

**HESPERIA CITY COUNCIL
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
HOUSING AUTHORITY
COMMUNITY DEVELOPMENT COMMISSION
WATER DISTRICT
AGENDA**

Regular Joint Meetings
1st and 3rd Tuesday

Date: September 3, 2019
REGULAR MEETING

Time: NO CLOSED SESSION
6:30 P.M. (Regular Meeting)

CITY COUNCIL MEMBERS

Larry Bird, Mayor

William J. Holland, Mayor Pro Tem

Jeremiah Brosowske, Council Member

Cameron Gregg, Council Member

Rebekah Swanson, Council Member

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Nils Bentsen, City Manager

Eric L. Dunn, City Attorney



City of Hesperia

Council Chambers
9700 Seventh Avenue
Hesperia, CA 92345

City Clerk's Office: (760) 947-1007

**Agendas and Staff Reports are
available on the City Website**
www.cityofhesperia.us

Documents produced by the City and distributed less than 72 hours prior to the meeting, regarding items on the agendas, will be made available in the City Clerk's Office located at 9700 Seventh Avenue during normal business hours.



NOTE: In compliance with the Americans with Disability Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (760) 947-1007 or (760) 947-1056. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

**REGULAR MEETING AGENDA
HESPERIA CITY COUNCIL
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
HESPERIA HOUSING AUTHORITY
HESPERIA COMMUNITY DEVELOPMENT COMMISSION
HESPERIA WATER DISTRICT**

As a courtesy, please silence your cell phones and other electronic devices while the meeting is in session. Thank you.

Prior to action of the Council, any member of the audience will have the opportunity to address the legislative body on any item listed on the agenda, including those on the Consent Calendar.

Individuals wishing to speak during General Public Comments or on a particular numbered item must submit a speaker slip to the City Clerk with the agenda item noted. Speaker slips should be turned in prior to the public comment portion of the agenda or before an agenda item is discussed. Comments will be limited to three minutes for General Public Comments, Consent Calendar items and New Business items. Comments are limited to five minutes for Public Hearing items.

In compliance with the Brown Act, the City Council may not discuss or take action on non-agenda items or engage in question and answer sessions with the public. The City Council may ask brief questions for clarification; provide a reference to staff or other resources for factual information and direct staff to add an item to a subsequent meeting.

NO CLOSED SESSION

CALL TO ORDER - 6:30 PM

A. Invocation

B. Pledge of Allegiance to the Flag

C. Roll Call

*Mayor Larry Bird
Mayor Pro Tem William J. Holland
Council Member Jeremiah Brosowske
Council Member Cameron Gregg
Council Member Rebekah Swanson*

D. Agenda Revisions and Announcements by City Clerk

E. Closed Session Reports by City Attorney

ANNOUNCEMENTS/PRESENTATIONS

1. Community Events Calendar

JOINT CONSENT CALENDAR

1. Page 5 Consideration of the Draft Minutes of the Regular Meeting held August 20, 2019

Recommended Action:

It is recommended that the City Council approve the Draft Minutes from the Regular Meeting held August 20, 2019.

Staff Person: City Clerk Melinda Sayre

Attachments: [Draft CC Min 2019-08-20](#)

2. Page 11

Warrant Run Report (City - Successor Agency - Housing Authority - Community Development Commission - Water)

Recommended Action:

It is recommended that the Council/Board ratify the warrant run and payroll report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Water District.

Staff Person: Director of Finance Casey Brooksher

Attachments: [SR Warrant Run 9-3-2019](#)

[Attachment 1 - Warrant Runs](#)

3. Page 13

Accept Hesperia Animal Control Facility Remodel Project (CO 6526)

Recommended Action:

It is recommended that the City Council accept the Hesperia Animal Control Facility Remodel Project completed by Abboud Diamond Construction, Inc. (Construction Order No. 6526); authorize staff to record a "Notice of Completion;" and release all withheld retention after 35 days from the date of recordation.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Animal Control Remodel Project 9-3-2019](#)

[Attachment 1 - Notice of Completion](#)

4. Page 17

Landscape Maintenance and Repair Service

Recommended Action:

It is recommended that the Mayor and Council Members authorize the City Manager to execute a modification to an existing agreement 2017-18-019 to increase the contract authority by \$50,000. The total authority required to fully execute the three (3) year Professional Services Agreement with Lasting Images Landscape Inc. to provide maintenance, irrigation repair and plant replacement shall not exceed the amount of \$255,404.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Landscaping Services 9-3-2019](#)

5. Page 19

Amend Fiscal Year 2019-20 Capital Improvement Program Budget for C.O. No. 7149 FY 2018-19 Street Improvement Project

Recommended Action:

It is recommended that the City Council adopt Resolution No. 2019-048 amending the Fiscal Year (FY) 2019-20 adopted Capital Improvement Program (CIP) Budget by appropriating \$590,341 of unused project funds from FY 2018-19 to Fund 209 for FY 2019-20.

Staff Person: Assistant City Manager Michael Blay

Attachments: [SR Capital Improvement Budget CO 7149 9-3-2019](#)
[Resolution 2019-048](#)

CONSENT ORDINANCES*WAIVE READING OF ORDINANCES*

Approve the reading by title of all ordinances and declare that said titles which appear on the public agenda shall be determined to have been read by title and further reading waived.

6. Page 23 Adoption of Ordinance No. 2019-09 related to the formation of a local and housing appeals board

Recommended Action:

Place on second reading and adopt by title waiving the text of Ordinance No. 2019-09 repealing Ordinance 2018-05 and modifying Title 1 of the Hesperia Municipal Code related to the Local Appeals Board and Housing Appeals Board.

Staff Person: Assistant City Manager Michael Blay and Administrative Analyst Tina Bulgarelli

Attachments: [SR Administrative Hearings 8-20-2019](#)
[Ordinance 2019-09](#)
[Attachment 2 - Exhibit A Chapter 1.12 - Track Changes](#)
[Attachment 3 - Exhibit B Chapter 1.12 - Clean Copy](#)

NEW BUSINESS

7. Page 31 Appointment of Special Counsel to Investigate Residency

Recommended Action:

It is recommended that the City Council consider the issues and provide direction to staff and the City Attorney as deemed appropriate.

Staff Person: City Attorney Eric Dunn

Attachments: [SR Special Counsel Council Residency 9-3-2019](#)

8. Page 33 Council Member Residency, Quo Warranto, and Vacating an Office

Recommended Action:

It is recommended that the City Council consider the issues and take action or no action as deemed appropriate.

Staff Person: City Attorney Eric Dunn

Attachments: [SR Council Member Residency 9-3-2019](#)
[Attachment 1 - Attorney General Opinions](#)

GENERAL PUBLIC COMMENTS (For items and matters not listed on the agenda)

Individuals wishing to speak during General Public Comments or on a particular numbered item are requested to submit a speaker slip to the City Clerk with the agenda item noted. Speaker slips should be turned in prior to the public comment portion of the joint agenda or before an agenda item is discussed. Comments will be limited to three minutes for General Public Comments, Consent Calendar items and New Business items. Comments are limited to five minutes for Public Hearing items.

In compliance with the Brown Act, the City Council may not discuss or take action on non-agenda items or engage in question and answer sessions with the public. The City Council may ask brief questions for clarification; provide a reference to staff or other resources for factual information and direct staff to add an item to a subsequent meeting.

COUNCIL COMMITTEE REPORTS AND COMMENTS

The Council may report on their activities as appointed representatives of the City on various Boards and Committees and/or may make comments of general interest or report on their activities as a representative of the City.

CITY MANAGER/CITY ATTORNEY/STAFF REPORTS

The City Manager, City Attorney or staff may make announcements or reports concerning items of interest to the Council and the public.

ADJOURNMENT

I, Melinda Sayre, City Clerk of the City of Hesperia, California do hereby certify that I caused to be posted the foregoing agenda on Friday, August 30, 2019 at 5:30 p.m. pursuant to California Government Code §54954.2.

Melinda Sayre,
City Clerk

Documents produced by the City and distributed less than 72 hours prior to the meeting regarding items on the agenda will be made available in the City Clerk's Office during normal business hours.



City of Hesperia

Meeting Minutes - Draft

City Council

City Council Chambers
9700 Seventh Ave.
Hesperia CA, 92345

Tuesday, August 20, 2019

6:30 PM

**SPECIAL MEETING AGENDA
HESPERIA CITY COUNCIL
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
HESPERIA HOUSING AUTHORITY
HESPERIA COMMUNITY DEVELOPMENT COMMISSION
HESPERIA WATER DISTRICT
HESPERIA PUBLIC FACILITIES CORPORATION
HESPERIA PUBLIC FINANCING AUTHORITY ANNUAL MEETING
HESPERIA JOINT PUBLIC FINANCE AUTHORITY SPECIAL MEETING**

CLOSED SESSION - 5:30 PM

Roll Call

Present: 5 - Mayor Bird, Mayor Pro Tem William J. Holland,
Council Member Gregg and Council Member Swanson

Absent: 1

Conference with Legal Counsel – Existing Litigation
Government Code Section 54956.9(d)1

1. City of Barstow, et al. v. City of Adelanto, et al., Case No. 208568
2. City of Hesperia v. Lake Arrowhead Community Service District, et al., Court of Appeal Case No. E067679 (Superior Court Case No. CIVDS1602017)

CALL TO ORDER - 6:30 PM

- A. Invocation Darrell Nickolaisen of Church of Jesus Christ of Latter –day Saints
- B. Pledge of Allegiance to the Flag
- C. Roll Call

Present: 5 - Mayor Bird, Mayor Pro Tem William J. Holland, Council Member
Brosowski, Council Member Gregg and Council Member Swanson

- D. Agenda Revisions and Announcements by City Clerk - *None*
- E. Closed Session Reports by City Attorney – *No reportable action taken.*

ANNOUNCEMENTS/PRESENTATIONS

1. Public Works Employee of the Quarter to Hugo Enriquez, Maintenance Worker by Gabe Dobos, Maintenance Crew Supervisor

2. City Hall Employee of the Quarter to Jessica Nunez, Animal Care Technician by Don Riser, Animal Services Manager
3. Community Events Calendar - *Hesperia Recreation and Park District Summer Concert Series in the Park each Friday in August beginning at 6pm in the Civic Plaza Park; Meet & Clean Program 8/31 at Maple Avenue & Mesa Avenue; City offices will be closed on Monday, 9/2 for Labor Day.*

JOINT CONSENT CALENDAR

A motion was made by Brosowske, seconded by Holland, that the Consent Calendar be approved. The motion carried by the following vote:

Aye: 5 - Bird, Holland, Brosowske, Gregg and Swanson

Nay: 0

1. Consideration of the Draft Minutes from the Special Meeting held Tuesday, August 6, 2019

Recommended Action:

It is recommended that the City Council approve the Draft Minutes from the Special Meeting held Tuesday, August 6, 2019.

Sponsors: City Clerk Melinda Sayre

2. **HESPERIA PUBLIC FACILITIES CORPORATION AND HESPERIA PUBLIC FINANCING AUTHORITY ANNUAL MEETING ITEM AND HESPERIA JOINT PUBLIC FINANCE AUTHORITY SPECIAL MEETING ITEM**

Consideration of the Draft Minutes from the Corporation and Authority Annual Meetings held August 21, 2018

Recommended Action:

It is recommended that the Board of Directors approve the Draft Minutes of the Corporation and Authority Annual Meetings held August 21, 2018.

Sponsors: City Clerk Melinda Sayre

3. Warrant Run Report (City - Successor Agency - Housing Authority - Community Development Commission - Water)

Recommended Action:

It is recommended that the Council/Board ratify the warrant run and payroll report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Water District.

Sponsors: Director of Finance Casey Brooksher

4. Treasurer's Cash Report for the unaudited period ended June 30, 2019

Recommended Action:

It is recommended that the Council/Board accept the Treasurer's Cash Report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Hesperia Water District.

Sponsors: Director of Finance Casey Brooksher

5. Accept FY 2018-19 Street Improvement Project (CO 7149)

Recommended Action:

It is recommended that the City Council accept the FY 2018-19 Street Improvement Project completed by Matich Corporation (Construction Order No. 7149); authorize staff to record a "Notice of Completion," and release all withheld retention after 35 days from the date of recordation.

Sponsors: Assistant City Manager Michael Blay

6. License and Maintenance Agreement between the City of Hesperia and Hesperia Apartments, LLC

Recommended Action:

It is recommended that the City Council approve a license and maintenance agreement between the City of Hesperia and Hesperia Apartments, LLC.

Sponsors: Assistant City Manager Michael Blay

CONSENT ORDINANCES

A motion was made by Brosowske, seconded by Gregg, that this item be approved. The motion carried by the following vote:

Aye: 5 - Bird, Holland, Brosowske, Gregg and Swanson

Nay: 0

7. Amendments to Title 5 of Hesperia Municipal Code

Recommended Action:

Place on second reading and adopt by title waiving the text of Ordinance No. 2019-10 amending Title 5 of the Hesperia Municipal Code modifying the regulations for business licensing.

Sponsors: Assistant City Manager Michael Blay and Administrative Analyst Tina Bulgarelli

PUBLIC HEARING

8. Adoption of Ordinance No. 2019-09 related to the formation of a local and housing appeals board

Recommended Action:

It is recommended that the City Council introduce and place on first reading Ordinance No. 2019-09 repealing Ordinance 2018-05 and modifying Title 1 of the Hesperia Municipal Code related to the Local Appeals Board and Housing Appeals Board.

