



CITY COUNCIL SPECIAL AND REGULAR MEETING AGENDA

Tuesday, April 29, 2014
6:00 P.M.

701 Laurel Street, Menlo Park, CA 94025
City Council Chambers

6:00 P.M. CLOSED SESSION (1st floor Council Conference Room, Administration Building)

Public Comment on these items will be taken prior to adjourning to Closed Session

CL1. Closed Session pursuant to Government Code Section §54946.8 to meet with real property negotiators, City Attorney Bill McClure and City Manager Alex McIntyre, regarding potential sale of real property commonly known as 1467 Chilco Street, Menlo Park, to the Menlo Park Fire Protection District, including but not limited to instructions regarding sales price and other terms of sale

CL2. Closed Session pursuant to Government Code Section §54957 to conference with labor negotiators regarding labor negotiations with the Police Officers Association (POA) and Service Employees International Union (SEIU)

Attendees: Alex McIntyre, City Manager, Starla Jerome-Robinson, Assistant City Manager, Bill McClure, City Attorney, Gina Donnelly, Human Resources Director, Drew Corbett, Finance Director, and Charles Sakai, Labor Attorney

7:00 P.M. REGULAR SESSION

ROLL CALL – Carlton, Cline, Keith, Ohtaki, Mueller

PLEDGE OF ALLEGIANCE

REPORT FROM CLOSED SESSION

ANNOUNCEMENTS

SS. STUDY SESSION

SS1. Review of the Downtown Parking Program

SS2. Discuss participation in Alameda County Regional Renewable Energy Procurement (R-REP) Project that could potentially provide solar power (Photovoltaic Panels) to five city facilities, and provide general direction on financing, review process, and installation of solar carports ([Staff report #14-066](#))

A. PRESENTATIONS AND PROCLAMATIONS

A1. Proclamation honoring the Menlo Park Farmer's Market

A2. Presentation of Environmental Quality Awards

A3. Presentation of New City Website Reveal

B. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS

- B1.** Library Commission quarterly report on the status of their 2 Year Work Plan
- B2.** Consider applicants for appointment to fill two vacancies on the Planning Commission, two vacancies on the Parks and Recreation Commission, and one vacancy on the Housing Commission ([Staff report #14-062](#))
- B3.** Provide information from Bicycle and Transportation Commissions about a potential commission merger

C. PUBLIC COMMENT #1 (Limited to 30 minutes)

Under "Public Comment #1", the public may address the Council on any subject not listed on the agenda and items listed under the Consent Calendar. Each speaker may address the Council once under Public Comment for a limit of three minutes. Please clearly state your name and address or political jurisdiction in which you live. The Council cannot act on items not listed on the agenda and, therefore, the Council cannot respond to non-agenda issues brought up under Public Comment other than to provide general information.

D. CONSENT CALENDAR

- D1.** Waive the reading and adopt ordinances amending the zoning ordinance to include housing element implementation programs related to an emergency shelter for the homeless overlay, definitions pertaining to transitional and supportive housing and residential care facilities, and procedures for reasonable accommodation ([Staff report #14-061](#))
- D2.** Consider removal of on-street parking for new SamTrans bus stops ([Staff report #14-064](#))
- D3.** Accept minutes for the Council meeting of April 1, 2014 and April 22, 2014 ([Attachment](#))

E. PUBLIC HEARINGS

- E1.** Adopt a resolution amending the City's Master Fee Schedule to incorporate proposed changes in fees to become effective immediately, July 1, 2014, or as required by statute for the following departments: Community Services and the Menlo Park Municipal Water District ([Staff report #14-060](#))

F. REGULAR BUSINESS

- F1.** Adopt a resolution authorizing the City of Menlo Park to become a member of the Western Riverside Council of Governments Joint Powers Authority and consenting to the inclusion of properties within the City of Menlo Park in the California HERO Program provided through WRCOG for financing of renewable energy and energy and water efficiency improvements ([Staff report #14-065](#))
- F2.** Consider and introduce ordinances to amend Chapter 16.79 (secondary dwelling units), Section 16.68.030 related to accessory buildings and accessory structures, and associated sections of Title 16 (Zoning) pertaining to secondary dwelling units and accessory structures and accessory buildings ([Staff report #14-067](#))

G. CITY MANAGER'S REPORT – None

H. WRITTEN COMMUNICATION – None

I. INFORMATIONAL ITEMS – None

J. COUNCILMEMBER REPORTS

J1. Resident request to agendize Well in Nealon Park to be considered in Water Program presentation scheduled for the June 3, 2014 City Council meeting

J2. Resident request to agendize prohibition of Round Up at City Parks presently under review by the Environmental Quality Commission

K. PUBLIC COMMENT #2 (Limited to 30 minutes)

Under "Public Comment #2", the public if unable to address the Council on non-agenda items during Public Comment #1, may do so at this time. Each person is limited to three minutes. Please clearly state your name and address or jurisdiction in which you live.

L. ADJOURNMENT

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City website at <http://www.menlopark.org> and can receive e-mail notification of agenda and staff report postings by subscribing to the "Home Delivery" service on the City's homepage. Agendas and staff reports may also be obtained by contacting the City Clerk at (650) 330-6620. Copies of the entire packet are available at the library for viewing and copying. (Posted: 04/24/2014)

At every Regular Meeting of the City Council, in addition to the Public Comment period where the public shall have the right to address the City Council on the Consent Calendar and any matters of public interest not listed on the agenda, members of the public have the right to directly address the City Council on any item listed on the agenda at a time designated by the Mayor, either before or during the Council's consideration of the item.

At every Special Meeting of the City Council, members of the public have the right to directly address the City Council on any item listed on the agenda at a time designated by the Mayor, either before or during consideration of the item.

Any writing that is distributed to a majority of the City Council by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available for inspection at the Office of the City Clerk, Menlo Park City Hall, 701 Laurel Street, Menlo Park, CA 94025 during regular business hours. Members of the public may send communications to members of the City Council via the City Council's e-mail address at city.council@menlopark.org. These communications are public records and can be viewed by any one by clicking on the following link: <http://ccin.menlopark.org>

City Council meetings are televised live on Government Access Television Cable TV Channel 26. Meetings are re-broadcast on Channel 26 on Thursdays and Saturdays at 11:00 a.m. A DVD of each meeting is available for check out at the Menlo Park Library. Live and archived video stream of Council meetings can be accessed at <http://www.menlopark.org/694/Watch-Public-Meetings>.

Persons with disabilities, who require auxiliary aids or services in attending or participating in City Council meetings, may call the City Clerk's Office at (650) 330-6620.

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PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 29, 2014
Staff Report #: 14-066

Agenda Item #: SS-2

STUDY SESSION: Discuss Participation in Alameda County Regional Renewable Energy Procurement (R-REP) Project that Could Potentially Provide Solar Power (Photovoltaic Panels) to Five City Facilities, and Provide General Direction on Financing, Review Process, and Installation of Solar Carports

RECOMMENDATION

Discuss participation in the Alameda County Regional Renewable Energy Procurement (R-REP) project that could potentially provide solar power (photovoltaic panels) to five city facilities, and provide general direction on financing, review process, and installation of solar carports.

BACKGROUND

The R-REP Project is an initiative led by Alameda County to collaboratively purchase renewable energy systems with 19 public agencies throughout Alameda, Contra Costa, San Mateo, and Santa Clara Counties. Working collaboratively instead of individually leads to a significant reduction in renewable energy system costs, transaction costs, administrative time, and enhances leverage for public agencies in negotiations for renewable energy systems.

On November 27, 2012, the City Council signed a Memorandum of Understanding (MOU) with Alameda County (Attachment A) to participate in the R-REP project by including the following City facilities in the bulk purchase of renewable power:

- Onetta Harris Community Center
- Belle Haven Child Care Center
- Corporation Yard
- Arrillaga Gymnasium
- Arrillaga Gymnastics Center

The MOU does allow flexibility for the City to withdraw one or all of its sites; however, doing so could increase pricing of the systems thereby reducing savings for other participating agencies and the remaining Menlo Park sites that are included in the project.

The City has already saved significantly by joining this effort through reduced staffing costs as Alameda County prepared and coordinated additional financial analysis, bid documents, vendor selection, and reviews on behalf of Menlo Park. Staff was required to provide site feasibility reports to Alameda County in order to develop the Request for Proposals (RFP). Optony, Inc. was contracted to develop the feasibility reports for Menlo Park's sites, and the results are included in Attachment B.

This month Alameda County awarded contracts for renewable power vendors. For Menlo Park, the vendor will be SolarCity based out of San Mateo. The City still needs to formally enter into a contract with SolarCity, and this is expected to come before council by July 1, 2014. Over the next two months, the City in collaboration with other agencies will be negotiating terms of the contract in order to maximize cost savings and benefits. See Attachment C for information pertaining to vendor selection criteria used by Alameda County.

Since there has been a time lapse from the last time Council reviewed this project in 2012, staff is bringing this as a study session item to confirm the Council's interest in the project, provide direction on financing and review process, and confirm Council's previous support with the installation of solar carports at City facilities. The project has two benefits in that it would save on operating costs and reduce greenhouse gas (GHG) emissions.

ANALYSIS

Financing Renewable Power

R-REP's participating agencies are able to choose from three financing options to purchase renewable power systems: Direct Purchase, Power Purchase Agreement (PPA), and Lease/Loan. Staff previously and continues to recommend that the City pursue a PPA. Under this option, the City would enter into a contract with SolarCity to purchase all energy produced by a renewable energy system installed on City property. SolarCity would own the system and would be fully responsible for all ownership costs, including financing, maintenance, insurance, and system production. Typically, these agreements also allow a buyout option between seven and ten years, which could increase savings further. PPAs are usually in place for 20 to 25 years.

A PPA has less cost savings than direct purchase and leasing (see Table 1), but does not require cash up-front and reduces staff time for maintenance and operation of the system. Direct purchase would require an upfront cost estimated at \$1.7 million. The City could consider a loan for the solar power. The California Energy Commission is offering one percent interest loans to government agencies that install renewable power.

Another benefit of a PPA is fixed energy pricing over the term of the contract that is lower than PG&E rates. This is a substantial benefit not only because of the cost savings, but it allows the city to appropriately budget energy consumption costs for

facilities rather than trying to predict PG&E pricing, which has increased 60% between 2000 and 2010 (U.S. Energy Information Administration). PG&E prices are expected to continue to increase due to SB 1078 that requires PG&E and other utilities to achieve a 33% renewable power mix by 2020. Currently, PG&E is at a 20% renewable power mix. This will require installation of new infrastructure with costs passed on to rate payers.

The table below captures the cost savings for Menlo Park under each financing option based on the feasibility study done by Optyony, Inc. (Attachment B). It is important to note that savings will be greater than shown in the table by 10-15% due to R-REPs bulk purchase strategy and using group negotiations to leverage lower costs with SolarCity.

Table 1: Summary of Operational Savings by Installing Solar Power Over 25 years

| Costs and Savings* over 25 Years | Corp Yard | Gymnasium | Childcare Center | Onetta Harris | Gymnastics | Total |
|-----------------------------------|-----------|-------------|------------------|---------------|-------------|----------------------------|
| Current Energy Costs (NPV) | \$446,756 | \$1,437,775 | \$148,582 | \$728,370 | \$1,050,348 | \$3,811,832 |
| Direct Purchase Savings* | 71% | 69% | 60% | 60% | 57% | Average 63%* (\$1,840,387) |
| Loan Savings* | 64% | 61% | 51% | 50% | 47% | Average 55%* (\$1,818,280) |
| PPA Savings* | 47% | 43% | 33% | 31% | 27% | Average 36%* (\$1,345,558) |

*Percent savings not calculated at Net Present Value (NPV). Solar rebates are included in the savings. Operations and Maintenance of PV system is included for direct purchase and loan.

In addition, staff also secured rebates from the California Solar Incentive (CSI) program for all Menlo Park sites, which would provide a rebate of \$0.0880 per kWh of solar power produced for five years, totaling \$385,961. This was very timely considering that the funds in this state program are exhausted quickly and there are cities in the R-REP project that were unable to secure the incentive due to lack of funding.

Greenhouse Gas (GHG) Reduction

The City of Menlo Park will specifically benefit from the installation of renewable energy through sustained reductions in utility operating costs, and reducing up to 473 tons of greenhouse gas (GHG) emissions from government operations per year. This would contribute to helping the city meet 0.5% of its 27% GHG reduction goal by 2020.

Solar Carports

The feasibility study (Attachment B) determined that all sites except for the Belle Haven Childcare Center would need to utilize solar carport structures in order to achieve an

80% energy offset with renewable power, which is required for the project. There is flexibility in the placement of carports for some sites, such as the Corporation Yard and Onetta Harris Community Center, where the maximum system size shown in the feasibility study is not needed for a significant energy offset. However, most sites have a constrained area due to tree shading and usable roofing area.

At this time the design of the carports are unknown, and only conceptual placements of carports are shown in the feasibility report in Attachment B. Examples of carport designs are included in Attachment D. Detailed drawings of carport designs for city facilities will be brought to Council for final approval. Previously, the City Council was supportive of exploring the installation of carports. In order for the project to remain cost effective, it is likely that carport design options will be limited, and alternate designs could increase the costs of the project.

Process

In order to remain eligible for the CSI rebates, the City must enter into a contract with SolarCity by July 21, 2014, and must complete construction by February 6, 2015. Thus, timely review of the project is necessary. Installing carports is considered a new structure on city facilities, and would require Planning Commission review with final approval from Council.

The City would first enter into a contract with SolarCity, agreeing on the terms and conditions for the PPA. SolarCity would then provide construction designs for the city to review and approve. If the City does not approve of the designs, alternate designs may be offered or the project may be cancelled if an agreement cannot be reached.

It is anticipated that the conceptual carport designs (e.g. photographs of potential carports that would be installed) will be available prior to entering into an agreement with SolarCity. If this happens, staff will likely need to get council direction on the conceptual design prior to Planning Commission recommendation. Staff would bring the detailed carport design plans to the Planning Commission at a later date, and then return to council for a final determination. However, if detailed drawings are available before June, staff would proceed to the Planning Commission for recommendation and then to Council for final approval.

Meeting the following milestones will ensure that the City maintains eligibility for the CSI rebate:

- April/May: Group negotiations between public agencies and SolarCity
- June: Council Approves PPA with SolarCity
- July/August: Planning Commission Review of Carport Design Plans
- August/September: City Council Reviews and Approves Design Plan
- September- January: Construction (must be complete by February 6, 2015)

Discussion Questions to Provide Direction to Staff

In order to assist staff negotiate the agreement, general direction on the following questions would be beneficial:

1. Is the Council supportive of pursuing the PPA financing option?
2. Is the Council still supportive of installing solar carports at the civic center campus, Onetta Harris Community Center, and Corporation Yard?
3. Is the Council supportive of the review process?
4. What direction should be given to the Planning Commission about the review of the project? (e.g. review and provide direction only on carport design)
5. Would Council be supportive of reviewing conceptual designs before the Planning Commission has made a recommendation? The Council could then make a final decision after the Planning Commission has made a recommendation.

IMPACT ON CITY RESOURCES

With a PPA, there would be no upfront costs to install the system and no operations and maintenance costs. However, the savings would be less than with a direct purchase. The City would pay for the energy produced by the solar power systems, which would offset current costs paid to PG&E, and as noted in the feasibility study would produce cost savings to the City in the first year.

Once construction begins, Staff recommends hiring a project management consultant to review design and construction activities to ensure that solar power systems will operate according to vendor specifications and agreed upon terms. Depending on the number of sites approved, the estimated cost for this task would be up to \$90,000. Staff would request additional funds from the General Fund upon approval of a contract with SolarCity, or Council may choose to include this cost as part of the PPA.

The impact to participate in R-REP is Staff time, and continued participation has delayed other climate action plan initiatives, such as development of Phase II of a sustainable building policy and development of a five year energy plan to reduce GHG emissions. Additional staff will be required to stay on track with current Climate Action Plan initiatives while seizing timely opportunities that would save on City operation costs and reduce GHG emissions.

POLICY ISSUES

Installing renewable power on City facilities is consistent with the Climate Action Plan. This project could potentially reduce 473 tons of GHG emissions per year for the City, helping to meet 0.5% of the City's 27% GHG reduction goal by 2020. In addition, the project is consistent with sustainable budget practices by reducing operating costs.

ENVIRONMENTAL REVIEW

Installing PV rooftops and carports are exempt from California Environmental Quality Review (CEQA) under Existing Facilities 15301. In addition, state legislation SB 226 (2011) exempts both PV rooftop and parking lot projects from environmental review.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

- A. Memorandum of Understanding (MOU) with Alameda County
- B. Feasibility Study by Optony, Inc.
- C. R-REP Memorandum to Alameda County Board of Supervisors
- D. Carport Design Examples

Report prepared by:
Rebecca L. Fotu
Environmental Program Manager

**MEMORANDUM OF UNDERSTANDING FOR REGIONAL RENEWABLE ENERGY
PROCUREMENT**

This Memorandum of Understanding (“MOU”) is entered into as of February 19, 2013 (the “Effective Date”) by and among the following California jurisdictions: County of Alameda (“Alameda County”), Castro Valley Sanitary District, Central Contra Costa Sanitary District, City of Berkeley, City of Cupertino, City of Emeryville, City of Foster City, City of Fremont, City of Menlo Park, City of Mountain View, City of Oakland, City of Redwood City, City of Richmond, City of Walnut Creek, Contra Costa County, County of San Mateo, Hayward Area Recreation and Park District, and University of California, Berkeley. Signatories to this MOU are referred to herein as “the “Parties” and individually as a “Party”.

Recitals

WHEREAS, the Parties desire to purchase renewable energy for their operations;

WHEREAS, the Parties wish to take advantage of potential efficiencies when such purchases are made in large volumes;

WHEREAS, large volume purchases of renewable energy or renewable energy generation equipment will be made through a regional, multi-jurisdiction purchasing arrangement whereby project sites are aggregated into groups on the basis of the type of technology and geographic location, various risk and other financing related factors;

WHEREAS, large volume purchases likely result in more efficient procurement than would otherwise be available if individual jurisdictions independently purchased renewable energy;
WHEREAS, the Parties desire that Alameda County, by and through its General Services Agency, shall be the lead Party for issuing a solicitation to purchase renewable energy (the “Solicitation”);

WHEREAS, the Parties acknowledge that the transaction costs associated with purchasing renewable energy can be reduced when the Parties agree to the same terms and conditions incorporated within standardized template documents; and

WHEREAS, at the completion of the Solicitation process, subject to the approval of their respective Board, Council or applicable governing body, the Parties may enter into power purchase, financing, real estate and/or other agreements with selected vendors (“Vendors”) substantially in the forms of the Template Documents to be prepared pursuant to Sections 1.A and 1.B of this MOU.

NOW THEREFORE, in consideration of their mutual promises and agreements, and subject to the terms, conditions and provisions hereinafter set forth, the Parties agree as follows:

SECTION 1. ROLE AND RESPONSIBILITIES OF ALAMEDA COUNTY

- A. Alameda County shall (i) prepare and issue the Solicitation, and be the lead jurisdiction and point of contact for the bidders, (ii) create templates of transaction documents, which may include, without limitation, a direct acquisition agreement, Qualified Energy Conservation Bond documentation, a form of power purchase agreement and a form of lease (the “Template Documents”), and (iii) timely coordinate and communicate with Parties, as necessary throughout the procurement process through recommendation for award and negotiations with the bidders.
- B. Alameda County will consult with the Parties with respect to the content of the Solicitation and the terms and conditions contained within Template Documents, provided, however, that any comments or concerns must be communicated to Alameda County within the allotted timeframe as provided by Alameda County, with such timeframe to afford a reasonable opportunity to respond.
- C. The Parties agree that Alameda County shall be the single point of contact for Vendors and necessary third parties throughout the Solicitation process, in order to avoid the potential for confusion. Alameda County agrees to provide the Parties with all relevant information in a timely manner.
- D. In addition to participating as the lead jurisdiction under this MOU, Alameda County is also a participant in the R-REP and has identified locations for renewable energy in

Alameda County. As such, Alameda County is conducting site surveys and will list potential sites within the R-REP solicitation document.

- E. Any Party may separately pursue its own solicitation of renewable energy and/or related facilities.

SECTION 2. ROLES AND RESPONSIBILITIES OF THE PARTICIPATING JURISDICTIONS

- A. Each Party has undertaken its own due diligence prior to entering into this MOU to determine the feasibility of solar, fuel cell or other feasible technology to be located at project sites.
- B. Each Party is responsible for meeting its individual legal, procedural and other requirements for the procurement of renewable energy.
- C. Parties are responsible for promptly providing site surveys, if available, of their proposed real property sites that may accommodate renewable energy installations, and each such site survey shall be prepared by a licensed engineer in a uniform, industry standard format. Each Party acknowledges that to the extent it does not undertake a site survey for a particular site, such site (i) may not be considered for inclusion in the R-REP solicitation, or (ii) may be aggregated by Alameda County with other such sites into a higher risk group, and that pricing for such a group may be less favorable.
- D. Upon conclusion of the Solicitation process, the Parties may, subject to the approval of their respective Board, Council or applicable governing entity, enter into binding agreements, substantially in the form of the Template Documents, with the selected Vendors, provided that each Party determines, to its satisfaction, that the Vendors are responsible, and comply with the Party's terms, conditions and requirements. The Parties may also negotiate with Vendors in order to conform the Template Documents with requirements of law, regulation and policy. Alameda County shall not be responsible for reference checks, performance, or for compliance with any agreement, regulations, laws

or policies, except as to this MOU and any contracts between Alameda County and Vendor(s). Parties are not required to contract with any Vendor.

- E. Parties agree to participate in the Solicitation under the lead role of Alameda County and agree to work cooperatively and promptly with Alameda County throughout the Solicitation process. The Parties agree that time is of the essence; and failure of a Party to provide the required information in the requested format and within the reasonable deadlines established by Alameda County may result in termination of that Party's participation in the Solicitation.

SECTION 3. TERM OF MOU

The term of this MOU shall commence on the Effective Date and shall expire on June 30, 2015.

SECTION 4. GOVERNING LAW AND VENUE

The law governing this MOU shall be that of the State of California. In the event that suit shall be brought by any Party to this MOU, the Parties agree that venue shall be exclusively vested in the State's courts of the County of Alameda or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, Oakland, California.

SECTION 5. WARRANTY DISCLAIMER; LIABILITY; WAIVER

- A. No warranty, express or implied, is provided by any Party as to results or success of the Solicitation, this MOU, or any agreements ultimately entered into by the Parties. Each Party acknowledges that the others have not made, and are not making, any assurances, guaranties or promises with respect to the subject matter of this MOU and that each Party is ultimately responsible for conducting its own due diligence with respect to feasibility, pricing, technology, third parties and all other matters in any way related to the subject matter of this MOU.

- B. In no event shall any Party, nor its officers, agents, employers, or representatives be liable for any direct, indirect, incidental, special, exemplary, or consequential damages (including, but not limited to, procurement of substitute goods or services, loss of use, data, or profits, or business interruption) however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in any way, directly or indirectly, from this MOU, participation in the Solicitation, or any agreement(s) between a Party and any third party, even if advised of the possibility of such damage.

- C. Each Party is responsible for negotiation, execution, administration and enforcement of any contract with a Vendor or third party related to the subject matter of this MOU, and the agreements ultimately entered into by each Party shall not be cross-defaulted or cross-collateralized in any respect with the agreements entered into by any other Party to this MOU.

- D. No waiver by any Party to this MOU of any breach or violation of any term or condition of this MOU shall be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

SECTION 6. NOTICES

Notices shall be deemed effective on the date delivered if delivered by personal service or nationally recognized overnight delivery service, or, if mailed, three (3) days after deposit in the U.S. Postal Service mail. All notices and other communications required or permitted to be given under this MOU shall be in writing and shall be personally served, delivered by overnight service, or by mail, first class, certified or registered postage prepaid and return receipt requested, addressed to the respective Parties as follows:

To: County of Alameda, GSA
1401 Lakeside Drive, 10th Floor
Oakland, CA 94612
Attn: Caroline Judy

To: Central Contra Costa Sanitary District
5019 Imhoff Place
Martinez, CA 94553
Attn: Melody LaBella

To: City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attn: Erin Cooke

To: City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attn: Andra Lorenz

To: City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attn: Rebecca Fotu

To: City of Oakland
250 Frank H. Ogawa Plaza, Suite 5301
Oakland, CA 94612
Attn: Scott Wentworth

To: City of Richmond
450 Civic Center Plaza
Richmond, CA 94804
Attn: Adam Lenz

To: Contra Costa County
Public Works Department
2467 Waterbird Way
Martinez, CA 94553
Attn: Andy Green

To: Castro Valley Sanitary District
21040 Marshall Street
Castro Valley, CA 94546-6021
Attn: William Parker

To: City of Berkeley
2180 Milvia Street, 2nd Floor
Berkeley, CA 94704
Attn: Billi Romain

To: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attn: Peter Schultze-Allen

To: City of Fremont
39550 Liberty St.
P.O. Box 5006
Fremont, CA 94538
Attn: Amy Rakley

To: City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540
Attn: Steve Attinger

To: City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063
Attn: Pamela Thompson

To: City of Walnut Creek
1666 North Main Street
Walnut Creek, CA 94596
Attn: Gwen Ho-Sing-Loy

To: County of San Mateo
555 County Center, 5th Floor
Redwood City, CA 94063
Attn: Andy Jain

To: Hayward Area Recreation and Park District
1099 E Street
Hayward, CA 94541
Attn: Larry Lepore

To: University of California, Berkeley
Office of Sustainability
UC Berkeley
203 A&E Building
Berkeley, CA 94720-1382
Attn: Kira Stoll

SECTION 7. MISCELLANEOUS PROVISIONS

- A. If any term, condition or covenant of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this MOU shall be valid and binding on the Parties.
- B. This MOU may be executed in counterparts and will be binding as executed.
- C. All changes or extensions to this MOU shall be in writing in the form of an amendment executed by all Parties.
- D. This MOU is entered into only for the benefit of the Parties executing this MOU and not for the benefit of any other individual, entity, or person.

SECTION 8. WITHDRAWAL

- A. No Party may withdraw from this MOU during the period from 30 days before the issuance of the Solicitation and the date that Vendor(s) have been selected. The date of the Solicitation will be pursuant to the schedule developed by Alameda County in collaboration with the Parties for such Solicitation.
- B. Withdrawal by any Party from this MOU shall not preclude the remaining Parties from continuing the Solicitation contemplated under this MOU and from using the Template Documents created by any Party to this MOU, unless otherwise prohibited by law.

C. Notice of withdrawal must be provided in writing to Alameda County GSA.

SECTION 9. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed on the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a Party that are in any way related to this MOU shall not be shared pro rata but, instead, the Parties agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such Party under this MOU. No Party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of another Party hereto, its officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Party under this MOU.

SECTION 10. NON-DISCRIMINATION

The Parties shall comply with all applicable Federal, State, and local laws, regulations and policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Parties shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization,

promotion, layoff, rates of pay or other forms of compensation. Nor shall Parties discriminate in performing its obligations under this MOU because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the Effective Date

County of Alameda

AYES: Supervisors: Chan, Miley, Valle & President Carson - 4

NOES: None

EXCUSED: Supervisor Haggerty - 1



PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

By James Robles
Deputy Clerk

APPROVED AS TO FORM:

By _____

Approved as to Form
DONNA R. ZIEGLER, County Counsel
By Audrey Beaman
Print Name Audrey Beaman

CASTRO VALLEY SANITARY DISTRICT

By:  _____

ATTEST:

By _____

APPROVED AS TO FORM:

By _____

CENTRAL CONTRA COSTA SANITARY DISTRICT

By: 
Curtis W. Swanson
Provisional General Manager

ATTEST:

By: 
Elaine Boehme, CMC
Secretary of the District

APPROVED AS TO FORM:

By: 
Kenton L. Alm, Esq.
Counsel for the District

medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Parties discriminate in performing its obligations under this MOU because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the Effective Date

County of Alameda

AYES:

NOES:

EXCUSED:

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

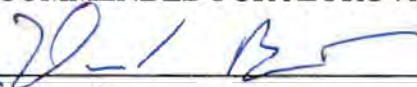
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By _____

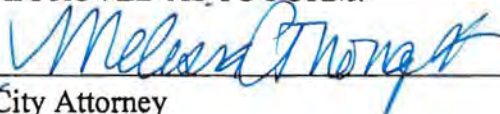
CITY OF CUPERTINO

RECOMMENDED FOR APPROVAL:



Title: City Manager

APPROVED AS TO FORM:



for City Attorney

ATTEST:



City Clerk

CITY OF BERKELEY

By: Christa Duf

ATTEST:

By: Rose Thomsen

APPROVED AS TO FORM:

By: Melissa Lee

CITY OF EMERYVILLE

By:  _____

ATTEST:

By  _____

APPROVED AS TO FORM:

By Michael Siddle _____

CITY OF FOSTER CITY


By: Archer Kiesel

ATTEST:
By Christy Olson

APPROVED AS TO FORM:
By John B. Sward

CITY OF FREMONT

APPROVED AS TO FORM:

By  _____
Bronwen Lacey, Deputy City Attorney

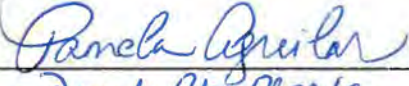
By:  _____
Fred Diaz, City Manager


ATTEST:

By  _____
Nadine Nader, City Clerk

CITY OF MENLO PARK

By: 
CITY MANAGER

ATTEST:
By 
Deputy City Clerk

APPROVED AS TO FORM:
By 
City Attorney

CITY OF MOUNTAIN VIEW

APPROVED AS TO CONTENT:



Public Works Director

"CITY":

CITY OF MOUNTAIN VIEW,

a California Charter City and municipal corporation

By: 

City Manager

FINANCIAL APPROVAL:



Finance and Administrative

Services Director

APPROVED AS TO FORM:



Asst. City Attorney

CITY OF OAKLAND

By: Deborah Barrow  

APPROVED AS TO FORM:

By: 

CITY OF REDWOOD CITY

By: *F. B. Seeg*

ATTEST:

Attest: By *[Signature]* 2-4-13
Silvia Vonderlinden, City Clerk

APPROVED AS TO FORM:

By *Fannella Thompson* 2-4-13

CITY OF RICHMOND

By: W. Lindsay

William A. Lindsay, City Manager

Date: 2/4/13

ATTEST:

By Diane Holmes

Diane Holmes, City Clerk

Date: 2-6-13

APPROVED AS TO FORM:

By Bruce Goodmiller

Bruce Goodmiller, City Attorney

Date: 2/4/13

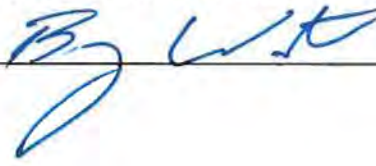
CITY OF WALNUT CREEK

By: 

ATTEST:

By _____

APPROVED AS TO FORM:

By 

COUNTY OF SAN MATEO

By: 
President, Board of Supervisors

ATTEST:

By: 

APPROVED AS TO FORM:

By: 

CONTRA COSTA COUNTY

By: Julia R Bueren
Public Works Director

ATTEST:


By: Julia R Bueren Jan 11, 2013

APPROVED AS TO FORM:

By: Eric Gelston
Eric Gelston, Deputy County Counsel

MOU for Regional Renewable
Energy Procurement
Board of Supervisors Approval 12/11/12

HAYWARD AREA RECREATION AND PARK DISTRICT

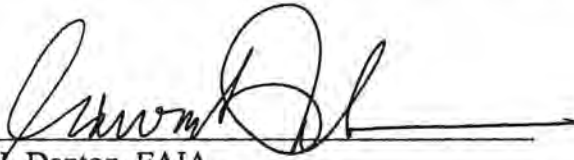
By: 
DENNIS WAESPI, President
Board of Directors

ATTEST:
By: 

APPROVED AS TO FORM:

By: _____

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (BERKELEY CAMPUS)

By: 
Edward F. Denton, FAIA
Vice Chancellor – Facilities Services

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Solar Feasibility Study for the City of Menlo Park



November 2, 2012

FINAL

► Prepared by: Optony, Inc.

Contact: Ammar Khan
mohammad.khan@optony.com
408-567-9216

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Solar Feasibility Study for the City of Menlo Park

November 2, 2012

This report has been prepared for the City of Menlo Park to provide a solar analysis of five potential sites for solar installation, with recommendations for future actions that best fit the needs and opportunities for renewable energy at City facilities.



► **What you will learn from this report:**

1. How Optony conducted this analysis for the City and the analytical approach used to develop this report.
2. The best City sites for photovoltaic solar installations, from both technical and economic perspectives.
3. The recommended photovoltaic (PV) solar system sizes and detailed site characteristics.
4. Next steps for pursuing the recommended option with an approximate timeline.

Introduction

The City of Menlo Park has engaged Optony Inc. to conduct a solar feasibility for multiple City-owned sites. Solar electric (also called photovoltaic, or PV) installations can reduce the City’s reliance on utility-generated energy while reducing operational costs. By producing on-site power from a clean and renewable source (sunlight), the City can reduce its carbon footprint and demonstrate environmental leadership to both City residents and to neighboring jurisdictions.

The City of Menlo Park, like many California municipalities, is faced with environmental and economic challenges. A major cost of operations for municipal facilities is the electricity usage, paid to the utility company—in this case, Pacific Gas & Electric (PG&E). Cities like Menlo Park are also required by California Assembly Bill 32 to reach specified carbon dioxide emissions reductions, which is expected to be achieved, at least partially, through investments in energy efficiency and on-site energy generation. Solar electric systems help on both accounts. Through Net Energy Metering (NEM) with the utility company, City electrical accounts with solar installations can save money on energy costs, while reducing greenhouse gas emissions. NEM allows for solar generation exported to the grid to be credited at the same price as the City would pay for energy use at the same time-of-day and year. There are restrictions to how much credit NEM accounts can accrue, but generally, these net-metering arrangements give the highest value for solar production. An additional benefit of solar project construction is increased local economic activity, both for installation labor teams and for surrounding businesses.



Executive Summary

Optony has performed a detailed technical and financial analysis of sites presented by the City. Table 1 shows a brief summary of the results of this study. The criteria for site evaluation include electricity usage at the site, physical space available for PV installation, accessibility of the site for construction, existing conditions at the site including age of the building and structural and electrical limitations, planned energy or structural renovations, as well as surrounding vegetation and other shading concerns.

The team collected twelve months of prior electric usage data for each site and performed a thorough analysis on all material aspects of a potential PV system using industry standard tools and our market leading approach. Based on the data analysis, we have identified sites that are viable for solar PV system installations, both from a technical and economic perspective.

In the following pages, we have mapped out usable areas for solar PV using a modular approach to provide system and project design flexibility. Along with usable areas, the report analyzes potential output and details site-specific opportunities and constraints.

Next steps for system procurement have been recommended for when the City proceeds with these solar projects. It is very important to be aware of the time-sensitive availability of certain state and federal incentives. For example, the U.S. Treasury Department-sponsored Investment Tax Credit (ITC) program is slated to expire in 2016. This program, which allows for significant cash-flow benefits for tax-eligible PV system owners, can lead to lower pricing for third-party ownership installation models such as PPA's, and sometimes leases, as described below.

Financial modeling is included for three likely financing mechanisms: Direct Purchase, Power Purchase Agreement, and Lease. Optony recommends that the City consider several or all of these options during the procurement phase when deciding to pursue solar projects:

1. Direct Purchase – The City would use existing cash reserves to purchase the system outright. In this situation, the City would be responsible for all ownership concerns, including Operations & Maintenance (O&M), regular system cleaning, and monitoring of system production. In many situations, this may yield the greatest long-term returns, but requires cash up-front and operational costs.
2. Power Purchase Agreement (PPA) – The City would enter into a contract with a third party to purchase all energy produced by a PV system installed on property owned by the City. This third party would own the PV system and would be fully responsible for all ownership costs, including financing, maintenance, insurance, and system production.
3. Lease/Loan – Instead of paying for purchase costs up-front, the City would pay a third party on a monthly basis over 10 to 20 years. In many such arrangements, the City would be responsible for all ownership concerns, just as with a Direct Purchase. Locally-issued bonds or renewable energy bonds, such as CREBs (Clean Renewable Energy Bonds) and QECBs (Qualified Energy Conservation Bonds), would fall into this category.

Detailed in the following sections is a thorough report of Optony's methodology, findings, and recommendations for this solar feasibility study. Optony is pleased to work with the City of Menlo Park, and we look forward to many opportunities for collaboration in the near future!

Site Evaluations

The team conducted site visits at five sites presented by the City of Menlo Park:

- Corporation Yard
- Arrillaga Family Gymnasium
- Belle Haven Childcare Center
- Onetta Harris Community Center
- Arrillaga Family Gymnastics Center



A site inspection involves reviewing the overall layout of the proposed facility and identifying potential location opportunities and challenges. The age, materials, and condition of the rooftop, if available for development, are assessed, as photovoltaic systems typically have a 25-year lifespan and are costly to remove for roof repair or replacement. For rooftop sites, additional space-limiting concerns are evaluated, including the presence of HVAC equipment, parapets, skylights, and conduits - all of which cannot be easily relocated. For parking lot or parking structure carport PV systems, the main site selection issues are the availability of space for construction, surrounding vegetation, and distance to the electrical interconnection point. For both installation types, potentially usable areas are mapped out and a detailed shading analysis is conducted.

Shading analysis is performed on-site within the designated usable areas, with outer boundaries set by observing industry installation guidelines and best practices. A shading analysis involves surveying the surroundings of the usable areas to identify potentially shade-causing obstructions, such as rooftop HVAC equipment, lightning conductors, antennas, trees, lampposts, building overhangs, and neighboring buildings. Shading must be avoided, as PV systems operate most efficiently in direct sunlight, and even minor shading can sometimes have a profound negative impact on system performance.

As the seasons change, the sun path changes as well. In the winter months, the altitude of the sun off the horizon is lower in comparison to its altitude during the summer months – this leads to varying shading situations each month. In order to assess the amount of direct sunlight available at each usable area, the annual sun path is plotted at various points using hardware and software developed for use in the solar industry. Further analysis of the data yields the most optimal areas for solar installation at each site.



Whenever possible, the electrical room at each site is inspected for main breaker and switchgear amperage and voltage ratings, as well as availability of space for additional electrical equipment. The location of the utility electrical meter is determined, as well, since the distance between the solar modules and the interconnection point should be minimized to reduce voltage drop and increase system efficiency.

Table 1 on the following page shows a summary of the sites, along with maximum PV system sizes and recommended system sizes. A direct purchase cost range is shown, and the projected gross utility bill savings are also included in this table.

Table 1 City of Menlo Park Solar PV Project Overview

| Site Index and Name | Recommended PV System Size (kW DC) | Annual PV Output (kWh) | Annual Building Usage (kWh) | Energy Offset | Direct Purchase Cost Range ¹ | NPV ² Direct Purchase Savings | NPV ² PPA Savings |
|------------------------------------|------------------------------------|------------------------|-----------------------------|---------------|-----------------------------------------|------------------------------------------|------------------------------|
| Corporation Yard | 49 | 65,194 | 80,240 | 81% | \$163,923 - \$181,178 | \$ 261,012 | \$ 203,861 |
| Arrillaga Family Gymnasium | 166 | 222,438 | 278,368 | 80% | \$564,457 - \$623,873 | \$ 794,903 | \$ 604,666 |
| Belle Haven Child Center | 21 | 27,157 | 30,320 | 90% | \$69,825 - \$77,175 | \$ 64,207 | \$ 46,865 |
| Onetta Harris Community Center | 103 | 136,206 | 166,000 | 82% | \$342,475 - \$378,525 | \$ 314,460 | \$ 218,045 |
| Arrillaga Family Gymnastics Center | 158 | 208,311 | 267,596 | 78% | \$536,608 - \$593,093 | \$ 405,805 | \$ 272,121 |
| Total for All Sites | 498 | 659,305 | 822,525 | 80% | \$1,677,287 - \$1,853,843 | \$ 1,840,386 | \$ 1,345,558 |

Table Notes:

¹ Cost before any incentives and/or rebates; cost range uses assumption of \$3.5/Watt-DC as average installed cost, with 10% variance

² Net present value (NPV) uses a 25 year financial analysis period; 4% annual discount rate; PG&E 4.5% annual escalation; A6 Time-Of-Use (TOU) utility rate schedule where appropriate; 0.5% annual PV system degradation; Step 10 CSI (California Solar Initiative) rebates at \$0.088/kWh for first 5 years; O&M cost of \$15/kW with a 3% annual escalation; PPA rate \$0.160/kWh with a 3% escalation rate

Recommended system sizes are determined by using a variety of factors which include: electricity usage amounts and patterns, maximum possible energy offset, projected cash flows, and Net Present Value (NPV) of energy savings. All numbers are estimated and intended for planning purposes only. A kilowatt (kW) is a common unit for measuring power, typically for either maximum spontaneous capacity of solar generation or maximum power load of a facility. In this report, kilowatt-DC (kW-DC) refers explicitly to Direct Current capacity of solar installations, before inversion of power to alternating current, or AC. Kilowatt-hours (kWh) is a unit of energy measurement to track power production or consumption over time.

As Table 1 shows, with direct purchase of the recommended systems at mid-range prices, the City can potentially net over \$1.8M in discounted electricity bill savings over the 25-year expected operating life of the proposed systems at the most financially beneficial electricity rate schedules available.

A full summary of Menlo Park sites and their economic potential is included in Attachment A.

Corporation Yard

Site Address: 333 Burgess Drive, Menlo Park CA 94025

| | |
|-----------------------------|-------------------------------------|
| Type of PV System: | Carport, Rooftop |
| Current PG&E Rate Schedule: | A-10S |
| Annual Energy Usage: | 80,240 kWh |
| Maximum System Size: | 125 kW-DC |
| Maximum System Output: | 165,747 kWh |
| Recommended System Size: | 49 kW-DC |
| Recommended System Output: | 65,194 kWh |
| Energy Offset: | over 100% possible, 81% recommended |



Issues: Shading from trees;
Opportunities: Carport, rooftop, and shade structures

There are five usable areas at the Corporation Yard composed of one rooftop section and four carport sections as shown in Figure 1 below. The white box indicates the location of the electrical room, which is located between offices and maintenance garage.



Figure 1 Corporation Yard Usable Areas

Within these five sections, a PV system of 125 kW-DC can be installed. A system of that size would produce 165,747 kWh each year. In the last 12-months the site used 80,240 kWh of electricity. As Table 2, below, shows, the maximum PV system size would offset over 200% of site’s usage. A smaller, 49 kW-DC, PV system is recommended for the Corporation Yard. The recommended PV system would produce 65,194 kWh of energy, offset 81% of the site’s usage, and have a high economic return.

Table 2 Corporation Yard PV System Summary

| Section | Azimuth | Area (Sq. Ft.) | Size (kW DC) |
|----------------------------------------|---------|----------------|---------------|
| Carport | | | |
| 1 | 210° | 1,668 | 17 |
| 2 | 210° | 4,220 | 44 |
| 3 | 240° | 413 | 4 |
| 4 | 210° | 5,120 | 54 |
| Rooftop | | | |
| 5 | 210° | 565 | 6 |
| Total | | 13,650 | 125 |
| Total System Production (kWh) | | | 165,747 |
| Recommended System Size (kW) | | | 49 |
| Recommended System Output (kWh) | | | 65,194 |

During daylight hours, excess power generated by the PV system flows back into the utility grid. Excess power is defined as the net power between the production and usage at the site. This excess generates credits for the site which can then be used up during the night. However, at the end of each calendar year, PG&E zeroes out the excess credits on all net-metered accounts. Essentially, the site will be producing power for the utility for free.



Figure 2 shows Section 3 usable area



Figure 3 Example view of Section 4 of the usable area

Figure 2 and Figure 3 show a view Section 3 and Section 4, respectively. The trees shown in Figure 3 are north of the usable area and therefore should not create any shade issues. There are trees south of Section 4 as well, but those trees are far enough to not create any shading concerns. As for Section 3, the only concern is shade structure post location. Aside from that, both those locations are ideal candidates.

As indicated in Figure 1, the electrical room is located at the rear of the offices building. The main building voltage is 120/208V and the switchgear and main breaker are rated 600A. There is no available space within this electrical room for any additional electrical equipment related to a PV system. Additional space maybe available outside the electrical room, behind the building.

Arrillaga Family Gymnasium

Site Address: 600 Alma Street, Menlo Park CA 94025

| | |
|-----------------------------|-------------------------------|
| Type of PV System: | Carport, Rooftop |
| Current PG&E Rate Schedule: | A-10S |
| Annual Energy Usage: | 278,368 kWh |
| Maximum System Size: | 168 kW-DC |
| Maximum System Output: | 224,776 kWh |
| Recommended System Size: | 166 kW-DC |
| Recommended System Output: | 222,438 kWh |
| Energy Offset: | 81% possible; 80% recommended |



Issues: Clay tile roofing material; shade from trees; limited roof and carport space; low energy offset
 Opportunities: Carport and Rooftop installation

The Arrillaga Family Gymnasium is a one-story structure built in 2010. The pitched portion of the rooftop is composed of flat concrete tiles. For this study, part of the pitched rooftop and sections of the parking lot closest to the building were considered for a solar PV installation. Figure 4 shows the four usable sections identified in this study.



Figure 4 Arrillaga Family Gymnasium Usable Areas

Sections 1-3 take up less than half of the parking lot, which is shared by the gymnasium and the library. The other half of the parking is not considered usable due to tree shading. West of the pitched roof is a flat portion of the rooftop, which is not usable due existing solar thermal collectors.

At this site, a total of 168 kW-DC of solar PV can be installed within all four sections. A system of this size is capable of producing 224,776 kWh annually. This production would offset 81% of the site’s annual usage, which is 278,368 kWh. Given the site’s usage, a smaller, 166 kW-DC, PV system is recommended for this site. The recommended system would generate 222,438 kWh of energy and offset 80% of the site’s usage. Table 3 shows the size and possible solar PV size that can be installed in each section.

Table 3 Arillaga Family Gymnasium Possible PV System Summary

| Section | Azimuth | Area (Sq. Ft.) | Size (kW DC) |
|----------------------------------------|---------|----------------|----------------|
| Carport | | | |
| 1 | 215° | 1,687 | 18 |
| 2 | 215° | 1,843 | 19 |
| 3 | 215° | 4,362 | 46 |
| Rooftop | | | |
| 4 | 215° | 8,164 | 85 |
| Total | | 16,056 | 168 |
| Total System Production (kWh) | | | 224,776 |
| Recommended System Size (kW) | | | 166 |
| Recommended System Output (kWh) | | | 222,438 |

As stated earlier, the pitched roof of the Gymnasium is composed of flat concrete tiles. The roof deck is composed of metal, 4" insulation, ¾ plywood, and 1 layer of 30lbs cell.

Figure 5 below shows a view of Sections 1-3. Additionally, Figure 6, on the right, shows a view of the existing solar thermal collectors. These collectors are installed on the flat portion of the rooftop that is west of Section 4.



Figure 5 shows a view of the usable carport area



Figure 6 shows the existing solar thermal collectors

Main building voltage is 480/277V while the switchgear and main breaker are both rated 600A. There is space within the electrical room for additional PV-related electrical equipment.

Belle Haven Childcare Center

Site Address: 410 Ivy Drive, Menlo Park CA 94025



| | |
|-----------------------------|-------------------------------|
| Type of PV System: | Rooftop |
| Current PG&E Rate Schedule: | A-1 |
| Annual Energy Usage: | 30,320 kWh |
| Maximum System Size: | 23 kW-DC |
| Maximum System Output: | 29,730 kWh |
| Recommended System Size: | 21 kW-DC |
| Recommended System Output: | 27,157 kWh |
| Energy Offset: | 98% possible, 90% recommended |

Issues: Roof age and roof deck are unknown; tree shading
 Opportunities: High energy offset;

The usable areas at the Belle Haven Childcare Center are located only on the rooftops as shown in Figure 7 below. All four areas are composed of shingles, pitched at about 12°. The southeast portion of Section 4 is not usable due to shading concerns from the tree east of the property.



Figure 7 Belle Haven Childcare Center Usable Areas

As Table 4 shows, a maximum of 23 kW-DC can be installed within the four identified sections. This system can produce approximately 29,730 kWh during its first year of operation. In the last 12-months the site used 30,320 kWh of electricity. The maximum PV system would 98% of the site’s energy usage. A smaller, 21 kW-DC system, is recommended for this site. The 21 kW-DC system would produce 27,157 kWh of energy in its first year and offset 90% of the site’s energy.

Table 4 Belle Haven Childcare Center Possible PV System Summary

| Section | Azimuth | Area (Sq. Ft.) | Size (kW DC) |
|----------------------------------------|---------|----------------|--------------|
| 1 | 115° | 603 | 6 |
| 2 | 115° | 583 | 6 |
| 3 | 115° | 595 | 6 |
| 4 | 115° | 416 | 4 |
| Total | | 2,198 | 23 |
| Total System Production (kWh) | | 29,730 | |
| Recommended System Size (kW) | | 21 | |
| Recommended System Output (kWh) | | 27,157 | |

Figure 8 shows a view of the tree, east of the site, which limited the usable area for Section 4. Figure 9, on the right, shows a sample view of Sections 1 and 2. The remaining two sections, Sections 3 and 4, are composed of the same material and pitched at the same angle. The translucent shade structure in front of Section 1 and 2 is not usable for Solar PV.



Figure 8 View of the tree that limits the usable area for Section 4



Figure 9 shows a view of Sections 1 and 2, which are on a shingle roof that is pitched at about 12°

Main building voltage at this site is 120/240V. The switchgear and main breaker are rated 400A. While there is no room for additional PV-related electrical equipment in the electrical room, there is ample space immediately outside the electrical room for additional PV-related electrical equipment.

Onetta Harris Community Center

Site Address: 100 Terminal Avenue, Menlo Park CA 94025

| | |
|-----------------------------|-------------------------------------|
| Type of PV System: | Carport, Rooftop |
| Current PG&E Rate Schedule: | E-19 SV |
| Annual Energy Usage: | 166,000 kWh |
| Maximum System Size: | 299 kW-DC |
| Maximum System Output: | 391,591 kWh |
| Recommended System Size: | 103 kW-DC |
| Recommended System Output: | 136,206 kWh |
| Energy Offset: | over 100% possible; 82% recommended |



Issues: Roof age and integrity;
 Opportunities: High energy offset; Carport and rooftop installation;

The Onetta Harris Community Center (OHCC) is in the same lot as the Onetta Harris Senior Center and the Onetta Harris Teen Center. Aside from the gymnasium, the OHCC has a heated pool, tennis courts, a basketball court and a large soccer field.

Figure 10 shows an aerial view of the usable areas at this site. Sections 1 is an empty storage area, and Sections 2-4 are parking lot areas. Sections 5-9 are location on the rooftop of the center itself. Section 10 is the rooftop of the pool house. And lastly, Sections 11-12 are on the rooftop of the Teen Center building.



Figure 10 Onetta Harris Community Center Usable Areas

Using all the highlighted areas, a maximum of 299 kW-DC can be installed at this site. The annual production from a system of this size is approximately 391,591 kWh. The Community Center’s most recent 12-month electricity usage was 166,000 kWh. The maximum system size would offset over 100% of the site’s usage; therefore, a smaller, 103 kW-DC, system is recommended for this site. The recommended system would produce 136,206 kWh of energy each year and offset 82% of the site’s usage. More detail about each of the sections can be found in Table 5.

Table 5 Onetta Harris Community Center Possible PV System Summary

| Section | Azimuth | Area (Sq. Ft.) | Size (kW DC) |
|----------------------------------------|---------|----------------|----------------|
| Carport | | | |
| 1 | 215° | 1,012 | 11 |
| 2 | 175° | 3,650 | 38 |
| 3 | 175° | 6,093 | 64 |
| 4 | 175° | 2,785 | 29 |
| Rooftop | | | |
| 5 | 265° | 2,279 | 24 |
| 6 | 175° | 5,555 | 58 |
| 7 | 85° | 2,325 | 24 |
| 8 | 85° | 1,103 | 12 |
| 9 | 265° | 1,048 | 11 |
| 10 | 175° | 840 | 8 |
| 11 | 265° | 974 | 10 |
| 12 | 85° | 891 | 9 |
| Total | | 28,554 | 299 |
| Total System Production (kWh) | | | 391,591 |
| Recommended System Size (kW) | | | 103 |
| Recommended System Output (kWh) | | | 136,206 |

During daylight hours, any excess energy that is produced by the PV system and is not consumed by the site flows back into the utility grid earning energy credits for the site. During the night, when the PV system is not generating power, these credits are used up. However, Pacific Gas & Energy will only allow these credits to be used within the same calendar year. Therefore, a system must be sized appropriately in order to avoid generating too much electricity.



Figure 11 shows a view of Sections 7 and 9, which are metal standing seam



Figure 12 shows the roof of the pool house, Section 10



Figure 13 shows a view of the Teen Center rooftop, which includes Section 11 and Section 12



Figure 15 shows a view of the parking lot, west of the Community Center



Figure 14 shows a view of Section 6, which is the highest area of the Community Center rooftop



Figure 16 shows a view of the storage area, identified in Section 1

The electrical room is located in the Community Center building as shown by the white box in Figure 10. Main building voltage is 120/208V. The switchgear and main breaker are both rated 800A. The electric room does not have ample space for any additional equipment. All PV related equipment will have to be installed outside of the building in a fenced area.

Arrillaga Family Gymnastics Center

Site Address: 701 Laurel Street, Menlo Park CA 94025



| | |
|-----------------------------|-------------------------------------------------------------------------|
| Type of PV System: | Carport , Rooftop |
| Current PG&E Rate Schedule: | A-10SX |
| Annual Energy Usage: | 1,337,982 kWh (Civic Center) 267,596 kWh (Suggested 20% meter split) |
| Maximum System Size: | 162kW-DC |
| Maximum System Output: | 213,584 kWh |
| Recommended System Size: | 158 kW-DC |
| Recommended System Output: | 208,311 kWh |
| Energy Offset: | 15.5% - Civic Center; 78% - 20% meter split recommended |

Issues: Limited usable area; tree shading; meter split required due to multiple sites under one meter; high total campus electricity usage

Opportunities: Carport and rooftop installation; solar demonstration site

The Arrillaga Family Gymnastics Center is a new facility located within the City of Menlo Park Civic Center. The Menlo Park Civic Center is composed of four buildings: the Administration and Police Department, the Arrillaga Family Gymnastics Center, the Children’s Center, and City Council Chambers. There are five usable areas at this site, as shown in Figure 17, which could be used for a solar PV installation. The white box shows the location of the Civic Center main electrical room, which is in the basement of the Administration and Police Department building.

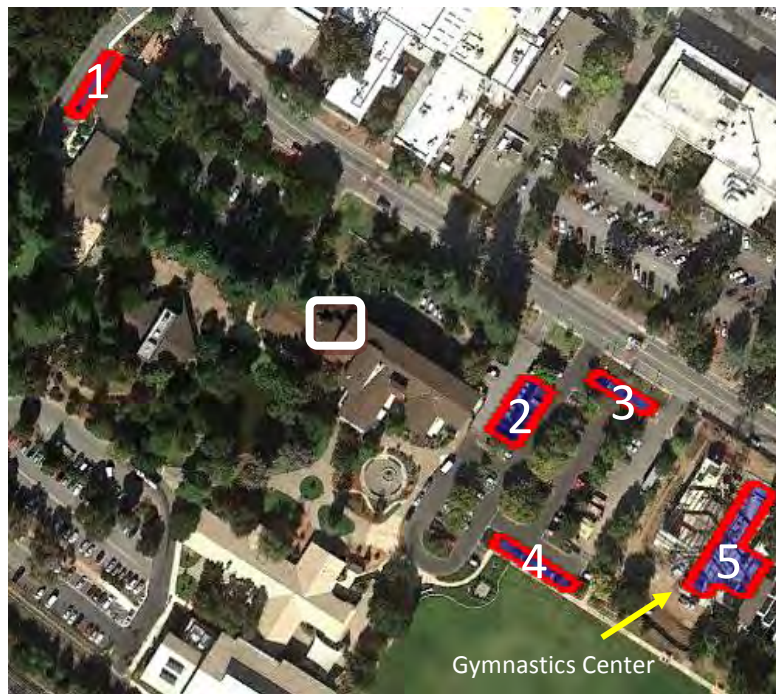


Figure 17 Civic Center Usable Areas for the Arrillaga Family Gymnastics Center

Sections 1-4 are located in the parking lots northwest of the Arrillaga Family Gymnastics Center. A total of 53 spots will be covered by PV carports. Section 5 is located on the rooftop of the gymnastics building. A total of 162 kW-DC can be installed

at this site. A system of this size will be able to produce about 213,584 kWh each year. The maximum PV system size would offset 15.5% of the entire Civic Center’s usage, which was 1,337,982 kWh last year. A meter split is highly recommended for this site. The suggested usage split is 20% of the current usage, which would be 267,596 kWh. With a 20% meter split, the recommended PV size would be 158 kW-DC, which would produce 208,311 kWh yearly and offset 78% of the split usage. Otherwise, as it stands, given the low system offset, limited available space to expand, and a single meter for multiple buildings, a PV installation would not be recommended at this site. Details about size and layout of each of the sections are shown in Table 6.

Table 6 Arrillaga Family Gymnastics Center Possible PV System Summary

| Section | Azimuth | Area (Sq. Ft.) | Size (kW DC) |
|----------------------------------------|---------|----------------|----------------|
| Carport | | | |
| 1 | 210° | 1,646 | 20 |
| 2 | 210° | 3,431 | 41 |
| 3 | 210° | 1,531 | 18 |
| 4 | 210° | 2,041 | 24 |
| Rooftop | | | |
| 5 | 120° | 5,001 | 59 |
| Total | | 13,650 | 162 |
| Total System Production (kWh) | | | 213,584 |
| Recommended System Size (kW) | | | 158 |
| Recommended System Output (kWh) | | | 208,311 |

If there is a 20% usage meter split, then an A-6 Time Of Use (TOU) rate schedule switch is recommended for this site. During daylight hours, excess power generated by the PV system flows back into the utility grid. Excess power is defined as the net power between the production and usage at the site. This excess generates credits for the site which can then be used up during the night. However, at the end of each calendar year, PG&E zeroes out the excess credits on all net-metered accounts. Essentially, with a large system the site will be producing power for the utility for free. The recommended system size at this site is 158 kW, which would offset 78% of the site’s electricity usage and maximize the financial benefits from a PV system.

The following images show potential carport and rooftop usable areas at the Arrillaga Family Gymnastics Center. Figure 18 shows a view of the parking lot behind the Child Care Center, identified as Section 1, and Figure 19 shows a view of the parking lot next to the Police Department building, which is identified as Section 2.



Figure 18 view of Section 1 carport area



Figure 19 shows a view of Section 2, which is another potential carport area



Figure 20 shows a view of Section 4 carport area



Figure 21 shows a view of the Gymnastics building rooftop

Section 4, which is shown in Figure 20, is the parking area along the football field. Lastly, Figure 21 shows a view of the Gymnastics building rooftop. The roof is composed of flat concrete tiles. The roof deck is composed of metal, 4" insulation, ¾ plywood, and 1 layer of 30lbs cell.

Building voltage is 277/400V. Main breaker and switchgear are both rated 2,500A. There is space for additional equipment within the electrical room, but the inverter will need to be installed outside the building. A proposed inverter location is the police vehicle parking lot.

Economic and Environmental Impact

If all three sites move forward with the proposed solar projects, there will be a significant environmental and economic impact to the City of Menlo Park and its neighboring communities.

From an economic perspective, a large-scale multiple-site solar project would create approximately \$1.2M in new, local economic activity and about 9 additional jobs, in addition to generating substantial energy cost savings for the City of Menlo Park. If the City were to pursue a direct purchase of the systems, there would be substantial long-term benefits and a positive return on investment from the effort when competitively bid. A summary of the economic benefits is shown in Figure 22.

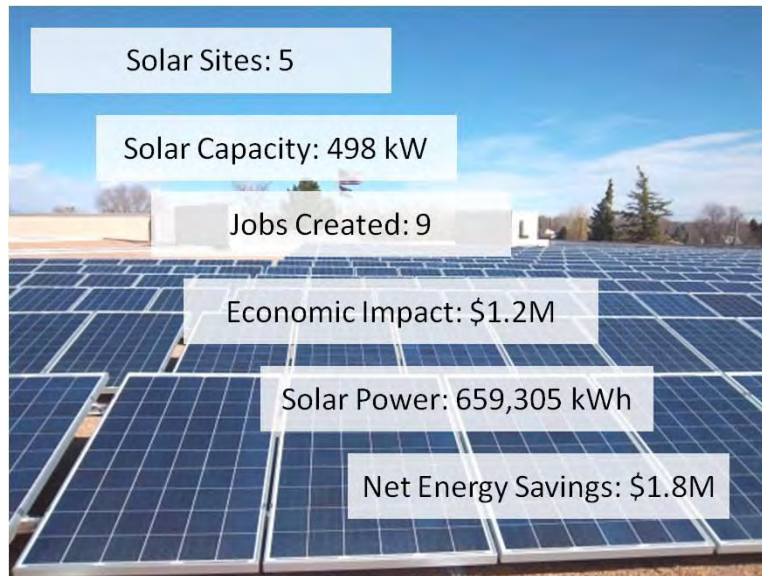


Figure 22 Snapshot of Economic Benefits

Opton performed a detailed financial analysis of the recommended sites and PV system sizes. Detailed below are site specific recommendations with District preferred financing option.

