide, we did the best we could researching, some cities were estimating 3% but those were larger cities with many retail stores that sell this type of prepaid services. I do want to mention that the law does mention the point of sale; meaning, if you are a Sierra Madre resident and you buy one of prepaid services in another city, for instance Arcadia, Arcadia would put their UUT on it but the law also specifies that if the retailer shipped to a Sierra Madre address or you buy online, Sierra Madre gets the UUT on it. If the retailer in another city has the zip code or mailing address for (warranty purpose) or customer service or they are going to ship it somewhere later, they need to report Sierra Madre as the point of sale. So if they have the address or zip code, they need to report to Sierra Madre if they are shipping since a lot of this is done online now so the UUT tax will be sent to Sierra Madre so this UUT tax is not just for the items sold in this city.

That concludes staff presentation, I would be glad to answer any questions.

Mayor asks; any questions

Council Member Harabedian: Thanks city manager for report. My only question is there is an estimation of how much revenue this could bring in, other cities estimate 3%, do you mean 3% in the total UUT?

City Manager: 3%increases on telecommunication portion of UUT.

Council Member Harabedian: So it is very small

City Manager: I am going from memory here but maybe it's a Million per year from everything, telephone related, cell phones etc. 3% of that is \$30,000 per year.

Mayor: A million a year?

City Manager: That's from the last time I looked at it, most of this is from memory. We get about 3M -3.5M total

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Mayor: No, no our total General Fund is 8M

City Manager: I'm talking UUT

Mayor: OK, and the telecom % of that is 3M

Council Member Harabedian: Well maybe a 30K.

Mayor Pro Tem: Just a question about the mechanics of this, the BOE is doing all the work right?

City Manager: Correct

Mayor Pro Tem: So we just wait and they will pay us?

City Manager: They will send a check annually, the Board does all the work, there are a number of surcharges, the city UUT plus the state us putting a sur charge on it like a statewide 911; I think part of the reason is the State implemented this is they were looking for more ways they were losing on revenue. The state wide 911, 611 and all these surcharges were not previously collected on these prepaid plans. The retailer gets to keep 2% to reimburse them for their time and effort in reporting to the BOE.

Mayor: just on the mechanics again, I'm wondering what kind of burden this is on retailers. Well I am not sure I should worry about that since it will be implemented all over the state.

Mayor: Acknowledges Council Member Delmar as she enters Council Chambers (20 Min late?)

Council Member Harabedian: I think in practicality, it's the only way to do it. But I guess you could get a prepaid card and not provide your address or zip code so at that point the state will just collect from the store or gas station or wherever it is being sold.

Mayor: Just for the record madam city clerk, please just note that Counsel Member Denise Delmar has arrived.

Council Member Delmar: Apologizes for her tardiness; she is not used to her new commute from Los Angeles to Sierra Madre.

Mayor: Asks City Manager to brief Delmar on what she has missed and now we are asking questions. Can we highlight this for Denise?

City Manager : Sure, the reader's digest version is the action the council is considering taking this evening does not in any way shape or modify our voter approved ordinance, it implements the cities ordinance because the city's ordinance approved by voters indicated we would collect UUT on prepaid plans but there previously wasn't a mechanism for that to be tracked, the state actually now has been passing legislation and came up with a mechanism to get the retailers to track this information, the money will all go to the BOE and they will be sending it annually to each city who submits the appropriate documentation.

Council Member Delmar: Have we stated why we are having this "Special "meeting tonight?

City Manager: Yes, briefly we mentioned if the city council does not take action before September 1st we would be delayed until April 1st 2016. If we take action before the 1st of September then the BOE will start accounting for this January 1st, if we delay, we lose revenue for January through March.

Council Member Delmar: But the law was put in place in April I guess that's why I'm wondering why it has taken us this long.

City Manager: We were notified two weeks ago by the BOE that the agreements and the resolutions that are in your agenda packets were provided by the BOE two weeks ago and that is what they want the cities to use when they submit.

Council Member Delmar: OK, because I do know some other cities have done it previously.

City Manager: A lot of cities who met in August did it in August, early in August.

Council Member Delmar: Some did it in July also.

City Manager: We received our email, I have the email in mid-August so they might have sent different notifications at different times, I don't know. I just know when we received our email with our drafts attached.

Mayor: What is the burden on our staff to do the audits is it even necessary to do audits on it?

City Manager: I don't foresee it as being necessary, if we suspect something is incorrect it gives us the ability to do it should we desire but we are not anticipating we will have the need.

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Mayor: What would you audit; wouldn't you be looking at another cities point of sale?

City Manager: We would be looking at the State documents and how they developed the estimated amounts they send us.

Council Member Delmar: So the information goes to the BOE and these are the documents you would audit if you felt you needed to?

City Manager: Correct

Mayor: So if we don't implement then what happens again if someone buys something in Arcadia and they put down a Sierra Madre address, does it mean Arcadia would get the revenue?

