

ORDINANCE NO. 01-2022

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF EAST PALO ALTO**

**ENACTING CHAPTER 5.11 OF THE EAST PALO ALTO
MUNICIPAL CODE RELATING TO FIRST SOURCE HIRING FOR
CITY-FUNDED PROJECTS AND PROPERTIES**

**THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES ORDAIN AS
FOLLOWS:**

SECTION 1. CHAPTER 5.11 ENACTED.

A new chapter, Chapter 5.11 is added to the East Palo Alto Municipal Code to read as follows:

5.11.010 Findings

A. The City Council of the City of East Palo Alto hereby finds statistics indicate that unemployment levels for the residents of the City of East Palo Alto are higher than for the remainder of San Mateo and Santa Clara Counties. Statistics also indicate that the higher unemployment level in the City of East Palo Alto correlates to the higher number of families living in poverty, to a higher crime rate, and to an increased need for essential services provided by government agencies.

B. Residents of East Palo Alto also have significantly lower per capita income and median family incomes than residents of the surrounding Bay Area, resulting in higher levels of poverty and increased need for social services.

C. Residents of East Palo Alto are much more diverse than the surrounding Bay Area, with the majority of the residents being Black, Indigenous or People of Color (BIPOC). BIPOCs are underrepresented in the Science, Technology, Engineering and Mathematics (STEM) fields which represent a significant segment of the jobs available in the Bay Area and suffer from higher unemployment rates.

D. Residents of East Palo Alto have a lower rate of high school and college graduation than the surrounding Bay Area, making it harder for East Palo Alto residents to compete for high paying quality jobs.

E. Employed residents of East Palo Alto on average have a 25-minute one-way commute to their place of employment, adding additional cars to the Bay Area's congested roadways and increasing climate impacts.

F. On November 6, 2018, the residents of East Palo Alto passed a parcel tax on commercial space, titled Measure HH, the funds from which are to create and maintain programs that facilitate access to job opportunities for East Palo Alto residents in the STEM and building trade sectors.

G. Providing jobs to East Palo Alto residents in publicly financed construction and development projects will assist in combatting the negative impacts of unemployment in the community by decreasing the need for social services, increasing the standard of living for East Palo Alto residents, addressing long standing racial inequities, and shortening resident's commute times.

5.11.020 Title, Policy and Purpose

A. This chapter may be referred to as the First Source Hiring Ordinance.

B. It is the policy of the City of East Palo Alto to ensure full and equitable opportunities for East Palo Alto residents to participate in the employment opportunities that arise from public works contracts and subsidized projects. It is also the policy of the City to increase the number of employed persons living in the City of East Palo Alto in an attempt to counteract the grave economic and social ills associated with the higher unemployment levels that exist within the City and to address the effects of systemic racism.

C. The City Council has determined, that although there are numerous workforce development programs providing services to East Palo Alto residents, there is a need to provide East Palo Alto residents with more opportunities to participate in workforce development programs that include life skills training, job readiness training, and case management services. Such workforce development programs will increase the capacity of East Palo Alto residents to succeed in obtaining jobs and reduce the unemployment rate and accompanying poverty and crime conditions.

D. By increasing the capacity of East Palo Alto residents through workforce development programs, East Palo Alto residents will be better suited to compete in the marketplace, and East Palo Alto employers will be better able to meet increased local workforce participation goals.

E. In furtherance of these policies, the City establishes a first source hiring program to encourage the hiring and retention of East Palo Alto residents for the work to be performed under public works contracts and subsidized projects.

5.11.030 Scope and Goals.

A. For any public works contracts with the City that have a value of \$250,000 or more, a subsidized project with a subsidy from the City of \$250,000 or more, or a project sited on property leased from the City, there is hereby established the following goals for employment of East Palo Alto residents:

1. Public Works (Construction) Employment: A minimum of twenty percent (20%) of the total work hours for the contract or project shall be performed by East Palo Alto residents, and a minimum of twenty percent (20%) of all new hires for the contract or project shall be East Palo Alto residents for the duration of the contract or project, of which a minimum of five percent (5%) of all new hires for the contract or project shall be disadvantaged workers who are East Palo Alto residents.