Table 7 Site Recommendations

| Site Name | Recommended System Size (kW-DC) | Action | Financing | Financial Savings/Cost* |
|------------------------------------|---------------------------------|------------------------|-----------|-------------------------|
| Corporation Yard | 49 | Join R-REP Procurement | DP/PPA | \$ 261,012 |
| Arrillaga Family Gymnasium | 166 | Join R-REP Procurement | DP/PPA | \$ 794,903 |
| Belle Haven Child Center | 21 | Join R-REP Procurement | DP/PPA | \$ 64,207 |
| Onetta Harris Community Center | 103 | Join R-REP Procurement | DP/PPA | \$ 314,460 |
| Arrillaga Family Gymnastics Center | 158 | Join R-REP Procurement | DP/PPA | \$ 405,805 |
| Total for All Sites | | | | \$ 1,840,386 |

* Savings/Cost shown for Direct Purchase Financing

In general, the Direct Purchase option provides the greatest savings over the long-term, but does require initial project investment and ongoing Operations & Maintenance for the system. The PPA option, on the other hand, shows the lowest savings over the life of the systems, but, yearly payments with a rate schedule change would be lower than current or projected PG&E bills **starting in Year One**. With a PPA, no capital investment or balloon payments are necessary, and O&M

is handled by the third-party system owner. Based upon projected values, Solar Leases for the recommended systems may be a valid option to consider for inclusion in an RFP issuance. Savings under a Lease or Loan option are typically lower than for a PPA for the life of the Lease or Loan, but after the buy-out (modeled at zero cost at Year 15), savings are significant. Based on this analysis, we recommend further investigation with private project developers through a competitive bid process to get the best results in terms of pricing and performance.

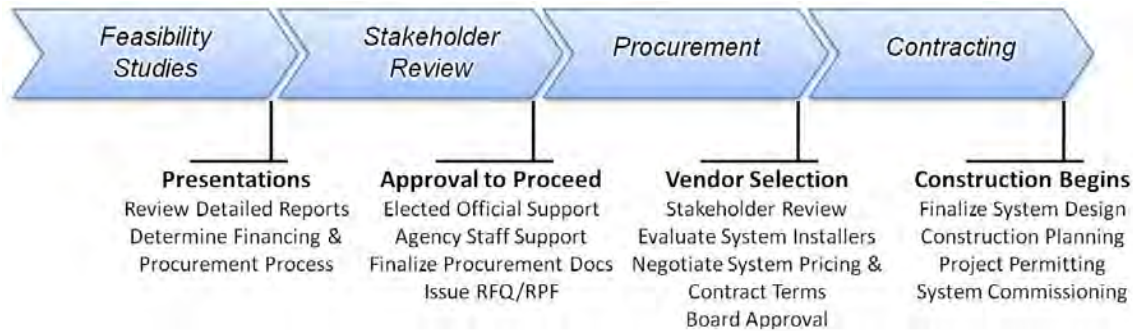
A financial analysis summary of all the individual sites is provided in Attachment A.

From an environmental perspective, the combined solar production will prevent the equivalent of nearly 473 metric tons of carbon dioxide from being released into the environment from current power sources annually. This amount of carbon sequestration can be visualized as planting approximately 101 acres of new forest. The carbon emissions reduction is equivalent to eliminating approximately 1.09 million Vehicle Miles Traveled (VMT) annually. The total yearly energy production would be sufficient to power nearly 53 homes in the City of Cupertino.

Next Steps

If the City of Menlo Park decides to pursue the recommended options, the following next steps have been identified to move this project along quickly and achieve the desired impact on cost reduction and green energy production before available solar incentives decrease. Also included is an estimate for duration of each step and when the work can be started.

- 1) **Build Consensus:** Use the report’s findings to build internal support, determine financing options, and appropriate procurement process. *Start: immediately, Duration: approximately 4-6 weeks*
- 2) **Prepare Standard RFQ/RFP and Issue RFQ/RFP:** After receiving approval to proceed, publish a procurement package and encourage vendor participation. *Start: upon approval of RFQ/RFP, Duration: approximately 14 weeks*
- 3) **Evaluate Vendors, Proposals, Benefits and Costs** in terms of design, price, performance, and capabilities, ensuring industry best practices are offered and contracted. *Start: upon receipt of proposals, Duration: approximately 4 weeks*
- 4) **Select Vendor and Negotiate Contracts:** Select vendor and review contract language to ensure maximum benefit for each agency. *Start: upon selection of shortlisted vendors, Duration: approximately 6 weeks*
- 5) **Plan for Construction in 2013:** Finalize financial arrangements, system design, and required building documents to begin installation and construction phase. *Start: upon project approval, Duration: approximately 6-8 weeks*



Methodology & Assumptions

Optony uses a rigorous methodology and client-focused approach to evaluate potential solar sites that goes well beyond the effort that is provided by system installers, finance companies, or even the utility companies. We combine our decades of experience in the solar field to balance the tradeoffs between technology, system design, rebates and incentive opportunities, electric demand and rate schedules, solar macro- and micro-economics, and available funding sources to develop an independent assessment of the realistic options at each site to meet the client's specific needs and goals.

Methodology and assumptions for this Feasibility Assessment:

- Optony uses a proprietary approach to performing a solar site analysis that uses dynamic scenario creation and evaluation processes along with publicly and privately developed software and tools to determine all the relevant variables and tradeoffs between options.
- For calculating available space at each site, the team visited the site, took physical measurements, compared site available area with aerial views from Google Earth and performed shading analysis using Solmetric SunEye. Mapping software by Bing was also used for satellite imagery.
- Solar access is defined as the availability of direct sunlight which reaches the photovoltaic panels. A higher solar access percentage reflects fewer shading obstructions. Shading obstructions may include surrounding buildings, mechanical equipment on rooftops including antennas and power lines, architectural features of the building, tall trees, and other surrounding vegetation.
- Optony uses industry standard as well as proprietary financial modeling software with local utility rate schedules and typical meteorological year 3 data, and neutral to conservative inflation, SREC and Investment Tax Credit assumptions in all financial modeling. This approach allows Optony to present the client with realistic forecasting that reduces risks and estimates realistic project returns.
- Project timing is very important in the overall economics of a solar system installation due to the time-sensitive nature of the various federal, state, utility, and local incentives. Optony assumed that this project will not be completed in 2012, but has evaluated the impact for construction completion in 2013.
- Optony has a unique insight into the latest solar technology due to its cooperative agreement and ongoing research with the National Renewable Energy Laboratory in Golden, CO. This has led to the achievement of world-record performance in thin film solar cells and major advancements in other emerging photovoltaic technologies.
- Optony does not sell equipment or installation services, and this report is not intended to provide a quote for future service; rather, it is a report on the ability of the pre-selected sites to produce power from the sun.

Disclaimer: This report is provided as an illustration of the potential benefits of a renewable energy system. The information presented in this report should not be construed as legal, tax or accounting advice. You should consult with professional advisors familiar with your particular factual situation for advice concerning specific matters before making any decision. Furthermore, this report may contain references to certain laws, regulations, tax incentives, rebates, programs and third party provided information. These will change over time and should be interpreted only in light of this particular engagement as of the date of this report.

About Optony Inc.

Optony Inc. is a global research and consulting services firm focused on enabling government and commercial organizations to bridge the gap between solar energy goals and real-world results. Optony's core services offer a systematic approach to planning, implementing, and managing commercial and utility-grade solar power systems, while simultaneously navigating the dramatic and rapid changes in the solar industry; from emerging technologies and system designs to government incentives and private/public financing options. Leveraging our independence, domain expertise and unique market position, our clients are empowered to make informed decisions that reduce risk, optimize operations, and deliver the greatest long-term return on their solar investments. Based in Silicon Valley, Optony has offices in Washington DC, Denver, Beijing and Hangzhou. Optony has participated in over 20 patent filings and continues to explore next-generation solar technologies and policies in collaboration with the National Renewable Energy Laboratory (NREL) and other leading research institutions.

For more information, visit www.optony.com

Attachment A - Solar PV Project Analysis Summary

| | Corp Yard | Arrillaga Gym | Belle Haven Childcare Center | Onetta Harris Community Center | Arrillaga Gymnastics Center | Total |
|------------------------------------------|-----------|---------------|------------------------------------|--------------------------------------|-----------------------------------|-------------|
| System Overview | | | | | | |
| System Size (kWp) | 49 | 166 | 21 | 103 | 158 | 498 |
| Yield (kWh/kWp) | 1,322 | 1,338 | 1,293 | 1,322 | 1,318 | 1,325 |
| Total onsite energy usage (kWh) | 80,240 | 278,368 | 30,320 | 166,000 | 267,596 | 822,525 |
| Year 1 Output (kWh) | 65,194 | 222,438 | 27,157 | 136,206 | 208,311 | 659,305 |
| Annual degradation | 0.50% | 0.50% | 0.50% | 0.50% | 0.50% | 0.50% |
| Energy Offset % | 81% | 80% | 90% | 82% | 78% | 80% |
| Current Utility Information | | | | | | |
| Utility Provider | PG&E | PG&E | PG&E | PG&E | PG&E | |
| Utility Rate Schedule | A-10 S | A-10 S | A-1 | E-19 SV | A-10 S | |
| Average Utility Cost (\$/kWh) | 0.123 | 0.123 | 0.180 | 0.092 | 0.123 | 0.1193 |
| Utility Inflation (%) | 4.50% | 4.50% | 4.50% | 4.50% | 4.50% | 4.5% |
| Direct Purchase Information | | | | | | |
| Eng, Proc, Constr \$ ¹ | \$172,550 | \$594,165 | \$73,500 | \$360,500 | \$564,850 | \$1,765,565 |
| Solar Rebate (\$/kWh) | \$0.088 | \$0.088 | \$0.088 | \$0.088 | \$0.088 | |
| Solar Rebate Term | 5 years | 5 years | 5 years | 5 years | 5 years | |
| Yr 1 O&M | \$740 | \$2,493 | \$525 | \$2,575 | \$3,950 | \$10,283 |
| O&M Escalator | 3.00% | 3.00% | 3.00% | 3.00% | 3.00% | 3.00% |
| Discount Rate | 4.00% | 4.00% | 4.00% | 4.00% | 4.00% | 4% |
| Loan Information | | | | | | |
| Loan Term | 15 | 15 | 15 | 15 | 15 | |
| Loan Interest Rate - % | 3.80% | 3.80% | 3.80% | 3.80% | 3.80% | |
| End of Term Buyout | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | |
| PPA Information | | | | | | |
| Initial PPA rate (\$/kWh) ¹ | 0.1600 | 0.1600 | 0.1600 | 0.1600 | 0.1600 | |
| PPA escalator | 3.00% | 3.00% | 3.00% | 3.00% | 3.00% | |
| S-REC Value (keep/sell) (\$/kWh) | 0.010 | 0.010 | 0.010 | 0.010 | 0.000 | |
| S-REC escalator | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | |
| S-REC Contract Term | 5 year(s) | 5 year(s) | 5 year(s) | 5 year(s) | 5 year(s) | |
| Buyer sells S-REC (Direct Purchase/Loan) | N | N | N | N | N | |
| Environmental Impact | | | | | | |
| Annual CO2 Reduction (Tons) | 47 | 160 | 19 | 98 | 150 | 473 |
| Annual VMT Reduction Equivalent | 107,413 | 366,490 | 44,744 | 224,413 | 343,214 | 1,086,274 |
| Tree Acre Equivalent | 10 | 34 | 4 | 21 | 32 | 101 |
| NPV of Energy Cost | | | | | | |
| Utility Energy Purchase (25 year) | \$446,756 | \$1,437,775 | \$148,582 | \$728,370 | \$1,050,348 | \$3,811,832 |
| Getting PPA (25 year) | \$242,894 | \$833,108 | \$101,718 | \$510,326 | \$778,227 | \$2,466,274 |
| Direct Purchase (incl O&M, solar rebate) | \$185,744 | \$642,872 | \$84,376 | \$413,910 | \$644,543 | \$1,971,445 |
| Loan (year term) | \$187,904 | \$650,312 | \$85,296 | \$418,424 | \$651,616 | \$1,993,552 |
| % Energy Savings | | | | | | |
| Direct Purchase (25 year) | 71.21% | 68.99% | 59.76% | 59.64% | 56.63% | |
| Loan (25 year) | 64.01% | 61.29% | 50.54% | 50.42% | 46.60% | |
| PPA (25 year) | 46.66% | 43.14% | 32.82% | 31.24% | 27.30% | |
| LCOE Analysis | | | | | | |
| Utility LCOE | 0.3746 | 0.3475 | 0.3297 | 0.2952 | 0.2641 | 0.3123 |
| Direct Purchase LCOE | 0.1078 | 0.1078 | 0.1327 | 0.1191 | 0.1145 | 0.1133 |
| Loan LCOE | 0.1348 | 0.1345 | 0.1631 | 0.1464 | 0.1410 | 0.1402 |
| PPA LCOE | 0.1998 | 0.1976 | 0.2215 | 0.2030 | 0.1920 | 0.1981 |

¹ Indicative pricing, pending further analysis by vendor after system size and site assumptions are finalized

² Based on most recent 12 months of Utility interval data



April 7, 2014

TO: Each Member, Board of Supervisors

FROM: Aki K. Nakao, Interim Director, General Services Agency *Aki K. Nakao*

SUBJECT: REGIONAL RENEWABLE ENERGY PROCUREMENT (R-REP) BID EVALUATION

This memo is being provided as an update on the R-REP Request for Proposal (RFP) process and will include detailed information on the recommendation for award of contracts by R-REP Participating Agencies, and the authorization to negotiate for Master Contract No. 901098 for the Alameda County sites included in the solicitation. Information on the structure of the RFP, the projected costs and benefits for R-REP sites, the selection criteria and process for the solicitation, and the upcoming negotiations process is also included.

On September 17, 2013, your Board authorized the Director of General Services Agency (GSA) to advertise and publish the Regional Renewable Energy Procurement (R-REP) RFQ/RFP, Master Contract No. 901098, on behalf of the nineteen (19) Participating Agencies in the collaborative procurement. The GSA-Administration subsequently issued a hybrid, two-step solicitation for R-REP. This included a Request for Qualification (RFQ) to identify and prequalify providers of renewable energy power systems for municipal facilities via on-site generation of solar photovoltaic (PV), solar thermal, and fuel cell systems, followed by a RFP from prequalified bidders. The solicitation was issued by GSA in its capacity as Lead Agency and on behalf of the other Participating Agencies in the Bay Area, per terms of a Memorandum of Understanding (MOU) executed on February 19, 2013. The solicitation included 186 sites that were grouped into 11 bid bundles. Each bid bundle was comprised of sites from across two or more agencies participating in the R-REP.

Your Board received a memo on January 30, 2014 regarding the R-REP bid response. Twelve vendors submitted qualified proposals for six out of the 11 bid bundles that were included in the RFP. The vendors submitted bids for bundles M1, M2, M3, M4, L1 and BA2. A subsequent evaluation of the bids was conducted, as described in detail below.

Upon conclusion of negotiations, GSA will return to your Board for contract award and approval.

RECOMMENDATION FOR AWARD/AUTHORIZATION TO NEGOTIATE:

On April 1, 2014, the following bidders were recommended for award of contracts by R-REP Participating Agencies related to specified Bid Bundles included in the R-REP solicitation:

1. Sun Edison (Sujay Parikh, Vice President), Beltsville, MD for R-REP Bid Bundles BA2, L1, M1, and M3; and

2. Solar City (Erik Folgelberg, Vice President, Commercial Sales), San Mateo, CA, for R-REP Bid Bundles M2 and M4.

In addition, negotiations for Master Contract No. 901098 were authorized for renewable energy power systems to be designed and installed and, possibly, operated on Alameda County sites, with:

1. Sun Edison (Sujay Parikh, Vice President), Beltsville, MD, for Bid Bundles BA2 and L1; and
2. Solar City (Erik Folgelberg, Vice President, Commercial Sales), San Mateo, CA, for Bid Bundle M2.

RFP STRUCTURE:

The R-REP RFQ/RFP was structured as an indefinite quantity, multiple award, best value solicitation. In addition, this solicitation was conducted in accordance with Government Code Section 4217.10, et. seq., and specifically, Section 4217.16, which authorizes public agencies to solicit proposals from qualified persons and to award a contract on the basis of the experience of the Firm, the type of technology employed by the Firm, the cost to the local agency, and any other relevant considerations, provided that the projects deliver net cost savings to the public agency. Participating Agencies will be provided summary sheets of the financial analysis for each of their sites, such that they may make the findings consistent with Code Section 4217.10. The site financial summaries demonstrating the savings are attached to this memo (Attachments 1A and 1B).

The RFQ/RFP included innovative elements designed to meet the needs of the County and Participating Agencies in this unique, regional collaboration. These elements included financing options, standardized agreement terms, extensive technical specifications, site-specific data, workforce and unique contracting requirements and project management expense recovery terms. Each is briefly described below:

- Financing Options - To provide flexibility to each agency, various financing options were sought including direct purchase, power purchase agreement (PPA), lease financing or other alternatives.
- Standardized Agreement Terms - General PPA and Standard Agreement terms were agreed upon by the Participating Agencies counsel prior to the solicitation and described in the R-REP RFP.
- Technical Specification Requirements - Technical requirements for each site and PV, solar thermal or fuel cell technologies were defined.

- Detailed Site Data - Detailed information on existing Pacific Gas & Electric (PG&E) rates, as-built drawings, hazardous materials reports, and other site specific information was gathered and provided to vendors as part of the RFP materials.
- Workforce Plans - Bidders were required to submit workforce plans containing good-faith effort commitments to achieve 40% local hiring on all projects undertaken.
- Unique Contracting Requirements - The RFP contained a requirement that the recommended bidders meet all unique contracting requirements, including workforce/local hire requirements, as appropriate for the County and each Participating Agency.
- Project Management Expense Recovery - The bidders were instructed to include in their PPA pricing 3.5% of the proposed direct purchase price for cost recovery of Participating Agency project management expenses associated with delivery of the project sites. This project management recovery option was not included in direct acquisition pricing, as there are no opportunities to amortize the expense.

PROJECTED COSTS AND BENEFITS:

Based on feasibility studies that were completed prior to issuing the RFP, total design and construction costs across all agencies are an estimated \$131 million if all projects included in the solicitation were paid for through a cash acquisition. The feasibility studies were conducted by one or more of the following firms: kW Engineering; Information & Energy Services, Inc.; Optony, Inc.; Kenwood Energy; and/or Energy Solutions. These feasibility studies were validated by the RFP consulting team of Newcomb Anderson McCormick, Optony, Inc., and KNN.

Total design and construction costs across all agencies for those sites that received bids (sites in Bundles BA2, L1, M1, M2, M3 and M4) are estimated at \$58.3 million. The total net benefit under cash acquisition for all sites that received bids is approximately \$108.8 million. For only the County's sites, in the case that all sites are developed and the renewable energy systems are purchased and operated by the County, the total net benefit over 25 years is an estimated \$53.1 million. It is unlikely, however that the County or the Participating Agencies will directly acquire the renewable energy systems and instead will likely finance either through third-party financing such as Power Purchase Agreements (PPA) or equipment leases, or they will finance using State and federal incentives such as Clean Renewable Energy Bonds. If sites are developed under a PPA, the total 25 year net benefit for all sites that received bids (sites in Bundles BA2, L1, M1, M2, M3 and M4) is estimated at \$51.8 million, and if all of the County's sites are developed using PPAs, there would be approximately \$27.9 million in net savings over 25 years.

One of the main objectives of the R-REP solicitation was to achieve economies of scale through the collaborative procurement strategy. Bidders were required to hold pricing with assumptions that there could be up to 10% movement of sites outside of bundles, anticipating the possibility that some Participating Agencies may decide not to enter into contracts.

On behalf of the 18 Participating Agencies, GSA has worked diligently to stay on schedule during the procurement process. Due to budgetary and time constraints it is extremely important that GSA continues to stay on track during negotiations. GSA and seven other Participating Agencies currently hold reservations for California Solar Initiative (CSI) rebates with the program administrator, PG&E, for a total of over \$5 million. These reservations will expire on July 21, 2014 without a signed contract. See attached list of Participating Agencies that hold CSI reservations (Attachment 2). GSA will make every effort to meet the CSI deadline.

SELECTION CRITERIA/PROCESS:

On June 10, 2013, the County issued a Request for Information (RFI), which was distributed via email not only through the County's EGOV bulletin to a total of 3,763 recipients, but also to the members of SolarTech and CalSEIA, two local non-profit solar trade organizations comprised of small and large firms. In addition, the Alameda County Purchasing Department notified 43 solar vendors of the RFI directly. Alameda County conducted outreach at three events targeting small, local businesses in advance of issuing the RFP.

The RFP was released on September 18, 2013 and was posted in three different categories as both an RFP and a RFQ: Architectural and Engineering (A&E), Construction, and Professional Services. An EGOV bulletin was sent to Subscribers of GSA A&E - Current Contracting Opportunities, GSA Construction - Current Contracting Opportunities, and GSA Professional Services - Current Contracting Opportunities.

On the morning of October 4, 2013 the County hosted a bidders conference to provide an opportunity for interested vendors to attend live or via web-conference, and to allow them to ask questions regarding the RFP. On the afternoon of the same day a networking conference was held. On December 6, 2013, a mandatory workforce development conference was held to allow qualified vendors and local job development agencies to network. This event was attended by job development agencies, prime vendors and subcontractors.

On October 22, 2013, 20 vendors submitted RFQ responses, 17 of which were deemed qualified. The nature of the disqualifications ranged from not demonstrating adequate prior experience, to simply not filling out the entire the questionnaire, which made it impossible to judge their ability to meet the qualifications. This list of qualified vendors may be used by Participating Agencies for further renewable energy solicitations as part of the indefinite quantity, multiple award solicitation structure. The qualified vendors were instructed to submit proposals. On January 14, 2014, 14 responses were received for six out of the 11 bid bundles that were included in the RFP. Bid responses were not received for the (2) small solar PV bundles, the (1) Solar Thermal,

(1) Fuel Cell, and (1) Alternative bundle (BA1). Upon conclusion of contract negotiations County staff will conduct a survey of all bidders to obtain further information on the entire RFP process. Upon receipt of the bid proposals a completeness check was conducted and it was determined that responses submitted by three vendors, Gestamp Asetym Solar North America, Inc.; AMSolar, LLC; and Cool Earth Solar, Inc. were incomplete, and therefore these bids were disqualified.

Bids were evaluated by the County Selection Committee (CSC) comprised of representatives from County of Alameda Community Development Agency, UC Berkeley, Hayward Area Recreation and Park District, County of Alameda Technical Services Department, City of Oakland and County of Santa Clara. Proposals were evaluated on the basis of firm experience, technical proposal, cost, financing plan, etc., as described in the RFP attachment Exhibit G, Proposal Evaluation Matrix. To assist the Selection Committee, the County's consultants, Newcomb Anderson McCormick, Optony, Inc., and KNN reviewed the bid proposals and prepared an analysis of financial and technical criteria.

A shortlist of six vendors was selected to move on to the vendor interviews. Vendors were selected for interviews based upon the following criteria: a maximum of five bidders per bundle; only those bidders who scored above 300 points; and no bidders that scored a zero or one for the cost criteria.

SunEdison Government Solutions, LLC and Solar City Corporation were the highest ranked bidders for the bundles specified below, and are being recommended for award. County Small Local Emerging Business provisions were waived during the conduct of this multi-jurisdictional solicitation. Applicable unique contract requirements will be imposed by each awarding authority, as appropriate. Contracts entered into by the County of Alameda will meet all program requirements before a recommendation is taken to the Board of Supervisors.

A maximum total of 500 evaluation points were available for this RFP. The following are evaluation summaries by bundle:

EVALUATION SUMMARY

Highest Ranked Bidders by Bundle

| Bundle | Vendor | Ranking | Points |
|---------------|-------------------------------------|----------------|---------------|
| BA2 | SunEdison Government Solutions, LLC | 1 | 441.17 |
| L1 | SunEdison Government Solutions, LLC | 1 | 444.30 |
| M1 | SunEdison Government Solutions, LLC | 1 | 446.67 |
| M2 | SolarCity Corporation | 1 | 377.50 |
| M3 | SunEdison Government Solutions, LLC | 1 | 444.67 |
| M4 | SolarCity Corporation | 1 | 367.67 |

| <i>Detailed Scores by Bundle and Bidder</i> | | | |
|---------------------------------------------|---------------------------------------------------|----------------|---------------|
| Bundle | Vendor | Ranking | Points |
| BA2 | SunEdison Government Solutions, LLC | 1 | 441.17 |
| BA2 | SunEdison Government Solutions, LLC Prepay PPA | 2 | 420.83 |
| BA2 | Borrego Solar Alternate | 3 | 420.40 |
| BA2 | Borrego Solar | 4 | 419.63 |
| BA2 | Sun Power Corporation, Systems | 5 | 411.67 |
| BA2 | Ecoplexus, Inc. | 6 | 403.97 |
| BA2 | Cupertino Electric, Inc. | 7 | 363.17 |
| BA2 | Cupertino Electric, Inc. Plan B | 8 | 356.77 |

| Bundle | Vendor | Ranking | Points |
|---------------|---------------------------------------|----------------|---------------|
| L1 | SunEdison Government Solutions, LLC | 1 | 444.30 |
| L1 | Borrego Solar Systems, Inc. 1000V UCB | 2 | 411.83 |
| L1 | Borrego Solar Systems, Inc. 600V | 3 | 410.23 |
| L1 | Borrego Solar Systems, Inc. | 4 | 408.57 |
| L1 | Ecoplexus, Inc. | 5 | 398.00 |
| L1 | Sun Power Corporation, Systems | 6 | 383.17 |
| L1 | SolarCity Corporation | 7 | 343.30 |

| Bundle | Vendor | Ranking | Points |
|---------------|-------------------------------------|----------------|---------------|
| M1 | SunEdison Government Solutions, LLC | 1 | 446.67 |
| M1 | Ecoplexus, Inc. | 2 | 390.70 |

| Bundle | Vendor | Ranking | Points |
|---------------|-----------------------|----------------|---------------|
| M2 | SolarCity Corporation | 1 | 377.5 |

| Bundle | Vendor | Ranking | Points |
|---------------|-------------------------------------|----------------|---------------|
| M3 | SunEdison Government Solutions, LLC | 1 | 444.67 |
| M3 | Ecoplexus, Inc. | 2 | 396.70 |

| Bundle | Vendor | Ranking | Points |
|---------------|--------------------------|----------------|---------------|
| M4 | SolarCity Corporation | 1 | 367.67 |
| M4 | Cupertino Electric, Inc. | 2 | 363.47 |

NEGOTIATIONS PROCESS:

The R-REP Project Team in collaboration with GSA Purchasing and Technical Services Departments, and representatives from the Participating Agencies, will conduct negotiations with the recommended bidders. The County will lead negotiations for those bundles in which it has sites, and Participating Agencies may elect to participate collectively or negotiate on their own. Bid information, including pricing, will be distributed to participating agencies for their use in collaborative or independent contract negotiations. The R-REP project team strongly recommends collaborative contract negotiations as a best practice to leverage the negotiating power of the Participating Agencies. Staff plans to share contract terms as negotiations progress with all of the Participating Agencies. Ultimately the discretion to proceed with the development of any specific project at each of the sites will be retained by the governing authority of each Participating Agency per the terms of the MOU.

For additional information on the R-REP please contact:

Caroline Judy
Assistant Director, General Services Agency
510-208-9702
Caroline.Judy@acgov.org

Kayla Platt
Management Associate II, General Services Agency
510-208-9603
OR
Kayla.Platt@acgov.org

ADMIN/R-REP BID PROCEDURES

Attachments

cc: Susan S. Muranishi, County Administrator
Patrick J. O'Connell, Auditor-Controller
Donna R. Ziegler, County Counsel
Chiefs of Staff, Board of Supervisors

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PV Carport Design Samples







ADMINISTRATIVE SERVICES DEPARTMENT

Council Meeting Date: April 29, 2014
Staff Report #: 14-062

Agenda Item #: B-2

COMMISSION REPORT: Consider applicants for appointment to fill two vacancies on the Planning Commission, two vacancies on the Parks and Recreation Commission, and one vacancy on the Housing Commission

RECOMMENDATION

Staff recommends appointing applicants to fill two vacancies on the Planning Commission, two vacancies on the Parks and Recreation Commission, and one vacancy on the Housing Commission.

BACKGROUND

Staff conducted recruitment for the vacant positions by publishing press releases in the *Daily News*, the *Almanac* and *Patch.com*, posting notices on the City's Facebook page and website, displaying ads on the electronic bulletin boards throughout the City's recreation facilities, the main library and on government access Channel 29, and by reaching out to the community through the social media site Next Door, the Chamber of Commerce online newsletter and by emailing targeted residents.

Planning Commission applicants:

- Ben Eiref (incumbent)
- Jonas Halpren
- Lin Khabbaz
- Lawrence Lee
- Elizabeth Youngblood
- Noria Zasslow
- Andrew Combs
(currently serving on the Bicycle Commission, term expires April 2017)
- Michael Meyer
(currently serving on the Transportation Commission, term expires April 2017)

Parks and Recreation Commission applicants:

- Stefan Krawczyk
- Thomas Stanwood
- Elidia Tafoya

Housing Commission applicant:

- Sally Cadigan (incumbent)

ANALYSIS

Pursuant to City Council Policy CC-01-0004 (Attachment A), commission members must be residents of the City of Menlo Park and serve for designated terms of four years, or through the completion of an unexpired term. Residency for all applicants has been verified by the City Clerk's office.

In addition, the Council's policy states that the selection/appointment process shall be conducted before the public at a regularly scheduled meeting of the City Council. Nominations will be made and a vote will be called for each nomination. Applicants receiving the highest number of affirmative votes from a majority of the Council present shall be appointed.

There are currently two vacancies on the Planning Commission due to the expiring terms of Ben Eiref, who is eligible to reapply and has, and Henry Riggs, who served two consecutive terms and is no longer eligible to reapply. Council had the opportunity to interview the applicants during a Special Meeting on April 22nd.

The two vacancies on the Parks and Recreation Commission are due to the expiring terms of Kelly Blythe, who served two consecutive terms and is no longer eligible to apply, and Noria Zasslow, who has elected not to reapply. Ms. Zasslow has applied to the Planning Commission.

Incumbent Sally Cadigan's term on the Housing Commission expires on April 30th. She is seeking reappointment, and no other applications for this vacancy have been received. Staff recommends reappointing Ms. Cadigan to the Housing Commission.

IMPACT ON CITY RESOURCES

Staff support for selection of commissioners is included in the FY 2013-14 Budget.

POLICY ISSUES

Council Policy CC-01-004 establishes the policies, procedures, roles and responsibilities for the City's appointed commissions and committees.

ENVIRONMENTAL REVIEW

The proposed action does not require environmental review.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

- A. Excerpt from Council Policy CC-01-004, pages 5-6
- B. Commission Applications*

Report prepared by:
Pamela Aguilar
City Clerk

*Attachment B will not be available on-line, but is available for review at City Hall in the City Clerk's Office during standard City operating hours.

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|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|----------------------------------|
| City of Menlo Park | | City Council Policy |
| Department City Council | | Effective Date 3-13-01 |
| Subject Commissions/Committees Policies and Procedures and Roles and Responsibilities | Approved by: Motion by the City Council on 03-13-2001; Amended 09-18-2001; Amended 04-05-2011 | Procedure # CC-01-0004 |

Application/Selection Process

1. The application process begins when a vacancy occurs due to term expiration, resignation, removal or death of a member.
2. The application period will normally run for a period of four weeks from the date the vacancy occurs. If there is more than one concurrent vacancy in a Commission, the application period may be extended. Applications are available from the City Clerk’s office and on the City’s website.
3. The City Clerk shall notify members whose terms are about to expire whether or not they would be eligible for reappointment. If reappointment is sought, an updated application will be required.
4. Applicants are required to complete and return the application form for each Commission/Committee they desire to serve on, along with any additional information they would like to transmit, by the established deadline. Applications sent by fax, email or submitted on-line are accepted; however, the form submitted must be signed.
5. After the deadline of receipt of applications, the City Clerk shall schedule the matter at the next available regular Council meeting. All applications received will be submitted and made a part of the Council agenda packet for their review and consideration. If there are no applications received by the deadline, the City Clerk will extend the application period for an indefinite period of time until sufficient applications are received.
6. Upon review of the applications received, the Council reserves the right to schedule or waive interviews, or to extend the application process in the event insufficient applications are received. In either case, the City Clerk will provide notification to the applicants of the decision of the Council.
7. If an interview is requested, the date and time will be designated by the City Council. Interviews are open to the public.
8. The selection/appointment process by the Council shall be conducted open to the public. Nominations will be made and a vote will be called for each nomination. Applicants receiving the highest number of affirmative votes from a majority of the Council present shall be appointed.
9. Following a Council appointment, the City Clerk shall notify successful and unsuccessful applicants accordingly, in writing. Appointees will receive copies of the City’s Non-Discrimination and Sexual Harassment policies, and disclosure statements for those members who are required to file under State law as designated in the City’s Conflict of Interest Code. Copies of the notification will also be distributed to support staff and the Commission/Committee Chair.
10. An orientation will be scheduled by support staff following an appointment (but before taking office) and a copy of this policy document will be provided at that time.

| | | |
|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|----------------------------------|
| City of Menlo Park | | City Council Policy |
| Department City Council | | Effective Date 3-13-01 |
| Subject Commissions/Committees Policies and Procedures and Roles and Responsibilities | Approved by: Motion by the City Council on 03-13-2001; Amended 09-18-2001; Amended 04-05-2011 | Procedure # CC-01-0004 |

Attendance

1. An Attendance Policy (CC-91-001), shall apply to all advisory bodies. Provisions of this policy are listed below.
 - A compilation of attendance will be submitted to the City Council at least annually listing absences for all Commissions/Committee members.
 - Absences, which result in attendance at less than two thirds of their meetings during the calendar year, will be reported to the City Council and may result in replacement of the member by the Council.
 - Any member who feels that unique circumstances have led to numerous absences can appeal directly to the City Council for a waiver of this policy or to obtain a leave of absence.
2. While it is expected that members be present at all meetings, the Chair and Staff Liaison should be notified if a member knows in advance that he/she will be absent.

Compensation

1. Members shall serve without compensation (unless specifically provided) for their services, provided, however, members shall receive reimbursement for necessary travel expenses and other expenses incurred on official duty when such expenditures have been authorized by the City Council (See Policy CC-91-002).

Conflict of Interest and Disclosure Requirements

1. A Conflict of Interest Code has been updated and adopted by the City Council and the Community Development Agency pursuant to Government Code Section 87300 et seq. Copies of this Code are filed with the City Clerk. Pursuant to the adopted Conflict of Interest Code, members serving on the Planning Commission are required to file a Statement of Economic Interest with the City Clerk to disclose personal interest in investments, real property and income. This is done within thirty days of appointment and annually thereafter. A statement is also required within thirty days after leaving office.
2. If a public official has a conflict of interest, the Political Reform Act may require the official to disqualify himself or herself from making or participating in a governmental decision, or using his or her official position to influence a governmental decision. Questions in this regard may be directed to the City Attorney.

Qualifications, Compositions, Number

1. In most cases, members shall be residents of the City of Menlo Park, at least 18 years of age and a registered voter.
2. Current members of any other City Commission or Committee are disqualified for membership, unless the regulations for that advisory body permit concurrent membership.
3. Commission/Committee members shall be permitted to retain membership while seeking any elective office. However, members shall not use the meetings, functions or activities of such bodies for purposes of campaigning for elective office.

COMMISSION APPLICATIONS

*Attachment B will not be available on-line, but is available for review at City Hall in the City Clerk's Office during standard City operating hours.

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COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: April 29, 2014
Staff Report #: 14-061

Agenda Item #: D-1

CONSENT CALENDAR: Waive the Reading and Adopt Ordinances Amending the Zoning Ordinance to Include Housing Element Implementation Programs Related to an Emergency Shelter for the Homeless Overlay, Definitions Pertaining to Transitional and Supportive Housing and Residential Care Facilities, and Procedures for Reasonable Accommodation

RECOMMENDATION

Staff recommends that the City Council complete actions related to the adoption of the Housing Element by waiving the full reading of, and adopting the following three ordinances:

1. Ordinance of the City Council of the City of Menlo Park, Amending the Zoning Ordinance to Add the Emergency Shelter for the Homeless Overlay and a Definition of Emergency Shelter (Attachment A);
2. Ordinance of the City Council of the City of Menlo Park, Amending the Zoning Ordinance to Modify and Add Definitions Related to Transitional and Supportive Housing and Residential Care Facilities (Attachment B); and
3. Ordinance of the City Council of the City of Menlo Park, Amending the Zoning Ordinance to Add Provisions for Reasonable Accommodations (Attachment C)

BACKGROUND

On April 1, 2014, the City Council conducted a public hearing to consider and take action on the Housing Element and associated implementation programs. After reviewing the Planning Commission recommendation and written correspondence from the public, receiving public comment, and deliberating on the items, the Council voted unanimously to take the following actions related to the Housing Element:

Environmental Review

1. Adopt a Resolution adopting the Negative Declaration for the Housing Element Update and associated Zoning Ordinance Amendments.

General Plan Amendment

2. Adopt a Resolution updating the Housing Element for the 2015-2023 Planning Period.

Zoning Ordinance Amendments

3. Introduce an Ordinance amending the Zoning Ordinance to add the Emergency Shelter for the Homeless Overlay and a definition of Emergency Shelter.
4. Introduce an Ordinance amending the Zoning Ordinance to modify and add definitions related to Transitional and Supportive Housing and Residential Care Facilities.
5. Introduce an Ordinance amending the Zoning Ordinance to add provisions for Reasonable Accommodations.
6. Continue deliberation on an Ordinance amending the Zoning Ordinance to modify requirements related to Secondary Dwelling Units.
7. Continue deliberation on an Ordinance amending the Zoning Ordinance to modify requirements related to Accessory Buildings and Accessory Structures.

The resolutions for items #1 and #2 became effective immediately. Staff has submitted the adopted Housing Element to the State Housing and Community Development Department for review and certification. The ordinances relating to items #3 through #5 were introduced, as proposed, and require a second reading for adoption.

As referenced in items #6 and #7, the Council continued its deliberation on modifications to the secondary dwelling unit and accessory buildings and accessory structures ordinances. This item will be discussed separately during Regular Business of the April 29, 2014 meeting.

ANALYSIS

The final version of the three ordinances introduced on April 1, 2014 are included as Attachments A, B and C. The adoption of the ordinances is critical to the certification of the Housing Element, and they will be submitted to HCD after adoption. If the Council takes action to adopt the ordinances on April 29, 2014, they will become effective after 30 days, or on May 30, 2014.

IMPACT ON CITY RESOURCES

There is no direct impact on City resources associated with adoption of these ordinances. However, staff will be considering the appropriate fees for the compliance review process for the emergency shelter for the homeless and review of an application for reasonable accommodation. The setting of the fees for these items is a policy discussion for the City Council to determine whether to pursue full cost recovery or not. The amounts of the fees are not part of the formal Zoning Ordinance amendments, but staff will be presenting the City Council with options for potential fee reductions or waivers.

POLICY ISSUES

The recommended action is consistent with the City Council's actions and approvals at its meeting of April 1, 2014 and would serve to implement programs of the adopted Housing Element. The adoption of the three ordinances would bring the City into compliance with State law.

ENVIRONMENTAL REVIEW

On April 1, 2014, the City Council considered and adopted the Negative Declaration prepared for the Housing Element and the associated implementation programs.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting. In addition to the agenda posting, an email update was sent to subscribers of the project page for the proposal, which is available at the following address: <http://www.menlopark.org/athome>. The project page allows interested parties to subscribe to email updates, and provides up-to-date information about the project, as well as links to previous staff reports and other related documents.

ATTACHMENTS

- A. [Ordinance of the City Council of the City of Menlo Park Adding Chapter 16.99 \[Emergency Shelter for the Homeless Overlay\] and Amending Chapter 16.04 \[Definitions\] to Title 16 \[Zoning\] of the Menlo Park Municipal Code](#)
- B. [Ordinance of the City of Menlo Park Amending and Adding Definitions in Chapter 16.04 \[Definitions\] of Title 16 \[Zoning\] of the Menlo Park Municipal Code](#)
- C. [Ordinance of the City Council of the City of Menlo Park Adding Chapter 16.83 \[Reasonable Accommodation\] to Title 16 \[Zoning\] of the Menlo Park Municipal Code](#)

Report prepared by:

Deanna Chow

Senior Planner

Report reviewed by:

Justin Murphy

Development Services Manager

ORDINANCE NO.

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MENLO PARK ADDING CHAPTER 16.99 [EMERGENCY
SHELTER FOR THE HOMELESS OVERLAY] AND
AMENDING CHAPTER 16.04 [DEFINITIONS] TO TITLE 16
[ZONING] OF THE MENLO PARK MUNICIPAL CODE**

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1: The City Council of the City of Menlo Park hereby finds and declares as follows:

- a. The City desires to add Chapter 16.99 [Emergency Shelter for the Homeless Overlay] to Title 16 [Zoning] to fulfill implementing program H3.A in the City's current 2007-2014 Housing Element, and for compliance with Senate Bill 2, which requires every California City and County to regulate for these facilities by identifying where an emergency shelter to meet the City's unmet need is allowed without a discretionary action, and to amend Chapter 16.04 [Definitions] for clarity and consistent implementation of Chapter 16.99.
- b. The Planning Commission held a duly noticed public hearing on March 10, 2014 to review and consider the proposed addition of Chapter 16.99 [Emergency Shelter for the Homeless Overlay] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.
- c. The City Council held a duly noticed public hearing on April 1, 2014 to review and consider the addition of Chapter 16.99 [Emergency Shelter for the Homeless Overlay] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.
- d. After due consideration of the proposed addition of Chapter 16.99 [Emergency Shelter for the Homeless Overlay] to Title 16 [Zoning], public testimony, staff reports, and the Planning Commission recommendation, the City Council finds that the proposed ordinance is appropriate.

SECTION 2: Chapter 16.99 [Emergency Shelter for the Homeless Overlay] is hereby added to Title 16 [Zoning] to read as follows:

Chapter 16.99

EMERGENCY SHELTER FOR THE HOMELESS OVERLAY

Sections:

- 16.99.010 Purpose and goals
- 16.99.020 Applicability
- 16.99.030 Permitted uses
- 16.99.040 Conditional uses
- 16.99.050 Development regulations
- 16.99.060 Performance standards
- 16.99.070 Compliance review procedures

16.99.010 Purpose and goals. The purposes of this Chapter are to ensure the development of emergency shelters for the homeless do not adversely impact adjacent parcels or the surrounding neighborhood, and to ensure they are developed in a manner which protects the health, safety, and general welfare of the nearby residents and businesses, while providing housing for the homeless of the community. Further the goal of this Chapter is to create a local approach to housing for the homeless, which includes veterans who, as of the date of the adoption of this ordinance, make up approximately 25 percent of the homeless population in San Mateo County and who may be served by the U.S. Department of Veterans Affairs located in Menlo Park.

16.99.020 Applicability. This Chapter shall apply only to emergency shelters for the homeless and only to the following properties, listed by the San Mateo County Assessor's Parcel Number (APN) as of the date of the adoption of this ordinance: 062470050, 062285320, 062285210, 062285300, 062065050, 062065070, 062285200, 062285220, 062064080, 113910999, 062065060, 062065010, 062064110, 062065030, 062064090, 062064100, 062064140, 062064130, 062490999, 062064120, 062065020, 062490020, 062490010, 113910010, 113910030, and 113910020. Any use other than an emergency homeless shelter shall be regulated by the underlying zoning district.

16.99.030 Permitted uses. The only permitted use in the Emergency Shelter for the Homeless Overlay is a facility housing the homeless with 16 or fewer beds, which shall serve no more than 16 homeless persons at one time. The cumulative number of beds allowed through this Chapter shall be no more than 16 beds, except as authorized by a use permit.

16.99.040 Conditional uses. Conditional uses allowed in the Emergency Shelter for the Homeless Overlay, subject to obtaining a use permit, are as follows:

- (1) Single facility housing the homeless with more than 16 beds;
- (2) Facility housing the homeless that would increase the cumulative total number of beds allowed through this Chapter above 16.

16.99.050 Development regulations. The emergency shelter for the homeless shall conform to all development regulations of the zoning district in which it is located, except for the off-street parking requirement. A modification to a development regulation of the underlying zoning district may be permitted subject to approval of a use permit by the Planning Commission.

- (1) Off-street parking. All required parking spaces and access thereto shall conform to the City parking standards. Parking shall be provided per the requirements and shall not be located in any required yard abutting a street or R district. The Community Development Director may also reduce the parking requirement if the shelter can demonstrate a lower need.

| Type | Parking Spaces | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|------------|
| Vehicular* | Per employee or volunteer on duty when the shelter is open to clients | 1 space |
| | Per family | 1 space |
| | Per non-family bed | 0.25 space |
| Bicycle | Per bed | 0.2 space |
| *A 10 percent reduction in the overall parking requirement is permitted if the facility is located within one-half mile of a rail station or one-quarter mile of a bus stop that serves at least four buses per hour during the weekday peak periods in the morning (7-9 a.m.) and afternoon (4-6 p.m.). | | |

16.99.060 Performance standards. The shelter for the homeless shall conform to all performance standards. A modification to a performance standard may be permitted subject to approval of a use permit.

- (1) **Waiting and Client Intake Areas.** Shelters shall provide 10 square feet of on-site, interior waiting and client intake space per bed. In addition, one office or cubicle shall be provided per 10 beds, with at least one office or up to 25 percent of the offices designed for client privacy. Waiting and intake areas may be used for other purposes as needed during operations of the shelter.
- (2) **Facility Requirements.** Each facility shall include a written management plan that uses best practices to address homeless needs (e.g. Quality Assurance Standards developed by the San Mateo County HOPE Quality Improvement Project) and shall include, at a minimum, the following:
 - (a) **On-site management:** On-site personnel are required during hours of operation when clients are present. The provider shall have a written management plan that includes procedures for screening residents to ensure compatibility with services provided at the facility.

- (b) **Hours of operation:** Facilities shall establish and maintain set hours for client intake and discharge. The hours of operation shall be consistent with the services provided and be clearly posted.
 - (c) **Services:** Facilities shall provide overnight accommodation and meals for clients. Staffing and services or transportation to such services shall be provided to assist clients to obtain permanent shelter and income. Such services shall be available at no cost to all clients of the facility.
 - (d) **Kitchen:** Each facility shall provide a common kitchen and dining room adequate for the number of clients served on a daily basis.
 - (e) **Sanitation:** Each facility shall provide showers adequate for the number of clients served on a daily basis.
 - (f) **Storage:** Each facility shall provide secure areas for personal property adequate for the number of clients served on a daily basis.
 - (g) **Other amenities:** Other amenities may be required that are consistent with the State's provision for emergency housing, as recommended by the Police Department prior to Compliance Review approval.
 - (h) **Coordination:** The Shelter Operator shall establish a liaison staff to coordinate with City, Police, School District officials, local businesses, and residents on issues related to the operation of the facility.
- (3) **Exterior Lighting.** Adequate external lighting shall be provided for security purposes. The lighting shall be sufficient to provide illumination and clear visibility to all outdoor areas, with minimal spillover on adjacent properties. The lighting shall be stationary, directed away from adjacent properties and public rights-of-way, and of an intensity compatible with the neighborhood.
- (4) **Security.** On-site security shall be provided during the hours of operation when clients are present.

16.99.070 Compliance review procedures. Each facility proposed under the Emergency Shelter for the Homeless Overlay requires review for compliance with Section 16.099.050 (development regulations) and Section 16.99.060 (performance standards) prior to occupancy of the facility, where a use permit is not required.

- (1) **Application.** Requests for compliance review shall be made in writing by the owner of the property, lessee, purchaser in escrow, or optionee with the consent of the owners, on a form prescribed by the City. The application shall be accompanied by a fee, set by the City Council, plans, and a project description explaining the details of the proposal.
- (2) **Noticing.** A notice shall be mailed to all property owners and building occupants within 300 feet of the exterior boundary of the property involved, using for this purpose the last known name and address of such owners as shown upon the current assessment roll maintained by the City. The notice shall include a description of the proposal, methods for providing comments, and date and time of a public meeting.

- (3) **Public meeting.** Prior to making a determination of compliance, the Planning Commission shall conduct a study session. The review by the Planning Commission shall be advisory and non-binding and shall be limited to the proposal relative to the development regulations and performance standards.
- (4) **Compliance determination.** The Community Development Director or designee shall make a determination of compliance in writing after reviewing the application materials and considering any comments received. The determination of the Community Development Director is final and not subject to appeal.

SECTION 3: Section 16.04.299 [Emergency shelter] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] for clarity and consistency in implementation of Chapter 16.99 [Emergency Shelter for the Homeless Overlay] as follows:

Section 16.04.299 Emergency shelter. “Emergency shelter” means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay. (Health and Safety Code Section 50801(e))

SECTION 4: A Negative Declaration was prepared that considered the environmental impacts of the adoption of an emergency shelter for the homeless overlay for the identified area and determined that any potential environmental impacts were less than significant.

SECTION 5: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 6: This Ordinance shall become effective 30 days after the date of its adoption. Within 15 days of its adoption, the Ordinance shall be posted in three public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney shall be published in the local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the 1st day of April, 2014.

PASSED AND ADOPTED as an Ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the 29th day of April, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Ray Mueller
Mayor

ATTEST:

Pamela Aguilar
City Clerk

ORDINANCE NO.

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MENLO PARK AMENDING AND ADDING DEFINITIONS IN
CHAPTER 16.04 [DEFINITIONS] OF TITLE 16 [ZONING] OF
THE MENLO PARK MUNICIPAL CODE**

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1: The City Council of the City of Menlo Park hereby finds and declares as follows:

- a. The City desires to amend and add definitions in Chapter 16.04 [Definitions] of Title 16 [Zoning] to fulfill implementing program H3.B in the City's current 2007-2014 Housing Element, which includes amending zones to specifically allow residential care facilities and transitional and supportive housing as required by State Law.
- b. State Law requires transitional and supportive housing to be considered a residential use subject to only those restrictions that apply to other residential dwellings of the same type in the same zone. Similarly, small residential care facilities must be permitted as a residential use.
- c. The Planning Commission held duly a noticed public hearing on March 10, 2014 to review and consider the proposed amendments and additions to Chapter 16.04 [Definitions] of Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.
- d. The City Council held a duly noticed public hearing on April 1, 2014 to review and consider the amendments and additions to Chapter 16.04 [Definitions] of Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.
- e. After due consideration of the proposed amendments and additions to Chapter 16.04 [Definitions] of Title 16 [Zoning], public testimony, staff reports, and the Planning Commission recommendation, the City Council finds that the proposed ordinance is appropriate.

SECTION 2: Section 16.04.220 [Convalescent Home] of Chapter 16.04 [Definitions] of Title 16 [Zoning] is hereby amended to include large residential care facilities and other comparable licensed care facilities and to read as follows:

16.04.220 Convalescent home. "Convalescent home" means a large residential care facility or any structure occupied or intended to be occupied, for compensation, by persons recovering from injury or illness, or suffering from the infirmities of old age, and any comparable licensed care facility.

SECTION 3: Section 16.04.240 [Dwelling] of Chapter 16.04 [Definitions] of Title 16 [Zoning] is hereby amended to comply with State Law regarding residential care facilities and transitional and supportive housing and to read as follows:

16.04.240 Dwelling. “Dwelling” means a building or a portion thereof designed and used exclusively for residential occupancy, including one family, two family dwellings and multiple family dwellings, small residential care facility, transitional and supportive housing, but not including hotels, motels or boardinghouses.

SECTION 4: Section 16.04.554 [Residential Care Facility, Large] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] to differentiate between small residential care facilities, which are permitted uses and regulated more similarly to residential uses, and large residential care facilities, which are not subject to the same allowances under State law and may be subject to different regulations and to read as follows:

16.04.554 Residential care facility, large. “Large residential care facility” means any facility, place, or building that is maintained and operated to provide twenty-four (24)-hour care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual and licensed by the state of California for occupation by seven (7) or more persons.

SECTION 5: Section 16.04.555 [Residential Care Facility, Small] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] to differentiate between small residential care facilities, which are permitted uses and regulated more similarly to residential uses, and large residential care facilities, which are not subject to the same allowances under State law and may be subject to different regulations and to read as follows:

16.04.555 Residential care facility, small. “Small residential care facility” means any facility, place, or building that is maintained and operated to provide twenty-four (24)-hour care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual and licensed by the state of California for occupation by six (6) or fewer persons.

SECTION 6: Section 16.04.662 [Supportive Housing] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] to comply with State Law and demonstrate that supportive housing is permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone and to read as follows:

16.04.662 Supportive housing. “Supportive housing” means housing with no limit on length of stay, that is occupied by the target population, and that is linked to an onsite or offsite service that assists the supportive housing resident in

retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

SECTION 7: Section 16.04.665 [Transitional Housing] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] to comply with State Law and demonstrate that transitional housing is permitted as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone and to read as follows:

16.04.665 Transitional housing. “Transitional housing” means buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six (6) months from the beginning of the assistance.

SECTION 8: A Negative Declaration was prepared that considered the environmental impacts of the changes necessary to bring the City’s Zoning Ordinance into compliance with State Law relative to residential care facilities and transitional and supportive housing and determined that any potential environmental impacts were less than significant.

SECTION 9: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 10: This Ordinance shall become effective 30 days after the date of its adoption. Within 15 days of its adoption, the Ordinance shall be posted in three public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney shall be published in the local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the 1st day of April, 2014.

PASSED AND ADOPTED as an Ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the 29th day of April, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ray Mueller
Mayor

ATTEST:

Pamela Aguilar
City Clerk

ORDINANCE NO.

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
MENLO PARK ADDING CHAPTER 16.83 [REASONABLE
ACCOMMODATION] TO TITLE 16 [ZONING] OF THE MENLO
PARK MUNICIPAL CODE**

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1: The City Council of the City of Menlo Park hereby finds and declares as follows:

- a. The City desires to add Chapter 16.83 [Reasonable Accommodation] to Title 16 [Zoning] to fulfill implementing program H3.C in the City's current 2007-2014 Housing Element, which includes adopting an ordinance to provide individuals with disabilities reasonable accommodation in rules, policies, practices and procedures that may be necessary to ensure equal access to housing.
- b. The Planning Commission held a duly noticed public hearing on March 10, 2014 to review and consider the proposed addition of Chapter 16.83 [Reasonable Accommodation] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.
- c. The City Council held a duly noticed public hearing on April 1, 2014 to review and consider the addition of Chapter 16.83 [Reasonable Accommodation] to Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.
- d. After due consideration of the proposed addition of Chapter 16.83 [Reasonable Accommodation] to Title 16 [Zoning], public testimony, staff reports, and the Planning Commission recommendation, the City Council finds that the proposed ordinance is appropriate.

SECTION 2: Chapter 16.83 [Reasonable Accommodation] is hereby added to Title 16 [Zoning] to read as follows:

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Chapter 16.83

REASONABLE ACCOMMODATION

Sections:

- 16.83.010 Purpose
- 16.83.020 Applicability
- 16.83.030 Application requirements
- 16.83.040 Review authority
- 16.83.050 Findings and decision
- 16.83.060 Appeal determination
- 16.83.070 Rescission of grants of reasonable accommodation

16.83.010. Purpose

The purpose of this Chapter is to provide a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the California Fair Employment and Housing Act in the application of zoning laws and other land use regulations, policies and procedures, and to establish relevant criteria to be used when considering such requests.

16.83.020. Applicability

In order to make specific housing available to an individual with a disability, any person may request a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing- related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of his or her choice. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment. This Chapter applies only to those persons who are defined as disabled under the Federal Fair Housing Act and the California Fair Employment and Housing Act.

16.83.030. Application requirements

- (1) A request for reasonable accommodation shall be filed on the application form provided by the Community Development Department. If necessary to ensure accessibility, the applicant may request an alternative format. The applicant may be the person with the disability or his or her representative. The application shall be accompanied by a fee, set by the City Council, and be signed by the owner of the property and shall provide the following information:
 - (a) Applicant's name and contact information;
 - (b) Property address;
 - (c) Current use of the property;
 - (d) Basis for the claim that the individual is considered disabled under Fair Housing Laws;

- (e) The zoning code provision, regulation or policy from which reasonable accommodation is being requested;
 - (f) Explanation why the reasonable accommodation is necessary to make the specific property accessible to the individual; and
 - (g) Plans showing the details of the proposal.
- (2) If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval under this Title (including but not limited to a conditional use permit, architectural control, variance, or zoning amendment), the application for reasonable accommodation shall be submitted and reviewed at the same time as the related applications.

16.83.040. Review authority

- (1) If an application under this Chapter is filed without any accompanying application for another approval, permit or entitlement under this Title, the Community Development Director shall make a written determination within 45 days and either grant, grant with modifications or deny a request for reasonable accommodation.
- (2) If an application under this Chapter is filed with an application for another approval, permit or entitlement under this Title, it shall be heard and acted upon at the same time and in the same manner as such other application, and shall be subject to all of the same procedures.

16.83.050. Findings and decision

- (1) Any decision on an application under this Chapter shall be supported by written findings addressing the criteria set forth in this subsection. An application under this Chapter for a reasonable accommodation shall be granted if all of the following findings are made:
- (a) The housing, which is the subject of the request, will be used by an individual disabled under the Federal Fair Housing Act and the California Fair Employment and Housing Act.
 - (b) The requested reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Federal Fair Housing Act and the California Fair Employment and Housing Act.
 - (c) The requested reasonable accommodation would not impose an undue financial or administrative burden on the City.
 - (d) The requested reasonable accommodation would not require a fundamental alteration in the nature of a City program or law, including but not limited to land use and zoning.
 - (e) The requested reasonable accommodation would not adversely impact surrounding properties or uses.
 - (f) There are no reasonable alternatives that would provide an equivalent level of benefit without requiring a modification or exception to the City's applicable rules, standards and practices.

- (2) In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by subsection (A) above.

16.83.060. Appeal determination

Any decision of the Community Development Director or designee may be appealed by the applicant to the Planning Commission. The appeal shall be made in writing and filed with the Community Development Director within 15 days following the final decision. The appeal shall be accompanied by a fee, as set by the City Council, and shall clearly state the reasons for the appeal. Where the request for accommodation is in conjunction with an application for another approval, permit or entitlement under this Title, the appeal procedures for such other approval, permit or entitlement shall control.

16.83.070. Rescission of grants of reasonable accommodation

Any approval or conditional approval of an application under this Chapter may be conditioned to provide for its rescission or automatic expiration under appropriate circumstances.

SECTION 3: A Negative Declaration was prepared that considered the environmental impacts of the adoption of procedures for reasonable accommodation for individuals with disabilities and determined that any potential environmental impacts were less than significant.

SECTION 4: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5: This Ordinance shall become effective 30 days after the date of its adoption. Within 15 days of its adoption, the Ordinance shall be posted in three public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney shall be published in the local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the 1st day of April, 2014.

PASSED AND ADOPTED as an Ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the 29th day of April, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ray Mueller
Mayor

ATTEST:

Pamela Aguilar
City Clerk

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PUBLIC WORKS DEPARTMENT

Council Meeting Date: April 29, 2014
Staff Report #: 14-064

Agenda Item #: D-2

CONSENT CALENDAR: **Consider Removal of On-Street Parking for New Samtrans Bus Stops**

RECOMMENDATION

Staff recommends that the City Council approve “No Parking” zones to accommodate the new Samtrans bus stops at the locations as shown in Attachment A.

BACKGROUND

In late January 2014, Samtrans made significant changes to its bus service across San Mateo County. These changes were identified in the Service Plan Samtrans adopted in May 2013. A first wave of changes was implemented in August 2013, and the remaining changes were implemented on January 26, 2014.

The most significant changes affecting the City include modifications to Routes 281 and 295. Route 281 serves the Belle Haven neighborhood, which provides a connection between the Onetta Harris Community Center (OHCC) and the Stanford Shopping Center. The frequency of trips was increased to provide service every 15 minutes on weekdays and improve on-time performance. The route was running in a loop on the Ivy-Almanor-Hamilton and Newbridge corridors; the new route now runs on Newbridge Street in both directions.

Route 295 served Sharon Park and West Menlo Park, providing a connection to shopping destinations and connections to other transit lines for local residents. The route was replaced with new Route 286, which runs between Menlo Park Caltrain and Sharon Park during commute hours. Service on Route 86 was also expanded to capture some of the demand left by the elimination of Route 295.

ANALYSIS

The City received a request from Samtrans to install new bus stops to support these route changes. Four new stops on the north side of Newbridge Street at the following locations to serve the modified Route 281 were requested:

- East of Carlton Avenue
- East of Windermere Avenue
- East of Almanor Avenue
- East of Market Place

One new stop to serve the new Routes 86 and 286 was requested:

- North side of Monte Rosa Drive, southeast of Eastridge Drive

Aerial images showing each location are included in Attachment A.

After consideration of Samtrans' request and based on field observations, staff is recommending that the Council approve "No Parking" restrictions at each location for 50-75 feet to allow buses to effectively load and unload passengers adjacent to the curb.

