

ORDINANCE NO. 1400

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA AMENDING CHAPTER 35 OF THE CHULA VISTA CITY CODE BY ADDING THERETO A NEW ARTICLE 2, RELATING TO PROCEDURES FOR THE ACQUISITION, DEVELOPMENT AND MAINTENANCE OF OPEN SPACE, TO BE KNOWN AS THE CHULA VISTA OPEN SPACE DISTRICT PROCEDURAL ORDINANCE OF 1972

The City Council of the City of Chula Vista does hereby ordain as follows:

SECTION I: That Chapter 35 of the Chula Vista City Code is hereby amended by adding thereto a new Article 2, to be and to read as follows:

ARTICLE 2. OPEN SPACE ACQUISITION, DEVELOPMENT AND MAINTENANCE DISTRICTS.

Sec. 35.201. Citation.

This ordinance, consisting of Article 2 of Chapter 35 of the Chula Vista City Code, may be cited as the "Chula Vista Open Space District Procedural Ordinance of 1972".

Sec. 35.202. Purpose and Intent.

The purpose of this article is to provide a means whereby the City may form open space districts within which property may be assessed to pay the costs and expenses of acquisition, development and maintenance of open spaces.

It is the intent of this article to establish and provide procedures by which open space lands may be acquired, developed and maintained either in their natural state or appropriately landscaped for scenic purposes or for passive or active park and recreational purposes.

This article is intended to provide a method for the holding and maintenance of properties which may serve localized interests but are not susceptible to administration and funding by the typical homeowners association, and which should not be imposed as a burden upon the general taxpayers of the City. The concept of such a maintenance program may be extended to natural, undeveloped areas, landscaped slope areas which do not fall within the ownership of individual lots, the shoulders of major roadways, and physical structures such as fences adjacent to common open areas that cannot be properly maintained by individual land owners and other similar types of open space areas and facilities which commonly benefit land owners within a defined district area. Such open space or open area is more specifically defined hereinafter.

The City Council of the City of Chula Vista, in establishing said purpose and intent, declares the need for such open space as a means for shaping and improving the design and growth of the urban area; the establishment of vegetation and air passages contributing to the clearing of air and providing a means

for clearing air pollution and reducing noise pollution; preservation and conservation of areas of scenic value; as well as enhancing recreational areas of meaningful proportion on the neighborhood or community level.

It is the intent and purpose of the City Council to provide by this article a means for acquiring, developing, and maintaining those open spaces which are not properly within the province of the total City for acquisition and maintenance either by means of direct purchase, or as required by park land dedication standards, or for those properties or facilities which constitute difficult problem areas for maintenance by virtue of homeownership association programs or individual ownership obligations or additional park land areas or open space preserves, which the City, as a totally governmental agency, does not find economically feasible at the particular time, but which the owners or residents of a certain area may deem to be necessary and desirable.

Sec. 35.203. Definitions.

"Open Space" or "Open Area" shall be defined as, but shall not be limited to, any space or area characterized by great natural scenic beauty or whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources. For the purposes of this article, open space or open area shall mean any land or water area primarily in its natural state which has value for park and recreational purposes and which is designated as such in the General Plan for the City of Chula Vista as amended or as contained in an officially adopted community or specific plan. It may also include so-called "common areas" as designated in a planned unit development approved in accordance with the provisions of Chapter 33 of this Code, or open areas designated in the design of a subdivision; provided, however, an area to be acquired for this latter purpose may not be acquired through the exercise of the power of eminent domain by the City of Chula Vista and the use of said power of condemnation is reserved to open spaces or open areas meeting the first two criteria set forth above.

Sec. 35.204. Procedure as Additional Alternative.

The procedure established herein for the acquisition, development and maintenance of open spaces shall be additional or alternative to any other procedure established by ordinance of the City of Chula Vista or state law; provided, however, that in proceeding pursuant to this article, only the provisions contained herein need be followed.

It is understood that open space developments undertaken pursuant to this article shall serve to augment any other open space programs including park land dedication requirements in new subdivisions or in lieu payments therein, and shall not be considered as a substitute therefor.