2. Retail Employment in Subsidized Project: A minimum of twenty percent (20%) of the total workforce shall be East Palo Alto residents, and a minimum of twenty percent (20%) of all new hires shall be East Palo Alto residents.

3. Office, Administrative, and Other Employment in Subsidized Projects: A minimum of twenty percent (20%) of the total workforce shall be East Palo Alto residents, and a minimum of twenty percent (20%) of all new hires shall be East Palo Alto residents.

B. An employer who does not meet these goals may still be deemed in compliance with these requirements if the employer demonstrates the following good faith efforts:

1. The employer complied with the guidelines adopted by the City to implement this policy including any local employment plan approved by the City;

2. The employer demonstrates that information on all available jobs was presented to the City's designated job coordinator or coordinators at least forty-eight (48) hours prior to hiring for any available position

3. The employer provides evidence that it made requests to any unions working on the project for East Palo Alto residents

4. If the employer received applications from East Palo Alto residents but did not hire the East Palo Alto residents, the employer can demonstrate the failure to hire was based on objective skills-based criteria.

C. The goals established in this section represent the minimum employment standards for the affected categories, and subject businesses are encouraged to exceed these goals whenever possible.

D. With respect to retail employment and office, administrative, and other employment by any employer that occupies any portion of a subsidized project or any property owned by the City pursuant to a lease or other agreement with the City and employs more than ten (10) full time equivalent employees at the site shall meet the employment goals as provided for in this section. The obligation to comply with these goals for a subsidized project shall be for a term of not less than three (3) years or more than ten (10) years after issuance of the certificate of occupancy for the subsidized project, with such term determined by the amount of the City subsidy in accordance with the adopted guidelines. The obligation to comply with these goals for any property owned by the City pursuant to a lease or other agreement with the City shall be in accordance with the terms of that lease or other agreement.

E. Any small business is exempt from the requirements of this chapter.

F. Any waiver of the provisions of this chapter for any public works contract or subsidized contract must be approved by the city council. The city council may consider a waiver of the provisions of this chapter if application of this chapter to a particular project or public work contract would make the City ineligible for state or federal funding.

G. The employer's compliance with this chapter shall be a requirement for any bid for a public work contract to be considered responsive and responsible. If the City elects to pre-qualify contractors, a contractor's or subcontractor's agreement to comply with this chapter shall be required for the contractor or subcontractor to be considered qualified, capable and fit. Failure of a contractor or subcontractor to comply with the requirements of this chapter in past contracts shall be a basis for the City to determine that the contractor or subcontractor is not qualified, capable or fit and shall be a factor in determining whether the contractor is the lowest responsible bidder in accordance with Section 2.84.080.

5.11.040 Definitions

As used in this chapter:

"City Manager" means the City Manager for the City of East Palo Alto, or designee.

"Construction contractor" means an individual, partnership, corporation, joint venture or other legal entity entering into a public works contract with the City or performing construction work on a subsidized project.

"Disadvantaged Workers" means an individual, who prior to commencing work on the public work, faces at least two of the following barriers to employment; (1) being homeless; (2) being a custodial single parent; (3) receiving public assistance; (4) lacking a GED or high school diploma; (5) having a criminal record or other involvement with the criminal justice system; (6) suffering from chronic unemployment; (7) emancipated from the foster care system; (8) being a veteran of the Iraq/Afghanistan war; or (9) being an apprentice with less than 15% of the required apprenticeship hours in the program.

"Employer" means a construction contractor, subsidy recipient or any of their subcontractors, or any business which occupies and conducts its business on any portion of the site of any subsidized project while the chapter is applicable to the project or on any property leased from the City.

"Guidelines" means the guidelines for implementation of this policy as initially adopted or as may be amended from time to time.

"First source agreement" means a written contract between an employer and the City establishing the hiring process to be followed and containing the employer's commitment to abide by the responsibilities of an employer under this chapter and agreement that the

specified hiring process shall be followed in order to maximize the number of East Palo Alto residents and disadvantaged workers employed.