City Manager: Yes, the state would assess Arcadia's UUT.

Mayor: So it would work according to Arcadia's rate?

City Manager: Correct, it defaults to point of sale so there would be a chance for Arcadia to get our tax money.

Mayor: If we didn't implement then the informed consumers could look around for a town that does not have a UUT, and that's a way to avoid paying the tax.

City Manager: If they knew someone in a town without a UUT and used their address.

Mayor: I'm saying if we did not implement it ourselves so that 91024 zip would be meaningless.

City Manager: Right and if they went to a town without a UUT then you are right, they would not be paying a UUT on top of their purchase.

Mayor: Seems strange, that their computer systems are just going to sort this stuff out and they get the forms from retailer, sounds kind of messy.

Council Member Harabedian: I think the mechanics are similar to how they collect sales tax. It's just going to be baked into the technology they are already using for the sale and will automatically take out the % at the point of sale. Let's say you bought in Arcadia and it was 7.5%, so I assume the Arcadia retailers will keep whatever their rate, let's say it's 8%, they will hold 8% but they will only give us 7.5%. I don't know what happens with the .5% difference.

Mayor: What I'm not getting is if our UUT rate is higher than Arcadia and the customer puts 91024, how much is he being charged?

City Manager/ Council Member Harabedian: simultaneously answer 7.5%.

Mayor: Oh, so they will have a table?

City Manager: Yes, they have a table.

Mayor: Really

City Manager: Man: BOE is preparing tables quarterly to retailers I just went on the website today to get answers, also along the way cities UUT rate will change.

Council Member Harabedian: They are doing it now for the cell phone packages.

Council Member Delmar: I erroneously gave false information because I really did think the point of sale was just if they sold it in Sierra Madre. I'm happy to learn it is the other way around. My understanding when this was explained to us a couple weeks ago was that the BOE just does all this behind the scenes then the sorting/ vetting gets done and they give us the money, once a year right?

City Manager: Correct, once a year.

Council Member Harabedian: once a quarter.

City Manager: I thought it was an annual payment.

Council Member Harabedian: quarterly.

City Manager: That corrects me, my staff report says one check pre year but the City Attorney is saying quarterly and they will be able to track it and other than the staff report this evening there isn't anything in the future we need to do until the UUT rate changes which it possible will, then we have to notify them of our new rate. So there would be another staff report prepared, other than that there isn't anything else. Thank God we are not the ones at the point of sale trying to figure out what goes to each city.

Mayor: Any other Questions? No? OK, I will open this up to Public Comment.

PUBLIC COMMENT:

Barbara Leigh Cline on Sierra Madre Blvd.

Hi, The reason I came this evening is regarding the old fashioned telephone prepaid card; someone said there was a meeting this evening which surprised me since I thought August was "Dark", so I even question if you noticed the meeting, don't we have to put it in the adjudicated paper?, for public input? We are having a public meeting and as you can see there is only myself and Mr. Gold who just walked in, who is here otherwise the room is empty and we are spending a lot of money to have the meeting on something that, I will give you, since you said you were notified two weeks ago by the state and since we know how messy it can be with the state politics, so I can accept that.

I guess since it was only two weeks ago this is why you are holding a special meeting. The way this reads (holding up paper) I am glad Elaine that you explained it further, since the way this reads I thought they were going to violate privacy rights when they would go ahead and audit the telephone cards and local records, something we hear about a lot with our National Government but apparently its going to be through the BOE and they will be in charge of the record keeping, well we will see how that goes. I was going to ask that the minutes be read from the 2008 meeting since I recall that the public did speak out and say We Don't Care for That and We Don't want a Surcharge on cell phones, fax machines and computers! This was after Colantuno wrote this ordinance and the public by Vote said we don't care for that so now I am learning the public is being overridden or over written by the state and who put these surcharges on? So basically the Vote of the People is being denied. Faye Angus who is such a wonderful speaker when she simply put it, "This is something that we really don't want to have". Apparently there is nothing we can do I guess. Our hands are tied but maybe we will get a couple of pennies or 30.00 or so but if this is something our State says then I guess we will have to follow up on this and you are just doing what you are guided to do. But to me, having a meeting that really was not notified correctly does not appear to be good or reflect well on the City. Thank you.

Mayor: Anyone else? Seeing no one I'll bring it back for discussion.

Council Member Delmar: Can we just answer some of Barbara Leigh's concerns?

City Manager: My recollection is this is a voter approved ordinance and I read into the record the actual sentence in the voter approved ordinance that said the UUT would be collected on prepaid cell phones. What I recall the opposition and the ordinance said is not to tax the internet. So my recollection and I was here at the time, the intent was to tax cell phones and prepaid services and there was not any voiced disapproval; well there is always some disapproval, but it was clearly written in the ordinance the intent was to tax prepaid service.

