



SPECIAL MEETING AGENDA – AMENDED

Date: 3/12/2019
Time: 5:00 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

City Councilmember Catherine Carlton will be participating by phone from:
1000 E 5th Street
Austin, TX 78702

According to City Council policy, all regular meetings of the City Council are to end by midnight unless there is a super majority vote taken by 11:00 p.m. to extend the meeting and identify the items to be considered after 11:00 p.m.

5:00 p.m. Closed Session (City Hall – “Downtown” Conference Room, 1st Floor)

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

CL1. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding PSA

Attendees: City Attorney Bill McClure, Administrative Services Director Lenka Diaz

CL2. Closed session conference pursuant to Government Code §54957(b)(1) regarding public employee performance evaluation of the City Attorney

6:00 p.m. Study Session (City Council Chambers)

SS1. Best practices for chronic homelessness

7:00 p.m. Regular Session

- A. Call to Order**
- B. Roll Call**
- C. Pledge of Allegiance**
- D. Report out of Closed Session**

Public Comment

Under “Public Comment,” the public may address the City Council on any subject not listed on the agenda. Each speaker may address the City 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 City Council cannot act on items not listed on the agenda and, therefore, the City Council cannot respond to non-agenda issues brought up under public comment other than to provide general information.

E. Consent Calendar

- E1. Accept the City Council meeting minutes for February 26, 2019 ([Attachment](#))
- E2. Waive the second reading and adopt Ordinance No. 1055 to update inspection requirements of the Stormwater Management Program ([Staff Report #19-043-CC](#))
- E3. Award a construction contract to Gruendl Inc. DBA Ray's Electric for rectangular rapid flashing beacon installation at five locations in the amount of \$301,016, approve a contingency in the amount of \$30,102; and appropriate \$235,000 from the Measure A fund balance ([Staff Report #19-044-CC](#))
- E4. Approve an expenditure, not to exceed \$104,087, for fiscal year 2018-19 Xerox, Inc. services ([Staff Report #19-041-CC](#))

F. Regular Business

- F1. Approval of seventh amendment to the agreement of services for City Attorney William L. McClure ([Staff Report #19-047-CC](#))
- F2. Biennial review of the El Camino Real/Downtown Specific Plan and direction on plan amendments ([Staff Report #19-045-CC](#))
- F3. Second reading and adoption of Ordinance No. 1053 to add residential tenant relocation assistance requirement and discussion of establishing a community housing fund to assist lower income tenants ([Staff Report #19-046-CC](#))
- F4. Discuss and provide direction on the City's travel policy and/or adopt Resolution No 6485 rescinding City Council Procedure No. CC-18-001 and adopting City Council Procedure No. CC-19-002 titled "City of Menlo Park Travel, Meal and Lodging Policy" ([Staff Report #19-023-CC](#))
- F5. Approval of City Council appointments to various City Council subcommittees and liaisons to outside agencies ([Staff Report #19-030-CC](#))

G. Informational Items

- G1. City Council and commission/committee annual attendance report for March 2018 – February 2019 ([Staff Report #19-039-CC](#))
- G2. Update on proposed Cable JPA purchase of the Mid-Pen Media Center building at 900 San Antonio Road, Palo Alto, CA, using member agencies' PEG fees ([Staff Report #19-048-CC](#))
- G3. City Council adopted fiscal year 2019-20 budget principles and 2019 priorities and work plan ([Staff Report #19-049-CC](#))

H. City Manager's Report

I. Councilmember Reports

J. Adjournment

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 any matters of public interest not listed on the agenda, members of the public have the right

to directly address the commission on any item listed on the agenda at a time designated by the chair, either before or during the City 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 chair, 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 city clerk's office, 701 Laurel St., Menlo Park, CA 94025 during regular business hours. 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.

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 menlopark.org/agenda and can receive email notification of agenda and staff report postings by subscribing to the "Notify Me" service at menlopark.org/notifyme. Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 3/7/2019)



SPECIAL AND REGULAR MEETING MINUTES – DRAFT

Date: 2/26/2019
Time: 5:00 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

5:00 p.m. Closed Session (City Hall – “Downtown” Conference Room, 1st Floor)

CL1. Closed session conference pursuant to Government Code §54957(b)(1) regarding public employee performance evaluation of the City Attorney

5:45 p.m. Regular Session (City Council Chambers)

A. Call to Order

Mayor Mueller called the meeting to order at 5:52 p.m.

B. Roll Call

Present: Carlton, Combs, Nash, Taylor, Mueller

Absent: None

Staff: Interim City Manager Starla Jerome-Robinson, City Attorney Bill McClure, City Clerk Judi A. Herren

C. Pledge of Allegiance

Mayor Mueller led the Pledge of Allegiance.

D. Report from Closed Session

None.

Mayor Mueller announced the reordering of the agenda.

H3. Approve a two-year employment agreement with Starla Jerome-Robinson as city manager (Staff Report #19-034-CC)

- Andrew Boone spoke in support of the agreement and was enthusiastic for the selection of a Menlo Park resident.

ACTION: City Council voted to approve a two-year employment agreement with Starla Jerome-Robinson as city manager, passed unanimously.

H1. 2019 City Council policy priorities and work plan (Staff Report #19-035-CC)

Assistant City Manager Nick Pegueros made the presentation.

Mayor Mueller commented that a study session on chronic homelessness has been scheduled for March.

- Marcy Coggins spoke against the Sharon Road sidewalks project but does support the residents being a part of the process.
- Lynne Fovinci spoke in support of safety on Sharon Road and not just sidewalks.
- Ann Wahlundlatta spoke of safety concerns on Sharon Road but spoke against the sidewalk project.
- Andrew Boone spoke against the public comment two-minute requirement and is encouraged by the study session on homelessness and in support of the minimum wage ordinance.
- Christy Heaton spoke in support of Sharon Road sidewalks.
- Elyse Stein spoke in support of the library projects.
- Linda Barman spoke in support of sidewalks on Sharon Road.
- Nina Barman spoke in support of sidewalks on Sharon Road.
- Rich Ginn spoke in support of sidewalks on Sharon Road.
- Neil Barman spoke in support of sidewalks on Sharon Road.
- Karen Reis spoke against the sidewalk project on Sharon Road.
- Ian Edwards spoke in support of the sidewalks on Sharon Road.
- Adina Levin spoke in support of the downtown parking strategies, requested grade separation as a priority and the deadlines for reach codes.
- Pamela Dakis spoke against the sidewalk project on Sharon Road but in favor of burying the power lines.
- James Tuleya spoke in support of building reach codes and stressed the importance of their timeline.
- Angela Evans spoke in support of downtown parking and housing strategies.
- Pamela Jones spoke in support of the Belle Haven library but urged City Council to reconsider the timeline. Jones also requested that Belle Haven projects be merged and completed together.
- Curt Conroy spoke about locations for homeless housing.
- Fran Dehn spoke in support of downtown parking solutions and transportation alternatives.
- Mila Zelkha spoke in support of the creation of a transportation management association.
- Jen Wolosin spoke in support of streamlining, transparency, road standards, and community communication.
- Rachel Horst spoke in support of downtown parking solutions/strategies and affordable housing.
- Bill Baron spoke in support of communication between the city and the residents and establishing a priority item for a communications monitor.
- Ethan Edwards spoke in support of sidewalks on Sharon Road.
- Hilary Stevenson spoke in support of sidewalks on Sharon Road and improved school routes in general.
- Katie Behroozi asked to reaffirm priorities for the Middle Avenue bike lanes, access points, and safe routes to school.
- Pushpinder Lubana spoke in favor of investing in human return and human need when considering priorities.
- Karen Grove requested that City Council prioritize racial equity.
- Tom Kabat spoke in support of reach codes for new construction projects.

Mayor Mueller closed public comment.

The City Council continued this item to March 12.

E. Presentations and Proclamations

E1. Proclamation: Recognizing Rich Ginn

Mayor Mueller read and Rich Ginn accepted the proclamation.

E2. Proclamation: Recognizing Christy Heaton

Mayor Mueller read and Christy Heaton accepted the proclamation.

E3. Proclamation: Recognizing Terry Thygessen

Mayor Mueller read and Terry Thygessen accepted the proclamation.