The Transportation Commission considered this item on April 9, 2014 and voted unanimously in favor of the parking removal to support the new stops.

For its outreach effort, staff mailed out the meeting notification flyers (Attachment B) to residents in the area shown in Attachment C in advance of the Transportation Commission and City Council meetings.

IMPACT ON CITY RESOURCES

The proposed changes do not impact City resources; however, ongoing coordination and support with Samtrans is required when schedule changes are implemented.

POLICY ISSUES

The recommendation does not represent a change to existing City policy.

ENVIRONMENTAL REVIEW

This Council action is not subject to the current California Environmental Quality Act (CEQA) Guidelines. Any approved project will comply with all required environmental review documents to construct a project.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

- A. Aerial images showing proposed stop locations and areas of parking restrictions
- B. Meeting Notification Flyers
- C. Map of Meeting Notification Area

Report prepared by:
Nicole H. Nagaya, P.E.
Senior Transportation Engineer

Aerial images showing proposed
stop locations and areas of parking
restrictions

Belle Haven / Route 281

- Serves Onetta Harris Community Center to Stanford Shopping Center
- Eliminate service on Ivy-Almanor-Hamilton
- Add two-way service on Newbridge
- Add 4 new stops on north side of Newbridge







Newbridge St

Almanor

Berkeley



Market Place

Pierce

Newbridge St

Monte Rosa/Routes 86 & 286

- Eliminated Route 295 service to Menlo Park
- Replaced with new Route 286:
 - Service from Menlo Park Caltrain to Sharon Park
 - School Hours only
 - 1 New Stops on Monte Rosa





New Bus Stop and Parking Modifications

March 26, 2014

In late January 2014, Samtrans made significant changes to its bus service across Sam Mateo County. To support these changes, Samtrans has requested placement of new bus stops and parking restrictions to serve these routes. In proximity to your property, Route 281 was reconfigured to run in both directions on Newbridge Street. Samtrans has requested a new stop on the northeast corner at Carlton Avenue as shown below.



CITY OF MENLO PARK
PUBLIC WORKS DEPARTMENT
701 LAUREL STREET
MENLO PARK, CA 94025-3483



MENLO PARK, CA 94025

COMMISSION MEETING

The Transportation Commission will consider parking restrictions to support these stops at their upcoming meeting on **Wednesday, April 9th, 2014 at 7:00 pm in the City Council Chambers at 701 Laurel Street, Menlo Park.** Please contact Nikki Nagaya at nhnagaya@menlopark.org or 650.330.6770 with comments or questions.

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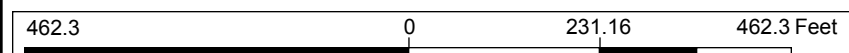
City of Menlo Park



Legend

- Address
- Street Names
- Railroad
- Sphere Of Influence
- City Limits
- Adjacent Cities
 - <all other values>
 - ATHERTON
 - BELMONT
 - DEVONSHIRE (UNINC)
 - EAST PALO ALTO
 - EMERALD LAKE HILLS (UNINC)
 - HARBOR/INDUSTRIAL (UNINC)
 - LADERA (UNINC)
 - LOS TRANCOS WOODS (UNINC)
 - MENLO OAKS (UNINC)
 - MOBILE HOME PARKS (UNINC)
 - NORTH FAIR OAKS (UNINC)
 - PALO ALTO
 - PALOMAR PARK (UNINC)
 - PORTOLA VALLEY
 - REDWOOD CITY
 - SAN CARLOS
 - SEQUOIA TRACT (UNINC)
 - STANFORD LANDS (UNINC)
 - STANFORD WEEKEND ACRES (L)
 - UNINCORPORATED
 - WEST MENLO PARK (UNINC)
 - WOODSIDE
- Public Facilities
- Schools
- Parks
- Travel Ways
 - Asphalt
 - Landscape
 - Median
 - Railroad
 - Paper
- Lakes

1:2,774



NAD_1983_StatePlane_California_III_FIPS_0403_Feet
City of Menlo Park GIS

This map is for reference purposes only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. The City of Menlo Park and its staff shall not be held responsible for errors or omissions. Please contact City staff for the most current information.

Notes



City of Menlo Park



Legend

- Address
- Street Names
- Pedestrian Overcrossing
- Railroad
- Sphere Of Influence
- City Limits
- Adjacent Cities
 - <all other values>
 - ATHERTON
 - BELMONT
 - DEVONSHIRE (UNINC)
 - EAST PALO ALTO
 - EMERALD LAKE HILLS (UNINC)
 - HARBOR/INDUSTRIAL (UNINC)
 - LADERA (UNINC)
 - LOS TRANCOS WOODS (UNINC)
 - MENLO OAKS (UNINC)
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 - NORTH FAIR OAKS (UNINC)
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 - PALOMAR PARK (UNINC)
 - PORTOLA VALLEY
 - REDWOOD CITY
 - SAN CARLOS
 - SEQUOIA TRACT (UNINC)
 - STANFORD LANDS (UNINC)
 - STANFORD WEEKEND ACRES (L)
 - UNINCORPORATED
 - WEST MENLO PARK (UNINC)
 - WOODSIDE
- Public Facilities
- Schools
- Parks
- Travel Ways
 - Asphalt
 - Landscape
 - Median
 - Railroad
 - Paver

1:2,774



462.4 0 231.18 462.4 Feet

NAD_1983_StatePlane_California_III_FIPS_0403_Feet
City of Menlo Park GIS

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Notes



**CITY COUNCIL
SPECIAL AND REGULAR MEETING
DRAFT MINUTES**

Tuesday, April 1, 2014
6:00 P.M.

701 Laurel Street, Menlo Park, CA 94025
City Council Chambers

6:00 P.M. CLOSED SESSION (1st floor Council Conference Room, Administration Building)

Mayor Mueller called the Closed Session to order at 6:00 p.m. with all members present.

There was no public comment.

CL1. Closed Session pursuant to Government Code Section §54957 to conference with labor negotiators regarding labor negotiations with the Police Officers Association (POA) and Service Employees International Union (SEIU)

Attendees: Alex McIntyre, City Manager, Starla Jerome-Robinson, Assistant City Manager, Bill McClure, City Attorney, Gina Donnelly, Human Resources Director, Drew Corbett, Finance Director, and Charles Sakai, Labor Attorney

7:00 P.M. REGULAR SESSION

Mayor Mueller called the meeting to order at 7:20 p.m. with all members present.

Mayor Mueller led the pledge of allegiance.

REPORT FROM CLOSED SESSION

There is no report from the Closed Session held earlier this evening.

At this point, Mayor Mueller called Agenda Items A1 and A2 out of order.

A1. Proclamation for National Library Week (April 13-19, 2014)([attachment](#))
Library Director Susan Holmer, Library Commissioner Jacqueline Cebrian and Library Foundation President Jill Parker accepted the proclamation.

A2. Presentation of Commendations to Menlo-Atherton High School Robotics Team Coach Jeff DeCurtins and members of the robotics team accepted the commendations.

SS. STUDY SESSION

SS1. Review and possibly provide direction on the requested abandonment of the Burgess Drive reserved right-of-way for the SRI International Campus Modernization Project
([Staff report #14-056](#))(*presentation*)

A staff presentation was made by Community Development Manager Justin Murphy.

Public Comment:

- Tom Furst of SRI spoke regarding the constructive and helpful feedback from staff as well as from the commissions as part of the outreach for this project.

Mr. Furst and Mr. Murphy responded to Council questions regarding safety and security in the right of way, potential bike lanes, traffic, and negotiating the development agreement.

A. PRESENTATIONS AND PROCLAMATIONS

A1. Proclamation for National Library Week (April 13-19, 2014)

This item was called earlier in the agenda.

A2. Presentation of Commendations to Menlo-Atherton High School Robotics Team

This item was called earlier in the agenda.

A3. Quarterly update from Trustee of the Mosquito and Vector Control District ([presentation](#)) Menlo Park Trustee Valentina Cogoni gave a brief presentation.

Trustee Cogoni responded to Council questions regarding mosquitos, catch bins and public outreach.

ANNOUNCEMENTS

The City is currently recruiting for multiple seats on the Environmental Quality, Housing, Library, Planning and Parks & Recreation Commissions. Applications are available online or from the City Clerk and are due April 14th.

B. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS

B1. Parks & Recreation Commission quarterly report on the status of their 2 Year Work Plan
Commissioner Tom Cecil gave an update regarding the following Commission activities: research of social services and recreational opportunities in Belle Haven, research and evaluation of opportunities to support arts programs in Menlo Park, research and evaluation of City parks for their short and long term vitality.

C. PUBLIC COMMENT #1

- Phillip Bahr spoke regarding traffic issues

D. CONSENT CALENDAR

D1. Authorize the Police Department to purchase radio console equipment for \$133,000 from a sole-source (Avtec) and enter into an agreement with Telecommunications Engineering Associated to install replacement radio console equipment, in an amount not to exceed \$48,000 pursuant to approved Capital Improvement Program project
([Staff report #14-049](#))

D2. Adopt **Resolution 6189** supporting Senate Bill (SB) 1014 (Jackson) Home-Generated Pharmaceutical Waste Collection and Disposal Act and authorizing the Mayor to sign a letter of support ([Staff report #14-054](#))

D3. Approve a comment letter to the Metropolitan Transportation Commission on the Dumbarton Rail Corridor Project ([Staff report #14-052](#))

D4. Authorize the Public Works Director to accept the work performed by Nor Cal Concrete for the 2012-2013 Citywide Sidewalk Repair Project ([Staff report #14-051](#))

D5. Authorize the City Manager to approve expenditures of up to \$124,000 for labor and employee relations consulting services to the Law Office of Renne, Sloan, Holtzman, and Sakai ([Staff report #14-050](#))

D6. Accept minutes for the Council meeting of March 18, 2014 ([Attachment](#))

Councilmember Cline requested Item D-1 be pulled from the Consent Calendar for further discussion.

ACTION: Motion and second (Keith/Ohtaki) to approve items D2 – D6 on the Consent Calendar passes unanimously.

In response to Councilmember Cline, Police Commander Dave Bertini discussed the sole-source aspect of this purchase and installation.

ACTION: Motion and second (Cline/Keith) to authorize the Police Department to purchase radio console equipment for \$133,000 from a sole-source (Avtec) and enter into an agreement with Telecommunications Engineering Associated to install replacement radio console equipment, in an amount not to exceed \$48,000 pursuant to approved Capital Improvement Program project passes unanimously.

At this time, Mayor Mueller called Agenda Item F-3 out of order. At 8:35 p.m., City Attorney McClure recused himself and exited the Council chambers due to the proximity of his business office to the rail location. Special Counsel Greg Rubens was present on behalf of the City.

F3. Approve a comment letter on the Draft Environmental Impact Report for the Peninsula Corridor Electrification Project ([Staff report #14-057](#))([presentation](#))

A staff presentation was made by Senior Transportation Engineer Nicole Nagaya. Marian Lee of Caltrain was present.

Public Comment:

- Kathy Hamilton expressed concerns regarding public rail meetings, railroad agreements, quiet zones and trees, noise and dust

Ms. Lee and staff responded to Council questions regarding railroad agreements with Union Pacific, quiet zones, parking structures, and CEQA issues.

Motion and second (Mueller/Carlton) to have the Rail Council Subcommittee review the letter in a meeting open to the public and give authority to the subcommittee to modify the letter with Councilmember Keith's friendly amendment that language regarding CEQA and dust be included prior to the public subcommittee meeting passes unanimously.

At 9:25 p.m. City Attorney McClure returned to the Council chambers.

At this time, Mayor Mueller called Agenda Item F-2 out of order.

F2. Approve by resolution a Memorandum of Agreement regarding funding to share in the cost of an animal care shelter on Airport Boulevard in San Mateo to serve Menlo Park and other local municipalities ([Staff report #14-055](#))([presentation](#))

A staff presentation was made by Clay Curtin, Assistant to the City Manager. Pam Mercado, San Mateo County Project Manager, was present and responded to Council questions.

ACTION: Motion and second (Cline/Ohtaki) to continue this item to the April 29th Council meeting in order to receive more information passes unanimously.

E. PUBLIC HEARINGS

E1. Consider the Planning Commission recommendation to approve the Housing Element of the General Plan and associated Housing Element Implementation Zoning Ordinance Amendments, and Environmental Review ([Staff report #14-053](#))([presentation](#))([additional correspondence](#))

A staff presentation was made by Senior Planner Deanna Chow.

Mayor Mueller opened the Public Hearing.

Public Comment:

Sandy Lee asked how front and rear setbacks are determined within a cul de sac.

Motion and second (Cline/Carlton) to close the Public Hearing passes unanimously.

At 10:17 p.m. Mayor Mueller exited the Council chambers and Mayor Pro Tem Carlton presided over the meeting. Mayor Mueller returned at 10:20 p.m.

Staff responded to Council questions and discussion ensued regarding setbacks, parking requirements, secondary dwelling units and lots, R2 zoning, and accessory structures versus buildings.

ACTION: Motion and second (Keith/Carlton) to take the following actions passes unanimously:

1. Approve **Resolution 6190** adopting a Negative Declaration for the Housing Element Update and associated Zoning Ordinance amendments
2. Approve **Resolution 6191** updating the Housing Element for the 2015-2023 planning period
3. Introduce an Ordinance adding Chapter 16.99 [Emergency Shelter for the Homeless Overlay] and amending Chapter 16.04 [Definitions] to Title 16 [Zoning] of the Menlo Park Municipal Code
4. Introduce an Ordinance amending and adding definitions in Chapter 16.04 [Definition] of Title 16 [Zoning] of the Menlo Park Municipal Code
5. Introduce an Ordinance adding Chapter 16.83 [Reasonable Accommodation] to Title 16 [Zoning] of the Menlo Park Municipal Code

ACTION: Motion and second (Cline/Carlton) to continue the Public Hearing regarding introduction of ordinances pertaining to Secondary Dwelling Units and Accessory Buildings and Structures to the April 29, 2014 Council meeting passes unanimously.

F. REGULAR BUSINESS

F1. 2013 Annual Report on the status and progress in implementing the City's Housing Element (2007-2014) of the General Plan ([Staff report #14-058](#))
Community Development Manager Justin Murphy introduced the item.

ACTION: Motion and second (Carlton/Keith) to accept the 2013 Annual Report on the status and progress in implementing the City's Housing Element (2007-2014) of the General Plan passes unanimously.

F2. Approve by resolution a Memorandum of Agreement regarding funding to share in the cost of an animal care shelter on Airport Boulevard in San Mateo to serve Menlo Park and other local municipalities

This item was called earlier in the agenda.

F3. Approve a comment letter on the Draft Environmental Impact Report for the Peninsula Corridor Electrification Project

This item was called earlier in the agenda.

G. CITY MANAGER'S REPORT – None

H. WRITTEN COMMUNICATION – None

I. INFORMATIONAL ITEMS – None

J. COUNCILMEMBER REPORTS

J1. Proposed Ballot Initiative Review Subcommittee Report

Mayor Mueller stated that the subcommittee will be meeting on April 7th. Councilmember Othaki discussed addressing One Bay Area grants at the ABAG Spring Assembly. Councilmember Keith reported on a telephone conference she participated in regarding groundwater in Menlo Park and East Palo Alto. Mayor Pro Tem Carlton reported on discussions with SBWMA regarding public water. Mayor Mueller stated that in the future Councilmembers may submit the topics they will report on in advance of the Council meetings.

K. PUBLIC COMMENT #2

There was no public comment.

L. ADJOURNMENT at 11:05 p.m.

Pamela Aguilar
City Clerk

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**CITY COUNCIL
SPECIAL MEETING
DRAFT MINUTES**

**Tuesday, April 22, 2014
6:00 P.M.**

**701 Laurel Street, Menlo Park, CA 94025
Council Conference Room – 1st Floor of City Hall**

Mayor Mueller called the Special Meeting to order at 6:12 p.m. Councilmember Keith arrived at 6:25 p.m.

PUBLIC COMMENT

- Elizabeth Houck spoke asking Council to choose a Planning Commissioner who will support the ban of the use of Round Up in the City's parks

SPECIAL BUSINESS

1. Interviews of applicants for appointments to the Planning Commission.

The City Council interviewed the following seven candidates for the two vacancies on the Planning Commission.

- Lin Khabbaz
- Elizabeth Youngblood
- Noria Zasslow
- Andrew Combs
- Ben Eiref – *not present at meeting. (Individual Councilmembers spoke to applicant prior to meeting or may be able to speak to him in advance of the appointment of the Planning Commissioners)*
- Jonas Halpren
- Lawrence Lee
- Michael Meyer

ADJOURNMENT at 8:30 p.m.

Nicole Mariano
Deputy City Clerk

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ADMINISTRATIVE SERVICES DEPARTMENT

Council Meeting Date: April 29, 2014
Staff Report #: 14-060

Agenda Item #: E-1

PUBLIC HEARING: **Adopt a Resolution Amending the City's Master Fee Schedule to Incorporate Proposed Changes in Fees to Become Effective Immediately, July 1, 2014, or as Required by Statute for the Following Departments: Community Services and the Menlo Park Municipal Water District**

RECOMMENDATION

Staff recommends City Council adopt a resolution amending the City's Master Fee Schedule to incorporate proposed changes in fees to become effective immediately, July 1, 2014, or as required by statute for the following departments: Community Services and the Menlo Park Municipal Water District.

BACKGROUND

The Master Fee Schedule reflects fees charged by all City departments. It is amended annually so that fees reflect current costs to provide services, to bring fees closer to full cost recovery targets, to add new fees when applicable for new City services, and/or to eliminate fees for discontinued services.

The City imposes different categories of fees with different requirements regarding how fees are set or changed:

- Fees and charges for the use of facilities, services, and access to property: these fees are elective on the part of the customer/user. The purpose of these fees and charges is to generate revenues for access or use of the service or facility. There is no legal restriction on the amount of such fees or charges, and they can be effective immediately.
- Property development processing fees: these include fees for building and use permits, variances, building inspections, map applications, and planning services. These fees cannot exceed the reasonable cost of providing the service. Any new fee or increase to existing fees in this category can be effective no sooner than sixty days after approval by City Council.

- Fees relating to public records act requests and copies of documents and reports: these fees are limited to the actual cost of copying (not including personnel time to copy) or the statutory amount, whichever is less. There are no changes recommended for any fees in this category at the present time.

ANALYSIS

Identifying the cost components of providing services is integral to the establishment of the fees and cost recovery rates. Accordingly, a detailed cost study was identified as a priority project for the 2006-07 budget and completed in 2008-09. Staff has prepared the following recommendations using analyses provided by the Cost Allocation and Overhead Rate Study, the Fully Burdened Hourly Staff Labor Rate Study, the Comprehensive Fee and Service Charge Study, using updated cost information. In addition, the citywide Cost Recovery Fee Policy/Strategy (Attachment B) was referenced as a guide in determining appropriate cost recovery rates for services.

The recommendations presented by staff in this report ensure not only that charges keep pace with the costs of providing services, but are also competitive with comparable programs (where applicable), aligned with cost recovery levels defined in the Cost Recovery Fee Policy, and are responsive to demands for these services within the community. The proposed fee changes are summarized below, by department. Fees for which there are no recommended changes are not listed.

Community Services

Several fee increases for recreation programs are suggested in order to continue progress toward the Department's long-term cost recovery goals. Staff believes the 2005 *Your City/Your Decision* community-driven budget process provided community direction and support for increasing the degree to which recreational services pay for themselves. The Cost Allocation Plan and User Fee Study and Policy also provides further clarification for making fee changes in order to align fees more appropriately to the costs of recreation services and some social service programs.

In accordance with the Cost Recovery Policy, staff has suggested the greatest fee increases for programs that are of special benefit to individuals or groups, where the goal is to set fees to a level sufficient to support direct program costs, plus up to 100% of City overhead associated with the activity. These programs provide individual benefit foremost, and minimal community benefit. Activities promoting the full utilization of parks and recreation facilities are also included in those recommended for the greatest fee increases.

Several programs delineated in the policy are included in the medium cost recovery category, with recovery of a majority of direct (budgeted) costs incurred in the delivery of the service. However, administrative and other overhead costs of the Community Services Department are not being recovered. Both the community and individuals benefit from these services.

The schedule below summarizes the current fees, proposed fees, and percentage change in certain Community Services fees. If approved, it is estimated that increases and new fees will generate an additional \$171,300 annually at current and estimated participation levels.

| Fee Title | Current Fee | Proposed Fee | Change % |
|---------------------------------------------------------------------------------|-------------|--------------|----------|
| MENLO CHILDREN'S CENTER – RESIDENT: | | | |
| <u>Preschool</u> (per month) | | | |
| Toddler Room | | | |
| Full-time 5 days per week | 1,787.00 | 1,805.00 | 1% |
| Part-time 3 days per week | 1,304.00 | 1,317.00 | 1% |
| Part-time 2 days per week | 1,018.00 | 1,028.00 | 1% |
| Early pre-school and Pre-school room | | | |
| Full-time 5 days per week | 1,405.00 | 1,419.00 | 1% |
| Part-time 3 days per week | 1,026.00 | 1,036.00 | 1% |
| Part-time 2 days per week | 801.00 | 809.00 | 1% |
| <u>School-Age Child Care</u> | | | |
| 1 st through 5 th grades (Full-time 5 day) | 425.00 | 446.00 | 5% |
| 1 st through 5 th grades (Full-time 4 day) | N/A | 400.00 | New |
| 1 st through 5 th grades (Full-time 3 day) | 310.00 | 326.00 | 5% |
| 1 st through 5 th grades (Full-time 2 day) | 242.00 | 254.00 | 5% |
| 1 st through 5 th grades (Full-time 1 day) | N/A | 150.00 | New |
| Morning Kindergarten (Full-time 5 day) | | | |
| Morning Kindergarten (Full-time 5 day) | 670.00 | 704.00 | 5% |
| Morning Kindergarten (Full-time 3 day) | 489.00 | 513.00 | 5% |
| Morning Kindergarten (Full-time 2 day) | 382.00 | 401.00 | 5% |
| Afternoon Kindergarten (Full-time 5 day) | | | |
| Afternoon Kindergarten (Full-time 5 day) | 460.00 | 483.00 | 5% |
| Afternoon Kindergarten (Full-time 3 day) | 331.00 | 348.00 | 5% |
| Afternoon Kindergarten (Full-time 2 day) | 262.00 | 275.00 | 5% |
| <u>Seasonal Programs – 2 week Camp*</u> | | | |
| 1 st through 5 th grades | 375.00 | 425.00 | 13% |
| Middle School grades | 375.00 | 400.00 | 7% |
| Kindergarten | 447.00 | 550.00 | 23% |
| (*Field Trips subject to extra fees) | | | |
| BELLE HAVEN PROGRAMS - RESIDENT: | | | |
| <u>Afterschool</u> (per month) | | | |
| Kindergarten – standard start (non-subsidized) | 460.00 | 483.00 | 5% |
| 1 st through 6 th grade – standard start (non-subsidized) | 425.00 | 446.00 | 5% |
| Kindergarten – standard start (subsidized*) | 104.00 | 109.00 | 5% |
| 1 st through 6 th grade – standard start (subsidized*) | 95.00 | 99.00 | 4% |
| Kindergarten – early start (non-subsidized) | 670.00 | 704.00 | 5% |
| Kindergarten – early start (subsidized*) | 124.00 | 129.00 | 4% |

| Fee Title | Current Fee | Proposed Fee | Change % |
|----------------------------------------------------------------------------------------|---------------------|-----------------------|-----------------|
| BELLE HAVEN PROGRAMS – RESIDENT: continued | | | |
| <u>Seasonal Programs</u> | | | |
| Camp Programs | | | |
| Kindergarten (subsidized) | 156.00 | 159.00 | 2% |
| 1 st through 6 th grade & Counselor-in-training (subsidized*) | 135.00 | 139.00 | 3% |
| *Subsidized rates for eligible residents only | | | |
| ARRILLAGA FAMILY RECREATION CENTER: | | | |
| Menlo Madness – Camps | | | |
| - per week – sliding scale | 175.00 to 304.00 | 150.00 to 380.00 | (14%) to 25% |
| Birthday Party Packages – Residents | 175.00 to 800.00 | 225.00 to 1,000.00 | 25% to 29% |
| - Non-Residents | 52.00 additional | 25% additional | Varies |
| Sequoia Room Rentals – per hour | | | |
| Weekday – Residents | 125.00 | 150.00 | 20% |
| - Non-Residents | 170.00 | 195.00 | 15% |
| Weekend – Residents | 170.00 | 200.00 | 18% |
| - Non-Residents | 230.00 | 260.00 | 13% |
| ARRILLAGA FAMILY GYMNASTICS CENTER: | | | |
| <u>Gymnastics – Per hour fee</u> | | | |
| 1– 2 hours per week | 13.40 | 14.10 | 5% |
| 3 hours per week | 10.45 | 11.00 | 5% |
| 6 hours per week | 8.90 | 9.35 | 5% |
| 9 hours per week | 8.45 | 8.90 | 5% |
| 12 hours per week | 7.85 | 8.25 | 5% |
| 15 hours per week | 7.00 | 7.35 | 5% |
| <u>Private Lessons</u> | | | |
| 1/2 hour – resident – up to two children | 35.00 | 35.00 | No Change |
| - each additional child | 15.00 | 15.00 | No Change |
| 1 hour – resident – up to two children | N/A | 57.00 | New |
| - each additional child | | 25.00 | New |
| Gymnastics Program T-Shirt – each | N/A | 10.00 | New |
| Birthday Party Packages – Residents | 175.00 to 800.00 | 225.00 to 1,000.00 | 25% to 29% |
| - Non-Residents | 52.00 additional | 25% additional | Varies |
| All gymnastics fees for non-residents are 125% of resident fee | | | |

| Fee Title | Current Fee | Proposed Fee | Change % |
|---------------------------------------------------------------------------------------------------------------|-------------|--------------|-----------|
| MENLO PARK SENIOR CENTER | | | |
| Grand Ballroom and Kitchen Rental Fee | | | |
| Resident – per hour | 120.00 | 120.00 | No Change |
| Non-resident – per hour | 150.00 | 150.00 | No Change |
| Kitchen Only | | | |
| Resident – per hour | N/A | 30.00 | New |
| Non-resident – per hour | N/A | 40.00 | New |
| Imagination Room | | | |
| Resident – per hour | 40.00 | 40.00 | No Change |
| Non-resident – per hour | 50.00 | 50.00 | No Change |
| Community Room | | | |
| Resident – per hour | 40.00 | 40.00 | No Change |
| Non-resident – per hour | 50.00 | 50.00 | No Change |
| Minimum Rental Period All Locations | 1 hour | 2 hours | 100% |
| Discounts on per hour rates | | | |
| Multi-room – entire facility | N/A | 30% | New |
| Long-term – 20 or more hours in a year | N/A | 25% | New |
| Non-Profit use of facilities (only one discount per rental) | N/A | 25% | New |
| ONETTA HARRIS COMMUNITY CENTER | | | |
| Drop-In Basketball Fee | 1.00 | 1.00 | No Change |
| Drop-In Fitness Fee | 1.00 | 1.00 | No Change |
| Drop-In Class Fee | N/A | 3.00 | New |
| Activity Room Rental Fee | | | |
| Resident – per hour | 50.00 | 70.00 | 40% |
| Non-resident – per hour | 65.00 | 85.00 | 31% |
| FEE NAME CHANGES | | | |
| <i>From:</i> Athletic Fields Usage – Natural Turf - For Profit Groups | | | |
| <i>To:</i> Athletic Fields Usage – Natural Turf – For Profit Groups and Non-Profit Groups Camps and Clinics | | | |
| Resident – Per hour – per group | 33.00 | 33.00 | No Change |
| Non-resident – Per hour – per group | 72.00 | 72.00 | No Change |
| <i>From:</i> Athletic Fields Usage – Synthetic Turf – For Profit Groups | | | |
| <i>To:</i> Athletic Fields Usage – Synthetic Turf – For Profit Groups and Non-Profit Groups Camps and Clinics | | | |
| Resident – per hour – per group | 60.00 | 60.00 | No Change |
| Non-resident – per hour – per group | 100.00 | 100.00 | No Change |
| (All non-resident fees are 135% of resident fees unless a specific non-resident fee is listed) | | | |

Child Care Programs

Menlo Children's Center (MCC) Preschool Programs: The tuition increase proposal for the MCC Preschool is a 1% increase in child care fees. This moderate increase will help remain comparable to other preschool programs in the area, as well as moving MCC closer to its cost-recovery target. In the Afterschool Program, there has been a decrease in the demand for full-time afterschool care by parents in favor of part-time spots that provide for greater flexibility for parents whose children participate in a variety of afterschool activities. Although full-time participants will continue to be the majority of participants, we are proposing options for a 1 day per week at \$150 per month and a 4 day per week at \$400 per month. These options will allow families to continue to use all of the services of the program even if their childcare needs change. The tuition proposal for MCC Afterschool calls for a 5% increase in childcare fees. This increase will keep the program at a comparable tuition fee when compared to other afterschool programs in the area.

For Seasonal Programs, fees for the 1 week camp range between \$175 to \$304. Staff proposes bringing fees for the 2 week camp within the 1 week camp range by increasing the fees for 1st through 5th grades from \$375 to \$425, for Middle School grades from \$375 to \$400, and for Kindergarten from \$447 to \$550.

The estimated increase in annual revenue is \$26,500.

Belle Haven School Age Programs and Camp Menlo: Staff proposes increasing the Kindergarten and 1st through 6th grade monthly afterschool program fees, as well as camp fees by 2% to 5% in order to continue progress toward achieving the program's cost recovery target of 30% per City Council Cost-Recovery Policy. These moderate increases will move us toward our cost-recovery target while not significantly impacting parents and ensuring that we can maintain our capacity of 56 children or greater.

The estimated increase in annual revenue is \$2,900.

Recreation Programs

Arrillaga Family Recreation Center: The Menlo Madness Summer Camp fees are currently set within a sliding scale range of \$175 to \$304 per week. An expansion of the Menlo Madness Summer Camp is being proposed to include a Munchkin Madness Camp to accommodate preschool age children (3 to 4 year olds) to meet an identified community need in this popular day camp. In order to offer the half-day camp at a competitive rate, we request that the lower range of the sliding scale be lowered from \$175 to \$150 per week. Camp fees have not been increased 3 years. So, we are also, at the same time, proposing an increase in the higher range of the scale from \$304 to \$380 due to increased cost for field trips and program supplies. This will result in a new sliding scale range of \$150 to \$380 per week. The addition of the Munchkin Madness Camp is expected to generate \$15,000 in annual revenue for the program, while the increase to the Menlo Madness Camp for grade school-age participants is expected to result in a \$10,000 annual increase in revenue.

Increases in the rental fees for the Arrillaga Family Recreation Center are being proposed due to the high demand and increased facility usage since the facility was renovated. There has not been an increase in room rental fees since the renovation, and an increase will continue the progress made toward achieving the community center's cost-recovery targets. The following increases are being proposed: Sequoia Room Weekday increase \$25 per hour from \$125 to \$150 per hour for residents and \$170 to \$195 per hour for non-residents; Sequoia Room Weekends increase \$30 per hour from \$170 to \$200 per hour for residents and \$230 to \$260 per hour for non-residents.

An increase to the Birthday Party Packages range is being proposed to account for the increased demand and for the potential party add-on's that customers frequently request. The current range is \$175 to \$800 and the range being proposed is \$225 to \$1,000.

The estimated increase in total annual revenue is \$50,900.

Arrillaga Family Gymnastics Center: An increase of 5% to gymnastics classes is being proposed to account for the high-demand, below-market pricing, and is in alignment with the gradual fee increases outlined in the Gymnastics Business Plan to make the Gymnastics Center more competitive with other neighboring gymnastics programs. In addition to the half-hour private lessons we currently offer, there is a proposal to include a full-hour private lesson at \$57 per hour to accommodate the demand for longer lesson time. T-shirts were offered this year as a promotional opportunity for Preschool Gymnastics students and were well received. This year we would like to offer the T-shirts for sale to parents at \$10 per shirt for both the preschool and developmental program students. An increase to the Birthday Party Package Non-resident fee is proposed that would equal 25% of the resident rate, which will make it more consistent with the non-resident rate for classes and with other birthday party packages offered by other programs in the City.

The estimated annual increase in revenue is \$79,200.

Menlo Park Senior Center: As a result of a reduction of rental pricing and increased promotion in FY 2013-14, the Menlo Park Senior Center has seen an increase in the demand by residents and groups to rent the facility. One area of interest is the rental of the Senior Center Kitchen, for which we are proposing a new fee of \$30 per hour for residents and \$40 per hour for non-residents to meet the demand for this type of rental. Rental of the Kitchen would only be available as an add-on to the rental of space in the Senior Center or an adjacent facility. It is also being recommended that all room rentals for the Grand Ballroom, Community Room, and Imagination Room be a minimum of two hours in order to offset the amount of staff support required to conduct a rental and to be consistent with the two hour minimum requirement of other facilities. A multi-room discount of 30% is being proposed to encourage larger groups who have expressed an interest in renting the whole facility for additional breakout rooms the ability to do so. The discount would not apply to renters who are already receiving a lower rate, as in

non-profits, or those who are getting long-term rental discounts. A long-term rental discount of 25% is being proposed for those renting for 20 or more hours in a year. This will encourage church, non-profits, and other local businesses to hold their regular meetings at the Senior Center.

The estimated increase in annual revenue based on the higher projected volume of rentals is \$1,900.

Onetta Harris Community Center: The Onetta Harris Community Center collects a drop-in fee of \$1 for its basketball gym and fitness room. Recently the Community Center began offering a drop-in option for classes to encourage people who did not want to commit to the longer class session the opportunity to participate. Staff proposes a new fee of \$3 per class for these drop-in participants. The Center has seen a large increase in weekend rentals of activity rooms which are requiring a significant amount of professional maintenance. In order to offset the additional maintenance cost, staff proposes increasing the Activity Room Rental fee from \$50 to \$70 per hour for residents and from \$65 to \$85 per hour for non-residents. These increases are not expected to have an impact to the demand in rental business given the current below-market rates offered.

The estimated increase in annual revenue for these changes is \$9,600.

Athletic Fields Usage: Currently there are fees established for the use of both natural and synthetic turf athletic fields by non-profit sports team organizations (Little League, AYSO, MAASL, etc.) for team play. There are separate fees charged to "For Profit Groups" for the use of these fields for group activities. To accommodate requests from non-profits to conduct "camps and clinics", staff recommends changing the fee names for use of athletic fields by "For Profit Groups" to "For Profit Groups and Non-Profit Groups Camps and Clinics".

The estimated increase in annual revenue is \$300.

Non-resident surcharge: The City of Menlo Park, as with many cities, charges a non-resident rate for its programs and services that helps to offset the overhead costs not shared by non-residents for programs, services and facilities. As the cost for delivering services to non-residents is equal to residents in terms of staffing, supplies and the wear-and-tear on facilities, which eventually will need to be replaced, the City Council has previously determined that it would not be in the interest of the City to be the supplier of recreation programs in the region if non-residents are not also contributing to covering the full costs of these services. It has been the position of the City that the General Fund or resident tax dollars, should not subsidize non-residents in the delivery and consumption of City services. The City passes these costs on to non-residents by way of a non-resident user fee surcharge which varies between programs from 10% - 35% of the resident rate given the 12% of residents' property taxes plus the assessment to pay off the Measure T Recreation Improvement Bonds which only residents pay.

Staff does not recommend changing the non-resident surcharge for Community Services programs from the current rate of 35 percent of the resident fee. For example, if a resident fee is \$100, the non-resident fee is \$135, which includes the \$35 surcharge. This surcharge percentage applies when an alternate percentage or dollar amount for non-resident use has not been approved.

Menlo Park Municipal Water District (MPMWD)

The schedule below summarizes a proposed new MPMWD fee.

| Fee Title | Current Fee | Proposed Fee | Change % |
|------------------------------------------------------|-------------|--------------|----------|
| CONVERT-A-SCAPE DESIGN ASSISTANCE PROGRAM | N/A | \$ 50.00 | New |
| | | | |

Convert-A-Scape Design Assistance Program: On January 22, 2013, the City Council approved development of a water efficient landscape design assistance program to increase participation in the lawn conversion rebate program. Offering this service would remove the “how to design a water efficient landscape” barrier for a potential participant by offering them a personalized water efficient landscape design and maintenance plan.

A handful of water districts in California have been offering this service, and it has been successful in increasing participation in lawn conversion programs. Although the City could offer the design program for free, it is recommended that the participants pay some of the cost to increase commitment to convert lawns. Behavioral research has shown that people tend to hold more value and commitment to services or projects that require a nominal fee instead of receiving it for free.

In addition, the water districts that do offer the landscape design assistance program charge participants between \$25 and \$50 for the service, with the water district paying the remaining cost. Staff currently has a Request for Proposals (RFP) advertised to hire a landscape designer to perform this service and does not have exact costs per design project at this time. It is estimated that each design project would cost between \$250 and \$400. The program would be voluntary and is not needed to participate in the lawn conversion rebate program.

The annual increase to Water Fund revenue from this new fee is estimated to be \$650 per year, recovering approximately 10% to 20% of the program costs.

Water Rates: The rates for MPMWD services through June 30, 2015 were approved at the May 18, 2010 Council meeting. This recap is presented for informational purposes only.

The City hired Bartel Wells Associates to review the MPMWD water rates to determine if the rates were adequate over time to pay for the anticipated increase in wholesale

water costs, ongoing replacement projects, and any planned major capital projects. The comprehensive report was presented to Council on March 23, 2010. At a public hearing on May 18, 2010, Council approved Resolution No. 5929 adopting annual rate increases (over each of the five fiscal years) to the consumption charge, fixed monthly meter charge, and capital facilities charge based on consumption. The annual rate increases for the meter charge and water consumption are 16.5 percent each year. The annual rate increases for capital facilities charge, also based on consumption, are based on the change in the *Bay Area Construction Cost Index*. The change in the index for calendar year 2013 was 5.24 percent.

The approved increased rates, effective as of July 1 of each year, are listed below.

Water Consumption Charge – Per CCF

| Water Consumption | Approved 2010-2011 | Approved 2011-2012 | Approved 2012-2013 | Approved 2013-2014 | Approved 2014-2015 |
|----------------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| First 5 hundred cubic feet (ccf) | \$1.46 | \$1.70 | \$1.98 | \$2.30 | \$2.69 |
| Next 6 through 10 ccf | 1.83 | 2.13 | 2.48 | 2.90 | 3.37 |
| Next 11 through 25 ccf | 2.19 | 2.55 | 2.98 | 3.47 | 4.04 |
| Consumption over 25 ccf | 2.93 | 3.41 | 3.97 | 4.63 | 5.39 |

Water Meter Charge - Per Month

| Meter Size | Approved 2010-2011 | Approved 2011-2012 | Approved 2012-2013 | Approved 2013-2014 | Approved 2014-2015 |
|-------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| ¾" or smaller | \$ 9.14 | \$ 10.65 | \$ 12.41 | \$ 14.46 | \$ 16.84 |
| 1" | 14.61 | 17.03 | 19.85 | 23.12 | 26.94 |
| 1-1/2" | 30.15 | 35.14 | 40.95 | 47.70 | 55.57 |
| 2" | 48.42 | 56.43 | 65.77 | 76.62 | 89.26 |
| 3" | 88.62 | 103.27 | 120.36 | 140.21 | 163.35 |
| 4" | 137.04 | 159.71 | 186.12 | 216.83 | 252.61 |
| 6" | 304.24 | 354.56 | 413.20 | 481.38 | 560.81 |
| 8" | 675.16 | 786.83 | 916.98 | 1,068.28 | 1,244.54 |
| 10" | 1,498.33 | 1,746.16 | 2,034.97 | 2,370.74 | 2,761.91 |

Capital Facilities Charge – Per CCF

| Per CCF (100 cubic feet) | Approved 2010-2011 | Approved 2011-2012 | Approved 2012-2013 | Approved 2013-2014 | Approved 2014-2015 |
|-----------------------------------------------------------------------------------------------------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| Annually adjusted based on the Construction Cost Index, as published in the Engineering News Record for the Bay Area. | \$ 0.41 | \$ 0.43 | \$ 0.47 | \$ 0.48 | \$ 0.51 |

IMPACT ON CITY RESOURCES

The estimated annual net increase in General Fund revenue from the revisions discussed in this report is \$171,300.

User fees provide a significant source of cost recovery for the City. The recommended revisions to the Master Fee Schedule will be built into the 2014-15 budget recommendations and will help in maintaining service levels in the current fiscal year.

POLICY ISSUES

The fee changes proposed in this report are in compliance with the Cost Recovery / Subsidization Policy adopted by Council on March 9, 2010.

ENVIRONMENTAL REVIEW

Adoption of a Master Fee Schedule is categorically exempt under current California Environmental Quality Act guidelines.

PUBLIC NOTICE

Published legal notice on April 16, 2014 in the local newspaper.

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

- A. Resolution Amending City Fees and Charges
- B. User Fee Cost Recovery – Fiscal Policy

Report prepared by:

John McGirr

Revenue & Claims Manager

Cherise Brandell

Community Services Director

Charles Taylor

Public Works Director

Drew Corbett

Finance Director

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RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO
PARK AMENDING CITY FEES AND CITY CHARGES**

WHEREAS, under the provisions of the City of Menlo Park Municipal Code Section 1.25.010, fees and charges assessed by the City of Menlo Park may be amended or modified upon the adoption of a Resolution by the City Council; and

WHEREAS, the City Council of the City of Menlo Park considers that said amended fees, as per Staff Report #14-060 dated April 29, 2014 are appropriate and should be adopted.

The City Council of the City of Menlo Park makes the following findings:

1. User fee services are those performed by the City on behalf of a private citizen or group with the assumption that the costs of services benefiting individuals, and not society as a whole, should be borne by the individual receiving the benefit. However, in some circumstances, it is reasonable to set fees at a level that does not reflect the full cost of providing service but to subsidize the service.
2. A listing of the fee changes proposed for City services was available to the public for at least ten days preceding the Public Hearing on April 29, 2014, at which time the fees were adopted.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED that the Master Fee Schedule last amended April 2, 2013, is hereby amended to take effect on the date this resolution is passed and adopted; and

BE IT FURTHER RESOLVED that the City Manager is authorized to waive, modify or amend fees on any matter in his/her reasonable discretion, provided that said fees may not be increased and if he/she does so, he/she shall so advise the City Council.

PASSED AND ADOPTED at a regular meeting of the Menlo Park City Council on the twenty-ninth day of April, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Menlo Park this twenty-ninth day of April, 2014.

Pamela Aguilar
City Clerk

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City of Menlo Park

Fiscal Policy

| | | |
|------------------------------------------|-----------------------------------------------------|-----------------------------------|
| Department City Council | Page 1 of 11 | Effective Date 03/09/10 |
| Subject User Fee Cost Recovery | Approved by Minute Order March 9, 2010 | Procedure # CC-10-0001 |

Purpose:

A clear User Fee Cost Recovery Policy will allow the City of Menlo Park to provide an ongoing, sound basis for setting fees that allows charges and fees to be periodically reviewed and updated based on predetermined, researched and supportable criteria that can be made available to the public.

Background:

In 2005 the *Your City/Your Decision* community driven budget process provided community direction and initial information on approaches to cost recovery of services. In 2007, the Cost Allocation Plan provided further basis for development of a standardized allocation system by providing a methodology for data-based distribution of administrative and other overhead charges to programs and services. The Cost of Services Study completed in 2008 allowed the determination of the full cost of providing each service for which a fee is charged and laid the final groundwork needed for development of a values-based and data-driven User Fee Cost Recovery Policy. A draft User Fee Cost Recovery Policy was presented for consideration by the Council at a Study Session on February 10, 2009. Comments and direction from the Study Session were used to prepare this Fiscal Policy.

Policy:

The policy has three main components:

- Provision for ongoing review
- Process of establishing cost recovery levels
 - Factors to be Considered
- Target Cost Recovery Levels
 - Social Services and Recreation Programs
 - Development Review Programs
 - Public Works
 - Police
 - Library
 - Administrative Services

Provision for ongoing review

Fees will be reviewed at least annually in order to keep pace with changes in the cost of living and methods or levels of service delivery. In order to facilitate a fact-based approach to this review, a comprehensive analysis of the city's costs and fees should be made at least every five years. In the interim, fees will be adjusted by annual cost factors reflected in the appropriate program's operating budget.

Process of establishing service fee cost recovery levels

The following factors will be considered when setting service fees and cost recovery levels:

1. Community-wide vs. special benefit
 - The use of general purpose revenue is appropriate for community-wide services while user fees are appropriate for services that are of special benefit to individuals or groups. Full cost recovery is not always appropriate.
2. Service Recipient Versus Service Driver
 - Particularly for services associated with regulated activities (development review, code enforcement), from which the community primarily benefits, cost recovery from the "driver" of the need for the service (applicant, violator) is appropriate.
3. Consistency with City public policies and objectives
 - City policies and Council goals focused on long term improvements to community quality of life may also impact desired fee levels as fees can be used to change community behaviors, promote certain activities or provide funding for pursuit of specific community goals, for example: health and wellness, environmental stewardship.

City of Menlo Park

Fiscal Policy

| | | |
|------------------------------------------|-----------------------------------------------------|-----------------------------------|
| Department City Council | Page 2 of 11 | Effective Date 03/09/10 |
| Subject User Fee Cost Recovery | Approved by Minute Order March 9, 2010 | Procedure # CC-10-0001 |

4. Impact on demand (elasticity)
 - Pricing of services can significantly impact demand. At full cost recovery, for example, the City is providing services for which there is a genuine market not over-stimulated by artificially low prices. Conversely, high cost recovery may negatively impact lower income groups and this can work against public policy outcomes if the services are specifically designed to serve particular groups.
5. Discounted Rates and Surcharges
 - Rates may be discounted to accommodate lower income groups or groups who are the target of the service, such as senior citizens or residents.
 - Higher rates are considered appropriate for non-residents to further reduce general fund subsidization of services.
6. Feasibility of Collection
 - It may be impractical or too costly to establish a system to appropriately identify and charge each user for the specific services received. The method of assessing and collecting fees should be as simple as possible in order to reduce the administrative cost of collection.

Target cost recovery levels

1. Low cost recovery levels (0% – 30%) are appropriate if:
 - There is no intended relationship between the amount paid and the benefit received
 - Collecting fees is not cost-effective
 - There is no intent to limit use of the service
 - The service is non-recurring
 - Collecting fees would discourage compliance with regulatory requirements
 - The public at large benefits even if they are not the direct users of the service
2. High cost recovery levels (70% – 100%) are appropriate if:
 - The individual user or participant receives the benefit of the service
 - Other private or public sector alternatives could or do provide the service
 - For equity or demand management purposes, it is intended that there be a direct relationship between the amount paid and the level and cost of the service received
 - The use of the service is specifically discouraged
 - The service is regulatory in nature
3. Services having factors associated with both cost recovery levels would be subsidized at a mid-level of cost recovery (30% - 70%).

General categories of services tend to fall logically into the three levels of cost recovery above and can be classified according to the factors favoring those classifications for consistent and appropriate fees. Primary categories of services include:

- Social Services and Recreation Programs
- Development Review Programs – Planning, and Building
- Public Works Department – Engineering, Transportation, and Maintenance
- Public Safety

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Social Services and Recreation Programs

| Master Fee Schedule Page #'s | General categorization of programs, Services, Activity, and facilities | Low cost recovery (0-30%) | Mid cost recovery (30-70%) | High cost recovery (70-100%) |
|------------------------------------------------------------|------------------------------------------------------------------------|---------------------------|----------------------------|------------------------------|
| 9 | <u>Parks</u> | | | |
| | Dog Park | X | | |
| | Skate Parks | X | | |
| | Open Space/Parks Playgrounds | X X | | |
| 7 11 10 11 11 7 7 11 | <u>Social Services</u> | | | |
| | Senior Transportation | X | | |
| | Senior Classes/Events | X | | |
| | Belle Haven School Age – Title 22 | | X | |
| | Menlo Children’s Center – Title 22 | | | X |
| | Preschool - Title 22 | | | X |
| | Preschool – Title 5 | | X | |
| | Second Harvest | X | | |
| Congregate Nutrition | | X | | |
| Belle Haven Community School | | X | | |
| | <u>Events/Celebrations</u> | | | |
| | City Sponsored | X | | |
| | City-Wide | X | | |
| | Youth & Teen Targeted | X | | |
| | Cultural | X | | |
| | Concerts | X | | |
| 5, 6, 7 9 9 9 10 5,6,7 9 5,6,7,8,9,10 | <u>Facility Usage</u> | | | |
| | City Functions (e.g. commissions) | X | | |
| | Co-Sponsored Organizations | X | | |
| | Non-Profit | X | | |
| | Fields - Youth (non-profit) | | X | |
| | Fields - Adult (non-profit) | | X | |
| | Tennis Courts | | X | |
| | Picnic Rentals - Private Party | | | X |
| | Private Rentals | | | X |
| | Fields - For-profit | | | X |
| Contracted Venues – for profit | | | X | |
| 8 8 8 7 11 | <u>Fee Assisted Programs</u> | | | |
| | Recreational Swim | X | | |
| | Swimming Classes | X | | |
| | Lap Swimming | X | | |
| | Recreation Classes | X | | |
| | Open Gym Activities | X | | |

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Social Services and Recreation Programs - continued

| Master Fee Schedule Page #'s | General categorization of programs, Services, Activity, and facilities | Low cost recovery (0-30%) | Mid cost recovery (30-70%) | High cost recovery (70-100%) |
|------------------------------|------------------------------------------------------------------------|---------------------------|----------------------------|------------------------------|
| | <u>Recreation Programs</u> | | | |
| 11 | Drop-In Activities | | X | |
| 10,11 | Camps & Clinics | | | X |
| 9 | Youth Leagues | | | X |
| 10 | Youth Special Interest | | | X |
| 10 | Adult Special Interest | | | X |
| 12 | Gymnastics | | | X |
| 6,12 | Birthday Parties | | | X |
| 11 | Adult League | | | X |

Low Recovery Expectations: Low to zero recovery is expected for programs in this category as the community benefits from the service. Non-resident fees if allowed may provide medium cost recovery.

In general, low cost programs or activities in this group provide a community wide benefit. These programs and activities are generally youth programs or activities enhancing the health, safety and livability of the community and therefore require the removal of a cost barrier for optimum participation. Recreation programming geared toward the needs of teens, youth, seniors, persons with disabilities, and/or those with limited opportunities for recreation are included. For example:

- **Parks** – As long as collecting fees at City parks is not cost-effective, there should be no fees collected for general use of parks and playgrounds. Costs associated with maintaining the City’s parks represent a large cost for which there is no significant opportunity for recovery – these facilities are public domains and are an essential service of City government.
- **Social Services** – There is no intended relationship between the amount paid and the benefit received for social service programs. Some programs are designed and delivered in coordination/partnership with other providers in Menlo Park.
- **Senior Transportation** – Transportation is classified as a low cost recovery program because there is no fee charged for the program and the majority of the seniors served cannot afford the actual cost of the service. Donations are solicited, but they are minimal. No fee should be established for this service, as it would threaten ridership and County reimbursements would be withdrawn.
- **Senior Classes/Events** – The primary purpose of senior classes and events is to encourage participation. The seniors served in these classes do not have the means of paying for the classes and are classified as “scholarship” recipients due to their low income levels. The classes should continue to be offered in collaboration with outside agencies which can offer them for free through state subsidies.
- **Second Harvest** – Monthly food distributions provide free food to needy families and so contribute a broad community benefit. The coordination and operation of the program is through the Onetta Harris Center staff with volunteers assisting with the distribution of food, to keep costs as low as possible.
- **Events/Celebrations** – Community Services events provide opportunities for neighborhoods to come together as a community and integrate people of various ages, economic and cultural backgrounds. Events also foster pride in the community and provide opportunities for volunteers to give back. As such, the benefits are community-wide. In addition, collection of fees are not always cost effective.

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- Facility Usage – Safe and secure facilities for neighborhood problem-solving and provision of other general services support an engaged community and should be encouraged with low or no fees.
- Fee Assisted Recreation Programs – Activities with fee assistance or sliding scales make the programs affordable to all economic levels in the community. Organized activities, classes, and drop-in programs are designed to encourage active living, teach essential life and safety skills and promote life-long learning for broad community benefit.

Medium Recovery Expectation – recovery of most program costs incurred in the delivery of the service, but without recovery of any of the costs which would have been incurred by the department without the service. Both community and individuals benefit from these services. Non-resident fees if allowed may provide high cost recovery.

- Belle Haven School Age – Title 22 - Licensed Child Care Program – Services to participants in this program are not readily available elsewhere in the community at low cost. The program provides broad community benefit in the form of a safety net for children in the community. Organized activities and programs teach basic skills, constructive use of time, boundaries and expectations, commitment to learning and social competency. Resident fees charged based on San Mateo County Pilot program for full day care that sets fees at no more than 10% of the family's gross income.
- Preschool Title 5 – The Preschool Program is supported primarily by reimbursement of federal and state grants for low income children. Tuition and reimbursement rates are regulatory.
- Senior Lunches – Congregate Nutrition is classified as a medium cost recovery fee as it asks a donation coupled with a per meal reimbursement from OAA & State funds.
- Belle Haven School Community School – The Community School partners with various non-profit and community-based agencies to provide much needed services to the community – high quality instruction, youth enrichment services, after-school programs, early learning and a family center. Services are open to Belle Haven students, their families and residents of the surrounding neighborhood.
- Field Rentals and Tennis Courts – Costs should be kept low for local non-profit organizations providing sports leagues open to residents and children in the Menlo Park Schools that encourage healthy lifestyles and lifelong fitness. Opportunities exist to collect a reasonable fee for use to defray citywide expenses for tennis facilities and fields.
- Programs – Drop-in programs can be accessed by the widest cross section of the population and therefore have the potential for broad-base participation. Recreation drop-in programs have minimal supervision while providing healthy outlets for youth, teens and adults

High Recovery Expectations – present when user fees charged are sufficient to support direct program costs plus up to 100% of department administration and city overhead associated with the activity. Individual benefit foremost and minimal community benefit exists. Activities promote the full utilization of parks and recreation facilities.

- Menlo Children's Center School Age and Pre-school – Title 22 – Participation benefits the individual user.
- Picnic Areas – Picnic rental reservations benefit the individual but help defray the cost of maintaining parks benefiting the entire community.
- Facility Usage – Facility use is set at a higher rate for the private use of the public facility for meetings, parties, and programs charging fees for services and celebrations.

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- Programs – Activities in this area benefit the individual user. Programs, classes, and sports leagues are often offered to keep pace with current recreational trends and provide the opportunity to learn new skills, improve health, and develop social competency. The services are made available to maximize the use of the facilities, increase the variety of offerings to the community as a whole and spread department administration and city-wide overhead costs to many activities. In some instances offering these activities helps defray expenses of services with no viable means of collecting revenue e.g. parks, playgrounds, etc.
- Contracted Venues – (for profit) – Long term arrangements where a facility is rented or contracted out to reduce general funding expense in order to provide specialized services to residents.

Development Review Services

1. Planning (planned development permits, tentative tract and parcel maps, re-zonings, general plan amendments, variances, use permits)
2. Building and safety (building permits, structural plan checks, inspections)

| Master Fee Schedule Page #'s | General categorization of programs, Services, Activity, and facilities | Low cost recovery (0-30%) | Mid cost recovery (30-70%) | High cost recovery (70-100%) |
|------------------------------|------------------------------------------------------------------------|---------------------------|----------------------------|------------------------------|
| | 1. Planning | | | |
| 24 | Appeals of Staff Decisions | X | | |
| 24 | Appeals of Planning Commission Decisions by Residents | X | | |
| | Subsequent Appeals | | | X |
| 24 | Temporary Sign Permits | X | | |
| 23 | Use Permits – Non-Profits | X | | |
| 24 | Administrative Reviews – Fences | | X | |
| | Appeals of Planning Commission Decisions by | | | X |
| 24 | Non-Residents | | | X |
| 23 | Administrative Reviews – Other | | | X |
| 23 | Architectural Control | | | X |
| 23 | Development Permits | | | X |
| 23 | Environmental Reviews | | | X |
| 23 | General Plan Amendments | | | X |
| 24 | Tentative Maps | | | X |
| 24 | Miscellaneous – not listed elsewhere | | | X |
| | Reviews by Community Development | | | X |
| 24 | Director or Planning Commission | | | X |
| 23 | Special Events Permitting | | | X |
| 23 | Study Sessions | | | X |
| 24 | Zoning Compliance Letters | | | X |
| 23 | Signs and Awnings | | | X |
| 23 | Use Permits – other | | | X |
| 23 | Variances | | | X |
| 23 | Zoning Map | | | X |
| | Ordinance Amendments | | | X |

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| Master Fee Schedule Page #'s | General categorization of programs, Services, Activity, and facilities | Low cost recovery (0-30%) | Mid cost recovery (30-70%) | High cost recovery (70-100%) |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|----------------------------|------------------------------|
| 28-48 | <u>2. Building and safety</u> Solar installations Building Permits Mechanical Permits Electrical Permits Plumbing Permit Consultant Review | X | | X X X X X |

Low Recovery Expectations: Low to zero recovery is expected for services in this category to maintain open and accessible government processes for the public, encourage environmental sustainability and encourage compliance with regulatory requirements. Example of Low Recovery items:

- Planning – The fees for applicants who wish to appeal a Staff Decision or for a Menlo Park resident or neighbor from an immediately adjacent jurisdiction who wishes to appeal a decision of the Planning Commission is purposefully low to allow for accessibility to government processes.
- Planning – Temporary sign permit fees are low so as to encourage compliance.
- Building – The elimination or reduction of building permits for solar array installations is consistent with California Government Code Section 65850.5, which calls on local agencies to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

Mid-level Recovery Expectations: Recovery in the range of 30% to 70% of the costs incurred in the delivery of the service reflects the private benefit that is received while not discouraging compliance with the regulation requirements.

- Planning – Administrative permits for fences that exceed the height requirements along Santa Cruz Avenue are set at mid-level to encourage compliance.

High Recovery Expectations: Cost recovery for most development review services should generally be high. In most instances, the City's cost recovery goal should be 100%.

- Planning – Subsequent Appeals - The fees for applicants who are dissatisfied with the results of a previous appeal of an administrative permit or a decision of the Planning Commission should be at 100% cost recovery.
- Planning – Most of the Planning fees charged are based on a "time and materials" basis, with the applicant/customer being billed for staff time (at a rate that includes overhead cost allocations) and the cost of actual materials or external services utilized in the delivery of the service.
- Building – Building fees use a cost-basis, not a valuation basis, and are flat fees based on the size and quantities of the project.

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Public Works Department - Engineering, Transportation, and Maintenance

1. Engineering and Transportation (public improvement plan checks, inspections, subdivision requirements, encroachments)
2. Transportation (red curb installation, truck route permits, traffic signal repairs from accidents)
3. Maintenance (street barricades, banners, trees, special event set-up, damaged city property)

| Master Fee Schedule Page #'s | General categorization of programs, Services, Activity, and facilities | Low cost recovery (0-30%) | Mid cost recovery (30-70%) | High cost recovery (70-100%) |
|------------------------------|------------------------------------------------------------------------|---------------------------|----------------------------|------------------------------|
| | <u>1. Engineering</u> | | | |
| 25 | Heritage Tree | X | | |
| 25 | Appeals to Environmental Quality Commission and City Council | X | | |
| | Bid Packages | X | | |
| 19 | Plotter Prints | | X | |
| 19 | Encroachment Permits for | | | |
| 19 | City-mandated repair work (non-temporary) | | X | |
| 25 | Heritage Tree | | X | |
| | Tree Removal Permits 1 – 3 trees | | | |
| 19 | City Standard Details | | X | |
| 20 | Improvement Plan Review | | | X |
| 20 | Plan revisions | | | X |
| 21 | Construction Inspection | | | X |
| 20 | Maps / Subdivisions | | | X |
| | Real Property | | | X |
| 19 | Abandonments | | | X |
| 19 | Annexations | | | X |
| 21 | Certificates of Compliance | | | X |
| 20 | Easement Dedications | | | X |
| 20 | Lot Line Adjust/Merger | | | X |
| 19 | Encroachment Permits | | | X |
| 19 | Completion Bond | | | X |
| | Processing Fee | | | X |
| 25 | Heritage Tree Permits | | | X |
| | After first 3 trees | | | X |
| 16 | Downtown Parking Permits | | | X |
| | <u>2. Transportation</u> | | | |
| 22 | Red Curb Installation | X | | |
| 22 | Truck Route Permits | X | | |
| 22 | Traffic Signal Accident | | | X |
| 22 | Aerial Photos | | | X |

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| Master Fee Schedule Page #'s | General categorization of programs, Services, Activity, and facilities | Low cost recovery (0-30%) | Mid cost recovery (30-70%) | High cost recovery (70-100%) |
|------------------------------|------------------------------------------------------------------------|---------------------------|----------------------------|------------------------------|
| | <u>3. Maintenance</u> | | | |
| 22 | Tree Planting | X | | |
| 22 | Banners – Santa Cruz Ave | | | X |
| 22 | Barricade replacement | | | X |
| 22 | Weed Abatement | | | X |
| 22 | Special Event set-up – for profit use | | | X |
| 22 | Special Event set-up- for non-profits use | | X | |
| 22 | Damaged City property | | | X |

Low Recovery Expectations: Low to zero recovery is expected for services in this category as the community benefits from the service. In general, low cost services in this group provide a community-wide benefit. These services generally are intended to enhance or maintain the livability of the community and therefore require the removal of a cost barrier to encourage use. However, in some instances the maximum fee that can be charged is regulated at the State or Federal level and therefore the City fee is not determined by City costs (truck route permits, copies of documents). Examples of Low Recovery items:

- Maintenance – Tree Plantings is classified as a low cost recovery fee to replacement of trees removed due to poor health and to encourage new tree plantings.
- Transportation – Red Curb Installation is classified as a low cost recovery fee for support traffic/parking mitigation requests to address safety concerns of residents and businesses.
- Transportation – Truck Route Permits Fees – maximum fee set by State Law.
- Engineering – Heritage Tree Appeals is classified as a low cost recovery fee to insure that legitimate grievances are not suppressed by high fees.
- Engineering – Bid Packages are provided at a low cost to encourage bid submissions thereby insuring that the City receives sufficient bids to obtain the best value for the project to be undertaken.

