

ORDINANCE NO. 21-004

An Ordinance Of The City Council Of The City Of Emeryville Establishing A Vehicle Share Policy As Chapter 14 Of Title 4 Of The Emeryville Municipal Code, Program And Fees (CEQA Determination: Exempt Pursuant to State CEQA Guidelines 15061(b)(3))

WHEREAS, the City recognizes the practice of Vehicle sharing as a beneficial mode of transportation that reduces demand for private Vehicles, decreases per-capita greenhouse-gas emissions, and creates additional affordable mobility options for all members of the community; and

WHEREAS, the City's Climate Action Plan (Resolution 16-166) calls for a 40% reduction in greenhouse gas emissions from 2004 levels by 2030; and

WHEREAS, the General Plan includes a goal that "supports and encourages the expansion of car-sharing programs in Emeryville" (T-P-66), and the implementation plan for Climate Action Plan includes item 2M, "Increase opportunities for car-sharing and car-pooling"; and

WHEREAS, the State of California, through Assembly Bill 2154 (California Vehicle Code Section 22507.1), has supported the practice of Vehicle sharing in both on- and off-street locations since 2006; and

WHEREAS, numerous municipalities in California, and notably those municipalities sharing a border with Emeryville, have adopted Vehicle share policies and legislation, thereby offering those living in, working in, or visiting Emeryville a seamless regional transportation system; and

WHEREAS, the adoption of a formal Vehicle share policy and program will help the City ensure all residents, including the elderly, disabled, and underserved, have access to this environmentally beneficial mode of transportation; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this ordinance is to adopt a new Chapter 14, "Vehicle Share" to Title 4 of the Emeryville Municipal Code to provide for effective and responsible regulation of shared Vehicles.

SECTION TWO. ADDING CHAPTER 14 TO TITLE 4 OF THE EMERYVILLE MUNICIPAL CODE

Chapter 14 of Title 4 of the Emeryville Municipal Code is hereby added to read as follows:

Chapter 14

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Vehicle Share

Sections:

Article 1. General Provisions

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- 4-14.105 Community Engagement Process**
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Article 2. One-Way Car Sharing

- 4-14.201 Permits**
- 4-14.202 Permit Parking Exemption**
- 4-14.203 Fleet and Parking**

Article 3. One-Way Electric Moped Sharing

- 4-14.301 Permits**
- 4-14.302 Permit Parking Rights and Exemptions**
- 4-14.303 Safety and Parking Requirements**

Article 4. Dedicated-Space Vehicle Sharing

- 4-14.401 Permits**
- 4-14.402 Permit Parking Rights**
- 4-14.403 Parking Space Dedication**
- 4-14.404 Fleet and Parking**

ARTICLE 1. GENERAL PROVISIONS.

4-14.101. Definitions

- (a) "City Manager" means the City Manager or his or her designee.
- (b) "Dedicated Parking Space" means a parking space that the City Council has designated for the exclusive use of a Dedicated-Space Vehicle Share Organization.

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- (c) “Dedicated-Space Vehicle Share Organization” means an entity that provides one or more shared-use cars and/or trucks for its members at designated parking spaces at hourly, daily, and/or weekly rates (or fractions thereof) with insurance coverage provided by the organization.
- (d) “Dedicated-Space Vehicle Sharing” means shared mobility of cars and/or trucks for trips taken from and returned to a Dedicated Parking Space.
- (e) “Dedicated-Space Vehicle Sharing Parking Permit” means a Permit issued under Article 4 of this Chapter.
- (f) “Deployment” means the placement of Vehicles by the Shared Vehicle System Operator.
- (g) “Electric Moped” means a two-wheeled Vehicle having no pedals and powered by electrical energy, that has an automatic transmission and a motor which produces less than four (4) gross brake horsepower, capable of propelling the Vehicle at a maximum speed of not more than thirty (30) miles per hour on level ground.
- (h) “Free-Floating Parking Permit” means a Permit to park One-Way Car Share or One-Way Electric Moped System Vehicles in the Operator’s Service Area as described in Sections 4-14.202 and 4-14.302.
- (i) “Master Residential Parking Permit” is a Parking Permit that allows Vehicles other than One-Way Electric Moped Sharing Vehicles to be parked in metered and unmetered Residential Parking Permit areas.
- (j) “Low-Emission Vehicle” means a hybrid, electric, hydrogen, or other Vehicle with a fuel efficiency of at least 40 miles per gallon of gasoline or diesel fuel.
- (k) “One-Way Car Share Organization” means an entity that provides at least twenty (20) shared-use cars and/or trucks for its members at geographically distributed locations in Emeryville at hourly, daily, and/or weekly rates (or fractions thereof) with insurance coverage provided by the organization.
- (l) “One-Way Car Share Vehicle” means a car or truck for short-term rental for point-to-point trips, that is owned by a One-Way Car Share Organization, clearly and distinctly branded, constantly tracked through Global Positioning System (“GPS”), technologically enabled to allow members to pick up a share Vehicle from one location and drop it off at a different location, and not required to be parked in a designated Dedicated Parking Space for rental.
- (m) “One-Way Share Electric Moped” means an Electric Moped for short-term rental for point-to-point trips, that is owned by a One-Way Electric Moped Share Organization, clearly and distinctly branded, constantly tracked through Global Positioning System