E4. Proclamation: Recognizing Joan Lambert

Mayor Mueller read and Joan Lambert accepted the proclamation.

E5. Proclamation: Recognizing Dr. Charlie Mae Knight

Mayor Mueller read and Dr. Charlie Mae Knight accepted the proclamation.

E6. Proclamation: Recognizing Marcelino Lopez

Mayor Mueller read and Marcelino Lopez accepted the proclamation.

H2. Consideration and possible adoption of two alternative tenant relocation assistance ordinances (Staff Report #19-036-CC)

City Manager Starla Jerome-Robinson was recused and exited the City Council chambers.

Interim Housing and Economic Development Director Clay Curtin made the presentation and Assistant City Attorney Cara Silver was available for questions.

- Curt Conroy spoke in support on addressing Menlo Park housing needs.
- Andrew Boone spoke in support of the ordinance.
- Paula Macchello spoke against the tenant relocation ordinance.
- Nik Noomen spoke against the tenant relocation ordinance.
- Diane Dittmar spoke in support of alternative A and offering a natural lease end.
- Dr. Jackie Newton spoke in support of the tenant relocation ordinance.
- Ernesto Reyes spoke on a letter sent earlier in the day and in support of the tenant relocation ordinance.
- Mike Haddock spoke against the tenant relocation ordinance.
- Nicole Evans spoke in support of alternative B.
- Justin Alley spoke in support of the tenant relocation ordinance.
- Brian Ponty spoke in support of alternative A.
- Susan Lewis spoke against alternative B.
- James Purvis spoke against the tenant relocation ordinance.

- Carol Collins spoke against alternative B and in support of alternative A.
- Caitlyn Marianacci spoke in support alternative B.
- Meg McGraaw-Sherer spoke in support of alternative B as an urgency ordinance.
- Mickie Winkler spoke against alternative B.
- Mike Dunham spoke in support of alternative B.
- Rupa Narsingmia spoke in support of alternative A.
- Jeff Deng spoke against the tenant relocation ordinance.
- David Tuzman spoke in support of alternative B.
- Ine Grewe spoke in support of the tenant relocation ordinance, alternative B.
- Julissa Moreno spoke in support of alternative B.
- Kenia Nojar spoke in support of the tenant relocation ordinance, alternative B.
- Ofelia Bello spoke in support of alternative B.
- Mark Moll'neaux spoke in support of the tenant relocation ordinance.
- Karen Grove spoke in support of the tenant relocation ordinance, alternative B.
- Julian Cortella spoke support of alternative B.
- Keith Ogden spoke in support of alternative B.
- Jonathan Erwin-Frank spoke in support of alternative B.
- Vanessa Honey spoke in support of alternative A.
- Sandra Zamora spoke in support of alternative B.
- Pamela Jones spoke in support of alternative B.
- Rachel Horst spoke in support of the tenant relocation ordinance.
- Jennifer Liu spoke against the tenant relocation ordinance.
- Tom Thompson spoke against the tenant relocation ordinance.
- Kelsey Baner spoke in support of alternative B.
- Adina Levin spoke in support of the tenant relocation ordinance, alternative B.
- Nevada Meriman spoke in support of alternative B.
- Munir Vora spoke against the tenant relocation ordinance and asked City Council to find the root cause of the housing problem. Vora also commented that alternative A was the better option of the two.
- Jordan Grimes spoke in support of alternative B.
- Piyush Gupta spoke against the tenant relocation ordinance.
- Angie Evans spoke in support of tenant relocation ordinance, alternative B.
- Joyce Liu spoke in support of alternative A.
- Jeanne Merino spoke in support of tenant relocation ordinance, alternative B.
- Diane Bailey spoke in support of alternative B.
- Penelope Huang spoke against the tenant relocation ordinance.
- Rhory Lyn Antonio spoke in support of alternative A.
- Ryan Carrigan spoke in support of alternative A.
- Karyl Eldridge spoke in support of alternative B.
- Emily Ann Ramos spoke in support of tenant relocation ordinance, alternative B.
- Jen Wolosin spoke support of the tenant relocation ordinance.
- Keith Suddjian spoke against alternative B.
- Nani Friedman spoke in support of alternative B.
- Andrew Skeleton spoke in support of alternative B.
- Kate Ham spoke in support of alternative B.

- Hannah Williams spoke in support of alternative B.
- Marisol Zarate spoke in support of alternative B.

The City Council received clarification on the different aspects of alternatives A and B. There was discussion about means testing, parameters around nuisance fees, a community housing fund and its uses, adjusting the AMI (area median income) levels, potential litigation, and who receives assistance through each alternative.

ACTION: The City Council voted to extend the meeting past 11 p.m., passed unanimously.

ACTION: Motion and second (Combs/Carlton) to adopt alternative A as an urgency ordinance with language proposed by the City Attorney, failed (3-2, Taylor and Nash dissenting).

ACTION: Motion and second to direct staff to return alternative A for introduction at the next meeting, failed (2-3, Mueller, Combs, and Carlton dissenting).

ACTION: Motion and second (Combs/Carlton) to introduce an ordinance adding Chapter 8.56 of the Menlo Park Municipal Code Regarding Tenant Relocation Assistance, Attachment A), with an amendment to Section 8.56.130 as proposed by City Attorney, passes (3-2, Taylor and Nash dissenting).

- H4. Receive a report and hear public comment on upcoming negotiations with the Menlo Park Police Sergeants Association on a successor agreement to the current agreement expiring June 30, 2019 (Staff Report #19-026-CC)

ACTION: Motion and second (Combs/Carlton) to receive a report and hear public comment on upcoming negotiations with the Menlo Park Police Sergeants Association on a successor agreement to the current agreement expiring June 30, 2019, passed unanimously.

F. Public Comment

- Kyra Brown spoke against the Menlo Park policing of Facebook bicyclist and requested that data be provided on the number of East Palo Alto residents arrested on Facebook bikes.
- Izamar Moya echoed Kyra's comments regarding East Palo Alto residents arrested while using Facebook bikes.

G. Consent Calendar

- G1. Accept the City Council meeting minutes for February 12, 2019 (Attachment)
- G2. Introduce Ordinance No. 1055 to update inspection requirements of the stormwater management program (Staff Report #19-027-CC)
- G3. Adopt Resolution No. 6486 to approve development-related fees for the new polychlorinated biphenyls building demolition program, and amend the master fee schedule to include these fees (Staff Report #19-028-CC)

- G4. Adopt Resolution No. 6487 amending Resolution No. 6480 regarding the proposed abandonment of public right-of-way and public utility easements adjacent to 1345 Willow Road to reschedule the dates for Planning Commission review and City Council public hearing (Staff Report #19-033-CC)

ACTION: Motion and second to approve the consent calendar, passed unanimously.

I. Informational Items

- I1. Review of the City's investment portfolio as of December 31, 2018 (Staff Report #19-031-CC)
- I2. Update on the proposed San Mateo County Flood and Sea Level Rise Resiliency Agency (Staff Report #19-029-CC)

J. City Manager's Report

None.

K. Councilmember Reports

City Councilmember Carlton reported on a C/CAG (City/County Association of Governments) meeting.

Mayor Mueller reported that there would be a joint meeting between the City Councils of Menlo Park and Palo Alto.

L. Adjournment

Mayor Mueller adjourned the meeting at 12:05 a.m.

Judi A. Herren, City Clerk



STAFF REPORT

City Council
Meeting Date: 3/12/2019
Staff Report Number: 19-043-CC

Consent Calendar: **Waive the second reading and adopt Ordinance No. 1055 to update inspection requirements of the Stormwater Management Program**

Recommendation

Staff recommends that the City Council waive the second reading and adopt an ordinance to update the City's Municipal Code, Chapter 7.42 (Stormwater Management Program), to reflect that the County has transferred stormwater inspection responsibility to the City and to permit the City to recover its inspection costs from the affected businesses.

Policy Issues

The majority of the City's stormwater activities are funded by the general fund. Per the City's fiscal policy (user fee cost recovery), stormwater inspections are considered "high recovery costs" between 70-100 percent since they are regulatory in nature.

Background

On February 26, 2019, the City Council introduced an ordinance (Attachment A) to update inspection requirements of the Stormwater Management Program. The staff report from that meeting is included as Attachment B.