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Council Member Delmar: I would like to share that Council Member Rachelle and I found out about this at a league meeting when one of the women who works for the state and does no profit work told us about it and we said; OH, can we do it? She said it depends on if it is written into your ordinance because in some cities it is not. So we asked her to check it out for us and the next day she e-mailed us and said yes it is in your ordinance so you can use it when the new law goes into effect.

City Manager: And regarding the" Brown Act", city council; in fact, we exceeded what's required by law, you can call a meeting with 24 hours' notice so that would have been Sunday night for Monday, we noticed this and posted on the website on Thursday so we provided more than 24 hours' notice. It's a council policy that if you would like us to pay for special meetings, to pay for special notice in the newspaper, we would be glad to do that if you think it would help in the future.

Council Member Delmar: I do know a lot of people heard about it because I got a lot of calls. I do know it was out there, trust me.

Mayor Pro Tem: It was out there, no doubt about it.

Mayor: OK, any other comments?

Mayor Pro Tem: I just concur with Council Member Delmar.

Council Member Harabedian moved for approval of the adoption of Resolution No. 15-51 "A RESOLUTION AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO EXECUTE CERTAIN DOCUMENTS PREPARED BY THE BOARD OF EQUALIZATION TO COLLECT THE CITY'S UTILITY USERS TAX ON PREPAID WIRELESS SERVICE", including authorizing the City Manager to enter into an agreement with California State Board of Equalization in order to receive UUT imposed on consumers of prepaid mobile services; and Resolution No. 15-52 "A RESOLUTION AUTHORIZING THE EXAMINATION OF PREPAID MOBILE TELEPHONY SERVICES SURCHARGE AND LOCAL CHARGE RECORDS". The motion was seconded by Mayor Pro Tem Gene Goss and passed by unanimous vote of the present City Council Members.

Comments from City Council:

Council Member Delmar: I would like to mention how smart whoever it was that wrote the resolution back in 2008.

City Manager: That was Colantuno and Levin who wrote that.

Mayor: OK, so we had a unanimous vote from the present City Council for approval of Resolutions 15-51 and 15-52. Ok I think it is time for item number 2 on the agenda.

**2). CONSIDERATION OF AWARD OF CONSTRUCTION CONTRACT TO PERRY C. THOMAS
CONSTRUCTION IN THE AMOUNT OF \$28,250 FOR EMERGENCY REPAIRS TO THE MWD
CONNECTION.**

SUMMARY

On Thursday, August 13 the City's connection to MWD developed a significant leak, located in the buried equipment vault adjacent to East Grandview. Staff quickly effected a temporary repair to stem the leak. However in doing so, staff had to disconnect the chemical feed that injects the anti-corrosion materials into the water. The permanent repairs need to be done on an emergency basis in order to restore the City's ability to treat the water. The scope of the project and the limited time frame in which it must be completed are not something that our available manpower can handle. Staff recommends that the City Council approve the expenditure of up to \$28,250 and award a contract for the emergency repairs to Perry c. Thomas to make the repairs.

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ANALYSIS

A leak developed on Thursday afternoon the 13th of August in the bottom of the 12 inch pipe that is the City's connection to MWD. While staff was able to quickly fashion a repair clamp and staunch the leak, the location of the leak was such that in order to fit the clamp to cover the hole in the pipe, the chemical feed by which the anti-corrosion zinc-orthophosphate is injected in the water had to be temporarily removed. This leaves the system without treatment for the water discoloration that has been such a problem. So the temporary clamp is covering the leak as well as the injection site opening.

In order to make permanent repair and re-install the chemical feed, the 12 inch pipe has to be replaced, it cannot simply be patched. The section of pipe that needs to be replaced is partially within a large underground vault and partially buried at a depth of ten feet outside the box. In order to remove and replace the pipe, a large portion of the piping assembly within the vault will have to be disassembled and moved out of the way. The buried end of the pipe will need to be unearthed via an excavation that will require shoring. In order to do the excavation, a portion of an existing security fence will require removal, and electrical pull box, and an electrical control cabinet will have to be relocated.

Control Cabinet: The work will be scheduled for a Wednesday, when system demand is minimal. Maximum of 8 hours to remove and replace the pipe and get it back into operation. Considering the amount of work to be done, that is a very tight time frame.

Because Perry C. Thomas Construction is the contractor which built the connection staff immediately contacted them for a quote for the repair. Their familiarity with the system will be of great assistance in completing the job quickly and getting it put back together correctly. And due to the need to get the repairs done as quickly as possible staff has not sought additional bids. Preparation of bid documents and holding a bid process could add weeks of delay to getting this repair made. Therefore staff is recommending that the City Council approve this repair to be done by Perry C. Thomas Construction. The cause of the leak in this two-year old pipe is not known at this time. The most likely causes are assumed to be a design flaw or faulty material. Once it is disassembled and removed from the system and we can look inside we may have a better indication of the cause.