Sponsors: Assistant City Manager Michael Blay and Administrative Analyst Tina Bulgarelli

The public hearing was opened. The following individuals commented on item 8:

Cody Leis and James Blocker commented regarding the Planning Commission serving as appeal board.

There being no further comment, the public hearing was closed.

A motion was made by Holland, seconded by Brosowske, that the Planning Commission be the appeals board hearing body. The motion carried by the following vote:

Aye: 5 - Bird, Holland, Brosowske, Gregg and Swanson

Nay: 0

9. Substantial Amendment to the Community Development Block Grant (CDBG) 2018-2019 Action Plan

Recommended Action:

It is recommended that the City Council: 1) Conduct a public hearing and upon accepting public testimony, adopt Resolution No. 2019-038 including any modifications or amendments thereto 2) Approve a Substantial Amendment to the Community Development Block Grant ("CDBG") 2018-2019 Annual Action Plan ("Action Plan") by programming \$150,000 in unprogrammed dollars to the 2018-2019 Street Improvement Project ("Street Project"); and 3) Authorize the City Manager and/or Economic Development Manager to execute and transmit all necessary documents, including the Substantial Amendment to the Action Plan, and any additional amendments, to assure the City's timely expenditure of CDBG funds.

Sponsors: Economic Development Manager Rod Yahnke

The public hearing was opened. There being no public comments the public hearing was closed.

A motion was made by Brosowske, seconded by Swanson, that this item be approved. The motion carried by the following vote:

Aye: 5 - Bird, Holland, Brosowske, Gregg and Swanson

Nay: 0

NEW BUSINESS

10. Hesperia Golf Course Operations

Recommended Action:

It is requested that the City Council provide staff guidance pertaining to the operations of the Hesperia Golf Course & Country Club (Golf Course) by considering and providing direction on the following options, as the current Golf Course operations contract is set to expire during September 2019:

1. Enter into a professional service agreement (PSA) with Donovan Bros. Golf, LLC (Donovan Bros.) for the Golf Course operations and conduct a Community Facilities District (CFD) feasibility study for homes that benefit from the Golf Course;
2. Repurpose the Golf Course;
3. Provide alternative direction.

Sponsors: Director of Finance Casey Brooksher

Bob Nelson commented about keeping the golf course as a golf course. Richard Jordan commented on CFD's and golf course operations, Al Vogler commented on the future of the golf course. Steve Wierzbinski commented on golf course operations, Bill Jensen commented on golf course operations. Dan Kiewicz commented on golf course operations.

A motion was made by Swanson, seconded by Gregg, that option 1 be approved for this item. The motion carried by the following vote:

Aye: 5 - Bird, Holland, Brosowske, Gregg and Swanson

Nay: 0

11. Advance Disposal Rate Structure

Recommended Action:

It is recommended that the City Council provide direction to staff on whether to conduct a Proposition 218 Public Hearing related to new maximum rates for solid waste and recycling services in the City of Hesperia

and allow for rate adjustments pertaining to equipment purchased by City's waste hauler in response to State of California mandates.

Sponsors: Assistant to the City Manager Rachel Molina

Kelly Gregg and Cody Leis commented on item 11.

A motion was made by Gregg, seconded by Swanson, that a Proposition 218 hearing been conducted for possible changes to the Advance Disposal rate structure be approved. The motion carried by the following vote:

Aye: 5 - Bird, Holland, Brosowske, Gregg and Swanson

Nay: 0

GENERAL PUBLIC COMMENTS (For items and matters not listed on the agenda)

Thurston Smith, representing Victor Valley Bicycle Tour, commented on the City's support of the upcoming Bicycle Tour.

Bob Nelson commented on public speech at public meetings.

Daniel Krist commented on various community issues.

Al Vogler commented on the golf course and Council Member Brosowske.

Kelly Gregg commented on the Hesperia Golf Course operations.

Meeting went into Recess at 9:00 p.m. and reconvened at 9:07 p.m.

COUNCIL COMMITTEE REPORTS AND COMMENTS

Council Member Swanson commented on attendance at the Association of San Bernardino County Special Districts meeting, SBCTA meeting, Hesperian of the year award, attended the Smokey Bear 75th birthday celebration, National Night Out, and Concert in the Park event.

Council Member Brosowske commented on meeting decorum.

Council Member Gregg commented on agendizing future items for campaign contributions, solicitation of special council to investigate Council Member Brosowske, National Night Out, a ride along with the Hesperia Police Department, attendance at the Hesperia of the Year Chamber awards dinner and League of California Cities Division Meeting in Big Bear.

Mayor Pro Tem Holland requested that items be brought forward discussing how items are agendized and an item to vacate Council Member Brosowske's seat on the Council, and meeting attendance.

Mayor Bird commented on attendance at the VVTA meeting, Hesperia of the Year Chamber awards dinner, how items are agendized, future of the General Plan, and Council Member Brosowske's residency.

CITY MANAGER/CITY ATTORNEY/STAFF REPORTS

None.

ADJOURNMENT

9:35 p.m.

*Melinda Sayre,
City Clerk*

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City of Hesperia STAFF REPORT



DATE: September 3, 2019

TO: Mayor and Council Members
City Council, as Successor Agency to the Hesperia Community Redevelopment Agency
Chair and Commissioners, Hesperia Housing Authority
Chair and Commissioners, Community Development Commission
Chair and Board Members, Hesperia Water District

FROM: Nils Bentsen, City Manager

BY: Casey Brooksher, Director of Finance
Anne Duke, Deputy Finance Director
Keith Cheong, Financial Analyst

SUBJECT: Warrant Run Report (City – Successor Agency – Housing Authority – Community Development Commission – Water)

RECOMMENDED ACTION

It is recommended that the Council/Board ratify the warrant run and payroll report for the City, Successor Agency to the Hesperia Community Redevelopment Agency, Hesperia Housing Authority, Community Development Commission, and Water District.

BACKGROUND

The Warrant Run totals represented below are for the period July 27, 2019 through August 9, 2019.

<u>Agency/District</u>	<u>Accounts Payable</u>	<u>Payroll</u>	<u>Wires</u>	<u>Totals</u>
City of Hesperia	\$4,427,618.89	\$230,151.13	\$0.00	\$4,657,770.02
Successor Agency	0.00	0.00	0.00	0.00
Housing Authority	7,588.46	431.01	0.00	8,019.47
Community Development Commission	53,123.18	9,708.29	0.00	62,831.47
Water	796,239.31	98,012.95	33,776.59	928,028.85
Totals	\$5,284,569.84	\$338,303.38	\$33,776.59	\$5,656,649.81

The wire amounts are as follows:

- \$20,645.74 to Bank of America, N.A. for Hesperia Water Swap Interest Payment.
- \$13,130.85 to U.S. Bank Trust N.A. for Hesperia Water 1998A Interest Payment.

ATTACHMENT(S)

1. Warrant Runs

City of Hesperia
WARRANT RUNS
07/27/2019 - 08/09/2019

FUND #	FUND NAME	W/E 8/2/2019	W/E 8/9/2019	WARRANT TOTALS	Wires	YEAR-TO DATE TOTALS *	PRIOR FY YTD DATE TOTALS
Accounts Payable							
100	GENERAL	\$ 1,782,986.80	\$ 105,651.44	\$ 1,888,638.24	\$ -	\$ 3,860,343.61	\$ 4,702,922.37
200	HESPERIA FIRE DISTRICT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,630,301.21
204	MEASURE I - RENEWAL	\$ -	\$ 1,232.50	\$ 1,232.50	\$ -	\$ 7,562.50	\$ 207,837.50
205	GAS TAX	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
207	LOCAL TRANSPORT-SB 325	\$ -	\$ -	\$ -	\$ -	\$ 22,011.99	\$ 77,219.18
209	GAS TAX-RMRA	\$ -	\$ -	\$ -	\$ -	\$ 765,219.62	\$ -
210	HFPD (PERS)	\$ 874,510.00	\$ -	\$ 874,510.00	\$ -	\$ 874,510.00	\$ -
251	CDBG	\$ 5,621.50	\$ 320.83	\$ 5,942.33	\$ -	\$ 63,095.17	\$ 45,360.38
254	AB2766 - TRANSIT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
256	ENVIRONMENTAL PROGRAMS GRANT	\$ 6.00	\$ 76.02	\$ 82.02	\$ -	\$ 3,475.35	\$ 8,467.22
257	NEIGHBORHOOD STABILIZATION PROG	\$ -	\$ 11,433.00	\$ 11,433.00	\$ -	\$ 46,998.45	\$ 127.09
260	DISASTER PREPARED GRANT	\$ -	\$ 76.02	\$ 76.02	\$ -	\$ 1,166.04	\$ 152.04
263	STREETS MAINTENANCE	\$ 205,608.07	\$ 26,516.74	\$ 232,124.81	\$ -	\$ 504,468.91	\$ 514,283.47
300	DEV. IMPACT FEES - STREET	\$ 3,837.19	\$ -	\$ 3,837.19	\$ -	\$ 18,228.63	\$ 105,575.01
301	DEV. IMPACT FEES - STORM DRAIN	\$ -	\$ -	\$ -	\$ -	\$ 15,505.00	\$ 17,560.00
402	WATER RIGHTS ACQUISITION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
403	2013 REFUNDING LEASE REV BONDS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
501	CFD 91-3 BELGATE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
502	FIRE STATION BUILDING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,766.87
504	CITY WIDE STREETS - CIP	\$ 7,635.00	\$ -	\$ 7,635.00	\$ -	\$ 13,247.50	\$ 16,889.00
509	CITY FACILITIES CIP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
800	EMPLOYEE BENEFITS	\$ 343,588.53	\$ 192,637.59	\$ 536,226.12	\$ -	\$ 1,051,515.70	\$ 796,751.48
801	TRUST/AGENCY	\$ 8,983.71	\$ 170.00	\$ 9,153.71	\$ -	\$ 145,649.14	\$ 35,796.16
802	AD 91-1 AGENCY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
804	TRUST-INTEREST BEARING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 67.50
807	CFD 2005-1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
808	HFPD (TRANSITION)	\$ -	\$ 856,727.95	\$ 856,727.95	\$ -	\$ 856,727.95	\$ -
CITY		\$ 3,232,776.80	\$ 1,194,842.09	\$ 4,427,618.89	\$ -	\$ 8,249,725.56	\$ 9,162,076.48
160	REDEVELOP OBLIG RETIREMENT - PA1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,318.27
161	REDEVELOP OBLIG RETIREMENT - PA2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 256.73
162	REDEVELOP OBLIG RETIREMENT-HOUSING	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
163	REDEVELOP OBLIG RETIREMENT-2018	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
173	SUCCESSOR AGENCY ADMINISTRATION	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,005.00
SUCCESSOR AGENCY		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,580.00
370	HOUSING AUTHORITY	\$ 2,057.50	\$ 5,530.96	\$ 7,588.46	\$ -	\$ 20,456.26	\$ 66,920.44
HOUSING AUTHORITY		\$ 2,057.50	\$ 5,530.96	\$ 7,588.46	\$ -	\$ 20,456.26	\$ 66,920.44
170	COMMUNITY DEVELOPMENT COMMISSION	\$ 52,618.82	\$ 504.36	\$ 53,123.18	\$ -	\$ 62,875.98	\$ 112,399.24
COMMUNITY DEVELOPMENT COMMISSION		\$ 52,618.82	\$ 504.36	\$ 53,123.18	\$ -	\$ 62,875.98	\$ 112,399.24
700	WATER OPERATING	\$ 260,403.46	\$ 248,551.29	\$ 508,954.75	\$ 33,776.59	\$ 1,160,007.19	\$ 843,769.26
701	WATER CAPITAL	\$ 34,573.00	\$ 1,133.00	\$ 35,706.00	\$ -	\$ 401,352.71	\$ 123,084.28
710	SEWER OPERATING	\$ 244,492.11	\$ 5,386.95	\$ 249,879.06	\$ -	\$ 508,293.72	\$ 75,138.44
711	SEWER CAPITAL	\$ -	\$ 1,699.50	\$ 1,699.50	\$ -	\$ 20,052.50	\$ 46,626.30
WATER		\$ 539,468.57	\$ 256,770.74	\$ 796,239.31	\$ 33,776.59	\$ 2,089,706.12	\$ 1,088,618.28
ACCOUNTS PAYABLE TOTAL		\$ 3,826,921.69	\$ 1,457,648.15	\$ 5,284,569.84	\$ 33,776.59	\$ 10,422,763.92	\$ 10,436,594.44
REG. PAYROLL							
City		\$ -	\$ 230,151.13	\$ 230,151.13	\$ -	\$ 714,705.26	\$ 705,293.68
Housing Authority		\$ -	\$ 431.01	\$ 431.01	\$ -	\$ 960.49	\$ 7,755.17
Community Development Commission		\$ -	\$ 9,708.29	\$ 9,708.29	\$ -	\$ 23,132.17	\$ 11,531.50
Water		\$ -	\$ 98,012.95	\$ 98,012.95	\$ -	\$ 304,253.74	\$ 295,106.12
PAYROLL TOTAL		\$ -	\$ 338,303.38	\$ 338,303.38	\$ -	\$ 1,043,051.66	\$ 1,019,686.47

* The year to date totals for this Warrant Report are for the 2019-20 fiscal year starting July 1, 2019.

City of Hesperia STAFF REPORT



DATE: September 3, 2019

TO: Mayor and Council Members

FROM: Nils Bentsen, City Manager

BY: Michael Blay, Assistant City Manager
Jamie Carone, Administrative Analyst

SUBJECT: Accept Hesperia Animal Control Facility Remodel Project (CO 6526)

RECOMMENDED ACTION

It is recommended that the City Council accept the Hesperia Animal Control Facility Remodel Project completed by Abboud Diamond Construction, Inc. (Construction Order No. 6526); authorize staff to record a "Notice of Completion;" and release all withheld retention after 35 days from the date of recordation.