The maintenance aspects of this article may be contemplated for application to open spaces acquired by City through provisions of state laws and local ordinances under suitable circumstances. The adoption and implementation of this ordinance in no way constitutes an admission of deficiencies in other available programs, but seeks to provide a vehicle for the enhancement of programs which are considered to be adequate by commonly accepted standards, but inadequate for particularized areas based upon mutual understanding of the City and land owners within the proposed district.

Sec. 35.205. Nature of Improvements and Scope of Maintenance Requirements.

The means contemplated for development of open space areas shall include, but not be limited to, gymnasiums, youth centers, multi-purpose recreational buildings, swimming pools, and basketball and tennis courts.

The maintenance of open space areas acquired and developed pursuant to this article need not become the sole obligation of the district established pursuant to this article. The City of Chula Vista, may under specified circumstances and in accordance with criteria to be adopted by resolution of the City Council, participate in said maintenance as the financial capability of the City may from time to time change in regard to projects developed pursuant to the provisions of this article.

It is understood that initial terms and conditions established at the time of the origination of a park or an open space maintenance district may be modified from time to time in order to insure an equitable sharing of the burden of the maintenance of open space areas.

Sec. 35.206. Non-exclusiveness of Remedies.

The remedies provided in this article for the enforcement of any assessment levied or bond issued in accordance with the provisions of this article are not exclusive and additional remedies may be provided or exercised at any time.

Sec. 35.207. Necessary or Convenient Procedure Authorized.

Any procedure not expressly set forth in this article but deemed necessary or convenient to carry out any of its purposes is hereby authorized.

Sec. 35.208. Notice.

Whenever any notice is to be given as provided in this article, and the officer or employee of the City to give the notice is not designated, the notice shall be given by the City Clerk. Any notice shall not be invalidated because given or made by a person other than the one whose duty it is to give notice.

Sec. 35.209. Authorized Acts.

In addition to matters specified elsewhere in this article, the acts authorized under this article include the following:

1. The formation of districts pursuant to this article.
2. The acquisition of lands, properties and rights-of-way necessary or convenient for open space or park and recreation purposes.
3. The acquisition by condemnation, purchase, gift, grant, bequest, devise, lease, dedication or otherwise, of the fee or any lesser interest, development right, easement, covenant or other contractual right of any lands, property or water areas necessary or convenient for open space purposes as defined herein.
4. The improvement of any acquired lands as is necessary or convenient for said purposes.
5. The planning, maintaining, improving, protecting, limiting the future use of, or otherwise conserving open spaces and areas; clearing and removing or ordering the clearing and removal of dry grass, stubble, brush or other vegetation or rubbish, litter or other inflammable material which endanger the public safety or health and do not conform to the plans and specifications for the development and maintenance of said open spaces.
6. Planting and maintaining trees, shrubs, lawns and other vegetation.
7. Destroy and remove noxious, dangerous or unsightly weeds.
8. Making such regulations as are necessary or desirable to limit the future use of the areas in order to maintain or enhance their natural or scenic resources and to protect the public health and safety.
9. The utilization of City work forces or employment of groundsmen-gardeners or other persons skilled in the development and maintenance of open spaces for the purposes set forth herein, or entering into contractual agreements to accomplish said development and maintenance with persons or firms skilled in such activity.
10. The employment of engineers, attorneys and other persons necessary and convenient for the doing of any act authorized by this article, or for the doing of all acts necessary and convenient for the accomplishment of the purpose of this article.
11. The enumeration of specific authority in this section does not limit in any way the general authority granted by this article.

Sec. 35.210.

Formation of District.

Proceedings for the formation of an open space district may be initiated by petition signed by the owners of assessable land in the proposed district as shown on the last equalized assessment roll of the county, who own lands of an assessed value, exclusive of improvements, of not less than twenty-five percent (25%) of the total assessed value of all assessed land in the district, as shown on the last county equalized assessment roll, or said proceedings may be initiated by resolution of the City Council. The petition shall be filed with the City Clerk. Assessable land shall be deemed to be those lands which will be assessed if the district is formed and the acquisition made as proposed in the petition, or if any of the lands within the proposed district are public land of the type described in this article, such land shall be deemed assessable only if the governing body or owner of said property shall have filed its consent for the assessment on or before the date of the filing with the Clerk of the petition or any supplemental petitions. The City Clerk shall check or cause such petition to be checked. If it is signed by the requisite number of qualified signers, the Clerk shall certify to that effect and shall present the petition and certificate to the legislative body. ✓

Sec. 35.211.