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(“GPS”), technologically enabled to allow members to pick up an Electric Moped from one location and drop it off at a different location, and not required to be parked in a designated Dedicated Parking Space for rental.

- (n) “One-Way Car Sharing” means shared mobility of cars and/or trucks for point-to-point trips, with no Dedicated Parking Space, available to all licensed drivers who meet the One-Way Car Share Organization’s eligibility requirements.
- (o) “One-Way Electric Moped Share Organization” means an entity that provides at least twenty (20) shared-use Electric mopeds for its members at geographically distributed locations in Emeryville at hourly, daily, and/or weekly rates (or fractions thereof) with insurance coverage provided by the organization.
- (p) “One-Way Electric Moped Sharing Permit” means a Permit allowing shared One Way Electric mopeds to park anywhere within the City where parking is allowable, as described in section 4-14.302 below.
- (q) “One-Way Vehicle Sharing” means a Vehicle sharing model that allows members to pick up a Vehicle from one location and drop it off at a different location within a defined geographic area, as specified by the Shared Vehicle System Operator.
- (r) “One-Way Vehicle Parking Zone” is the area agreed upon by the Shared Vehicle System Operator and the City of Emeryville, which bounds the geographic area where one-way Vehicle share Users may legally park one-way Vehicle share Vehicles within Emeryville.
- (s) “Permit” means the Permit applicable to the applicable Shared Vehicle System: Free-Floating Parking Permit, Master Residential Parking Permit, One-Way Electric Moped Sharing Permit, or – MRPP, One-Way Electric Moped Sharing Permit, or Dedicated-Space Vehicle Sharing Parking Permit. Permits expire on June 30 of each year, with the exception of Permits issued prior to June 30, 2021, which will expire on June 30, 2022.
- (t) “Preferential Permit Parking Zone” means a zone restricted for holders of Residential Parking Permits or other specified vehicles.
- (u) “Residential Parking Permit Program” and “Residential Parking Permit” refer to permits issued under the City of Emeryville’s Parking Permit Program Guidelines.
- (v) “Roadway” is defined in section 530 of the California Vehicle Code or any successor statute.
- (w) “Service Area” means the roadways where parking is permitted, in the entire City of Emeryville, including public parking lots.

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- (x) "Shared Vehicle," or "Vehicle," means a Vehicle for short-term rental for point to point trips where, by design of the Shared Vehicle System Operator, the Vehicle is intended to remain in the public right of way, even when not being rented. "Vehicles" include cars, passenger trucks, and mopeds.
- (y) "Shared Vehicle System," or "System," means a system providing Vehicles as defined above.
- (z) "Shared Vehicle System Operator" or "Operator" is an entity that owns and/or operates a Shared Vehicle System in the public right of way. The term includes any employee, agent or independent contractor hired or retained by the Operator.
- (aa) "Shared Vehicle User, or "User," is any person that uses, rents, or operates a Shared Vehicle or is a customer of the Operator.
- (bb) "Shared Vehicle System" means a membership-based service, available to all licensed drivers, who meet the Vehicle sharing organization's eligibility requirements, which offers access to a network of Vehicles 24 hours per day, 7 days a week, at self-service locations and allows members to reserve and use a shared Vehicle without a separate written agreement, at rates that are proportional to usage.

4-14.102 Vehicle Share Parking Zone

- (a) Operator must serve the public right of way in the entire city of Emeryville. An Operator shall not restrict use of its System within geographical areas of the city without written permission.
- (b) Vehicles should be distributed throughout Emeryville. Operators shall provide the City real-time access to data showing the location of all of their Vehicles.
- (c) Operators will closely monitor Vehicle use and adjust Vehicle density and location accordingly to maximize the convenience of the greatest number of riders.