Analysis

If adopted, the ordinance will become effective 30 days after adoption.

Impact on City Resources

The majority of the City's stormwater activities are funded by the General Fund, including implementing a stormwater business inspection program. Revising the Municipal Code to ensure full cost recovery for stormwater business inspections.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it has no potential for resulting in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Menlo Park Municipal Code, Chapter 7.42, Ordinance No. 1055
- B. City Council staff report, February 26, 2019 – hyperlink:
menlopark.org/DocumentCenter/View/20711/G2---Stormwater-Ord---SR

Report prepared by:
Pam Lowe, Senior Civil Engineer

Report reviewed by:
Chris Lamm, Assistant Public Works Director

ORDINANCE NO. 1055

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK,
CALIFORNIA, AMENDING TITLE 7, "HEALTH AND SANITATION," CHAPTER
7.42, "STORM WATER MANAGEMENT PROGRAM" OF THE MENLO PARK
MUNICIPAL CODE**

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

SECTION 1. FINDINGS AND DETERMINATIONS.

- A. The San Francisco Bay Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (NPDES Permit) Order No. R2-2015-0049 outlines the State's requirements for municipal agencies to address the water quality and flow-related impacts of stormwater runoff. One of the permit conditions requires a monitoring program to help characterize local water quality conditions and to begin evaluating the overall effectiveness of the permit's implementation.
- B. Provision C.4 Industrial and Commercial Site Control of the Regional Permit requires each municipality to implement an industrial and commercial site control program at all sites which could reasonably be considered to cause or contribute to stormwater runoff pollution, with inspections and effective follow-up and enforcement to abate actual or potential pollution sources.
- C. Every fiscal year, the City is required to conduct approximately 200 industrial and commercial stormwater inspections.
- D. San Mateo County Environmental Health Services Division stopped providing inspection services to all of the cities and towns in the County of San Mateo, excluding Daly City, San Mateo, and South San Francisco, on December 31, 2017.
- E. In order to continue meeting the Regional Permit Provision C.4 inspection requirements, on January 23, 2018, the City Council approved an agreement with EOA, Inc. to perform business inspections.

SECTION 2. AMENDMENT OF CODE. Section 7.42.080 [Discharge of Pollutants] of Chapter 7.42 [Storm Water Management Program] of Title 7 [Health and Sanitation] is hereby amended as follows.

7.42.080 Discharge of pollutants.

(a) Prohibition. The discharge of non-storm water discharges to the city storm sewer system and water courses is prohibited. The discharge of rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters including flood plain areas is prohibited.

(b) Implementation of NPDES permit conditions. The public works director, community development director or designees shall have authority to adopt policies to implement NPDES permit No.CAS612008 and all subsequent permits or amendments. These policies may include best management practices (BMPs) to control and reduce non-stormwater and polluted stormwater discharges to storm drains and watercourses; including but not limited to conditions



STAFF REPORT

City Council
Meeting Date: 3/12/2019
Staff Report Number: 19-044-CC

Consent Calendar: **Award a construction contract to Gruendl Inc. DBA Ray's Electric for rectangular rapid flashing beacon installation at five locations in the amount of \$301,016, approve a contingency in the amount of \$30,102; and appropriate \$235,000 from the Measure A fund balance**

Recommendation

Staff recommends that City Council award a construction contract to Gruendl Inc. DBA Ray's Electric for rectangular rapid flashing beacon (flashing beacon) installation on Crane Street near Valparaiso Avenue, at Middlefield Road and Linfield Drive, at Oak Grove Avenue near Hoover Street, at Ravenswood Avenue and Alma Street, and at Santa Cruz Avenue and Johnson Street in the amount of \$301,016, approve a contingency in the amount of \$30,102, and appropriate \$235,000 from the Measure A fund balance.

Policy Issues

This project is consistent with the City's circulation element, adopted in 2016, which includes goals of safe, efficient, attractive, user-friendly circulation system that promotes a healthy, safe, and active community and quality of life throughout the City and policies to promote pedestrian and bicyclist safety in the design of streets, intersections and traffic control devices.

Background

On September 13, 2016, the City Council adopted Resolution No. 6342 to establish a citywide crosswalk policy. Staff has used the guidelines set forth in this policy to select appropriate locations and identify appropriate treatments for crosswalks within the City. This policy included rectangular rapid flashing beacons as one of the crosswalk treatments for pedestrian safety enhancement. This particular type of flashing beacons are user-actuated, and display a rapid flashing yellow LED (light-emitting diode) light that supplements warning signs to alert motorists of crossing pedestrians at uncontrolled crossings (intersections or midblock crosswalks that do not have either a traffic signal or stop sign.)

In summer of 2017, in conjunction with the Santa Cruz Avenue sidewalk installation project and the Valparaiso Avenue pedestrian improvement project, City installed a total of five flashing beacons at various intersections on Santa Cruz Avenue and on Valparaiso Avenue.

Staff has been pursuing upgrades to several in-pavement lighted crosswalk systems that are at the end of their useful lives and can no longer be repaired because the systems have been discontinued by their manufacturers.

Staff has received several concerns from parents and residents about feeling unsafe when crossing these locations, especially on Crane Street near Valparaiso Avenue, and on Middlefield Road at Linfield Drive,

because these systems are not fully functional and in need of replacement.

Analysis

On January 25, 2019, bids were solicited from prospective contractors for replacement of in-pavement lighted crosswalk systems with flashing beacons via the competitive bidding process. The work to be done consists of removing existing in-pavement lighted systems and furnishing and installing a rectangular rapid flashing beacon system at five locations, signing and striping improvements, and curb ramp reconstruction at various locations and other incidentals as necessary to complete the work at the following five locations as shown in Attachment A:

- Crane Street near Valparaiso Avenue
- Middlefield Road at Linfield Drive
- Oak Grove Avenue near Hoover Street
- Ravenswood Avenue at Alma Street
- Santa Cruz Avenue at Johnson Street

All locations except for Middlefield Road at Linfield Drive will have typical flashing beacon installation on poles on each side of the roadway (Attachment B.) Based on the wider roadway, higher traffic speeds and for improved visibility, Middlefield Road at Linfield Drive will have flashing beacons mounted overhead on a signal mast arm for both directions of traffic (Attachment C.)

The Middlefield Road at Linfield Drive improvements are being coordinated with the planned future project to install a pedestrian hybrid beacon (e.g., “HAWK” signal) or traffic signal in collaboration with the Menlo Park Fire Protection District near Station 1. The poles installed as part of this effort are able to be reused for additional future modifications at either this location or at a similar location (e.g., at Survey Lane on Middlefield Road.) The future project (Middlefield Road and Linfield Drive and Santa Monica Avenue crossing improvements) to install a pedestrian hybrid beacon or traffic signal is planned in the fiscal year 2019-20 capital improvement program with a proposed budget of \$960,000 of Measure A funds and a potential contribution from the fire district. If funded in next year’s budget, the project would be expected to start design next fiscal year and construction in fiscal year 2020-21.

Bids for this project were opened February 21, 2019, with the following results.

Table 1: Bid results	
Contractor	Bid price
Engineer's estimate	\$345,000
Gruendl Inc. DBA Ray's Electric	\$301,016
W. Bradley Electric, Inc.	\$312,513
St. Francis Electric, LLC	\$369,172
Bear Electrical Solutions, Inc.	\$339,182
Tennyson Electric, Inc.	\$364,138
Columbia Electric, Inc.	\$391,670

Upon bid evaluation and analysis by staff and with the close range of the six bid prices received, the low bid is considered reasonable for the work involved in the project. The engineer's estimate for this project was higher than two of the lowest received bids. Staff anticipates this is due to the fact that the engineer's estimate was based on recent City projects involving flashing beacons were larger capital projects including sidewalk and pedestrian safety improvements. Since this project is a stand-alone project with a higher quantity of devices purchased as part of a single contract, the unit prices are slightly lower resulting in an overall cost savings to the City to perform this work.

Staff has never previously worked with the low bidder, but upon checking its references, found them to be acceptable.

Because the equipment needs to be ordered in advance, it is estimated that the project would begin construction by early May to meet a late July completion.