Bruce Inman, Director of Public Works, gave a slide presentation.

Director Inman: Good evening Mayor and members of City Council, last Thursday our connection to the Metropolitan Water Districts Foothill Feeder developed significant leak, staff was able to get the leak temporarily repaired that afternoon without shutting down or having any loss of service. However the leak developed at a location directly opposite the spot where the injection material is injected into the water so as a result, the repair clamp that we put on the pipe to stop the leak also covered the injection site. So in order to enact or put in place the final permanent repairs that entire section of pipe needs to come out and be replaced which is going to be, unfortunately No Small Task. I took the liberty of including a couple of pictures in the body of the Staff Report and I will refer your attention to the picture in the bottom of page 1. The leak is located in the lower side of the picture with the right of the pipe which goes through the wall of that vault. In order to get that pipe out of there a significant part of that piping system is going to have to be removed. Probably from the nearest point from that blue device there which is known as a Clay Valve all the way to the wall, that's all going to have to be removed which requires a Crane and other lifting equipment, it may even have to take the lid off the vault in order to lift these things out of the way. The other part of the work which is very complex, somewhat by the photo on page 2. The pipe which needs to be removed is buried in the location shown in this particular photo

between the Utility Box, that vertical green colored box, and the electrical Pull Box, that whole area needs to be excavated to get to the pipe which is down about 10 feet, so in order to do excavation, the Pull Box, chain-link fence, and that Control Cabinet all have to be removed temporarily. So this is why the work is as costly as it is and we are going to have a window of about 8 hours to get this work at least complete to the point where we can turn the system off for the duration of the repair. The Metropolitan Connection will have to be shut down and we will not be getting any water from that source so Staff proposes to get the work done on a Wednesday which is our day of the week when we generally use the least amount of water. We will get our reservoirs as full of water as possible prior to the start of the work. As much of the work as possible will be done prior to shutting the system down. The contractor we are proposing to do the job is (as noted) the contractor who did the original construction, we have selected them to do the work since they would be faster than any other contractor who is not familiar with what's under the ground there. They would not be familiar with the wiring or what's going on inside the cabinets and Pull Box's. So we believe that Perry C. Thomas Construction can get in and out fastest and are the best chance we have to get the work completed within that 8 hour window before we start being concerned with where our water will come from. Perry Thomas's bid was for slightly under the amount we are asking for, their bid was for 24,550 and Staff added and a contingency in the amount of about 15% which would bring the expenditure to 28,250. If the contingency funding is needed, although we don't expect that but we do this on all our Capital Projects and something like this is very close to being a Capital Project because of its scope.

FINANCIAL REVIEW

A copy of the Thomas bid was attached to the Agenda. Their bid price is stated as \$24,550 and staff expects that the amount will be the final price. However, staff recommends the addition of approximately 15% to the award for contingencies. As always, unused contingency funds are returned to their source. The proposed contract amount will be covered under the Water Fund 71000.81100.56011 Wells Pumps and Distribution System line item which is currently budgeted at \$760,470.

PUBLIC NOTICE PROCESS

This item has been noticed through the regular agenda notification process. Copies of the report are available via the City's website at www.cityofsierramadre.com, at the City Hall public counter, and the Sierra Madre Public Library.

STAFF RECOMMENDATION

Staff's recommendation is that the City Council approves the expenditure of \$28,250 and awards a contract for these repairs to Perry C. Thomas Construction. I will be happy to answer any questions you may have.

ACTION ITEMS:

2) DISCUSSION

Council Member Delmar: Asks City Attorney, Are we not in violation because we did not go out for bids?

City Attorney: Nods her head yes

Council Member Delmar: Says OK we are OK with that.

Council Member Harabedian: Thanks Director Inman, 1st question; the original work was done two years ago? Correct?

Director Inman: Yes

Council Member Harabedian: And the original warranty was?

Director Inman: 1 year or 12 months; which is standard in general.

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Council Member Harabedian: This unfortunately falls outside the warranty, to our knowledge now does it look like this could have been from a pipe defect, a manufacturing issue? The reason I ask is if Perry Thomas originally didn't put it in correctly, obviously we wouldn't want to award them with a new contract. With what you know now does it look like something that was due to the pipe itself or something Perry Thomas might have done in the process of installation?

Director Inman: We are not going to know anything for sure until the pipe is removed, once removed we will be better able to see the cause and even then we may not know for sure, it's doubtful that it Perry Thomas's installment since the location of the leak doesn't seem to have anything to do with installation, could be a material defect, could be a design defect and earlier I mentioned a Clay Valve shown in the picture and one of the things we do know is that down stream of the clay valve there is often a lot of turbulence in the pipe which may account for the erosion of the concrete lining which we will know when the pipe is pulled out. We can't tell looking at the outside of the pipe what caused this. The pipe will have to come out and even then we may or may not really know the cause. It's doubtful that it's Perry Thomas who installed incorrectly because of the location of the leak, it could be a material or design flaw. One thing we do know as I have mentioned before, downstream of the clay valve there is often a lot of turbulence in a pipe which could cause erosion of the concrete lining inside the pipe and eventually cause the leak but again we will not really know until we get the thing out of the ground and even then we may not know for sure.