BACKGROUND

In June of 2017, the City Council approved the Fiscal Year 2017-18 Capital Improvement Program (CIP), which included programming for the Hesperia Animal Control Facility Remodel Project (Construction Order No. 6526). On July 17, 2018, the City Council awarded the Public Works contract to the lowest responsive/responsible bidder, Abboud Diamond Construction, Inc., in the amount of \$701,053 with a 10% contingency in the amount of \$70,105.30 for a total authorized contract amount of \$771,158.30.

ISSUES/ANALYSIS

Construction was completed in May of 2019. During construction, there were many unforeseen variables that created change orders. These change orders included repairing damaged walls that deteriorated due to the constant water use necessary for cleaning and sanitizing the kennels and floors daily. Furthermore, as demolition of the flooring occurred, it became evident that a stronger, more durable flooring system would be necessary to prevent future water damage to the flooring and walls. Therefore, a change order was created to upgrade the flooring to an epoxy system that would be easy to clean and maintain and would not allow water into the concrete below or the surrounding walls. Subsequent change orders were created for repairs to walls and ceilings as well as structural changes to allow for ADA accommodations without disturbing existing structural elements of the facility.

The total amount of change orders equaled \$82,729.83 which exceeded the 10% contingency of \$70,105.30 that was originally established for the contract. Therefore, on March 19, 2019, City Council authorized the City Manager to execute an increase to the contract with Abboud Diamond Construction, Inc. in the amount of \$20,000 to establish a new not-to-exceed contract amount of \$791,158.30 in order to cover the current change orders and any future change orders throughout the remainder of the project. Upon City Council's approval and acceptance of the project,

retention funds in the amount of \$39,189.18 will be released to Abboud Diamond Construction, Inc.

Staff approved the contractor's "Notice of Completion" indicating all work was complete and ready for final inspection in May 2019. Staff recommends Council accept all of the work constructed under this contract and authorize staff to record a formal "Notice of Completion" with the County of San Bernardino clerk's office and release all withheld retention funds 35 days after recordation.

FISCAL IMPACT

Costs for the project are noted below:

CO 6526 Hesperia Animal Control Remodel:	<u>Actual: \$ 783,783.50</u>
	Total: \$ 783,783.50

Total Project:

Original Budget:	\$ 771,158.30
Increased Budget:	\$ 791,158.30
Actual:	<u>\$ 783,783.50</u>
Balance:	\$ 7,374.80

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Notice of Completion



City of Hesperia

Gateway to the High Desert

CONTRACTOR'S NOTICE OF COMPLETION

RETURN TO:

Engineering Department

9700 Seventh Avenue

Hesperia, CA 92345

Attn: Jamie Carone

DATE:	5/13/19
PROJECT:	Hesperia Animal Remodel Project
C.O. No. #:	6526
OWNER:	City of Hesperia

CONTRACTOR'S NAME: Diamond Construction, Inc.

This is to certify that I, John C. Abboud am an authorized official of Abboud Diamond Construction, Inc. working in the capacity of CONTRACTOR-PRIME and have been properly authorized by said firm or corporation to sign the following statements pertaining to the subject contract:

I know of my own personal knowledge, and do hereby certify, that the work of the contract described above has been performed and materials used and installed in every particular, in accordance with, and in conformity to, the contract drawings and specifications.

The contract work is now complete in all parts and requirements, and ready for your final inspection.

I understand that neither the determination by the engineer/architect that the work is complete, nor the acceptance thereof by the Owner, shall operate as a bar to claim against the contractor under the terms of the guarantee provisions of the contract documents.

By: [Signature]

Title: FIELD INSPECTOR

Acceptance Date: _____

By: [Signature]

Title: President

Completion Date: 5/13/19

Larry Bird, Mayor
Bill Holland, Mayor Pro Tem
Rebekah Swanson, Council Member
Cameron Gregg, Council Member
Jeremiah Brosowski, Council Member

Nils Bentsen, City Manager

9700 Seventh Avenue
Hesperia, CA 92345
760-947-1000
TD 760-947-1119

www.cityofhesperia.us

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City of Hesperia STAFF REPORT



DATE: 09/03/2019
TO: Mayor and Council Members
FROM: Nils Bentsen, City Manager
BY: Michael Blay, Assistant City Manager
Scott Saude, Facility Supervisor
SUBJECT: Landscape Maintenance and Repair Services

RECOMMENDED ACTION

It is recommended that the Mayor and Council Members authorize the City Manager to execute a modification to an existing agreement 2017-18-019 to increase the contract authority by \$50,000. The total authority required to fully execute the three (3) year Professional Services Agreement with Lasting Images Landscape Inc. to provide maintenance, irrigation repair and plant replacement shall not exceed the amount of \$255,404.

BACKGROUND

On July 18 of 2017 the City of Hesperia entered into a three year agreement with Lasting Images Landscape Agreement 2017-18-019. The original agreement in the amount of \$205,404 provided for maintenance services only and did not include Irrigation repair and plant replacement over the three period. Currently there is inadequate contract authority to fully execute the third and final year of the contract. The additional \$50,000 of contract authority will provide sufficient authority to execute the third and final year of the agreement in addition to irrigation repair and plant replacement.

ISSUES/ANALYSIS

Contract authority for agreement 2017-18-019 only provided for basic landscape maintenance and did not include irrigation repair and plant replacement. The current approved fiscal year budget has allocated funding to conduct landscape maintenance as well as irrigation repairs and plant replacements at each location.

FISCAL IMPACT

Within the Fiscal Year 2019-20 budget, funding was allocated for the purpose of contracting landscape maintenance, repair and plant replacement services. Account 100-29-310-3110-7500 for maintenance services and 100-29-310-3110-8070 for irrigation repair and plant replacement. Additional contract authority is required in the amount of \$50,000.00 to fully execute the third and final year of the agreement including irrigation repair and plant replacement as required.

ALTERNATIVE(S)

1. Provide staff alternate direction.

ATTACHMENT(S)

None

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City of Hesperia STAFF REPORT



DATE: September 3, 2019

TO: Mayor and Council Members

FROM: Nils Bentsen, City Manager

BY: Michael Blay, Assistant City Manager
Jamie Carone, Administrative Analyst

SUBJECT: Amend Fiscal Year 2019-20 Capital Improvement Program Budget for C.O. No. 7149 FY 2018-19 Street Improvement Project

RECOMMENDED ACTION

It is recommended that the City Council adopt Resolution No. 2019-048 amending the Fiscal Year (FY) 2019-20 adopted Capital Improvement Program (CIP) Budget by appropriating \$590,341 of unused project funds from FY 2018-19 to Fund 209 for FY 2019-20.

BACKGROUND

In June of 2018, the City Council approved the FY 2018-19 CIP which included programming for the FY 2018-19 Annual Street Improvement Project, C.O. No. 7149. On February 19, 2019, the City Council awarded the contract to the lowest responsive/responsible bidder, Match Corporation, in the amount of \$1,359,850 with a 10% contingency in the amount of \$135,985 for a total authorized contract amount of \$1,495,835.

Immediately after City Council awarded the contract, City Staff began working with Match on a construction schedule that included an end date of June 2019. Therefore, when preparing the CIP Budget for FY 2019-20, City Staff appropriated the majority of expenditures for this project in the FY 2018-19 Budget; \$1,460,000 was anticipated to be expended from FY 2018-19, and only \$100,000 was anticipated to be expended from FY 2019-20.

As Match Corporation developed their traffic control plan during the coordination phase of this project, it became evident that the traffic control would encroach into the right-of-way of the California Department of Transportation (Caltrans). Therefore, the City and the contractor, in order to comply with Caltrans standards, needed to obtain an encroachment permit from Caltrans.

Obtaining an encroachment permit from Caltrans created a slight delay in the original project schedule pushing the start date closer to the middle of May. Additionally, City Staff made the decision to wait an additional two weeks in order to start construction after the last day of school for Hesperia Unified School District. This decision was made in order to reduce traffic delays for Hesperia residents and to accommodate school traffic. Due to the delays for the Caltrans permit and the decision to begin construction after the end of the school year, the construction that was anticipated to occur before June 30, 2019 instead occurred into FY 2019-20.

ISSUES/ANALYSIS

The FY 2018-19 CIP Budget included funds for C.O. No. 7149 in the amount of \$1,560,000 from Fund 209. The adopted FY 2019-20 CIP identified funding for this project from Fund 209, in the amount of \$100,000; however due the delay in the construction of the project, nearly half of the work, and therefore half of the expenditures, occurred in FY 2019-20.

Currently, there is \$100,000 in Fund 209 for FY 2019-20 for C.O. No. 7149, and \$690,341 is needed to complete the project; therefore, an amendment of \$590,341 to the FY 2019-20 CIP budget is necessary to accommodate forthcoming expenditures.

FISCAL IMPACT

Funding in the amount of \$100,000 in Fund 209 for the project is currently budgeted in the approved FY 2019-20 CIP Budget. Further funding for the project will require amending the FY 2019-20 CIP Budget by appropriating \$590,341 in Fund 209, to carry over funds that were originally budgeted in the FY 2018-19 Budget for a total budgeted amount in FY 2019-20 of \$690,341.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

1. Resolution No. 2019-048

RESOLUTION NO. 2019-048

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, AMENDING CONSTRUCTION ORDER (C.O.) NO. 7149 STREET IMPROVEMENT PROJECT FOR THE FISCAL YEAR 2019-20 ADOPTED CAPITAL IMPROVEMENT PROGRAM (CIP) BUDGET BY APPROPRIATING AN ADDITIONAL \$590,341 IN FUND 209, THE ROAD MAINTENANCE REHABILITATION ACT (SB-1) FUND.

WHEREAS, on June 18, 2019, the City Council of the City of Hesperia adopted the Fiscal Year (FY) 2019-20 Capital Improvement Program (CIP) Budget; and

WHEREAS, partial funding for the project is budgeted in the FY 2019-20 CIP Budget; and

WHEREAS, due to a delay in the project schedule, the budgeted amount of \$1,560,000 was not fully expended in FY 2018-19 as outlined in the FY 2019-20 CIP Budget; and

WHEREAS, the anticipated expenditures of \$690,341 will occur in the FY 2019-20 CIP Budget; and

WHEREAS, the FY 2019-20 CIP Budget includes \$100,000 for C.O. No. 7149; therefore, an additional \$590,341 allocation of funds from FY 2018-19 to FY 2019-20 is needed to complete the project.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HESPERIA AS FOLLOWS:

- Section 1. The City hereby amends C.O. No. 7149 FY 2018-19 Street Improvement Project and appropriates \$590,341 to Account No. 209-29-700-7149-7500 in the FY 2019-20 Capital Improvement Program Budget.
- Section 2. That the above is true and correct and adopted as findings.
- Section 3. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

ADOPTED AND APPROVED this 3rd day of September, 2019.

Larry Bird, Mayor

ATTEST:

Melinda Sayre, City Clerk

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City of Hesperia STAFF REPORT



DATE: August 20, 2019

TO: Mayor and Council Members

FROM: Nils Bentsen, City Manager **SECOND READING AND ADOPTION**

BY: Michael Blay, Assistant City Manager
Tina Bulgarelli, Administrative Analyst

SUBJECT: Adoption of Ordinance No. 2019-09 related to the formation of a local and housing appeals board

RECOMMENDED ACTION

It is recommended that the City Council introduce and place on first reading Ordinance No. 2019-09 repealing Ordinance 2018-05 and modifying Title 1 of the Hesperia Municipal Code related to the Local Appeals Board and Housing Appeals Board.

BACKGROUND

The California Building Code Section 1.8.8 requires the formation of a Local Appeals Board and a Housing Appeals Board to hear contest hearings related to orders, decisions, and determinations made by the City of Hesperia relative to the application and interpretation of the building code, and other regulations governing construction, use, maintenance, and change of occupancy relative to administrative citations and notices of public nuisance.

ISSUES/ANALYSIS

The Building and Safety Department and Code Enforcement are responsible for enforcing the Municipal Code, and by extension, the California Building Code. At times, the enforcement measures taken to abate violations related to sub-standard housing, illegal or unpermitted construction, or occupancy lead to the issuance of a Notice of Public Nuisance or Administrative Citation. Persons issued these notices have the right to appeal the notice and any fines or fees associated with it.

Administrative hearings afford the person the right to tell their version of events, present evidence contrary to the City showing the violation was not occurring at the time the notice was written, or provide evidence that the interpretation of the Code by the City is incorrect.

The California Building Code mandates a body of persons, known as a Local Appeals Board shall hear contest hearings that are related to notices issued for violations or questions of interpretation related to building construction, building code application, use, maintenance, or occupancy of buildings. The code also mandates that there shall be a Housing Appeals Board to hear matters related to alterations, repairs, demolition, and moving of buildings and structures.

The Local Appeals Board and the Housing Appeals Board can be the same body. In absence of a local and housing appeals board, the City Council must hear contest hearings related to these items.

Staff recommends adopting Ordinance No. 2019-09 repealing Ordinance No. 2018-05. Upon this action, the Planning Commission shall serve as the Housing Appeals Board and the Local Appeals Board.

The Planning Commission currently hears matters related to land use entitlement, including zoning, building projects and matters related to the development code. This body meets regularly at least once a month. Staff believes that assigning the Planning Commission to serve as the Local and Housing Appeals Board(s) will provide an efficient way to schedule hearings, as necessary. The Planning Commission is qualified to hear such matters as they already hear matters related to code interpretation, and land use entitlement.