Petition; Contents.

The petition which may consist of one instrument or any number of separate instruments shall contain:

1. A general description of the exterior boundaries of the proposed district or reference to an attached map showing such boundaries.

2. A general description of the open areas proposed to be acquired or accepted by the City, all of which lands must lie wholly within the boundaries of the district.

3. A general description of the improvements proposed to be made or constructed.

4. A general description of the maintenance desired.

5. A statement that an advisory board has been created to advise the City on the establishment and operation of the district, and the names of the membership thereof, or the manner in which said membership will be selected in the future.

6. A request that bonds be issued pursuant to this article and the term of, and interest rate, or maximum interest rate, to be paid on said bonds.

7. A statement that the petition is filed pursuant to this article and intended to carry out the purposes of this article.

8. A statement that the provisions of the Special Assessment, Investigation, Limitation and Majority Protest Act of 1931 are waived.

Sec. 35.212. Petition; Insufficient Signatures.

If the petition is not signed by the requisite number of qualified signers, the Clerk shall certify to the Council that said petition is insufficient. If the petition is insufficient, supplemental petitions may be filed within three (3) months from the date of the certificate of insufficiency, or such additional period as the Council may allow, not to exceed six (6) months from the date of the first certificate of insufficiency.

Sec. 35.213. Clerk Certification.

The Clerk shall certify the sufficiency of the petition and any supplemental petitions to the Council if the petition, together with supplemental petitions, if any, shall be signed by the requisite number of signers as shown on the last equalized assessment roll upon the date of said certificate. Such certification shall be conclusive as to the sufficiency of the petition.

Sec. 35.214. Legal Representative.

If any person shown on the last equalized assessment roll to be the owner of land within the proposed district shall be unable to sign by reason of legal disability or shall cease to be the owner of all or any part of such land before the petition or supplemental petition shall have been filed with the Clerk, said petition or supplemental petition may be signed by the legal representative (as hereinafter designated) or other successor in interest of said owner. All petitions signed by a person other than said owner shall be accompanied by written evidence satisfactory to the Clerk, that the signer:

1. In the case of a legal representative, is the duly appointed guardian, executor or administrator of the estate of said owner, or

2. In the case of other successors in interest, is the holder of legal title to, or has the beneficial ownership in, said land.

Sec. 35.215. Legislative Body's Preliminary Report; Contents; Reference to and Recommendation of Planning Commission.

Before the legislative body considers the adoption of a resolution of intention to form the district, the Director of Public Works and the Director of Parks and Recreation shall make and file with the City Clerk a preliminary report, which report shall be filed with the Clerk and forwarded to the Planning Commission within a reasonable period of time so as to allow the Planning Commission time to proceed within forty (40) days of the submission of the petition, and shall contain the following information:

1. An analysis of the information contained in the petition.

2. An estimate of the costs of acquisition and the improvements proposed.

3. An estimate of the annual cost and expense of maintenance of the open areas which benefit property within the proposed district.

4. A diagram or map showing:

(a) The boundaries of the district proposed to be assessed and the public streets, alleys, ways or other public places situated therein;

(b) Each parcel of land benefited by the acquisition, development and maintenance, giving each a separate number or designation upon the diagram. The said diagram, as approved by the legislative body, shall govern for all details as to the lands determined to be benefited by the acquisition, development and maintenance and to thereafter be assessed.

The preliminary report, prior to its filing with the Clerk, shall be referred to the Planning Commission for its recommendation upon the formation of such district. The recommendation of the Planning Commission shall be transmitted to the Clerk along with the preliminary report, and if said recommendation is not prepared within forty (40) days of submission of the petition, said preliminary report shall be deemed approved.

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Sec. 35.216. Preliminary Report; Filing and Consideration; Fixing Time and Place for Hearing; Adoption of Resolution; Inspection of Report.

After the filing of the report, the Clerk shall present it to the legislative body for consideration. The legislative body may approve, amend, alter, modify or correct the report or may direct changes to be made therein. When the report has been approved by the legislative body, it may fix a time and place for hearing objections to the proposed formation of the district or to the report and may adopt a resolution declaring its intention to form the district. The report shall thereafter be open to inspection in the office of the Clerk until the public hearing.