Impact on City Resources

Staff has identified a total project budget of \$385,000, which includes a 10 percent contingency, as summarized below:

Table 2: Construction budget	
Item	Amount
Construction contract	\$301,016
Contingencies	\$30,102
Construction inspection and administration	\$53,882
Total	\$385,000

Staff is requesting an appropriation of \$235,000 from the Measure A fund balance as follows:

Table 3: Appropriation request	
Item	Amount
Approved budget	\$150,000
New appropriation	\$235,000
Total project budget	\$385,000

Environmental Review

The project is categorically exempt under class 1 of the current State of California Environmental Quality Act Statute and Guidelines, which allows minor alterations and repair of existing facilities.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Map of proposed rectangular rapid flashing beacon system locations
- B. Typical rectangular rapid flashing beacon installation
- C. Rectangular rapid flashing beacons mast arm installation

Report prepared by:
Rene Baile, Associate Transportation Engineer

Report reviewed by:
Nikki Nagaya, Assistant Director of Public Works

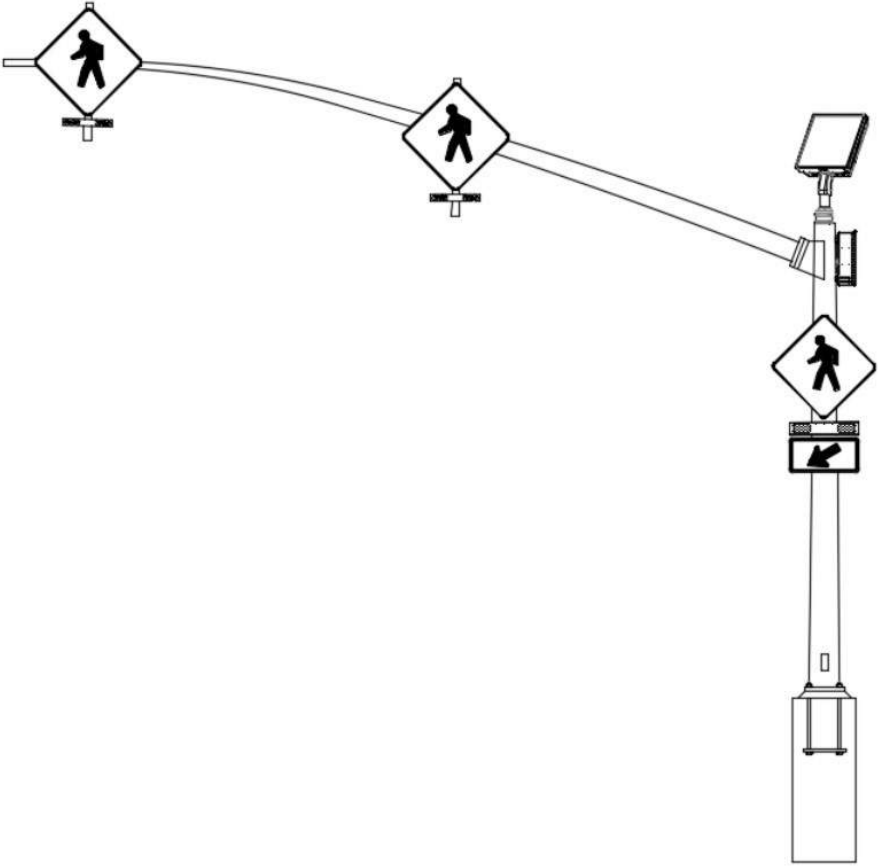
LOCATIONS OF PROPOSED
RECTANGULAR FLASHING BEACON SYSTEM



Typical Rectangular Rapid Flashing Beacon Installation



Rectangular Rapid Flashing Beacons Mast Arm Installation



of approval, maintenance agreements; regular inspections and reporting requirements.

(c) Permitted discharges. All discharges of material other than storm water must be in compliance with a NPDES permit issued for the discharge (other than NPDES Permit No. CAS612008-CA0029924) and this chapter.

SECTION 3. AMENDMENT OF CODE. Section 7.42.140 [Authority to Inspect] of Chapter 7.42 [Storm Water Management Program] of Title 7 [Health and Sanitation] is hereby amended as follows.

7.42.140 Authority to inspect.

(a) Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized enforcement official has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this chapter, the official may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the official by this chapter; provided that: (1) if such building or premises be occupied, he or she shall first present proper credentials and request entry; and (2) if such building premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

(b) Any such request for entry shall state that the property owner or occupant has the right to refuse entry that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate. In the event the search owner and/or occupant refuses entry after such request has been made, the official is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(c) Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of storm water contamination, illicit discharges, discharges of non-storm water to the storm water system, or similar factors.

(d) In accordance with the master fee schedule, the city may charge all applicable fees and charges, including but not limited to fees and charges for plan checking and maintenance verification inspections and re-inspections related to this chapter or the current NPDES permit.

SECTION 4. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it has not potential for resulting in any direct or indirect physical change in the environment.

SECTION 6. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city. Within 15 days after the adoption of the ordinance

amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the twenty-sixth day of February 2019.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the twelfth day of March 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Ray Mueller, Mayor

ATTEST:

Judi A. Herren, City Clerk

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STAFF REPORT

City Council

Meeting Date: 3/12/2019
Staff Report Number: 19-041-CC

Consent Calendar: Approve an expenditure, not to exceed \$104,087, for fiscal year 2018-19 Xerox, Inc. services

Recommendation

Staff recommends that the City Council approve an expenditure, not to exceed \$104,087 in fiscal year 2018-19, with Xerox, Inc. (Xerox) for the lease and maintenance of printers and citywide managed print services.

Policy Issues

This expenditure amount exceeds the city manager's signing authority and requires City Council approval.

Background

Since 2013, departments individually budgeted and maintained separate printer lease and support agreements with Xerox, in order to meet their print service needs (Attachment A.) Each printer agreement consists of both a base printer lease and a per-print (or impression) minimum volume charge, which are billed on a monthly basis. The City currently has seven main, high volume, multifunction production printers in its printer fleet which are under lease contracts and supported by Xerox. These lease contracts were originally negotiated and signed by various department staff across the City, as the amount of each department contract was within the purchasing authority of the department manager or director. Most of these agreements are currently operating on a month-to-month basis, with two agreements expiring July 20, 2019.

Additionally since 2014, and most recently in 2017, the City entered into renewable support contract agreement with Xerox for managed print services, called Xerox Print Services (XPS), which covers the support and replenishment of consumable supplies for the remaining low volume, city-owned printers deployed across all departments. This agreement (Attachment B) expires June 30, 2019.

In fiscal year 2015-16, City staff introduced a new, separate internal service fund for organizationwide technology spending. The Information Technology Internal Service Fund (ITISF) was created to centralize the purchasing of technology assets as well as manage, track and accurately report technology spending across all city departments. The ITISF performs cost recovery by charging each department for their technology related expenditures throughout the year. The goal in the creation and implementation of the ITISF is to consolidate all City technology purchasing and expenditures in order for the Information Technology division to review and negotiate vendor contracts and pricing, as well as accurately and centrally report on citywide technology expenditures.

Analysis

The City’s overall print services needs includes leasing high volume multifunction printers, purchasing individual desktop printers, and overall printer maintenance support. For the high volume printers, different departments entered into separate lease and support agreements with the Xerox vendor at different times throughout the years, and, because of this, contract pricing.

As for overall citywide printer maintenance and support, staff decided to contract with Xerox in order to reduce the support and administrative burden to Information Technology staff members. The XPS managed print services contract pricing is based on a minimum monthly print volume charge as well as an excess per print or impression charge which is determined following a quarterly reconciliation of the period’s total print volume.

It is important to note that both print volume and the number of supported city printers can change throughout the year depending on the printing needs of the various departments. The current fiscal year budget for print services is derived from both the direct printer lease costs and the average of the prior fiscal year’s print volume cost-plus a 10 percent contingency.