Medium Recovery Expectations: Recovery in the range of 30% to 70% of the costs incurred in the delivery of the service. Typically both the community and individuals benefit from these services.

- Engineering – Encroachment Permits for City-mandated repairs are classified as a medium cost recovery. Since the property owner is paying for the cost of construction but is required by ordinance to perform it promptly, a discounted fee for the permit is appropriate.

High Recovery Expectations: Recovery in the range of 70% to 100% when user fees charged are sufficient to fully recover costs of providing the service. Individual benefit is foremost and minimal community benefit exists. Most services provided by the Public Works Department fall in this area.

- Engineering – Encroachment Permits where the public right of way is used or impacted on a temporary or permanent basis for the benefit of the permittee. Debris Boxes are such an example.
- Transportation – Traffic Signal Accident repair cost is the responsibility of the driver/insurer.
- Maintenance – Weed Abatement performed by Public Works staff to address ongoing code violation.
- Maintenance – Banners on Santa Cruz Avenue and El Camino Real.

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Public Safety – Police Services (Case Copies, False Alarms, Parking Permits, Abatements, Emergency Response, Background Investigations, Tow Contract)

| Master Fee Schedule Page #'s | General categorization of programs, Services, Activity, and facilities | Low cost recovery (0-30%) | Mid cost recovery (30-70%) | High cost recovery (70-100%) |
|------------------------------|------------------------------------------------------------------------|---------------------------|----------------------------|------------------------------|
| 14 | Case Copies | X | | |
| 15 | Citation Sign Off - Residents | X | | |
| 1, 15 | Document Copies | X | | |
| 14 | Bicycle Licenses | X | | |
| 16 | Overnight Parking Permits | | | X |
| 16 | Residential Parking Permits | X | | |
| 15 | Property Inspection – Code Enforcement | X | | |
| 15 | Real Estate Sign Retrieval | X | | |
| 14 | False Alarm – Low Risk | | X | |
| 15 | Rotation Tow Service Contract | | X | |
| 15 | Repossession Fee | | X | |
| 14 | False Alarm – High Risk | | | X |
| 14 | Good Conduct Letter | | | X |
| 14 | Preparation Fees | | | X |
| 14 | Research Fee | | | X |
| 14 | Civil Subpoena Appearance | | | X |
| 14 | Finger Printing Documents | | | X |
| 15 | Background Investigations | | | X |
| 14 | Notary Services | | | X |
| 14 | Vehicle Releases | | | X |
| 14 | DUI - Emergency Response | | | X |
| 15 | Intoximeter Rental | | | X |
| 15 | Street Closure | | | X |
| 15 | Unruly Gatherings | | | X |
| 18 | Abatements | | | X |

Low Recovery Expectations: Low to zero recovery is expected for services in this category as the community generally benefits from the regulation of the activity. The regulation of these activities is intended to enhance or maintain the livability of the community. However, in some instances the maximum fee that can be charged is regulated at the State or Federal level and therefore the City fee is not determined by City costs (copies of documents).

Medium Recovery Expectation: Recovery in the range of 30% to 70% of the costs of providing the service. Both community and individuals benefit from these services.

- False Alarm – primarily residential and low cash volume retail. Alarm response provide a disincentive to crime activity. However excessive false alarms negatively impact the ability of prompt police response to legitimate alarms.

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Public Safety – Police Services - continued

High Recovery Expectations: Recovery in the range of 70% to 100% when user fees charged are sufficient to recover costs of the service provided. Individual benefit is foremost and minimal community benefit exists. Items such as False Alarm, DUI Emergency Response, Vehicle Releases, Unruly Gathering, and Abatements are punitive in nature and the costs should not be funded by the community. Items such as Good Conduct Letter, Preparation Fees, Research Fee, Finger Printing, Background Investigations, and Notary Service primarily benefit the individual. 100% of the cost for services in these areas is typical.

- Overnight Parking Permits – the fee charged for One Night Parking Permits fall into Low Cost Recovery, however when combined with the fees collected from the issuance of Annual Permits the result is the program should achieve High Cost Recovery.
- Street Closure – primarily residential for activities within a defined area. This service is provide for public safety and therefore is provided at a rate below 100% cost recovery.

Library (Library Cards, Overdue Fines, etc.) – fees are primarily established by the Peninsula Library Service.

Administrative Services (Copying Charges, Postage, etc.) – fees are primarily set by regulations and are generally high cost recovery of pass-thru charges.

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PUBLIC WORKS DEPARTMENT

**Council Meeting Date: April 29, 2014
Staff Report #: 14-065**

Agenda Item #: F-1

REGULAR BUSINESS:

Adopt a Resolution Authorizing the City of Menlo Park to Become a Member of the Western Riverside Council of Governments Joint Powers Authority and Consenting to the Inclusion of Properties within the City of Menlo Park in the California HERO Program Provided through WRCOG for Financing of Renewable Energy and Energy and Water Efficiency Improvements

RECOMMENDATION

Adopt a resolution (Attachment A) authorizing the City of Menlo Park to become a member of the Western Riverside Council of Governments Joint Powers Authority (WRCOG) and consenting to the inclusion of properties within the City of Menlo Park in the California HERO Program provided through WRCOG for the financing of renewable energy and energy and water efficiency improvements, subject to the negotiation and execution of an agreement with the administrator of the California HERO program to indemnify the City.

BACKGROUND

On March 18, 2014, the Council held a study session to discuss implementing Property Assessed Clean Energy (PACE) financing programs in Menlo Park that would assist the City in reducing greenhouse gas emissions. PACE programs offer property owners the ability to finance renewable and energy and water efficient projects through a voluntary special assessment or tax placed on their annual property tax bill. The City is permitted to do this under AB 811 and SB 555. The study session report is included as Attachment B.

Staff presented two paths to establishing a PACE program in Menlo Park: (1) enacting a stand-alone ordinance or (2) joining an existing Joint Powers Authority (JPA). The Council directed Staff to prioritize establishing a PACE program by joining existing JPAs, starting with the WRCOG's HERO program. In addition, the Council supported continuing and enhancing the City's existing energy audit rebate program to compliment the PACE program.

ANALYSIS

What is PACE?

PACE programs use assessment districts in order for property owners to finance energy efficiency, water efficiency, and renewable energy projects on existing residential and commercial structures through a property owner's voluntary agreement to have a special assessment or special tax placed on their annual property tax bill. Property owners repay the financing with interest as a line item charge on their property tax bill for up to 20 years.

Repayment of the loan through the property tax bill was intended to provide the property owner with the flexibility of having the unpaid portion of the loan run with the property in the event the property was sold. The new property owner(s) would then assume responsibility for the remaining amount to be repaid through the property tax bill. Thus, the program may reduce financial loss if the property is sold before the energy savings are realized, and if the buyer assumes the assessment. This overcomes the hesitancy to invest in longer payback measures, such as photovoltaic systems (solar power).

Greenhouse Gas (GHG) Reduction Potential

Implementation of a PACE program could help reduce 2% (2,355 tons) of Menlo Park's GHG emissions, which would help towards meeting the community wide goal to reduce GHG emissions 27% (or roughly 100,000 tons) below 2005 levels by 2020. See Attachment B for additional details.

Challenges of a PACE Program

Assessment liens and the special tax liens take priority over private liens such as mortgages even when the mortgage lien pre-dates the assessment or special tax lien. The priority of PACE liens over pre-existing loans causes concern for Fannie Mae and Freddie Mac. Since September 2008, both Fannie Mae and Freddie Mac have been under federal conservatorship by the Federal Housing Financing Agency (FHFA). FHFA issued a directive to Fannie Mae and Freddie Mac that outlined specific measures to "protect safe and sound operations," including among other actions, ensuring that their mortgage documents require that the borrower obtain lender consent in order to put a PACE lien on the property senior to the mortgage. There were also more extreme measures called out, such as adjusting the debt to income ratio in communities where PACE is offered. To date, these extreme measures have not been implemented.

There is risk that the residential property owner with a mortgage purchased or owned by Fannie Mae or Freddie Mac could violate the terms of the mortgage by entering into a PACE contractual assessment and expose the property owner to the lender exercising its remedies under the mortgage, including acceleration to pay off the mortgage. Also, residential property owners with no outstanding mortgage who wish to sell the property

to a purchaser with Fannie Mae or Freddie Mac requirements may be required to pay off the PACE contractual assessment at the time of sale.

The State of California is working to ensure success of PACE by setting up a reserve for PACE programs to address FHFA concerns. However, the FHFA has made no comments on whether this will alleviate their issues with PACE assessments. Attachment C includes a copy of the FHFA July 2010 directive.

Menlo Park has the option to opt out or discontinue any PACE program if the FHFA directives are implemented. However, technically the City could not withdraw from the JPA administering PACE in Menlo Park if there are any outstanding assessments that need to be paid off. The City would remain in the JPA for any and all contractual assessments established prior to the City's election to no longer authorize participation in the HERO program.

Western Riverside Council of Governments (WRCOG)- California HERO Program

The WRCOG is a joint powers authority formed by various jurisdictions located in Western Riverside County. In January 2012, WRCOG established its PACE program known as the HERO Program that was limited to its members in the Western Riverside region. In August 2012, WRCOG amended its joint powers agreement in order to make its PACE program available throughout the State.

The California HERO Program is administered by Renovate America, Inc. for residential properties and by Samas Capital for commercial properties. WRCOG issues bonds secured by the assessments that are purchased by Renovate America, Inc. for the residential loans and Samas Capital for the commercial loans.

The California HERO Program is available to all residential properties and consent from lenders to participate is not required. The California HERO residential loan application states that the applicant should review their existing loan documents to determine if entering into the California HERO loan would violate their existing loan. For commercial properties, acknowledgement of any existing lender for the property is required in order to obtain a California HERO loan.

In order to proceed with implementation of the California HERO program, the City Council will need to adopt a resolution (Attachment A) authorizing the City to join WRCOG as an associate member and execute the associate membership agreement. Additionally, the City Council's resolution will need to authorize WRCOG to conduct contractual assessment proceedings and to levy the assessments within Menlo Park. WRCOG holds a public hearing to approve Menlo Park as an associate member and does the necessary proceedings to include Menlo Park properties in the assessment district. This takes approximately 4 months, and is paid for by the California HERO Program.

Once the City has joined the JPA, HERO then mobilizes to work with the San Mateo County Tax Assessor's Office on administration procedures, develops marketing material, and works with the contracting community to certify contractors and to promote the program in Menlo Park. Additional City staff time will likely be needed to successfully launch the program for maximum participation. Tasks include ongoing marketing of the program, educational workshops, or other outreach to increase participation in the program. Other aspects of the California HERO Program are described in Attachment D.

As of February 2014, 67 cities and counties have joined the HERO Program, such as:

- San Jose
- Napa
- Solano
- Fresno
- Anaheim,
- San Diego (Commercial Only)

Rebates for Energy Audits

Energy audits are not required in the HERO program, but are very useful in informing property owners of problem areas and providing a road map for implementation of cost effective measures. The City already offers an incentive program that covers half the cost of an energy audit, which typically costs between \$300 and \$600. If energy improvements are made, the City reimburses the remaining cost of the energy audit. The Energy Audit Rebate program is funded by the General Fund, and currently uses \$10,000 annually for the program.

During the pilot of this program, Staff found issues with some energy auditors in regards to price and quality of the audit reports. Staff will restructure the program to ensure cost effective energy audits while maintaining a high quality of reporting information for the homeowner. This could include providing free home energy audits upfront or for a nominal fee through a list of energy auditors approved by the City. This would ensure product quality and fixed pricing. In addition, staff will work with HERO Program to include the rebate program in marketing and application materials.

At this time, Staff is not requesting an increase for the program budget, and will monitor participation to determine if additional funds are needed to support HERO Program participants.

Community Engagement

The Environmental Quality Commission (EQC) discussed whether to implement a PACE program in Menlo Park at its regular public meeting in February. No public comments were received, and the EQC voted to proceed with exploring the JPA option on the basis that the program be supported with realistic expectations in regards to

GHG reductions, that it have an effective marketing and implementation plan in place, and that its performance be evaluated over a three year period. In addition, the EQC approved delaying current climate action plan initiatives in order to work on implementing this program.

Program Promotion Plan and Monitoring

Staff and the HERO Program will work collaboratively on a marketing and outreach plan. Key messages will include:

- That the program is completely voluntary
- There is a risk of mortgage term violations for Fannie Mae and Freddie Mac loans
- The home energy audit incentive program
- The program is just one of many financing options available (e.g. homeowners can choose to refinance, take out a personal loan, use existing home equity line of credit, or use a credit card to make upgrades)

Staff time will also be used to annually market the program on the City's website, in newsletters, billing inserts, and other related media. In addition, Staff time will be dedicated to holding workshops about the program twice a year. These efforts would help address the concerns of the Environmental Quality Commission for a broader marketing plan to maximize participation in the program.

Staff will work with the HERO Program to update the Council and the Environmental Quality Commission on the performance of the program through the annual Climate Action Plan update.

IMPACT ON CITY RESOURCES

Due to limited staff resources, prioritizing this activity has already impacted other Climate Action Plan initiatives due this fiscal year, such as delayed development of a five year strategic energy plan to reduce GHG emissions and Phase II of a local sustainable building policy. Additional staff resources are needed to keep up with opportunities while also staying on schedule with the five year strategic plan to meet the 27% GHG reduction goal by 2020.

HERO offers a turnkey program that once operating requires minimal staff time to maintain. Staff resources and funding have been and would be dedicated to reviewing resolutions and agreements with the JPA, developing associated staff reports, and public engagement in launching the program in Menlo Park through marketing, educational workshops, and other outreach to increase participation in the program to gain further traction in reducing communitywide GHG emissions.

The City's energy audit rebate program is currently operating with minimal staff time, and Staff has not spent significant time in marketing the program due to other priorities. Thus, participation has been low. Additional staff time will be needed to restructure the

program to ensure product quality and cost effectiveness. Staff resources and program budgets may need to be increased if the program becomes heavily used. The current budget for the energy audit rebate program is \$10,000 from the General Fund.

POLICY ISSUES

This would be a new program offered to residents and businesses, and is consistent with the Climate Action Plan goal to reduce GHG emissions 27% below 2005 levels by 2020.

ENVIRONMENTAL REVIEW

Not required.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

- A. Resolution to Join WRCOG California HERO Program
- B. March 18, 2014 Study Session Staff Report
- C. FHFA July 2010 Directive
- D. HERO Program Report

Report prepared by:
Rebecca Fotu
Environmental Program Manager

Charles Taylor
Public Works Director

RESOLUTION NO.**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK, CALIFORNIA, CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE CITY'S JURISDICTION IN THE CALIFORNIA HERO PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY AND WATER EFFICIENCY IMPROVEMENTS AND ELECTRIC VEHICLE CHARGING INFRASTRUCTURE AND APPROVING THE AMENDMENT TO A CERTAIN JOINT POWERS AGREEMENT RELATED THERETO**

WHEREAS, the Western Riverside Council of Governments ("Authority") is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Act") and the Joint Power Agreement entered into on April 1, 1991, as amended from time to time (the "Authority JPA"); and

WHEREAS, Authority has established the California HERO Program to provide for the financing of renewable energy distributed generation sources, energy and water efficiency improvements and electric vehicle charging infrastructure (the "Improvements") pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code ("Chapter 29") within counties and cities throughout the State of California that elect to participate in such program; and

WHEREAS, City of Menlo Park (the "City") is committed to development of renewable energy sources and energy efficiency improvements, reduction of greenhouse gases, protection of our environment, and reversal of climate change; and

WHEREAS, in Chapter 29, the Legislature has authorized cities and counties to assist property owners in financing the cost of installing Improvements through a voluntary contractual assessment program; and

WHEREAS, installation of such Improvements by property owners within the jurisdictional boundaries of the counties and cities that are participating in the California HERO Program would promote the purposes cited above; and

WHEREAS, the City wishes to provide innovative solutions to its property owners to achieve energy and water efficiency and independence, and in doing so cooperate with Authority in order to efficiently and economically assist property owners within the City in financing such Improvements; and

WHEREAS, Authority has authority to establish the California HERO Program, which will be such a voluntary contractual assessment program, as permitted by the Act, the Authority JPA, originally made and entered into April 1, 1991, as amended to date, and the Amendment to Joint Powers Agreement Adding the City of Menlo Park as an Associate Member of the Western Riverside Council of Governments to Permit the

Provision of Property Assessed Clean Energy (PACE) Program Services within the City (the "JPA Amendment"), by and between Authority and the City, a copy of which is attached as Exhibit "A" hereto, to assist property owners within the incorporated area of the City in financing the cost of installing Improvements; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy and collection of assessments or any required remedial action in the case of delinquencies in the payment of any assessments or the issuance, sale or administration of any bonds issued in connection with the California HERO Program.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. This City Council finds and declares that properties in the City's incorporated area will be benefited by the availability of the California HERO Program to finance the installation of Improvements.
2. This City Council consents to inclusion in the California HERO Program of all of the properties in the incorporated area within the City and to the Improvements, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to such program; and to the assumption of jurisdiction thereover by Authority for the purposes thereof.
3. The consent of this City Council constitutes assent to the assumption of jurisdiction by Authority for all purposes of the California HERO Program and authorizes Authority, upon satisfaction of the conditions imposed in this resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent and be secured by such contractual assessments.
4. This City Council hereby approves the JPA Amendment and authorizes the execution thereof by appropriate City officials.
5. City staff is authorized and directed to coordinate with Authority staff to facilitate operation of the California HERO Program within the City, and report back periodically to this City Council on the success of such program.
6. This Resolution shall take effect immediately upon its adoption. The City Clerk is directed to send a certified copy of this resolution to the Secretary of the Authority Executive Committee.

I, Pamela Aguilar, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing Council Resolution was duly and regularly passed and adopted at a meeting by said Council on the twenty-ninth day of April, 2014, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twenty-ninth day of April, 2014.

Pamela Aguilar
City Clerk

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**AMENDMENT TO THE JOINT POWERS AGREEMENT
ADDING CITY OF MENLO PARK AS
AS AN ASSOCIATE MEMBER OF THE
WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS
TO PERMIT THE PROVISION OF PROPERTY ASSESSED CLEAN
ENERGY (PACE) PROGRAM SERVICES WITH SUCH CITY**

This Amendment to the Joint Powers Agreement (“JPA Amendment”) is made and entered into on the 29th day of April, 2014, by City of Menlo Park (“City”) and the Western Riverside Council of Governments (“Authority”) (collectively the “Parties”).

RECITALS

WHEREAS, Authority is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the “Joint Exercise of Powers Act”) and the Joint Power Agreement entered into on April 1, 1991, as amended from time to time (the “Authority JPA”); and

WHEREAS, as of October 1, 2012, Authority had 18 member entities (the “Regular Members”).

WHEREAS, Chapter 29 of the Improvement Act of 1911, being Division 7 of the California Streets and Highways Code (“Chapter 29”) authorizes cities, counties, and cities and counties to establish voluntary contractual assessment programs, commonly referred to as a Property Assessed Clean Energy (“PACE”) program, to fund certain renewable energy sources, energy and water efficiency improvements, and electric vehicle charging infrastructure (the “Improvements”) that are permanently fixed to residential, commercial, industrial, agricultural or other real property; and

WHEREAS, Authority intends to establish a PACE program to be known as the “California HERO Program” pursuant to Chapter 29 as now enacted or as such legislation may be amended hereafter, which will authorize the implementation of a PACE financing program for cities and county throughout the state; and

WHEREAS, City desires to allow owners of property within its jurisdiction to participate in the California HERO Program and to allow Authority to conduct proceedings under Chapter 29 to finance Improvements to be installed on such properties; and

WHEREAS, this JPA Amendment will permit City to become an Associate Member of Authority and to participate in California HERO Program for the purpose of facilitating the implementation of such program within the jurisdiction of City; and

WHEREAS, pursuant to the Joint Exercise of Powers Act, the Parties are approving this JPA Agreement to allow for the provision of PACE services, including the operation of a PACE financing program, within the incorporated territory of City; and

WHEREAS, the JPA Amendment sets forth the rights, obligations and duties of City and Authority with respect to the implementation of the California HERO Program within the incorporated territory of City.

MUTUAL UNDERSTANDINGS

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated, the Parties hereto agree as follows:

A. JPA Amendment.

1. The Authority JPA. City agrees to the terms and conditions of the Authority JPA, attached.

2. Associate Membership. By adoption of this JPA Amendment, City shall become an Associate Member of Authority on the terms and conditions set forth herein and the Authority JPA and consistent with the requirements of the Joint Exercise of Powers Act. The rights and

obligations of City as an Associate Member are limited solely to those terms and conditions expressly set forth in this JPA Amendment for the purposes of implementing the California HERO Program within the incorporated territory of City. Except as expressly provided for by the this JPA Amendment, City shall not have any rights otherwise granted to Authority's Regular Members by the Authority JPA, including but not limited to the right to vote on matters before the Executive Committee or the General Assembly, the right to amend or vote on amendments to the Authority JPA, and the right to sit on committees or boards established under the Authority JPA or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee, nor shall Associate Member have any of the obligations otherwise imposed to Authority's Regular Members. City shall not be considered a member for purposes of Section 9.1 of the Authority JPA.

3. Rights of Authority. This JPA Amendment shall not be interpreted as limiting or restricting the rights of Authority under the Authority JPA. Nothing in this JPA Amendment is intended to alter or modify Authority Transportation Uniform Mitigation Fee (TUMF) Program, the PACE Program administered by Authority within the jurisdictions of its Regular Members, or any other programs administered now or in the future by Authority, all as currently structured or subsequently amended.

B. Implementation of California HERO Program within City Jurisdiction.

1. Boundaries of the California HERO Program within City Jurisdiction. City shall determine and notify Authority of the boundaries of the incorporated territory within City's jurisdiction within which contractual assessments may be entered into under the California HERO Program (the "Program Boundaries"), which boundaries may include the entire incorporated territory of City or a lesser portion thereof.

2. Determination of Eligible Improvements. Authority shall determine the types of distributed generation renewable energy sources, energy efficiency or water conservation improvements, electric vehicle charging infrastructure or such other improvements as may be authorized pursuant to Chapter 29 (the "Eligible Improvements") that will be eligible to be financed under the California HERO Program.

3. Establishment of California HERO Program. Authority will undertake such proceedings pursuant to Chapter 29 as shall be legally necessary to enable Authority to make contractual financing of Eligible Improvements available to eligible property owners within the Program Boundaries.

4. Financing the Installation of Eligible Improvements. Authority shall develop and implement a plan for the financing of the purchase and installation of the Eligible Improvements under the California HERO Program.

5. Ongoing Administration. Authority shall be responsible for the ongoing administration of the California HERO Program, including but not limited to producing education plans to raise public awareness of the California HERO Program, soliciting, reviewing and approving applications from residential and commercial property owners participating in the California HERO Program, establishing contracts for residential, commercial and other property

owners participating in such program, establishing and collecting assessments due under the California HERO Program, adopting and implementing any rules or regulations for the California HERO Program, and providing reports as required by Chapter 29.

City will not be responsible for the conduct of any proceedings required to be taken under Chapter 29; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the California HERO Program.

6. Phased Implementation. The Parties recognize and agree that implementation of the California HERO Program as a whole can and may be phased as additional cities and counties execute similar agreements. City entering into this JPA Amendment will obtain the benefits of and incur the obligations imposed by this JPA Amendment in its jurisdictional area, irrespective of whether cities or counties enter into similar agreements.

C. Miscellaneous Provisions.

1. Withdrawal. City or Authority may withdraw from this JPA Amendment upon six (6) months written notice to the other party; provided, however, there is no outstanding indebtedness of Authority within City. The provisions of Section 6.2 of the Authority JPA shall not apply to City under this JPA Amendment. City may withdraw approval for conduct of the HERO Program within the jurisdictional limits of City upon thirty (30) days written notice to WRCOG without liability to the Authority or any affiliated entity. City withdrawal shall not affect the validity of any voluntary assessment contracts (a) entered prior to the date of such withdrawal or (b) entered into after the date of such withdrawal so long as the applications for such voluntary assessment contracts were submitted to and approved by WRCOG prior to the date of City's notice of withdrawal.

2. Indemnification and Liability. Authority shall defend, indemnify and hold the City and its directors, officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of the willful misconduct or negligent acts, errors or omissions of the Authority or its directors, officials, officers, employees and agents in connection with the California HERO Program administered under this JPA Amendment, including without limitation the payment of expert witness fees and attorney's fees and other related costs and expenses, but excluding payment of consequential damages, provided that the Authority shall not be required to defend or indemnify City and its directors, officials, officers, employees and agents for City's sole negligence or willful misconduct. Without limiting the foregoing, Section 5.2 of the Authority JPA shall not apply to this JPA Amendment. In no event shall any of Authority's Regular Members or their officials, officers or employees be held directly liable for any damages or liability resulting out of this JPA Amendment.

3. Environmental Review. Authority shall be the lead agency under the California Environmental Quality Act for any environmental review that may be required in implementing or administering the California HERO Program under this JPA Amendment.

4. Cooperative Effort. City shall cooperate with Authority by providing information and other assistance in order for Authority to meet its obligations hereunder. City recognizes that one of its responsibilities related to the California HERO Program will include any permitting or inspection requirements as established by City.

5. Notice. Any and all communications and/or notices in connection with this JPA Amendment shall be either hand-delivered or sent by United States first class mail, postage prepaid, and addressed as follows:

Authority:

Western Riverside Council of Governments
4080 Lemon Street, 3rd Floor. MS1032
Riverside, CA 92501-3609
Att: Executive Director

City:

City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Att: Environmental Program Manager

6. Entire Agreement. This JPA Amendment, together with the Authority JPA, constitutes the entire agreement among the Parties pertaining to the subject matter hereof. This JPA Amendment supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied herein.

7. Successors and Assigns. This JPA Amendment and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. A Party may only assign or transfer its rights and obligations under this JPA Amendment with prior written approval of the other Party, which approval shall not be unreasonably withheld.

8. Attorney's Fees. If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorney's fees and costs.

9. Governing Law. This JPA Amendment shall be governed by and construed in accordance with the laws of the State of California, as applicable.

10. No Third Party Beneficiaries. This JPA Amendment shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this JPA Amendment to maintain a suit for personal injuries or property damages under the provisions of this JPA Amendment. The duties, obligations, and responsibilities of the Parties to this JPA Amendment with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

11. Severability. In the event one or more of the provisions contained in this JPA Amendment is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this JPA Amendment and the remaining parts of this JPA Amendment shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this JPA Amendment.

12. Headings. The paragraph headings used in this JPA Amendment are for the convenience of the Parties and are not intended to be used as an aid to interpretation.

13. Amendment. This JPA Amendment may be modified or amended by the Parties at any time. Such modifications or amendments must be mutually agreed upon and executed in writing by both Parties. Verbal modifications or amendments to this JPA Amendment shall be of no effect.

14. Effective Date. This JPA Amendment shall become effective upon the execution thereof by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this JPA Amendment to be executed and attested by their officers thereunto duly authorized as of the date first above written.

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS

By: _____
Executive Committee Chair
Western Riverside Council of Governments

Date: _____

CITY OF MENLO PARK

By: _____
Title: _____

Date: _____

JOINT POWERS AGREEMENT OF
THE WESTERN RIVERSIDE
COUNCIL OF GOVERNMENTS

This Agreement is made and entered into on the 1st day of April, 1991, pursuant to Government Code Section 6500 et. seq. and other pertinent provisions of law, by and between six or more of the cities located within Western Riverside County and the County of Riverside.

RECITALS

A. Each member and party to this Agreement is a governmental entity established by law with full powers of government in legislative, administrative, financial, and other related fields.

B. The purpose of the formation is to provide an agency to conduct studies and projects designed to improve and coordinate the common governmental responsibilities and services on an area-wide and regional basis through the establishment of an association of governments. The Council will explore areas of inter-governmental cooperation and coordination of government programs and provide recommendations and solutions to problems of common and general concern.

C. When authorized pursuant to an Implementation Agreement, the Council shall manage and administer thereunder.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

I.

PURPOSE AND POWERS

1.1 Agency Created.

There is hereby created a public entity to be known as the "Western Riverside Council of Governments" ("WRCOG"). WRCOG is formed by this Agreement pursuant to the provision of Government Code Section 6500 et. seq. and other pertinent provision of law. WRCOG shall be a public entity separate from the parties hereto.

1.2 Powers.

1.2.1. WRCOG established hereunder shall perform all necessary functions to fulfill the purposes of this Agreement. Among other functions, WRCOG shall:

- a. Serve as a forum for consideration, study and recommendation on area-wide and regional problems;
- b. Assemble information helpful in the consideration of problems peculiar to Western Riverside County;
- c. Explore practical avenues for intergovernmental cooperation, coordination and action in the interest of local public welfare and means of improvements in the administration of governmental services; and
- d. Serve as the clearinghouse review body for Federally-funded projects in accordance with Circular A-95 in conjunction with the Southern California Association of Governments.

1.2.2. The Council shall have the power in its own name to do any of the following;

a. When necessary for the day to day operation of the Council, to make and enter into contracts;

b. To contract for the services of engineers, attorneys, planners, financial consultants and separate and apart therefrom to employ such other persons, as it deems necessary;

c. To apply for an appropriate grant or grants under any federal, state, or local programs.

d. To receive gifts, contributions and donations of property, funds, services and other forms of financial assistance from persons, firms, corporations and any governmental entity;

e. To lease, acquire, construct, manage, maintain, and operate any buildings, works, or improvements;

f. To delegate some or all of its powers to the Executive Committee and the Executive Director of the Council as hereinafter provided.

1.2.3 The association shall have the power in its own name, only with the approval of all affected member agencies to;

a. Acquire, hold and dispose of property by eminent domain, lease, lease purchase or sale.

b. To incur debts, liabilities, obligations, and issue bonds;

II.

ORGANIZATION OF COUNCIL

2.1 Parties.

The parties to WRCOG shall be the County of Riverside and each city located within Western Riverside County which has executed or hereafter executes this Agreement, or any addenda, amendment, or supplement thereto and agrees to such become a member upon such terms and conditions as established by the general council or executive committee, and which has not, pursuant to provisions hereof, withdrawn therefrom. Only the parties identified in this section and Associate Members approved under section 8.2 of this Agreement, if any, shall be considered contracting parties to this Agreement under Government Code section 6502, provided that the rights of any Associate Member under this Agreement shall be limited solely those rights expressly set forth in a PACE Agreement authorized in section 8.2 of this Agreement.

2.2 Names.

The names, particular capacities and addresses of the parties at any time shall be shown on Exhibit "A" attached hereto, as amended or supplemented from time to time.

2.3 Duties.

WRCOG shall do whatever is necessary and required to carry out the purposes of this agreement and when authorized by an Implementation Agreement pursuant to section 1.2.3 as appropriate, to make and enter into such contracts, incur such debts and obligations, assess contributions from the members, and perform such other acts as are necessary to the accomplishment of the purposes of such agreement,

within the provisions of Government Code Section 6500 et seq. and as prescribed by the laws of the State of California.

2.4 Governing Body.

2.4.1. WRCOG shall be governed by a General Assembly with membership consisting of the appropriate representatives from the County of Riverside, each city which is a signatory to this Agreement, Western Municipal Water District, and Eastern Municipal Water District, the number of which shall be determined as hereinafter set forth. The General Assembly shall meet at least once annually, preferably scheduled in the evening. Each member agency of the General Assembly shall have one vote for each mayor, council member, county supervisor, and water district board member present at the General Assembly. The General Assembly shall act only upon a majority of a quorum. A quorum shall consist of a majority of the total authorized representatives, provided that members representing a majority of the member agencies are present. The General Assembly shall adopt and amend by-laws for the administration and management of this Agreement, which when adopted and approved shall be an integral part of this Agreement. Such by-laws may provide for the management and administration of this Agreement.

2.4.2. There shall be an Executive Committee which exercises the powers of this Agreement between sessions of the General Assembly. Members of the Executive Committee shall be the Mayor from each of the member cities, four members of the Riverside County Board of Supervisors and the President of each Water District, the remaining member of the Board of Supervisors shall serve as an alternate, except any City Council, at its discretion, can appoint a Mayor Pro Tem or other city council

member in place of the Mayor, and each water district board, at its discretion, can appoint another board member in place of the President. The Executive Committee shall act only upon a majority of a quorum. A quorum shall consist of a majority of the member agencies. Membership of the Water Districts on the General Assembly and Executive Committee of WRCOG shall be conditioned on the Water Districts entering into a separate Memorandums of Understanding with WRCOG.

2.4.3. Each member of the General Assembly and the Executive Committee shall be a current member of the legislative body such member represents.

2.4.4. Each participating member on the Executive Committee shall also have an alternate, who must also be a current member of the legislative body of the party such alternate represents. The name of the alternate members shall be on file with the Executive Committee. In the absence of the regular member from an agency, the alternate member from such agency shall assume all rights and duties of the absent regular member.

2.5 Executive Director.

The Executive Director shall be the chief administrative officer of the Council. He shall receive such compensation as may be fixed by the Executive Committee. The powers and duties of the Executive Director shall be subject to the authority of the Executive Committee and include the following:

- a. To appoint, direct and remove employees of the Council.
- b. Annually to prepare and present a proposed budget to the Executive Committee and General Assembly.
- c. Serve as Secretary of the Council and of the Executive Committee.

- d. To attend meetings of the Executive Committee.
- e. To perform such other and additional duties as the Executive Committee may require.

2.6 Principal Office.

The principal office of WRCOG shall be established by the Executive Committee and shall be located within Western Riverside County. The Executive Committee is hereby granted full power and authority to change said principal office from one location to another within Western Riverside County. Any change shall be noted by the Secretary under this section but shall not be considered an amendment to this Agreement.

2.7 Meetings.

The Executive Committee shall meet at the principal office of the agency or at such other place as may be designated by the Executive Committee. The time and place of regular meetings of the Executive Committee shall be determined by resolution adopted by the Executive Committee; a copy of such resolution shall be furnished to each party hereto. Regular, adjourned and special meetings shall be called and conducted in accordance with the provisions of the Ralph M. Brown Act, Government Code Section 54950 et. seq., as it may be amended.

2.8 Powers and Limitations of the Executive Committee.

Unless otherwise provided herein, each member or participating alternate of the Executive Committee shall be entitled to one vote, and a vote of the majority of those present and qualified to vote constituting a quorum may adopt any motion,

resolution, or order and take any other action they deem appropriate to carry forward the objectives of the Council.

2.9 Minutes.

The secretary of the Council shall cause to be kept minutes of regular adjourned regular and special meetings of the General Assembly and Executive Committee, and shall cause a copy of the minutes to be forwarded to each member and to each of the members hereto.

2.10 Rules.

The Executive Committee may adopt from time to time such rules and regulations for the conduct of its affairs consistent with this agreement or any Implementation Agreement.

2.11 Vote or Assent of Members.

The vote, assent or approval of the members in any manner as may be required, hereunder shall be evidenced by a certified copy of the action of the governing body of such party filed with the Council. It shall be the responsibility of the Executive Director to obtain certified copies of said actions.

2.12 Officers.

There shall be selected from the membership of the Executive Committee, a chairperson and a vice chairperson. The Executive Director shall be the secretary. The Treasurer of the County of Riverside shall be the Treasurer of the Council and the Controller or Auditor of the County of Riverside shall be the Auditor of the Council. Such persons shall possess the powers of, and shall perform the treasurer and auditor functions respectively, for WRCOG and perform those functions required of them by

Government Code Sections 6505, 6505.5 and 6505.6, and by all other applicable laws and regulations, including any subsequent amendments thereto.

The chairperson and vice chairperson, shall hold office for a period of one year commencing July 1st of each and every fiscal year; provided, however, the first chairperson and vice chairperson appointed shall hold office from the date of appointment to June 30th of the ensuing fiscal year. Except for the Executive Director, any officer, employee, or agent of the Executive Committee may also be an officer, employee, or agent of any of the members. The appointment by the Executive Committee of such a person shall be evidence that the two positions are compatible.

2.13 Committees.

The Executive Committee may, as it deems appropriate, appoint committees to accomplish the purposes set forth herein. All committee meetings of WRCOG, including those of the Executive Committee, shall be open to all members.

2.14 Additional Officers and Employees.

The Executive Committee shall have the power to authorize such additional officers and assistants as may be appropriate. Such officers and employees may also be, but are not required to be, officers and employees of the individual members.

2.15 Bonding Requirement.

The officers or persons who have charge of, handle, or have access to any property of WRCOG shall be the members of the Executive Committee, the treasurer, the Executive Director, and any other officers or persons to be designated or empowered by the Executive Committee. Each such officer or person shall be required

to file an official bond with the Executive Committee in an amount which shall be established by the Executive Committee. Should the existing bond or bonds of any such officer be extended to cover the obligations provided herein, said bond shall be the official bond required herein. The premiums on any such bonds attributable to the coverage required herein shall be appropriate expenses of WRCOG.

2.16 Status of Officers and Employees.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, worker's compensation, and other benefits which apply to the activity of officers, agents, or employees of any of the members when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the Executive Committee shall be deemed, by reason of their employment by the Executive Committee, to be employed by any of the members or, by reason of their employment by the Executive Committee, to be subject to any of the requirements of such members.

2.17 Restrictions.

Pursuant to Government Code Section 6509, for the purposes of determining the restrictions to be imposed by the Council in its exercise of the above-described joint powers, reference shall be made to, and the Council shall observe, the restrictions imposed upon the County of Riverside.

2.18 Water Districts and TUMF Matters.

Pursuant to this Joint Powers Agreement, WRCOG administers the Transportation Mitigation Fee (“TUMF”) for cities in western Riverside County. The fee was established prior to the Water District’s involvement with WRCOG and will fund transportation improvements for the benefit of the County of Riverside and the cities in western Riverside County. As such, the Western Municipal Water District and the Eastern Municipal Water District General Assembly and Executive Committee Members shall not vote on any matter related to the administration of the TUMF program or the expenditure of TUMF revenues.

III

FUNDS AND PROPERTY

3.1 Treasurer.

The Treasury of the member agency whose Treasurer is the Treasurer for WRCOG shall be the depository for WRCOG. The Treasurer of the Council shall have custody of all funds and shall provide for strict accountability thereof in accordance with Government Code Section 6505.5 and other applicable laws of the State of California. He or she shall perform all of the duties required in Government Code Section 6505 and following, such other duties as may be prescribed by the Executive Committee.

3.2. Expenditure of Funds.

The funds under this Agreement shall be expended only in furtherance of the purposes hereof and in accordance with the laws of the State of California and standard accounting practices shall be used to account for all funds received and disbursed.

3.3. Fiscal Year.

WRCOG shall be operated on a fiscal year basis, beginning on July 1 of each year and continuing until June 30 of the succeeding year. Prior to July 1 of each year, the General Assembly shall adopt a final budget for the expenditures of WRCOG during the following fiscal Year.

3.4. Contributions/Public Funds.

In preparing the budget, the General Assembly by majority vote of a quorum shall determine the amount of funds which will be required from its members for the purposes of this Agreement. The funds required from its members after approval of the final budget shall be raised by contributions 50% of which will be assessed on a per capita basis and 50% on an assessed valuation basis, each city paying on the basis of its population and assessed valuation and the County paying on the basis of the population and assessed valuation within the unincorporated area of Western Riverside County as defined in the by-laws. The parties, when informed of their respective contributions, shall pay the same before August 1st of the fiscal year for which they are assessed or within sixty days of being informed of the assessment, whichever occurs later. In addition to the contributions provided, advances of public funds from the parties may be made for the purposes of this Agreement. When such advances are made, they shall be repaid from the first available funds of WRCOG.

The General Assembly shall have the power to determine that personnel, equipment or property of one or more of the parties to the Agreement may be used in lieu of fund contributions or advances.

All contributions and funds shall be paid to WRCOG and shall be disbursed by a majority vote of a quorum of the Executive Committee, as authorized by the approved budget.

3.5 Contribution from Water Districts.

The provision of section 3.4 above shall be inapplicable to the Western Municipal Water District and the Eastern Municipal Water District. The amount of contributions from these water districts shall be through the WRCOG budget process.

IV

BUDGETS AND DISBURSEMENTS

4.1 Annual Budget.

The Executive Committee may at any time amend the budget to incorporate additional income and disbursements that might become available to WRCOG for its purposes during a fiscal year.

4.2 Disbursements.

The Executive Director shall request warrants from the Auditor in accordance with budgets approved by the General Assembly or Executive Committee subject to quarterly review by the Executive Committee. The Treasurer shall pay such claims or disbursements and such requisitions for payment in accordance with rules, regulations, policies, procedures and bylaws adopted by the Executive Committee.

4.3 Accounts.

All funds will be placed in appropriate accounts and the receipt, transfer, or disbursement of such funds during the term of this Agreement shall be accounted for in accordance with generally accepted accounting principles applicable to governmental

entities and pursuant to Government Code Sections 6505 et seq. and any other applicable laws of the State of California. There shall be strict accountability of all funds. All revenues and expenditures shall be reported to the Executive Committee.

4.4 Expenditures Within Approved Annual Budget.

All expenditures shall be made within the approved annual budget. No expenditures in excess of those budgeted shall be made without the approval of a majority of a quorum of the Executive Committee.

4.5 Audit.

The records and accounts of WRCOG shall be audited annually by an independent certified public accountant and copies of such audit report shall be filed with the County Auditor, State Controller and each party to WRCOG no later than fifteen (15) days after receipt of said audit by the Executive Committee.

4.6 Reimbursement of Funds.

Grant funds received by WRCOG from any federal, state, or local agency to pay for budgeted expenditures for which WRCOG has received all or a portion of said funds from the parties hereto shall be used as determined by WRCOG's Executive Committee.

V

LIABILITIES

5.1 Liabilities.

The debts, liabilities, and obligation of WRCOG shall be the debts, liabilities, or obligations of WRCOG alone and not of the parties to this Agreement.

5.2 Hold Harmless and Indemnity.

Each party hereto agrees to indemnify and hold the other parties harmless from all liability for damage, actual or alleged, to persons or property arising out of or resulting from negligent acts or omissions of the indemnifying party or its employees. Where the General Assembly or Executive Committee itself or its agents or employees are held liable for injuries to persons or property, each party's liability for contribution or indemnity for such injuries shall be based proportionately upon the contributions (less voluntary contributions) of each member. In the event of liability imposed upon any of the parties to this Agreement, or upon the General Assembly or Executive Committee created by this Agreement, for injury which is caused by the negligent or wrongful act or omission of any of the parties in the performance of this Agreement, the contribution of the party or parties not directly responsible for the negligent or wrongful act or omission shall be limited to One Hundred Dollars (\$100.00). The party or parties directly responsible for the negligent or wrongful acts or omissions shall indemnify, defend, and hold all other parties harmless from any liability for personal injury or property damage arising out of the performance of this Agreement. The voting for or against a matter being considered by the General Assembly or executive or other committee or WRCOG, or abstention from voting on such matter, shall not be construed to constitute a wrongful act or omission within the meaning of this Subsection.

VI

ADMISSION AND WITHDRAWAL OF PARTIES

6.1 Admission of New Parties.

It is recognized that additional cities other than the original parties, may wish to participate in WRCOG. Any Western Riverside County city may become a party

to WRCOG upon such terms and conditions as established by the General Assembly or Executive Committee. Any Western Riverside County city shall become a party to WRCOG by the adoption by the city council of this agreement and the execution of a written addendum thereto agreeing to the terms of this Agreement and agreeing to any additional terms and conditions that may be established by the general assembly or Executive Committee. Special districts which are significantly involved in regional problems and the boundaries of which include territory within the collective area of the membership shall be eligible for advisory membership in the Council. The representative of any such advisory member may participate in the work of committees of the Council.

6.2 Withdrawal from WRCOG.

It is fully anticipated that each party hereto shall participate in WRCOG until the purposes set forth in this Agreement are accomplished. The withdrawal of any party, either voluntary or involuntary, unless otherwise provided by the General Assembly or Executive Committee, shall be conditioned as follows:

- a. In the case of a voluntary withdrawal following a properly noticed public hearing, written notice shall be given to WRCOG, six months prior to the effective date of withdrawal;
- b. Withdrawal shall not relieve the party of its proportionate share of any debts or other liabilities incurred by WRCOG prior to the effective date of the parties' notice of withdrawal;
- c. Unless otherwise provided by a unanimous vote of the Executive Committee, withdrawal shall result in the forfeiture of that party's rights and claims

relating to distribution of property and funds upon termination of WRCOG as set forth in Section VII below;

d. Withdrawal from any Implementation Agreement shall not be deemed withdrawal from membership in WRCOG.

VII

TERMINATION AND DISPOSITION OF ASSETS

7.1 Termination of this Agreement.

WRCOG shall continue to exercise the joint powers herein until the termination of this Agreement and any extension thereof or until the parties shall have mutually rescinded this Agreement; providing, however, that WRCOG and this Agreement shall continue to exist for the purposes of disposing of all claims, distribution of assets and all other functions necessary to conclude the affairs of WRCOG.

Termination shall be accomplished by written consent of all of the parties, or shall occur upon the withdrawal from WRCOG of a sufficient number of the agencies enumerated herein so as to leave less than five of the enumerated agencies remaining in WRCOG.

7.2 Distribution of Property and Funds.

In the event of the termination of this Agreement, any property interest remaining in WRCOG following the discharge of all obligations shall be disposed of as the Executive Committee shall determine with the objective of distributing to each remaining party a proportionate return on the contributions made to such properties by such parties, less previous returns, if any.

VIII

PACE IMPLEMENTATION AND PARTICIPATION AGREEMENTS;

ASSOCIATE MEMBERSHIP

8.1 Execution of Agreement.

When authorized by the Executive Committee, any affected member agency or agencies enumerated herein, may execute an Implementation Agreement for the purpose of authorizing WRCOG to implement, manage and administer area-wide and regional programs in the interest of the local public welfare. The costs incurred by WRCOG in implementing a program including indirect costs, shall be assessed only to those public agencies who are parties to that Implementation Agreement.

8.2 PACE Agreements; Associate Membership.

WRCOG shall be empowered to establish and operate one or more Property Assessed Clean Energy (“PACE”) programs pursuant to Chapter 29 of the Improvement Bond Act of 1911, being Division 7 of the California Streets and Highways Code, and to enter into one or more agreements, including without limitation, participation agreements, implementation agreements and joint powers agreements and amendments thereto to fulfill such programs both within and outside the jurisdictional boundaries of WRCOG.

WRCOG, acting through its Executive Committee, shall be empowered to establish an “Associate Member” status that provides membership in WRCOG to local jurisdictions that are outside WRCOG’s jurisdictional boundaries but within whose boundaries a PACE program will be established and implemented by WRCOG. Said local jurisdictions shall become Associate Members of WRCOG by adopting one or more agreements (the “PACE Agreement”) on the terms and conditions established by

the Executive Committee and consistent with the requirements of the Joint Exercise of Powers Act, being 5 of Division 7, Title 1 of the California Government Code (Sections 6500 et seq.). The rights of Associate Members shall be limited solely to those terms and conditions expressly set forth in the PACE Agreement for the purposes of implementing the PACE program within their jurisdictional boundaries. Except as expressly provided for by the PACE Agreement, Associate Members shall not have any rights otherwise granted to WRCOG's members by this Agreement, including but not limited to the right to vote, right to amend this Agreement, and right to sit on committees or boards established under this Agreement or by action of the Executive Committee or the General Assembly, including, without limitation, the General Assembly and the Executive Committee.

IX

MISCELLANEOUS

9.1 Amendments.

This Agreement may be amended with the approval of not less than two-thirds (2/3) of all member agencies.

9.2 Notice.

Any notice or instrument required to be given or delivered by depositing the same in any United States Post Office, registered or certified, postage prepaid, addressed to the addresses of the parties as shown on Exhibit "A", shall be deemed to have been received by the party to whom the same is addressed at the expiration of seventy-two (72) hours after deposit of the same in the United States Post Office for transmission by registered or certified mail as aforesaid.

9.3 Effective Date.

This Agreement shall be effective and WRCOG shall exist from and after such date as this Agreement has been executed by any seven or more of the public agencies, including the County of Riverside, as listed on page 1 hereof.

9.4 Arbitration.

Any controversy or claim between any two or more parties to this Agreement, or between any such party or parties and WRCOG, with respect to disputes, demands, differences, controversies, or misunderstandings arising in relation to interpretation of this Agreement, or any breach thereof, shall be submitted to and determined by arbitration. The party desiring to initiate arbitration shall give notice of its intention to arbitrate to every other party to this Agreement and to the Executive Director of the Council. Such notice shall designate as "respondents" such other parties as the initiating party intends to have bound by any award made therein. Any party not so designated but which desires to join in the arbitration may, within ten (10) days of service upon it of such notice, file with all other parties and with the Executive Director of the Council a response indicating its intention to join in and to be bound by the results of the arbitration, and further designating any other parties it wishes to name as a respondent. Within twenty (20) days of the service of the initial demand for arbitration, the initiating party and the respondent or respondents shall each designate a person to act as an arbitrator. The designated arbitrators shall mutually designate the minimal number of additional persons as arbitrators as may be necessary to create an odd total number of arbitrators but not less than three to serve as arbitrator(s).

The arbitrators shall proceed to arbitrate the matter in accordance with the provisions of Title 9 of Part 3 of the Code of Civil Procedure, Section 1280 et. seq. The parties to this Agreement agree that the decision of the arbitrators will be binding and will not be subject to judicial review except on the ground that the arbitrators have exceeded the scope of their authority.

9.5 Partial Invalidity.

If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

9.6 Successors.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

9.7 Assignment.

The parties hereto shall not assign any rights or obligations under this Agreement without written consent of all other parties.

9.8 Execution.

The Board of Supervisors of the County of Riverside and the city councils of the cities enumerated herein have each authorized execution of this Agreement as evidenced by the authorized signatures below, respectively.

Original Members Agencies

1. City of Banning
2. City of Beaumont (withdrawn)
3. City of Calimesa
4. City of Canyon Lake
5. City of Corona
6. City of Hemet
7. City of Lake Elsinore
8. City of Moreno Valley
9. City of Murrieta
10. City of Norco
11. City of Perris
12. City of Riverside
13. City of San Jacinto
14. City of Temecula
15. County of Riverside

Additional City Members

1. City of Eastvale (added on 08/02/2010, Resolution 01-11)
2. City of Jurupa Valley (added on 07/29/2011, Resolution 02-12)
3. City of Menifee (added on 10/06/2008, Resolution 03-09)
4. City of Wildomar (added on 08/04/2008, Resolution 01-09)

**THE WESTERN RIVERSIDE
COUNCIL OF GOVERNMENTS**

Participating Agencies

5. Eastern Municipal Water District (membership on the Governing Board of WRCOG, 05/11/2009)
6. Western Municipal Water District (membership on the Governing Board of WRCOG, 05/11/2009)
7. Riverside County Superintendent of Schools (membership as an ex-officio, advisory member of WRCOG, 11/07/2011)
8. Morongo Band of Mission Indians (membership as an ex-officio, advisory member of WRCOG, 6/4/2013)

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PUBLIC WORKS DEPARTMENT

Council Meeting Date: March 18, 2014
Staff Report #: 14-047

Agenda Item #: SS-1

STUDY SESSION: Discuss Implementing a Property Assessed Clean Energy (PACE) Financing Program

RECOMMENDATION

No Action Required. Staff would like direction on whether to implement a Property Assessed Clean Energy (PACE) Financing Program in Menlo Park, and if so, provide further direction on how to implement the program.

BACKGROUND

Property Assessed Clean Energy (PACE) programs use assessment districts or Mello-Roos (Community Facilities) districts in order for property owners to finance energy efficiency, water efficiency, and renewable energy projects on existing residential and commercial structures through a property owner's voluntary agreement to have a special assessment or special tax placed on their annual property tax bill. Property owners would repay the financing with interest as a line item charge on their property tax bill for up to 20 years.

Repayment of the loan through the property tax bill was intended to provide the property owner with the flexibility of having the unpaid portion of the loan run with the property in the event the property was sold. The new property owner would then assume responsibility for the remaining amount to be repaid through the property tax bill. Thus, the program reduces financial loss if the property is sold before the energy savings are realized, and overcomes the hesitancy to invest in longer payback measures, such as photovoltaic systems (solar power).

Enabling legislation in California has resulted in two types of PACE programs. AB 811 was enacted in 2008 to provide for voluntary contractual assessments and SB 555 was enacted in 2011 to provide for voluntary special taxes.

Both AB 811 and SB 555 authorize public agencies to:

- Establish special districts for PACE
- Enter into voluntary contracts with the property owner

- Use available funding from any source including existing bond issuing statutes
- Attach an assessment/special tax for repayment of the loan to the property with billing facilitated through the property tax bill.

The primary difference between the two statutes is that SB 555 allows for public or nonprofit owned buildings to be included if there is an assigned Assessor Parcel Number (APN). The City has the option of establishing a PACE Program under either AB 811 or SB 555.

The Council may consider offering this program in Menlo Park as it can reduce greenhouse gas emissions, create jobs, increase revenues, and property values. The Environmental Quality Commission reviewed the project at its regular meeting in February, and believes the program is worthwhile to implement. The EQC is also comfortable prioritizing this project over other Climate Action Plan (CAP) initiatives this year. The analysis below includes benefits of a PACE program, challenges, and how it could be implemented in Menlo Park. Staff needs direction from the Council for the prioritization of the PACE program in Menlo Park as it will have impacts on staff time not only in Environmental Programs but also in the City Attorney's Office, and would delay progress on currently scheduled climate action plan initiatives.

ANALYSIS

Benefits of a PACE Program

Examples of PACE improvement projects include, but are not limited to, high efficiency furnaces, dual-pane windows, solar photovoltaic panel systems, insulation, and cool roofs. The benefits to the property owner include:

- Increased energy savings through lower utility bills.
- Increased home values.
- Choosing to participate in the program at their discretion.
- Having a loan that stays with the property upon transfer of ownership. However, certain mortgage providers subject to Federal Housing Financing Agency (FHFA) guidelines may or will require the assessment be paid off at the time the property is refinanced or sold (discussed further under "Challenges to PACE").

The City would also experience additional benefits, such as reduce GHG emissions, increase local jobs, increase housing prices as a result of more efficient housing stock, and increases in sales and property tax revenue. With the exception of GHG emissions, exact estimates of these benefits have not been evaluated, and would require additional staff time to analyze.

Greenhouse Gas Reduction Potential

Implementation of a PACE program could help meet 2% of the adopted community wide goal to reduce GHG emissions 27% (or roughly 100,000 tons) below 2005 levels by 2020.

Staff obtained GHG reduction information from the Western Riverside Council of Governments' (WRCOG) PACE program that has been in operation for over three years, and includes 41 cities and counties. A total of 8,284 projects have been funded to date, and are estimated to reduce 21,092 tons of GHG emissions or about 3 tons per project. It is important to note that the methodology used to measure emissions does not use energy bill reductions, but rather the estimated energy savings from product performance.

WRCOG's participation rates are about 1% of the housing stock per year. If 6% or 785 residential homes in Menlo Park participated in a similar PACE program over the next six years, it is estimated to reduce 2,355 tons of Menlo Park's greenhouse gas emissions or meet 2% of the City's greenhouse gas (GHG) reduction goal. Participation in PACE programs from the commercial sector have been off to a slow start, and staff could not obtain meaningful data for analysis.

Staff surveyed three cities in the WRCOG's PACE program about participation efforts, and they commented that to increase participation, more marketing and outreach is needed from the local agency. Also, additional incentives are likely needed to motivate property owners, such as the California Solar Initiative or Energy Upgrade rebate program.

Challenges of a PACE Program

Assessment liens and the special tax liens take priority over private liens such as mortgages even when the mortgage lien pre-dates the assessment or special tax lien. If a property owner fails to pay the assessment or special tax lien on the property, the local government that formed the district and issued bonds to finance the improvements has the obligation to foreclose on the property in order to recover the delinquent amount in order to make payment on the outstanding bonds. The assessment liens and special tax liens placed on properties participating in PACE programs pursuant to AB 811 or SB 555 also have priority over pre-existing mortgages.

The priority of PACE liens over pre-existing loans causes concern for Fannie Mae and Freddie Mac. These two organizations were chartered by Congress to purchase residential mortgages from the original lenders in order to provide greater liquidity in the residential mortgage market. Since September 2008, both Fannie Mae and Freddie Mac have been under federal conservatorship by the Federal Housing Financing Agency (FHFA).

In July 2010, FHFA issued a directive that Fannie Mae and Freddie Mac should take measures to "protect safe and sound operations", including among other actions, ensuring that their mortgage documents require that the borrower obtain lender consent in order to put a PACE lien on the property senior to the mortgage. There were also more extreme measures called out, such as adjusting the debt to income ratio in communities where PACE is offered. To date, these extreme measures have not been implemented. If the program is implemented in Menlo Park, and the more extreme directives are executed, Menlo Park could simply opt out or discontinue the program.

The FHFA July 2010 directive was specific to PACE programs where the PACE lien has priority over mortgage liens on the property and stated it did not apply to traditional tax assessment liens, such as assessments for public improvements. A copy of the FHFA July 2010 directive is attached (Attachment A).

Following the issuance of the FHFA directive, the State of California and a number of jurisdictions with existing PACE programs sued the FHFA alleging that it should have followed Federal rulemaking procedures before issuing its July 2010 directive. In March, 2013, the 9th Circuit Court of Appeals overturned a lower court decision and held that the FHFA was not required to follow Federal rulemaking provisions before issuing its July 2010 directive. The decision is final and on July 31, 2013, the FHFA published in the Federal Registrar its withdrawal of proposed rules and confirmation that its prior 2010 directive is in effect, stating in part: "FHFA does not contemplate altering its policy regarding certain lien-priming energy retrofit loan programs at this time, but will continue its policy review of lending programs that would support energy retrofit and might be appropriate for purchase by the regulated entities."

In light of the FHFA directive, there is risk that that the residential property owner with a mortgage purchased by Fannie Mae or Freddie Mac could violate the terms of the mortgage by entering into the PACE loan and expose the property owner to the lender exercising its remedies under the mortgage, including acceleration to pay off the mortgage. Also, the residential property owners with no outstanding mortgage who wishes to sell the property may be required to pay off the PACE loan in order to sell the property to a purchaser who wishes to obtain a mortgage meeting Fannie Mae or Freddie Mac requirements, which was not the intent of the program.

On September 23, 2013, Governor Brown sent a letter to FHFA advising that California will establish a mechanism to address the concerns raised by FHFA and protect the interest of Fannie Mae and Freddie Mac. The Governor proposed that the California Alternative Energy and Advanced Transportation Financing Authority will create a reserve for PACE programs: An excerpt from the letter is below with the full letter attached to this memorandum (Attachment B):

- "Any PACE program that wishes to use the reserve fund will enter into an agreement that requires the PACE program to make Fannie Mae and Freddie Mac whole, as follows:

1. In any foreclosure for any losses to Fannie Mae and Freddie Mac resulting from payment of any PACE assessment paid while in possession of the property, and
2. In any forced sale for unpaid taxes or special assessments, for any losses to Fannie Mae and Freddie Mac that result from PACE assessments being paid before the outstanding mortgage."

At this time, the FHFA had not responded to the Governor's letter.

Implementing PACE in Menlo Park

There are two paths to establishing a PACE program:

1. The City can enact a stand-alone ordinance to establish its own program based on AB 811 or SB 555. Other jurisdictions, including Sonoma County, the City and County of San Francisco, Los Angeles County, the City of Palm Desert and the City of Sacramento, operate their PACE Programs either under State law or their own procedures.
2. Join an existing Joint Powers Authority (JPA) that is already administering the program. There are three JPAs in California that operate PACE programs and make these programs available within their member agencies' jurisdictions:
 - The HERO Program operated through the Western Riverside Council of Governments (WRCOG) JPA in Southern California.
 - The Figtree Property Assessed Clean Energy and Job Creation Program operated through the California Enterprise Development Authority.
 - The California First Program operated through the California Statewide Communities Development Authority. Although originally designed to provide both residential and commercial financing, CaliforniaFIRST has been adapted to focus solely on commercial properties, avoiding the regulatory issues and legal risks surrounding residential PACE programs. Commercial properties include multifamily buildings with 5 or more units, industrial, retail, agricultural and commercial properties. When the regulatory environment improves, the Program plans to expand to include residential financing.