Sec. 35.217. Resolution of Intention; Contents.

If the legislative body determines that the public interest and convenience require the formation of an open space district, it may adopt a resolution declaring its intention to form a district pursuant to the provisions of this article. The resolution of intention, in addition to making the foregoing determination, shall also contain:

1. All of the contents set forth in the preliminary report.
2. A statement of the maximum tax levy necessary to finance the maintenance as estimated.
3. A statement that an assessment will be levied pursuant to this article to pay the costs of acquisition and development.

4. If bonds are to be issued, a statement that bonds to represent unpaid assessments will be issued pursuant to this article and the interest rate, or maximum interest rate of any such bonds.

5. A statement of the annual assessment limit on each one hundred dollars (\$100.00) of assessed valuation of taxable lands and improvements within the district, and that amounts so assessed shall be billed for and collected as a part of the regular tax bills.

6. The day, hour and place for the hearing by the Council of protests and objections to the formation of the proposed district or to the proposed development or maintenance of the open space, and a statement that any owner of property liable to be assessed for the acquisition, development and maintenance may make written protest against the proposed development or maintenance or against the formation of the proposed district or both, by filing a written protest with the Clerk at any time not later than the hour fixed for the hearing. The time for the hearing shall not be less than fifteen (15) or more than sixty (60) days from the date of the adoption by the Council of the resolution of intention.

Sec. 35.218. Publication.

The resolution of intention shall be published once in a newspaper of general circulation, as required by the Charter of the City of Chula Vista. The publication shall be not less than ten (10) days prior to the date fixed for the hearing of protests.

Sec. 35.219. Mailing of Notice.

Notice of the adoption of the resolution shall be mailed, postage prepaid, by the Clerk to each person to whom land in the district is assessed as shown on the last equalized County assessment roll, at his address as shown upon the roll, and to any person, whether owner in fee or having a lien upon or legal or equitable interest in, any land within the district, whose name and address and a designation of the land in which he is interested is on file in the Office of the City Clerk.

Sec. 35.220. Termination of Proceedings.

If at the hearing and after all proceedings, if any, taken at the hearing for a change of boundaries have been concluded, it appears that the owners of more than one-half (1/2) of the area of the land included within the proposed district and subject to assessment have made objection in writing to the doing of the things proposed to be done as an entirety, the Council shall so find. Thereafter, the legislative body shall not proceed further under the resolution of intention and the proceeding is terminated.

Sec. 35.221. Further Proceedings.

If the owners of more than one-half (1/2) of the area of the property included within the district and subject to assessment have not made written objections or protests to the things proposed to be done as an entirety, the Council may so find orally or otherwise and proceed with the hearing.

Sec. 35.222. Modification of Boundaries.

A. *Council Action.* At the hearing the Council may:

1. Modify the boundaries of the proposed district.
2. Add to the district land which, in its opinion, will be benefited.
3. Exclude from the district any land described in the resolution of intention which it finds will not be benefited by the doing of the things proposed to be done.

B. *Notice.* The hearing may be continued from time to time by order entered on the minutes. The Council shall not change the boundaries to include additional land in the district except after notice of intention to do so, given by the Clerk by mailing a copy of the notice to each person to whom land in the area proposed to be added is assessed as shown on the last equalized assessment roll, at his address as shown upon the roll. The notice shall describe the proposed change and specify the time for hearing objections, which shall be at least fifteen (15) days after the date of mailing of the notice.

C. *Computation.* If the boundaries are changed, objections or protests made by owners of land excluded by the change shall not be counted in computing a majority protest, but written objections or protests to the things proposed to be done as an entirety made by owners of the remaining assessable land in the district, including assessable land added by a change, and filed with the Clerk not later than the time set for hearing objections to the proposed change, shall be included in computing a majority protest.

Sec. 35.222. Land not Benefited.

Any land which, in the judgment of the Council, will not be benefited shall not be included in the district.

Sec. 35.223. Change or Modification.

At the hearing, the Council may decrease, change or otherwise modify the acquisitions of improvements proposed by the resolution of intention.