Council Member Harabedian: The reason this is so much of an emergency is because we are not able to reconnect our zinc-orthophosphate connection until this is fixed properly so we are in a position where we have to move expeditiously. The only other question I have is if we were to go with Perry Thomas are we confident we are getting market rate for the work? You never know I guess, if we went to bid and did the 30 day process and got 9 bids back maybe we'd save money but it doesn't sound like we should do it for this issue. It's fine with me as long as we think we are getting a fair rate.

Director Inman: We've done a lot of work with Perry Thomas in the past, they were the low bidder on the project originally, they've been low bidding on a number of projects in the past and we have always had a good experience with them. Certainly, if we went out to bid we may get a lower price so it's always possible, and it could go the other way too. One of the issues we are going to have to look at is determining whether or not we are going to go out for more bids as the time it will take to prepare the plans, the specs and bid documents and things like this to go out and make sure we're giving all the exact same information to all the bidder's. Then once we have a low bidder we don't know for sure if that low bidder is going to be that familiar with this system, to get in and out before we start running out of water. These are things we took into consideration and opted to go with a single bid.

Mayor Pro Tem: I am feeling that I can't fathom the idea that a pipe would fail that quickly, so we have a 1 year warranty but I don't understand if we have such a great relationship with them that they wouldn't stand behind their work and at least give us some kind of discount if not a full-fledged repair or replacement. I think since we are representing the tax payers we should demand or have we had that conversation with them? Have we reminded them of how much business we give them?

Director Inman: We have not had that conversation with them.

Mayor Pro Tem: If this were my home and I put something comparable in my home, I'd go to the mat to get what I thought I deserved, you may not get it but you won't know until you try. I would like to know that we at least tried and in the final analysis when something like this happens my confidence in that company is considerably less. I understand you are juggling chainsaws, I understand the nature of the timeliness of this issue. How long can we go without injecting the chemicals? Are we in a tough spot now?

Director Inman: They have been off since Thursday, neither I nor the staff has had any reports of any water discoloration increase anywhere in town. But we don't know for sure that it won't happen. If we delay and the discoloration picks up again in some areas we're going to be under the gun.

City Manager: I would like to add that it will take a longer period of time to get that coating back in place again.

Council Member Harabedian: To piggy back to Mayor Pro Tem's point, which was a great one, let's say we were to approve this tonight, is there any way to make this contingent upon when excavation occurs and the pipe is exposed and it is determined to be a construction installation defect that is the fault of Perry C. Thomas; can we have something in the contract worked out to where we would get some money back or a discount? I don't know how these contracts work but I agree, if a plumber came to my home and installed a bathtub for example and two years later something major went wrong and we later found the person or company was at fault, I think that the two parties could come to an agreement. You wouldn't pay full market value for the repair, I would think. I guess this is a question for the City Attorney but I would like us to at least try to build in some contingency. That might be more of a direction that a question. Can we do that?

City Attorney: You can try, it might be difficult to describe the exact language and I don't actually see the contract attached to the staff report, this page I am holding up does not qualify as that so I assume they will be signing our standard form agreement with the full indemnity and everything. (Attorney looking up for agreement of Dir Inman and gets it). To the extent that it is determined that the reason the pipe failed had something to do with poor installation or something that they had fault in then technically that could be considered a "Breach of Contract" for which the statute of limitation is 4 years, so I think there is bargaining power there to convince them without having to go that route right now. They probably don't know since they have not gotten into it to do the work but I would say even if it wasn't in the contract as a condition that's a conversation very worth having. Assuming our staff and Perry Thomas are both able to agree on the cause of the failure and if it is their fault they would be willing to say yes it was.

Council Member Delmar: Can I ask how much we paid Perry Thomas Construction to do the work 2 years ago?

City Manager: Well it wasn't the City it was funds through the Water District; so I'm trying to remember.

Director Inman: I believe it was in the \$498,000, somewhere in that range.

Council Member Delmar: And how are we going to know it was Perry Thomas's fault? Since I can't imagine them saying it was their fault.

City Manager: Staff will be there as soon it's dismantled.

Council Member Delmar: And we will get a report back to council?

City Manager: We will do that.

Director Inman: If we find what we think is a defective issue we may have to send it to a lab to have it looked at as we may not have the expertise to make an assessment.

Council Member Delmar: I understand we work with this company a lot and are familiar with them but sometimes that's why we need to do the bidding process and that's why that's in place. Since we don't want to get stuck with one person. I understand it's a time issue and we need to get this done and I agree with my colleagues in that we need to look into why it failed and try to get a discount from them since it seems we paid them quite a bit of money.