Summary of the City’s printer fleet and estimated annual cost (additional details in Attachment A):

High volume leased multifunction printers with individual contracts:

All departments (shared)	Xerox 7775
All departments (shared)	Xerox D110
Public Works	Xerox 7845
Public Works	Xerox 7970
Community Development	Xerox 7225 (quantity 2)
Police	Xerox 7545

Total annual costs for printer lease	\$38,738
Estimate annual print volume charges with 10 percent contingency	\$31,909

High volume city-owned multifunction printers with print volume contracts:

Human Resources	Xerox 6655
Community Services	Xerox 6655

Estimate annual print volume charges with 10 percent contingency	\$4,200
--	---------

Low Volume City-owned Printers with XPS support contract:

All departments	50+ Various Xerox and Hewlett Packard models
-----------------	--

XPS support contract annual base charge	\$22,784
Estimate annual print volume charges with 10 percent contingency	\$6,456

Total fiscal year 208-19 cost estimate for citywide printer support \$104,087

This is the first fiscal year of a complete transition of all Xerox vendor contracts into the ITISF since Information Technology staff began working with the different departments to consolidate and streamline the procurement and management of the City’s print service needs. The consolidation of citywide printing expenditures into the internal service fund results in a total anticipated expenditure amount that exceeds the city manager’s authorized single vendor purchase limit and requires City Council approval.

Now that the transition is complete, information technology staff is in the process of reevaluating the print services needs of all City departments and will obtain quotes for services in future fiscal years in an effort to increase efficiency and reduce costs.

Impact on City Resources

There is no impact on City resources as the total Xerox print services expenditures have been budgeted for fiscal year 2018-19.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it is a minor change that will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. City of Menlo Park printer fleet cost summary report fiscal year 2018-19
- B. Maintenance agreement between the City of Menlo Park and Xerox Inc.

Report prepared by:
Gene Garces, Information Technology Manager

**City of Menlo Park
Printer Fleet Cost Summary
FY2018 - 2019**

ATTACHMENT A

Department	Model	Serial Number	Status - Contract #	Agreement Start Date	Base Monthly Lease Cost	Base Annual Lease Cost	Print Volume Annual Cost w/ 10% Contingency	Printer Location
All - Shared	W7775P D110	RFX017652 BG0965410	Leased - #072471800 Leased - #071386407	4/2/2013 3/28/2014	463.19 1,390.28	5,558.28 16,683.36	13,809.00 0.00	City Hall - 2nd Floor City Hall - 2nd Floor
Public Works	W7845P W7970P	MX4331788 BOW588894	Leased - #072555500 Leased - #072471800	11/27/2013 3/8/2015	327.26 350.97	3,927.12 4,211.64	4,500.00 8,500.00	Corporation Yard City Hall - 1st Floor
Planning	W7225P	LX7067604	Leased - #072714800	7/20/2016	210.64	2,527.68	1,600.00	City Hall - 1st Floor
Building	W7225P	LX7658175	Leased - #072714800	7/20/2016	210.64	2,527.68	2,300.00	City Hall - 1st Floor
Police	W7545P	XKP510657	Leased	Est. - 2014	275.17	3,302.04	1,200.00	Police Records
Human Resources	W6655	E1B966857	City Owned - #072735500	3/23/2016	N/A	N/A	2,700.00	City Hall - 2nd Floor
Community Services	W6655	E1B966890	City Owned - #072735500	3/23/2016	N/A	N/A	1,500.00	Arrillaga Recreation Center
Totals						38,737.80	36,109.00	

Xerox Managed Print Services (XPS)	50 + Hewlett Packard / Xerox	Various	City Owned - #7138403-002	7/6/2017	1,898.69	22,784.28	6,456.00	Various City Locations
Totals						61,522.08	42,565.00	

Grand Total 104,087.08

MAINTENANCE AGREEMENT

City Manager's Office
701 Laurel St., Menlo Park, CA 94025
tel 650-330-6620



Contract #: 2145
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND XEROX CORPORATION
THIS AGREEMENT made and entered into at Menlo Park, California, this 6th day of July, 2017, by and between the CITY OF MENLO PARK, a Municipal Corporation, hereinafter referred to as "CITY", and XEROX CORPORATION, hereinafter referred to as "FIRST PARTY."
<p>WITNESSETH:</p> <p>WHEREAS, CITY desires to retain FIRST PARTY to provide certain professional services for CITY in connection with that certain project called: Xerox Print Services Support under the terms of the Cooperative Purchasing Network contract # R5245, which terms are hereby incorporated by its reference.</p> <p>WHEREAS, FIRST PARTY is licensed to perform said services and desires to and does hereby undertake to perform said services.</p> <p>NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND CONDITIONS of each of the parties hereto, it is hereby agreed as follows:</p>
1. SCOPE OF WORK
In consideration of the payment by CITY to FIRST PARTY, as hereinafter provided, FIRST PARTY agrees to perform all the services as set forth in Exhibit "A", Scope of Services.
2. SCHEDULE FOR WORK
<p>FIRST PARTY's proposed schedule for the various services required pursuant to this agreement will be as set forth in Exhibit "A", Scope of Services. CITY will be kept informed as to the progress of work by written reports, to be submitted monthly or as otherwise required in Exhibit "A". Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other, or the other's employees and agents.</p> <p>FIRST PARTY shall commence work immediately upon receipt of a "Notice to Proceed" from CITY. The "Notice to Proceed" date shall be considered the "effective date" of the Agreement, as used herein, except as otherwise specifically defined. FIRST PARTY shall complete all the work and deliver to CITY all project related files, records, and materials within one month after completion of all of FIRST PARTY's activities required under this Agreement.</p>
3. PROSECUTION OF WORK

FIRST PARTY will employ a sufficient staff to prosecute the work diligently and continuously and will complete the work in accordance with the schedule of work approved by the CITY. (See Exhibit "A", Scope of Services).

4. COMPENSATION AND PAYMENT

- A. CITY shall pay FIRST PARTY an all-inclusive fee that shall not exceed \$56,200.00 as described in Exhibit "A", Scope of Services. This compensation shall be based on the rates described in Exhibit "A". All payments, including fixed hourly rates, shall be inclusive of all indirect and direct charges to the Project incurred by FIRST PARTY. The CITY reserves the right to withhold payment if the City determines that the quantity or quality of the work performed is unacceptable provided FIRST PARTY is otherwise in default under this Agreement and has failed to cure any shortfall after receiving 30-day written notice.
- B. FIRST PARTY's fee for the services as set forth herein shall be considered as full compensation for all indirect and direct personnel, materials, supplies and equipment, and services incurred by FIRST PARTY and used in carrying out or completing the work.
- C. Payments shall be monthly for the invoice amount or such other amount as approved by CITY. As each payment is due, a statement describing the services performed shall be submitted to CITY by the FIRST PARTY. This statement shall include, at a minimum, the project title, Agreement Number, payment rate, and a listing of all reimbursable costs.
- D. Payments are due upon receipt of written invoices. CITY shall have the right to receive, upon request, documentation substantiating charges billed to CITY. CITY shall have the right to perform an audit of the FIRST PARTY's relevant records pertaining to the charges.

5. EQUAL EMPLOYMENT OPPORTUNITY

- A. FIRST PARTY, with regard to the work performed by it under this Agreement shall not discriminate on the grounds of race, religion, color, national origin, sex, handicap marital status or age in the retention of sub consultants, including procurement of materials and leases of equipment.
- B. FIRST PARTY shall take affirmative action to insure that employees and applicants for employment, are treated without regard to their race, color, religion, sex, national origin, marital status or handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. FIRST PARTY shall post in prominent places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- D. FIRST PARTY shall state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, national origin, marital status or handicap.
- E. FIRST PARTY shall comply with Title VI of the Civil Rights Act of 1964 and shall provide such reports as may be required to carry out the intent of this section.
- F. FIRST PARTY shall incorporate the foregoing requirements of this section in FIRST PARTY's agreement with all sub consultants.

6. ASSIGNMENT OF AGREEMENT AND TRANSFER OF INTEREST

- A. FIRST PARTY shall not assign this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the CITY thereto, provided, however, that claims for money due or to become due to the FIRST PARTY from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of an intended assignment or transfer shall be furnished promptly to the CITY.
- B. In the event there is a change of more than 30% of the stock ownership or ownership in FIRST PARTY from the date of this Agreement is executed, then CITY shall be notified prior to the date of said change of stock ownership or interest and CITY shall have the right, in event of such change in stock ownership or interest, to terminate this Agreement upon notice to FIRST PARTY provided FIRST PARTY is otherwise in default under this Agreement. In the event CITY is not notified of any such change in stock ownership or interest, then upon knowledge of same, it shall be deemed that CITY has terminated this Agreement.