Option one would require intensive staff resources to develop, and would require the City to develop the necessary financing mechanism to support the program. Option two offers a turnkey program that would take minimal staff time to develop. The average interest rate of a JPA PACE loan ranges from 5.95% to 8% for the JPAs. See Attachment C for a comparison of PACE programs offered through JPAs or stand-alone program. The benefits to participating in a JPA PACE program (option two) include:

- The City is not obligated to repay the bonds or to pay the assessments levied on the participating properties as in conventional assessment financing.
- All program and assessment administration, bond issuance and bond administration functions are handled by JPA's program administrators. Little, if any, City staff time is needed to implement the program.
- The City can provide access for its residents to a PACE program without the higher staff costs that an independent program established by the City would require.

In December, staff and the Mayor were approached by a HERO representative to join their JPA so at this time there is more in depth knowledge of the HERO program. Additional time is needed to evaluate participation in the other JPAs. In order to keep a competitive financing market for energy efficient or renewable energy projects in Menlo Park, the council may want to consider joining the other two JPAs.

The HERO program works at the customer level in the following steps:

1. Property owner calls an approved HERO program contractor or contacts HERO directly
2. Property owner selects a project (e.g. install new furnace, windows, renewable power, etc.)
3. Property owner completes a HERO application (no credit check is required)
4. HERO Loan is approved and contractor completes work
5. Loan is paid back through property taxes

In order to join the HERO program, the City council would need to adopt a resolution to join the JPA and consent to the inclusion of properties within the City's jurisdiction in the HERO program. Staff and the City Attorney still need time to examine the resolution, JPA agreement, and other areas of the program before it comes back to council for final adoption.

Once the City has joined the JPA, HERO then mobilizes to work with the San Mateo County Tax Assessor's Office on administration procedures, develops marketing material, and works with the contracting community to certify contractors and to promote the program in Menlo Park. Additional City staff time will likely be needed to successfully launch the program for maximum participation. Tasks include ongoing marketing of the program, educational workshops, or other outreach to increase participation in the program.

Requiring Energy Audits

One area of concern is that an energy audit is not required in the HERO program. The CaliforniaFirst JPA program does require this, and it is also generally required for cities or counties operating their own PACE program.

Energy audits are very useful in informing property owners of problem areas and identifying the most cost effective measures. A property owner will typically use the PACE program when equipment is down or performing low (e.g. broken furnace, water heater, etc.), or may have preconceived ideas on what would be the most cost effective energy measures, such as installing dual pane windows over installing floor or attic insulation. This leads to gaps in maximizing energy efficiency and reduces potential GHG reductions in the community.

In addition, a PACE contractor may not have the expertise to offer other services. For example, if a furnace is broken, a property owner is likely to call an HVAC contractor who may not inform the property owner of other energy saving opportunities. Staff recommends that the program also include a requirement for an energy audit to help property owners determine the best course of action. This could possibly be included as part of the loan or the city could expand its current energy audit rebate program to cover a 1% participation rate in the PACE program.

The City already offers an incentive program that covers half the cost of an energy audit, which typically costs on average \$300-\$600. If energy improvements are made, the City reimburses the remaining cost of the energy audit. The Energy Audit Rebate program is funded by the General Fund and currently uses \$10,000 annually for the program. In order to meet the demand for the PACE program staff estimates that the program would need to be increased to \$60,000 annually.

PACE Prioritization Impacts on Other Climate Action Plan (CAP) Initiatives

Due to limited staff resources, prioritizing this activity has already impacted other CAP initiatives due this fiscal year, such as delayed development of a five year strategic energy plan to reduce GHG emissions and phase II of a local sustainable building policy.

Focusing staff time on this strategy will continue to delay all CAP activities by at least one year, and will impact environmental work on projects scheduled next fiscal year, such as the Heritage Tree Ordinance revisions. However, implementing a PACE program could help meet 2% of Menlo Park's 27% GHG reduction goal.

Additional environmental staff resources are needed to keep up with opportunities like these while also staying on schedule with the five year strategic plan in order to meet the 27% GHG reduction goal by 2020. Additionally, it should be noted that the advanced prioritization of this project will also have staff impacts and cause other project delays in the City Attorney's Office.

Community Engagement

The Environmental Quality Commission (EQC) discussed whether to implement PACE in Menlo Park at its regular meeting in February that is open to the public. No comments were received, and the EQC voted to proceed with exploring the JPA option on the basis that the program be supported with realistic expectations, that it have an effective marketing and implementation plan in place, and that its performance be evaluated over a three year period. In addition, the EQC also approved of delaying current climate action plan initiatives in order to work on implementing this program.

Questions for Council

1. Does Council want to implement a PACE program, and if so, does the council want to explore joining JPAs or develop a stand-alone program?
2. If the direction is to join a JPA, does the council want to join HERO in the short term or join all three at the same time? Joining all three at the same time would take additional staff time to evaluate.
3. Does the council want to explore adding a home energy analysis as part of the HERO and/or Figtree program?

IMPACT ON CITY RESOURCES

Due to limited staff resources, prioritizing this activity has already impacted other CAP initiatives due this fiscal year, such as delayed development of a five year strategic energy plan to reduce GHG emissions and Phase II of a local sustainable building policy. Additional staff resources are needed to keep up with opportunities while also staying on schedule with the five year strategic plan to meet the 27% GHG reduction goal by 2020.

Option one to develop a stand-alone Menlo Park PACE program would require intensive staff resources to develop, and would likely require a third party to administer the program. Option two offers a turnkey program that would take less staff time to develop. Staff resources and funding would be dedicated to reviewing the resolutions and agreements, developing associated staff reports, public engagement (if necessary) launching the program in Menlo Park through marketing, educational workshops, and other outreach to increase participation in the program in order to gain further traction in reducing communitywide GHG emissions.

Staff recommends that an energy audit be required in the PACE program as it can provide an action plan to property owners to reduce energy use as well as maximize savings and greenhouse gas reductions. At this time, staff has been unable to confirm if this cost can be included as part of the PACE loan for HERO, and it would likely be funded by the City's current Energy Rebate Program. In order to meet the potential demand of the PACE program, the program would need to increase from \$10,000 to \$60,000 annually.

POLICY ISSUES

This would be a new program offered to residents and businesses, and is consistent with the Climate Action Plan goal to reduce GHG emissions 27% below 2005 levels by 2020.

ENVIRONMENTAL REVIEW

Not required.

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

- A. FHFA Statement on Certain Energy Retrofit Loan Programs
- B. Letter from Governor Brown Regarding PACE Program in California
- C. Comparison of PACE Program Administrators in California done by City of San Jose

Report prepared by:

Rebecca Fotu

Environmental Program Manager

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FEDERAL HOUSING FINANCE AGENCY

STATEMENT

 For Immediate Release
 July 6, 2010

Contact: Corinne Russell (202) 414-6921
 Stefanie Mullin (202) 414-6376

**FHFA Statement on Certain Energy
 Retrofit Loan Programs**

After careful review and over a year of working with federal and state government agencies, the Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks. Specifically, programs denominated as Property Assessed Clean Energy (PACE) seek to foster lending for retrofits of residential or commercial properties through a county or city's tax assessment regime. Under most of these programs, such loans acquire a priority lien over existing mortgages, though certain states have chosen not to adopt such priority positions for their loans.

First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.

FHFA urged state and local governments to reconsider these programs and continues to call for a pause in such programs so concerns can be addressed. First liens for such loans represent a key alteration of traditional mortgage lending practice. They present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation.

While the first lien position offered in most PACE programs minimizes credit risk for investors funding the programs, it alters traditional lending priorities. Underwriting for PACE programs results in collateral-based lending rather than lending based upon ability-to-pay, the absence of Truth-in-Lending Act and other consumer protections, and uncertainty as to whether the home improvements actually produce meaningful reductions in energy consumption.

Efforts are just underway to develop underwriting and consumer protection standards as well as energy retrofit standards that are critical for homeowners and lenders to understand the risks and rewards of any energy retrofit lending program. However, first liens that disrupt a fragile housing finance market and long-standing lending priorities, the absence of robust underwriting standards to protect homeowners and the lack of energy retrofit standards to assist homeowners, appraisers, inspectors and lenders determine the value of retrofit products combine to raise safety and soundness concerns.

On May 5, 2010, Fannie Mae and Freddie Mac alerted their seller-servicers to gain an understanding of whether there are existing or prospective PACE or PACE-like programs in jurisdictions where they do business, to be aware that programs with first liens run contrary to the Fannie Mae-Freddie Mac Uniform Security Instrument and that the Enterprises would provide additional guidance should the programs move beyond the experimental stage. Those lender letters remain in effect.

Today, FHFA is directing Fannie Mae, Freddie Mac and the Federal Home Loan Banks to undertake the following prudential actions:

1. For any homeowner who obtained a PACE or PACE-like loan with a priority first lien prior to this date, FHFA is directing Fannie Mae and Freddie Mac to waive their Uniform Security Instrument prohibitions against such senior liens.
2. In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:
 - Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;
 - Ensuring that loan covenants require approval/consent for any PACE loan;
 - Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;
 - Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance.

Fannie Mae and Freddie Mac should issue additional guidance as needed.

3. The Federal Home Loan Banks are directed to review their collateral policies in order to assure that pledged collateral is not adversely affected by energy retrofit programs that include first liens.

Nothing in this Statement affects the normal underwriting programs of the regulated entities or their dealings with PACE programs that do not have a senior lien priority. Further, nothing in these directions to the regulated entities affects in any way underwriting related to traditional tax programs, but is focused solely on senior lien PACE lending initiatives.

FHFA recognizes that PACE and PACE-like programs pose additional lending challenges, but also represent serious efforts to reduce energy consumption. FHFA remains committed to working with federal, state, and local government agencies to develop and implement energy retrofit lending programs with appropriate underwriting guidelines and consumer protection standards. FHFA will also continue to encourage the establishment of energy efficiency standards to support such programs.

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The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.9 trillion in funding for the U.S. mortgage markets and financial institutions.



PROGRAM REPORT

CITIES ALHAMBRA, ANAHEIM, ATWATER, AZUSA, BALDWIN PARK, BRADBURY, BRAWLEY, BREA, BUENA PARK, CARLSBAD, CARSON, CITRUS HEIGHTS, CLAREMONT, COVINA, DIAMOND BAR, EL CENTRO, EL MONTE, EL SEGUNDO, FRESNO, GARDEN GROVE, GARDENA, GLENDORA, HAWTHORNE, HERMOSA BEACH, INDUSTRY, INGLEWOOD, IRWINDALE, LA CANADA FLINTRIDGE, LA PALMA, LA VERNE, LAWNSDALE, LEMON GROVE, LOMITA, MONROVIA, MONTEBELLO, MONTEREY PARK, NEWPORT BEACH, OCEANSIDE, PLACENTIA, POMONA, RANCHO CORDOVA (COMMERCIAL ONLY), RANCHO PALOS VERDES, ROLLING HILLS, ROLLING HILLS ESTATES, ROSEMEAD, SAN DIMAS, SAN GABRIEL, SAN JOSE, SAN MARCOS, SAN MARINO SANTA ANA, SANTA MONICA, SOLANO BEACH, SOUTH EL MONTE, SOUTH PASADENA, TAFT, TEMPLE CITY, TORRANCE, TURLOCK, TUSTIN, VISTA, WEST COVINA, WESTMINSTER, AND THE UNINCORPORATED COUNTIES OF KERN, NAPA, SAN DIEGO (COMMERCIAL ONLY), AND SOLANO.

ADOPTED JUNE 3, 2013
REVISED JULY 15, 2013
REVISED AUGUST 5, 2013
REVISED SEPTEMBER 9, 2013
REVISED NOVEMBER 4, 2013
REVISED DECEMBER 2, 2013
REVISED JANUARY 6, 2014
REVISED FEBRUARY 3, 2014

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I. PROGRAM INTRODUCTION

This California HERO Program Report (this "Program Report") provides an overview of a property assessed clean energy ("PACE") municipal financing program called the California HERO Program (the "California HERO Program", "HERO" or "Program") for cities and counties that elect to participate in the California HERO Program.

A Residential Program Handbook and a Commercial Program Handbook (collectively "Handbooks") are incorporated herein by reference into this Program Report and supplement and provide further details on the Program.

1.1 PURPOSE OF THE CALIFORNIA HERO PROGRAM

The Western Riverside Council of Governments ("WRCOG" or "Agent") is making the California HERO Program available to every city and county in California to encourage installation of distributed generation renewable energy sources, energy efficiency and water efficiency improvements and electric vehicle charging infrastructure for residential and commercial property owners. The Agent has partnered with Renovate America and SAMAS Capital to make HERO available throughout the State.

The California HERO Program is an economic development program available at no cost to participating cities and counties. HERO finances improvements which decrease energy, create clean renewable energy, or decrease water consumption. In addition to these direct benefits, HERO helps create local jobs, save money, increase property values and lower greenhouse gas emissions.

HERO first launched its residential program in western Riverside County in December 2011 and has received several awards across the state. HERO for commercial properties launched in December 2012.



Southern California Association of Governments
2012 President's Award for Excellence (Highest Honor)
<http://www.compassblueprint.org/toolbox/videos/12awards/wrcog>



U.S. Green Building Council
2012 Best Residential Partnership Program in California
<http://www.usgbc.org/ShowFile.aspx?DocumentID=18852>



Urban Land Institute
2012 Best of the Best

1.2 HERO FINANCING

In July, 2008, the California Legislature approved Assembly Bill 811 amending Chapter 29 of the Improvement Act of 1911 (Streets and Highways Code Section 5898.12 and following) (“Chapter 29”), authorizing cities and counties to establish voluntary contractual assessment programs to fund an array of conservation and renewable energy projects proposed by property owners. Assembly Bill 474 was subsequently passed in October 2009 to further amend Chapter 29 to add water efficiency improvements to the list of eligible improvements. Finally, SB 1340 was enacted in 2010 to amend Chapter 29 to authorize the installation of electric vehicle charging infrastructure.

Under the California HERO Program, a contractual assessment is entered into between the property owner and the Agent. Participation by a property owner in such a contractual assessment is 100% voluntary. The contractual assessment is memorialized in a contract between the participating property owner and SANBAG (an “Assessment Contract”). The separate forms of Assessment Contract for Residential properties, i.e., a property developed for a single family home or fewer than four (4) residential dwelling units, or Commercial properties, i.e., all non-residential properties, including apartment buildings with five (5) units or more, are set forth in substantially the forms attached to this Program Report as Appendix E. The amount of the contractual assessment is equal to the cost to pay for the eligible improvements (“Eligible Products”), the costs to pay for the issuance of the bonds that will finance the Program, and the costs to administer the Program. Like most assessments, the amounts are billed and collected on the County property tax bill. If the property is sold, the obligation to make the remaining payments on the assessment may remain on the property or may be required to be paid off when the primary mortgage is refinanced or when the property is sold. Additionally, if a property owner fails to pay the annual contractual assessment installments, the Agent is obligated to strip the delinquent installments off the property tax bill and commence judicial proceedings to foreclose the lien of the delinquent installments. This is an expedited procedure that can result in the public sale of the property in less than a year. This process is disclosed to the property owner in the applicable Assessment Contract.

1.3 PURPOSE OF THE PROGRAM REPORT

This Program Report is prepared pursuant to Sections 5898.22 and 5898.23 of the California Streets and Highways Code in connection with the establishment of the California HERO Program. This Program Report is supplemented by separate handbooks prepared for the residential and the commercial programs (each, a “Handbook”) which are incorporated in this Program Report by reference. This is the document, together with the Handbooks, that establish the parameters of the Program and the requirements for property owner participation in the California HERO Program and fulfills the requirements of Sections 5898.22 and 5898.23. The California HERO Program is offered to property owners in participating Cities and Counties. Cities and the County can make HERO available to their constituents by adopting a resolution and entering into an amendment to the WRCOG joint exercise of powers agreement (the “JPA Amendment”) pursuant to which such City or County becomes an Associate Member of WRGOG authorizing the Agent to offer the California HERO Program within the respective boundaries of such Cities and Counties. The Associate Members within which the California HERO Program may be implemented are set forth in Exhibit “B” hereto which delineates the boundaries of the territory within which voluntary contractual assessments may be offered pursuant to the California HERO Program.

II. RESIDENTIAL AND COMMERCIAL PROGRAM REQUIREMENTS

This section identifies the California HERO Program requirements relating to improvements made on residential and commercial properties.

2.1 ELIGIBLE PROPERTY OWNERS AND ELIGIBLE PROPERTIES

In order for properties to be eligible to participate in the California HERO Program, the applicant must meet the eligibility requirements listed below. The Handbooks provides additional detail on each criteria.

- a. Applicant. Applicant(s) must be the property owner(s) of record.
- b. Address. The applicant's property must be located within the boundaries of the California HERO Program. If a property is located in a city, the city must adopt a resolution and enter into the JPA Amendment authorizing the Agent to offer the California HERO Program within its boundaries. If a property is located within the unincorporated territory of a County, the County must adopt a resolution and enter into the JPA Amendment authorizing the Agent to offer the Program within its boundaries. A map showing the areas within which the California HERO Program may be offered is attached hereto as Appendix B.
- c. Property Taxes. The property owners must be current on their property taxes within the time period specified in the applicable Handbook.
- d. Involuntary Liens. The property must not be subject to involuntary liens, judgments or defaults or judgments in excess of the amount identified in the applicable Handbook.
- e. Mortgage Debt. The mortgage debt on the property must not exceed that certain percentage of the value of the property as set forth in the applicable Handbook.
- f. Annual Property Taxes. The total annual property tax and assessments, including the contractual assessment, on the property must not exceed 5% of the property's market value, as determined at the time of approval of the Assessment Contract.
- g. Bankruptcy. The property owner must not have declared bankruptcy within the time period specified in the applicable Handbook.

2.2 ELIGIBLE PRODUCTS, CONTRACTORS AND COSTS

Eligible Products

Property owners are responsible for installation, operation, and maintenance of the Eligible Products installed on their property. Property owners must address performance and other system-related issues directly with the contractor installing the Eligible Products according to the terms of the contract between the property owner and the contractor. The California HERO Program is a financing program only. Neither the Agent or the City or the County in which the property is located, nor their employees or agents are responsible for the Eligible Products, their installation or their performance.

The California HERO Program affords property owners the opportunity to take advantage of a wide range of eligible renewable energy, energy-saving, and water conservation/efficiency products that are included among the Eligible Products, consistent with the following provisions:

- a. The California HERO Program is intended principally to encourage the adoption of renewable energy, energy efficiency and water efficiency measures.
- b. The California HERO Program provides financing only for Eligible Products that are permanently affixed to real property.
- c. The California HERO Program provides financing only for Eligible Products specified in Appendix A of the report. The list of Eligible Products will be updated from time to time and published in the Handbooks. Broadly, these include:
 - a. Water Conservation/Efficiency Products
 - b. Energy Efficiency Products
 - c. Renewable Energy Systems
 - d. Electric vehicle charging infrastructure
 - d. Custom Products
- d. The property owner must ensure that any and all permits and inspections required by the jurisdiction within which such property is located for the installation of the Eligible Products are obtained.
- e. Financing is also available for projects that combine Eligible Products, such as bundling of water conservation/efficiency, energy efficiency, and renewable energy improvements. For instance, a property owner may choose to replace an aging and inefficient furnace, install weather stripping, install low flow toilets, and install a photovoltaic system as part of a single project.

Contractors

The cost of installation of Eligible Products shall be eligible to be financed under the California HERO Program only if such installation is completed by a contractor that is registered with the Program or by the property owner if self-installing such Eligible Products. A list of contractors that are registered with the Program shall also be located on the Program website. Registration of a contractor with the Program is neither a recommendation of such contractor nor a guaranty of or acceptance of responsibility for work of such contractor by the Agent, Renovate America, Samas Capital or the City or County in which the property upon which the Eligible Products are installed is located or the officers, employees or agents of such entities. Neither the Agent, Renovate America, Samas Capital, or the City or County in which the property upon which the Eligible Products are installed is located, their officers, employees nor agents any have responsibility whatsoever for the selection by a property owner of a registered contractor or the work performed by such registered contractor.

Improvement Costs

Eligible costs of the improvements include the cost of equipment and installation of such equipment. Installation costs may include, but are not limited to, energy and water audit consultations, labor, design, drafting, engineering, permit fees, and inspection charges. Eligible costs do not include labor costs for property owners that elect to do the work themselves.

Property owners who elect to engage in broader projects – such as home or business remodeling – may only receive Program financing for that portion of the cost of retrofitting existing structures with Eligible

Products. Repairs and/or new construction do not qualify except to the extent that the construction is required for the specific approved Eligible Products. Repairs to existing infrastructure, such as water and sewer laterals, are considered repairs and are not eligible.

Program staff will evaluate conditions in the construction and installation market for the proposed Eligible Products, including the pricing of Eligible Products, and may require the property owner to obtain additional bids to determine whether costs are reasonable. While the property owner may choose the contractor, the amount available for financing may be limited as set forth in the applicable Handbook.

Administrative Costs/Fees

The Program will cover all or a portion of its costs of establishing the Program; processing, reviewing and approving a property owner's application; processing the Assessment Contract and other related financing and contract documents and issuing the bonds that will finance the Program through an expense component to be added to the amount of the financing request as set forth in the applicable Handbook. In addition, there may be other costs that are not covered in the expense component and will be borne by the property owners as set forth in the applicable Handbook. These costs may include:

- a. Application Fee. An application fee may be required. The owner may not include this cost in the financing request. Except as otherwise provided in applicable federal or state law, the application fee is nonrefundable, unless the property owner is deemed ineligible and the unused portion of the application fee may be prorated.
- b. Title and Recording Costs. Title and recording costs, including title insurance, where required, may be paid by the property owner.
- c. Permitting Costs. Property owners are required to verify whether or not a permit and/or inspections are required by the jurisdiction in which such owner's property is located. Any such permit and/or inspection costs will be paid by the property owner and are an eligible cost to include in the financing.
- d. Ongoing Administration Costs. Annual assessment administration, collection, County treasurer-tax collector and auditor-controller and trustee costs will be added each year to the annual assessment on property tax bills and will be adjusted in subsequent years for cost of living increases using the U.S. Department of Labor, Bureau of Labor Statistics, and Consumer Price Index for the County or region.
- e. Onsite Validation Fees. Onsite validation fees may be required for Program staff to confirm that approved Eligible Products were actually installed prior to funding; provided, however, such fee may not exceed the actual cost to undertake such validation.
- f. Multiple Disbursement Fees. The Program may offer multiple disbursements for assessments if feasible. If multiple disbursements are offered, the partial disbursement funding requests may be subject to an additional processing fee per partial disbursement as set forth in the applicable Handbook; provided, however, that such fee may not exceed the actual cost of providing such service.
- g. Capitalized Interest. Because each County has established a deadline for placing the contractual assessments on such County's property tax bill, the principal component of the

contractual assessment may also include an amount equal to the first tax year's contractual assessment installments if the deadline cannot be met.

h. Deposit to a Debt Service Reserve Fund. The Agent or project investors may require property owners to fund a deposit to a debt service reserve fund as set forth in the applicable Handbook. The reserve fund would be used to pay debt service on bonds issued to finance the installation of Eligible Products in the event of contractual assessment installment delinquencies.

As required pursuant to Section 5898.22 of Chapter 29, the Agent has met and consulted with the staff of the Counties of the Fresno, Imperial, Kern, Los Angeles, Merced, Orange, Sacramento, San Diego, Solano, and Stanislaus Auditor's office concerning the additional fees, if any, that will be charged to the Agent for incorporating the proposed assessment installments into the assessments of the general taxes on real property. The payment of such fees shall be included as a part of ongoing administration costs which will be added each year to the annual assessment on property tax bills.

III. APPEAL PROCESS

The Program allows for property owners to go through an appeal process if their application is denied or if the property owner or property is deemed ineligible to participate in the Program. The process is set forth in the applicable Handbook.

IV. TRACKS FOR PARTICIPATION

There are four categories of improvements under which property owners may participate in this Program. Minimum energy efficiency specifications are set at EnergyStar, California Title 24 and Title 20, and WaterSense standards, as applicable. Efficiency standards will "ratchet-up" with EnergyStar, WaterSense, California Title 24 and Title 20 standards, or other new standards as may be appropriate and as agreed upon by WRCOG Executive Committee. A complete list of Eligible Products can be found in Appendix A.

4.1 WATER CONSERVATION/EFFICIENCY

Water Conservation/Efficiency covers a wide range of water conserving fixtures, such as low flow toilets, low flow shower heads, and irrigation controllers.

4.2 ENERGY EFFICIENCY

Energy Efficiency covers a wide range of energy efficiency fixtures such as windows and doors, attic insulation, and HVAC equipment that are EnergyStar rated. Most Eligible Products in this category must meet specified minimum efficiencies.

4.3 RENEWABLE ENERGY

Solar Photovoltaic or Solar Thermal Systems provide for solar energy generation and solar hot water systems, respectively. Small wind turbines, fuel cell systems or geothermal systems may also be eligible under this category.

4.4 CUSTOM PROJECTS

The development of technologies is encouraged by the Program as a means of diversifying the region's energy and water sources. Custom Projects will be evaluated and provided funding, if appropriate, for either innovative projects or for more complex, larger projects that require additional review.

V. PROGRAM PARAMETERS

5.1 MINIMUM FINANCING AMOUNT AND DURATION OF ASSESSMENT

Assessment Contracts are available for varying terms as set forth in the applicable Handbook.

Minimum and maximum financing amounts are set forth in the applicable Handbook.

5.2 MAXIMUM PORTFOLIO

The maximum aggregate dollar amount of contractual assessments initially authorized under the California HERO Program is \$2 billion.

5.3 ASSESSMENT INTEREST RATE

Residential Properties: The interest rate for a contractual assessment on a residential property is set at the time that the Assessment Contract is delivered to the property owner. An estimated, current rate will always be available on the Program website and any variations from that estimated rate will be based solely on market fluctuations.

Commercial Properties: The interest rate for a contractual assessment on a commercial property is set at the time the Assessment Contract is entered into.

The Program interest rate(s) will be set with the intention of creating a self-sustaining Program at rates that are competitively priced to compare to financing options available through banking or other financial institutions, balanced with the ability to remarket the bonds issued to finance the installation of Eligible Products on participating properties and encourage the future liquidity of the Program.

5.4 PROPERTY ASSESSMENT LIEN

All property owners must sign, and return the Assessment Contract within the time period specified in the notice of approval of a property owner's application. Upon completion of the project and execution of the Assessment Contract, the Agent will place a lien for the full amount of the contractual assessment on the property that secures such assessment. If the lien is recorded before the first business day in July, the assessment installment will appear on the next tax bill. For liens recorded after the first business day of July, the assessment installment will not appear on the tax bill until the following tax year, but interest will accrue on the outstanding balance. A direct bill and/or additional tax bill or other method of payment (including capitalized interest) may be required, as determined by the Program, during the first tax year.

5.5 DELINQUENT ASSESSMENT COLLECTIONS

In general, it is expected that assessment installments will be collected on the *ad valorem* tax bills sent to property owners by the Treasurer-Tax Collector of the County in which such owner's property is located, and therefore delinquency information will generally be available from such the Treasurer-Tax Collector's office. In order to attract financing, the Agent will covenant to commence and pursue judicial foreclosure proceedings with respect to parcels that are delinquent in the payment of assessment installments. The precise terms of such a covenant will be determined at the time of bond issuance.

VI. THE FINANCIAL STRATEGIES

The Program includes the following financial strategies.

Strategy One: The Program will, at launch, utilize Renovate America to fund installations of Eligible Products for Residential properties. Renovate America will provide a revolving credit line to finance the installation of Eligible Products for such Residential properties. Property and other eligibility requirements will be determined pursuant to the criteria set forth in Section II above and in the Residential Handbook. In consideration for funding the installation of such Eligible Products the Agent shall issue and deliver to Renovate America one or more municipal bonds secured by the contractual assessments payable by the Residential properties to be improved.

Strategy Two: The Program will, at launch, utilize the Samas Capital to fund installations of Eligible Products for Commercial properties. Samas Capital will provide a revolving credit line to finance the installation of Eligible Products to Commercial properties. Property and other eligibility requirements will be determined pursuant to the criteria set forth in Section II above and the Commercial Handbook. In consideration for funding the installation of such Eligible Products the Agent shall issue and deliver to Samas Capital one or more municipal bonds secured by the contractual assessments payable by the Commercial properties to be improved.

Strategy Three: The Agent may establish the "Statewide PACE Financing Fund" (the "PACE Fund") and may accept funds from any available source. Repayments will be made pursuant to Assessment Contracts between the property owners and the Agent and will be collected through the property assessment mechanism in the County property tax system in which the properties of such owners are located. The Agent will manage or cause the Trustee or other qualified third party administrator to manage the PACE Fund in one enterprise fund with multiple sub-funds.

Strategy Four: For additional financing, the Agent will continue to explore funding opportunities from a number of other potential funding sources, and combinations of sources, which may include but are not limited to additional funding from any funds under the control of the Agent, the issuance of notes, bonds, or agreements with utilities or public or private lenders, other governmental entities and quasi-governmental entities such as SCERA, CALPERS, Nationwide Retirement Solutions, funding from private entities, or any financing structure allowed by law.

VII. GLOSSARY OF TERMS

ANNUAL FUEL UTILIZATION EFFICIENCY (AFUE): AFUE is the standard measurement of efficiency for gas and oil-fired furnaces. Given in percentages, this number tells you how much of your fuel is used to heat your home and how much fuel is wasted. The higher the AFUE rating, the greater the efficiency.

ASSEMBLY BILL 811: Approved in July 2008 by the California legislature, AB 811 amended Chapter 29 to authorize cities and counties to establish voluntary contractual assessment programs to fund an array of conservation and renewable energy projects proposed by property owners.

ASSEMBLY BILL 474: Approved in October 2009 by the California legislature, AB 474 amended Chapter 29 to authorize the funding of water conservation products through a voluntary contractual assessment program.

ASSESSMENT CONTRACT: A contract entered into between a property owner or property owners to provide financing for the installation of Eligible Improvements on property of such owner or owners under the California HERO Program.

BRITISH THERMAL UNITS (BTU): The amount of heat required to raise the temperature of one (1) pound of water one (1) degree Fahrenheit.

BUILDING PERFORMANCE INSTITUTE (BPI): BPI is a national standards development and credentialing organization for residential energy efficiency retrofit work – providing training through a network of training affiliate organizations, individual certifications, company accreditations and quality assurance programs. BPI certifications include building analysts (for energy audits) as well as building envelope professionals (envelope or manufactured housing) and mechanical professionals (heating or cooling).

BUILDING PERMITS: Formal approval of building plans by the designated government agency as meeting the requirements of prescribed codes. It is an authorization to proceed with the construction or reconfiguration of a specific structure at a particular site, in accordance with the approved drawings and specifications.

CALIFORNIA SOLAR INITIATIVE (CSI): The California Solar Initiative is part of the Go Solar California campaign and builds on 10 years of state solar rebates offered to customers in California's investor-owned utility territories: Pacific Gas & Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E). The California Solar Initiative is overseen by the California Public Utilities Commission.

COEFFICIENT OF PERFORMANCE (COP): The COP is the basic parameter used to report efficiency of refrigerant based systems.

COMMERCIAL: Commercial entities are defined as all non-residential properties and include, but are not limited to, apartment buildings with five units or more, industrial and agricultural properties.

CONTRACTOR: A person or business entity who contracts to erect buildings, or portions of buildings, or systems within buildings.

COOL ROOF: A cool roof reflects and emits the sun's heat back to the sky instead of transferring it to the building below. "Coolness" is measured by two properties, solar reflectance and thermal emittance. Both properties are measured from zero (0) to one (1) and the higher the value, the "cooler" the roof

COOL ROOF RATING COUNCIL (CRRC): The CRRC is an independent, non-profit organization that maintains a third-party rating system for radiative properties of roof surfacing materials.

ENERGY AUDIT: An evaluation of energy consumption, as in a home or business, to determine ways in which energy can be conserved.

ENERGY EFFICIENCY RATIO (EER): EER is a measure of how efficiently a cooling system will operate when the outdoor temperature is at a specific level (95°F). The higher the EER, the more efficient the system.

ELIGIBLE PRODUCTS: All Eligible Products as specified in the applicable Program Handbook.

ENERGYSTAR: EnergyStar is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy helping us all save money and protect the environment through energy efficient products and practices.

EXPECTED PERFORMANCE-BASED BUY-DOWN (EPBB): Under CSI, EPBB provides that solar systems smaller than 30kW in capacity can receive a one-time, up-front incentive based on expected performance, and calculated by equipment ratings and installation factors (geographic location, tilt and shading). EPBB payments are provided on a \$ per watt basis. Systems eligible for EPBB can choose to opt-in to the PBI system.

EVAPOTRANSPIRATION (ET): ET is a term used to describe the sum of evaporation and plant transpiration from the Earth's land surface to atmosphere.

HEAT SEASONAL PERFORMANCE FACTOR (HSPF): HSPF is the most commonly used measure of a heat pumps heating efficiency. The higher the HSPF, the more efficient the heat pump.

HOME ENERGY RATING SYSTEM (HERS): Based on the home's plans, the Home Energy Rater uses an energy efficiency software package to perform an energy analysis of the home's design. This analysis yields a projected, pre-construction HERS Index. Upon completion of the plan review, the rater will work with the builder to identify the energy efficiency Eligible Products needed to ensure the house will meet ENERGY STAR performance guidelines. The rater then conducts onsite inspections, typically including a blower door test (to test the leakiness of the house) and a duct test (to test the leakiness of the ducts). Results of these tests, along with inputs derived from the plan review, are used to generate the HERS Index score for the home.

INTERCONNECTION AGREEMENT: A legal document authorizing the flow of electricity between the facilities of two electric systems. Under the CSI Program, eligible renewable energy systems must be permanently interconnected and operating in parallel to the electrical distribution grid of the utility serving the customer's electrical load. Portable systems are not eligible. Proof of interconnection and parallel operation is required prior to receiving an incentive payment.

INVESTOR-OWNED UTILITY (IOU): For purposes of the Program, this refers to Southern California Edison Company, Pacific Gas & Electric Company and San Diego Gas & Electric Company.

KILOWATT (KW): A unit of electrical power equal to 1,000 watts, which constitutes the basic unit of electrical demand. The watt is a metric measurement of power (not energy) and is the rate (not the duration over which) electricity is used. 1,000 kW is equal to 1 megawatt (MW).

KILOWATT HOUR (KWH): The use of 1,000 watts of electricity for one full hour. Unlike kW, kWh is a measure of energy, not power, and is the unit on which the price of electrical energy is based. Electricity rates are most commonly expressed in cents per kilowatt hour.

MARKET VALUE: Highest estimated price that a buyer would pay and a seller would accept for an item in an open and competitive market.

MANUAL J REPORT: A report that is the accepted industry standard for the proper sizing and selection of HVAC equipment in residential applications. Manual J outlines the accurate procedure which can be used to estimate the heat loss and heat gain for conventional residential structures

MEGAWATT (MW): Unit of electrical power equal to one million watts; also equals 1,000 kW.

NET OPERATING INCOME (NOI): Net operating income is rental income of a property after operating expenses. These expenses would include all operating expenses, including maintenance, janitorial, supplies, insurance, accounting, management, etc.

PARTICIPATING JURISDICTION: A city or county that has elected to participate in the California HERO Program.

PROGRAM: The California HERO Program.

PROGRAM ADMINISTRATOR: The WRCOG Executive Director and/or his designee are designated as the Program Administrator and are authorized to enter into contractual assessments.

REAL PROPERTY: A property in the County that is subject to a real property tax.

PERFORMANCE BASED INCENTIVE (PBI): All solar systems requesting incentive payments over 30 kW must take the PBI. Any sized system can elect to take PBI. The PBI pays out an incentive, based on actual kWh production, over a period of five years. PBI payments are provided on a \$ per kilowatt-hour basis.

POWER PURCHASE AGREEMENT (PPA): PPA's are contracts between two parties, one who generates electricity for the purpose of sale (the seller) and one who agrees to purchase electricity (the buyer). Financing for the project is delineated in the contract, which also specifies relevant dates of the project coming into effect, when the project will begin commercial operation, and a termination date for which the contract may be renewed or abandoned. All sales of electricity are metered to provide both seller and buyer with the most accurate information about the amount of electricity generated and bought. Rates for electricity are agreed upon in the contract between both parties.

RENEWABLE: Electricity supplied by energy sources that are naturally and continually replenished, such as wind, solar power, geothermal, small hydropower, and various forms of biomass.

RESIDENTIAL: Single family home, fewer than four (4) residential units.

R-VALUE: R-Value is a measure of thermal resistance used in the building and construction industry, usually for insulation. The higher the R-Value, the greater the insulation qualities of the product.

SEASONAL ENERGY EFFICIENCY RATIO (SEER): SEER is most commonly used to measure the efficiency of central air conditioners and air source heat pumps. SEER measures how efficiently a cooling system will operate over an entire season. The higher the SEER, the more efficient the system.

SOLAR HEAT GAIN COEFFICIENT (SHGC): SHGC measures how well a product blocks heat by sunlight. SHGC is expressed as a number between 0 and 1. The lower the SHGC, the less solar heat is transmitted into the building.

SOLAR RATING AND CERTIFICATION CORPORATION (SRCC): The SRCC currently administers a certification, rating, and labeling program for solar collectors and a similar program for complete solar water heating systems.

TITLE 20: CCR Title 20, California regulations intended to drive down electrical energy consumption in the state, is having a noticeable impact on manufacturers, importers and retailers who produce or sell portable lamps.

TITLE 24: California Code of Regulations (CCR), Title 24, also known as the California Building Standards Code, is a compilation of three types of building standards from three different origins:

- Building standards that have been adopted by state agencies without change from building standards contained in national model codes;

- Building standards that have been adopted and adapted from the national model code standards to meet California conditions;
- Building standards, authorized by the California legislature, that constitute extensive additions not covered by the model codes that have been adopted to address particular California concerns.

Water Audit: Water Audit is a qualitative and quantitative analysis of water consumption to identify means of reducing, reusing and recycling of water.

WATERSENSE: WaterSense is a partnership program sponsored by the U.S. Environmental Protection Agency (EPA) with the goal of protecting the future of the US's water supply. By promoting and enhancing the market for water efficient products and services, WaterSense makes every drop count by leveraging relationships with key utility, manufacturer and retail partners across the U.S.

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (WRCOG): A joint powers authority representing its Associate Members in establishing the California HERO Program. WRCOG is serving as Agent to facilitate funding for owners of properties in jurisdictions of its Associate Members that meet the project approval and funding criteria provided herein for participation in the California HERO Program.

Appendix A

ELIGIBLE PRODUCTS

The California HERO Program offers financing for a number of eligible equipment types, energy efficiency measures, water efficiency/conservation improvements, solar systems, and other innovative, energy-saving, water saving, and energy generation custom products for residential and commercial property owners as specified in the applicable Handbook.

Minimum energy efficiency specifications are set at EnergyStar, California Title 24 and Title 20, and WaterSense standards, as applicable. Efficiency standards will “ratchet-up” with EnergyStar, WaterSense, California Title 24 and Title 20 standards, or other new standards as may be appropriate and as agreed upon by the Agent.

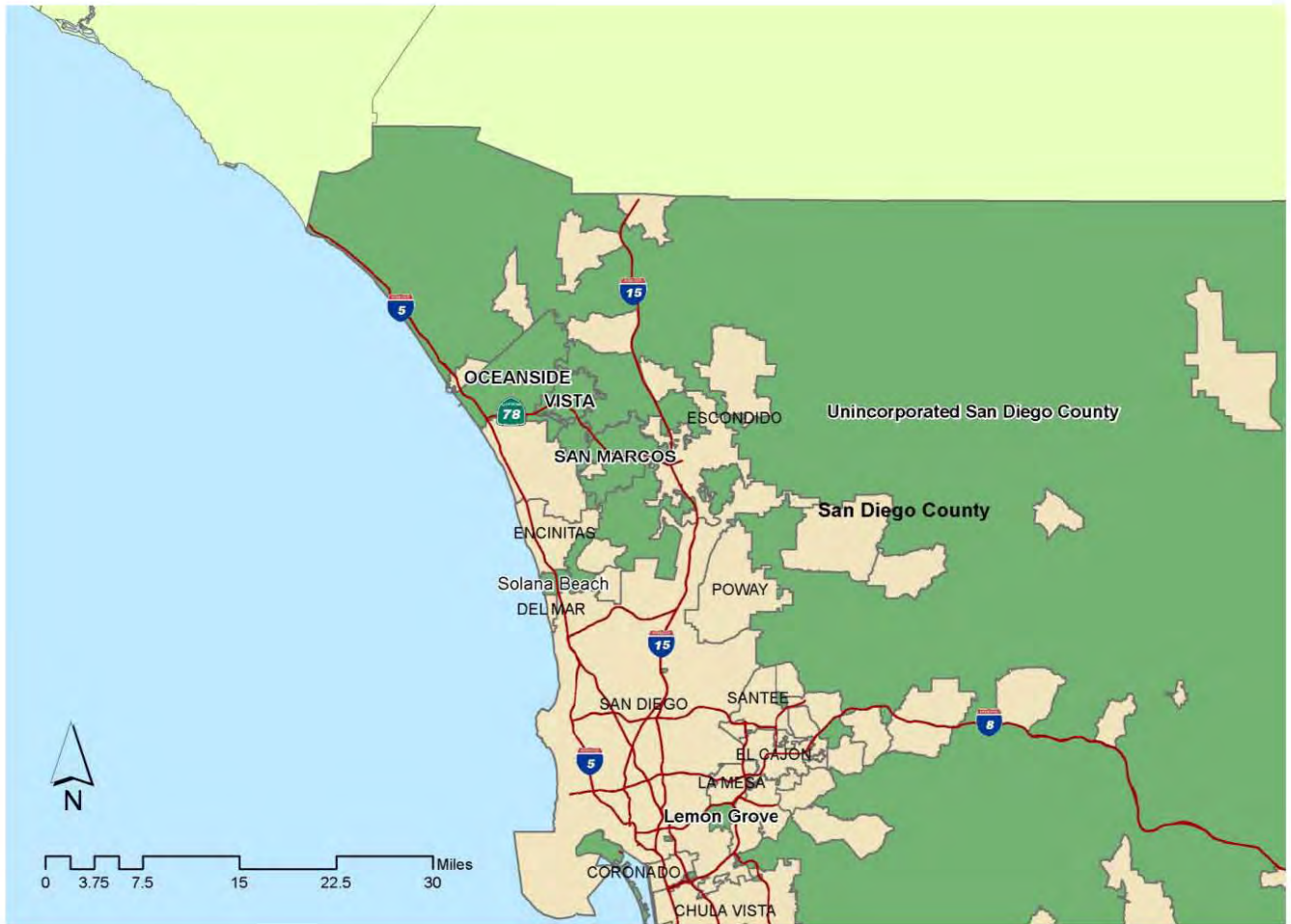
Any Solar PV system must be eligible for and participate in CSI or an equivalent utility rebate program, unless the property is not connected to the electricity grid, or such utility rebate program is not available.

Appendix B

MAP OF PROGRAM AREA (FEBRUARY 3, 2014)

The territories within which voluntary contractual assessments are authorized to be offered pursuant to the California hero program are the jurisdictional boundaries of the Alhambra, Anaheim, Atwater, Azusa, Baldwin Park, Bradbury, Brawley, Brea, Buena Park, Carlsbad, Carson, Citrus Heights, Claremont, Covina, Diamond Bar, El Centro, El Monte, El Segundo, Fresno, Garden Grove, Gardena, Glendora, Hawthorne, Hermosa Beach, Industry, Inglewood, Irwindale, La Canada Flintridge, La Palma, La Verne, Lawndale, Lemon Grove, Lomita, Monrovia, Montebello, Monterey Park, Newport Beach, Oceanside, Placentia, Pomona, Rancho Cordova (Commercial Only), Rancho Palos Verdes, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, San Gabriel, San Jose, San Marcos, San Marino Santa Ana, Santa Monica, Solano Beach, South El Monte, South Pasadena, Taft, Temple City, Torrance, Turlock, Tustin, Vista, West Covina, Westminster, and the unincorporated counties of Kern, Napa, San Diego (commercial only), and Solano, as shown on the attached maps.

Cities of Carlsbad, Lemon Grove, Oceanside, San Marcos, Solana Beach, and Vista, County unincorporated (for commercial only) located in San Diego County, California



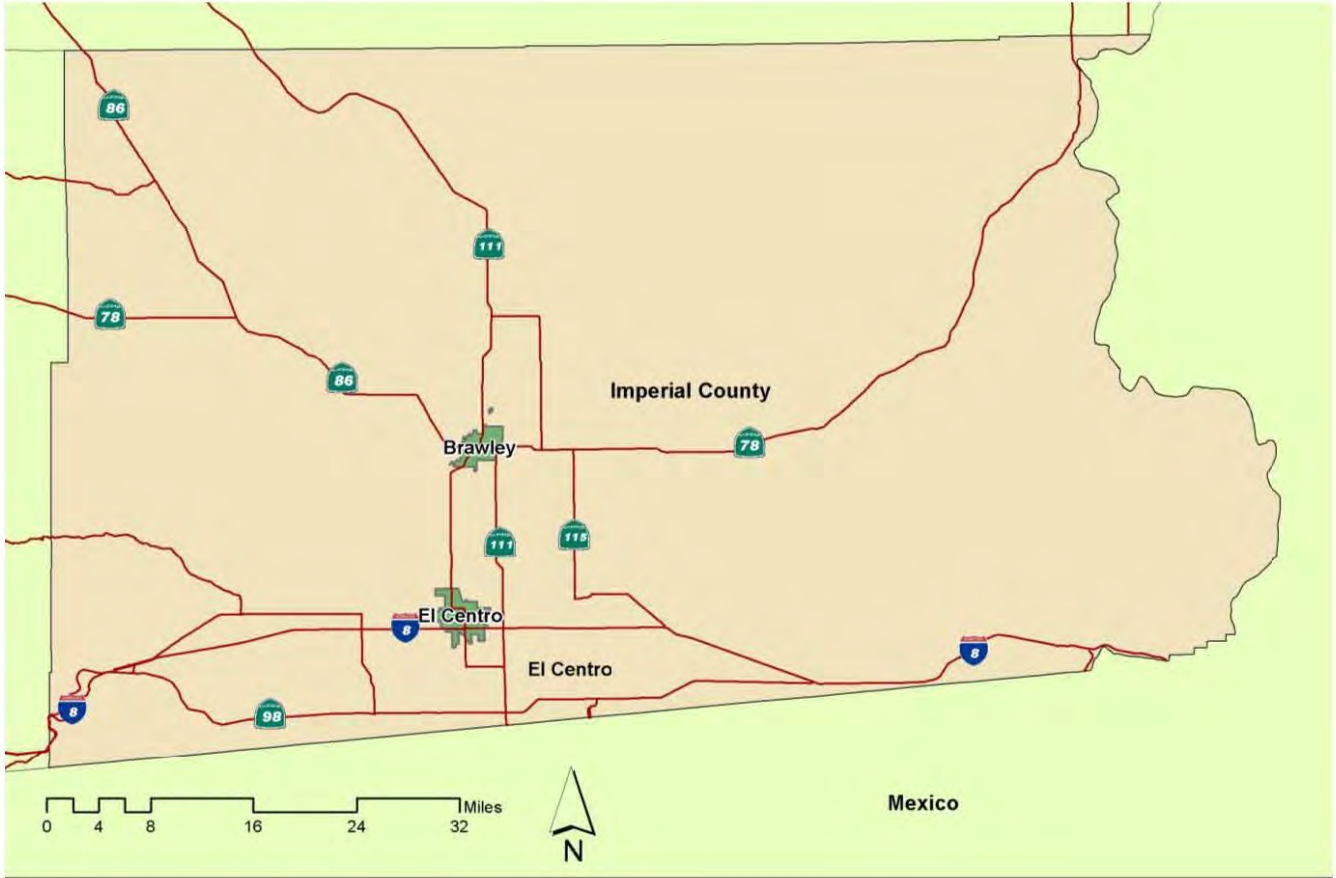
Cities of Alhambra, Azusa, Baldwin Park, Bradbury, Carson, Claremont, Covina, Diamond Bar, El Monte, El Segundo, Gardena, Glendora, Hawthorne, Hermosa Beach, Industry, Inglewood, Irwindale, La Canada Flintridge, La Verne, Lawndale, Lomita, Monrovia, Montebello, Monterey Park, Pomona, Rolling Hills, Rolling Hills Estates, Rancho Palos Verdes, Rosemead, San Dimas, San Gabriel, San Marino, Santa Monica, South El Monte, South Pasadena, Temple City, Torrance, Walnut, and West Covina, located in Los Angeles County, California.



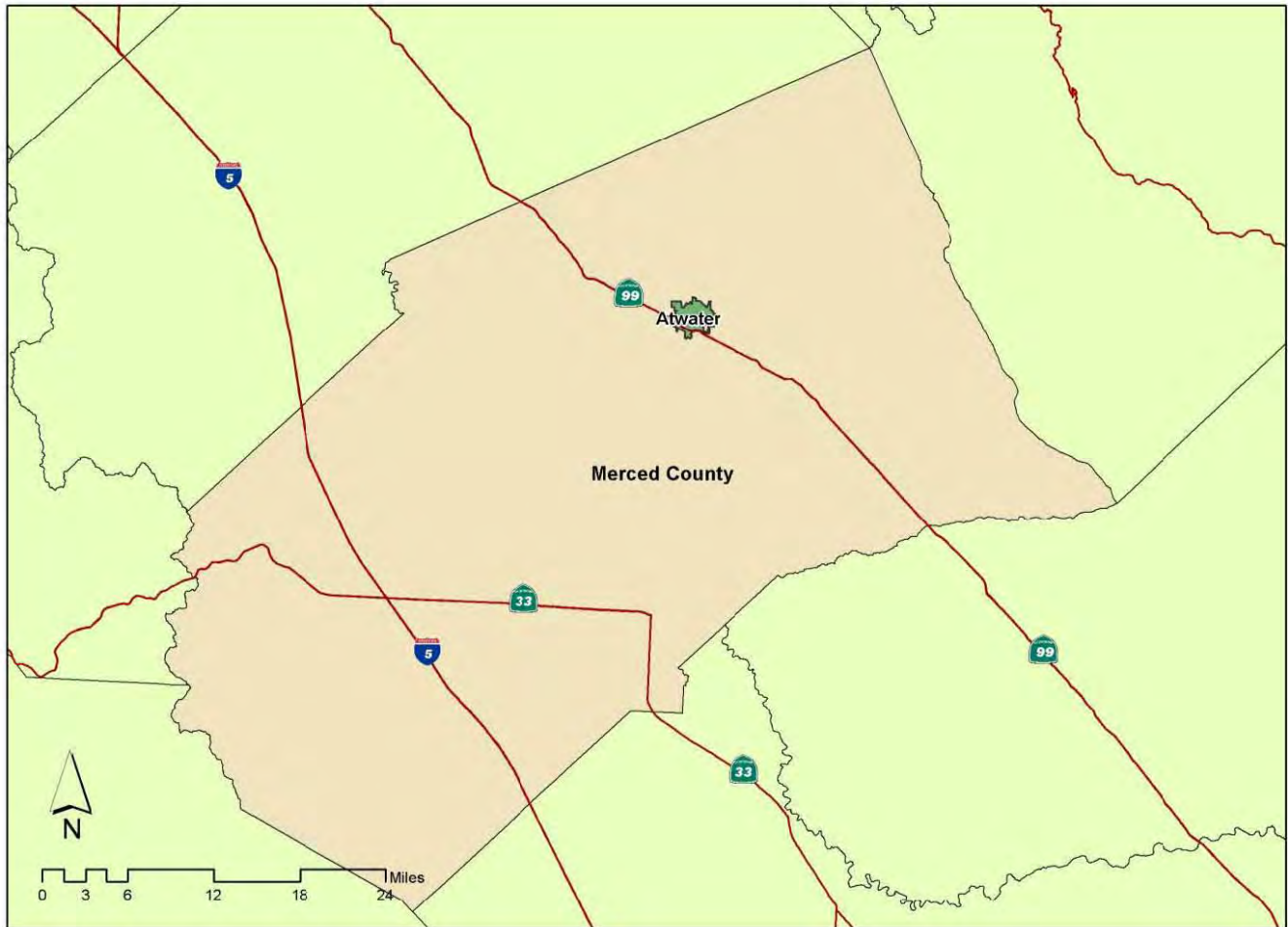
Cities of Anaheim, Brea, Buena Park, Garden Grove, La Palma, Newport Beach, Placentia, Santa Ana, Tustin, and Westminster located in Orange County, California.