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Mayor: Director Inman; wasn't the initial installation and contract between Perry Thomas and the Water District?

Director Inman: It was between us and the contractor and the Water District reimbursing us.

Mayor: I see, OK, I think the challenge here is figuring out what happened. This is really disturbing; something 2 years old is failing. What is that blue device called again?

Director Inman: It is called a clay valve, a mechanical device that can be operated remotely and the way it functions rather than being the type of valve that just slams shut it's one that closes slowly and avoids water hammer in the system which would be very destructive to the system. They do work very well, however are known to create turbulence downstream from them and this might be a contributing factor to the failure.

Mayor: Who designed this?

Director Inman: Stetson Engineers

Mayor: Have you talked with Stetson about what the problem is?

Director Inman: Not Yet. But this is something we are going to want to do once we get started and out of the ground. The priority for us has been in getting it repaired.

Mayor: OK, then my thinking is since we don't know what happened, it seems it would be practical to get them involved right up front because if you are going to replace it with the same thing you potentially have the same problem. So before you repair it, doesn't' make sense to get some engineering.

City Manager: We can get them involved, it could be their fault.

Mayor: You can see my concern as to who is going to fix it, but we're going to fix it the same way it is designed today it will be a problem if the design is faulty.

Director Inman: We are going to be contacting Stetson in this process. One of the things we have to do is determine if the design is faulty but the concern was that we just got the bid in on Thursday and we wanted to get it to you right away at this meeting.

Mayor: OK, so as long as they are involved before we actually fix it, I just feel it would actually make sense.

Mayor Pro Tem: Maybe this would be another question? This can't be the only connection that's been built into this MWD water line, I'm guessing it's probably not an unusual design, so it would seem Stetson may have some data to look up and check with. But they were in on the ground floor knew how this was put in, Right?

Director Inman: Yes

Mayor Pro Tem: So were going to ask them to check design when they have already signed off on design, I don't know if that is going to help.

City Manager: I understand the struggle, it's a difficult situation, Staff's concern was keeping this working so we could continue adding the orthophosphate so we don't have a continuation of or worsening of the color of the water issue; on the other hand it is your prerogative. If you want us to not do this now and bring in an outside expert who wasn't already involved to step in, we can do that it just wasn't a gamble staff was willing to take without the Councils input.

Mayor: The risk as I understand it is by not putting the orthophosphate in we are kind of back to where we were before we started this treatment. But since we've been doing the orthophosphate for a while this has what? put a deposit on the pipes, is this all going to be washed away in a period of time?

Director Inman: No, we don't expect it to be washed away; we expect it to stay there.

Mayor: As long as we keep putting in the orthophosphate or the original plan was to treat with orthophosphate for a period of time then stop doing it?

Director Inman: We were planning to stop it all along once it the discoloration cleared up. As you know it hasn't cleared up yet so that's why we have continued.

Mayor: So that's why, are we just guessing? I'm wondering if we didn't do this for one month would our problem suddenly get worse?

City Manager: That is our concern but we really don't know, that's our best guesstimate.

Director Inman: That is our worst case.

Mayor: See but what you told me though is eventually you were going to stop the orthophosphate once we finished the program and if we stop the orthophosphate at that time, and are not expecting it to get worse then why would it get worse now? I think we would just be Status Quo.

Director Inman: We don't expect it to get worse but with all the years plus time invested into this and all the guarantees from other experts we're just not willing to gamble.

Mayor: We are gambling paying someone to fix something that's broke and we don't know why it's broke so we could be paying for it again in the next two years. That's what is really eating at me.

Council Members Harabedian and Goss: Both agree.

Council Member Harabedian: There are concerns on both sides of this, the water quality issue with the orthophosphate is a concern, then the concern that we fix this and re-cement, put fences and box back and in another year were back to the same place. So this is my struggle from the beginning.

Mayor: Unless this is a material deal and we bought a bad part.

Council Member Harabedian: Is there a way we could bring both Perry Thomas and the representative from Stetson in at the same time? Have we used Stetson Engineering on other City projects in the past

Director Inman: We have not used them on any other Capitol Projects.

Council Member Harabedian: OK, well there is a way to bring them in, because you are going to break ground on Wednesday.

Director Inman: He's not going forward with any work until this is awarded. So he hasn't ordered any pipe, equipment or anything else so it probably wouldn't be for a week from Wednesday.

Council Member Harabedian: So why can't we bring Stetson Engineering and Perry Thomas Construction both in within the next week?

Mayor: I'm OK with approving it today but just wonder if it's SO URGENT that we need to start the next week, you know? I would really like to know what Stetsons opinion is and ask what could have possible gone wrong.

Council Member Harabedian: That is a good point.