4-14.103 Affordability.

- (a) Operators shall offer a discounted membership or rate for those who participate in the State Nutritional Assistance Program (SNAP) or California Alternative Rates for Energy (CARE).
- (b) Operators shall implement a marketing and targeted outreach plan at its own cost, or, at the City Manager's discretion, pay an in-lieu fee to the City to increase awareness of low-income discount options.

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- (c) Operators must report quarterly to the City the status of their low-income discount programs, including how many members have signed up, how many trips have been taken at a discounted rate, and other aspects of the program as requested by City.

4-14.104. System Data and Reports.

- (a) Operators must provide license plate numbers of all Vehicles covered by a Permit and keep the City apprised of changes in the Vehicle fleet. Vehicles with license plate numbers that have not been provided to the City will be subject to parking enforcement.
- (b) Operators shall make anonymized real-time data compliant with Federal, State or Local data privacy provisions available to the City and designated third parties via the "Mobility Data Specification (MDS)," or similar standard as determined by the City.
- (c) Operators must provide quarterly reports to the City on key performance indicators, including, but not limited to, the following:
 - 1. Number of Vehicles in fleet
 - 2. Parking locations of Vehicles
 - 3. Fleet usage
 - 4. Routes
 - 5. Total number of members
 - 6. Member survey and general demographics
- (d) Operators must provide reports on a quarterly basis or at other intervals as agreed upon by the Operator and the City.

4-14.105. Community Engagement Process.

- (a) The City Manager may establish requirements for a community engagement process, including public workshops where Operators co-plan the System with the community and a public forum for Operators to present their proposals directly to, and receive comments from, members of the Emeryville community including residents and members of the business and educational communities. Public outreach plans shall be pre-approved by designated City staff, and should include a full list of presentations, activities, and events.
- (b) Operators must have a way to receive and respond to complaints in multiple languages, including, but not limited to, Spanish. A summary of complaints must be submitted to the City at least quarterly.

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- (c) For Vehicles requiring helmets, Operators shall make available free or discounted helmets to those participating in the discounted membership program through in-person events or through their mobile application.
- (d) Helmets provided to users should be available by mail or equivalent as well as at an accessible physical location.

4-14.106. Revocation or Suspension of Permits.

- (a) The City Manager may revoke or suspend a Permit, or impose penalties at his or her reasonable discretion for reasons including, but not limited to, the following:
 - 1. A failure to comply with the Emeryville Municipal Code;
 - 2. A failure to comply with the Conditions of the Permit, if any;
 - 3. A violation of the provisions of this Chapter.
 - 4. A determination that the operation of the Shared Vehicle service poses a risk to public safety;
 - 5. A determination that the operation of the Shared Vehicle service by the Permittee conflicts with the City's obligation to manage the right of way responsibly;
 - 6. A transfer of the Permit to another party without prior written approval by the City;
 - 7. A material misstatement or omission in the Permit application or any other associated document;
 - 8. The Permittee sells or shares confidential and individual User data;
 - 9. The Permittee does not pay required fees, surcharges, or penalties;
 - 10. The Permittee blocks or alters the presentation of any information or denies access to its company application by any City representative authorized to enforce the provisions of the associated Permit and this Chapter, or for the purpose of thwarting or interfering with any City representative's enforcement or oversight of the associated Permit or this Chapter; and
 - 11. Failure by the Users of specific Permittee to comply with applicable laws and the requirements of this Chapter.
 - 12. Permit can be revoked if an ADA claim against the operator is filed (or – violation of any other law)
- (b) Appeal of Disapproval, Revocation or Suspension of Permits.
 - 1. Within fifteen (15) days after the City Manager serves notification of disapproval, revocation or suspension of a Permit, an applicant or Permit holder may appeal the action by notifying the City Clerk in writing of the appeal, the reasons for the appeal, and paying any applicable fees.
 - 2. The City Clerk shall set a hearing on the appeal and shall fix a date and time certain, within thirty (30) days after the receipt of the appeal, unless the City and the applicant/Permit holder agree to a longer time to consider the appeal.

- The City Clerk shall provide notice of the date, time and place of hearing, at least seven (7) days prior to the date of the hearing.
3. The City Manager shall appoint a Hearing Officer to hear the appeal, determine the order of procedure, and rule on all objections to admissibility of evidence. The applicant/Permit holder and the City Manager shall each have the right to submit documents, call and examine witnesses, cross-examine witnesses and argue their respective positions. The proceeding shall be informal, and the strict rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions.
 4. The Hearing Officer shall issue a written decision within fifteen (15) days after the close of the hearing. The decision of the Hearing Officer shall be final.