City of Brawley and El Centro, located in Imperial County, California



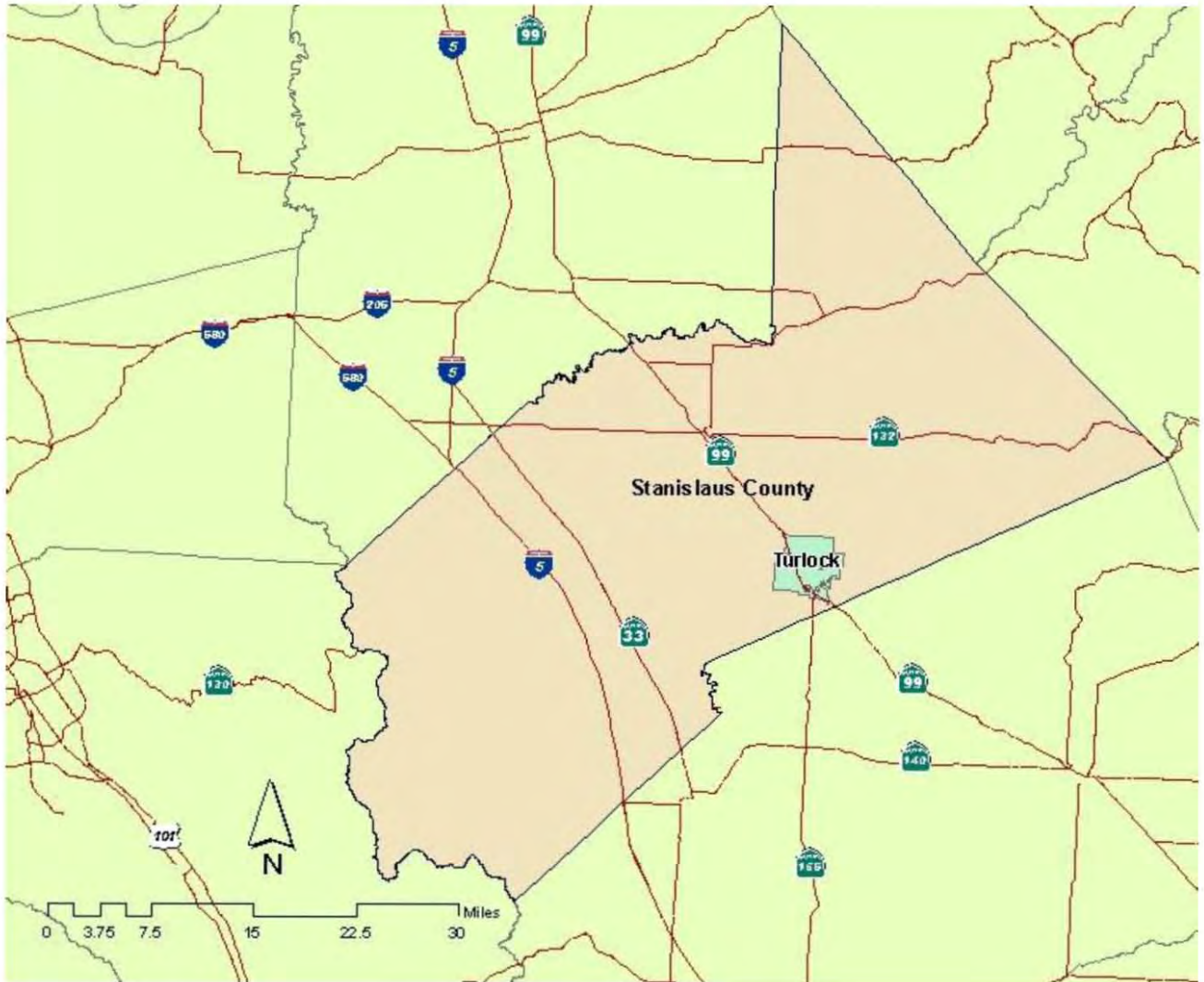
City of Atwater, located in Merced County, California



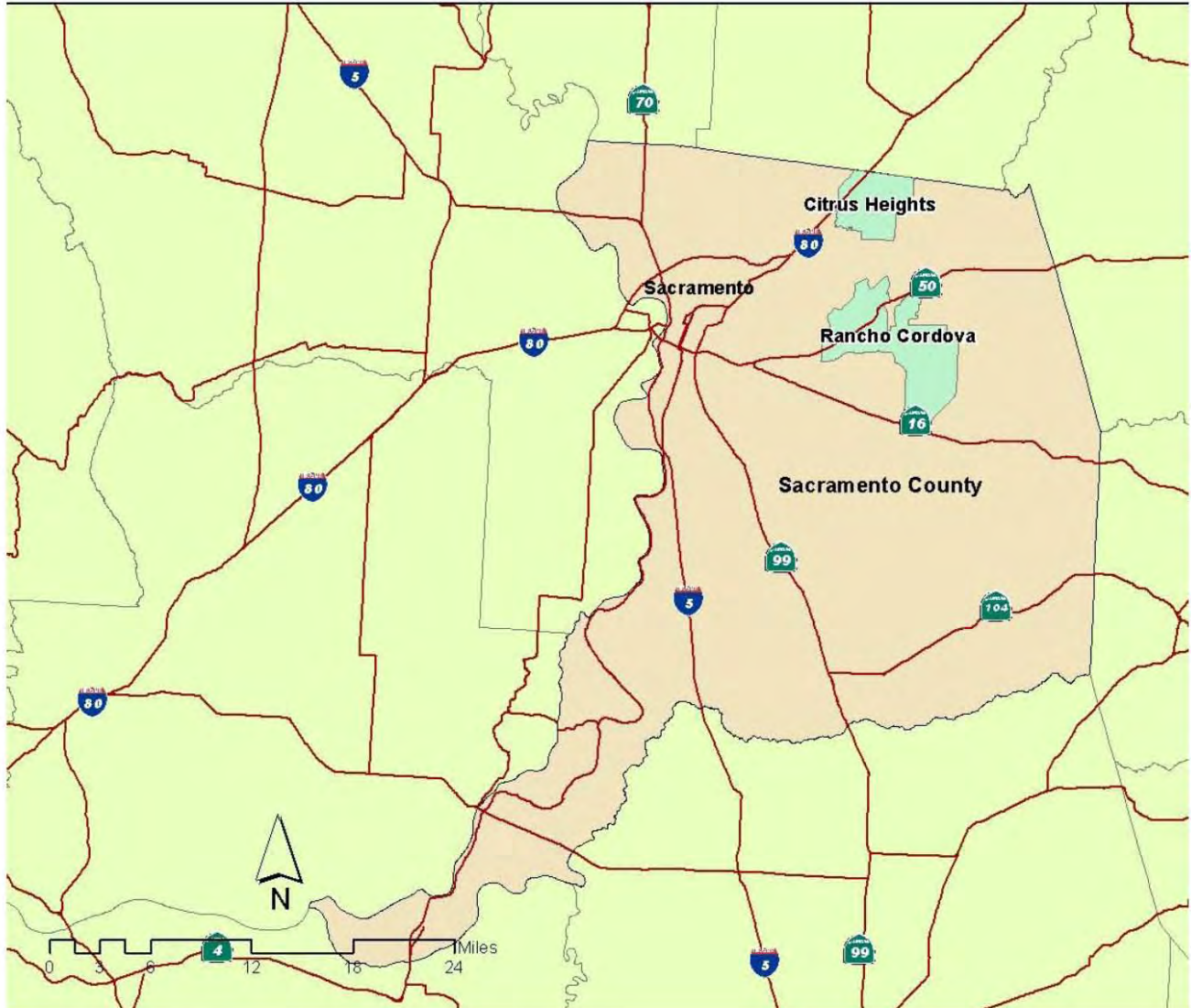
City of Monterey located in Monterey County, California



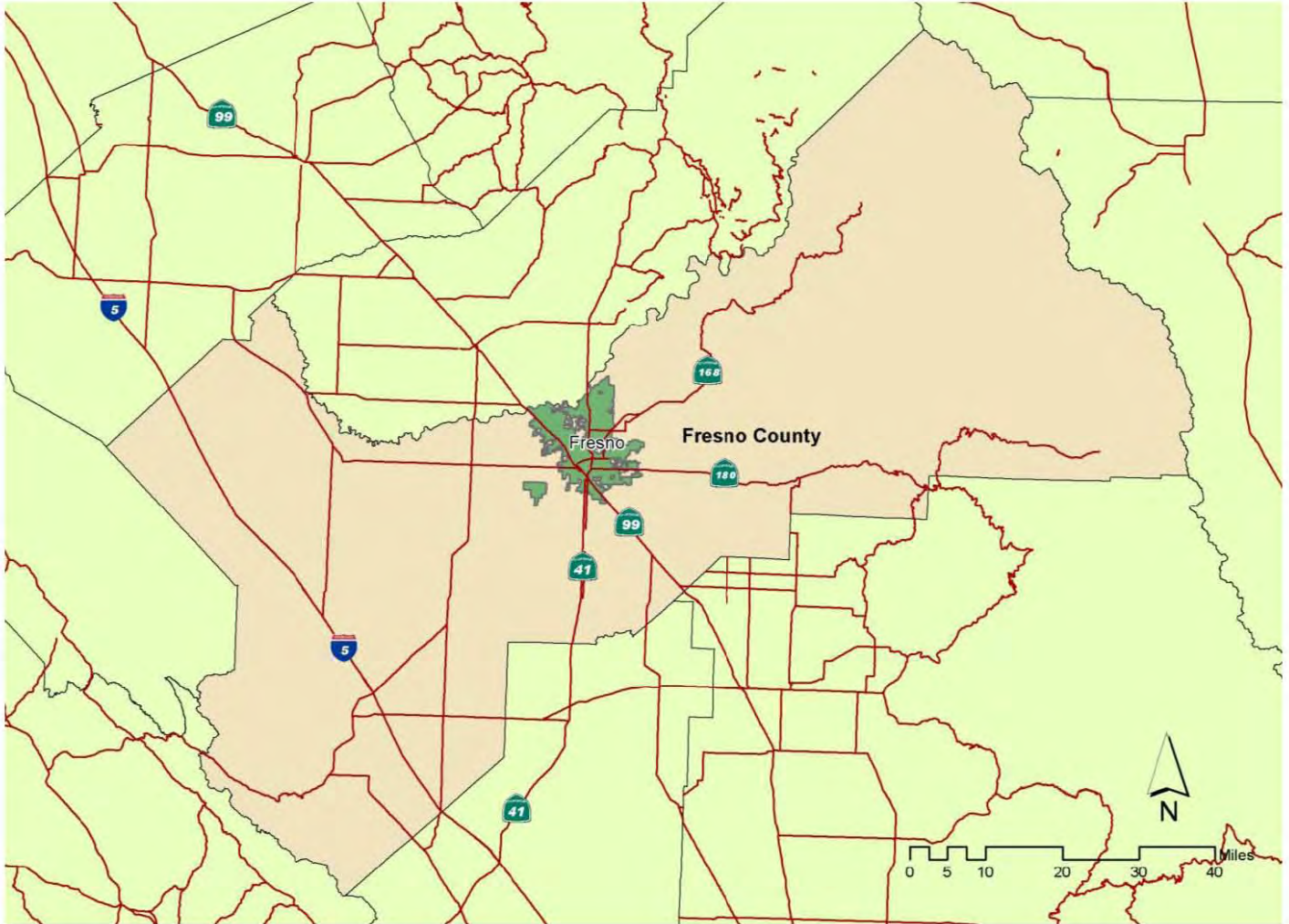
City of Turlock, located in Stanislaus County, California



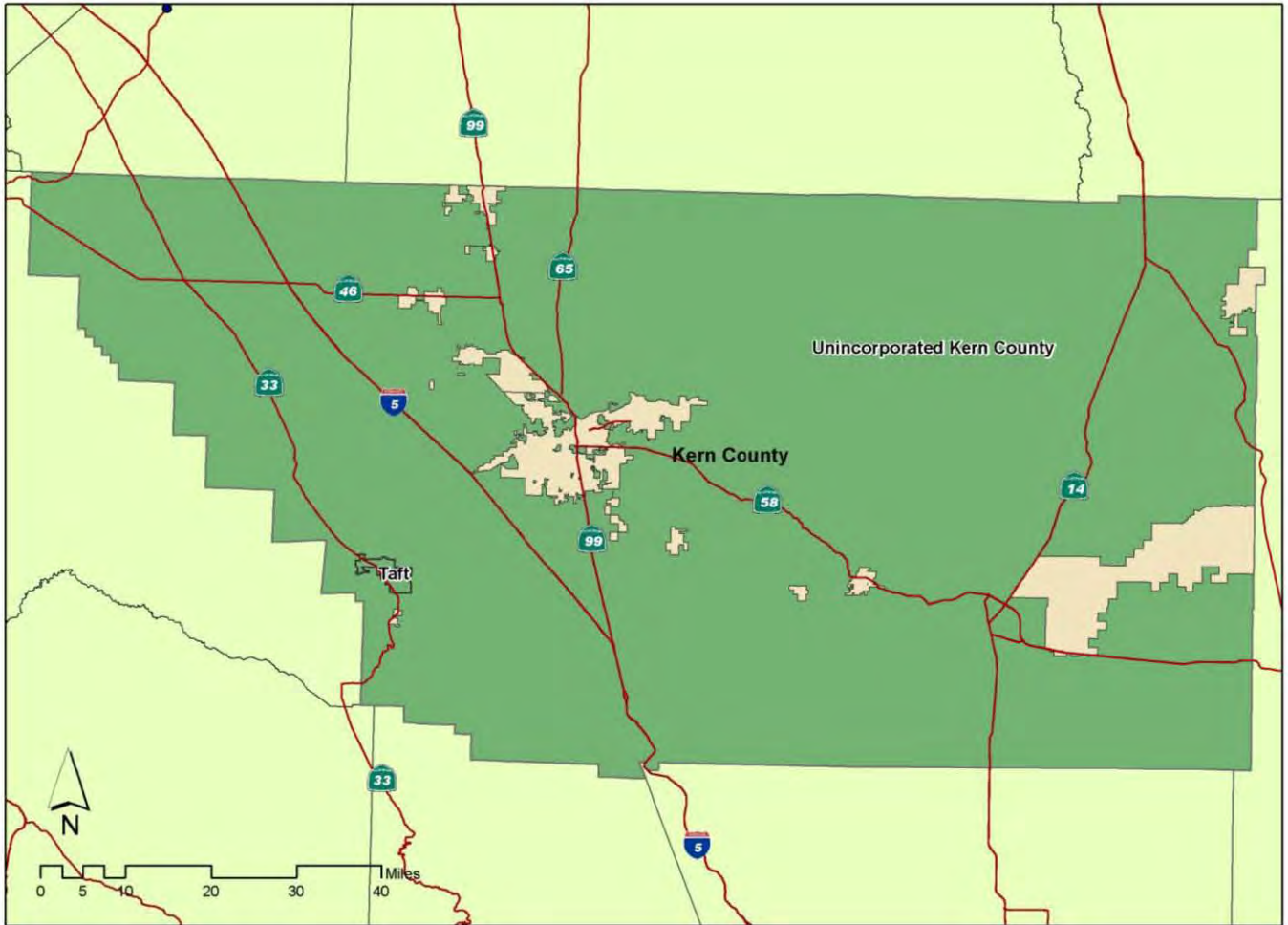
Cities of Citrus Heights and Rancho Cordova (commercial only), located in Sacramento County, California



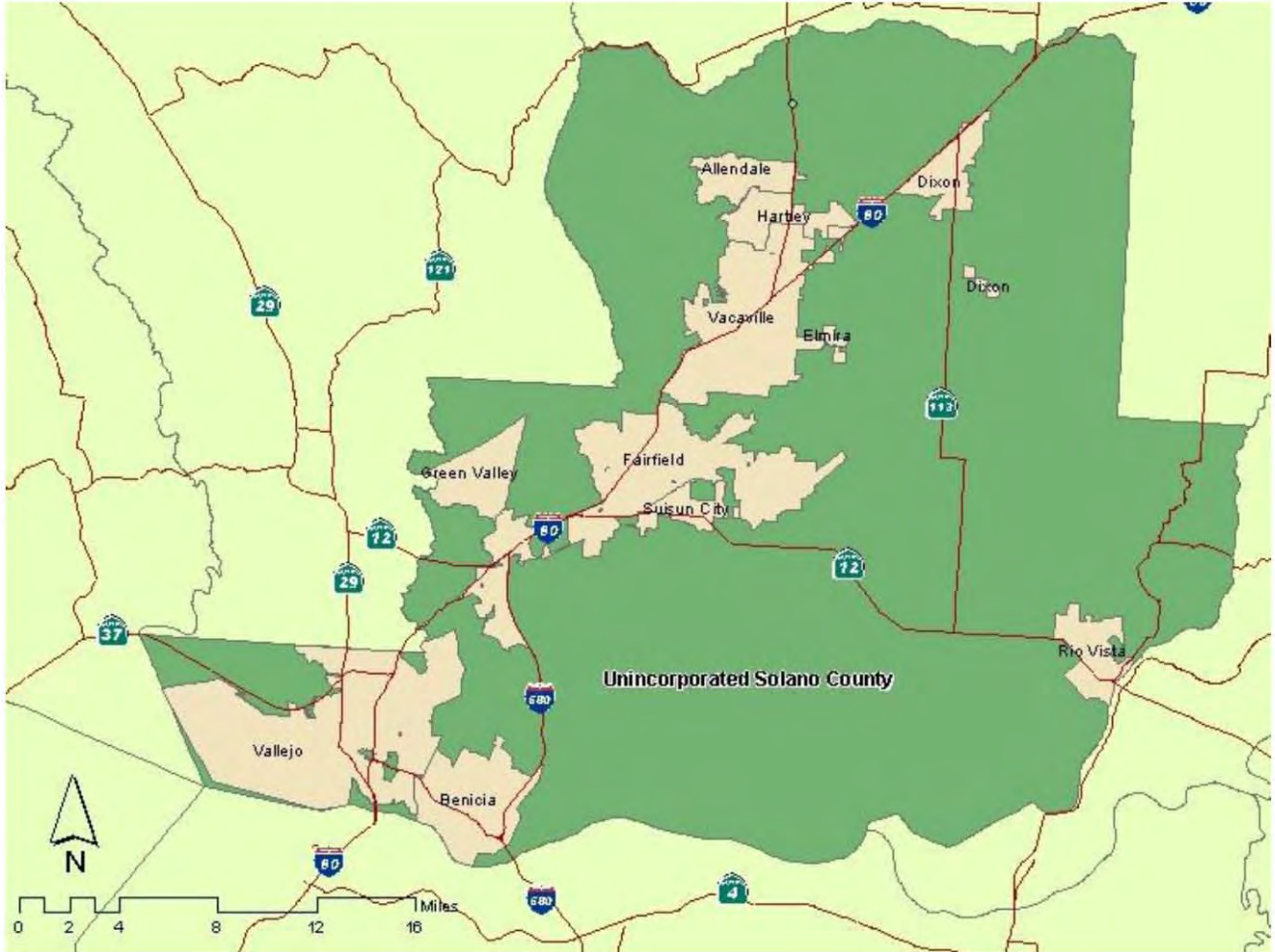
City of Fresno, located in Fresno County, California



City of Taft and Kern County unincorporated, located in Kern County, California



Solano County unincorporated, located in Solano County, California



Appendix C
**RESIDENTIAL PROPERTIES
PROGRAM APPLICATION**

**WRCOG HERO Financing™ Application**

Phone: (877) 747-4889
Fax: (858) 385-0379
Email: wrcog@herofinancing.com

Address: 4080 Lemon Street, 3rd Floor, MS1032
Riverside, CA 92501

The Western Riverside Council of Governments ("WRCOG") Energy Efficiency and Water Conservation Program for Western Riverside County (the "Program") finances installation of renewable energy, or energy or water efficiency products that are permanently fixed to a property owner's real property ("Eligible Products"). Eligible Products will be financed upon the signing of an assessment contract between WRCOG and the property owner ("Assessment Contract"). WRCOG has retained Renovate America, Inc. ("RA") to facilitate the Program, and you will see this name throughout the Program materials. WRCOG and RA are referred to collectively therein as "Program Administrator."

Property Owner Acknowledgments

In order to participate in the Program, I understand that I need to meet the qualifications listed below. By signing this Application, I acknowledge and represent that to the best of my knowledge that I and any other owner(s) of the property which is the subject of this application (the "Property") meet these qualifications and I authorize the Program Administrator to obtain a credit report for each of the property owner(s) and/or trustees whose social security number is provided on this application.

- I am current on all property taxes for the Property.
- I certify that I have not had a late payment on the property taxes levied on the Property more than once during the prior three (3) years (or since the purchase of the Property if owned less than three (3) years).
- I am and have been current on property debt for the past twelve (12) months on the Property.
- I am not aware of any involuntary liens, defaults or judgments on the Property.
- I have the authority to authorize the Program Administrator to obtain a credit report for each of the property owner(s) and/or trustee(s) whose social security number(s) is provided on this application.
- I have not declared bankruptcy in the last seven (7) years.
- I understand that to qualify for the Program the Property must meet the following requirements:
 - a. The amount to be financed under the Program may not exceed 10% of the value of the Property.
 - b. All existing debt recorded against the Property may not exceed 90% of the value of the Property.
 - c. I understand that, following approval, my contractor or I must call the Program to identify the Eligible Products I would like to purchase and must receive Notification to Proceed from the Program before beginning the installation of any Eligible Products. Products which have not been approved by the Program will not be funded.
 - d. I understand that interest rates may change from this approval date to receiving Notification to Proceed.

By signing this Application, I hereby declare under penalty of perjury under the laws of the State of California all of the following:

1. That the information provided in this Application is true and correct as of the date set forth opposite my signature on the Application and that I understand that any intentional or negligent misrepresentation(s) of the information contained in this Application may result in civil liability and/or criminal penalties including, but not limited to, imprisonment or both and liability for monetary damages to WRCOG, its agents, or successors and assigns, insurers and any other person who may suffer any loss due to reliance upon any misrepresentation which I have made in this Application.
2. I have received, read and understood all documents comprising the Program, which, in addition to information on the Program website, include the following:
 - a. This Application,
 - b. Privacy Policy Notice,
 - c. Assessment Contract (sample); and
 - d. Program Handbook.

I have had an opportunity to ask Program representatives and/or my legal counsel any questions I have regarding the documents listed above. I understand I will be asked to sign the Assessment Contract, among other documents, as a pre-condition to the closing of the financing.

3. I am applying to participate in the Program. I have the authority, without the consent of any third party, to execute and deliver this Application, the Assessment Contract, and the various other documents and instruments referenced herein.
4. I understand that the financing provided pursuant to the Assessment Contract will be repayable through an assessment levied against the Property. I understand that an assessment lien will be recorded by WRCOG against the Property in the office of the County Recorder of the County of Riverside upon execution of the Assessment Contract. The property tax bill (which includes my assessments) for the Property will increase by the amount of these assessment installment payments. The Assessment Contract will specify the amount of the assessment, the assessment installments and the interest on the assessment to be collected on the tax bill for the Property each year during the term specified in the Assessment Contract. The assessment and the interest and any penalties thereon will constitute a lien against the Property until they are paid. As with all tax and assessment liens, this lien will be senior to all existing and future private liens against the Property, including mortgages, deeds of trust and other security instruments.



WRCOG HERO Financing™ Application

Phone: (877) 747-4888
Fax: (858) 385-0378
Email: wrcog@herofinancing.com

Address: 4080 Lemon Street, 3rd Floor, MS1032
Riverside, CA 92501

Disclosures

The following describes some (but not all) characteristics and risks of participation in the Program as well as laws to which the Program is subject. A full understanding of any item listed below can be gained only by reviewing the relevant laws, policy statements, and/or the contractual documents related to the Program. The Program Administrator is committed to your understanding each of the items listed below, and invites you to ask Program representatives any questions regarding these items or if you need copies of any document related to the Program.

1. Program Disclosures and Disclaimers.

- a. **Existing Mortgage.** The Program establishes the manner by which WRCOG may finance, pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (commencing with Section 5898.10), the installation of Eligible Products. Eligible Products will be financed pursuant to an Assessment Contract between you and WRCOG.

BEFORE COMPLETING A PROGRAM APPLICATION, YOU SHOULD CAREFULLY REVIEW ANY MORTGAGE AGREEMENT(S) OR OTHER SECURITY INSTRUMENT(S) WHICH AFFECT THE PROPERTY OR TO WHICH YOU AS THE PROPERTY OWNER ARE A PARTY. ENTERING INTO A PROGRAM ASSESSMENT CONTRACT WITHOUT THE CONSENT OF YOUR EXISTING LENDER(S) COULD CONSTITUTE AN EVENT OF DEFAULT UNDER SUCH AGREEMENTS OR SECURITY INSTRUMENTS. DEFAULTING UNDER AN EXISTING MORTGAGE AGREEMENT OR SECURITY INSTRUMENT COULD HAVE SERIOUS CONSEQUENCES TO YOU, WHICH COULD INCLUDE THE ACCELERATION OF THE REPAYMENT OBLIGATIONS DUE UNDER SUCH AGREEMENT OR SECURITY INSTRUMENT. IN ADDITION, ON AUGUST 31, 2010, FANNIE MAE AND FREDDIE MAC STATED THAT THEY WOULD NOT PURCHASE HOME LOANS WITH ASSESSMENTS SUCH AS THOSE OFFERED BY WRCOG. THIS MAY MEAN THAT PROPERTY OWNERS WHO SELL OR REFINANCE THEIR PROPERTY MAY BE REQUIRED TO PREPAY SUCH ASSESSMENTS AT THE TIME THEY CLOSE THEIR SALE OR REFINANCING.

If your lender requires an impound for your property taxes, please consider notifying them of the annual assessment payment amount so they can adjust your impound amount.

- b. **Interest Rate.** You will be charged a fixed interest rate on your total financed amount. Your interest rate will be set at the time your Financing Documents are issued.
- c. **Program Administration Fee.** At the time of closing, WRCOG will charge you a one-time administration fee of 5.35% of the principal amount of the assessment on the Property to cover the costs of administering the Program. This fee will be added to the assessment amount.
- d. **Recording Fee.** At the time of closing, WRCOG will pass-through the assessment recording fee of approximately \$87 to you to cover the costs of recording the assessment. This fee will be added to the assessment amount.
- e. **Assessment Administration Fee.** Each year, an annual assessment administrative fee will be added to the assessment lien amount on your property tax bill. These costs will be \$25 at the time the WRCOG HERO Program is launched, will not exceed \$95, and will be adjusted in subsequent years for cost of living increases.
- f. **Interest Before First Payment:** Based on the date an assessment is recorded on your property, payments may not begin until the following year's tax statement. This is the amount of interest that is added to the assessment amount for the period between your closing date and the date of your first assessment payment. The maximum amount of interest will be listed on your Assessment Cost and Payment Summary, which will be provided with your Financing Documents.
- g. **Automated Valuation Model Disclosure.** You have the right and obligation to a copy of the automated valuation model (AVM) report used in connection with your application for credit. If you want to obtain a copy, please write to us at the mailing address we have provided. We must hear from you no later than 90 days after we provide you with a notice of the action taken on your application or a notice of incompleteness, or in the case of a withdrawn application, 90 days after the withdrawal. An AVM is not an appraisal. It is a computerized property valuation system that is used to derive a real property value.
- h. **Foreclosure.** Not later than October 1 each year, WRCOG shall determine whether any annual assessment is not paid when due and shall have the right and obligation to order that any such delinquent payment and its associated costs be collected by an action brought in Superior Court to foreclose the lien of the delinquent assessment installment in the manner provided and to the extent permitted by applicable law.
- i. **Mandatory Prepayment Redemption.** You have the option to pay off your assessment lien amount in full, or in increments of \$5,000, at any time. However, if you do so, you will have to pay (i) the principal amount of the assessment to be prepaid (the "Assessment Prepayment Amount"), (ii) a prepayment premium computed as set forth below, (iii) interest on the Assessment Prepayment Amount to the earlier of March 2 or September 2 occurring at least 90 days following the date the prepayment is made, and (iv) a processing fee (not to exceed \$500).

The prepayment premium is determined as follows:

| | |
|-------------|---------------------------------|
| Year 1: | 5% of Prepaid Assessment Amount |
| Year 2: | 4% of Prepaid Assessment Amount |
| Year 3: | 3% of Prepaid Assessment Amount |
| Year 4: | 3% of Prepaid Assessment Amount |
| Year 5: | 3% of Prepaid Assessment Amount |
| Years 6-20: | No penalty. |



WRCOG HERO Financing™ Application

Phone: (877) 747-4888
Fax: (858) 385-0378
Email: wrvog@herofinancing.com

Address: 4080 Lemon Street, 3rd Floor, MS1032
Riverside, CA 92501

Disclosures Continued

- j. No Endorsement, Warranty or Liability. WRCOG, Renovate America, Inc. and the Program do not endorse any manufacturer, contractor, product, or system...
k. Validation. The Program may validate that installed Eligible Products meet Program eligibility requirements...
2. Legal Disclosures
a. Equal Credit Opportunity Act (ECOA). The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against Credit Applicant(s) on the basis of race, color, religion, national origin, sex, marital status, age...
b. Fair Credit Reporting Act. As part of assembling your Program application, WRCOG has requested a consumer report bearing your credit worthiness, credit standing and credit capacity...
c. The Housing Financial Discrimination Act Of 1977. It is illegal to discriminate in the provision of or in the availability of financial assistance because of the consideration of:
i. trends, characteristics or conditions in the neighborhood or geographic area surrounding a housing accommodation...
ii. race, color, religion, sex, marital status, domestic partnership, national origin or ancestry.
d. Patriot Act Disclosure. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account...
e. Communications with Legal Advisers. If you have any questions about any agreements or security instruments which affect the Property or to which you are a party...

Property Owner Signature(s)

I declare that (i) I have received, read and understand the risks and characteristics of the Program described in the Property Owner Acknowledgments and Disclosures set forth in this Application and (ii) I have been informed that I must take the sole responsibility to satisfy myself that executing the Assessment Contract, receiving financing for Eligible Products, and consenting to the assessment levied against the Property will not constitute a default under any other agreement or security instrument (specifically the terms of any mortgage on the Property) which affects the Property or to which I am a party.

Property Owner 1 Signature Date Property Owner 2 Signature Date





WRCOG HERO Financing™ Application

Phone: (877) 747-4888
Fax: (858) 385-0379
Email: wrcog@herofinancing.com

Address: 4080 Lemon Street, 3rd Floor, MS1032
 Riverside, CA 92501

| | | |
|-----------------------------------|-----------------------------|-----------------------|
| FOR CONTRACTOR CALLIN ONLY | Contractor ID# _____ | HERO ID# _____ |
|-----------------------------------|-----------------------------|-----------------------|

Property Address

Property Type: Single Family Home Condo/Townhome Manufactured/Mobile Home Multi Family Home (1-4 units)

Property Address _____

 City _____ State _____ (C A) Zip Code _____

Property Owner

Ownership Type: Individual Joint Trust Corporation/LLC/etc. Other: _____

First Name _____ M. Initial _____ Last Name _____
 Social Security Number _____ - _____ - _____ DOB _____ / _____ / _____ Month _____ Day _____ Year _____ Phone Number _____
 Email Address _____

 Mailing Address (if different from Property Address) _____

 City _____ State _____ (C A) Zip Code _____

Property Owner 2

First Name _____ M. Initial _____ Last Name _____
 Social Security Number _____ - _____ - _____ DOB _____ / _____ / _____ Month _____ Day _____ Year _____

Property Owner Signature(s)

I declare that I have the authority, without the consent of any third party which has not been previously obtained, to execute and deliver the Application, Assessment Contract, and the various documents and instruments referenced therein.

 Property Owner 1 Signature Date Property Owner 2 Signature Date

If you do NOT wish to receive email communications from the Program and would prefer all communications to occur through the U.S. mail instead, please contact us.

Please check this box if you do NOT want to receive newsletters or other marketing materials from the Program or Renovate America, Inc.



Appendix D
**COMMERCIAL PROPERTIES
PROGRAM APPLICATION**



APPLICATION DATE:

 (MONTH/DAY/YEAR)

FOR OFFICIAL USE ONLY
 DATE RECEIVED: _____
 FILE #: _____

CALIFORNIA COMMERCIAL HERO APPLICATION

PROPERTY OWNER QUALIFICATIONS:

- | | | |
|--------------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Property Owner(s) and/or Trustees are and have been current on all property debt for the past six (6) months, including no technical defaults. |
| <input type="checkbox"/> | <input type="checkbox"/> | Property Owner(s) and/or Trustees are current on property taxes with no more than one late payment during the past three (3) years. |
| <input type="checkbox"/> | <input type="checkbox"/> | Property Owner(s) and/or Trustees have no involuntary liens, defaults or judgments on the property. |
| <input type="checkbox"/> | <input type="checkbox"/> | Property Owner(s) and/or Trustees have not declared bankruptcy in the last seven (7) years and the property is not an asset in a bankruptcy. |
| <input type="checkbox"/> | <input type="checkbox"/> | Mortgage-related debt does not exceed 80% of the fair market value of the property, as defined in the Program Handbook. |
| <input type="checkbox"/> | <input type="checkbox"/> | Property has a debt service coverage ratio of 1.05 (or 105%) (calculated by dividing net operating income by total lender debt on property). |

PROPERTY ADDRESS:

(STREET) _____ (CITY) _____ (STATE) _____ (ZIP CODE) _____

(ASSESSOR'S PARCEL NUMBER) _____ **OCCUPANCY TYPE:** Owner-Occupied Tenant-Occupied Both

DESCRIBE OCCUPANTS' BUSINESSES: _____

PROPERTY TYPE:

Multi-Family (5+ units) Commercial Industrial Agricultural Other: _____

MAILING ADDRESS:
(if different from property address)

(STREET/P.O. BOX) _____ (APT./SUITE/ETC./) _____ (CITY) _____ (STATE) _____ (ZIP CODE) _____

PROPERTY OWNER TYPE:

Individual Trust Corporation Partnership Other: _____

PROPERTY OWNER #1 INFORMATION (Should be person/entity who handles all program contacts):

NAME OF PROPERTY OWNER _____ (TAX ID # OR SSN) _____ NAME OF CONTACT PERSON, IF BUSINESS ENTITY OWNER _____

(PHONE NUMBER) _____ (ADDITIONAL PHONE NUMBER) _____ (EMAIL ADDRESS) _____ % OWNERSHIP _____

PROPERTY OWNER #2 INFORMATION:
(If there are additional Property Owners or Trustees, please provide additional sheet(s) with property owner information.)

NAME OF PROPERTY OWNER _____ (TAX ID # OR SSN) _____ NAME OF CONTACT PERSON, IF BUSINESS ENTITY OWNER _____

(PHONE NUMBER) _____ (ADDITIONAL PHONE NUMBER) _____ (EMAIL ADDRESS) _____ % OWNERSHIP _____



| Assets | Amount | Liabilities | Amount |
|---------------------|--------|-----------------------------------|--------|
| Cash in Banks | | Notes Payable | |
| Accounts Receivable | | Accounts Payable | |
| Notes Receivable | | Income Tax Payable | |
| Securities Owned | | Other Taxes Payable | |
| Real Estate | | Mortgages or Liens on Real Estate | |
| Other Assets | | Other Liabilities | |
| | | | |
| Total | | Total | |

| Property Income (Annual) | Amount | Property Expenses (Annual) | Amount |
|--------------------------|--------|----------------------------|--------|
| Rent | | Maintenance and Repairs | |
| Other Income | | Property Taxes | |
| Interest | | Property Insurance | |
| | | | |
| Total | | Total | |

| Mortgages and Liens on Commercial Real Estate | | | | | | | |
|-----------------------------------------------|-----------------|----------------------------------------------|-----------------|----------|----------|---------------|---------------------|
| Property ID | To Whom Payable | 1 st or 2 nd Mortgage? | Monthly Payment | Current? | Security | Maturity Date | Principal Remaining |
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If the property is cross-collateralized or cross-defaulted, please complete this section.

| Commercial Real Estate Schedule | | | | | | | |
|---------------------------------|------------------|----------|----------------------|----------------|----------------------|--------------------|--|
| Address / Type of Property | Title in Name of | How Held | Cost / Year Acquired | Monthly Income | Present Market Value | Total Balance Owed | |
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If the property is owner-occupied, please complete this section.

| Notes Payable | | | | |
|----------------|------------|-----------------|---------------|------------------|
| Name of Debtor | Collateral | Monthly Payment | Maturity Date | Total Amount Due |
| | | | | |
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OTHER CRITERIA QUESTIONS

Please explain all "yes" answers on a separate sheet.

- | | | |
|--------------------------|--------------------------|-------------------------------------------------------------------------------------------------------------------|
| YES | NO | |
| <input type="checkbox"/> | <input type="checkbox"/> | Do(es) the Property Owner(s) have any outstanding judgment(s)? |
| <input type="checkbox"/> | <input type="checkbox"/> | Do(es) the Property Owner(s) have any tax obligations, including payroll or real estate taxes, that are past due? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is/Are the Property Owner(s) a party in any active or threatened lawsuit(s) or other legal action(s)? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has(ve) the Property Owner(s) had property foreclosed or give title or deed in lieu thereof? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has(ve) the Property Owner(s) compromised a debt or modified a mortgage loan in the last 12 months? |



For the listed insurance policy types, is there an active insurance policy for this property?

| YES | NO | |
|--------------------------|--------------------------|----------------------------------------------------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Fire and Hazard insurance? |
| <input type="checkbox"/> | <input type="checkbox"/> | General Liability insurance? |
| <input type="checkbox"/> | <input type="checkbox"/> | Flood Insurance? Please check here if not in flood zone <input type="checkbox"/> |

| REQUIRED ATTACHMENTS: | |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Completed rent rolls form. |
| <input type="checkbox"/> | Signed lender consent for each mortgage on the property to be improved. |
| <input type="checkbox"/> | 12 month payment history for each mortgage on the property to be improved (account history print out (preferred) or mortgage statements). |
| <input type="checkbox"/> | Profit and Loss Statements and Tax Returns for past two years. |
| <input type="checkbox"/> | Proposed Improvements – Contractor Bid(s) or Consultant/Engineer Proposal |

| APPLICANT(S) SIGNATURES | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|------------------------------------------------------|--------|
| By signing this Application, the undersigned hereby declares under penalty of perjury under the laws of the State of California that all property owner(s) and/or trustees have read, understand, and agree to all sections of the Program Handbook and that all information set forth in this Application is true, accurate, and complete. | | | |
| _____ | _____ | _____ | _____ |
| (Applicant Signature) | (Date) | (Applicant Signature) | (Date) |
| _____ | _____ | _____ | _____ |
| (Printed Name, Business Name, Title (if applicable)) | | (Printed Name, Business Name, Title (if applicable)) | |
| _____ | _____ | _____ | _____ |
| (Applicant Signature) | (Date) | (Applicant Signature) | (Date) |
| _____ | _____ | _____ | _____ |
| (Printed Name, Business Name, Title (if applicable)) | | (Printed Name, Business Name, Title (if applicable)) | |



RENT ROLL DETAILS FORM

DATE: _____

| Unit # | Unit Type | Tenant Name | Square Feet | Monthly Rent | Term | | Occupied Yes or No? | Comments |
|---------------------|-----------|-------------|-------------|--------------|-------|-----|---------------------|----------|
| | | | | | Start | End | | |
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| Prospective Tenants | | | | | | | | |
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Rent Roll Certification:
 I/We certify that the above information dated _____ for the property located at _____ is/are true and correct.
 By: _____
 Title: _____



EXHIBIT A

PROPOSED BUILDING IMPROVEMENTS

| DESCRIPTION | ESTIMATED COST |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| 1 Description: _____ Brand: _____ Model #: _____ Quantity: _____ Efficiency Level: _____ Estimated Annual Energy Savings/ Production (# Units): _____ | \$ _____ |
| 2 Description: _____ Brand: _____ Model #: _____ Quantity: _____ Efficiency Level: _____ Estimated Annual Energy Savings/ Production (# Units): _____ | \$ _____ |
| 3 Description: _____ Brand: _____ Model #: _____ Quantity: _____ Efficiency Level: _____ Estimated Annual Energy Savings/ Production (# Units): _____ | \$ _____ |
| <p style="text-align: center;">ITEMIZED ESTIMATED COST OF IMPROVEMENT(S)</p> | |
| A. (i) Construction contract(s) (bid price for cost of materials and labor less any applicable rebates); and/or | \$ _____ |
| (ii) If self-installing, cost of equipment (less applicable rebates; do not include any labor costs): | \$ _____ |
| B. Energy assessment/audit costs | \$ _____ |
| C. Draft, engineering and/or plan preparation costs: | \$ _____ |
| D. Estimated Permit fees: | \$ _____ |
| E. Recording Fee for Assessment Lien documents and assessment contract. Set by state law and the County Recorder's Office | \$ _____ |
| F. Title Costs | \$ _____ |
| G. Other Please list (Attach separate sheet(s) explaining other costs if needed.) | \$ _____ |
| Other: _____ | \$ _____ |
| Other: _____ | \$ _____ |
| Requested Financing Amount: | \$ _____ |
| This requested amount is the maximum amount that can be funded. | |
| Loan Term (5, 10, 15, 20 years): | _____ |



EXHIBIT B

Fill in all contractors or sub-contractors working on the proposed project:

| CONTRACTOR OR SUB-CONTRACTOR | CONTRACTOR COMPANY | CONTRACTOR NAME | CONTRACTOR LICENSE # |
|--------------------------------------------|--------------------|-----------------|----------------------|
| 1 Circle One: Contractor or Sub-Contractor | _____ | _____ | _____ |
| 2 Circle One: Contractor or Sub-Contractor | _____ | _____ | _____ |
| 3 Circle One: Contractor or Sub-Contractor | _____ | _____ | _____ |
| 4 Circle One: Contractor or Sub-Contractor | _____ | _____ | _____ |
| 5 Circle One: Contractor or Sub-Contractor | _____ | _____ | _____ |
| 6 Circle One: Contractor or Sub-Contractor | _____ | _____ | _____ |
| 7 Circle One: Contractor or Sub-Contractor | _____ | _____ | _____ |
| 8 Circle One: Contractor or Sub-Contractor | _____ | _____ | _____ |
| 9 Circle One: Contractor or Sub-Contractor | _____ | _____ | _____ |

Appendix E

Assessment Contracts

CALIFORNIA HERO PROGRAM
ASSESSMENT CONTRACT
(Residential Property)

This Assessment Contract (this "Contract") is made and entered into as of this _____ day of _____, 20__, by and between the Western Riverside Council of Governments, a joint exercise of powers authority (the "Agent"), and the record owner(s) (the "Property Owner") of the fee title to the real property identified on Exhibit A (the "Property").

RECITALS

WHEREAS, the Agent is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California; and

WHEREAS, the Agent has established the California HERO program (the "California HERO Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently fixed to real property (the "Authorized Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") and the issuance of improvement bonds under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid contractual assessments; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied pursuant to a contract between the property owner and the public agency; and

WHEREAS, the Agent has conducted the proceedings required by Chapter 29 with respect to the territory within the boundaries of the City or County identified in Exhibit A and which has elected to participate in the California HERO Program (the "Participating Entity"); and

WHEREAS, the Property is located in the boundaries of the Participating Entity, and the Participating Entity has consented to (i) owners of property within its jurisdiction (the "Participating Property Owners") participating in the HERO Program and (ii) the Agent conducting assessment proceedings under Chapter 29 and issuing bonds under the 1915 Act to finance the Authorized Improvements; and

WHEREAS, pursuant to Chapter 29, the Agent and the Property Owner wish to enter into a contract pursuant to which the Property Owner would agree to pay an assessment in order to finance the installation on the Property of the Authorized Improvements described in Exhibit B (the "Improvements") and the Agent would agree to provide financing, all on the terms set forth in this Contract;

NOW, THEREFORE, in consideration of the foregoing and the material covenants hereinafter contained, the Property Owner and the Agent formally covenant, agree and bind themselves and their successors and assigns as follows:

AGREEMENT

Section 1. Purpose. The Property Owner and the Agent are entering into this Contract for the purpose of financing the installation of the Improvements identified on Exhibit B on the Property. The Agent will not finance installation of Improvements other than those listed on Exhibit B.

Section 2. The Property. This Contract relates to the real property identified on Exhibit A. The Property Owner has supplied to the Agent current evidence of its ownership of fee title to the Property and possesses all legal authority necessary to execute this Contract on behalf of the Property Owner.

Section 3. Contract to Pay Assessment; Prepayment; Non-Completion Assessment

(a) Payment of Assessment. The Property Owner hereby freely and willingly agrees to pay the assessment set forth on Exhibit B (the "Assessment"). The Agent will not provide financing in an amount in excess of the Assessment.

Except as otherwise set forth in this Contract, the Assessment will be paid in the installments set forth in Exhibit B.

Interest will accrue on the Assessment at the interest rate set forth on Exhibit B beginning on the date on which the Agent issues bonds to finance the installation of the Improvements.

(b) Administrative Expenses. The Property Owner hereby acknowledges that, pursuant to the 1915 Act, including Sections 8682(b) and 8682.1(a), the Agent may add amounts to an annual installment of the Assessment in order to pay for the costs of collecting the Assessment (the "Additional Administrative Assessment").

(d) Prepayment of the Assessment. The Assessment may be prepaid, in whole or in part in increments of \$5,000, at any time upon the payment of (a) the whole or a portion of the unpaid principal component of the Assessment, (b) the accrued but unpaid interest component of the whole or applicable portion of the unpaid principal component of the Assessment through the prepayment date, (c) a prepayment premium in the amount set forth on Exhibit B and (d) the reasonable costs of the Agent related to such prepayment.

(d) Absolute Obligation. The Property Owner hereby agrees that the Assessment will not be subject to reduction, offset or credit of any kind in the event that the bond or bonds secured thereby are refunded or for any other reason.

Section 4. Collection of Assessment; Lien. The Assessment, the interest and penalties thereon as a result of a delinquency in the payment of any installment of the Assessment, and the Additional Administrative Assessment shall constitute a lien against the Property until they are paid and shall be collected and shall have the lien priority as set forth in Chapter 29.

The Property Owner acknowledges that if any Assessment installment is not paid when due, the Agent has the right to have such delinquent installment and its associated penalties and interest stripped off the secured property tax roll and immediately enforced through a judicial foreclosure action that could result in a sale of the Property for the payment of the delinquent installments, associated penalties and interest, and all costs of suit, including attorneys' fees. The Property Owner acknowledges that, if bonds are sold to finance the Improvements, the Agent may obligate itself, through a covenant with the owners of such bonds, to exercise its judicial foreclosure rights with respect to delinquent Assessment installments under circumstances specified in such covenant.

Section 5. Financing of the Improvements.

(a) Contract to Finance Improvements. The Agent hereby agrees to use the Assessment, together with the Additional Administrative Assessment, to finance the Improvements, including the payment of the Agent's reasonable costs of administering the California HERO Program, subject to the Property Owner's compliance with the conditions for such financing established by the Agent.

(b) Assessment Installments. The Property Owner agrees to the issuance of bonds by the Agent to finance the installation of the Improvements. The interest rate used to calculate the Assessment installments set forth on Exhibit B is identified on Exhibit B. If the Agent determines in its reasonable discretion that the Assessment installments may be reduced because the applicable interest rate on the bonds issued to finance installation of the Improvements is lower than the interest rate specified in Exhibit B, or if the cost of the Improvements, as shown in a final invoice provided to the Agent by the Property Owner, is less than the amount shown on Exhibit B, then, concurrently with the disbursement of funds to the Property Owner, the Agent may provide the Property Owner with a schedule of annual Assessment installments that provides for annual installments that are less than those set forth in the attached Exhibit B.

Section 6. Term: Contract Runs with the Land: Subdivision.

(a) Except as otherwise set forth in this Contract, this Contract shall expire upon the final payment or prepayment of the Assessment.

(b) This Contract establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land pursuant to Civil Code Section 1462.

(c) In the event the Property is subdivided while the Assessment remains unpaid, the Assessment will be assigned to the newly-created parcel on which the Improvements are located. If the Improvements no longer exist, the Assessment will be assigned to each of the newly-created parcels on a per-acre basis, unless the Agent, in its sole discretion, determines that the Assessment should be allocated in an alternate manner.

Section 7. Recordation of Documents. The Property Owner hereby authorizes and directs the Agent to cause to be recorded in the office of the County Recorder the various notices and other documents required by Chapter 29 and other applicable laws to be recorded against the Property.

Section 8. Notice. To the extent required by applicable law, the Property Owner hereby agrees to provide written notice to any subsequent purchaser of the Property of the obligation to pay the Assessment pursuant to this Contract.

Section 9. Waivers, Acknowledgment and Contract. Because this Contract reflects the Property Owner's free and willing consent to pay the Assessment following a noticed public hearing, the Property Owner hereby waives any otherwise applicable requirements of Article XIII D of the California Constitution or any other provision of California law for an engineer's report, notice, public hearing, protest or ballot.

The Property Owner hereby waives its right to repeal the Assessment by initiative or any other action, or to file any lawsuit or other proceeding to challenge the Assessment or any aspect of the proceedings of the Agent undertaken in connection with the California HERO Program. The Property Owner hereby agrees that the Property Owner and its successors in interest to fee title in the Property shall be solely responsible for the installation, operation and maintenance of the Improvements. The Property Owner hereby acknowledges that the Property will be responsible for payment of the Assessment regardless of whether the Improvements are properly installed, operated or maintained as expected.

The Property Owner hereby agrees that the Agent is entering into this Contract solely for the purpose of assisting the Property Owner with the financing of the installation of the Improvements, and that the Agent and the Participating Entity have no responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing or maintenance of the Improvements. Based upon the foregoing, the Property Owner hereby waives the right to recover from and fully and irrevocably releases the Agent, the Participating Entity and any and all agents, employees, attorneys, representatives and successors and assigns of the Agent and the Participating Entity from any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), relating to the subject matter of this Contract that the Property Owner may now have or hereafter acquire against the Agent, the Participating Entity and any and all agents, employees, attorneys, representatives and successors and assigns of the Agent or the Participating Entity.

To the extent that the foregoing waivers and agreements are subject to Section 1542 of the California Civil Code or similar provisions of other applicable law, it is the intention of the Property Owner that the foregoing waivers and agreements will be effective as a bar to any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), of whatever character, nature and kind, known or unknown, suspected or unsuspected, and Property Owner agrees to waive any and all rights and benefits conferred upon the Property Owner by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law. Section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

By initialing below, the Property Owner agrees to waive the provisions of Section 1542 in connection with the matters that are the subject of the foregoing waivers and releases.

Property Owner's Initials: _____

The waivers, releases and agreements set forth in this Section 9 shall survive termination of this Contract.

Section 10. Indemnification. The Property Owner agrees to indemnify, defend, protect, and hold harmless the Agent, the Participating Entity and any and all agents, employees, attorneys, representatives and successors and assigns of the Agent or the Participating Entity, from and against all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with (i) the Property Owner's participation in the California HERO Program, (ii) the Assessment, (iii) the Improvements, or (iv) any other fact, circumstance or event related to the subject matter of this Contract, regardless of whether such losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) accrue before or after the date of this Contract.

The provisions of this Section 10 shall survive the termination of this Contract.

Section 11. Right to Inspect Property. The Property Owner hereby grants the Agent, its agents and representatives the right to enter at any reasonable time, upon reasonable notice, to inspect the Improvements. The Property Owner further hereby grants the Agent, its agents and representatives the right to examine and copy any documentation relating to the Improvements.

Section 12. Carbon Credits. The Property Owner hereby agrees that any carbon credits attributable to the Improvements shall be owned by the Agent.

Section 13. HERO Application. The Property Owner hereby represents and warrants to the Agent that the information set forth in the California HERO Program Application submitted to the Agent in connection with its request for financing is true and correct as of the date hereof, and that the representations set forth in the California HERO Program Application with respect to the Property and the Property Owner are true and correct as of the date hereof as if made on the date hereof.

Section 14. Amendment. Except as set forth in Section 5(b), this Contract may be modified only by the written agreement of the Agent and the Property Owner.

Section 15. Binding Effect; Assignment. This Contract inures to the benefit of and is binding upon the Agent, the Property Owner and their respective successors and assigns. The Agent has the right to assign any or all of its rights and obligations under this Contract without the consent of the Property Owner. The obligation to pay the Assessment set forth in this Contract is an obligation of the Property and no agreement or action of the Property Owner will be competent to impair in any way the Agent's rights, including, but not limited to, the right to pursue judicial foreclosure of the Assessment lien or the right to enforce the collection of the Assessment or any installment thereof against the Property.

Section 16. Exhibits. The Exhibits to this Contract are incorporated into this Contract by this reference as if set forth in their entirety in this Contract.

Section 17. Severability. If any provision of this Contract is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision of this Contract.

Section 18. Corrective Instruments. The Agent and the Property Owner agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required in order to carry out the expressed intention of this Contract.

Section 19. Governing Law: Venue. This Contract is governed by and construed in accordance with the laws of the State of California. Any legal action brought under this Contract must be instituted in the Superior Court of the County of _____, State of California; provided, however, actions to foreclose delinquent installments of the Assessment will be instituted in the superior court of the County or as otherwise provided by law.

Section 20. Counterparts. This Contract may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Section 21. Contract Documents. Property Owner understands and acknowledges that the entire agreement between Property Owner and Agent includes each and every document specified in the List of Documents contained in Exhibit B to this Contract (together, the "Contract Documents").

By executing this Contract Property Owner acknowledges and agrees that:

a. Property Owner has had sufficient time to review and has reviewed each of the Contract Documents and has had the opportunity to ask any questions to the Agent that Property Owner may have regarding such Contract Documents.

b. Property Owner has reviewed, understands and agrees to each and every additional requirement and term contained in Appendix B to the HERO Residential Program Handbook (the "Handbook").

c. Property Owner has reviewed, understands, agrees to and affirms each and every representation and warranty contained in the Property Owners application and the Handbook.

IN WITNESS WHEREOF, the Agent and the Property Owner have caused this Contract to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

| | | | |
|-------------------------------------------------------------------------------------------------------|-------------|------------------------------------|-------------|
| IN WITNESS WHEREOF , Owner and Agent have entered into this Contract as of the Effective Date. | | | |
| Owner 1: | | Owner 2: | |
| [OWNER 1 NAME] | | [OWNER 2 NAME] | |
| <i>Owner 1 Name (Please Print)</i> | | <i>Owner 2 Name (Please Print)</i> | |
| By: | | By: | |
| <i>Owner 1 Signature</i> | | <i>Owner 2 Signature</i> | |
| Date of Execution by Owner 1: | | Date of Execution by Owner 2: | |
| , 20 | | , 20 | |
| <i>Date</i> | <i>Year</i> | <i>Date</i> | <i>Year</i> |

| |
|-------------------------------------------------------------|
| Agent: Executive Director and/or his or her designee |
| <i>Name (Please Print)</i> |
| By: |
| <i>Agent Signature</i> |
| Date of Execution by Agent: |

EXHIBIT A

DESCRIPTION OF PROPERTY, DESCRIPTION OF THE PRODUCTS, AND NOTICE INFORMATION,

Description of Property:

Owner(s) Name(s):

Property Address:

APN:

Participating Member Agency:

Description of Products:

The Products include the following:

[List of Products]

Or similar energy efficient product which is allowed under the Program Guide.

Notice Information:

EXHIBIT B**LIST OF CONTRACT DOCUMENTS, DISBURSEMENT, AND
SCHEDULE OF ANNUAL ASSESSMENT INSTALLMENTS, INCLUDING PRINCIPAL,
INTEREST AND ANNUAL ASSESSMENT ADMINISTRATIVE FEE****List of Contract Documents:**

The Contract shall consist of the following documents:

- This Contract and the exhibits hereto;
- The Application;
- The Completion Certificate;
- The Assessment Cost and Payment Summary;
- The Notice of Assessment;
- The Payment of Contractual Assessment Required;
- The California HERO Residential Program Handbook;
- The California HERO Program website located at www.wrcog.cog.ca.us.

Disbursement:

The Maximum Disbursement Amount is \$_____.

The Estimated Disbursement Date will be no later than _____, which date is used in the table below.

Schedule of Estimated Maximum Annual Assessment Installments:

The schedule of the estimated maximum Annual Assessment Installments is based on the following assumptions:

1. The Agent disburses the Maximum Disbursement Amount to Owner.
2. Interest totaling a maximum of \$_____ will accumulate until your first Payment. That amount will be added to Owner's Maximum Disbursement Amount.
3. The Agent disburses to Owner on the Estimated Disbursement Date.
4. The Assessment Interest Rate is _____%
5. The Annual Percentage Rate (APR) of your assessment is _____%. APR is the Effective Cost of Credit in consumer loans and real estate loans expressed as a percentage interest rate. The annual percentage rate is the interest rate the borrower actually pays, including fees required in order to participate in the program.
6. The total administrative fees, recording fees and annual assessment added to your assessment is \$_____



| Tax Year (commencing July 1) | Principal (a) | Interest (b) | Administrative Expenses (c) | Total (a) + (b) + (c) |
|------------------------------------|---------------|--------------|--------------------------------|-----------------------|
| 20__ - 20__ * | | | | |
| 20__ - 20__ | | | | |
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| 20__ - 20__ | | | | |
| 20__ - 20__ | | | | |
| 20__ - 20__ | | | | |

*Initial Tax Year

FOLLOWING THE DISBURSEMENT OF THE DISBURSEMENT AMOUNT, THE PROGRAM ADMINISTRATOR WILL ADJUST THE ASSESSMENT AND THE ESTIMATED MAXIMUM ANNUAL ASSESSMENT INSTALLMENTS, IF NECESSARY, TO REFLECT THE ACTUAL ASSESSMENT BASED UPON THE ACTUAL DISBURSEMENT AMOUNT, THE ACTUAL DATE OF DISBURSEMENT AND THE ACTUAL AMOUNT OF INTEREST DUE AND PAYABLE BEFORE THE FIRST PAYMENT ADDED TO THE DISBURSEMENT AMOUNT. THE ACTUAL AMOUNT OF THE ASSESSMENT AND SCHEDULE OF ANNUAL ASSESSMENT INSTALLMENTS SHALL BE SPECIFIED IN THE "PAYMENT OF CONTRACTUAL ASSESSMENT REQUIRED" TO BE RECORDED BY THE AUTHORITY IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF _____.

Prepayment :

You have a right to pay off your assessment lien amount in full, or in part in increments of \$5,000 at any time pursuant to Section 11 of the Assessment Contract. However, if you do so, you will have to pay (i) the principal amount of the assessment to be prepaid (the "Assessment Prepayment Amount"), (ii) a prepayment premium if you prepay within the first five years from the Effective Date (if you prepay after the first five years, there is no prepayment premium), see table below, (iii) interest on the Assessment Prepayment Amount to the earlier of March 2 or September 2 occurring at least 90 days following the date of the prepayment is made, and (vi) a processing fee (not to exceed \$500).

The prepayment premium shall be the percentage of the principal amount of the Assessment to be prepaid as follows:

| Next Bond Interest Payment Date | Prepayment Premium |
|-----------------------------------------------------------|--------------------|
| September 2, ____ or March 2, ____ | 5% |
| September 2, ____ or March 2, ____ | 4% |
| September 2, ____ or March 2, ____ | 3% |
| September 2, ____ or March 2, ____ | 3% |
| September 2, ____ or March 2, ____ | 3% |
| September 2, ____ or any interest payment date thereafter | 0% |

CALIFORNIA HERO PROGRAM
ASSESSMENT CONTRACT
(Commercial Property)

This Assessment Contract (“Contract”) is made and entered into as of the Effective Date (defined below) by and between the Western Riverside Council of Governments, California, (“Agent”), a joint exercise of powers authority, and **[OWNER(S)]** (“Owner”), the record owner of fee title to the real property identified in the “Description of Property” section of Exhibit A attached hereto and incorporated herein by this reference (the “Property”). The “Effective Date” is defined as the last date entered with the signatures of the parties below.

RECITALS

- A. The Western Riverside Council of Governments (Agent) is a joint exercise of powers authority the members of which include the County of Riverside (the “County”) and numerous cities located in the County (each, a “Member Agency”).
- B. Agent has established the “California HERO Program” (the “Program”) pursuant to Chapter 29 of Division 7 of the Streets & Highways Code of the State of California (“Chapter 29”) to allow for the financing of certain renewable energy, energy efficiency and water efficiency and electric vehicle charging infrastructure improvement products that are permanently affixed to real property (“Eligible Products”).
- C. Pursuant to Chapter 29 and the Program, Agent may levy voluntary contractual assessments against developed properties in the jurisdictions of the Associate Members that have authorized Agent to implement and administer the Program within such Associate Members, with the free and willing consent of the owners of the properties on which such assessments are levied, to finance the acquisition and construction on and/or installation in the assessed properties of certain qualifying renewable energy, energy efficiency and/or water efficiency products or electric vehicle charging infrastructure. The purpose and method of administration of the assessments under the Program are described in the California HERO Program Report originally adopted by the Agent Board of Directors on June 3, 2013, as such report has been and may be amended from time to time (the “Program Report”) prior to the Effective Date of this Contract.
- D. The Property is located within the jurisdiction of the Associate Member set forth in the “Description of Property” section of Exhibit A hereto and such Associate Member has consented to (i) owners of property within its jurisdiction participating in the Program and (ii) Agent conducting the assessment proceedings under Chapter 29 and issuing bonds pursuant to the Program to finance Eligible Products.
- E. Owner has submitted an application and funding request to participate in the Program (collectively, the “Application”). Agent has approved the Application pursuant to the requirements of the Report. The Application describes, among other things, the particular Eligible Products that have been acquired, constructed on and/or installed in the Property and are to be financed pursuant to the Program. In this Contract, such Eligible Products, together with their acquisition, construction and/or installation on the Property, are referred to as “the Products.”
- F. Owner will acquire and construct and/or install the Products on or in the Property or will cause the acquisition and construction and/or installation of the Products on or in the Property and Owner will obtain all necessary permits and/or inspections required pursuant to this Contract and the Program necessary to enable Agent to finance the Products.
- G. Pursuant to Chapter 29 and the Program, Agent and Owner wish to enter into a contract pursuant to which Owner agrees to pay a voluntary contractual assessment in order to finance the Products including the acquisition, construction and/or installation of thereof and Agent agrees to providing financing for such purpose, all on the terms set forth in this Contract.

NOW THEREFORE, in consideration of the foregoing and the mutual material covenants contained herein and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, Owner and Agent formally covenant and agree as follows:

CONTRACT

- 1) **Purpose** The Owner and Agent are entering into this Contract for the purpose of financing the acquisition, construction and/or installation of the Products identified in Exhibit A in or on the Property.
- 2) **The Property** This Contract relates to the Property identified in Exhibit A.
- 3) **Contract Documents** This Contract shall consist of the documents listed in Exhibit B attached hereto and incorporated herein by this reference.

All such documents shall be collectively referred to herein as the "Contract Documents." All of the declarations and warranties of Owner made in the Application are incorporated in this Contract as if fully set forth herein. Owner acknowledges that Owner has received copies of each of the Contract Documents.

OWNER AGREES AND UNDERSTANDS THAT OWNER MUST EXECUTE AND RETURN THIS CONTRACT SO THAT SUCH CONTRACT IS RECEIVED BY Agent OR ITS REPRESENTATIVE ON OR BEFORE THE DEADLINE DATE SET FORTH ON THE SIGNATURE PAGE HEREOF AND THAT ALL SIGNATURES MUST BE NOTARIZED BY A DULY LICENSED NOTARY PUBLIC.

- 4) **Contract Term** The term of this Contract shall be until the Assessment defined below and all accrued interest thereon, together with any applicable penalties, costs, fees, and other charges have been paid in full.
- 5) **Assessment and Lien**
 - a) Owner agrees that upon the execution of this Contract by the parties, the Property is subject to a voluntary contractual assessment levied against the Property pursuant to this Contract, Chapter 29 and other applicable law (the "Assessment") together with interest, and consents to levy of the Assessment on and recordation of a lien against the Property. Upon execution of this Contract, Agent will execute and cause to be recorded in the office of the County Recorder of the County within which the Property is located (the "County") (i) a notice of assessment (the "Notice of Assessment") as required pursuant to Chapter 29, together with a copy of this Contract and (ii) a Payment of Contractual Assessment Required as required pursuant to Chapter 29.
 - b) The execution of this Contract by the parties constitutes the levy of the Assessment by Agent against the Property without any further action required by the parties.
 - c) Upon recordation of the Notice of Assessment in the office of the County Recorder, the Assessment and each installment, together with any interest and penalties that become due on the Assessment, shall constitute a lien upon the Property until paid. Initially, as reflected in the Notice of Assessment, upon recordation of the Notice of Assessment, the Assessment shall be equal to the Disbursement Amount, as defined in Section 6 below.
 - d) Failure to pay any installment of the Assessment or any interest thereon, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing on the amounts due. In addition, under those circumstances, Agent has the right to judicially foreclose the lien of the Assessment, as set forth in paragraph 8(g) below.

- 6) **Disbursement Amount** Agent agrees to disburse monies to or on behalf of Owner pursuant to the terms of this Contract in the amount set forth in Exhibit B attached hereto and incorporated herein by this reference (“Disbursement Amount”). In the event the actual cost of the Products exceeds the Disbursement Amount, Owner shall be solely responsible for the payment of all such costs.
- 7) **Special Benefit to Property** Owner expressly acknowledges that the Products confer a special benefit to the Property in an amount at least equal to the Assessment.
- 8) **Collection of Assessment and Annual Assessment Administrative Fee on Property Tax Bill; Other Remedies**

- a) The annual portion of the principal amount of the Assessment, together with the annual interest on the Assessment and the Annual Assessment Administrative Fee (defined in paragraph f) below) (collectively, the “Annual Assessment Installment”), due and payable each Tax Year (each such Tax Year being the period from July 1st through the following June 30th), shall be collected on the property tax bill pertaining to the Property. The Annual Assessment Installment coming due in any Tax Year shall be payable in the same manner and at the same time and in the same installments as the general taxes of the County on real property are payable, and the Annual Assessment Installments shall be payable and become delinquent at the same times and in the same proportionate amounts and shall bear the same penalties and interest after delinquency, and be subject to the same provisions for redemption and sale, as the general taxes on real property of the County.
- b) Following disbursement of the Disbursement Amount to the Owner, the Annual Assessment Installments shall be placed on the tax roll each Tax Year, commencing with the Tax Year beginning immediately following the date of such disbursement (the “Disbursement Date”). The estimated initial Tax Year is set forth in Exhibit B attached and incorporated by this reference (the “Estimated Initial Tax Year”).

The amount of interest accrued on the Assessment from the Disbursement Date through September 1st of the Initial Tax Year (“Capitalized Interest”) has been included in the Disbursement Amount and is therefore included in the principal amount of the Assessment.

- c) Interest shall accrue on the unpaid Assessment from the Disbursement Date at a simple interest rate fixed by Agent and set forth on Exhibit B attached hereto and incorporated herein by this reference. Interest shall be computed on the basis of a three hundred sixty (360) day year. If a court of competent jurisdiction determines the interest or other charges provided for herein in connection with the Assessment or the Annual Assessment Administrative Fee exceed the limits permitted by applicable law, then: (i) any such interest or charge shall be reduced by the amount necessary to reduce the interest or charge to such permitted limit; and (ii) any sums already collected which exceed such permitted limit will be refunded by Agent. Agent may make the refund by making a direct payment to Owner or by crediting the refund amount against the next installment or installments of the Assessment.
- d) The Estimated Maximum Annual Assessment Installments that may be placed on the tax roll each Tax Year are set forth in Exhibit B. The amounts set forth on Exhibit B are based on the assumption that Agent disburses the Disbursement Amount to or on behalf of Owner on the Estimated Disbursement Date set forth in Exhibit B. Prior to the disbursement of the Disbursement Amount, Agent will adjust the Annual Assessment Installments to reflect the actual Assessment based upon the Disbursement Amount, the actual date of such disbursement and the actual amount of Capitalized Interest.
- e) The lien of the Assessment shall be co-equal to and independent of the lien for general taxes, and, pursuant to Government Code Section 53936, not subject to extinguishment by the sale of the Property on account of the nonpayment of any taxes, and prior and superior to all liens, claims and encumbrances on or against the Property except (i) the lien for general taxes, special taxes or ad valorem assessments in the nature of and collected as taxes levied by the State of California or any county, city, special district

or other local agency, (ii) the lien of any special assessment or assessments the lien date of which is prior in time to the lien date of the Assessment, (iii) easements constituting servitudes upon or burdens to the Property, (iv) water rights, the record title to which is held separately from the title to the Property, and (v) restrictions of record.

- f) In addition to the Assessment, until the Assessment and the interest thereon is paid in full, Owner agrees that the Property is subject to an annual administrative fee to be included in the Annual Assessment Installment pursuant to this Contract, Chapter 29 and applicable law to pay costs incurred by Agent which result from the administration and collection of the Assessment and from the administration or registration of any associated bonds or other financing arrangement, as described in the Report, and from the administration of any reserve fund and other related funds (the "Annual Assessment Administrative Fee"). The maximum Annual Assessment Administrative Fee shall not exceed fifty dollars (\$50.00) in Tax Year commencing on July 1, 2015 and shall thereafter be adjusted annually commencing on July 1 of each subsequent Tax Year for cost of living based on the U.S. Department of Labor, Bureau of Labor Statistics, and Consumer Price Index for all urban consumers for applicable to the County of Riverside. Agent shall annually determine the amount of the Annual Assessment Administrative Fee, not to exceed the maximum Annual Assessment Administrative Fee determined in accordance with the preceding sentence.
- g) Owner acknowledges and understands that, no later than October 1 of each year, Agent will determine whether the Property is delinquent in the payment of any Assessment Installments and, if so, will notify Agent Counsel of any such delinquencies. Agent Counsel will commence, or cause to be commenced, judicial foreclosure proceedings against the Property, including collection actions preparatory to the filing of any complaint, but will file the complaint not later than December 1 of such year. Failure of such a complaint to be filed by such December 1 shall not, however, invalidate any judicial foreclosure proceedings commenced after such date.