Mayor Pro Tem: Another factor and something we will be considering as early as maybe October is the idea of putting the MWD water into the spreading basins. So, some of the water quality issue may be mute in 1-2 months. So I think we have some time to play with.

Mayor: Are we still on track with that? To do that with the water and what other hurdles do we have to overcome?

City Manager: I think October might be a little soon plus it's going to take some time for that water to seep down in there, I will have to defer to Bruce Inman. I can't give an estimate.

Director Inman: This is an item we're bringing to you at the next City Council meeting September 8th. I've had contacts with the Regional Board already, they are considering right now whether they could really expedite the process for us, and we've already been in contact with the Water Master Board. We have not gotten any opposition from them although it hasn't gone to the full Board yet but the Storage Committee was fine with the proposal. We have gotten a little bit of a push back from Arcadia but we don't know whether they're really going to go anywhere with that so we probably have a minimum of a month or month and half or so before we actually get approval to start putting the water into the ground.

Mayor: Has Arcadia's push back just come recently because last I heard was that were ok with it?

Director Inman: They had initially indicated they were ok but at the Pumping and Storage Committee meeting my counterpart indicated some concern about possibly changing the ground water.

City Manager: It was approved, The City Manager agreed but the Public Works Director is making comment. I think all I have to do is call the City Manager of Arcadia and we can fix it.

Mayor: Well, I say I'm willing to approve it but I would really like to get an engineer's opinion on what could have gone wrong here. This is just not right having this thing fail after two years.

Council Member Harabedian: I assume the warranty on the project; it might only be a year?

Director Inman: That I don't know, they designed this particular system and this particular point in the system for injecting a different treatment material so that may have an impact on their overall design.

Council Member Harabedian: I'm sure they will say that.

Mayor: Then let's hear them say it. We will try to see if there are design flaws and we'll try and shoot some holes in it. So once again if they say that and are correct then once again, here we are putting the same thing back that could fail in two years. Of course if all goes well, we won't be running water through this. I mean we've got a flawed system basically. The pumping this into the aquifer may not work out. There are some unknowns her we could be reverting back to this thing again. To put this back into place with the same conditions without knowing if it's a material defect we are going to wind up with the same thing.

Council Member Delmar: I have one last question, so what happens if we have to turn off all the water so there is not pumping right. So what happens hour 6 into this and they realize OH! this is the problem (something not expected) so what's going to happen then?

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Director Inman: Yes, we would have to turn the wells on and start pulling water from that source.

Council Member Delmar: Would we have enough to deep us going?

Director Inman: Yes, we have water at the wells right now, the reason we have not turned them on is we don't want to mix the two water sources together in the same system.

Council Member Delmar: OK

Director Inman: We really want to avoid Plan B because it could be ugly.

Council Member Delmar: I know, I want to avoid Plan B but I'm just wondering what happens because we don't really have an idea of what's really happening until we get in there and discover OH, it's the part, well do we have a different part to put in there? Are there some contingency's set up for all the possible things that could go wrong? Or for the reason it went wrong in the first place or are we just going to dig it up and just say "OH WELL"?

Director Inman: The idea was to have the parts so it would fit back in there and essentially for now were not fabricating a half dozen parts to do it a half dozen ways, our plan is to make one and put it back. If we get some different direction from the engineer we can certainly do that.

Mayor: So I just think that's the thing, to get the engineer involved just to see if there is something there before we just blindly replace it, maybe there is something obvious to him and we could get really lucky if he told us. I am OK approving that with this direction to not rush it and try to figure out what the problem is before we actually replace it. So what do you guys think? (Mayor looking at fellow Council)
OH, I will now open the meeting for Public Comment:

PUBLIC COMMENT:

Barbara Leigh Cline: This is one of the best discussions I have attended in so many years, Thank you. I had many questions but you brought them forth, including the construction contract which the City Attorney Highsmith pointed out, Thank you so much; I'm wondering since the pipes been around for 100 years and recently we have been having so much trouble, if it turns out to be electrical, maybe it's part of the contract since you are going to have the crane and electric box so close to the plumbing, it's expensive but why not move the electrical box while they are working down there especially if that turns out to be the moving part that's having so much difficulty. Just my thought for the evening. Thank you.

Barry Gold 447 Ramona Ave.: Good evening Mayor and fellow Council Members, my thought is if you are going to go ahead with this, and you are going to have to do it eventually, if our Department made the temporary repairs to keep us for a period of time, knowing what they actually did may actually help us understand what some of the actual problem was. Eventually you're going to have to do this anyway and when you do I suggest that you ask for a longer guarantee then, like possibly 3 years. The life expectancy of these kinds of things is supposed to be 25-30 years, so I would ask for a longer warranty. Thank you.

Mayor: OK, can we answer that question? How did we patch it?