"New hire" means any employee of an employer who is not listed on the employer's last quarterly tax statement for the period prior to the commencement of work.

"Public works contract" means any contract with the City for construction, alteration, demolition or repair work.

"Referral system" means the system established by the City to provide referrals of residents to employers for employment covered by this chapter.

"Resident" means any person who is domiciled in East Palo Alto as that term is defined in Election Code Section 349(b).

"Small business" means any business that employs the equivalent of ten (10) or fewer full-time employees in its total workforce.

"Subcontractor" means any and all parties with whom a subsidy recipient, construction contractor or other subcontractor enters into a contract to perform a portion of any construction, alteration, demolition or repair work.

"Subsidized project" means a development project for which a subsidy recipient received one or more subsidies with a total value to the City of \$250,000 or more.

"Subsidy" means direct or indirect assistance by the City or as directed by the City that materially benefits a person or entity, including, but not limited to: grants or loans of funds administered by the City; tax abatements or deferrals; fee deferrals or abatements; infrastructure improvements made for the purpose of facilitating or supporting a development project; land sale or ground lease at below market value.

"Subsidy recipient" means a person or entity that in any twelve-month period receives one or more subsidies from the City with a total value of \$250,000 or more; and/or a person or entity that receives written notice that in exchange for the grant or subsidy to that person or entity, such person or entity must abide by the provisions of this chapter.

5.11.050 Powers and Duties of City

In addition to the duties and powers given to the City set forth elsewhere in the East Palo Alto Municipal Code, the City shall have the following duties and powers regarding this chapter:

- A. The City shall conduct pre-bid meetings for public works contracts or projects subject to this chapter to inform potential bidders of the requirements codified in this chapter;
- B. The City shall include the requirements of this chapter in all bid packages for public works;

- C. The City shall have the exclusive right to determine whether or not a business is a small business;
- D. The City shall require all employers with contracts or projects subject to this chapter to abide by its provisions;
- E. The City shall require that employers require compliance with and enforce the provisions of this chapter with any and all subcontractors, successors and assigns;
- F. The City shall actively monitor compliance with this chapter and submit periodic reports to the city council on the status of the implementation of this chapter on all public works contracts, and subsidized projects. Compliance will be measured from the initial day of performance and shall continue for the duration of the contract or project in question;
- G. The City shall convene a semi-annual meeting of stakeholders including, local labor unions, local contractors who participate in state-certified jointly administered training programs, community-based training and job development program providers, local college training programs, and social justice advocacy groups to provide feedback and suggestions about this chapter and to review employment goals established by this chapter. Such feedback and suggestions shall be included in the required report to city council;
- H. The City shall require that this chapter is incorporated into all relevant development agreements, development and disposition agreements, land disposition agreements, leases, requests for proposal, requests for qualifications, bid packages, construction contracts, and other such documents;
- I. The City shall ensure the employment goals set pursuant to this chapter are maintained for the duration of the contract or project in question.

5.11.060 Employer Responsibilities

- A. As a condition of entry into any contract or receipt of a subsidy subject to this chapter, or of locating in a subsidized project, each employer shall comply with the responsibilities and goals set forth in this chapter, including, but not limited to:
 - 1. First Source Agreements. Each employer shall enter into a first source agreement. The first source agreement shall establish the hiring process to be followed by the employer for construction and non-construction hiring to achieve the goals of this chapter. Unless the city council directs otherwise, first source agreements shall contain the terms set forth in the sample documents. The form of the first source agreement shall be approved by the city manager and shall be consistent with this chapter and the guidelines.
 - 2. Pre-Bid Meetings. Each employer shall attend any pre-bid meeting conducted by the city for any contract or project subject to this chapter;
 - 3. Cooperation with Monitoring Efforts. Each employer shall make available to the city all records and information relevant to monitoring and enforcement of this chapter, including contracts with other entities. The City shall not use such records or information

for any purpose other than monitoring or enforcement of this chapter. Each employer shall cooperate fully and promptly with any inquiry or investigation the City deems necessary in order to monitor compliance, including allowing access to job sites and employees. In no event shall an employer take more than ten (10) days to respond to an inquiry or investigation. Employers may remove names and social security numbers from requested records to protect the privacy of individual employees, however, the City may require that an employer provide addresses of individual employees if their actual place of residence is at issue.