9) Use of Proceeds Owner shall use the Disbursement Amount for the sole purpose of paying for the reasonable costs and expenses of the Products on the Property, for the Program fees, and capitalized interest.

10) Disbursement Procedures

- a) Notwithstanding anything to the contrary contained herein, Agent shall have no obligation to disburse funds to Owner unless and until each of the following conditions is satisfied, or any such condition is expressly waived by Agent:
- i) Owner has, as appropriate, executed and delivered to Agent the Contract Documents and such other documents or instruments pertaining to the Disbursement Amount or the Products as Agent may require.
 - ii) As of the Disbursement Date, Agent shall have determined that the representations of Owner contained in the Contract Documents are true and correct, and no Default (as defined in Section 18 below) shall have occurred and be continuing.
 - iii) No stop payment or mechanic's lien notice pertaining to the Products has been filed and remains in effect as of the Disbursement Date.
 - iv) Owner will, within fifteen (15) days of presentation by Agent or the representative thereof, execute any and all documents or instruments required by the Contract Documents in connection with the disbursement of funds to Owner, other than this Contract, which must be executed by the date set forth on the Signature Page below.

- b) Upon satisfaction or waiver of the conditions described in paragraph (a), above, Agent will disburse funds to or on behalf of the Owner.

11) Prepayment of Assessment Owner may prepay the remaining balance of the Assessment by paying the principal amount or a portion of the Assessment in increments of \$5,000 owing on the Assessment, plus the applicable prepayment premium, if any, calculated on the principal amount of the Assessment to be prepaid, processing fee and accrued interest determined by Agent in accordance with this Contract and the Report, and the amount of any delinquent installments of principal of and interest on the Assessment, together with penalties accrued to the date of prepayment. The processing fee and schedule of prepayment premiums is set forth in Exhibit B hereto.

Interest on the Assessment shall accrue until the next available redemption date for any bond or bonds issued pursuant to a financing relationship contemplated by the Report and which bond or bonds are secured by the Assessment. Such redemption date shall not exceed 180 days from the date of prepayment of the Assessment. Owner shall notify Agent in writing of Owner's determination to prepay the Assessment at least ten (10) business days prior to the date Owner intends to prepay the Assessment.

12) Representations and Warranties of Owner Owner promises that each representation and warranty set forth below is true, accurate and complete as of the date of this Contract. By accepting the Disbursement Amount, Owner shall be deemed to have reaffirmed each and every representation and warranty made by Owner in this Contract and in the Application, as of the date of disbursement. If Owner is comprised of the trustees of a trust, the following representations shall also pertain to the trustor(s) of the trust.

- a) Formation: If Owner is anything other than a natural person, it has complied with all laws and regulations concerning its organization, existence and the transaction of its business, and is in good standing in each state in which it conducts its business.
- b) Authority: Owner is the owner of the Property and is authorized to execute, deliver and perform its obligations under the Contract Documents, and all other documents and instruments delivered by Owner to Agent in connection therewith. The Contract Documents have, if required, been duly executed and delivered by Owner and are valid and binding upon and enforceable against Owner in accordance with their terms, and no consent or approval of any third party, which has not been previously obtained by Owner, is required for Owner's execution thereof or the performance of its obligations contained therein.
- c) Compliance with Law: Neither Owner nor the Property is in violation of, and the terms nor provisions of the Contract Documents conflict with, any regulation or ordinance, any order of any court or governmental entity, or any building restrictions or governmental requirements affecting the Property.
- d) No Violation: The terms and provisions of the Contract Documents, the execution and delivery of the Contract Documents by Owner, and the performance by Owner of its obligations contained in the Contract, will not and do not conflict with or result in a breach of or a default under any of the terms or provisions of any other agreement, contract, covenant or security instrument by which Owner or the Property is bound.
- e) Other Information: All reports, documents, instruments, information and forms of evidence which have been delivered to Agent related to Owner's application for the Program funding are accurate, correct and sufficiently complete to give Agent true and accurate knowledge of their subject matter.
- f) Lawsuits: There are no lawsuits, tax claims, actions, proceedings, investigations or other disputes pending or threatened against Owner or the Property which may impair Owner's ability to perform its obligations hereunder, or which may impair Agent's ability to levy and collect the Assessment and Annual Assessment Installments.

- g) No Event of Default: There is no event which is, or with notice or lapse of time or both would be, a Default under this Contract.
- h) Accuracy of Declarations: The declarations of Owner contained in the Application are accurate, complete and true.

13) Owner's Covenants Owner promises:

- a) Installation and Maintenance of Products: Owner shall cause its contractor(s) to install the Products, in a good and workmanlike manner and in accordance with sound construction and installation practices. Owner shall maintain the Products in good condition and repair.
- b) Compliance with Law and Agreements: Owner shall complete all Products, or cause the Products to be completed, in conformity with all applicable laws, including all applicable federal, state, and local occupation, safety and health laws, rules, regulations, standards, and recorded instruments, covenants or agreements affecting the Property. Owner shall comply with and keep in effect all permits, licenses, and approvals required to complete installation of the Products.
- c) Site Visits: Owner grants Agent, its agents and representatives the right to enter and visit the Property at any reasonable time, after giving reasonable notice to Owner, for the purposes of observing the Products. Agent will make reasonable efforts during any site visit to avoid interfering with Owner's use of the Property. Owner shall also allow Agent to examine and copy records and other documents of Owner which relate to the Products. Any site visit, observation or examination by Agent shall be solely for the purposes of protecting Agent's rights under the Contract Documents.
- d) Protection Against Lien Claims: Owner shall promptly pay or otherwise discharge any claims and liens for labor done and materials and services furnished to the Property in connection with the Products. Owner shall have the right to contest in good faith any claim or lien, provided that it does so diligently and without delay in completing the Products.
- e) Notice to Successors in Interest: Owner agrees to provide written notice to any subsequent purchaser of the Property that the Property is subject to a Program assessment lien, and to provide any subsequent purchaser a copy of this Contract.
- f) Insurance: If the Disbursement Amount exceeds \$50,000, Owner shall provide, maintain and keep in force at all times until the Products are completed, builder's all risk property damage insurance on the Property, with a policy limit equal to the amount of the Disbursement Amount.
- g) Notices: Owner shall promptly notify Agent in writing of any Default under this Contract, or any event which, with notice or lapse of time or both, would constitute a Default hereunder.

14) Mechanic's Lien and Stop Notices In the event of the filing of a stop notice or the recording of a mechanic's lien pursuant to applicable law of the State of California and relating to the Products, Agent may summarily refuse to disburse any funds to Owner, and in the event Owner fails to furnish Agent a bond causing such notice or lien to be released within ten (10) days of notice from Agent to do so, such failure shall at the option of Agent constitute a Default under the terms of this Contract. Owner shall promptly deliver to Agent copies of all such notices or liens.

15) Owner Responsibility; Indemnification

- a) Owner acknowledges that Agent has established the Program solely for the purpose of assisting the owners of property in the Agent subregion with the financing of the acquisition, construction, and installation of Eligible Products. The Program is a financing program only. Neither Agent, its officials,

agents, employees, attorneys and representatives, are responsible for selection, management or supervision of the Products or of the Products' performance. Owner acknowledges and understands that any issues related to performance of the Products should be discussed with chosen contractors or installers, and the manufacturer or distributor of the Products.

- b) To the extent permitted by law, Owner shall indemnify, defend, protect, and hold harmless Agent and any and all officials, agents, employees, attorneys and representatives of Agent, the purchasers of any bonds issued to finance the installation of the Products from and against all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorneys' fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with, (i) the Contract Documents, (ii) disbursement of the Disbursement Amount, (iii) the Products, (iv) any breach or Default by Owner under the Contract Documents, (v) the levy and collection of the Assessment and the Annual Assessment Administrative Fee, (vi) the imposition of the lien of the Assessment, and (vii) any other fact, circumstance or event related to Agent's extension and payment of the Disbursement Amount to or on behalf of Owner or Owner's performance of its obligations under the Contract Documents (collectively, the "Liabilities"), regardless of whether such Liabilities shall accrue or are discovered before or after the Disbursement. If the Property is located in an incorporated area, this indemnity shall extend to officials, agents, employees, attorneys and representatives of the city in which the Property is located. If the Property is located in an unincorporated area, this indemnity shall extend to officials, agents, employees, attorneys and representatives of the County. This indemnity shall also extend to the purchasers of any bonds issued to finance the installation of the Products and such purchasers' officials, agents, employees, attorneys and representatives. Each of the parties to which the indemnifications provided for in this paragraph b) extend shall be referred to as the "Indemnified Parties."
- c) The indemnity obligations described in this Section shall survive the disbursement of funds to Owner, the payment of the Assessment in full, the transfer or sale of the Property by Owner, and the termination of this Contract.

16) Waivers, including Waiver of Claims

- a) Because this Contract reflects Owner's free and willing consent to enter into this Contract and to pay the Assessment and the Annual Administrative Assessment Fee, Owner hereby waives any otherwise applicable requirements for or right to the preparation of an engineer's report, notice of public hearing, public hearing, protest or opportunity to submit an assessment ballot in support of or in opposition to the Assessment pursuant to Article XIID of the California Constitution, the Proposition 218 Omnibus Implementation Act (commencing at California Government Code Section 53750) and any other provision of California law.

Owner agrees and acknowledges that the Assessment is not a "tax" as used in Section 1(e) of Article XIIC of the California Constitution and that if such Assessment is a levy, charge, or exaction of any kind by Agent, it is a charge imposed for a specific benefit conferred or privilege granted to Owner that is not provided to those not charged, and which does not exceed the reasonable costs to Agent of conferring the benefit or granting the privilege to Owner. Owner further knowing and voluntarily waives any otherwise applicable requirements for or rights granted under Article XIII A or XIIC pertaining to the Assessment.

Owner hereby waives Owner's right to repeal or reduce the Assessment by initiative or any other action, or to file any lawsuit or other proceeding, at law or in equity, to challenge the validity of the Assessment or the proceedings of Agent, or any portion thereof, undertaken in connection with the establishment of the Program.

- b) For and in consideration of Agent's execution and delivery of this Contract, Owner, for itself and for its successors-in-interest to the Property and for any one claiming by, through, or under Owner, hereby waives the right to recover from and fully and irrevocably releases the Indemnified Parties and each of them from any and all claims, obligations, liabilities, causes of action, or damages, including attorneys' fees and court costs, that Owner may now have or hereafter acquire against any of Indemnified Parties and accruing from or related to (i) the Contract Documents, (ii) the disbursement of the Disbursement Amount, (iii) the levy and collection of the Assessment and the Annual Assessment Administrative Fee, (iv) the imposition of the lien of the Assessment, (v) the issuance and sale of any bonds or other evidences of indebtedness, or other financial arrangements entered into by Agent pursuant to the Program, (vi) the performance of the Products, (vii) the Products, (viii) any damage to or diminution in value of the Property that may result from construction or installation of the Products, (ix) any personal injury or death that may result from the construction or installation of the Products, (x) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Products, (xi) the merchantability and fitness for any particular purpose, use or application of the Products, (xii) the amount of energy savings resulting from the Products and the Products, (xiii) the workmanship of any third parties, and (xiv) any other matter with respect to the Program. This release includes claims, obligations, liabilities, causes of action, and damages of which Owner is not presently aware or which Owner does not suspect to exist which, if known by Owner, would materially affect Owner's release of the Indemnified Parties.

OWNER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BY INITIALING BELOW, OWNER HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES. **Owner's Initials:** _____

The waivers and releases by Owner contained in this Section 16 shall survive the disbursement of the Disbursement Amount, the payment of the Assessment in full, the transfer or sale of the Property by Owner, and the termination of this Contract.

- 17) Further Assurances** Owner shall execute any further documents or instruments consistent with the terms of this Contract, including documents and instruments in recordable form, as Agent shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Contract and disbursing funds to Owner.

18) Events of Default

- a) Remedies with respect to the nonpayment of the Assessment or other amounts payable by Owner hereunder are governed by the provisions of Section 8 hereof and state law.
- b) The failure of any of Owner's representations or warranties to be correct in all material respects, or the failure or delay by Owner to perform any of its obligations under the terms or provisions of the Contract Documents, other than with respect to the payment of the Assessment, the Annual Assessment Administrative Fee, or other amount payable by Owner shall constitute a non monetary default hereunder

("Default"). Owner must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence, but in any event, within the time set forth in paragraph (c) below.

- c) If a Default occurs, prior to exercising any remedies under the Contract Documents or Chapter 29, Agent shall give Owner notice of such Default. If the Default is reasonably capable of being cured within thirty (30) days, Owner shall have such period to effect a cure prior to exercise of remedies by Agent under the Contract Documents or Chapter 29. If the Default is such that it is reasonably capable of being cured, but not within such thirty (30) day period, and Owner (i) initiates corrective action within such thirty (30) day period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then Owner shall have such additional time as is reasonably necessary to cure the Default prior to exercise of any remedies by Agent. However, in no event shall Agent be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a Default, or if the Default is not cured within one hundred and twenty (120) days after the first notice of Default is given.
- d) Subject to the provisions of paragraph (c), above, if any Default occurs Agent may exercise any or all of the rights and remedies available to it under applicable law, at equity, or as otherwise provided herein. Upon the election of Agent, if there has been no Disbursement, this Contract shall terminate and, except as otherwise expressly provided herein, the parties shall have no further obligations or rights hereunder.
- e) Except as provided in Section 22, any and all costs and expenses incurred by Agent in pursuing its remedies hereunder shall be additional indebtedness of Owner to Agent.
- f) Except as otherwise expressly stated in this Contract or as otherwise provided by applicable law, the rights and remedies of Agent are cumulative, and the exercise of one or more of such rights or remedies shall not preclude the exercise by Agent, at the same time or different times, of any other rights or remedies for the same Default or any other Default. No failure or delay by Agent in asserting any of its rights and remedies as to any Default shall operate as a waiver of any Default or of any such rights or remedies, or deprive Agent of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
- g) Performance of the covenants and conditions imposed upon Owner hereunder with respect to the commencement and completion of the Products shall be excused while and to the extent that, Owner, through no fault or negligence of its own, is prevented from complying therewith by war, riots, strikes, lockouts, action of the elements, accidents, or acts of God beyond the reasonable control of Owner; provided, however, that as soon as the cause or event preventing compliance is removed or ceases to exist the obligations shall be restored to full force and effect and Owner shall immediately resume installation of the Products.

19) Severability Each and every provision of this Contract is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Contract or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and shall be enforced to the extent permitted by law.

20) Notices All notices and demands shall be given in writing by first class mail, postage prepaid, or by personal delivery (by recognized courier service or otherwise). Notices shall be considered given upon the earlier of (a) personal delivery or (b) two (2) business days following deposit in the United States mail, postage prepaid. Notices shall be addressed as provided in the "Notice Information" section of Exhibit A attached hereto and incorporated herein by this reference for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice.

Notwithstanding anything set forth above, after disbursement of the Disbursement Amount to Owner, all notices regarding the assessment shall be sent only as provided by state law.

- 21) Attorneys' Fees and Costs** In the event that any action is instituted to enforce payment or performance under this Contract, the parties agree that the non-prevailing party shall be responsible for and shall pay all costs and all attorneys' fees incurred by the prevailing party in enforcing this Contract.
- 22) No Waiver** No disbursement of the Disbursement Amount based upon inadequate or incorrect information shall constitute a waiver of the right of Agent to receive a refund thereof from Owner.
- 23) Governing Law** This Contract shall be governed by the substantive law of the State of California, regardless of any law of conflicts to the contrary in any jurisdiction. Any legal action brought under this Contract must be instituted in the Superior Court of the County of Riverside, State of California.
- 24) Assignment by Agent** Agent, at its option, may (i) assign any or all of its rights and obligations under this Contract, and (ii) pledge and assign its right to receive the Assessment and the Annual Assessment Administrative Fee, and any other payments due to Agent hereunder, without obtaining the consent of Owner.
- 25) Owner Assignment Prohibited** In no event shall Owner assign or transfer any portion of this Contract or Owner's obligations under the Contract without the prior express written consent of Agent, which consent may be granted or withheld in the sole and absolute discretion of the Agent. Sale, transfer, or rental of the Property is not an assignment or transfer of this Contract.
- 26) Carbon Credits** Owner agrees that any carbon credits or renewable energy credits attributable to the Products shall be owned by Agent (on behalf of the Program).
- 27) Entire Agreement; Counterparts; Amendment** This Contract, together with the other Contract Documents, is the entire agreement between the parties. Any other agreement related to the Products, and any amendment to this Contract, must be signed in writing by both parties. If there is more than one "Owner," the obligations hereunder of all Owners shall be joint and several.
- This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.
- 28) Further Documents** Agent and Owner agree that they shall sign, deliver and if appropriate record any additional documents necessary to effectuate the purposes of this Contract. Upon expiration or termination of this Contract, Agent and Owner agree to shall sign and record any document reasonably necessary to cancel this Contract from the public records as to the Property.
- 29) Special Termination** Notwithstanding anything to the contrary contained herein, this Contract shall terminate and be of no further force or effect if Owner has submitted to Agent a notice of its decision to cancel this transaction on or prior to the date and time described in the Notice of Right to Cancel which was delivered to Owner upon its execution of this Contract.
- 30) No Third Party Beneficiary Rights** This Contract is entered into for the sole benefit of Owner and Agent and, subject to the provisions of Sections 13, 14, 15, and 25, no other parties are intended to be direct or incidental beneficiaries of this Contract and no third party shall have any right in, under or to this Contract.
- 31) Contract Date** The date on which Agent or its representative sends this Contract to the Owner or Owners for execution shall be referred to herein as the "Contract Date."

32) Recordation of Contract Agent may file this Contract for recordation with the County Recorder of the County either as a separate instrument or as a part of the Notice of Assessment within ten (10) days after the last day entered with the signatures below.

Owner(s) must execute and return this Contract to Agent at the address set forth in the “Notice Information” section of Exhibit A hereto so that it is received by Agent not later than _____, 20__. All signatures of the Owner(s) must be notarized by a duly licensed notary.

| | | | |
|-------------------------------------------------------------------------------------------------------|-------------|----------------------------------------------|-------------|
| IN WITNESS WHEREOF , Owner and Agent have entered into this Contract as of the Effective Date. | | | |
| Owner 1: | | Owner 2: | |
| [OWNER 1 NAME] | | [OWNER 2 NAME] | |
| <i>Owner 1 Name (Please Print)</i> | | <i>Owner 2 Name (Please Print)</i> | |
| By: | | By: | |
| <i>Owner 1 Signature (Must be Notarized)</i> | | <i>Owner 2 Signature (Must be Notarized)</i> | |
| Date of Execution by Owner 1: | | Date of Execution by Owner 2: | |
| , 20 | | , 20 | |
| <i>Date</i> | <i>Year</i> | <i>Date</i> | <i>Year</i> |

| |
|-------------------------------------------------------------|
| Agent: Executive Director and/or his or her designee |
| |
| <i>Name (Please Print)</i> |
| By: |
| <i>Agent Signature (Must be Notarized)</i> |
| Date of Execution by Agent: |

EXHIBIT A

DESCRIPTION OF PROPERTY, DESCRIPTION OF THE PRODUCTS, AND NOTICE INFORMATION,

Description of Property:

Owner(s) Name(s):

Property Address:

APN:

Associate Member:

Legal Description:

Description of Products:

The Products include the following:

Notice Information:

EXHIBIT B
LIST OF CONTRACT DOCUMENTS, DISBURSEMENT, AND
SCHEDULE OF ANNUAL ASSESSMENT INSTALLMENTS, INCLUDING PRINCIPAL,
INTEREST AND ANNUAL ASSESSMENT ADMINISTRATIVE FEE

List of Contract Documents:¹

The Contract shall consist of the following documents:

- This Contract and the exhibits hereto;
- The Application;
- The Funding Request;
- The Assessment Cost and Payment Summary;
- The Notice of Assessment;
- The Payment of Contractual Assessment Required;
- The California HERO Program Report and the Commercial HERO Program Handbook; and
- California HERO Program website located at www.wrcog.cog.ca.us.

Disbursement:

The Maximum Disbursement Amount is \$_____.

The Estimated Disbursement Date will be no later than \$_____.

Schedule of Estimated Maximum Annual Assessment Installments:

The schedule of the estimated maximum Annual Assessment Installments is based upon the following assumptions:

1. Agent disburses the Maximum Disbursement Amount to Owner.
2. Accumulated costs of funds until Owner's first payment of \$_____ will be added to Owner's Disbursement Amount.
3. WRCOG disburses to Owner on the Estimated Disbursement Date. If the actual disbursement occurs prior to July 1, 20__, the Initial Tax Year shall be 20__-20__.
4. The Assessment Interest Rate is ____%.
5. The Annual Percentage Rate (APR) of Owner's assessment is ____%. If the interest due before Owner's first payment of \$_____ was paid in cash at disbursement, Owner's APR would be ____%. APR is the Effective Cost of Credit in consumer loans and real estate loans expressed as a percentage interest rate. The APR is the interest rate the borrower actually pays, including fees required in order to participate in the Program.
6. The total administrative fees and recording fees added to Owner's assessment is \$_____.

¹ The List of Contract Documents may vary depending upon the financing plan being used for a particular parcel. In any event the terms of the Assessment Contract entered into for a particular parcel will govern if there is any conflict between such Assessment Contract and Appendix C.

| Tax Year (commencing July 1) | Interest | Principal | Total Principal and Interest | Current Annual Assessment Administrative Fee | Total Annual Assessment Installment |
|------------------------------------|----------|-----------|------------------------------------|-------------------------------------------------------|-------------------------------------------|
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*The Estimated Initial Tax Year shown on preceding schedule is based upon the Estimated Disbursement Date. The actual Initial Tax Year will be based upon the actual Disbursement Date. Please see Section 8 b) and d) of the Assessment Contract.

Prepayment Fee and Prepayment Premium Schedule:

Processing Fee: The fee for processing the prepayment of the Assessment in whole or in part shall be \$_____.

Prepayment Premium: The prepayment premium applicable to the principal amount of the Assessment to be prepaid in whole or in part in increments of \$5,000 pursuant to Section 11 of the Assessment Contract shall be determined based upon the next interest payment date on the bond issued for the Assessment occurring not less than 90 days after the date of the prepayment (the "Next Bond Interest Payment Date"). The prepayment premium shall be the percentage of the principal amount of the Assessment to be prepaid as follows:

| Next Bond Interest Payment Date | Prepayment Premium |
|--------------------------------------|--------------------|
| September 2, _____ or March 2, _____ | 5% |

Appendix F

NOTICE OF ASSESSMENT

RECORDING REQUESTED BY &
WHEN RECORDED RETURN TO:

Western Riverside Council of Governments
4080 Lemon Street, 3rd Floor
Riverside, CA 92501

File No: _____

NOTICE OF ASSESSMENT

CALIFORNIA HERO PROGRAM
FOR _____ COUNTY
STATE OF CALIFORNIA

On _____, 201__, the Executive Committee of the Western Riverside Council of Governments ("WRCOG"), County of Riverside, State of California, adopted its Resolution No. ____ (the "Resolution") whereby the Executive Committee approved a report (the "Program Report") prepared by the Executive Director, in accordance with Section 5898.22 of Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code ("Chapter 29"), established the California HERO Program (the "Program") to be implemented as provided in the Program Report, confirmed that voluntary contractual assessments may be levied against parcels within the jurisdictions participating in the Program (the "Program Area") within the parameters of the Program Report to finance certain distributed generation renewable energy sources and/or energy efficiency improvements, including water efficiency improvements (the "Improvements").

Pursuant to the requirements of Sections 5898.32 of the Streets and Highways Code, the undersigned Secretary of the Executive Committee of WRCOG, at the direction of such Executive Committee, HEREBY GIVES NOTICE that pursuant to Chapter 29, the Resolution, and the Program Report, as initially approved and as amended to date, WRCOG and the record owner(s) (the "Record Owners") of the real property described on Exhibit "A" to this Notice, attached hereto and incorporated herein by reference (the "Property") have entered into an assessment contract with WRCOG (the "Assessment Contract"), a copy of which is contained in Exhibit "B" to this Notice, attached and incorporated herein by this reference. Pursuant to the Assessment Contract, WRCOG is making a disbursement in the principal amount of \$ _____ (the "Disbursement") to the Record Owners of the Property to finance the acquisition and installation and/or construction on the Property of the Improvements identified in the Assessment Contract. Pursuant to the Assessment Contract, the Record Owners agree that the Property is subject to an assessment levied against the Property pursuant to Chapter 29 in the principal amount of the Disbursement, as provided in the Assessment Contract, together with fees and interest thereon, for a total Assessment in the amount of \$ _____ (the "Assessment") as set forth in the payment schedule on Exhibit "___" to the Assessment Contract. In addition, so long as the Assessment is unpaid, the Record Owners agree that the Property is subject to an annual administrative assessment levied against the Property to pay costs

of WRCOG which result from the administration and collection of the Assessment and from the administration or registration of any associated bonds or other financing arrangement, as described in the Report, and from the administration of any reserve fund and other related funds (the "Annual Administrative Assessment"). The Annual Administrative Assessment shall not exceed \$ _____ per annum.

NOTICE IS FURTHER GIVEN that upon the recording of this notice in the office of the County Recorder, the Assessment shall become a lien upon the Property. In addition, the Annual Administrative Assessment shall become a lien upon the Property at the same time as property taxes upon the Property become a lien each year.

DATED: ____, 201__

Secretary to WRCOG Executive Committee
Western Riverside Council of Governments

Appendix G

PAYMENT OF CONTRACTUAL ASSESSMENT REQUIRED

RECORDING REQUESTED BY &
WHEN RECORDED RETURN TO:

Western Riverside Council of Governments
4080 Lemon St., 3rd Floor, MS 1032
Riverside, CA 92501-3609

File No: _____

PAYMENT OF CONTRACTUAL ASSESSMENT REQUIRED

Pursuant to the requirements of Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code, as amended, commencing with Section 5898.10 (the "Act"), including without limitation Section 5898.24(d) of the Act, and in furtherance of Section 1102.6b of the California Civil Code, Western Riverside Council of Governments ("WRCOG") hereby provides notice of the levy and collection by WRCOG of a contractual assessment under the California HERO Program (the "Program"), established and authorized pursuant to the Act. Pursuant to the Act and the Program, WRCOG and the current owner(s) described below (the "Owners") of the real property (the "Property") described herein have entered into that certain assessment contract entitled, "Assessment Contract," dated as of _____, 20__, by and between WRCOG and the Owners (the "Assessment Contract"). Pursuant to the Assessment Contract and the Act, the Owners have requested and voluntarily agreed to WRCOG's imposition of a contractual assessment against the Property (the "Contractual Assessment"), which is generally collected by the County of _____, on behalf of WRCOG, through the consolidated property tax bill.

Current Owner(s): _____.

Legal Description of Property and Assessor's Parcel Number: See Exhibit "A" attached hereto.
Annual Amount of Contractual Assessment: See Exhibit "B" attached hereto.

Expiration of the Contractual Assessment: The date upon which the Contractual Assessment and all accrued interest thereon, together with any applicable penalties, costs, fees and other charges, have been paid

Purpose for Which Funds Will Be Used: The funds from the Contractual Assessment to be paid to WRCOG or its designee and shall finance the acquisition and construction and/or installation on the Property of the renewable energy system(s), energy efficiency and/or water efficiency improvement(s) which are permanently affixed to the Property and identified in the Assessment Contract (the "Work").

Contact Information: More information regarding the Contractual Assessment may be obtained by contacting WRCOG at 4080 Lemon Street, 3rd Floor, Riverside, CA 92501, tel: (951) 955-7985.

Dated: _____, 20__ Program Administrator

SCHEDULE OF ASSESSMENT INSTALLMENTS, INTEREST THEREON, AND THE MAXIMUM ADMINISTRATIVE

| Tax Year | Interest | Principal | Total Loan Payment | Maximum Annual Administrative Assessment Expense | Total Maximum Contractual Assessment |
|-----------------|-----------------|------------------|---------------------------|---------------------------------------------------------|---------------------------------------------|
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COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: April 29, 2014
Staff Report #: 14-067

Agenda Item #: F-2

REGULAR BUSINESS: **Consider and Introduce Ordinances to Amend Chapter 16.79 (Secondary Dwelling Units), Section 16.68.030 Related to Accessory Buildings and Accessory Structures, and Associated Sections of Title 16 (Zoning) Pertaining to Secondary Dwelling Units and Accessory Structures and Accessory Buildings**

RECOMMENDATION

Staff recommends that the City Council complete its deliberation and introduce ordinances to amend the Zoning Ordinance pertaining to secondary dwelling units and accessory buildings and accessory structures. The proposed ordinances are included as Attachments A and B, respectively.

BACKGROUND

On April 1, 2014, the City Council conducted a public hearing to consider and take action on the Housing Element for the 2015-2023 planning period and associated Housing Element implementation programs. At that meeting, the City Council unanimously approved two resolutions to adopt the Housing Element and the associated Negative Declaration, which provided the environmental review for the Housing Element and several Zoning Ordinance amendments to implement the Housing Element. These resolutions became effective immediately.

In addition, the City Council introduced three ordinances for compliance with State law. These ordinances require a second reading for adoption, which has been scheduled as a consent calendar item also on the April 29 City Council agenda.

The City Council also received public comment and discussed the proposed Zoning Ordinance amendments related to secondary dwelling units and accessory buildings and accessory structures, but voted unanimously to continue the item for further discussion. The Analysis section contains additional information to address comments made by Council Members as well as identifies several key issues for consideration by the Council.

ANALYSIS

Secondary Dwelling Units

The proposed modifications to the secondary dwelling unit ordinance is derived from the previously adopted Housing Element Program H4.F (Undertake a Secondary Dwelling Unit Amnesty Program), the recently adopted Program H.4.E (Modify Secondary Dwelling Unit Development Standards and Permit Process) and the repurposed Program H4.F (Establish a Process and Standards to Allow the Conversion of Accessory Buildings and Structures to a Secondary Dwelling Unit). To implement these programs, the approach would be two-pronged; including modifications to the existing secondary dwelling unit ordinance to allow for the conversion of legally permitted and constructed accessory buildings (meeting certain criteria) into secondary dwelling units while simultaneously amending the accessory building/structure language to more clearly distinguish between accessory buildings and secondary dwelling units, and define how the buildings and structures could be located and used. The proposed changes to the accessory buildings and accessory structures ordinance is described in more detail below in the Accessory Buildings and Accessory Structures section.

The proposed amendments to the secondary dwelling unit ordinance include the following:

- Minimum Lot Area: Reduction in the minimum lot size from 6,000 square feet to 5,000 square feet, except for properties in the R-1-U (LM) zoning district which shall have a minimum lot area of 4,900 square feet;
- Minimum Yards: Clarification that the minimum interior side and rear setbacks contiguous with an alley is five feet;
- Unit Size: Allow an increase in the unit size from 640 square feet up to a maximum of 700 square feet when the unit provides complying disabled access requirements for a kitchen, bathroom and accessible routes;
- Height: Eliminate the nine-foot wall height limit and replace it with a new daylight plane requirement while maintaining the overall maximum height limit of 17 feet;
- Daylight Plane: Establish a new daylight plane requirement, beginning at nine feet, six inches above the average natural grade at a line three feet from the property line;
- Tenancy: Establish a registration process for temporary non-tenancy status and allow a use permit for longer or permanent non-tenancy status;
- Conversion of Accessory Buildings: Establish a one-year time limit to allow the conversion of legally permitted and constructed accessory buildings into secondary dwelling units through an administrative permit process; and
- Clarifications to the subdivision and parking sections.

For reference, Attachment C is a map of all the single-family zoned lots in the City by size. Attachment D compares the existing secondary dwelling unit development regulations and the proposed ordinance.

At the City Council meeting on April 1, 2014, a number of questions about the development regulations were raised. Staff has noted three pertinent issues, summarized in Attachment E that should be discussed as part of the Council's deliberations. The issues for Council's consideration are:

1. Should the minimum lot size for a secondary dwelling unit (without a use permit) be reduced from 6,000 square feet?
2. Should the tenancy requirement be modified to allow temporary non-tenancy status through a registration process, and if yes, should there be established criteria for evaluating the registration?
3. Should a provision be added to allow the City Council the flexibility to extend the conversion of accessory buildings to secondary dwelling units beyond the proposed one-year time limit?

In addition, the Council asked for clarification regarding the determination of grade for calculating the daylight plane and whether the daylight plane should be established at nine feet rather than the proposed nine feet, six inches. In the proposed ordinance, included as Attachment A, 'grade' (for the purpose of calculating daylight plane) has been clarified as 'average natural grade', meaning the average grade of the highest and lowest points of the natural grade of the portion of the lot directly below a line three feet from the side property lines. The starting point of the daylight plane would remain at nine feet, six inches with a 45 degree slope inwards. The proposed daylight plane is effectively a nine-foot wall height, similar to the current wall height regulation, with allowance for a six-inch roof structure. The proposed height and three-foot setback from the side property lines would create functional and feasible development while minimizing potential impacts to neighboring properties, and is based on guidance from the Housing Element Steering Committee, Planning Commission and members of the public. The proposed daylight plane also would provide greater flexibility and clarity in application, allowing the wall height to vary as building increases its setbacks.

Since the meeting of April 1, 2014, staff has revisited the proposed secondary dwelling unit ordinance and made modifications to address comments from the City Council, provide greater clarity for ease of use, and correct typos and other formatting and grammatical inconsistencies. The edits of substance are noted in underline and ~~strikeout~~ format for reference.

Accessory Buildings and Accessory Structures

The proposed modifications to the secondary dwelling unit ordinance are coupled with proposed modifications to the accessory buildings and structures ordinance in an effort to more clearly distinguish between the two. For reference, Attachment F provides a summary table of existing development regulations for both secondary dwelling units and accessory buildings/structures. Attachment B includes the proposed modifications to the accessory buildings and structures section of the Zoning Ordinance (Section 16.68.030). Similar to the secondary dwelling unit, staff has made edits to the

document for clarity and to address comments from the Council about how grade is determined for daylight plane. The purpose and intent of the Ordinance amendment remains unchanged. The modifications are intended to 1) more clearly define accessory buildings and accessory structures, 2) establish development regulations more aligned with the use of the building or structure, 3) resolve internal inconsistencies in how accessory buildings and structures is used in the Zoning Ordinance, and 4) reformat the section for ease of use. The proposed amendments to the accessory buildings and structures section would also require minor edits in other sections of the Zoning Ordinance for consistency. These changes are also noted in the draft Ordinance.

Of particular note, the proposed amendment includes establishing separate definitions for accessory buildings and accessory structures. An accessory building is a subordinate building, where the use is incidental to that of the main building and/or use of the land, and may contain areas for “living”, but shall not include areas for cooking or permanent sleeping. An accessory building cannot be used as a secondary dwelling unit. An accessory structure is also incidental to the main building and/or use of the land, but is open in nature such as a trellis or outdoor fireplace. An accessory structure does not contain living space. The proposed definition of accessory building includes differentiation between “living space” and non-living space, whereby a building with four or more plumbing fixtures would be regulated as “living space.” The Planning Commission recommended four fixtures to allow an accessory building to be able to include a full bath (sink, toilet, and shower), but any additional fixture such as a bar sink, would deem the building as “living space.” If a building is deemed to have “living space”, the building would need to meet increased minimum side and rear yard setbacks, similar to those of a secondary dwelling unit. However, to provide greater flexibility, the proposed Zoning Ordinance amendment would distinguish setbacks differently between accessory structures and accessory buildings, allowing accessory structures to be located anywhere on the property so long as the front and side setback requirements for the main building of the zoning district are met. In addition, the current requirement for a 10-foot separation between accessory building/structures and a dwelling unit would no longer be applicable to accessory structures, which would allow for greater flexibility and practicality for the placement of such structures on a lot. This requirement would remain for accessory buildings, unless attached to the dwelling.

For consistency between attached and detached garages, the proposed Zoning Ordinance amendment would require all entrances to covered parking (garage or carport) to maintain a 20-foot setback from the property line it faces. This is to help ensure that vehicles parking in a driveway would not obstruct a sidewalk and/or street. The one exception, as recommended by the Planning Commission at its March 10, 2014 meeting, would be a garage entrance facing an alley. Given the limited volume of cars and overall use of an alley, the Planning Commission believed that the existing setback requirement of five feet is appropriate.

Lastly, the proposed ordinance would establish a new daylight plane requirement and eliminate the nine-foot wall height requirement. The proposed change is intended to

provide greater flexibility in design and clarity in application, allowing the wall height to vary as building setbacks increase. The proposed change is similar to the proposed modifications to secondary dwelling units. The overall height of 14 feet would remain unchanged. As mentioned previously, the daylight plane would be measured from average natural grade, and this has been clarified in the draft ordinance.

Following the Council's deliberation on the topics related to secondary dwelling units and accessory buildings and accessory structures, a motion should be made to introduce the two ordinances.

Correspondence

Since the December 12, 2013 City Council meeting, staff has received 11 pieces of correspondence related to secondary dwelling units, which are included as Attachment G. The issues vary from tenancy to parking to floor area. The themes have been summarized in a question and answer format included in Attachment H.

IMPACT ON CITY RESOURCES

There is no direct impact on City resources associated with adoption of these ordinances. However, staff will be considering the appropriate fees for the tenancy registration process and for secondary dwelling units. The setting of the fees for these items is a policy discussion for the City Council to determine whether to pursue full cost recovery or not. The amounts of the fees are not part of the formal Zoning Ordinance amendments, but staff will be presenting the City Council with options for potential fee reductions or waivers.

POLICY ISSUES

The recommended action is consistent with the City Council's actions and approvals at its meeting of April 1, 2014 and would serve to implement programs of the adopted Housing Element.

ENVIRONMENTAL REVIEW

On April 1, 2014, the City Council considered and adopted the Negative Declaration prepared for the Housing Element and the associated implementation programs.

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting. In addition to the agenda posting, an email update was sent to subscribers of the project page for the proposal, which is available at the following address: <http://www.menlopark.org/athome>. The project page allows interested parties to subscribe to email updates, and provides up-to-date information about the project, as well as links to previous staff reports and other related documents.

ATTACHMENTS

- A. Draft Ordinance Pertaining to Secondary Dwelling Units
- B. Draft Ordinance Pertaining to Accessory Buildings and Structures
- C. Single-Family Zoned Lots 5,000 Square Feet or Greater Map
- D. Summary Table of Existing and Proposed Development Standards for Secondary Dwelling Units
- E. Summary of Items for Discussion Related to Secondary Dwelling Units
- F. Comparison Table of Existing Development Regulations Between Secondary Dwelling Units and Accessory Buildings/Structures
- G. Correspondence on Secondary Dwelling Units and Accessory Buildings and Structures Received Since December 12, 2013
 - Dr. David Fetterman, dated April 4, 2014
 - Jennifer Baran, 510 Laurel Avenue, dated received April 1, 2014
 - John Preyer, 1141 Berkeley Avenue, dated received March 31, 2014
 - Sharon Bennett, 344 Concord Drive, dated March 31, 2014
 - Anne Perlman, 5 Cathy Place, dated March 30, 2014
 - Belle Haven Neighborhood Association, dated March 28, 2014
 - Jeannette Holliday, 864 College Avenue, dated March 19, 2014
 - Karen and Richard Recht
 - Elizabeth Houck, dated February 10, 2014
 - Patti Fry, dated February 10, 2014
 - Phillip Bahr, dated February 10, 2014
 - Jim Lukas, dated January 24, 2014
- H. Summary of Correspondence Questions and Answers Regarding Secondary Dwelling Units

Report prepared by:
Deanna Chow
Senior Planner

Report reviewed by:
Arlinda Heineck
Community Development Director

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING CHAPTER 16.79 [SECONDARY DWELLING UNITS], CHAPTER 16.04 [DEFINITIONS], CHAPTER 16.10 [R-E RESIDENTIAL ESTATE DISTRICT], CHAPTER 16.12 [R-E-S RESIDENTIAL ESTATE SUBURBAN DISTRICT], CHAPTER 16.14 [R-1-S SINGLE FAMILY SUBURBAN RESIDENTIAL DISTRICT], CHAPTER 16.15 [R-1-S (FG) SINGLE FAMILY SUBURBAN RESIDENTIAL DISTRICT (FELTON GABLES)], CHAPTER 16.16 [R-1-U SINGLE FAMILY URBAN RESIDENTIAL DISTRICT], AND CHAPTER 16.17 [R-1-U (LM) SINGLE FAMILY URBAN RESIDENTIAL DISTRICT (LORELEI MANOR)] OF TITLE 16 [ZONING] OF THE MENLO PARK MUNICIPAL CODE

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1: The City Council of the City of Menlo Park hereby finds and declares as follows:

- a. The City desires to amend Chapter 16.79 [Secondary Dwelling Units] to provide the ability to create additional housing throughout the City to accommodate varying housing needs.
- b. The City desires to amend Chapter 16.04 [Definitions] for the purpose of clarifying what is meant by cooking provisions in the definition of secondary dwelling units.
- c. The City desires to amend Chapter 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], and Chapter 16.17 [R-1-U (LM) Single Family Urban Residential District (Lorelei Manor) to enumerate a secondary dwelling unit as a permitted use, subject to meeting certain criteria, and to remove secondary dwelling units as a conditional use in all single-family zoning districts for consistency with the requirements of Chapter 16.79 [Secondary Dwelling Units].
- d. The Planning Commission held a duly noticed public hearing on March 10, 2014 to review and consider the proposed amendments to Chapter 16.79 [Secondary Dwelling Units], Chapter 16.04 [Definitions], 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential

District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], and Chapter 16.17 [R-1-U (LM) Single Family Urban Residential District (Lorelei Manor)] of Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

- e. The City Council held duly noticed public hearings on April 1, 2014 and April 29, 2014 to review and consider the proposed amendments to Chapter 16.79 [Secondary Dwelling Units], Chapter 16.04 [Definitions], 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], and Chapter 16.17 [R-1-U (LM) Single Family Urban Residential District (Lorelei Manor)] of Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.
- f. After due consideration of the proposed amendments to Chapter 16.79 [Secondary Dwelling Units], Chapter 16.04 [Definitions], 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], and Chapter 16.17 [R-1-U (LM) Single Family Urban Residential District (Lorelei Manor)] of Title 16 [Zoning], public testimony, staff reports, and the Planning Commission recommendation, the City Council finds that the proposed ordinance is appropriate.

SECTION 2: Chapter 16.79 [Secondary Dwelling Units] is hereby amended to Title 16 [Zoning] to read as follows:

Chapter 16.79

SECONDARY DWELLING UNITS

Sections:

- 16.79.010 Purpose.
- 16.79.020 Permitted use.
- 16.79.030 Conditional use.
- 16.79.040 Development regulations.
- 16.79.045 Conversion of accessory buildings.
- 16.79.050 Mitigation monitoring.

16.79.010 Purpose.

The purpose of this chapter is to set forth criteria and regulations to control the development of secondary dwelling units within the single-family residential zoning districts.

16.79.020 Permitted use.

A secondary dwelling unit developed within the main dwelling or structurally attached to the main dwelling as defined in Section 16.04.145 Buildings, structurally attached, or a secondary dwelling unit detached from the main dwelling, are permitted in a single-family residential zoning district, subject to the provisions set forth in Section 16.79.040.

16.79.030 Conditional use.

A secondary dwelling unit that is either attached or detached and requesting modification to the development regulations, except for items (4 2) density, and (2 3) subdivision, and ~~(10) tenancy~~, as established in Chapter 16.79.040.

16.79.040 Development regulations.

Development regulations for a secondary dwelling unit are as follows:

- (1) Minimum lot area: ~~6,000~~ 5,000 square feet, except for properties located in the R-1-U (LM) zoning district shall have a minimum lot area of 4,900 square feet;
- (2) Density: No more than one (1) secondary dwelling unit may be allowed on any one (1) lot;
- (3) Subdivision: A lot having a secondary dwelling unit may not be subdivided in a manner that would allow for the main dwelling and secondary dwelling unit to be located on separate lots that do not meet the minimum lot area, width and/or depth ~~or that would result in a lot of less than 7,000 square feet of area or less width and/or depth than required by the single-family zoning district in which the lot is located;~~
- (4) Minimum yards:
 - (a) Structurally attached secondary dwelling units: Secondary dwelling units developed within the main dwelling or structurally attached to the main dwelling as defined in Section 16.04.145 Buildings, structurally attached, shall comply with all minimum yard requirements for the main dwelling established by the single-family zoning district in which the lot is located;
 - (b) Detached secondary dwelling units: Detached secondary dwelling units shall comply with all minimum yard requirements for the main dwelling established by the single-family zoning district in which the lot is located, with the exception that the minimum rear yard is 10 feet. Furthermore, the interior side and rear yards may be reduced to five (5) feet, subject to written approval of the owner(s) of the

contiguous property abutting the portion of the encroaching structure. If the contiguous interior side or rear property line is an alley, the minimum setback is five (5) feet. The provision of 16.62.020(1) shall not apply to a detached secondary dwelling unit.

- (5) Unit size:
- (a) The habitable square footage of all levels of the secondary dwelling unit shall not exceed 640 square feet, except buildings complying with all aspects of the disabled access requirements for kitchens, bathrooms, and accessible routes established in the California Building Code for adaptable residential dwelling units shall have a maximum square footage of 700 square feet. The maximum square footage does not include the square footage of an attached accessory building for which there is no internal connection to the secondary dwelling unit;
 - (b) Secondary dwelling units shall be limited to studio or one-bedroom units and one bathroom.
- (6) ~~Height: The maximum wall height of a detached secondary dwelling unit is nine (9) feet and the maximum total height is 17 feet. Unless the secondary dwelling unit is located in a flood zone. When a secondary dwelling unit is located in a flood zone, the maximum wall height can be increased proportionally to the minimum amount needed to meet the flood zone requirements for habitable structures as determined by the Building Official. The total height of the structure shall be maintained at 17 feet.~~
- (7) Daylight Plane: A daylight plane shall begin at a horizontal line 9 feet, 6 inches above the average natural grade at a line 3 feet from the side property lines and shall slope inwards at a 45 degree angle. There are no permitted intrusions into the daylight plane. Average natural grade means the average of the highest and lowest points of the natural grade of the portion of the lot directly below a line three feet from the side property lines.
- ~~(7.8)~~ Parking: One (1) covered or uncovered off-street parking space, in addition to the required parking for the main dwelling unit, that may be provided in the following configurations and areas in addition to the areas allowed for the main dwelling:
- (a) In tandem, meaning one car located directly behind another car, including a single-car driveway leading to two required parking spaces for the main dwelling;
 - (b) Within required interior side yards;
 - (c) Within required front yards if no more than 500 square feet of the required front yard is paved for motor vehicle use (inclusive of the main residence driveway and parking areas) and a minimum setback of 18 inches from the side property lines is maintained.

The required off-street parking can be provided in either a covered or uncovered space, but all covered parking shall comply with the setback requirements of the main dwelling, if the parking is attached, or the accessory building regulations, if the parking is detached.

- (8 9) Consistency: All secondary dwelling units shall comply with all applicable development regulations for the single-family zoning district in which the lot is located and building code requirements set forth in Title 12 Building and Construction of the Municipal Code unless otherwise provided for in this section;
- (910) Aesthetics: The secondary dwelling unit shall have colors, materials, textures and architecture similar to the main dwelling.
- (4011) Tenancy: Either the main dwelling or the secondary dwelling unit shall be occupied by the property owner when both units are occupied as dwellings units. If a property owner does not occupy one of the dwelling units, the property owner may apply for a non-tenancy status for a term of one (1) year through a registration process established by the Community Development Director. To be eligible for the registration process, a property owner must have lived at the subject property for a minimum of two (2) years of the previous five (5) years from the date of application. The property owner may renew the registration annually, not to exceed four (4) years in total, subject to the review and approval of the Community Development Director, pursuant to criteria established by the Community Development Director. The application for the registration and renewal(s) shall be accompanied by a fee, set by the City Council. A use permit is required for non-tenancy status longer than four (4) years or for waiver of the requirement that the owner reside in the unit for not less than two (2) of the previous five (5) years prior to the date of application.

16.79.045 Conversion of accessory buildings.

- (1) An accessory building may be eligible to convert into a secondary dwelling unit, subject to meeting criteria as outlined in Section 16.79.045(2) and approval of an administrative permit per Chapter 16.82.
- (2) Eligibility: The following criteria must be met in order to be eligible for the conversion of an accessory building:
- (a) The accessory building must have received building permits and commenced construction prior to May 30, 2014 (insert effective date of ordinance). Other supporting documentation to show the building was legally built may be substituted for a building permit subject to review by the Community Development Director.
- (b) The property owner shall have one (1) year from May 30, 2014 (insert effective date of ordinance) to submit a complete administrative permit application, including all applicable fees and plans, to qualify for the conversion process.

- (c) The accessory building must be upgraded to meet the Building Code requirements based on the change of occupancy at the time of the conversion.
 - (d) The accessory building must meet all of the development regulations of Section 16.79.040, with the exception of minimum yards, which shall be established in the administrative permit.
- (3) All or any portion of an accessory building that meets the eligibility criteria as provided in this Section 16.79.045 may be demolished and reconstructed to meet the Building Code requirements based on the change of occupancy at the time of conversion. The secondary dwelling unit that replaces the accessory building may retain the setbacks and the footprint of the legally constructed accessory building. The existing setbacks and footprint of the accessory building must be evidenced by valid building permits or other supporting documentation subject to review by the Community Development Director. Nothing in this Section shall be deemed to authorize the expansion of the footprint or reduction of the setbacks beyond that evidenced by a valid building permit or other supporting documentation subject to review by the Community Development Director or to allow the continuation of any other nonconformity.
- (4) This section 16.97.045 shall sunset in its entirety and no longer be effective one (1) year from May 30, 2014 (insert effective date of ordinance) for any administrative permit application not received by said date.

16.79.050 Mitigation Monitoring.

All second unit development shall comply, at a minimum, with the Mitigation Monitoring and Report Program (MMRP) established through Resolution No. 6149 associated with the Housing Element Update, General Plan Consistency Update, and Zoning Ordinance Amendments Environmental Assessment prepared for the Housing Element adopted on May 21, 2013.

SECTION 3: Section 16.04.295 [Dwelling unit, secondary] of Chapter 16.04 [Definitions] of Title 16 [Zoning] is hereby amended to for clarity and for consistency with implementation of Chapter 16.79 [Secondary Dwelling Units] as follows:

16.04.295 Dwelling unit, secondary. A “secondary dwelling unit” means a dwelling unit on a residential lot which provides complete independent living facilities for one or more persons, and shall include permanent provisions for living, sleeping, eating, cooking, and sanitation independent of the main dwelling existing on the residential lot. For purposes of a secondary dwelling unit, permanent provisions for eating and cooking include the following: 1) permanent range, 2) counters, 3) refrigerator, and 4) sink.

SECTION 4: Sections 16.10.010 [Permitted uses] and 16.10.020 [Conditional uses] of Chapter 16.10 [R-E Residential Estate District] of Title 16 [Zoning] are hereby amended to add secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.10.010 Permitted uses. The following uses are permitted in the R-E district:

- (1) Single family dwellings;
- (2) Secondary dwelling units in accordance with Chapter 16.79;
- ~~(23)~~ Accessory buildings.

16.10.020 Conditional uses. Conditional uses allowed in the R-E district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:

- (1) Public utilities in accordance with Chapter 16.76;
- ~~(2)~~ Secondary dwelling units in accordance with Chapter 16.79;
- ~~(32)~~ Private schools and churches in accordance with Chapter 16.78;
- ~~(43)~~ Child day care centers in accordance with Chapter 16.78;
- ~~(54)~~ Home occupations in accordance with Section 16.04.340.

SECTION 5: Sections 16.12.010 [Permitted uses] and 16.12.020 [Conditional uses] of Chapter 16.12 [R-E-S Residential Estate Suburban District] of Title 16 [Zoning] are hereby amended to add secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.12.010 Permitted uses. The following uses are permitted in the R-E-S district:

- (1) Single family dwellings;
- (2) Secondary dwelling unit in accordance with Chapter 16.79;
- ~~(23)~~ Accessory buildings.

16.12.020 Conditional uses. Conditional uses allowed in the R-E-S district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:

- (1) Public utilities in accordance with Chapter 16.76;
- ~~(2)~~ Secondary dwelling units in accordance with Chapter 16.79;
- ~~(32)~~ Private schools and churches in accordance with Chapter 16.78;
- ~~(43)~~ Child day care centers in accordance with Chapter 16.78;
- ~~(54)~~ Home occupations in accordance with Section 16.04.340.

SECTION 6: Sections 16.14.010 [Permitted uses] and 16.14.020 [Conditional uses] of Chapter 16.14 [R-1-S Single Family Suburban Residential District] of Title 16 [Zoning] are hereby amended to add secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.14.010 Permitted uses. The following uses are permitted in the R-1-S district:

- (1) Single family dwellings;
- (2) Secondary dwelling unit in accordance with Chapter 16.79;
- (~~2~~3) Accessory buildings.

16.14.020 Conditional uses. Conditional uses allowed in the R-1-S district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:

- (1) Public utilities in accordance with Chapter 16.76;
- (~~2~~) ~~Secondary dwelling units in accordance with Chapter 16.79;~~
- (~~3~~2) Private schools and churches in accordance with Chapter 16.78;
- (~~4~~3) Child day care centers in accordance with Chapter 16.78;
- (~~5~~4) Home occupations in accordance with Section 16.04.340.

SECTION 7: Sections 16.15.010 [Permitted uses] and 16.15.020 [Conditional uses] of Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)] of Title 16 [Zoning] are hereby amended to add secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.15.010 Permitted uses. The following uses are permitted in the R-1-S (FG) district:

- (1) Single family dwellings;
- (2) Secondary dwelling unit in accordance with Chapter 16.79;
- (~~2~~3) Accessory buildings.

16.15.020 Conditional uses. Conditional uses allowed in the R-1-S (FG) district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:

- (1) Public utilities in accordance with Chapter 16.76;
- (~~2~~) ~~Secondary dwelling units in accordance with Chapter 16.79;~~
- (~~3~~2) Private schools and churches in accordance with Chapter 16.78;
- (~~4~~3) Child day care centers in accordance with Chapter 16.78;
- (~~5~~4) Home occupations in accordance with Section 16.04.340.

SECTION 8: Sections 16.16.010 [Permitted uses] and 16.16.020 [Conditional uses] of Chapter 16.16 [R-1-U Single Family Urban Residential] of Title 16 [Zoning] are hereby amended to add secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.16.010 Permitted uses. The following uses are permitted in the R-1-U district:

- (1) Single family dwellings;
- (2) Secondary dwelling unit in accordance with Chapter 16.79;
- (~~2~~3) Accessory buildings.

16.16.020 Conditional uses. Conditional uses allowed in the R-1-U district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:

- (1) Public utilities in accordance with Chapter 16.76;
- (~~2~~) ~~Secondary dwelling units in accordance with Chapter 16.79;~~
- (~~3~~2) Private schools and churches in accordance with Chapter 16.78;
- (~~4~~3) Child day care centers in accordance with Chapter 16.78;
- (~~5~~4) Home occupations in accordance with Section 16.04.340.

SECTION 9: Sections 16.17.010 [Permitted uses] and 16.17.020 [Conditional uses] of Chapter 16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor)] of Title 16 [Zoning] are hereby amended to add secondary dwelling units as a permitted use and delete secondary dwelling units as a conditional use for consistency with Chapter 16.79 [Secondary Dwelling Units] as follows:

16.17.010 Permitted uses. The following uses are permitted in the R-1-U (LM) district:

- (1) Single family dwellings;
- (2) Secondary dwelling unit in accordance with Chapter 16.79;
- (~~2~~3) Accessory buildings.

16.17.020 Conditional uses. Conditional uses allowed in the R-1-U (LM) district, subject to obtaining a use permit or, in the case of home occupations, a home occupation permit are as follows:

- (1) Public utilities in accordance with Chapter 16.76;
- (~~2~~) ~~Secondary dwelling units in accordance with Chapter 16.79;~~
- (~~3~~2) Private schools and churches in accordance with Chapter 16.78;
- (~~4~~3) Child day care centers in accordance with Chapter 16.78;
- (~~5~~4) Home occupations in accordance with Section 16.04.340.

SECTION 10: A Negative Declaration was prepared that considered the environmental impacts of the adoption of the proposed modifications to the secondary dwelling unit ordinance and associated consistency amendments for the identified areas. The Negative Declaration determined that any potential environmental impacts were less than significant.

SECTION 11: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 12: This Ordinance shall become effective 30 days after the date of its adoption, and is applicable to any building permit application received after the date of adoption of this Ordinance. Within 15 days of its adoption, the Ordinance shall be posted in three public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney shall be published in the local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the 29th day of April, 2014.

PASSED AND ADOPTED as an Ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the ____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ray Mueller
Mayor

ATTEST:

Pamela Aguilar
City Clerk

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING CHAPTER 16.68 [BUILDINGS], CHAPTER 16.04 [DEFINITIONS], CHAPTER 16.10 [R-E RESIDENTIAL ESTATE DISTRICT], CHAPTER 16.12 [R-E-S RESIDENTIAL ESTATE SUBURBAN DISTRICT], CHAPTER 16.14 [R-1-S SINGLE FAMILY SUBURBAN RESIDENTIAL DISTRICT], CHAPTER 16.15 [R-1-S (FG) SINGLE FAMILY SUBURBAN RESIDENTIAL DISTRICT (FELTON GABLES)], CHAPTER 16.16 [R-1-U SINGLE FAMILY URBAN RESIDENTIAL DISTRICT], CHAPTER 16.17 [R-1-U (LM) SINGLE FAMILY URBAN RESIDENTIAL (LORELEI MANOR)], CHAPTER 16.18 [R-2 LOW DENSITY RESIDENTIAL DISTRICT], CHAPTER 16.20 [R-3 APARTMENT DISTRICT], CHAPTER 16.22 [R-4 HIGH DENSITY RESIDENTIAL DISTRICT], CHAPTER 16.23 [R-4-S HIGH DENSITY RESIDENTIAL, SPECIAL DISTRICT], CHAPTER 16.24 [R-3-A GARDEN APARTMENT DISTRICT], CHAPTER 16.26 [R-3-C APARTMENT-OFFICE DISTRICT], CHAPTER 16.28 [R-L-U RETIREMENT LIVING UNIT DISTRICT], CHAPTER 16.48 [OSC OPEN SPACE AND CONSERVATION DISTRICT], CHAPTER 16.50 [FP FLOOD PLAIN DISTRICT], CHAPTER 16.67 DAYLIGHT PLANES, AND CHAPTER 16.72 [OFF-STREET PARKING] OF TITLE 16 [ZONING] OF THE MENLO PARK MUNICIPAL CODE

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1: The City Council of the City of Menlo Park hereby finds and declares as follows:

- a. The City desires to amend Section 16.68.030 [Accessory buildings and/or structures] of Chapter 16.68 [Buildings] of Title 16 [Zoning] to more clearly differentiate accessory buildings from secondary dwelling units and accessory buildings from accessory structures, and amend related sections pertaining to daylight planes and off-street parking.
- b. The Planning Commission held duly a noticed public hearing on March 10, 2014 to review and consider the proposed amendments to Chapter 16.68 [Buildings], 16.04 [Definitions], Chapter 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], Chapter

16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor)], Chapter 16.18 [R-2 Low Density Residential District], Chapter 16.20 [R-3 Apartment District], Chapter 16.22 [R-4 High Density Residential District], Chapter 16.23 [R-4-S High Density Residential, Special District], Chapter 16.24 [R-3-A Garden Apartment District], Chapter 16.26 [R-3-C Apartment-Office District], Chapter 16.28 [R-L-U Retirement Living Unit District], Chapter 16.48 [OSC Open Space and Conservation District], Chapter 16.50 [FP Flood Plain District], Chapter 16.67 Daylight Planes, and Chapter 16.72 [Off-Street Parking] of Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.

- c. The City Council held a duly noticed public hearings on April 1, 2014 and April 29, 2014 to review and consider the proposed amendments to Chapter 16.68 [Buildings], 16.04 [Definitions], Chapter 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], Chapter 16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor)], Chapter 16.18 [R-2 Low Density Residential District], Chapter 16.20 [R-3 Apartment District], Chapter 16.22 [R-4 HIGH Density Residential District], Chapter 16.23 [R-4-S High Density Residential, Special District], Chapter 16.24 [R-3-A Garden Apartment District], Chapter 16.26 [R-3-C Apartment-Office District], Chapter 16.28 [R-L-U Retirement Living Unit District], Chapter 16.48 [OSC Open Space and Conservation District], Chapter 16.50 [FP Flood Plain District], Chapter 16.67 Daylight Planes, and Chapter 16.72 [Off-Street Parking] of Title 16 [Zoning], at which all interested persons had the opportunity to appear and comment.
- d. After due consideration of the proposed amendments to Chapter 16.68 [Buildings], 16.04 [Definitions], Chapter 16.10 [R-E Residential Estate District], Chapter 16.12 [R-E-S Residential Estate Suburban District], Chapter 16.14 [R-1-S Single Family Suburban Residential District], Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)], Chapter 16.16 [R-1-U Single Family Urban Residential District], Chapter 16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor)], Chapter 16.18 [R-2 Low Density Residential District], Chapter 16.20 [R-3 Apartment District], Chapter 16.22 [R-4 HIGH Density Residential District], Chapter 16.23 [R-4-S High Density Residential, Special District], Chapter 16.24 [R-3-A Garden Apartment District], Chapter 16.26 [R-3-C Apartment-Office District], Chapter 16.28 [R-L-U Retirement Living Unit District], Chapter 16.48 [OSC Open Space and Conservation District], Chapter 16.50 [FP Flood Plain District], Chapter 16.67 Daylight Planes, and Chapter 16.72 [Off-Street Parking] of Title 16 [Zoning], public testimony, staff reports, and the Planning Commission recommendation, the City Council finds that the proposed ordinance is appropriate.