Director Inman: We actually patched it the same way we patch a leak in any pipe, typically were not patching 12 inch pipe so in this case we had to fabricate a repair clamp and what that looks like, you are probably all familiar with what a hose clamp looks like, something you put around a hose and tighten down. That's exactly what we did here it's like a giant hose clamp around this and it covered the hole at the bottom where it was leaking and the hole at the top at the injection site.

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Mayor: I just want to say that a lot of us with galvanized pipe are familiar with that type of clamp. OK, So Discussion? Where are you guys at?

Mayor Pro Tem: I would definitely like to have the engineer look at it before we make that final push to put it in and maybe or maybe not they will be able to get to the root of it. I also really want us to make an effort to try to get some kind of deal or discount from the contractor. I feel if they had a 400,000 plus deal here and 2 years later we're sitting on a pipe failure, I think that they should as a matter of business goodwill; they could step up and meet us half way.

Mayor: Just a question on the warranty; I can see how we are in a difficult situation here because the contractor is going to say; I'm building it to the design specs, and I don't know if he would be willing to offer a warranty like that without, you know the piping person saying OK then I'll warranty it for 3 years, are they willing to do something like that? I mean is this practical to ask for a longer warranty on something like this?

Director Inman: Typically in Public Works it is known as the "Green Book" and the "Green Book" specifies a 12 month warranty on work done and workmanship. That's what all contractors bid on is that 12 Month Warranty. If you wanted to we could change our specifications to require a longer warranty but you then get higher cost on all of your bids because the contractors are taking a risk there, likewise if we ask the contractor here to give us a longer warranty and that's not what he has bid on preparing this estimate. We could certainly ask for it and maybe that's what he gives as the "discount" you are looking for, a longer warranty. Could be a bargaining issue, I don't know.

Mayor: Well it doesn't hurt to ask but he's probably going to say that's fine but if it's a pipe problem then I'm not going to cover that.

Director Inman: Right

Mayor Pro Tem: I want to follow that up, what about the materials, someone built or made the pipe, don't they stand behind their pipe? There's got to be a warranty of the pipe itself right?

Director Inman: Yes, there could be.

Mayor Pro Tem: If it's a pipe failure, it seems like we could go to the manufacturer at some point and make a case for it.

Director Inman: It might be but again there is a lot of conjecture and we don't know how this occurred.

Mayor Pro Tem: OK, once we get it out of the ground and we are looking at it and can determine it is a pipe failure, can't we go to the pipe manufacturer?

Director Inman: We can certainly try that.

City Manager: They will warranty the pipe but not the labor.

Council Member Harabedian: I think all these folks are going to warrant what they have done individually but I think putting all this conversation together it would be very helpful to us, before we pay anyone or do anything, have them all in the same room, say here is the problem. I would love to have them look at each other; Stetson looks at Perry Thomas and they look at each other and say based on what we are seeing here... there may be some finger pointing here. But I have a feeling they will come to their own conclusions as to where the fault lies; maybe they will both say it's the pipe manufacture. But I think this only makes sense because when it's US only dealing with the Contractor, I think it's really easy to point finger at the engineer or design flaw but when you have all parties out in the open, standing over the pipe, I think it can only benefit the City. I think it's a good suggestion and having the engineer involved right away and having them take a look with their experience, I mean how many projects have they worked on. I feel it behooves them to take this seriously.

Mayor: Just one more question; now that you've brought that up, who specifies and procures the manufacturer and material? Was that Sierra Madre?

Director Inman: The Contractor procures the material, what happens is the Contractor prepares basically samples, there is like ... cut sheets they provide to us which we in turn give to the engineer to approve materials for the project. These are typically approved by the engineer so everyone is involved in the project. It's not just the Contractor going out and hiring a supplier, it's very thought out.

Mayor: So I think Perry Thomas has some incentive because if it's a material flaw, they want to know that since they are the ones who specify and bought from this company. So I think they have a natural incentive to want to understand what went wrong here and so does the Engineer. So good idea to get these two together and of course they will probably blame each other in the process.

Director Inman: We can probably get the manufacturer out there too.

Council Member Delmar: Are we going to document the process with photos?

Director Inman: Yes.

Mayor: OK, are we at a point where we can make a motion?

Council Member Harabedian: I'll move to approve with the direction given.

Council Member Delmar: I will second.

Mayor: OK, all in favor ?

Council responds with I

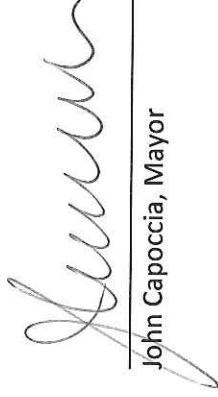
Mayor: Ok, pass unanimously zero opposed. So I think we're done I will call the meeting to a close here.

ADJOURNMENT: The City Council adjourned at 7:30 p.m.

Minutes taken and typed by:



Melissa Thew in the absence of
The City Clerk


John Capoccia, Mayor