7. INDEPENDENT WORK CONTROL

It is expressly agreed that in the performance of the service necessary for compliance with this Agreement, FIRST PARTY shall be and is an independent contractor and is not an agent or employee of CITY. FIRST PARTY has and shall retain the right to exercise full control and supervision of the services and full control over the employment, direction, compensation and discharge of all persons assisting FIRST PARTY in the performance of FIRST PARTY's services hereunder. FIRST PARTY shall be solely responsible for its own acts and those of its subordinates and employees.

8. CONSULTANT QUALIFICATIONS

It is expressly understood that FIRST PARTY is licensed and skilled in the professional calling necessary to perform the work agreed to be done by it under this Agreement and CITY relies upon the skill of FIRST PARTY to do and perform said work in a skillful manner usual to the profession. The acceptance of FIRST PARTY's work by CITY does not operate as a release of FIRST PARTY from said understanding.

9. NOTICES

All notices hereby required under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service. Notices required to be given to CITY shall be addressed as follows:

Gene Garces
IT Division
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6657

glgarces@menlopark.org

Notices required to be given to FIRST PARTY shall be addressed as follows:

Elissa Koestenbaum
Xerox Corporation
3333 Coyote Hill Rd. c/o EBC
Palo Alto, CA 94304-1314
415-590-9425

elissa.koestenbaum@xerox.com

Provided that any party may change such address by notice, in writing, to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. HOLD HARMLESS

The FIRST PARTY shall defend, indemnify and hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants from all claims, suits or actions that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the FIRST PARTY brought for, or on account of, injuries to or death of any person or damage to property resulting from the performance of any work required by this Agreement by FIRST PARTY, its officers, agents, employees and servants. Nothing herein shall be construed to require the FIRST PARTY to defend, indemnify or hold harmless the CITY, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782.8 of the California Civil Code.

11. INSURANCE

- A. FIRST PARTY shall not commence work under this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the FIRST PARTY's coverage to include the contractual liability assumed by the FIRST PARTY pursuant to this Agreement. These certificates shall specify to endeavor to provide thirty (30) days' notice be given, in writing, to the CITY, at the address shown in Section 9, of cancellation of the policy. FIRST PARTY shall notify CITY of any material change to the policy. All certificates shall be filed with the City.
1. Worker's Compensation and Employer's Liability Insurance:
The FIRST PARTY shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the FIRST PARTY makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement" (not required if the FIRST PARTY is a Sole Proprietor).
 2. Liability Insurance:
The FIRST PARTY shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the FIRST PARTY's operations under this Agreement, whether such operations be by FIRST PARTY or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in aggregate, or One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. FIRST PARTY shall provide the CITY with acceptable evidence of coverage. FIRST PARTY shall maintain Automobile Liability Insurance pursuant to this Agreement in an amount of not less than One Million Dollars (\$1,000,000) for each accident combined single limit or not less than One Million Dollars (\$1,000,000) for any one (1) person, and One Million Dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.
 3. Professional Liability Insurance:
FIRST PARTY shall maintain a policy of professional liability insurance, protecting it against claims arising out of the negligent acts, errors, or omissions of FIRST PARTY pursuant to this Agreement, in the amount of not less than One Million Dollars (\$1,000,000) per claim and in the aggregate. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.
- C. CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be included as additional insured for claims caused by the negligent acts or omissions of FIRST PARTY on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the Professional Liability and Worker's Compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the limits of liability of the policy under this agreement, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.
- E. Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to the CITY.

12. PAYMENT OF PERMITS/LICENSES

Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, prior to commencement of said work/services or forfeit any right to compensation under this Agreement.

13. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by CITY shall not constitute nor be deemed a release of responsibility and liability of FIRST PARTY or its sub-consultants and/or subcontractors for the accuracy and competency of the designs, working drawings, specifications or other documents and work, nor shall its approval be deemed to be an assumption of such responsibility by CITY for any defect in the designs, working drawings, specifications or other documents prepared by FIRST PARTY or its sub-consultants and/or subcontractors.

14. OWNERSHIP OF WORK PRODUCT

Work products of FIRST PARTY for this project, which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall become the property of CITY. The reuse of FIRST PARTY's work products by City for purposes other than intended by this Agreement shall be at no risk to FIRST PARTY.

15. REPRESENTATION OF WORK

Any and all representations of FIRST PARTY, in connection with the work performed or the information supplied, shall not apply to any other project or site, except the project described in Exhibit "A" or as otherwise specified in Exhibit "A".

16. TERMINATION OF AGREEMENT

- A. CITY may give thirty (30) days written notice to FIRST PARTY, terminating this Agreement in whole or in part at any time, either for CITY's convenience or because of the failure of FIRST PARTY to fulfill its contractual obligations or because of FIRST PARTY's change of its assigned personnel on the project without prior CITY approval. Upon receipt of such notice, FIRST PARTY shall:
1. Immediately discontinue all services affected (unless the notice directs otherwise); and
 2. Deliver to the CITY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated or produced by FIRST PARTY in performing work under this Agreement, whether completed or in process.
- B. If termination is for the convenience of CITY, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- C. If the termination is due to the failure of FIRST PARTY to fulfill its Agreement, CITY may take over the work and prosecute the same to completion by agreement or otherwise. In such case, FIRST PARTY shall be liable to CITY for any reasonable additional cost occasioned to the CITY thereby.
- D. If, after notice of termination for failure to fulfill Agreement obligations, it is determined that FIRST PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the CITY. In such event, adjustment in the contract price shall be made as provided in Paragraph B of this Section.
- E. The rights and remedies of the CITY provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.
- F. Subject to the foregoing provisions, the CITY shall pay FIRST PARTY for services performed and expenses incurred through the termination date.

17. INSPECTION OF WORK
It is FIRST PARTY's obligation to make the work product available for CITY's inspections and periodic reviews upon request by CITY.
18. COMPLIANCE WITH LAWS
It shall be the responsibility of FIRST PARTY to comply with all State and Federal Laws applicable to the work and services provided pursuant to this Agreement, including but not limited to compliance with prevailing wage laws, if applicable.
19. BREACH OF AGREEMENT
<p>A. This Agreement is governed by applicable federal and state statutes and regulations. Any material deviation by FIRST PARTY for any reason from the requirements thereof, or from any other provision of this Agreement, shall constitute a breach of this Agreement and may be cause for termination at the election of the CITY.</p> <p>B. The CITY reserves the right to waive any and all breaches of this Agreement, and any such waiver shall not be deemed a waiver of any previous or subsequent breaches. In the event the CITY chooses to waive a particular breach of this Agreement, it may condition same on payment by FIRST PARTY of actual damages occasioned by such breach of Agreement.</p>
20. SEVERABILITY
The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.
21. CAPTIONS
The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction, or meaning of any provisions of this Agreement.
22. LITIGATION OR ARBITRATION
In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees. The Dispute Resolution provisions are set forth on Exhibit "B", 'Dispute Resolution' attached hereto and by this reference incorporated herein.
23. RETENTION OF RECORDS
Contractor shall maintain all required records for three years after the City makes final payment and all other pending matters are closed, and shall be subject to the examination and /or audit of the City, a federal agency, and the state of California.
24. TERM OF AGREEMENT
This Agreement shall remain in effect for the period of July 1, 2017 through June 30, 2019 unless extended, amended, or terminated in writing by CITY.

25. ENTIRE AGREEMENT

This document constitutes the sole Agreement of the parties hereto relating to said project and states the rights, duties, and obligations of each party as of the document's date. Any prior Agreement, promises, negotiations, or representations between parties not expressly stated in this document are not binding. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties to this Agreement. This Agreement is subject to the TCPN Contract R5245 including the Services and Solutions Agreement (SSA) in Attachment 1. In the event of conflict between the terms of this Agreement and its attachments, the order of precedence shall be this Agreement, followed by the TCPN Contract R5245 and the applicable SSA.