FISCAL IMPACT

There is no fiscal impact associated with this item.

ALTERNATIVE(S)

1. Repeal Ordinance No. 2018-05, and do not adopt Ordinance No. 2019-09, by default appointing the City Council as the Local and Housing Appeals Board(s).
2. Take no action, leaving Ordinance No. 2018-05 intact, keeping the City Council Advisory Committee as the Local and Housing Appeals Board(s).
3. Amend Ordinance No. 2019-09, assigning the responsibility of the Local and Housing Appeals Board(s) to the Public Safety Committee.
4. Provide alternative direction to staff.

ATTACHMENT(S)

1. Ordinance No. 2019-09
2. Exhibit A – Chapter 1.12-Amended-Track Changes Copy
3. Exhibit B- Chapter 1.12-Amended-Clean Copy

ORDINANCE NO. 2019-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, REPEALING ORDINANCE 2018-05, AMENDING CHAPTER 1.04 AND 1.12 OF THE HESPERIA MUNICIPAL CODE, MODIFYING THE LOCAL APPEALS BOARD AND HOUSING APPEALS BOARD RELATED TO CONTEST HEARINGS.

WHEREAS, the City of Hesperia has the authority and responsibility to regulate building construction to protect the public health, safety, and welfare; and

WHEREAS, Title 15, Chapters 15.04 and 15.06 of the Hesperia Municipal Code were adopted for that purpose, and contain such building regulations and grading regulations for the City of Hesperia; and

WHEREAS, Title 1, Chapter 1.12 of the Hesperia Municipal Code contains language pertaining to the issuance of administrative citations, public nuisance notices, and contest hearings; and

WHEREAS, the California Government Code, Section 50022.2 authorizes cities to adopt the California Building Code (CBC) by reference; and

WHEREAS, Section 1.8.8.1 of the CBC requires a local agency to establish a process to hear and decide appeals of orders, decisions, and determinations made by enforcing agencies of the City of Hesperia relative to the application and interpretation of the California Building Code and other regulations governing construction, use, maintenance, and change of occupancy; and

WHEREAS, Section 1.8.8.1 of the CBC requires members of the appeals boards shall not be employees of the enforcing agency and shall be knowledgeable in the applicable building codes, regulations and ordinances; and

WHEREAS, upon rescinding Ordinance 2018-05, no appeals boards shall exist in the City; and

WHEREAS, the Planning Commission is a board of citizens, who have knowledge of the applicable building codes, ordinances and regulations, and are not employees of the City of Hesperia; and

WHEREAS, the Planning Commission meets on a regular basis and can serve as the Local Appeals Board and the Housing Appeals Board; and

WHEREAS, Section 1.8.8.3 of the CBC authorizes any person, firm or corporation adversely affected by a decision, order or determination by the City of Hesperia relating to the application of building standards published in the CBC, or any other applicable rule or regulation adopted by the Department of Housing and Community Development, or any lawfully enacted ordinance of the City of Hesperia, may appeal the issue for resolution to the Local Appeals Board or Housing Appeals Board, as appropriate.

WHEREAS, the City Council wishes to establish good and sufficient procedural due process for the confirmation of administrative fines, enforcement, and/or abatement costs, and for appeals by any affected party; and

WHEREAS, the Planning Commission shall be appointed to serve as the Local Appeals Board and the Housing Appeals Board; and

WHEREAS, on August 20, 2019 the City Council of the City of Hesperia conducted a duly noticed Public Hearing as required by Government Code Section 50022.3 and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW THEREFORE, THE HESPERIA CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1. All of the facts set forth in the forgoing recitals are true, correct and are adopted as findings.

Section 2. Ordinance No. 2018-05 is hereby repealed, and the Planning Commission shall serve as the Local Appeals Board and Housing Appeals Board.

Section 2. Title 1, Chapter 1.04 of the Hesperia Municipal Code is hereby amended as set forth in Exhibit "B", attached hereto.

Section 3. Title 1, Chapter 1.12 of the Hesperia Municipal Code is hereby amended as set forth in Exhibit "B", attached hereto.

Section 7. This Ordinance shall take effect on September 20, 2019.

Section 8. The City Council of the City of Hesperia hereby declares that should any provision, section, paragraph, sentence, or word of this Ordinance hereby adopted be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by any reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, and words shall remain in full force and effect.

Section 12. The City Clerk shall certify to the adoption of the Ordinance and shall cause the same to be posted in three (3) public places within the City of Hesperia pursuant to the provisions of Resolution 93-78.

ADOPTED AND APPROVED this 20th day of August, 2019

Larry Bird, Mayor

ATTEST _____
Melinda Sayre, City Clerk

ATTACHMENT 2

1.04.050 - Definitions.

A. Definitions. As used in this code:

"Administrative Board" means the Hesperia ~~Planning Commission~~~~City Council Advisory Committee~~, or other entity as designated by the City Council

"Committee" means the Hesperia City Council Advisory Committee as set forth in this code.

1.12.290 - Proceedings imposing fines only.

- A. Where the code violation or public nuisance is not of a continuing nature or does not lend itself to abatement by the city, then the city, in its discretion, may pursue the procedure provided in this section to impose, enforce and collect the fine and enforcement costs.
- B. The responsible person cited shall have thirty (30) days from the date of the administrative citation to pay the amount of the fine and enforcement costs to the city.
- C. The responsible person cited may contest issuance of the citation or issuance of a Notice of Public Nuisance by filing a notice of contest or appeal with the city clerk in accordance with the city's policy within fifteen (15) days from the date of the administrative citation or notice of public nuisance, together with the filing fee as adopted by resolution of the City Council. Contest hearings shall be conducted by the Administrative Board or hearing officer pursuant to section D below. The contest hearing shall be held not less than fifteen (15) days and not more than sixty (60) days from the date the notice of contest is filed, unless extended by agreement with the contesting party; provided, however, that no hearing to contest an administrative citation or notice of public nuisance shall be held unless the filing fee has been deposited in advance.
- D. Where the code violation or public nuisance is related to the application of building standards as set forth in California Building Code Section 1.8.8 as may be amended from time to time, the contest hearing shall be forwarded to the Administrative Board for consideration. A hearing officer shall hear all other contest hearings.
- E. The city shall provide the responsible person with written notice of the time and place of the contest hearing at least ten (10) days prior to the date of the hearing. If the enforcement officer submits an additional written report to the Administrative Board or hearing officer for consideration at the hearing, a copy of the report shall be served on the responsible person with the notice of hearing.
- F. The responsible person's failure to appear at the contest hearing shall constitute a forfeiture of any deposited amounts and be deemed a failure to exhaust the responsible person's administrative remedies. In such event, the full amount of the enforcement costs and fine shall be due immediately and the administrative citation shall be deemed a final administrative order for the purpose of California Government Code Section 53069.4. The final administrative order shall be served on the responsible person by mailing a copy of the order by certified mail postage prepaid to the responsible person at his last known address.
- G. The Administrative Board or hearing officer shall hear, receive and consider testimony and documentary evidence regarding the alleged code violation or public nuisance. The administrative citation or notice of public nuisance and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. The contesting responsible person shall be given the opportunity to testify at the hearing and to present documentary evidence concerning the administrative citation or notice of public nuisance, and to cross-examine the citing enforcement officer. The contesting responsible person may be subject to additional questioning by the Administrative Board or hearing officer, and any city legal representative. The hearing shall not be subject to the formal rules of evidence or discovery. The

Administrative Board or hearing officer may continue the hearing and request additional information from the enforcement officer or the responsible party prior to issuing a final administrative decision.

- H. After considering all of the testimony and evidence submitted at the contest hearing, the Administrative Board or hearing officer shall issue a written decision, based upon a preponderance of the evidence standard, whether to uphold, modify, or cancel the administrative citation or notice of public nuisance as provided in Subsection I. The amount of any fee and the amount of the enforcement costs and shall be listed in the decision along with the reason for the decision(s) made. The written decision shall be deemed a final administrative order for the purpose of California Government Code Section 53069.4. The final administrative order shall be served on the responsible person by mailing a copy of the order by certified mail, postage prepaid, to the responsible person at his last known address.
- I. If the Administrative Board or hearing officer determines after the hearing that there was no code violation or public nuisance in existence at the time the notice was issued, or that the interpretation of the applicable building standard has been determined incorrectly, as charged in the administrative citation or notice of public nuisance or that the amount of the fine or enforcement cost should be reduced, then the city shall amend the citation or notice to conform with the order to the Administrative Board or hearing officer decision.
- J. The city may collect any past due administrative citation fines, enforcement costs, and late payment charges by use of all available legal means, including the use of the lien procedures provided for under Article VIII of this chapter.

(Ord. 2001-6 Exh. A (part), 2001)

1.12.320 - Hesperia City Council Advisory Committee

A. The City Council Advisory Committee (hereinafter, "Committee") shall have no power or authority to bind or obligate the city or any officer or department thereof for any money, debt, undertaking or obligation of any kind in excess of the appropriations, which the city council may have made for the purpose of the committee in any fiscal year.

~~D. The committee is authorized to act as the local appeals board and housing appeals board under this chapter, and as required by California Building Code section 1.8.8, et seq., and to hold such hearings and to issue such orders as are appropriate under this chapter. All actions of the committee taken under this chapter shall be by the majority vote of a quorum of the committee members.~~

(Ord. 2001-6 Exh. A (part), 2001)

ATTACHMENT 3

1.04.050 - Definitions.

A. Definitions. As used in this code:

"Administrative Board" means the Hesperia Planning Commission, or other entity as designated by the City Council

"Committee" means the Hesperia City Council Advisory Committee as set forth in this code.

1.12.290 - Proceedings imposing fines only.

- A. Where the code violation or public nuisance is not of a continuing nature or does not lend itself to abatement by the city, then the city, in its discretion, may pursue the procedure provided in this section to impose, enforce and collect the fine and enforcement costs.
- B. The responsible person cited shall have thirty (30) days from the date of the administrative citation to pay the amount of the fine and enforcement costs to the city.
- C. The responsible person cited may contest issuance of the citation or issuance of a Notice of Public Nuisance by filing a notice of contest or appeal with the city clerk in accordance with the city's policy within fifteen (15) days from the date of the administrative citation or notice of public nuisance, together with the filing fee as adopted by resolution of the City Council. Contest hearings shall be conducted by the Administrative Board or hearing officer pursuant to section D below. The contest hearing shall be held not less than fifteen (15) days and not more than sixty (60) days from the date the notice of contest is filed, unless extended by agreement with the contesting party; provided, however, that no hearing to contest an administrative citation or notice of public nuisance shall be held unless the filing fee has been deposited in advance.
- D. Where the code violation or public nuisance is related to the application of building standards as set forth in California Building Code Section 1.8.8 as may be amended from time to time, the contest hearing shall be forwarded to the Administrative Board for consideration. A hearing officer shall hear all other contest hearings.
- E. The city shall provide the responsible person with written notice of the time and place of the contest hearing at least ten (10) days prior to the date of the hearing. If the enforcement officer submits an additional written report to the Administrative Board or hearing officer for consideration at the hearing, a copy of the report shall be served on the responsible person with the notice of hearing.
- F. The responsible person's failure to appear at the contest hearing shall constitute a forfeiture of any deposited amounts and be deemed a failure to exhaust the responsible person's administrative remedies. In such event, the full amount of the enforcement costs and fine shall be due immediately and the administrative citation shall be deemed a final administrative order for the purpose of California Government Code Section 53069.4. The final administrative order shall be served on the responsible person by mailing a copy of the order by certified mail postage prepaid to the responsible person at his last known address.
- G. The Administrative Board or hearing officer shall hear, receive and consider testimony and documentary evidence regarding the alleged code violation or public nuisance. The administrative citation or notice of public nuisance and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. The contesting responsible person shall be given the opportunity to testify at the hearing and to present documentary evidence concerning the administrative citation or notice of public nuisance, and to cross-examine the citing enforcement officer. The contesting responsible person may be subject to additional questioning by the Administrative Board or hearing officer, and any city legal representative. The hearing shall not be subject to the formal rules of evidence or discovery. The

ATTACHMENT 3

Administrative Board or hearing officer may continue the hearing and request additional information from the enforcement officer or the responsible party prior to issuing a final administrative decision.

- H. After considering all of the testimony and evidence submitted at the contest hearing, the Administrative Board or hearing officer shall issue a written decision, based upon a preponderance of the evidence standard, whether to uphold, modify, or cancel the administrative citation or notice of public nuisance as provided in Subsection I. The amount of any fee and the amount of the enforcement costs and shall be listed in the decision along with the reason for the decision(s) made. The written decision shall be deemed a final administrative order for the purpose of California Government Code Section 53069.4. The final administrative order shall be served on the responsible person by mailing a copy of the order by certified mail, postage prepaid, to the responsible person at his last known address.
- I. If the Administrative Board or hearing officer determines after the hearing that there was no code violation or public nuisance in existence at the time the notice was issued, or that the interpretation of the applicable building standard has been determined incorrectly, as charged in the administrative citation or notice of public nuisance or that the amount of the fine or enforcement cost should be reduced, then the city shall amend the citation or notice to conform with the order to the Administrative Board or hearing officer decision.
- J. The city may collect any past due administrative citation fines, enforcement costs, and late payment charges by use of all available legal means, including the use of the lien procedures provided for under Article VIII of this chapter.