SECTION 2: Section 16.68.030 [Accessory buildings and/or structures] of Chapter 16.68 [Buildings] of Title 16 [Zoning] is hereby amended to read as follows:

16.68.030 Accessory buildings and/or accessory structures.

- ~~(a) Accessory buildings and/or structures may be constructed with, or subsequent to the construction of the main building. Where an accessory building and/or structure is attached to the main building, it shall be made structurally a part of the main building, and shall comply in all respects with the requirements of this chapter which are applicable to the main building; provided, however, that garage or carport entrances on a dwelling or dwellings, fronting on any lot line shall be located not less than twenty feet from such line. Unless so attached, an accessory building and/or structure in an R district other than R 4 S shall be located on the rear one half of the lot and at least ten feet from any dwelling building existing or under construction on the same lot, or any adjacent lot. In the R 4 S district, an accessory building may encroach into the front half of the lot, but the accessory building shall maintain a minimum setback for 50 feet from the front property line unless a use permit is obtained therefor from the planning commission. Such accessory building shall not be located within five feet of any alley; or within thirty six inches of any property line. In the case of a corner lot, an accessory building may not project beyond the setback required on the adjacent lot. Overall height of an accessory building and/or structure shall not exceed fourteen feet; wall height shall not exceed nine feet.~~
- ~~(b) The total combined gross square footage of all the accessory buildings and structures on a lot shall not exceed twenty five percent of the gross square footage of the main building on such lot or seven hundred square feet, whichever is greater. Accessory buildings exceeding these requirements may be allowed, provided a use permit is obtained therefor from the planning commission and recordation of declaration of conditions and covenants relative to the use of the building and/or structure.~~
- (1) **Purpose.** The purpose of this section is to set forth regulations to control the development of accessory buildings and accessory structures to ensure their orderly development and compatibility of such uses with surrounding uses and properties, and to minimize impacts associated with such buildings and structures, which are purely ancillary and/or ornamental to the main building or use of the site.
- (2) **Requirements generally.** Unless otherwise provided for in a specific zoning district, requirements for accessory buildings and accessory structures in all zoning districts shall be stated in this section; except in non-residential zoning districts, accessory structures not meeting the development regulations may be permitted through approval of a use

permit, architectural control, or other discretionary process as part of the project development, or through the approval of the Community Development Director provided the proposed accessory structure is consistent with the use of the site, is compatible with the site and surrounding land uses, and does not add gross floor area.

- (3) **Development Regulations.** Development regulations for accessory buildings (living and non-living space) and accessory structures are as follows:

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Accessory Buildings and Accessory Structures

| | | |
|--------------------------------------|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Size | Building | The combined square footage of all levels of all accessory buildings shall not exceed 25 percent of the square footage of all levels of the main building or 700 square feet, whichever is greater. The size may be increased subject to a use permit and recordation of a condition and covenant relative to the use of the building. |
| | Structure | |
| Minimum Yard (Front) | Building | An accessory building shall be located on the rear half of the lot, except in the R-4-S zoning district where the minimum front setback is 50 feet. A use permit may be requested to modify the front setback requirement, so long as the minimum setback established for the main building as established by the zoning district in which the building is located is maintained. |
| | Structure | Minimum setback established for the main building as established by the zoning district in which it is located. |
| Minimum Yard (Side, Interior) | Building; Non-Living Space | Minimum 3 feet; 5 feet if abutting an alley |
| | Building; Living Space | Minimum setback established for the main building as established by the zoning district in which it is located. The minimum setback may be decreased subject to a use permit and recordation of a condition and covenant relative to the use of the building. |
| | Structure | Front half of lot: Minimum setback established for the main building as established by the zoning district in which it is located. Rear half of lot: Minimum 3 feet; 5 feet if abutting an alley |
| Minimum Yard (Side, Corner) | Building | Setback of adjacent lot |
| | Structure | Setback of adjacent lot |
| Minimum Yard (Rear) | Building; Non-Living Space | Minimum 3 feet; 5 feet if abutting an alley |
| | Building; Living Space | Minimum 10 feet; 5 feet if abutting an alley. The minimum setback may be decreased subject to a use permit and recordation of a condition and covenant relative to the use of the building. |
| | Structure | Minimum 3 feet; 5 feet if abutting an alley |
| Separation Between Buildings | Building | Minimum 10 feet from any dwelling on lot or adjacent lot, unless attached to a secondary dwelling unit |
| | Structure | None |
| Height | Building | Overall height – 14 feet See also Daylight Plane |
| | Structure | |
| Daylight Plane | Building | A daylight plane shall begin at a horizontal line 9 feet, 6 inches above the average natural grade at a line three feet from the side property lines and shall slope inwards at a 45 degree angle. There are no permitted intrusions into the daylight plane. Average natural grade means the average of the highest and lowest points of the natural grade of the portion of the lot directly below a line three feet from the side property lines. |
| | Structure | |

SECTION 3: Section 16.04.110 [Building and/or structure, accessory] of Chapter 16.04 [Definitions] of Title 16 [Zoning] is hereby amended as follows:

16.04.110 Building and/or structure, accessory. ~~“Accessory building and/or structure” means a subordinate detached building and/or structure, the use of which is incidental to that of the main building or buildings and/or the use of the land on the same lot or building site, and shall not include any building providing an area for cooking or permanent sleeping quarters; but not including any building used for living or sleeping quarters. An accessory building may be attached to a secondary dwelling unit. For the purpose of an accessory building, an area containing four (4) or more plumbing fixtures, regardless of the intended use of the space, shall be regulated as “living space” in the accessory building. Water supplied to washing machines and water heaters is not considered a plumbing fixture for the purposes of this section. In no case shall the “living space”, as defined by this section for the purpose of minimum yard requirements, be used as a dwelling unit. An accessory building that was legally permitted and constructed with four (4) or more plumbing fixtures prior to May 30, 2014 (insert effective date of ordinance) shall not be subject to the limitations set forth in Section 16.68.030 pertaining to minimum yard requirements. The addition of plumbing fixtures would be subject to the minimum yard requirements.~~

SECTION 4: Section 16.04.665 [Structure, accessory] is hereby added to Chapter 16.04 [Definitions] of Title 16 [Zoning] as follows:

16.04.665 Structure, accessory.

"Accessory structure" means a separate and subordinate structure, which is open in nature and the use of which is incidental to that of the main building or buildings and/or use of the land on the same lot or building site. Examples of such structures include, but are not limited to arbors, trellises, play structures, built-in barbeques, outdoor fireplaces, and water features. Unenclosed ground mounted mechanical equipment are not considered accessory structures.

SECTION 5: Section 16.10.010 [Permitted uses] of Chapter 16.10 [R-E Residential Estate District] of Title 16 [Zoning] is hereby amended as follows:

16.10.010 Permitted uses. The following uses are permitted in the R-E district:

- (1) Single family dwellings;
- (2) Secondary dwelling units;
- ~~(3)~~ (3) Accessory buildings;
- (4) Accessory structures.

SECTION 6: Section 16.12.010 [Permitted uses] of Chapter 16.12 [R-E-S Residential Estate Suburban District] of Title 16 [Zoning] is hereby amended as follows:

16.12.010 Permitted uses. The following uses are permitted in the R-E district:

- (1) Single family dwellings;
- (2) Secondary dwelling units;
- ~~(2)~~ (3) Accessory buildings;
- (4) Accessory structures.

SECTION 7: Section 16.14.010 [Permitted uses] of Chapter 16.14 [R-1-S Single Family Suburban Residential District] of Title 16 [Zoning] is hereby amended] as follows:

16.14.010 Permitted uses. The following uses are permitted in the R-1-S district:

- (1) Single family dwellings;
- (2) Secondary dwelling units;
- ~~(2)~~ (3) Accessory buildings;
- (4) Accessory structures.

SECTION 8: Section 16.15.010 [Permitted uses] of Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential District (Felton Gables)] of Title 16 [Zoning] is hereby amended as follows:

16.15.010 Permitted uses. The following uses are permitted in the R-1-S (FG) district:

- 1) Single family dwellings;
- (2) Secondary dwelling units;
- ~~(2)~~ (3) Accessory buildings;
- (4) Accessory structures.

SECTION 9: Section 16.16.010 [Permitted uses] of Chapter 16.16 [R-1-U Single Family Urban Residential District] of Title 16 [Zoning] is hereby amended as follows:

16.16.010 Permitted uses. The following uses are permitted in the R-1-U district:

- 1) Single family dwellings;
- (2) Secondary dwelling units;
- ~~(2)~~ (3) Accessory buildings;
- (4) Accessory structures.

SECTION 10: Section 16.17.010 [Permitted uses] of Chapter 16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor) District] of Title 16 [Zoning] is hereby amended as follows:

16.17.010 Permitted uses. The following uses are permitted in the R-1-U (LM) district:

- 1) Single family dwellings;
- (2) Secondary dwelling units;
- ~~(2)~~ (3) Accessory buildings;

- (4) Accessory structures.

SECTION 11: Section 16.18.010 [Permitted uses] of Chapter 16.18 [R-2 Low Density Apartment District] of Title 16 [Zoning] is hereby amended as follows:

16.18.010 Permitted uses. The following uses are permitted in the R-2 district:

- (1) Single-family dwellings;
- (2) Duplexes and projects of three or more dwelling units;
- (3) Accessory buildings;
- (4) Accessory structures.

SECTION 12: Section 16.20.010 [Permitted uses] of Chapter 16.20 [R-3 Apartment District] of Title 16 [Zoning] is hereby amended as follows:

16.20.010 Permitted uses.

The following uses are permitted in the R-3 (Apartment) district:

- (1) Single-family dwellings;
- (2) Duplexes;
- (3) Three or more units on lots 10,000 square feet or more;
- (4) Accessory buildings;
- (5) Accessory structures.

SECTION 13: Section 16.22.010 [Permitted uses] of Chapter 16.22 [R-4 High Density Residential District] of Title 16 [Zoning] is hereby amended as follows:

16.22.020 Permitted Uses. The following uses are permitted in the R-4 District:

- (1) Single-family dwellings;
- (2) Duplexes;
- (3) Accessory buildings;
- (4) Accessory structures.

SECTION 14: Section 16.23.020 [Permitted uses] of Chapter 16.23 [R-4-S High Density Residential, Special District] of Title 16 [Zoning] is hereby amended as follows:

~~**16.10.010 Permitted uses.** The only permitted use in the R-4-S zoning district is multiple dwellings.~~ The following uses are permitted in the R-4-S district:

- (1) Multiple dwellings;
- (2) Accessory Buildings;
- (3) Accessory Structures.

SECTION 15: Section 16.28.010 [Permitted uses] of Chapter 16.28 [R-L-U Retirement Living Units District] of Title 16 [Zoning] is hereby amended as follows:

~~**16.28.010 Permitted uses.** There are no permitted uses in the R-L-U district.~~ The only permitted use in the R-L-U zoning district is accessory structures.

SECTION 16: Section 16.48.030 [Permitted uses] of Chapter 16.48 [OSC Open Space and Conservation District] of Title 16 [Zoning] is hereby amended as follows:

16.48.030 Permitted uses. ~~There are no permitted uses in the OSC district. The~~ only permitted use in the OSC zoning district is accessory structures.

SECTION 17: Section 16.50.030 [Permitted uses] of Chapter 16.50 [FP Flood Plain District] of Title 16 [Zoning] is hereby amended as follows:

16.50.010 Permitted uses. The following uses are permitted in the FP district:

- (1) Agricultural uses;
- (2) Accessory buildings;
- (3) Accessory structures;
- ~~(34)~~ Extraction of chemicals from sea water;
- ~~(45)~~ Dredging.

SECTION 18: Sections 16.67.010 [Daylight planes in R-E, R-E-S and R-2 zoning districts] and 16.67.020 [Daylight planes in R-1-A and R-1-U zoning districts] of Chapter 16.67 [Daylight Planes] of Title 16 [Zoning] are hereby amended as follows:

16.67.010 Daylight planes in R-E, R-E-S and R-2 zoning districts. Daylight planes for the main dwelling unit are established for each lot as follows:

- (A) Daylight plane: A daylight plane shall begin at a horizontal line at a certain distance directly above each side setback line of each lot and shall slope inwards at a 45 degree angle. The distance between the side setback line and the horizontal line directly above it shall be 19 feet, 6 inches above the grade of the side setback line. For an addition to an existing structure, such distance shall be the higher of:
 - (1) 19 feet, 6 inches above the grade of the side setback line; or
 - (2) 18 feet above the underside of the actual first floor, measured at the side wall, or 20 feet, 6 inches above the grade of the sidewall, whichever is lower.

16.67.020 Daylight planes in R-1-S and R-1-U zoning districts. Daylight planes for the main dwelling unit are established for each lot as follows:

- (A) Daylight plane: A daylight plane shall begin at a horizontal line at a certain distance directly above each side setback line of each lot and shall slope inwards at a 45 degree angle. The distance between the side setback line and the horizontal line directly above it shall be as follows:
 - (1) Single-story development: 12 feet, 6 inches above the grade of the side setback line;
 - (2) Development of two or more stories: 19 feet, 6 inches above the grade of the side setback line. For an addition to an existing structure, such distance shall be the higher of:
 - (a) 19 feet, 6 inches above the grade of the side setback line; or

- (b) 18 feet above the underside of the actual first floor, measured at the side wall, or 20 feet, 6 inches above the grade of the side wall, whichever is lower.

SECTION 19: Section 16.15.020 [Development regulations] of Chapter 16.15 [R-1-S (FG) Single Family Suburban Residential (Felton Gables) District] of Title 16 [Zoning] is hereby amended as follows:

16.15.020 Development regulations. Development regulations in the R-1-S (FG) district shall be the same as those in the R-1-S district except for the following:

- (1) Daylight plane: A daylight plane for the main dwelling unit shall begin at each side property line, shall extend directly upwards above the natural grade of each side property line for a distance of 20 feet minus the width of the adjacent required yard, and shall then slope inwards towards the interior of the lot at a 34-degree angle. As used in this section, the natural grade of a side property line is the average grade of the highest and lowest points of the natural grade of the lot at the side property line. No portion of the structure shall intrude beyond the daylight plane except for dormers and gables as provided below and chimneys, vents, antennae, flues, and solar collectors.

Gables and dormers may intrude into the daylight plane of a lot that is 10,000 square feet or less. The permitted intrusion shall decrease on an even gradient from 10 feet in the case of a 5 foot required side setback to no permitted intrusion in the case of an 8 foot required side setback. Thus the permitted intrusion will be 6 feet, 8 inches in the case of a 6 foot required side setback, 5 feet in the case of a 6.5 foot required side setback, and 3 feet, 4 inches in the case of a 7 foot required side setback. Calculations of the permitted intrusion shall include fractional computations when necessary to maintain the even gradient. Gables and dormers may intrude into the daylight plane on one side of a lot only. The gable or dormer must not extend beyond a triangle described as follows:

- (a) The base of the triangle is the line formed by the intersection of the building wall with the daylight plane;
- (b) The aggregate length of the bases of all triangles intruding into a daylight plane shall not exceed 30 feet; and
- (c) The triangle must be entirely within the maximum building height.

SECTION 20: Section 16.17.030 [Development regulations] of Chapter 16.17 [R-1-U (LM) Single Family Urban Residential (Lorelei Manor) District] of Title 16 [Zoning] is hereby amended as follows:

16.17.030 Development regulations. Development regulations in the R-1-U (LM) district are as follows:

- (11) Daylight Plane: A daylight plane for the main dwelling unit shall begin a minimum of 5 feet from the side property line and extend directly upwards from the grade of the property for a distance of 15 feet, 6 inches (vertical plane), and then slope inwards towards the interior of the lot at a 45-degree angle. The vertical plane may be extended to a maximum height of 19 feet, 6 inches above grade subject to written approval of the owner(s) of contiguous property abutting the extended vertical plane or a use permit in accordance with Chapter 16.82. No portion of the structure shall intrude beyond the daylight plane except for dormers and gables as provided below and chimneys, vents, flues and eave overhangs. Solar collectors and antennae may intrude subject to written approval of the owner(s) of contiguous property abutting the intrusion or a use permit in accordance with Chapter 16.82;

Gables and dormers may intrude into the daylight plane. The permitted intrusion shall decrease on an even gradient from 10 feet in the case of a 5 foot required above ground side yard to no permitted intrusion at an 8 foot required above ground side yard. Calculation of the permitted intrusion shall include fractional computation when necessary to maintain the even gradient. The intrusion shall be measured along the uppermost horizontal roofline of the gable or dormer. The gable or dormer intrusion must not extend beyond a triangle in the plane of the building face described as follows:

- (a) The base of the triangle is the line formed by the intersection of the building wall with the daylight plane;
- (b) The aggregate length of the bases of all triangles intruding into the daylight planes must not exceed 30 feet, of which no more than 12 feet may occur at an interior side yard;
- (c) The triangle is limited to a maximum peak height of 24 feet above grade;

SECTION 21: Section 16.72.020[R district uses] of Chapter 16.72 [Off-street Parking] of Title 16 [Zoning] is hereby amended as follows:

Section 16.72.020 R district uses. R district parking uses are as follows:

- (1) Dwellings: Two spaces per unit, not in any required front or side yard, at least one of which shall be in a garage or carport, unless otherwise specified. However, when required parking is provided in a detached garage or carport, the parking space may be located in the interior side yard, but not closer than three feet from the property line. Any garage or carport entrance fronting on any lot line, except an alley, shall be a minimum of 20 feet from such line. For alleys, the minimum setback for an entrance facing an alley is five feet.

SECTION 22: A Negative Declaration was prepared that considered the environmental impacts of the adoption of the proposed modifications to the accessory building and/or structure ordinance and associated consistency amendments for the identified area. The Negative Declaration determined that any potential environmental impacts were less than significant.

SECTION 23: If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 24: This Ordinance shall become effective 30 days after the date of its adoption, and is applicable to any building permit application received after the date of adoption of this Ordinance. Within 15 days of its adoption, the Ordinance shall be posted in three public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney shall be published in the local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the 29th day of April, 2014.

PASSED AND ADOPTED as an Ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the ____ day of _____, 2014, by the following vote:

AYES:

NOES:

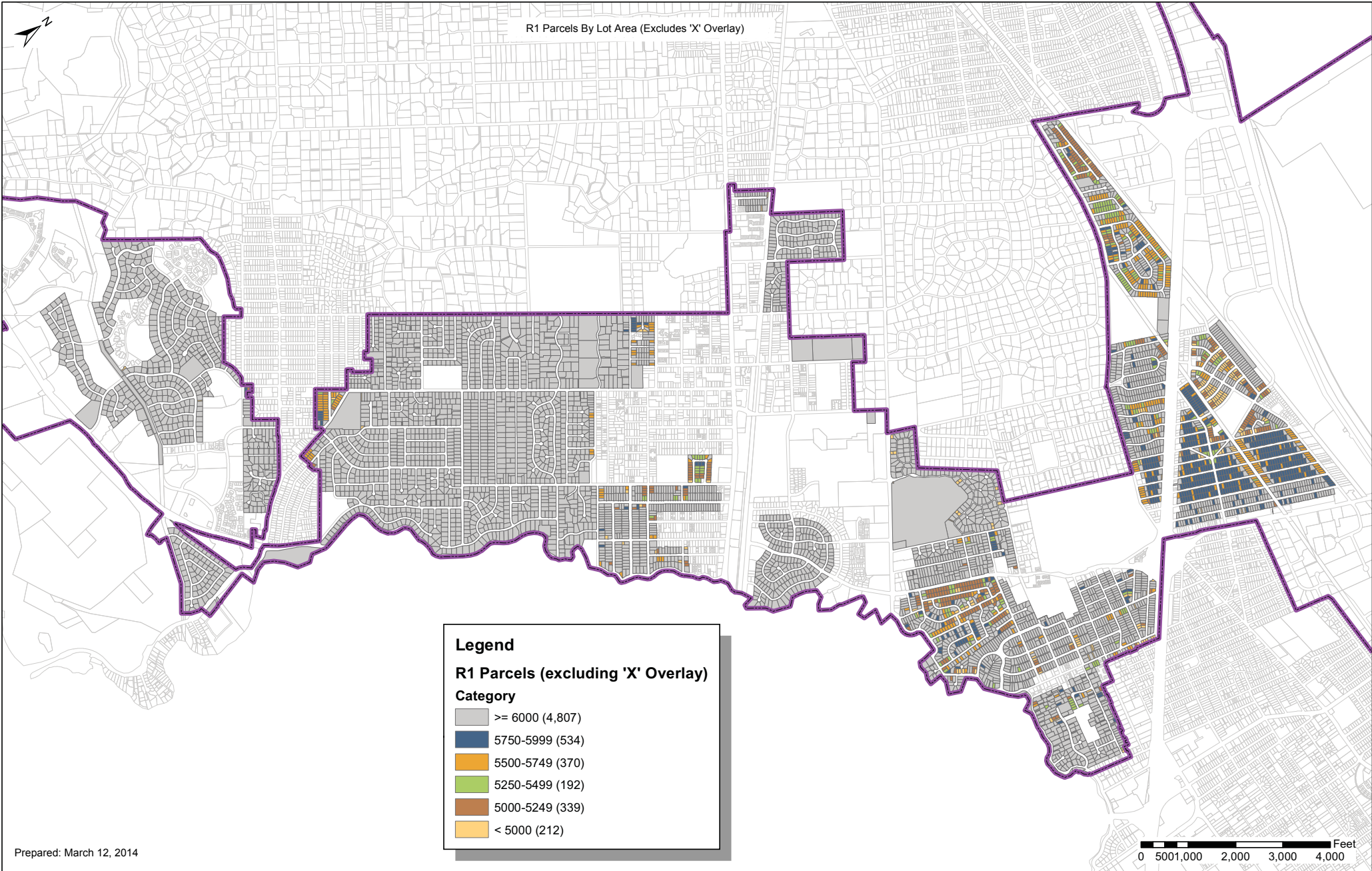
ABSENT:

ABSTAIN:

Ray Mueller
Mayor

ATTEST:

Pamela Aguilar
City Clerk



Prepared: March 12, 2014

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Summary Table of Existing and Proposed Development Standards for Secondary Dwelling Units

| Development Standard | Existing | Proposed |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Minimum Lot Size | 6,000 sf | 5,000 sf or 4,900 sf for property in the R-1-U(LM) zoning district |
| Minimum Yards (Setbacks) | Minimum setback of main structure, which varies by zoning district, except 10 feet for the rear; neighbor approval allowed for a reduction to 5 feet for interior side and rear yard; use permit allowed for further modifications | No change; except clarify that if interior side or rear property line is contiguous with alley, minimum setback is 5 feet |
| Maximum Unit Size | 640 sf | No change, except increase size up to 700 sf for buildings complying with disabled access requirements |
| Maximum Height | 9-foot wall height; 17-foot overall height; flexibility in wall height for properties in flood zone | Establish new daylight plane and eliminate wall height requirement; no change to overall height |
| Daylight Plane | Daylight plane of zoning district | Establish at 3-foot from the side property lines; 9 feet, 6 inches vertical line and slope inwards at 45 degree angle |
| Parking | 1 covered or uncovered in a variety of options | Clarify tandem parking configurations and location of covered parking |
| Tenancy | Either the main dwelling unit or secondary dwelling unit must be occupied by the property owner | 1) Clarify that property owner does not have to live in a unit if both units are not occupied as dwellings, 2) establish a registration process, which would be reviewed annually up to four years, to temporarily allow both units to be occupied by other persons than the property owner; to be eligible for registration, property owners must have lived at the subject site at least two of the five years prior to the registration application, and 3) allow the tenancy requirement to be modified through a use permit, including the eligibility criteria |

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| SECONDARY DWELLING UNITS | | | |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Zoning Ordinance Section | Topic/Question | Policy Issue | Potential Options |
| 16.79.040 (1) | <p>Lot Size</p> <p><i>Should the minimum lot size for a secondary dwelling unit (without a use permit) be reduced from 6,000 sf?</i></p> | <p>Housing Element Program H4.E considers the reduction in the minimum lot size as well as other incentives as means to encouraging the development of secondary dwelling units.</p> <p>Secondary dwelling units are often viewed as opportunities for providing affordable housing, primarily due to the size of the unit and often because family members who occupy the space pay limited or no rent. Secondary dwelling units would also provide variety in housing types.</p> <p>By reducing the minimum lot size threshold for a secondary dwelling unit, more single-family residential zoned lots would become eligible for a secondary dwelling unit without requiring approval of a use permit. This would reduce the potential time and financial implications of the use permit process. However, some community members have expressed concern about the reduction in lot size, primarily with regard to exacerbating existing parking problems and working with constrained sites.</p> | <p><i>If the Council believes the existing regulation adequately provides for secondary dwelling units, then maintain the existing regulation.</i></p> <p>1) <u>Existing Regulation</u>: Maintain existing minimum lot size of 6,000 square feet.</p> <p><i>If the Council believes that reducing the minimum lot size would be an incentive to encouraging the development of secondary dwelling unit, then a modification to the unit size is appropriate.</i></p> <p>2) <u>Existing Proposal</u>: Maintain proposal of reducing the lot size to 5,000 square feet, except for properties in the R-1-U (LM) zoning district shall have a minimum lot size of 4,900 square feet.</p> <p><i>If the Council believes that reducing the minimum lot size would be an incentive to encouraging the development of secondary dwelling unit, then a modification to the unit size is appropriate.</i></p> <p>3) <u>Existing Proposal (modified)</u>: Determine the minimum lot size; less than 6,000 square feet and greater than 5,000 square feet.</p> |
| 16.79.040 (11) | <p>Tenancy</p> <p><i>Should the tenancy requirement be modified to allow temporary non-tenancy status through a registration process, and if yes, should there be established criteria for evaluating the registration?</i></p> | <p>The current tenancy regulation requires a property owner to occupy either the main dwelling unit or secondary dwelling unit. Both members of the Planning Commission and Housing Element Steering Committee expressed desire to provide flexibility in the tenancy requirement to accommodate for changes in personal circumstances that may require a property owner to move temporarily from one's residence. The proposed ordinance revisions would include 1) clarification that a property owner does not have to live at either the</p> | <p><i>If the Council believes that a property owner must occupy either the main dwelling or secondary dwelling unit, then maintain the existing regulation.</i></p> <p>1) <u>Existing Regulation</u>: Either the main dwelling or the secondary dwelling unit shall be occupied by the property owner.</p> <p><i>If the Council believes that flexibility in the tenancy requirement is appropriate, then a modification to the tenancy requirement is appropriate.</i></p> <p>2) <u>Existing Proposal</u>: Allow flexibility in the tenancy requirement by 1) requiring only the</p> |

SECONDARY DWELLING UNITS

| Zoning Ordinance Section | Topic/Question | Policy Issue | Potential Options |
|--------------------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | <p>main dwelling unit or secondary dwelling unit so long as both units are not occupied as dwellings, 2) a registration process, for up to four years and renewed annually, to allow a homeowner to temporarily allow both the main and secondary dwelling units to be occupied by persons other than the property owner and 3) the ability for a property owner to request a use permit for modifications to the tenancy requirement on a permanent basis or a time period otherwise not eligible under the registration process. Although there was majority support for the changes, several Planning Commissioners and members of the public also expressed concern that the rental of the units would create a de facto R-2 zoning district in a single-family zoned area. Given the maximum size and limit on the number of bedrooms and bathrooms, a secondary dwelling unit would functionally be ancillary to the main dwelling unit. In contrast, two dwellings in an R-2 zoning district would typically be of equivalent size and function.</p> <p>Establishing evaluation criteria for non-tenancy status, however, may minimize concerns about absentee landlords.</p> | <p>property owner to occupy the main dwelling unit or secondary dwelling unit when both units are occupied as dwellings, 2) establish a registration process for non-tenancy status on an annual basis for up to four years, and to be eligible, a property owner must have lived at the subject property for a minimum of two of the five previous years from the date of application for non-tenancy, and 3) a use permit for non-tenancy status longer than four years or to waive the two year residency requirement.</p> <p><i>If the Council believes that flexibility in the tenancy requirement is appropriate and that predictability is important for both the property owner and neighbors through the tenancy registration process, then a modification to the tenancy requirement along with the documentation of written evaluation criteria is appropriate.</i></p> <p>3) <u>Existing Proposal (modified)</u>: Same as item #2, but add written evaluation criteria into the ordinance, such as the following:</p> <ul style="list-style-type: none"> a. Reason for the request (temporary job relocation, with the intent to return, education (e.g. attending school for mid-career change), and physically unable to live in the house. Are there other acceptable reasons that should be identified? b. Property management plan c. Parking plan (only if parking is provided in tandem) <p>The intent would be to approve the renewal application, so long as the appropriate documents are filed and no complaints have been received.</p> <p>If the Council believes that establishing criteria for the annual registration process is appropriate, it may wish to consider the following language</p> |

SECONDARY DWELLING UNITS

| Zoning Ordinance Section | Topic/Question | Policy Issue | Potential Options |
|---------------------------------|-----------------------|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | <p>modification:</p> <p>Tenancy: Either the main dwelling or the secondary dwelling unit shall be occupied by the property owner when both units are occupied as dwellings units. If a property owner does not occupy one of the dwelling units, the property owner may apply for a non-tenancy status for a term of one (1) year through a registration process established by the Community Development Director. To be eligible for the registration process, a property owner must have lived at the subject property for a minimum of two (2) years of the previous five (5) years from the date of application. The property owner may renew the registration annually, not to exceed four (4) years in total, subject to the review and approval of the Community Development Director, pursuant to the following criteria and process established by the Community Development Director.</p> <ol style="list-style-type: none"> 1) The application for the registration and renewal(s) shall be accompanied by a fee, set by the City Council. 2) The application for registration and renewal shall state the reason for the request and provide supporting documentation. The registration shall be approved for any of the following reasons: 1) temporary job relocation, with the intent to return, 2) relocation for school (e.g. mid-year career change), and 3) physically unable to live in the house. 3) The application shall provide a property management plan that includes the name and contact information to address issues or concerns about the use of the property should they arise. The plan should also include a parking plan if tandem parking is provided. |

SECONDARY DWELLING UNITS

| Zoning Ordinance Section | Topic/Question | Policy Issue | Potential Options |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | <p>A use permit is required for non-tenancy status longer than four (4) years or for waiver of the requirement that the owner reside in the unit for not less than two (2) of the previous five (5) years prior to the date of application or for a reason other than those stated in item #2 above.</p> |
| <p>16.79.045</p> | <p>Conversion of Accessory Buildings</p> <p><i>Should a provision be added to allow the City Council the flexibility to extend the conversion of accessory buildings to secondary dwelling units beyond the proposed one-year time limit?</i></p> | <p>Per Housing Element implementation program H4.F, the proposed secondary dwelling unit ordinance amendment establishes a conversion process for legally built and constructed accessory buildings. The program is intended to capture accessory buildings that may function like secondary dwelling units, but do not have the proper permits. The conversion process would allow an accessory building that was legally constructed, but does not comply with the setback requirements of a secondary dwelling unit, to be legally converted into a secondary dwelling unit. The formal conversion would also allow the City to include these building as dwelling units. The success of the program is unknown, but the proposed ordinance establishes a one year timeframe to submit an application for the conversion process through an administrative permit.</p> | <p><i>If the Council would like to limit the timeframe for the conversion process and/or evaluate the program after one year, then maintain the existing proposal.</i></p> <p>1) <u>Existing Proposal</u>: Maintain one year time frame from the effective date of the ordinance for the submittal of a complete administrative permit application.</p> <p><i>If the Council would like the flexibility to extend the proposed conversion process without the standard procedures and potential delay between the sunset and implementation of a new ordinance, then a modification to the existing proposal would be appropriate.</i></p> <p>2) <u>Existing Proposal (modified)</u>: Maintain the one year time frame, but add a clause allowing the Council, by resolution, to extend the effective date without further public hearings by the Planning Commission and City Council.</p> |

Single-Family Zoning District Summary

ATTACHMENT F

| | R-E | R-E-S | R-1-S & R-1-S (FG) | R-1-U | R-1-U (LM) | |
|------------------------------------------------|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|----------------|-----------------------------------------------------|---------------------------------------------------|
| Minimum Lot Area | 20,000 sf | 15,000 sf | 10,000 sf | 7,000 sf | 4,900 sf (before 6/1/06) 7,000 sf (after 6/1/06) | |
| Minimum Lot Width/Depth | 110 ft./130 ft. | 100 ft./100 ft. | 80 ft./100 ft. | 65 ft./100 ft. | 40 ft./75 ft. | |
| Main Dwelling Unit | | | | | | |
| Minimum Yard | Front | 20 ft. | | | | |
| | Rear | 20 ft. | | | | |
| | Side, Interior | 30 ft. total; minimum 10 ft. on one side | 25 ft. total; min. 10 ft. on one side | 10 ft | 10% lot width; min. 5 ft., max. 10 ft. | 5 ft.; 3 ft. with neighbor approval or use permit |
| | Side, Corner | min. 15 | | 12 ft | | |
| Height | | Lots >20,000 sf – 30 ft. Lots < 20,000 sf – 28 f | | | One-story – 20 ft. Two-stories – 28 ft. | |
| Detached Secondary Dwelling Units | | | | | | |
| Minimum Yard | Front | 20 ft. | | | | |
| | Rear* | 10 ft. | | | | |
| | Side, Interior* | 30 ft. total; minimum 10 ft. on one side | 25 ft. total; min. 10 ft. on one side | 10 ft. | 10% lot width; min. 5 ft., max. 10 ft. | 5 ft.; 3 ft. with neighbor approval or use permit |
| | Side, Corner | min. 15 ft. | | 12 ft. | | |
| Height | | 9 ft. wall height; 17 ft. total height; allowance for increased wall height if located in a flood zone, subject to review and approval of the Building Official | | | | |
| Detached Accessory Buildings/Structures | | | | | | |
| Minimum Yard | Front | Varies (must be on rear half of lot) | | | | |
| | Rear | 3 ft. (5 ft. from an alley) | | | | |
| | Side, Interior | 3 ft. (5 ft. from an alley) | | | | |
| | Side, Corner | Varies; cannot project beyond setback required on adjacent lot | | | | |
| Height | | 9 ft. wall height; 14 ft. total height | | | | |

* Interior side and rear yards may be reduced to 5 feet, subject to written approval of the owner(s) of the contiguous property abutting the portion of the encroaching structure.

Single-Family Zoning District Summary

| | | R-E | R-E-S | R-1-S & R-1-S (FG) | R-1-U | R-1-U (LM) |
|-------------------------------|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|--------------------|-------|------------|
| Floor Area Limit (FAL) | Lots less than 5,000 sf | The FAL will be determined by the Planning Commission through the review of a use permit. | | | | |
| | Lots Between 5,000-7,000 sf | 2,800 sf | | | | |
| | Lots greater than 7,000 sf | For all single-family districts except R-1-S (FG) = 2,800 square feet + 25% (lot area - 7,000 square feet) For R-1-S(FG) = 2,800 square feet + 20% (lot area - 7,000 square feet) | | | | |
| Unit Size | Secondary Dwelling Unit | 640 sf** | | | | |
| | Accessory Building/ Structure | 700 square feet or 25 percent of the gross square footage of the main building (whichever is greater)** | | | | |

**Additional square footage may be granted, subject to approval of a use permit by the Planning Commission.

Existing Definitions

16.04.110 Building and/or structure, accessory. "Accessory building and/or structure" means a subordinate building and/or structure, the use of which is incidental to that of the main building or buildings on the same lot or building site; but not including any building used for living or sleeping quarters.

16.04.270 Dwelling, single family. "Single family dwelling" means a building, containing not more than one kitchen, designed for, or used to house not more than one family, including all necessary employees of such family.

16.04.295 Dwelling unit, secondary. A "secondary dwelling unit" means a dwelling unit on a residential lot which provides complete independent living facilities for one or more persons, and shall include permanent provisions for living, sleeping, eating, cooking and sanitation independent of the main dwelling existing on the residential lot.

16.04.314 Floor area limit. "Floor area limit" means the maximum permitted floor area for a property within the single-family residential or R-2 zoning districts. For the purpose of determining the floor area limit, neither the panhandle extension of a panhandle lot, nor a private driveway or access easement across another lot to a panhandle lot, shall be included as part of the panhandle or other lot.

Dr. David Fetterman
Menlo Park Property Owner since 1979

April 4, 2014

Re: Ordinances Regulating Secondary Dwelling Units

Dear Menlo Park Housing and Planning Commissions and City Council Members,

I believe the work of the Housing Commission and Planning Commission has been forward thinking and should be applauded. The recommendations submitted for the April 1st City Council meeting struck a balance between maintaining property owner's interests and the needs of a city with an ever increasing population demanding affordable housing.

I would like to add my recommendations to the Commissions and Council Members as you revise and consider the Final Draft Housing Element and the Zoning Ordinance amendments. My comments and recommendations focus on modifications to ordinances regulating secondary dwelling units and are listed below:

1. The current 640 square foot unit size appears sufficient. However, I concur 700 square feet should be considered for known disabled access requirements, including aging or disabled parents or relatives.
2. I agree with the proposition that property owners should not have to occupy one of the dwellings.
3. I agree with the proposition that a registration process should exist to allow a homeowner to temporarily or permanently allow both units to be occupied by someone other than the property owner. (This should be an administrative process, not a discretionary process.)

As I understand it, another proposition was presented during the April 1st meeting, recommending property owners occupy one of the dwellings for 2 of the 5 years before applying for a use permit to rent both dwellings.

I do not agree with this proposition. I do not think property owners should be required to occupy one of the units for 2 of the 5 years previous to applying for a use permit. I think the 2 year recommendation, although well intentioned, constraints a property owner's choices and does not sufficiently account for normal changes in life circumstances.

For example, increasingly employees are forced to relocate without warning or notice as a result of normal job reassignments, unexpected employment opportunities, and company downsizing initiatives. A 2-year occupancy requirement hamstring a property owner. If any of these employment changes occur, increasingly with only a week or month's notice, the property owner is left in

an untenable position. They are unable to rent the 2nd dwelling even though they can no longer use it, because their circumstances changed before they could occupy the unit for 2 of the 5 years. In addition, a potential renter is denied affordable housing, even though the property is habitable and available for occupancy.

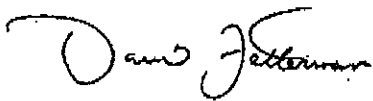
Similarly, for those of us with aging parents Menlo Park is a perfect place for them. Modern conveniences abound, great restaurants and shopping are within walking distance. In addition, they are very close to the Stanford Hospital.

Unfortunately, we know our parents will not always be able to stay in one of these 2nd dwellings for very long. The problem is that we can not predict precisely when they will either need tertiary care or when they will pass away. Once again, this leaves property owners in the same predicament. They are unable to rent the unit and they remove an affordable housing unit from the market.

Constructing a 2nd dwelling represents a significant investment on the part of a property owner. This occupancy restriction and restrictions of this nature that restrict property owners from repurposing their 2nd dwelling when normal life circumstances change are disincentives to building 2nd dwellings and increasing affordable housing in the city.

I hope this explanation concerning my positions and my recommendations have been clear and useful as you deliberate over the various proposed zoning amendments. I am encouraged by the Council's commitment to creating affordable housing. In addition, I applaud the Commissions for preparing thoughtful and constructive proposals, striking a balance between maintaining property values and helping us respond to the pressing needs for affordable housing in our city.

Sincerely,

A handwritten signature in cursive script that reads "David Fetterman". The signature is written in black ink and is positioned above the typed name.

Dr. David Fetterman
Menlo Park Property Owner since 1979

Chow, Deanna M

From: Jennifer Baran <baran.jenn@gmail.com>
Sent: Tuesday, April 01, 2014 2:36 PM
To: _athome
Subject: Comments Re

Dear Deanna,

Below are my comments regarding the secondary dwelling units. My apologies that I can not attend the meeting in person tonight but I have just had a baby a week and a half ago and need to get some sleep tonight.

Comments

(1) Who is driving this initiative? If it is a developer (re Tom Jackson) I kindly request the council to look at who is this really benefitting, Is this benefitting the persons who live here and call Menlo Park their home or is this a way for developers to make some quick money.

In the Willows neighborhood, there has been several complaints by neighbors to the compliance officer re a property owned by Tom Jackson on the 600 block of Laurel Ave. This property has several motor homes/5th wheel trailers that were being used as "rental" properties. I and our neighbors want to ensure that that allowing secondary dwelling units will not turn out like this.

(2) I am concerned about the alleys, If the secondary dwelling units are built to the back of the property and use alley access and parking, my concern is that the alley situation will worsen. The alleys are a free for all right now with the people with rental units/secondary dwelling units parking and having most of the say in what goes on. We do use the alley occasionally when we want to access the back of our property to trim non heritage trees or do some maintenance. When this occurs and we have a contractor park their car in the back (and not blocking the alley), we receive much unwanted feedback from the persons parking in the alley that try to block what we are doing. My understanding is that all properties on either side of the alley share the alley. I would like to see some additional structure and alley agreements if a secondary dwelling unit is added to the alley side.

Please let me know if you need additional detail.

Kind Regards,
Jennifer
510 Laurel Ave



1141 Berkeley Ave.
Menlo Park Ca. 94025-1323
3/29/14

RECEIVED

MAR 31 2014

**City Clerk's Office
City of Menlo Park**

Regarding the secondary dwellings at the planning
commission meeting.

The question to staff

How will secondary dwellings effect parking ?

Staff reply

No problem

Please find enclosed a few photos to show that
a problem exist and has existed for some years.





Chow, Deanna M

From: Sharon Bennett <sbenbook@yahoo.com>
Sent: Monday, March 31, 2014 3:42 PM
To: _athome
Subject: Secondary Units

City Council,

I am concerned about the changes that are being proposed for Secondary Dwelling units. My property backs up to two properties. One has a garage that is 5 feet front my fence and the other has a pavilion, also 5 feet from the fence. When the pavilion was built, I was told that no one could spend a night in it. The garage was replacing the existing garage but at the back of their property instead of next to their house. I fear that with new rules there will be 2 more families only 5 feet from my property. I might support units but only if neighboring properties had a right to veto them.

Sharon Bennett
344 Concord Drive
Menlo Park
sbenbook@yahoo.com

I tried to send this message to the city council but was unsuccessful. I also tried to call and there was no answer. Could you please forward this to them.

Chow, Deanna M

From: perlmana@ix.netcom.com
Sent: Sunday, March 30, 2014 12:44 PM
To: _athome
Subject: Existing, nonconforming secondary dwelling units

Deanna,

I would like to see existing, nonconforming secondary dwelling units have to be brought up to be conforming or else removed prior to or at the time of transfer or sale of the property. This will inspire following the new rules sooner and make these secondary dwelling units far more acceptable.

Thank you for listening,
Anne Perlman
5 Cathy Place
Menlo Park

MARCH 28, 2014

RECEIVED

APR - 1 2014

TO: MENLO PARK CITY COUNCIL

City Clerk's Office
City of Menlo Park

FROM: BELLE HAVEN NEIGHBORHOOD ASSOCIATION

RE: Secondary Units

✓ Honorable Mayor Mueller;

And Council Members; Cline, Carlton, Keith and Ohtaki

Thanks for receiving and lending an ear for your consideration.

Regarding the Secondary Dwelling. We are not opposed to an owner with the space that includes legal parking, the opportunity to build a secondary dwelling. Please bear in mind, there should not be any exceptions to those restrictions set forth or permits applied for on a case by case bases.

The Belle Haven community is plagued with many things unpleasant that are not pleasing to the eye. Let's face it, other communities DO NOT WANT SECONDARY UNITS, and for many good reasons.

We are asking Council to PLEASE consider the Belle Haven community as you would any other part of this City. We work hard and want THE SAME Quality of Life, that other Neighborhoods enjoy as a normal occurrence.

You will receive many comments that this community needs secondary units. If these comments Were investigated, you would find they are coming from families that are living with several families

In one dwelling and creating the blight that this "little postage stamp" neighborhood is enduring.

We SHOULD NOT be expected to bear the brunt of the housing crisis. We know, any way the city

Can use one more unit to cure their requirement, is better for them. WHY put it all on one

Little community? Unfortunatly the Bay Area is an expensive place to live and, not always affordable.

PLEASE don't use this community as a weapon to solve that issue.

Now, we wake up to most lawns being used as a PARKING LOT. Would you enjoy that for your Neighborhood? I didn't think so! You are the only entity we can depend on to do the right thing

For all of Menlo Park. Look at the whole picture and realize the demographics of our neighborhood.

We truly have a transit neighborhood, where people come and go that don't necessary have roots

In the community, but perhaps family to seek refuge. That creates the need of a Secondary Unit.

There are many reasons that we SHOULD NOT be engaging in that, when we are trying to BUILD A SUSTAINABLE COMMUNITY. Of course you will have an outcry for additional living quarters.

MAKE ALL OF MENLO PARK A GREAT PLACE TO LIVE. THE ONES THAT ARE RECOMMENDING THESE CHANGES DO NOT LIVE HERE. WHAT WOULD OTHER SUCCESSFUL CITIES THINK OF THE WAY, WE MAKE DECISIONS IN MENLO PARK, ON THE BACKS OF OTHER'S QUALITY OF LIFE, OR LACK OF.

When we call on you, we are suffering on a daily bases. We ask that the Sq. Ft. of 6,000.

Be left in place, WITH LEGAL SPACE FOR ADDITIONAL PARKING THAT WILL NOT IMPEAD ON REQUIRED LANDSCAPED FRONT YARDS THAT IS PART OF THE ORDINANCE THAT IS ALREADY ON THE BOOKS.

Council please take another look at the whole picture, and make a decision that is fair to this COMMUNITY THAT IS MOSTLY EXPECTED TO ACCEPT THAT, WHICH OTHERS DON'T WANT.

Page 3 – Secondary Unit

We want the best for our City, but it has a reputation for its unfairness. Is it too late to change that? We can change, with the help of a fair Council.

Thanks Council for Listening.

Respectfully,

The concerns of:

Belle Haven Neighborhood Association

Rachel Bickerstaff, President

Email: rachelbickerstaff@gmail.com

Meetings: First Wednesday of Each Month. @6:30-7:30 PM.

Malathong, Vanh

From: Jeannette Holliday <crzyjenn@pacbell.net>
Sent: Wednesday, March 19, 2014 2:37 PM
To: Chow, Deanna M
Subject: proposed revision of tenancy requirement for secondary dwelling units

Deanna Chow, Planning Commission and City Council:

Your proposal to relax the property owner tenancy requirement for parcels containing (or proposing) secondary dwellings, while perhaps well intended, creates a whole new set of problems, most disturbingly (and perhaps illegally) a de facto path to a zoning change from R-1 to R-2 on a spot basis and without going through the normal channel a zoning change of that dimension requires.

To prevent landlord manipulation that is not in the best interest of the surrounding properties there should first be a requirement that the property owner reside on the property at the time of the permit application or submit an affidavit of intent to occupy the property immediately upon completion of any proposed construction. The property at 856 College Ave, for instance, has never been occupied by the current owner of 23 years and he has previously stated (even before the currently proposed modification of the tenancy requirement) that he does not intend to occupy it. He has prevaricated before and I am sure he will have no difficulty doing so again, to come up with a reason why he should be allowed to not occupy but rather rent both dwellings.

Which brings up the second point. I can understand that there may be some compelling circumstances why a property owner might be unable to occupy one of the dwellings but nevertheless need to cover his mortgage payment for a brief period of time. The operative phrases here are "compelling reason" and "brief period of time". While "compelling circumstances" will vary, a blanket allowance of one year with the provision to extend that period three times is way too liberal and opens the door to obvious potential abuse. And as a victim in the past of a very bad "absentee landlord" situation I can tell you there MUST be provision for property management in absence of a readily available property owner. Moreover, the provision to allow a permanent change of the tenancy requirement is over the top. As stated before, this amounts to an illegal zoning change and this provision should be stricken. The tenancy requirement and any temporary suspension for "compelling cause" attaches to the property owner, not to the property.

I have been a resident of Menlo Park for many years and I am sorry to say I have had to watch the city run rough shod repeatedly over the interests and preferences of those of us who have made up this community. I realize things must always change and often for compelling (if not always good) reasons. If you insist (which you will) on relaxing a perfectly good mechanism for retaining neighborhood values please take a careful look at ALL the potential consequences of the changes you are proposing here and design a specific set of parameters that will prevent the degradation of our communities.

Jeannette Holliday
864 College Ave
Menlo Park

Menlo Park Planning Commission:
Diana Chow:

Ms. Chow, thank you very much for helping me understand how the proposed ordinance regarding a secondary dwelling work in our situation. We have a corner lot of about 13,000 square feet with more than adequate room for a secondary unit with off-street parking. Our neighbors have indicated they are supportive of a secondary unit on our property.

A secondary unit would be very helpful for our family. I will be 80 years old at my next birthday and a couple of years ago had a bad health scare. Our son and his family would love to move into our house in the next few years, the house in which he grew up. They probably cannot afford to move into the neighborhood otherwise.

The problem is that we apparently have only about 200 square of allowable additional floor area, about 300 feet short of an appropriately-sized secondary unit. (About 300 square feet at the back of our garage is essentially underground, unseen and unusable except for storage, but it really can't be excluded as basement area.)

We would very much appreciate it if the you would consider providing some flexibility in the floor area ratio as applied to secondary units, either a specified additional amount allowed or permitting application for a variance, the latter allowing for factors specific to the property to be considered. I understand that a variance is allowed with regard to the maximum size of a secondary unit; this would seem to be a similar situation.

Thank you very much for your consideration of this matter. I am sure other households also face this constraint. Allowing for flexibility for appropriate situations would contribute to regulations that result in additional needed affordable housing units in our city.

Thank you,

Karen and Richard Recht

Chow, Deanna M

From: Elizabeth Houck <elhouck@gmail.com>
Sent: Monday, February 10, 2014 1:11 PM
To: _Planning Commission
Subject: set backs for secondary units

Dear Commissioners,

Why not allow neighborhood set backs to dictate the set backs on secondary units?

It seems reasonable.

Regards,
Elizabeth

Chow, Deanna M

From: Patti L Fry <pattilry@gmail.com>
Sent: Monday, February 10, 2014 8:34 AM
To: _Planning Commission
Subject: secondary dwelling units

Dear Commissioners,

I continue to wonder why secondary units would be allowed to exist closer to the property line than allowed for main units in any particular residential zoning district. The property owners purchased their properties with the neighborhood characteristics of space and separation, which relate to privacy, noise, and access to sunlight. Surely there are other ways to locate granny units without allowing significant intrusions into building separations. This is particularly true in larger lot neighborhoods like R-1-S and RE.

Granny units serve a very useful purpose to provide additional presumably "affordable" housing. Unfortunately they won't all be occupied by a quiet grandmother.

If plumbing fixtures are allowed in accessory units, these easily could become dwelling units.

Regarding daylight plane, why not establish it to begin at 7' measured at the property line. That is the allowed maximum height of fences and hedges.

With respect,
Patti Fry

Chow, Deanna M

From: Phillip Bahr <philb@bahrarchitects.com>
Sent: Monday, February 10, 2014 4:06 PM
To: Bressler, Vincent; Eiref, Ben; Ferrick, Katie; Ferrick, Katie; Onken, John; Riggs, Henry
Cc: _Planning Commission; mmoulton@hlcsmc.org; Bahr, David (dbahr88@gmail.com);
Murphy, Justin I C; Phillip Bahr
Subject: Meeting 2/10/2014. F1. Housing Element/City of Menlo Park Study Session
(SECONDARY HOUSING UNITS)
Attachments: 140127_PlanningCommission.xps; Modifications_Secondary_Dwelling_Units_2.10.14.pdf

To the Menlo Park Planning Commissioners:

I am sending you this correspondence in regards to the agenda items for tonight as follows:

F1. Housing Element/City of Menlo Park: Study Session to review, discuss and comment on the proposed draft Zoning Ordinance amendments to Chapter 16.79 (Secondary Dwelling Unit) pertaining to secondary dwelling unit development standards, including reducing the minimum lot size eligible for a secondary dwelling unit (without a use permit) to 5,750 square feet to encourage the creation of more units and reducing the setback requirement for an existing and permitted accessory structure to allow for conversions of accessory structures to secondary dwelling units when specific criteria are met. In addition, amendments to Section 16.68.030 (Accessory Buildings and/or Structures) are also proposed. The modifications include establishing new setbacks for an accessory structure, dependent upon the use of the structure and to add a limit on the number of plumbing fixtures in a structure to distinguish use of an accessory structure from a secondary dwelling unit. Both amendments could also include language and formatting modifications for clarification and consistency purposes. Continued from the meeting of January 27. Staff report and presentation from the meeting of January 27.

My comments:

1. We would all agree that Secondary Housing units are a viable part to meet our Menlo Park housing needs.
2. In my review of the staff report and presentation, I believe that Menlo Park needs additional time to craft the standards for secondary units. My concern is that the planning requirements will not encourage enough secondary housing units to be built now. Furthermore, as I understand, there will be an additional number of secondary housing units identified for our next go-around of the Housing Element. I can see that a significant effort has already been made by the Planning Department. As we go forward we want to encourage secondary housing units that can be designed and placed on lots to accommodate all kinds of secondary housing, including:
 - a. Housing for people with disabilities and other medical needs,
 - b. Housing for our aging parents (or for us in the future)
 - c. Housing for our adult children (consider smaller housing units, referred to as "Tiny Houses")
 - d. Pilot Projects – housing for Facebook or other workers, self-contained-off the grid units and for healthcare needs.

Action Requested:

1. Additional study and review of planning requirements including building size, lot size, height limits, and setbacks.
2. Identification of potential pilot projects and partners to develop secondary housing unit projects.

Best,

Phillip Bahr
1119 Pine Street
Menlo Park, CA 94025

MOBILE: 650-329-0990

Chow, Deanna M

From: Jim Lukas <jimlukas2000@yahoo.com>
Sent: Friday, January 24, 2014 1:08 AM
To: _athome
Subject: Housing Element Feedback

Dear Deanna and committee,

In general I applaud your efforts at finally conforming to state law and at long last providing mandated housing.

My concern is that if I provide more housing, there is nowhere to park the cars. My entire front yard is already turned into a parking lot, due to the parking ordinance. As much as I would like to provide housing, I don't want to also turn my back yard into a parking lot.

Furthermore, the Parking Ordinance in practice and (and intent) comprises a form of parking discrimination. Our city attorney said as much to me. I am willing to provide more housing, but only if, in practical, and in political terms, Menlo Park is willing to cease its discriminatory practices, and let my people park. Its time we got rid of this 50-year-old vestige of Menlo Park's racist past.

The problem of course is that Menlo residents actually like it this way, and still very much enjoy their privilege of racist parking discrimination. Maybe we should just go the other way, erect fences, and turn the entire city into a gated community. Of course, leaving East Menlo Park on the other side of the fence, and still keeping them down, by not letting them park, or forcing them to park in their front yard.

While I don't expect or require a response to all of the above, if you can reply, does the Housing Element make enough of a provision for parking. It seems to me a very real concern, a make or break for me and others whom you hope to enroll in the program.

Signed,
Jim

Frequently Asked Questions

Proposed Secondary Dwelling Unit and Accessory Buildings and Accessory Structures Ordinances

1. Who is driving the initiative for changes to the secondary dwelling unit ordinance?

The proposed modifications to the secondary dwelling unit ordinance are derived from Housing Element implementation program H4.E. The Housing Element is the City's policy document on housing and provides goals, policies and programs to address housing needs in the City. The specific program is intended to encourage the development of secondary dwelling units as a means of providing a variety of housing types. The specific changes to the secondary dwelling unit ordinance would be determined through implementation of the program.

The draft ordinance has been prepared with guidance from the Housing Element Steering Committee, the City Council, Planning Commission, Housing Commission and members of the public who attended the community workshop, various meetings, and submitted correspondence during the process.

2. Can there be an increase in a property's maximum floor area limit if a secondary dwelling unit is added?

The maximum square footage for a secondary dwelling unit is 640 square feet. The proposed ordinance would allow a maximum size of 700 square feet if the building is designed to comply with all aspects of disabled access requirements for kitchens, bathrooms and accessible routes. The square footage of a secondary dwelling unit is included within the maximum floor area limit for the property. Therefore, a secondary dwelling unit may result in a smaller main dwelling. No changes to the maximum floor area limit are being considered at this time.

3. How will the addition of secondary dwelling units affect parking on a property?

One covered or uncovered parking space, in addition to the parking required for the main dwelling, is required for a secondary dwelling unit. The ordinance allows the parking space to be located in a variety of locations, including tandem and in the required interior side yard, and front yard, so long as no more than 500 square feet of the required front yard is paved for motor vehicle use. The proposed ordinance clarifies that tandem parking includes a single-car driveway leading to two-required parking spaces for the main dwelling unit. The parking space for the secondary dwelling unit can often be met without altering the existing parking configuration for the main dwelling. A property must continue to comply with other applicable parking ordinances in the Municipal Code.

4. What would be the requirements for a secondary dwelling unit with alley access parking?

As mentioned in item #4, one covered or uncovered space is required for a secondary dwelling unit. Parking from alley access is permitted, subject to meeting certain criteria. The proposed ordinance related to accessory buildings and accessory structures states that any garage or carport entrance on any lot line, except for an alley, shall be a minimum of 20 feet from such property line. For garage entrances facing an alley, the Planning Commission recommended that the garage entrance could be reduced to five feet instead of 20 feet due to the limited volume of cars and overall use of the alley. In practicality, however, the setback may be greater to allow for proper vehicular back-up and turning movements, but this would be reviewed during the building permit process. Additionally, if vehicular access from the alley is new to the property, an alley access maintenance agreement would be required. The agreement requires a property owner to assist in maintaining the alley with an all-weather surface leading up to the subject property, and would be required prior to issuance of a building permit. If the current condition of the alley falls below Engineering standards, the owner would be required to implement improvements to the alley concurrent with the construction of the development project.

5. What are the requirements or parameters for approving non-tenancy status through the registration process for properties with secondary dwelling units?

Per the proposed ordinance, the registration process and subsequent annual renewal (if requested) would be subject to a process and review by the Community Development Director. To be eligible for the registration process, the ordinance requires that a tenant occupy the property for a minimum of two of the previous five years prior to the registration application. The proposed ordinance does not establish set criteria, but criteria could be added. The application is intended to include the reason for the absence, along with supporting documents, including a property management plan and a parking plan (if tandem parking is used). The intent would be to approve the registration renewal, so long as the appropriate documents are filed and no complaints have been received.

6. Why is a two-year residency required for the non-tenancy registration process for secondary dwelling units?

During the Planning Commission's discussion regarding tenancy, concerns were raised that the rental of the main dwelling unit and secondary dwelling unit for a long period of time would be more akin to R-2 zoning, and not a single-family residential neighborhood. Taking those concerns into consideration, language is being proposed that would require a property owner to have occupied the subject property for a minimum of two years of the previous five years from the date of the registration application to be eligible for the registration process. The years of residence is the same used for the federal tax exemptions when a dwelling is deemed a primary residence. The requirement is intended to address concerns about absentee landlords and those seeking property solely as rental units for investment purposes.

7. What are the setback requirements for a secondary dwelling unit?

Setbacks will vary depending on the zoning district. For attached secondary dwelling units, the unit shall comply with all minimum yard requirements for the main dwelling established by the single-family zoning district in which the lot is located. For detached secondary dwelling units, the unit must also comply with the minimum yard requirements for the main dwelling established by the zoning district in which the lot is located, except that the minimum rear yard is 10 feet. In addition, the interior side and rear yard may be reduced to five feet, subject to written approval of the contiguous property owner where the portion of the structure encroaches. If the contiguous interior side or rear property line is an alley, the minimum setback is five feet. A use permit, which is a discretionary process by the Planning Commission, can be requested to seek modifications to the setback requirements.

8. Can an accessory building be used as a secondary dwelling unit?

An accessory building is distinctly different than a secondary dwelling unit. An accessory building, per its proposed definition, shall not contain an area for cooking or sleeping. The definition of a secondary dwelling unit, however, requires that the unit contain permanent provisions for sleeping and cooking, amongst other criteria.

Of note, the proposed modifications to the secondary dwelling unit ordinance is establishing a conversion process for legally permitted accessory buildings, meeting certain criteria, to become a secondary dwelling unit. The program would be for a limited one-year timeframe, unless extended.

9. If accessory buildings can have plumbing fixtures, how would this differ from a secondary dwelling unit?

The proposed definition of accessory building uses the number of plumbing fixtures in a building to determine whether the building has "living space". An accessory building with four or more plumbing fixtures is considered to have "living space." Although accessory buildings that have "living space" contain similar setback requirements as secondary dwelling units, these buildings cannot be used for permanent living or contain features of a dwelling such as cooking facilities. See also response to item #8.

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