Sec. 35.224. Protests.

1. *Termination by Majority Protest.* If the proceedings are terminated by a majority protest, a proceeding under this article for the same, or substantially the same acquisition and improvement shall not be initiated within one (1) year thereafter.

2. *Withdrawal of Protest.* Any protest or objection made pursuant to this article, or any signature to such objection or protest, may be withdrawn by a written withdrawal signed by the person or persons who signed the protest or objection or who affixed the signature to be withdrawn, and filed with the Clerk at any time prior to the determination by the Council as to whether or not a majority protest exists. Any protest, objection, or signature withdrawn shall not be counted in computing a majority protest.

3. *Waiver of Protest.* Any objections or protests not made at the time and in the manner provided by this article are deemed waived voluntarily.

4. *Determination of Protest.* Except in the case of a majority protest, the Council may sustain or deny by resolution any or all objections and protests, and its determination is final.

Sec. 35.225. Estoppel.

Proceedings under this article shall not be attacked after the hearing upon any ground not stated in an objection or protest filed pursuant to this article. Any landowner or person interested in any land within the district is estopped to attack the proceedings upon any ground not stated in a protest filed by him pursuant to this article.

Sec. 35.226. Resolution Ordering Formation.

Unless the power to proceed has been terminated pursuant to this article, at the conclusion of the hearing the Council, by resolution, may find and determine that the public interest and necessity require the acquisition and improvement described in the resolution of intention or the acquisition and improvement remaining after any elimination made pursuant to this article, and may order such acquisition and improvement. If the acquisition and improvement are ordered, the Council shall fix and establish the boundaries of the district and declare that the district is formed pursuant to this article.

Sec. 35.227. Designation of District.

Each open space district formed pursuant to this article shall be numbered, and the designation of the district shall be substantially (using appropriate number) "Open Space District No. _____ of the City of Chula Vista.

Sec. 35.228. Limitation of Actions.

Any action or proceeding to attack, review, set aside, avoid or annul the resolution ordering the acquisition and improvement and declaring the district formed, or any of the proceedings, acts or determinations pursuant to this article taken, done or made prior to the adoption of such resolution shall not be maintained by any person unless such action or proceeding is commenced within sixty (60) days after the date of adoption of such resolution. Thereafter all persons are barred from any such action or proceeding or any defense of invalidity of such resolution or of such proceedings, acts or determinations.

Sec. 35.229. Effects of Defect or Error.

Any defect, error, or informality in the petition, the Clerk's certificate, the publication, or mailing of notices, or of the landowner or person interested in the land to receive the notice shall not invalidate any proceeding pursuant to this article.

Sec. 35.230. Condemnation.

1. *Direction to Bring Action.* In its resolution ordering the things proposed to be done and forming the district, the Council shall make all necessary findings and direct an action be brought in the Superior Court in the name of the City by the City Attorney for the condemnation of the property necessary to be acquired as described in the resolution.

2. *Condemnation of Fee or Lesser Estate.* The fee simple title or any lesser estates and interests as necessary of any land to be acquired for open space purposes shall be condemned, but the Council may contract for the purchase of any such land and any land acquired by purchase or by gift shall not be included in the condemnation action or, if included, shall not be condemned.

Sec. 35.231. Change of Work, Boundaries or Proceedings.

1. *Defined.* "Changes" as used in this article shall include corrections, alterations, modifications, additions, omissions, increases or decreases.

2. *Time for Change.* Unless the power to proceed shall have ceased at the conclusion of the hearing on the resolution of intention because of a majority protest, at any time before the confirmation of the assessment the Council may make changes in, to or from the boundaries of the proposed assessment district, the work proposed to be done, or any act, determination or provision made, or permitted to be made, by the Council under and pursuant to this article, which act, determination or provision does not affect the jurisdiction of the Council to order the work or improvement; provided, that after the award of the contract no such changes shall be made without the written consent of the contractor or the bidder to whom the contract shall have been awarded. The Council shall not change the boundaries to include any territory which will not, in its judgment, be benefited by the work.

3. *Changes Ordered.* At the hearing on the resolution of intention, the Council, without further notice and hearing, may order any changes as defined herein, except changes to include additional territory in the assessment district. Any changes to include additional territory and all changes after the hearing on the resolution shall be ordered only as provided in Sections 35.232 through 35.236.