B. Reporting Exemption. As an incentive to exceed the goals of this chapter, an employer who meets the following requirements shall be deemed to be in compliance with the goals for the quarter and exempt from reporting requirements for that quarter:

1. Public Works (Construction) Employment: A minimum of thirty percent (30%) of the total work hours for the contract or project during the quarter was performed by residents and/or disadvantaged workers;

2. Retail Employment: A minimum of thirty percent (30%) of the total workforce during the quarter was residents;

3. Office, Administrative, and Other Employment: A minimum of thirty percent (30%) of the total workforce during the quarter was residents.

4. Any employer who achieves or exceed the goals set forth in this subsection for four consecutive quarters shall thereafter be required only to make an annual report, unless the employer fails to file the annual report or the report fails to demonstrate compliance.

C. Non-City Project Hiring. An employer who can adequately document the new hire of an East Palo Alto resident on any non-City project within one of the nine Bay Area counties (Alameda, Contra Costa, San Francisco, San Mateo, Santa Clara, Marin, Solano, Napa, and Sonoma), during the time a subject contract or project is in effect, shall be entitled to credit the hours of that East Palo Alto hire towards meeting the new hire goals of this chapter.

D. Binding on Successors and Assigns. Each employer subject to this chapter shall not assign, sell or in any way transfer any portion of their interest in a contract, project, subsidy or other interest subject to this chapter without first notifying the City. Each employer shall require each of the employer's successors and/or assigns agree to comply with all terms of this chapter applicable to employers.

E. Nondiscrimination in Conditions of Employment. Employers shall not discriminate against residents in any terms and conditions of employment, including retention, promotions, job duties, shift assignments and training opportunities.

5.11.070 Responsibilities Regarding New Hires.

Every employer shall have the following responsibilities:

A. Each employer shall comply with the goals for all new hires and shall use union hiring halls for union contracts and any referral system specified by the City for non-union contracts;

B. Each employer shall, prior to hiring in furtherance of the contract or project, provide to the City its hiring projections, including number, type, and qualifications for the projected jobs;

C. Each employer shall utilize the hiring process specified in their first source agreement with the City.

5.11.080 Noncompliance

A. The City shall determine whether an employer has complied with the requirements of this chapter. If the City determines the employer failed to comply with the provisions of this chapter, the employer has the burden of proving compliance and its obligations under this chapter or a good faith effort to comply. Each employer agrees to pay civil penalties if imposed if found in noncompliance.

B. The city manager has the power, in addition to any other remedy the City may have under this code or by operation of law, to suspend or terminate the pertinent contract in whole or in part, with continuance thereof conditioned upon a satisfactory showing to the city manager of the employer's ability to comply.

C. In the event the City believes the employer may not be in compliance with the requirements of this chapter, the following procedure will be followed:

1. The City Manager or designee shall cause to be delivered to the employer a written "Notice of Noncompliance." This notice shall specify the matters which constitute the noncompliance; the specific action required to correct the noncompliance; and the time period during which such correction shall occur. In no event shall this time period be more than thirty (30) days after receipt of the notice by the employer. If the notice is mailed, it will be deemed received five days after the date of mailing.

2. If the employer disagrees with the notice, it shall have the burden of proving compliance with the provisions of this chapter and shall submit any evidence and argument to the city manager to establish compliance no more than thirty (30) days after receipt of the notice of noncompliance by the employer.

3. In the event the city manager subsequently agrees compliance has occurred, the city manager shall cause to be delivered promptly to the employer a written "Notice of Correction of Noncompliance," specifying the original noncompliance which has been corrected.

4. In the event the City Manager does not agree compliance has occurred, the city manager shall promptly notify the employer by a written "Notice of Failure to Correct Noncompliance," describing the facts constituting the noncompliance.