4-14.107. Relationship to City.

In rendering service, hereunder, the Operator shall be and remain an Independent Contractor. It is expressly understood and acknowledged by the parties that any amounts payable hereunder shall be paid in gross amount, without reduction for penalties, taxes, or charges. Operators are responsible for assuming any applicable federal or state withholding taxes, estimated tax payments, or any other fees or expenses whatsoever.

Permits issued under this Chapter are not to be assigned or delegated to a substitute provider, a successor in interest, or a purchaser of the Permit without express written permission from the City.

The City reserves the right to terminate Permits at any time and require the Operator to remove their entire fleet from City streets. An Operator will have 30 days to remove the entire fleet from City streets.

4-14.108. Non-transferability.

A Permit may not be transferred without prior written approval of the City Manager. Operator shall promptly notify the City of any changes to the Operator's corporate structure or ownership. Failure to do so shall be cause for revocation of the Permit. "Transfer" shall include the sale or other exchange of 50% or more of the ownership or control of a Permittee to a third party.

4-14.109. Indemnification.

Operator agrees to defend, indemnify, and hold harmless the City, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands, and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses, and amounts paid in compromise, settlement, or judgment, and reasonable legal fees arising

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from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of, in connection with, or which are in any way related to, the City's issuance of or decision to approve a Permit, the process used by the City in making decisions, Operator's participation in the Shared Vehicle System, the Operator's (including its officers, managers, employees, contractors, agents, and volunteers) business conduct and operations, any violation of any laws by the Operator (including its officers, managers, employees, contractors, agents, and volunteers) or its users, or any bodily injury including death or damage to property arising out of or in connection with any use, misuse, placement or misplacement, including but not limited to placement or misplacement resulting in alleged violations of the Americans with Disabilities Act (ADA), of any of the Operator's device or equipment by any person, except such loss or damage which was caused by the sole willful misconduct of the City. Operator will conduct all defenses at its sole cost and expense, and City shall reasonably approve selection of the counsel to represent City as proposed by Operator. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Operator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of Operator, its affiliates or other parties are not a limitation upon the obligation of Operator, including without limitation, the amount of indemnification to be provided by Operator. The provisions of this section shall survive the termination of this Agreement.

4-14.110. Insurance Requirements.

Unless a written waiver is obtained from the City Manager or his or her designee, the Permittee must provide the insurance required in the Permit application.

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ARTICLE 2: ONE-WAY CAR SHARING

4-14.201 Permits.

- (a) Free Floating Parking Permits entitle One-Way Car Share Organization members to park One-Way Car Share Vehicles in metered and unmetered spaces in which parking is allowed for two (2) hours or longer, for up to seventy-two (72) hours, within the designated Service Area. Members may park at meters without paying the meter. Members may park in other zones and shall pay meters. Members may also park for less than two hours where parking is limited to less than two hours.
- (b) Fees for Master Residential Parking Permits, and for the implementation and administration of this Article, may be adopted by resolution of the City Council. One-Way car share fees shall reflect the cost of foregone meter revenue and administration.

4-14.202. Permit Parking Exemption

- (a) A One-Way Vehicle Share Vehicle covered by a valid Permit, parked at a metered or unmetered parking space in which parking is allowed for two (2) hours or longer, for up to seventy-two (72) hours, that is located within the company's defined Service Area, shall be exempt from the provisions stated in Sections 4-09 and 4-10 (Public Safety/Parking Meters), which regulate the parking or standing of Vehicles, which includes time limits enforced at inoperable parking meters and multi-space pay stations except that it may not remain parked at the same location for more than 72 hours.
- (b) A Vehicle covered by a valid Master Residential Parking Permit shall be permitted to stand or be parked in any of the Residential Permit Parking Areas established pursuant to the City of Emeryville's Parking Permit Program with the same rights and restrictions as Residential Parking Permit (RPP) holders.

4-14.203 Fleet and Parking

- (a) The City Manager is authorized to set the number of Free Floating Parking Permits issued to One-Way Car Share Organizations to be used on car share Vehicles.
- (b) The City Manager is authorized to institute a cap on the number of vehicles parked in Emeryville on a daily average or other related metric.
- (b) The One-Way Car Share Organization shall share the license plate numbers of the share Vehicles with the City when Permits are first obtained and before placing new Vehicles on streets.