(Ord. 2001-6 Exh. A (part), 2001)

1.12.320 - Hesperia City Council Advisory Committee

- A. The City Council Advisory Committee (hereinafter, "Committee") shall have no power or authority to bind or obligate the city or any officer or department thereof for any money, debt, undertaking or obligation of any kind in excess of the appropriations, which the city council may have made for the purpose of the committee in any fiscal year.

(Ord. 2001-6 Exh. A (part), 2001)

City of Hesperia STAFF REPORT



DATE: September 3, 2019
TO: Mayor and City Council Members
FROM: Eric Dunn, City Attorney
SUBJECT: Appointment of Special Counsel to Investigate Residency

RECOMMENDED ACTION

It is recommended that the City Council consider the issues and provide direction to staff and the City Attorney as deemed appropriate.

BACKGROUND

At the August 20, 2019 City Council meeting, Council Member Gregg requested an agenda item to consider the appointment of special counsel to investigate potential election violations by Council Member Brosowske.

ISSUES AND ANALYSIS

If the City Council so directs, the City Attorney and staff would search for a qualified attorney, law firm, or investigator and present a possible contract for the Council's consideration at a future meeting.

FISCAL IMPACT

Unknown at this time.

ATTACHMENTS

1. None

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DATE: September 3, 2019
TO: Mayor and City Council Members
FROM: Eric Dunn, City Attorney
SUBJECT: Council Member Residency, Quo Warranto, and Vacating an Office

RECOMMENDED ACTION

It is recommended that the City Council consider the issues and take action or no action as deemed appropriate.

BACKGROUND

At the August 20, 2019 City Council meeting, Mayor Pro Tem Holland requested an agenda item to discuss and possibly vote on vacating the Council seat of Council Member Brosowske based on allegations that Council Member Brosowske does not live in the City. This memorandum discusses the law on residency/domicile and a few Attorney General ("AG") Opinions and court cases that have dealt with the issue. Two recent AG Opinions that reached opposite conclusions are attached to illustrate the AG's interpretation of "domicile" and whether the allegations raised a substantial question of law or fact as to whether a council member actually resided in his city.

ISSUES / ANALYSIS

I. Discussion of Law.

A. Statutory Law.

The relevant sections of the Government Code on residency and vacancy are Sections 36502(a), 34882, 1770 (d) & (e), 243, and 244 (a), (b), (c) & (f), printed below:

Section 36502(a).

(a) A person is not eligible to hold office as councilmember, city clerk, or city treasurer unless he or she is at the time of assuming the office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

If, during his or her term of office, he or she moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office shall immediately become vacant.

Section 34882 (for elections by District).

A person is not eligible to hold office as a member of a municipal legislative body unless he or she is otherwise qualified, resides in the district and both resided in

the geographical area making up the district from which he or she is elected and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code.

Section 1770.

An office becomes vacant on the happening of any of the following events before the expiration of the term:

(d) His or her removal from office.

(e) His or her ceasing to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged.

Section 243.

Every person has, in law, a residence.

Section 244.

In determining the place of residence the following rules shall be observed:

(a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.

(b) There can only be one residence.

(c) A residence cannot be lost until another is gained.

(d) The residence can be changed only by the union of act and intent [emphasis added].

B. Quo Warranto Proceedings.

There have been a number of instances where a private party has challenged an elected official's right to hold office for various reasons, including residency. Under California Code of Civil Procedure ("CCP") Sections 803 through 810, the private party must seek permission from the AG to sue the officeholder in the local Superior Court for a determination of residency, or "domicile." This is called a "quo warranto" action. The AG reviews the allegations and grants or denies permission to sue. If the AG grants permission to sue, the Court makes the ruling on residency and the right to hold the office.

Section 811 of the CCP authorizes a local legislative body to sue in quo warranto without first obtaining the AG's consent.

In at least four instances since 1990 the legislative body did not seek permission from the AG or pursue its own action to sue in Superior Court under the quo warranto process, but instead took action to vacate the seat and appoint a replacement on the theory that the officeholder's seat automatically became vacant under the statutes listed above. In three of those cases the former official then pursued his or her own quo warranto action to challenge the

appointee's right to hold the office, and the AG gave permission to sue because the former official had raised substantial issues of fact or law that should be determined by the Court. In the other case the former official sued the City directly, but the Court held that the former official's sole remedy was the quo warranto process. These AG Opinions and case are:

1. 73 Ops.Cal.Atty.Gen. 197 (1990) [a school personnel commissioner].
2. 79 Ops.Cal.Atty.Gen 21 (1996) [an elected mayor].
3. 82 Ops.Cal.Atty.Gen 78 (1999) [a water district board member].
4. *Nicolopoulos v. City of Lawndale et al.* (2001) 91 Cal.App. 4th 1221 [an elected city clerk].

The following explanation is taken directly from the Attorney General's website on quo warranto proceedings, with a few redactions to focus on residency and make it shorter:

Quo warranto is a special form of legal action used to resolve a dispute over whether a specific person has the legal right to hold the public office that he or she occupies.

Quo warranto is used to test a person's legal right to hold an office, not to evaluate the person's performance in the office. For example, a quo warranto action may be brought to determine whether a public official satisfies a requirement that he or she resides in the district; or whether a public official is serving in two incompatible offices.

The term "quo warranto" (pronounced both *kwoh wuh-**rahn**-toh*, and *kwoh **wahr**-un-toh*) is Latin for "by what authority"—as in, "by what authority does this person hold this office?" The term "quo warranto" is still used today, even though the phrase no longer appears in the statutes.

Quo warranto originated in English common law as a process initiated by the crown to find out whether a person was legitimately exercising a privilege or office granted by the crown, or whether the person was instead intruding into a royal prerogative.

Early California law abolished the writ and substituted a statutory action, identical in purpose and effect to the common-law writ. Current California law provides that the action may be brought either by the Attorney General or by a private party acting with the consent and under the direction of the Attorney General.

How Does a Quo Warranto Action Get Filed?

A quo warranto action may not be filed without the approval of the Attorney General (except in those cases where a public agency is authorized to file for itself).

The remedy of quo warranto is vested in the People, and not in any private individual or group, because the question of who has the right to hold a public office is a matter of public concern, not a private dispute. The requirement of obtaining approval also serves the important purpose of protecting public officers from frivolous challenges.

In order to obtain the Attorney General's approval, a private person or a local agency must file an application pursuant to the rules and regulations issued by the Attorney General. The application and supporting documents must be prepared by a licensed attorney.

The party who files the application with the Attorney General is called the "relator." The responding party is called the "proposed defendant" or "the defendant."

An application must include a verified complaint; a verified statement of facts; a memorandum of points and authorities; and a notice to the proposed defendant giving him or her at least 15 days to show cause to the Attorney General why the application should not be granted. The application must be properly served on the proposed defendant, and filed within five days of service with the Attorney General.

The proposed defendant is given 15 to 20 days to respond, depending upon where service is made. The relator may then file a reply within 10 days. The Attorney General may prescribe a shorter period of time in special cases or upon a showing of good cause.

After all of the papers are filed, the Attorney General's Office evaluates the facts and the law in order to determine whether to grant leave to sue. Because this approval process is an administrative function, not a judicial one, there is no opportunity for formal discovery proceedings between the parties at this stage. From time to time, the Attorney General may ask one party or another for additional information in order to make a full evaluation of the application and responses.

After sufficient time to evaluate the matter, the Attorney General will render a decision either to grant leave to sue, or not to grant leave to sue. The decision whether or not to grant leave to sue involves an exercise of discretion, and will rarely if ever be disturbed by a court.

How Does a Quo Warranto Action Work?

If leave to sue is granted, then the relator may file a quo warranto action in the appropriate superior court. From that point on, the matter is a judicial proceeding, subject to the procedures and rules of the court. However, the relator must proceed under the direction and supervision of the Attorney General throughout the action.

Before filing a complaint in the superior court, the relator must make any changes or amendments that the Attorney General directs. At any stage of the proceeding, the Attorney General may withdraw, discontinue or dismiss the case, or any part of it. Additionally, the Attorney General may assume management of the litigation at any stage.

In the quo warranto action, the superior court will decide whether the defendant is lawfully entitled to the office in question. If the defendant is not entitled to hold the office, the court may decide who does have that right. If the court decides that the defendant unlawfully usurped the office, the court will exclude the defendant from the office and assess costs. The court may also, at its discretion, impose a fine on the defendant of up to \$5,000.

If the rightful holder of the office has suffered damages, those may be recovered in a separate action.

II. Residency (or "Domicile").

A number of AG Opinions have discussed the meaning of residency in quo warranto actions. Two recent AG Opinions from 2018 and 2019 involved situations where a private party sought permission from the AG to sue a city councilmember on the grounds that the councilmember did not live in the city. The AG denied permission to sue in one case and granted permission to sue in the other case. These AG Opinions are described briefly below and are attached for reference. Together these AG Opinions highlight the AG's focus on the "union of act and intent" as being the critical factor in establishing residency.

A. Costa Mesa AG Opinion.

On July 20, 2018 the AG issued Opinion 18-302 (101 Cal.Ops.Atty.Gen. 42). In this instance, Allan Mansoor (“Mansoor”) was a Costa Mesa city councilmember. Art Perry (“Perry”) sought permission from the AG to challenge Mansoor’s right to hold office. Perry alleged, and Mansoor admitted, that Mansoor had lived in Newport Beach for a few months while serving on the Costa Mesa city council.

The AG denied permission to sue in this case because Mansoor had presented evidence of his intent to remain in Costa Mesa, notwithstanding that he had moved out of Costa Mesa for a few months. Perry had not presented evidence creating a substantial question of law or fact overcoming Mansoor’s evidence of intent to remain in Costa Mesa. The AG cited to the Government Code Sections noted above, then turned to a discussion of the meaning of residency, or “domicile” [footnotes and citations omitted]:

“The residence of a public official in this context is his or her legal residence, also referred to as “domicile.” [...] The determination of domicile is a mixed question of fact and law that may involve various factors, including acts and declarations by the official, as well as the official’s mailing address, voter registration, car registration, and tax returns. But the critical element is intent. As we have recently observed, “Because a determination of domicile is based not only on physical conduct, but also intent, the requirement that a substantial showing be made before we authorize judicial resolution is particularly pertinent.”[...]“The burden of proving a change of domicile is on the party asserting it, here proposed relator Perry.”

Perry alleged Mansoor had moved to a house in Newport Beach owned by Mansoor’s in-laws for a few months in 2017. Perry presented declarations of neighbors and other individuals who observed Mansoor’s and his wife’s cars parked frequently at the Newport Beach house, and observed Mansoor behaving as though he lived in the Newport Beach house, by, for instance, entering the home without knocking, and giving fruit from one of its trees to a neighbor.

Mansoor did not deny that he lived in the Newport Beach house for a few months, but provided a sworn declaration explaining his intention to live in Costa Mesa. According to the declaration, Mansoor’s lease on their Costa Mesa apartment was about to expire and they wanted to move to a larger apartment for their three children. They had trouble finding a suitable apartment in Costa Mesa. They worked with a realtor, visited many apartments, and submitted applications, to no avail. Their lease expired in June 2017 and they moved to the Newport Beach house. However, within a couple of months they found a new apartment in Costa Mesa and were able to move in on October 17, 2017, which means Mansoor lived in Newport Beach for about three or four months while serving on the Costa Mesa city council.

The AG examined the record and concluded there was no “union of act and intent” to change Mansoor’s domicile: “[T]he acquisition of a new domicile is generally understood to require an actual change of residence accompanied by the intention to remain either permanently or for an indefinite time in the new locality” [emphasis added]. The AG concluded Perry had not presented evidence that Mansoor intended to remain in Newport Beach either permanently or indefinitely. The AG stated: “Mansoor must have a domicile, he cannot lose his [old Costa Mesa] domicile until another is acquired, and there is no evidence he intended to

remain in Newport Beach any longer than it took to acquire a new Costa Mesa domicile.” The AG concluded that Perry did not raise “a substantial question of law or fact” as to Mansoor’s domicile, and thus denied Perry permission to sue in quo warranto.

B. Ridgecrest AG Opinion.

On June 13, 2019 the AG issued Opinion 18-1103 (102 Cal.Ops.Atty.Gen. 56). In this instance, Wallace Martin (“Martin”) was a Ridgecrest city councilmember elected in 2016. Scott Leahy (“Leahy”) was another candidate in the 2016 election and sought permission from the AG to challenge Martin’s right to hold office on the ground that Martin did not legally reside in the city at the time his nomination papers were issued, at the time of his election, and during his term of office. Leahy alleged that Martin had leased some property from a friend and later purchased a duplex for the purpose of establishing residence in the city, but Martin actually continued to live in a house owned by him and his wife in the unincorporated area outside of the city.

The AG granted permission to sue in this case because the evidence submitted raised a substantial question as to whether Martin had legally changed his domicile to Ridgecrest. The AG noted that for nearly 15 years prior to June 2016, it was uncontested that Martin’s domicile was his house in unincorporated Kern County outside the City of Ridgecrest. The allegations were that Martin leased some property in the city on a temporary basis beginning July 1, 2016 to be eligible for city council, and used that address to register to vote and for his nominating papers. Martin subsequently purchased a duplex in Ridgecrest in October 2016, won election in November 2016, and moved into the Ridgecrest duplex in April 2017. Leahy alleged that Martin never actually lived in either the rental property or the Ridgecrest duplex.