5. After the issuance of a written "Notice of Failure to Correct Noncompliance," the employer shall have the right to request a hearing before the city council or a mutually agreed upon arbitrator who shall make the final determination. The request for a hearing must be made within ten (10) business days after receipt of the "Notice of Failure to Correct Noncompliance." If the notice is mailed, it will be deemed received five days after the date of mailing. The hearing shall be held no sooner than twenty (20) and no later than thirty (30) days after receipt by the City of the request for hearing, unless otherwise agreed to by the parties. At the hearing, the employer may present any evidence and argument it believes proves compliance. The city council or neutral arbitrator shall issue a final determination no later than ten(10) business days after the hearing. The employer must exhaust this administrative remedy prior to commencing further legal action.

6. In the event no request for hearing is timely made, the determination of failure to correct noncompliance shall be deemed to be final;

7. If the employer fails to comply with the "Notice of Noncompliance" and a final determination of noncompliance is made, the City may exercise any of its powers as specified in this section.

D. Civil Penalties. The City may assess civil penalties for violations of this chapter. Civil penalties for violations are as follows: An amount not to exceed \$1,000.00 or 1% of the total contract amount, whichever is greater, for each working day of noncompliance, regardless of the number of separate acts of noncompliance by the employer existing on a particular day.

E. The City shall keep a record of all violations of the hiring goals established by this chapter. A history of violation shall be a factor considered by the City when deciding upon any future awards of contracts to the affected employer and may form the basis for denying any future contracts to the affected employer.

5.11.090 Miscellaneous

A. Sources of Authority. This chapter constitutes an exercise of the police powers of the City and the contracting and spending powers of the City.

B. Compliance with State and Federal Law. This chapter shall be enforced only to the extent it is consistent with the laws of the State of California and the United States of America. Nothing in this chapter is intended to affect the duties of any business, including any small business, under state or federal law. In addition, no provision of this chapter is intended to exempt any business from complying with applicable state or federal law. No employer shall be required to violate its obligations under an agreement governed by the National Labor Relations Act and the Labor-Management Relations Act. If the provisions of the chapter conflict with any federal or state funding applicable to a project, the employer shall be excused from complying with the provisions of this chapter but only if the federal or state funding requirements prohibit compliance. If any provision of this chapter is held by a court of law to be in conflict with state or federal law, the applicable law shall prevail

over the terms of this chapter, and the conflicting provisions of this chapter shall not be enforceable.

C. Compliance with Court Order. An employer shall be excused from compliance with the pertinent terms of this chapter if the employer is bound by a court or administrative order or decree which conflict with those terms.

D. Material Terms. The provisions of this chapter are material terms of all contracts or agreements in which this chapter is incorporated.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Ordinance is not subject to CEQA because it is not a "project" which would have a direct physical change or a reasonably foreseeable indirect physical change on the environment pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15378. Even if it were a project subject to CEQA review, this project would be exempt from CEQA Guideline Section 15378 (regulatory actions), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning). The Council therefore directs that the Planning Division may file a Notice of Exemption with the San Mateo County Clerk.

SECTION 3. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 4. EFFECTIVE DATE.

This Ordinance shall take effect and be in full force thirty (30) days from and after the date of its adoption, and shall govern all contracts and other relevant agreements not executed by that date.

SECTION 5. PUBLICATION.

The City Clerk is hereby directed to cause publication of this Ordinance as required by Government Code Section 36933.

This Ordinance was introduced at the March 15, 2022, meeting of the City Council of the City of East Palo Alto.