26. STATEMENT OF ECONOMIC INTEREST

Consultants, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests with 30 days of approval of a contract services agreement with the City of its subdivisions, on an annual basis thereafter during the term of the contract, and within 30 days of completion of the contract.

Based upon review of the Consultant's Scope of Work and determination by the City Manager, it is determined that Consultant IS / IS NOT required to file a Statement of Economic Interest. A statement of Economic Interest shall be filed with the City Clerk's office no later than 30 days after the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

FIRST PARTY:


Signature
Michelle Yoshino

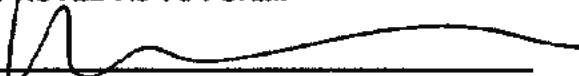
08/2/2017
Date
General Manager

Name

Title

16-0468020
Tax ID#

APPROVED AS TO FORM:


William L. McClure, City Attorney

7/10/17
Date

CITY OF MENLO PARK:

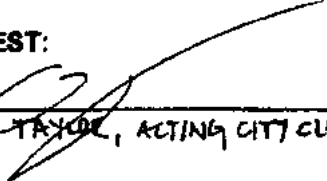

Signature

Date

Alex D. McIntyre
Name

City Manager
Title

ATTEST:


CHAE TAYLOR, ACTING CITY CLERK

DATE

EXHIBIT "A" – SCOPE OF SERVICES**A1. SCOPE OF WORK**

FIRST PARTY agrees to provide consultant services for CITY's Administrative Services Department – IT Division. In the event of any discrepancy between any of the terms of the FIRST PARTY's proposal and those of this Agreement, the version most favorable to the CITY shall prevail. FIRST PARTY shall provide the following services:

Provide general consultant services for projects as determined by the CITY. The detailed scope of work for each task the CITY assigns the consultant shall be referred to as Exhibit A -1, which will become part of this Agreement. A notice to proceed will be issued separately for each separate scope of work agreed to between the CITY and FIRST PARTY.

FIRST PARTY agrees to perform these services as directed by the CITY in accordance with the standards of its profession and CITY's satisfaction.

A2. COMPENSATION

CITY hereby agrees to pay FIRST PARTY at the rates to be negotiated between FIRST PARTY and CITY as detailed in Exhibit A-1. The actual charges shall be based upon (a) FIRST PARTY's standard hourly rate for various classifications of personnel; (b) all fees, salaries and expenses to be paid to engineers, consultants, independent contractors, or agents employed by FIRST PARTY; and shall (c) include reimbursement for mileage, courier and plan reproduction. The total fee for each separate Scope of Work agreed to between the CITY and FIRST PARTY shall not exceed the amount shown in Exhibit A-1.

FIRST PARTY shall be paid within thirty (30) days after date of the billing or invoice for work completed and approved by the CITY. Invoices shall be submitted containing all information contained in Section A5 below. In no event shall FIRST PARTY be entitled to compensation for extra work unless an approved change order, or other written authorization describing the extra work and payment terms, has been executed by CITY prior to the commencement of the work.

A3. SCHEDULE OF WORK

FIRST PARTY'S proposed schedule for the various services required will be set forth in Exhibit A-1.

A4. CHANGES IN WORK – EXTRA WORK

In addition to services described in Section A1, the parties may from time to time agree in writing that FIRST PARTY, for additional compensation, shall perform additional services including but not limited to:

- Change in the services because of changes in scope of the work.
- Additional tasks not specified herein as required by the CITY.

The CITY and FIRST PARTY shall agree in writing to any changes in compensation and/or changes in FIRST PARTY's services prior to the commencement of any work. If FIRST PARTY deems work he/she has been directed to perform is beyond the scope of this Agreement and constitutes extra work, FIRST PARTY shall immediately inform the CITY in writing of the fact. The CITY shall make a determination as to whether such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that the CITY determines that such work does constitute extra work, it shall provide compensation to the FIRST PARTY in accordance with an agreed cost that is fair and equitable. This cost will be mutually agreed upon by the CITY and FIRST PARTY. A supplemental agreement providing for such compensation for extra work shall be negotiated between the CITY and the FIRST PARTY. Such supplemental agreement shall be executed by the FIRST PARTY and may be approved by the City Manager upon recommendation of the IT Manager.

A6. BILLINGS

FIRST PARTY's bills shall include the following information: A brief description of services performed, project title and the Agreement number; the date the services were performed; the current contract amount; the current invoice amount;

Except as specifically authorized by CITY, FIRST PARTY shall not bill CITY for duplicate services performed by more than one person. In no event shall FIRST PARTY submit any billing for an amount in excess of the maximum amount of compensation provided in Section A2.

The expenses of any office, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by FIRST PARTY in the performances of this Agreement shall be incurred at the FIRST PARTY's discretion. Such expenses shall be FIRST PARTY's sole financial responsibility.

EXHIBIT "B" - DISPUTE RESOLUTION

- B1.0** All claims, disputes and other matters in question between the FIRST PARTY and CITY arising out of, or relating to, the contract documents or the breach thereof, shall be resolved as follows:
- B2.0 Mediation**
- B2.1** The parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute. After a written demand for non-binding mediation, which shall specify in detail the facts of the dispute, and within ten (10) days from the date of delivery of the demand, the matter shall be submitted to a mutually agreeable mediator. The Mediator shall hear the matter and provide an informal opinion and advice, none of which shall be binding upon the parties, but is expected by the parties to help resolve the dispute. Said informal opinion and advice shall be submitted to the parties within twenty (20) days following written demand for mediation. The Mediator's fee shall be shared equally by the parties. If the dispute has not been resolved, the matter shall be submitted to arbitration in accordance with Paragraph B3.1.
- B3.0 Arbitration**
- B3.1** Any dispute between the parties that is to be resolved by arbitration as provided in Paragraph B2.1 shall be settled and decided by arbitration conducted by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, as then in effect, except as provided below. Any such arbitration shall be held before three arbitrators who shall be selected by mutual agreement of the parties; if agreement is not reached on the selection of the arbitrators within fifteen (15) days, then such arbitrator(s) shall be appointed by the presiding Judge of the court of jurisdiction of the Agreement.
- B3.2** The provisions of the Construction Industry Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration, subject, however to the following:
- B3.3** Any demand for arbitration shall be writing and must be made within a reasonable time after the claim, dispute or other matter in question as arisen. In no event shall the demand for arbitration be made after the date that institution of legal or equitable proceedings based on such claim, dispute or other matter would be barred by the applicable statute of limitations.
- B3.4** The arbitrator or arbitrators appointed must be former or retired judges, or attorneys at law with last ten (10) years' experience in construction litigation.
- B3.5** All proceedings involving the parties shall be reported by a certified shorthand court reporter, and written transcripts of the proceedings shall be prepared and made available to the parties.
- B3.6** The arbitrator or arbitrators must be made within and provide to the parties factual findings and the reasons on which the decisions of the arbitrator or arbitrators is based.
- B3.7** Final decision by the arbitrator or arbitrators must be made within ninety (90) days from the date of the arbitration proceedings are initiated.
- B3.8** The prevailing party shall be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.9** Costs and fees of the arbitrator or arbitrators shall be borne by the non-prevailing party, unless the arbitrator or arbitrators for good cause determine otherwise.
- B3.10** The award or decision of the arbitrator or arbitrators, which may include equitable relief, shall be final, and judgment may be entered on it in accordance with applicable law in any court having jurisdiction over the matter.

**EXHIBIT "A-1" – Xerox Print Services Agreement
Invoice Presentment Statement of Work
Services and Solutions Agreement**

Xerox Print Services Agreement

XPS Services Contract # 7138403-002



Customer: **MENLO PARK, CITY OF**

Bill To: **CITY OF MENLO PARK
701 LAUREL ST
MENLO PARK, CA 94025-3439**

Print Services Summary

Xerox Print Services Term

24 Months from Services Commencement Date

Addenda/Attachments to this Order

- Invoice Presentation SOW
- Exhibit A - Pricing
- Exhibit B - Managed Device Listing
- Xerox Print Services Description of Services

Authorized Signatures

Customer acknowledges receipt of the terms of this agreement which consists of 1 pages including this page.