The AG reviewed the timeline of events and evidence submitted by the parties and said: “we have no cause to doubt that [Martin] intended that his rental property [...] would function as his domicile for purposes of his nomination to city council, effective July 2016, but there remains a question whether it actually became his new domicile—that is, a place of physical presence joined with the intent to make it his permanent home” [emphasis added]. Martin had “not declared that he spent any time there, let alone lived there, nor that he took any concrete steps to make it his home.” The AG concluded there was a substantial question as to whether Martin had changed his long time domicile to Ridgecrest at the time of his nomination.

The AG also noted that Martin’s purchase of the Ridgecrest duplex after the nomination but prior to the election showed that Martin intended his domicile be legally considered as Ridgecrest for the purpose of the election. However, Martin had stated he did not move into the Ridgecrest duplex until April 2017. The AG concluded there was no “corroborating evidence of his physical inhabitation, or even his physical presence, at his temporary rental [...] between the nomination and election.” Therefore, the AG concluded there was a substantial question as to whether Martin had changed his domicile to Ridgecrest before the election.

Finally, the AG concluded there was a substantial question whether Martin’s domicile had been in Ridgecrest at all times while serving as a councilmember. There was no evidence that in the period from the election in November 2016 to his moving into the Ridgecrest duplex in April 2017 that Martin “had a fixed habitation in Ridgecrest beyond his statements that he entered into a rental agreement with a friend in order to become eligible for city council.”

The AG thus granted Leahy permission to sue on all three timelines: the time of nomination, the time of the election, and the time while serving as a councilmember. Note the AG granting permission to sue does not resolve the issues, it just allows Leahy to file a lawsuit in the local Superior Court.

C. Union of Act and Intent.

As noted in Government Code Section 1770(f), “a residence can be changed only by a union of act and intent.” Contrasting the Costa Mesa and Ridgecrest AG Opinions, in those cases the AG acknowledged Mansoor’s intent to remain in Costa Mesa and Martin’s intent to move to Ridgecrest. The difference was in the evidence of actions taken to carry out that intent. Mansoor presented enough evidence that he only temporarily moved to Newport Beach; Martin did not present enough evidence that he physically moved to Ridgecrest.

D. Factors Considered in Determining Domicile.

AG Opinions considering what constitutes residency/domicile over the years have considered a number of factors that were asserted by either the challenger or the defendant to corroborate the union of act and intent, including but not limited to:

1. Intent.
2. Acts and declarations by the official.
3. The official’s mailing address.
4. Voter registration address.
5. Vehicle registration address.
6. Tax returns.
7. Buying a house in another jurisdiction.
8. Declarations, photographs, maps, voting records, telephone book pages, and other documents presented by others.
9. Where a car is frequently parked.
10. Statements of where an official said he “lives.”
11. Filing for a homeowner’s or renter’s tax exemption.
12. Address on the official’s driver’s license.
13. Address on a concealed weapons permit.
14. Utility bills.
15. Ownership of a business.
16. Grant deeds and trust deeds securing loans on property.
17. Reports of witness interviews concerning the official’s presence or absence from his claimed residence.
18. Acceptance of service of process at one location or another.

III. Declaring a Vacancy.

The majority of AG Opinions on quo warranto nonresidency allegations involve a private party seeking permission from the AG to challenge a sitting official’s right to hold office. Section 811 of the Code of Civil Procedure authorizes a local legislative body to file its own action in Superior Court without the AG’s consent. However, at least three AG Opinions and one court case involved situations where the legislative body simply declared the seat vacant due to nonresidency and appointed a replacement. Courts have held that where “a former officeholder has been ousted by a declaration the office is vacant due to his nonresidency, and

a successor has been appointed or elected to fill the vacant term, quo warranto is the ousted official's sole remedy for challenging the alleged vacancy." (*Nicolopoulos v. City of Lawndale et al.* (2001) 91 Cal.App. 4th 1221; citing *Klose v. Superior Court* (1950) 96 Cal.App.2d 913.) The burden shifts to the former official to go through the quo warranto process to challenge the appointee's right to hold office.

FISCAL IMPACT

Unknown at this time.

ATTACHMENT(S)

1. Two Attorney General Opinions

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

XAVIER BECERRA
Attorney General

OPINION	:	No. 18-302
	:	
of	:	July 20, 2018
	:	
XAVIER BECERRA	:	
Attorney General	:	
	:	
ANYA M. BINSACCA	:	
Deputy Attorney General	:	
	:	

Proposed relator ART PERRY has requested leave to sue proposed defendant ALLAN MANSOOR in quo warranto to oust Mansoor from the public office of Costa Mesa city councilmember on the ground that Mansoor did not reside in Costa Mesa for several months during his term.

CONCLUSION

Proposed relator does not raise a substantial question of law or fact that warrants initiating a judicial proceeding, and allowing the proposed quo warranto action to proceed would not serve the public interest. Proposed relator's application for leave to sue in quo warranto is therefore DENIED.

ANALYSIS

A quo warranto action is used to challenge whether a person is lawfully holding a public office.¹ The process is authorized by Code of Civil Procedure section 803, which provides: “An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state.”²

Where the quo warranto action is initiated “upon a complaint of a private party,”³ the Attorney General acts as a gatekeeper; the party must obtain the Attorney General’s permission before filing an action in superior court.⁴ In evaluating whether to grant leave to sue, we do not endeavor to resolve the merits of the controversy, but rather “decide whether the application presents substantial issues of fact or law that warrant judicial resolution, and whether granting the application will serve the public interest.”⁵

Proposed defendant Mansoor was elected in 2016⁶ to serve a four-year term on the Costa Mesa City Council. Proposed relator Perry contends that Mansoor automatically vacated this city council seat by living outside of Costa Mesa for several months in 2017. For the reasons that follow, we disagree, and therefore deny Perry’s application to proceed against Mansoor in quo warranto.

Costa Mesa is a general law city with a city manager form of government.⁷ At the time of Mansoor’s election, city councilmembers were elected at-large.⁸ The Government

¹ *Nicolopoulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1225; 76 Ops.Cal.Atty.Gen. 157, 165 (1993) (quo warranto is the “appropriate remedy to test the right of a person to hold public office”).

² Code Civ. Proc., § 803.

³ Code Civ. Proc., § 803.

⁴ *Nicolopoulos v. City of Lawndale*, *supra*, 91 Cal.App.4th at pp. 1228-1229.

⁵ 95 Ops.Cal.Atty.Gen. 50, 51 (2012).

⁶ Mansoor was first elected to the Costa Mesa City Council in 2002, and again in 2006. He was elected to the California State Assembly in 2010 and 2012. (<https://www.costamesaca.gov/index.aspx?page=911>, as of May 24, 2018.)

⁷ See Gov. Code, § 34851 (authorizing city manager form of government).

⁸ Beginning with the November 2018 election, Costa Mesa will transition to by-district

Code requires city councilmembers to maintain residence in the city they serve for the duration of their term.⁹

Two provisions of the Government Code¹⁰ are particularly relevant here. Section 36502 states: “If, during the term of office, [a councilmember] moves his or her place of residence outside of the city limits . . ., his or her office shall immediately become vacant.”¹¹ Similarly, section 1770, which describes events causing vacancies in public offices before the expiration of a term, provides that “[a]n office becomes vacant” if a councilmember “ceas[es] to be an inhabitant of the state, or if the office be local and one for which local residence is required by law, of the district, county, or city for which the officer was chosen or appointed, or within which the duties of his or her office are required to be discharged.”¹² Thus, the question before us is whether Perry has presented a substantial question of law or fact as to whether Mansoor vacated his office by failing to reside in Costa Mesa.

The residence of a public official in this context is his or her *legal* residence, also referred to as “domicile.”¹³ Section 244 of the Government Code guides the determination of a person’s domicile:¹⁴

In determining the place of residence the following rules shall be observed:

(a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.

(b) There can only be one residence.

(c) A residence cannot be lost until another is gained.

elections for its city council. (<https://www.costamesaca.gov/index.aspx?page=2121>), as of May 24, 2018.)

⁹ Gov. Code, § 36502, subd. (a); see also Gov. Code, § 1770, subd (e).

¹⁰ Future undesignated code references are to the Government Code.

¹¹ Gov. Code, § 36502, subd. (a).

¹² Gov. Code, § 1770, subd. (e).

¹³ 72 Ops.Cal.Atty.Gen. 8, 11 (1989).

¹⁴ *Smith v. Smith* (1955) 45 Cal.2d 235, 239 (sections 243 and 244 give “the basic rules generally regarded as applicable to domicile”).

...

(f) The residence can be changed only by the union of act and intent.

...

The determination of domicile is a mixed question of fact and law¹⁵ that may involve various factors, including acts and declarations by the official, as well as the official's mailing address, voter registration, car registration, and tax returns.¹⁶ But the critical element is intent.¹⁷ As we have recently observed, "Because a determination of domicile is based not only on physical conduct, but also intent, the requirement that a substantial showing be made before we authorize judicial resolution is particularly pertinent."¹⁸ The burden of proving a change of domicile is on the party asserting it,¹⁹ here proposed relator Perry.

Perry alleges that Mansoor was domiciled outside of Costa Mesa in a home on Pegasus Street in Newport Beach, apparently owned by Mansoor's in-laws, for several months in 2017. Perry presents declarations of neighbors and other individuals who observed Mansoor's and his wife's cars parked frequently at the Pegasus Street house during this period, including late nights and early mornings. People also observed Mansoor behaving as though he lived in this Pegasus Street house, by, for instance, entering the home without knocking, and giving fruit from one of its trees to a neighbor.

Mansoor, in turn, does not deny that he lived in the house on Pegasus Street for some time in 2017, but does deny that he ever changed his domicile from Costa Mesa. He provides a sworn declaration explaining that until June 2017, he and his family lived at 433 Enclave Circle, Apartment 106, in Costa Mesa. Voter registration forms filed in September 2016 for both Mansoor and his wife reflect that address. Several months before their lease for the Enclave Circle apartment was due to expire in June 2017, Mansoor and his wife began working with a realtor to locate an apartment more suitable for their family—which now included three children—in Costa Mesa. Mansoor provides an email from his realtor

¹⁵ *Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1117.

¹⁶ See, e.g., 99 Ops.Cal.Atty.Gen. 74, 76–77 (2016); 85 Ops.Cal.Atty.Gen. 90, 93 (2002); 72 Ops.Cal.Atty.Gen. 15, 22 (1989).

¹⁷ 72 Ops.Cal.Atty.Gen., *supra*, at p. 14.

¹⁸ 101 Ops.Cal.Atty.Gen. __ (2018), citing 87 Ops.Cal.Atty.Gen. 30, 31 (2004).

¹⁹ 85 Ops.Cal.Atty.Gen., *supra*, at p. 93, citing *DeMiglio v. Mashore* (1992) 4 Cal.App.4th 1260, 1268.

dated April 12, 2017, showing that she had established an automated search for them, and an example of the results of that searching system. They also searched real estate web sites and drove around the city in an attempt to locate an apartment. Mansoor states that he and his wife visited “many properties” in Costa Mesa between April and June 2017, and that every one of them had a waiting list. They submitted applications for “a few properties” where the waiting list was short enough that they hoped they might have a chance of securing a lease, but others had lists so long it would have been futile to apply.

Mansoor declares that despite their efforts, they were not able to secure a new lease before their June 2017 departure date because of the extremely competitive rental market in Costa Mesa. Around August 1, 2017, Mansoor and his wife noticed a for-rent sign at 2205 Canyon Drive in Costa Mesa, while they were driving to view an advertised rental. They arranged to see the property as quickly as possible, and secured the lease. Mansoor states that he believes they only got the Canyon Drive lease because they were the first ones to view the property, and submitted an application and deposit as soon as they had seen it. The Canyon Drive apartment needed extensive remodeling before Mansoor and his family were able to move in. They were able to move in on October 17, 2017, at which point Mansoor updated his voter registration to reflect the Canyon Drive address.

Mansoor declares that during the period between living in the Enclave Circle and Canyon Drive apartments, his intent was always to live in Costa Mesa, and that his residence has always been Costa Mesa. He further explains that his attachment to Costa Mesa is such that in 2012, he “gave up what was probably an easy reelection to the State Assembly because [he] was unwilling to leave Costa Mesa,” opting to face a better-funded opponent and a more challenging campaign.²⁰

Mindful that a change of domicile requires a union of act and intent,²¹ and considering the evidence before us, we do not believe that proposed relator Perry has shown a substantial issue of fact regarding Mansoor’s residence warranting the initiation of a quo warranto action. The facts regarding where Mansoor was living between the time he left the Enclave Circle apartment and the time he moved into the Canyon Drive apartment do not appear to be in dispute. Rather, the dispute is whether Mansoor changed his domicile to Newport Beach in the months between living at Enclave Circle and Canyon Drive.

²⁰ Mansoor nevertheless won reelection to the Assembly in 2012, representing the district now containing Costa Mesa.

²¹ Gov. Code, § 244, subd. (f).

“[T]he acquisition of a new domicile is generally understood to require an actual change of residence accompanied by the intention to remain either permanently or for an indefinite time in the new locality.”²² Although Perry speculates that it would have been logical for Mansoor and his family to remain, perhaps rent-free, in the larger Newport Beach house, he presents no evidence that Mansoor intended to remain in Newport Beach either permanently or indefinitely.

On the other hand, Mansoor has declared, under penalty of perjury, his intent at all times to remain a resident of Costa Mesa. Moreover, that intent is supported by Mansoor’s conduct in searching for apartments, employing a realtor, and signing a lease on an apartment that had yet to undergo substantial renovation.²³ Perry maintains that Mansoor’s intent to stay in Newport Beach until he found a suitable Costa Mesa home amounts to an intent to stay in Newport Beach indefinitely. We do not believe that the approximate two-month period²⁴ between the expiration of Mansoor’s Enclave Circle lease and his acquisition of the Canyon Drive lease, coupled with his efforts during those months to obtain a Costa Mesa home, produce a substantial issue of fact that he had an intent to remain in Newport Beach indefinitely. Given the evidence before us, we do not believe that temporarily staying with relatives for a few months while making efforts to secure permanent housing is sufficient to effect a change in domicile.