PASSED AND ADOPTED this 5th day of April, 2022 by the following vote:

AYES: Romero, Abrica, Gauthier, Lopez, and Wallace-Jones

NOES:

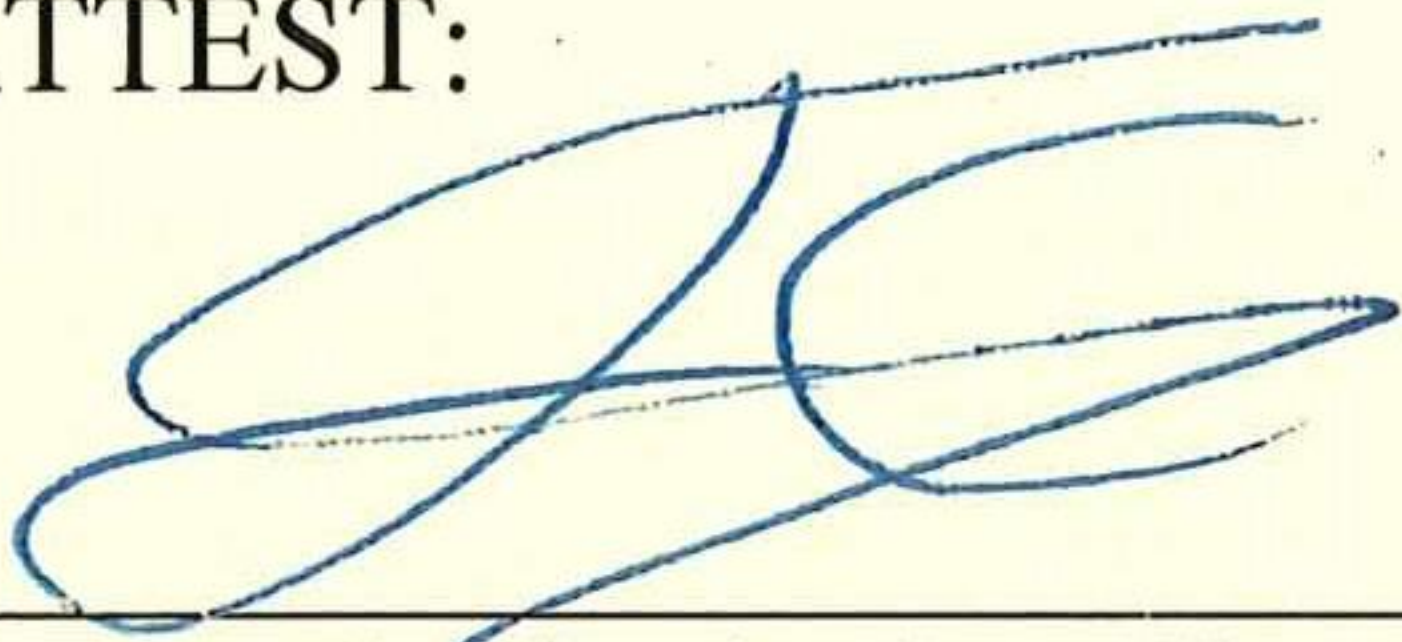
ABSENT:

ABSTAIN:



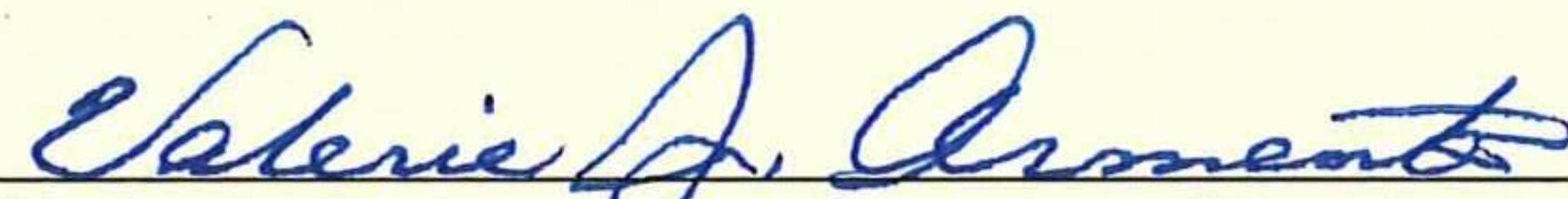
Ruben Abrica, Mayor

ATTEST:



James Colin, Acting City Clerk

APPROVED AS TO FORM:



Valerie J. Armento, Interim City Attorney