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- (c) All fleet Vehicles shall be Low-Emission Vehicles.
- (d) Car share Vehicles shall not park in Residential Permit Parking zones or preferential permit parking zones unless a Master Residential Parking Permit has been issued to the Operator.

ARTICLE 3. ONE-WAY ELECTRIC MOPED SHARING.

4-14.301 Permits

- (a) One-Way Electric Moped Sharing Parking Permits entitle One-Way Electric Moped Share Organization members to park One-Way Share Electric Mopeds for up to 72 hours in metered and unmetered spaces in which parking is allowed for two hours or longer and in Residential Parking Permit areas.
- (b) Fees for One-Way Electric Moped Sharing Parking Permits may be adopted by resolution of the City Council. One-Way Electric Moped Sharing Parking Permit fees shall reflect the cost of administration.

4-14.302 Permit Parking Rights and Exemptions.

- (a) One-Way Share Electric Mopeds associated with a valid annual One-Way Electric Moped Sharing Parking Permit are permitted to park in metered and unmetered parking spaces, duration-limited spaces, and permit parking zones, for up to seventy-two (72) hours, if the Electric Moped is parked perpendicular to the curb. Electric Mopeds parked in such locations and in such manner are exempt from time restrictions and meter payments.
- (b) This Article shall not exempt a One-Way Electric Moped Share Organization from any other parking prohibitions or from other traffic controls and regulations.

4-14.303 Safety and Parking Requirements.

In order to maximize User safety and compliance with the required parking method, all One-Way Electric Moped Share Organizations must do the following:

- (a) Require Users to have driver licenses.
- (b) Include at least one helmet for use by each rider, and require all riders to wear helmets.
- (c) Offer a free, in-person class showing how to ride the Electric Moped safely, stating that Electric Mopeds are not allowed in bike lanes or on freeways, and showing how to park Electric Mopeds perpendicularly with the front wheel touching the curb.

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- (d) The One-Way Electric Moped Share Organization shall share the license plate numbers of the One-Way Share Electric Mopeds with the City when Permits are first obtained and before placing new Electric Mopeds on the street.

ARTICLE 4. DEDICATED-SPACE VEHICLE SHARING

4-14.401 Permits.

- (a) Permit applicants must meet the requirements in this Chapter, with the exception of those set forth in Section 4-14.102.
- (b) Fees for Dedicated-Space Vehicle Sharing Parking Permits, and for the implementation and administration of this Article, may be adopted by resolution of the City Council. Dedicated-Space Vehicle Sharing fees shall reflect the cost of administration and lost revenue if a paid parking space is used as a Dedicated Space.

4-14.402 Permit Parking Rights.

A Dedicated-Space Vehicle Sharing Vehicle associated with a valid annual Dedicated-Space Vehicle Sharing Vehicle Parking Permit shall be permitted to be parked for an unlimited time in any parking space that the City has designated for the use of the Dedicated-Space Vehicle Share Organization that owns the Vehicle.

4-14.403 Parking Space Dedication.

A Dedicated-Space Vehicle Share Organization may request that a space or spaces on a public street or other City-owned property be designated for dedicated-space Vehicle share parking. Such request may be approved by the City Council upon a recommendation from the Transportation Committee. The City Council may add conditions to the approval.

4-14.404 Fleet and Parking.

- (a) All fleet Vehicles shall be Low-Emission Vehicles.
- (b) Dedicated-Space Vehicle Sharing Vehicles are subject to time limits, meter fees, and residential Parking Permit restrictions outside of the organization's designated parking spaces, as well as all other parking and traffic regulations and laws.
- (c) The Dedicated-Space Vehicle Share Organization shall share the license plate numbers of the share Vehicles with the City when Permits are first obtained and before placing new Vehicles on the streets.

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SECTION THREE. CEQA DETERMINATION

The City Council finds, pursuant to Title 14 of the California Code of Regulations, section 15061(b)(3) that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project that has the potential for causing a significant effect on the environment.

SECTION FOUR. SEVERABILITY

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause and phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases

SECTION FIVE. CODIFICATION

Section Two of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Three, Four, Five and Six are not codified.

SECTION SIX. EFFECTIVE DATE AND POSTING

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

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This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, May 18, 2021, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, June 1, 2021 by the following vote:

AYES:	<u>5</u>	Mayor Martinez, Vice Mayor Donahue, and Council Members Bauters, Medina, and Patz
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:

Dianne Martinez

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MAYOR

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:

Sheri Hartz

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CITY CLERK

DocuSigned by:

Andrea Visveshwara

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INTERIM CITY ATTORNEY