The California Supreme Court reached a similar conclusion in considering, for voting purposes, the domicile of college students who had departed the previous academic year with no intention of returning to their campus housing and were currently living in expressly temporary settings, such as friends’ apartments, tents, and cars.²⁵ The Elections Code provides that a person’s domicile for voting purposes is the place where “habitation is fixed, wherein the person has intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile.”²⁶ Construing the Elections Code together with section 244, the Court concluded that the students were domiciled for voting purposes at their prior campus addresses; they had to be domiciled somewhere to avoid disenfranchisement, and their temporary addresses did not qualify as domiciles because the students did not intend to

²² 85 Ops.Cal.Atty.Gen., *supra*, at p. 93.

²³ 85 Ops.Cal.Atty.Gen., *supra*, at p. 93 (most important evidence of intent is conduct).

²⁴ The record is not clear as to when in June Mansoor’s Enclave Circle lease expired.

²⁵ *Walters v. Weed* (1988) 45 Cal.3d 1, 7.

²⁶ Elec. Code, § 349. At the time of the *Walters v. Weed* decision, identical language was contained in Elections Code section 200. (See *Walters v. Weed*, *supra*, 45 Cal.3d at p. 6.)

remain there.²⁷

The same considerations are relevant here; Mansoor must have a domicile,²⁸ he cannot lose his Enclave Circle domicile until another is acquired, and there is no evidence he intended to remain in Newport Beach any longer than it took to acquire a new Costa Mesa domicile.

Perry urges that our granting of leave to sue in quo warranto in 30 Ops.Cal.Atty.Gen. 6 (1957) compels that we grant leave to sue here, but we disagree. In that earlier opinion, Wallace Pond, a city councilmember of Fremont, married and moved from Fremont to a home owned by his mother-in-law, just outside Fremont's limits, in June 1956. Pond maintained a business in Fremont and used that as his mailing address. He provided an affidavit, signed on April 5, 1957, attesting that he did not intend for his mother-in-law's house to be a permanent home; rather, it was temporary, while he and his wife searched for a suitable home to buy in Fremont. In May 1957, Pond provided a further affidavit indicating that he had acquired an apartment in Fremont, and would be living there as of July 1, 1957.²⁹

While Mansoor and Pond may appear similarly situated in some respects, when we balance the various factors we must take into consideration in evaluating an alleged change of domicile, we conclude that a different outcome is warranted here. First, we find it relevant that when Pond's residency was challenged, he had already lived outside of Fremont for nearly a year. Mansoor, by contrast, had obtained and moved into new housing in Costa Mesa by the time his residency was challenged. Additionally, in the Pond matter, the proposed relator provided an affidavit from a person stating that Pond had, on April 5, 1957, told that person that he "had no intention of returning to live within the City of Fremont 'for at least within the year.'"³⁰ In other words, the proposed relator in the Pond matter provided sworn testimony challenging Pond's intent regarding domicile. Here, there is no evidence contradicting Mansoor's stated intent to remain domiciled in Costa Mesa.³¹ To the contrary, both Mansoor's actions and his words provide factual support for his claim that he had, at all times, an intent to maintain his domicile in Costa Mesa.

²⁷ *Walters v. Weed*, *supra*, 45 Cal.3d at pp. 11-12.

²⁸ Gov. Code, § 243.

²⁹ 30 Ops.Cal.Atty.Gen., *supra*, at pp. 7-8.

³⁰ 30 Ops.Cal.Atty.Gen., *supra*, at p. 8.

³¹ See 8 Ops.Cal.Atty.Gen. 221, 223 (1946) (unverified statement of facts not persuasive against direct evidence produced by proposed defendant, leave to sue denied).

Thus, while we give weight to the fact that Mansoor, like Pond, spent some amount of time housed at a location outside the relevant city limits while serving as a councilmember, we balance that circumstance against the evidence of Mansoor's efforts to secure replacement housing in Costa Mesa, and the absence of evidence indicating Mansoor's intent to relocate elsewhere. Perry's contention that intent is inherently a question of fact that requires judicial resolution ignores his burden to raise a *substantial* issue of fact regarding Mansoor's purported change of domicile³² and our broad discretion in evaluating quo warranto matters.³³

Moreover, viewing the case in its full context, we do not believe that allowing a quo warranto action to proceed in this matter would serve the public interest. Although some may debate the notion that one's domicile in a particular jurisdiction can continue despite one's (temporary) abandonment of an address within that jurisdiction, to conclude that a quo warranto action is *mandated* under the present circumstances would elevate form over substance, and we decline to exercise our discretion in that way.³⁴ Mansoor lacked an identifiable address in Costa Mesa for only a few months, he acquired an intended address in Costa Mesa seven months before Perry submitted this quo warranto application, and he actually resided at the new Costa Mesa address for over four months by the time the application was submitted. When we consider these facts together with Mansoor's long-standing relationship to Costa Mesa and the complete lack of evidence that Mansoor ever intended to be domiciled anywhere else, we find no reasonable basis to doubt Mansoor's connection to Costa Mesa, and we do not believe that the spirit of the statutes requiring residency for city councilmembers would be served by allowing the proposed quo warranto action to proceed.

In sum, we find that Perry has not met his burden of demonstrating a substantial issue of fact or law³⁵ requiring judicial resolution, and further conclude that allowing a quo

³² 85 Ops.Cal.Atty.Gen., *supra*, at p. 93.

³³ *Rando v. Harris* (2014) 228 Cal.App.4th 868, 878-882 (presence of debatable issue does not require granting of quo warranto, much less demonstrate an "extreme and indefensible abuse of discretion" in denying application); 96 Ops.Cal.Atty.Gen. 48, 49 (2013); see also *City of Campbell v. Mosk* (1961) 197 Cal.App.2d 640, 650 ("The crystallization of an issue thus does not preclude an exercise of his discretion; it causes it").

³⁴ See 96 Ops.Cal.Atty.Gen., *supra*, at p. 53 (existence of "debatable" issue does not require judicial resolution through quo warranto where authorizing such a suit would not serve public interest).

³⁵ Perry contends that there is a substantial issue of law here because "no known case has required that Section 244 apply to Section 36502(a)." But we have consistently applied the rules of section 244 for determining domicile to the residency requirement of section

warranto action to proceed under the circumstances would not be in the public interest. Therefore, the application for leave to sue in quo warranto is DENIED.

36502, subdivision (a) (see, e.g., 99 Ops.Cal.Atty.Gen., *supra*, at p. 76; 85 Ops.Cal.Atty.Gen., *supra*, at p. 92; 72 Ops.Cal.Atty.Gen. 63, 64 (1989)), and Perry offers no reason to question this approach.

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OFFICE OF THE ATTORNEY GENERAL
State of California

XAVIER BECERRA
Attorney General

OPINION	:	No. 18-1103
	:	
of	:	June 13, 2019
	:	
XAVIER BECERRA	:	
Attorney General	:	
	:	
LAWRENCE M. DANIELS	:	
Deputy Attorney General	:	
	:	

Proposed relator SCOTT LEAHY has requested leave to sue proposed defendant WALLACE T. MARTIN to remove him from the public office of member of the Ridgecrest City Council on the ground that proposed defendant MARTIN did not legally reside in the city at the time his nomination papers were issued, at the time of his election, and during his term of office.

CONCLUSION

Leave to sue is GRANTED to determine whether proposed defendant WALLACE T. MARTIN meets the legal residency requirements for holding the public office of council member of the City of Ridgecrest.

ANALYSIS

Introduction

Ridgecrest is a general law city in Kern County governed by a city council consisting of a mayor and four members who serve at large. Proposed defendant Wallace T. Martin (Defendant) was elected as a Ridgecrest city council member in November 2016. Proposed relator Scott Leahy (Relator), another candidate in the election, has submitted an application in quo warranto challenging Defendant's eligibility to serve as council member for failing to be a legal resident of Ridgecrest, as required by state law, and has offered evidence and argument why he should be allowed to sue in court to remove Defendant from the office he now holds. After carefully reviewing the parties' submissions, we conclude that a substantial question is presented regarding Defendant's legal residency and that it would be in the public interest to allow a quo warranto lawsuit to proceed.

Background

The following timeline reflects the parties' allegations about Defendant's legal residency:

- A copy of a grant deed submitted by Relator indicates that Defendant and his wife bought a property on Felspar Avenue, located in an unincorporated area of Kern County, just outside the City of Ridgecrest, on October 3, 2001. According to a copy of another grant deed submitted by Relator, Defendant and his wife made an interspousal transfer of this property to Defendant on September 22, 2016. A newspaper article dated April 7, 2017 reports that at a Ridgecrest City Council meeting, Defendant referred to this property as his "former home." In his sworn declaration dated November 19, 2018, Defendant refers to the property as "our [his and his wife's] property."
- According to Defendant's declaration, he entered into a rental agreement to lease a property on Lee Avenue in Ridgecrest on June 27, 2016, almost 15 years after he and his wife purchased the home on Felspar. Defendant further declares that the rental agreement took effect on July 1, 2016. According to a newspaper article submitted by Relator, Defendant reportedly stated at a candidate forum held on September 29, 2016, that he was leasing the property "from a friend on a temporary basis." Later, Defendant was reported to have stated at an April 7, 2017 city council meeting that he had rented the Ridgecrest property in order to "follow the letter of the law" to be eligible for city council.

- On August 2, 2016, as reflected in a copy of Defendant’s nominating papers submitted by Relator, Defendant stated listing his residence as the Lee Avenue address.¹ Also on August 2, 2016, according to both Defendant’s declaration and his reported statement at the candidate forum mentioned above, he registered to vote using the Lee Avenue address.
- On or about October 25, 2016, according to Defendant’s declaration, Defendant completed a purchase of a duplex property on California Avenue in Ridgecrest. At the city council meeting held April 7, 2017, Defendant stated that he had done so as an “extra step” to establish legal residency in the city.
- On November 8, 2016, Defendant won election to the Ridgecrest City Council in the Kern County consolidated presidential general election.² Relator asserts that on December 7, 2016, Defendant was sworn into office.
- On January 17, 2017, Defendant declares, the tenant in one of his duplex units on California Avenue in Ridgecrest vacated the premises at Defendant’s behest. Defendant further declares that sometime in April 2017, after completing substantial repairs, he moved into this unit. His declaration further states that on April 7, 2017, he changed his driver’s license to reflect this address, and that on June 5, 2018, he changed his voter registration in kind.

In his application to sue in quo warranto, Relator states that Defendant “still lives” on Felspar Avenue outside Ridgecrest and does not live at either the Lee or California Avenue addresses in Ridgecrest. Relator attaches reports from a private investigator suggesting that Defendant lodged at the Felspar Avenue address from May 9 through 11, 2018, and from May 14 through 15, 2018. In his declaration, the investigator states that during these periods, Defendant went to his place of work in Ridgecrest in the morning, came home to the Felspar Avenue address after work, and stayed there in the evening.

¹ These documents also indicate that on August 3, 2016, Defendant signed a pledge to conduct his campaign in accordance with the “Code of Fair Campaign Practices,” and that on August 11, 2016, Defendant submitted his ballot designation worksheet. In response, Defendant does not specifically contest that he “received” his nomination papers on August 2, 2016, but rather states that he “pulled” his nominating papers on August 8, 2016. In any case, these small distinctions in terminology and timing do not affect our analysis.

² <https://www.kernvote.com/ElectionInformation/Results?ID=88>.

In the declaration he submitted in support of his opposition, Defendant states that he “stayed at” the Felspar Avenue address from May 9 through 11, 2018, and that he did so to care for his wife (as well as some animals on his property) because she needed treatment for a “medical condition.” Defendant also states that he “once again stayed at” Felspar on the “evening” of May 14 and explains that this was to care for his animals while his wife traveled to UCLA for medical treatment. Defendant contends, however, that even assuming he has dual residences both inside and outside the Ridgecrest city limits, this “4-day snapshot out of 815 possible days” does not negate that his “domicile” was and is in Ridgecrest.

In reply, Relator submits additional evidence to show that contrary to Defendant’s contention, it was not merely these dates that Defendant stayed at the Felspar Avenue address.³ Relator contends that his evidence demonstrates that Defendant’s “dual residence claims . . . are a sham attempt at establishing domicile in Ridgecrest city to make him eligible for city council.” To support this assertion, Relator submits a sworn declaration from Lori Acton (another candidate in the Ridgecrest city council election), who states that from September 2017 through June 2018, she lived in a residence on California Avenue that had “an unobstructed view” of Defendant’s duplex units, one of which Defendant states that he moved into in April 2017. Acton alleges that she had a “daily routine of checking for [Defendant] or his vehicles” at the duplex but that she never observed

³ Defendant objects to the introduction of all the factual allegations in Relator’s reply because they were not presented in Relator’s application. However, much of Relator’s reply evidence—the declarations involving service of the application materials and the amended statement of facts—could not have been argued in the original application. Moreover, at this state of the analysis, we are not conclusively adjudicating factual or legal issues, but simply determining whether to allow Relator to *initiate* a quo warranto action. In making this determination, we follow our own established procedures, which do not prohibit consideration of evidence submitted in a reply pleading in response to a showing made by the proposed defendant. (See California Attorney General, Quo Warranto, Resolution of Disputes—Right to Public Office (1990) p. 3 [quo warranto “is established solely as an action at law authorized by statute” and its application procedures “are contained in sections 803-811 of the Code of Civil Procedure and in sections 1 through 11 of the California Code of Regulations”]; Cal. Code Regs., tit. 11, § 4 [in a reply, the proposed relator may “reply to the showing thus made by the proposed defendant” in the opposition]; see also Code Civ. Proc., § 803 [Attorney General may initiate action “upon his own information” without “a complaint of a private party”]; Cal. Code Regs., tit. 11, § 10 [in certain cases of “urgent necessity,” Attorney General may issue leave to sue to a proposed relator without allowing opposition from the proposed defendant].) In any event, as will be seen, we need not rely on the reply evidence to find substantial questions as to Defendant’s legal residency at the time he was nominated and elected.