Sec. 35.232. Resolution.

Before ordering any changes made, the Council shall adopt a resolution briefly describing the changes proposed to be made, stating the amount of the estimated increase or decrease in the cost of the work by reason of said proposed changes and giving notice of a time and place when and where any interested having any objection to the changes proposed to be made may appear before the Council and show cause why said changes should not be ordered; said notice shall be omitted if the hearing of objections is not required as provided hereunder. Said resolution may describe said changes by referring to maps, plats, plans, profiles, detailed drawings or specifications on file in the Office of the City Clerk or Director of Public Works, which shall indicate the changes proposed to be made and which shall govern for all details thereof. The resolution shall be published to Section 6061 of the Government Code, at least ten (10) days prior to the date of the hearing.

The hearing of objections shall not be required if the Council, when considering passage of the resolution, finds and determines by a majority vote of all members thereof, that all of the owners of lots or lands liable to be assessed, or their agents (who shall make oath that they are such agents), have signed and filed a petition waiving said hearing, with the Clerk, on or before the fifth day prior to the day that the resolution is considered for passage, declaring that they do not have any objections to the proposed changes and requesting that the hearing of objections shall not be required.

Sec. 35.233. Additional Land.

If said resolution proposes to include additional territory in the assessment district, at least fifteen (15) days prior to the hearing fixed therein, the Clerk shall mail a copy of such resolution to all persons owning real property within said additional territory whose names and addresses appear on the last equalized assessment roll or as known to the Clerk. This Section shall not apply if the hearing of objections is not required pursuant to Section 35.232.

Sec. 35.234. Objections.

Written objections to the proposed changes may be filed with the Clerk by any interested person any any time not later than the time set for the hearing. The Council shall

hear and pass upon such objections at the time appointed, or at any time to which the hearing thereof may be adjourned, and its decision thereon shall be final and conclusive. If no written objections to said changes have been delivered to the Clerk up to the hour set for hearing thereon, or if said objections have been heard and found by the Council to be insufficient or have been overruled or denied, immediately thereupon the Council, by an affirmative vote of four-fifths of its members, shall acquire jurisdiction to order said changes made. If the hearing of objections is not required, pursuant to Section 35.232, immediately upon passage of the resolution the Council shall acquire jurisdiction to order said changes made. The decisions and determinations of the Council ordering such changes shall be final and conclusive upon all persons entitled to appear thereupon to the Council.

Sec. 35.235. Limitations.

No changes shall be made pursuant to Sections 35.231 through 35.234 which will increase the estimated cost by more than twenty percent (20%) of the total estimated cost of the work as determined from:

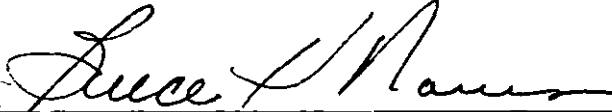
1. The Director of Public Works' estimate, if the change is ordered prior to the award of the contract; or
2. The successful bid, if the change is ordered after the award of the contract; provided, that any changes so made shall also be subject to the limitations, if any, contained in any law applicable to the proceedings, which law may impose limitations upon the amount by which the estimated cost of the work or improvement may be increased by reason of such changes.

Sec. 35.236. Sureties.


Any changes made pursuant to Sections 35.231 through 35.234 shall not release or discharge the sureties upon any bond required under this article.

SECTION II: This ordinance shall take effect and be in full force on the thirty-first day from and after its passage and approval.

Presented by


Bruce H. Warren, Director of
Planning

Approved as to form by


George D. Lindberg, City Attorney

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ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
CHULA VISTA, CALIFORNIA, this 13th day of June, 1972,
by the following vote, to-wit:

AYES: Councilmen Scott, Hobel, Hamilton, Hyde, Egdahl

NAYES: Councilmen None

ABSENT: Councilmen None

Thomas D. Hamilton Jr
Mayor of the City of Chula Vista

ATTEST Jennie M. Fulasz
City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF CHULA VISTA)

I, JENNIE M. FULASZ, City Clerk of the City of Chula Vista,
California, DO HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of _____
and that the same has not been amended or repealed.

DATED: _____

City Clerk

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