Defendant, his wife, or their cars there. Acton says that, between February and May 2018, she “would drive [her] boyfriend’s sons to school each morning at 7:20 a.m.” and “check” the “duplexes,” and, likewise, did not see Defendant, his wife, or their vehicles there. Acton further swears that between May 2018 and October 2018, while driving to her father’s residence (which she did with “considerable” frequency during this period “due to his declining health”), she passed by Defendant’s duplex property each time, “specifically looked to determine” whether Defendant’s or his wife’s cars “were parked at that location,” but “[a]t no time did [she] ever see” either of their cars parked there. On the other hand, when “occasionally” driving by the Felspar Avenue residence outside Ridgecrest, she “would observe” Defendant’s and his wife’s “vehicles parked in their driveway behind an electronic gate.” Additionally, Acton declares that “[f]or over the past two years [she] has received telephone calls from multiple individuals who have attended dinner parties at the [Defendant and his wife’s] county residence on Felspar.”

Relator has also submitted declarations from two process servers—Peggy Partida and Kenneth Yule—in support of his claim that Defendant still legally resides at the Felspar Avenue property, not at any Ridgecrest address. The contents of these declarations are described below.

First, on October 27, 2018, at 8:32 a.m., Peggy Partida “personally served” Defendant at the Felspar Avenue address with the quo warranto application materials now under consideration. At the time of service, Partida declares, Defendant came to the door looking “as if he had just woken up” and wearing “sweats.” Then, on October 29, 2018, at 7:25 a.m., according to an “affidavit of due diligence” (signed under penalty of perjury) attached to her declaration, Partida attempted to serve Defendant with an amended verified statement of facts at the Lee Avenue property in Ridgecrest (which Defendant was leasing) but received “no answer.” At 8:00 a.m., Partida declares, she attempted to serve Defendant at the Felspar Avenue address. Partida says that while she was “on a public road while in [her] car,” Defendant’s wife “threatened to call the sheriff if [she] did not leave.”⁴

Subsequently, on October 31, 2018, according to process server Kenneth Yule’s declaration and attached “affidavit of reasonable diligence” (also signed under penalty of perjury), Yule unsuccessfully “personally attempted” to serve Defendant at the Felspar, California, and Lee addresses with the same amended pleading at 6:00 p.m., 6:30 p.m., and 7:05 p.m., respectively. On November 3, 2018, at 11:20 a.m. in yet another unsuccessful service attempt, according to Yule’s declaration and attached affidavit of reasonable diligence, Yule saw Defendant’s “two toned Dodge Ram parked in front of his gate at” the Felspar Avenue property. Finally, on November 5, 2018, at noon, according to Partida’s

⁴ Partida’s declaration does not disclose the proximity of this road to the Felspar Avenue property or the location of Defendant’s wife during this alleged incident.

declaration and proof of service, after Defendant requested to meet in a public place, Partida served Defendant at a Denny's restaurant in Ridgecrest.

Applicable Law

Quo warranto is an action for challenging whether someone lawfully holds a public office.⁵ Code of Civil Procedure section 803 provides: "An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office . . . within this state."⁶ If a private party desires to bring a quo warranto lawsuit in superior court, the party must first obtain leave from the Attorney General.⁷ In determining whether to grant such leave to sue, we do not decide the merits of the controversy; rather, we decide whether there is a substantial issue of fact or law warranting judicial resolution and whether permitting a quo warranto action to commence would serve the overall public interest.⁸

The position of city council member is a public office for quo warranto purposes.⁹ An established ground to challenge a city council member's occupation of the office in a quo warranto proceeding is that the member does not legally reside in the city.¹⁰ Specifically, a person may not serve as a city council member unless the person resides within city boundaries when nomination papers are issued, when assuming office, and throughout the term of office.¹¹ For this purpose, residence means "legal residence" or "domicile."¹² Legal residence or domicile is defined as a place of physical presence joined

⁵ *Nicolopoulos v. City of Lawndale* (2001) 91 Cal.App.4th 1221, 1225; 76 Ops.Cal.Atty.Gen. 157, 162-163 (1993).

⁶ Code Civ. Proc., § 803; see *Rando v. Harris* (2014) 228 Cal.App.4th 868, 873; 97 Ops.Cal.Atty.Gen. 12, 14 (2014).

⁷ *Nicolopoulos v. City of Lawndale*, *supra*, 91 Cal.App.4th at pp. 1228-1229; 98 Ops.Cal.Atty.Gen. 85, 87 (2015).

⁸ *Rando v. Harris*, *supra*, 228 Cal.App.4th at p. 879; 100 Ops.Cal.Atty.Gen. 29, 30 (2017).

⁹ 99 Ops.Cal.Atty.Gen. 74, 76 (2016); 87 Ops.Cal.Atty.Gen. 30, 31 (2004).

¹⁰ See, e.g., 99 Ops.Cal.Atty.Gen., *supra*, at p. 74; 85 Ops.Cal.Atty.Gen. 90, 90 (2002); 72 Ops.Cal.Atty.Gen. 63, 63-64 (1989); 35 Ops.Cal.Atty.Gen. 198, 198-199 (1960).

¹¹ Gov. Code, §§ 1770, subd. (e), 34882, 36502, subd. (a); 99 Ops.Cal.Atty.Gen., *supra*, at p. 76.

¹² *Walters v. Weed* (1988) 45 Cal.3d 1, 7; 72 Ops.Cal.Atty.Gen. 8, 11 (1989).

with the intent to make the place a permanent home.¹³ It is the place where a person has “the most settled and personal connection.”¹⁴ Although a person may have multiple residences, a person may have only one legal residence/domicile.¹⁵ Factors considered in determining domicile include the person’s acts and declarations, mailing address, voter registration, tax returns, driver’s license, and homeowner’s exemption.¹⁶

Once established, a domicile is presumed to continue until it is demonstrated that a new domicile has been acquired.¹⁷ Where a relator establishes a defendant’s domicile outside the relevant locality, the defendant has the burden of showing a change of domicile inside the locality.¹⁸ In such a case, the defendant must make a sufficient showing of “physical presence” at the alleged new domicile.¹⁹ To satisfy the “critical element” of intent, “declarations of intent are significant,” but “they are not determinative. The acts must be examined as well.”²⁰ Although there is nothing improper about establishing a domicile in order to gain eligibility for office,²¹ “[i]t is not enough that a [person] desires to acquire or keep a ‘legal residence’ or ‘legal domicil;’ the intention necessary for the acquisition of a domicil is an intention as to the fact, not as to the legal consequences of

¹³ *Fenton v. Bd. of Directors* (1984) 156 Cal.App.3d 1107, 1116; 95 Ops.Cal.Atty.Gen. 43, 46 (2012); see Elec. Code, § 349, subd. (b) (“The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning”); Gov. Code, § 244, subd. (a).

¹⁴ *Smith v. Smith* (1955) 45 Cal.2d 235, 239.

¹⁵ Gov. Code, § 244, subd. (b); *Smith v. Smith*, *supra*, 45 Cal.2d at p. 239; 99 Ops.Cal.Atty.Gen., *supra*, at p. 76.

¹⁶ 99 Ops.Cal.Atty.Gen., *supra*, at pp. 76-77; 73 Ops.Cal.Atty.Gen. 197, 209-210 (1990).

¹⁷ Gov. Code, § 244, subd. (c); *Walters v. Weed*, *supra*, 45 Cal.3d at pp. 7-8; 90 Ops.Cal.Atty.Gen. 82, 86 (2007).

¹⁸ *DeMiglio v. Mashore* (1992) 4 Cal.App.4th 1260, 1268-1269; 81 Ops.Cal.Atty.Gen. 98, 102 (1998).

¹⁹ 90 Ops.Cal.Atty.Gen., *supra*, at p. 86.

²⁰ 72 Ops.Cal.Atty.Gen., *supra*, at p. 14; see also 85 Ops.Cal.Atty.Gen., *supra*, at p. 93 (“the most important evidence of [the council member’s] intent is his conduct”).

²¹ See 101 Ops.Cal.Atty.Gen. 16, 21 (2018) (“Moving to an electoral district in order to run for office in that district does not defeat the intent for domicile”).

the fact.”²²

Substantial Questions Exist as to Defendant’s Legal Residency

It is uncontested that from October 2001 to June 2016, Defendant’s domicile was his Felspar Avenue property in unincorporated Kern County outside the City of Ridgecrest. Defendant therefore carries the burden of showing that he changed his domicile to a location inside Ridgecrest before being issued his nomination papers in August 2016 and before his election in November 2016.

Based on a careful review of the parties’ submissions, we have no cause to doubt that Defendant *intended* that his rental property on Lee Avenue would function as his domicile for purposes of his nomination to city council, effective July 2016, but there remains a question whether it *actually became* his new domicile—that is, a place of physical presence joined with the intent to make it his permanent home. Defendant stated only that he was leasing the property “on a temporary basis” for the sake of demonstrating legal residency in Ridgecrest. While Defendant changed his voter registration to the Lee Avenue address around the time of his nomination, he has not declared that he spent any time there, let alone lived there, nor that he took any concrete steps to make it his home. We therefore find a substantial question as to whether Defendant has carried his burden of showing that he had changed his longtime domicile to a location inside Ridgecrest at the time of his nomination.

Moreover, there is a legitimate issue whether Defendant established a domicile within Ridgecrest between his nomination in August 2016 and his election in November 2016. In October 2016, Defendant purchased a duplex on California Avenue in Ridgecrest as an “extra step” to establish legal residency. Here too, Defendant’s intent that his domicile be legally considered as Ridgecrest for the purpose of the election is apparent. But again, what is lacking is any corroborating evidence of his physical inhabitation, or even his physical presence, at his temporary rental on Lee Avenue between the nomination and election. According to Defendant, he did not move into one of his duplex units on California Avenue in Ridgecrest until April 2017, after his election. We therefore also find a substantial question whether Defendant has carried his burden of showing a change of domicile to Ridgecrest before the election.

Lastly, we believe that Relator has raised a significant issue as to whether Defendant has been domiciled in Ridgecrest continuously since his election in November 2016.

²² *Johnson v. Johnson* (1966) 245 Cal.App.2d 40, 45, internal quotation marks omitted, spelling of “domicil” and placement of semicolon in original; see *ibid.* (“A man’s home is where he makes it, not where he would like to have it”).

Defendant alleges that he moved into a duplex unit on California Avenue in April 2017, but that leaves the period from November 2016 to April 2017 with no evidence that he had a fixed habitation in Ridgecrest beyond his statements that he entered into a rental agreement with a friend in order to become eligible for city council. And although Defendant summarily declares that he moved into the California Avenue unit that he purchased, he does not allege how often he has been dwelling there.

In fact, the evidence submitted by Relator credibly suggests that there has been, at least, a sizable amount of time when Defendant has had no physical presence in Ridgecrest since the election. To summarize, one potential witness declares that she regularly observed Defendant's duplex unit on California Avenue from September 2017 through October 2018 (daily from September through June, and frequently thereafter), not seeing Defendant, his wife, or their cars there. Defendant was served with the original quo warranto application in the morning at his Felspar Avenue property (outside Ridgecrest), appearing as though he had just woken up, which suggests he had slept there overnight. In addition, the process servers could not locate Defendant at his Ridgecrest addresses on multiple dates, also corroborating the allegation that he has not established an abode within Ridgecrest.²³ Indeed, Defendant does not dispute that he happened to be staying at the Felspar Avenue location on the days of the investigator's stakeout in May 2018. Other evidence allegedly identifying Defendant's and his wife's vehicles and dinner parties at their Felspar Avenue property also tends to show their regular presence there.

Without purporting to resolve Relator's claim, or conclusively determine the facts at issue, we find that the totality of the evidence submitted to us raises a substantial question whether Defendant's domicile has been in Ridgecrest at all times while serving as council member.

The Overall Public Interest Warrants Allowing Relator to Pursue a Quo Warranto Action

Absent countervailing considerations, we have viewed the existence of a substantial question of fact or law as presenting a sufficient "public purpose" to warrant granting leave

²³ See 97 Ops.Cal.Atty.Gen. 1, 4 (2014) (granting an application to sue a school district trustee in quo warranto, finding that "we cannot ignore or discount his regular absence from [the residence inside the district]" and "his regular presence at [the residence outside the district]"); 95 Ops.Cal.Atty.Gen., *supra*, at p. 48 (granting an application to sue a water district director because the documents presented "indicate little physical presence at the [district] address, coupled with significant activity and evidence of residence" outside the district).

to sue in quo warranto.²⁴ We see no countervailing considerations here. Accordingly, Relator's application for leave to sue in quo warranto is GRANTED.

²⁴ 98 Ops.Cal.Atty.Gen. 94, 101 (2015); 86 Ops.Cal.Atty.Gen. 82, 85 (2003).