Signature: GEVE GARCES Phone: (650)330-6657

Signature: [Signature] Date: 7/6/17

Agreement Presented by:

Elissa N Koestenbaum

Phone: (415) 227-1746

Xerox Authorized Signature: _____

Date: _____

[Handwritten Signature] 8/2/2017

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Exhibit A - Pricing

XPS Services Contract # 7138403-002



Pricing Summary

Xerox Print Services Term

24 Months from Services Commencement Date

Print Services Total

Total Monthly Minimum Charge: **\$1,898.69**

- Excludes applicable taxes

Networked Laser Devices

Black & White / Color	Monthly Minimum Print Volume	Charge per Impression	Monthly Minimum Charge	Excess Charge per Impression	Meter Reconciliation Period
Color	10,983	\$0.1200	\$1,268.96	\$0.1200	Quarterly
Black & White	28,158	\$0.0140	\$384.21	\$0.0140	Quarterly

MCR toner is not included. Break Fix Services, Supplies, maintenance kits and drums are included.

Networked Laser Devices

Black & White / Color	Monthly Minimum Print Volume	Charge per Impression	Monthly Minimum Charge	Excess Charge per Impression	Meter Reconciliation Period
Color	506	\$0.1200	\$60.72	\$0.1200	Quarterly
Black & White	200	\$0.0140	\$2.80	\$0.0140	Quarterly

Supplies Only: MCR toner is not included. Supplies, maintenance kits and drums are included.

Non-Networked Laser Devices

Black & White / Color	Monthly Fee (per device)	Number of Devices	Monthly Minimum Charge
Color	\$45.00	1	\$45.00
Black & White	\$25.00	0	\$0.00

MCR toner is not included. Break Fix Services, Supplies, maintenance kits and drums are included.

Exhibit A - Pricing

XPS Services Contract # 7138103 002



Xerox Contracted Devices			
Black & White / Color	Monthly Fee (per device)	Number of Devices	Monthly Minimum Charge
Color	\$10.00	6	\$60.00
Black & White	\$10.00	1	\$10.00

Monthly Supplies Shipping Charge: \$56.00

Summary of Device Count Variability			
Device Type	Black & White / Color	Device Count	Allowed Device Count Variability
Networked Laser Devices	Color	25	10%
Networked Laser Devices	Black & White	18	10%
Networked Laser Devices	Color	2	10%
Networked Laser Devices	Black & White	0	10%
Non-Networked Laser Devices	Color	1	10%
Non-Networked Laser Devices	Black & White	0	10%
Xerox Contracted Devices	Color	6	10%
Xerox Contracted Devices	Black & White	1	10%

Exhibit B - Managed Device Listing

XPS Services Contract # 7138403 002



Networked Laser Devices			
Brand	Model Name	Serial	Black & White / Color
XEROX	WORKCENTRE M201	RYU358086	Black & White
XEROX	WORKCENTRE 6655X	E18666880	Color
XEROX	WORKCENTRE 6605N	XL3531931	Color
XEROX	WORKCENTRE 6605DN	XL3585906	Color
XEROX	WORKCENTRE 4250S	MAC576848	Black & White
XEROX	WORKCENTRE 3220CN	UAK010252	Black & White
XEROX	PHASER 8560DN	CXF348847	Color
XEROX	PHASER 8560DN	CXF347189	Color
XEROX	PHASER 8560DN	CXF331269	Color
XEROX	PHASER 6800DN	XL1362111	Color
XEROX	PHASER 6500DN	YXE143312	Color
XEROX	PHASER 6280DN	NKA176971	Color
XEROX	PHASER 6180DN	DPX358868	Color
XEROX	PHASER 6180DN	DPX358866	Color
XEROX	PHASER 6180DN	DPX358038	Color
XEROX	COLORQUIBE 8700X	XY6000814	Color
HEWLETT-PACKARD	LASERJET PRO 500 COLOR MFP M57	CN59G1538Q	Color
HEWLETT-PACKARD	LASERJET PRO 400 M401N	VN63514769	Black & White
HEWLETT-PACKARD	LASERJET PRO 400 M401DNE	PHGFF00192	Black & White
HEWLETT-PACKARD	LASERJET PRO 400 M401DNE	PHGFC29768	Black & White
HEWLETT-PACKARD	LASERJET PRO 400 M401DNE	PHGFB84965	Black & White
HEWLETT-PACKARD	LASERJET PRO 400 COLOR MFP M47	CND8FDXDGX	Color
HEWLETT-PACKARD	LASERJET PRO 400 COLOR MFP M47	CND8FC88PH	Color
HEWLETT-PACKARD	LASERJET PRO 400 COLOR MFP M47	CND8F906JB	Color
HEWLETT-PACKARD	LASERJET PRO 400 COLOR MFP M47	CND8F7G5C8	Color
HEWLETT-PACKARD	LASERJET P4015N	JPDF255285	Black & White
HEWLETT-PACKARD	LASERJET P4014	CNDY353828	Black & White
HEWLETT-PACKARD	LASERJET P4014	CNDX204715	Black & White
HEWLETT-PACKARD	LASERJET P4014	CNDX202363	Black & White
HEWLETT-PACKARD	LASERJET P4014	CNDX168717	Black & White
HEWLETT-PACKARD	LASERJET P4014	CNDX147043	Black & White
HEWLETT-PACKARD	LASERJET M4345MFP	JPOCBBD03S	Black & White
HEWLETT-PACKARD	LASERJET ENTERPRISE 600 M602DN	CNCCDBQ098	Black & White
HEWLETT-PACKARD	LASERJET 4250	CNRXJ67721	Black & White
HEWLETT-PACKARD	LASERJET 4050	USQB040134	Black & White
HEWLETT-PACKARD	LASERJET 4050	USQB040117	Black & White
HEWLETT-PACKARD	COLOR LASERJET PRO MFP M476DN	CN88H1X24J	Color
HEWLETT-PACKARD	COLOR LASERJET PRO MFP M476DN	CN88H1G6PR	Color
HEWLETT-PACKARD	COLOR LASERJET PRO MFP M476DN	CN88G8TDWB	Color
HEWLETT-PACKARD	COLOR LASERJET PRO MFP M277DW	VN88H7LBR1	Color
HEWLETT-PACKARD	COLOR LASERJET PRO M252DW	VN88B38438	Color
HEWLETT-PACKARD	COLOR LASERJET 2550	CN88H48677	Color
BROTHER	HL-4150CDN	UR82498HZJ299311	Color

Exhibit B - Managed Device Listing

XPS Services Contract # 7138403-002



Networked Laser Devices			
Brand	Model Name	Serial	Black & White / Color
XEROX	WORKCENTRE 6015N1	RX6000665	Color
XEROX	WORKCENTRE 6015N1	BD1577557	Color

Non-Networked Laser Devices			
Brand	Model Name	Serial	Black & White / Color
XEROX	WORKCENTRE 6655X	E1B966857	Color

Xerox Contracted Devices			
Market Code	Model Name	Serial	Black & White / Color
W7970P	WORKCENTRE 7970	B0W588894	Color
W7845PT	WORKCENTRE 7845	MX4331788	Color
WC7775P	WORKCENTRE 7775	RFX017652	Color
W7545P	WORKCENTRE 7545	XCP510657	Color
W7225P	WORKCENTRE 7225	LX7658175	Color
W7225P	WORKCENTRE 7225	LX7067604	Color
D110CP	D110 COPIER/PRINTER	BG0865410	Black & White

Xerox Print Services Description of Services



Client: MENLO PARK, CITY OF

XPS Services Contract Number: 7138403-002

SERVICES COMMENCEMENT DATE. Xerox will notify Client in writing when Xerox reasonably determines that XPS Services, as applicable, are available for the Managed Devices ("Services Commencement Date"). Xerox Contracted Devices may be installed prior to the Services Commencement Date. Regardless of the Services Commencement Date for Managed Devices, Basic Maintenance Services and Consumable Supplies for Xerox Contracted Devices are provided as of the installation date per the terms of the Equipment Agreement.

1. **XPS SERVICES.** Xerox will use the Xerox Tools and Xerox Client Tools (collectively "Tools") to monitor networked Managed Devices. The Tools provide automatic service and supplies alerts to the Xerox Help Desk (e.g. low toner), automated meter collection, new device discovery, and device data collection for reporting. The Tools periodically scan the Client's network for devices which may be eligible to be Managed Devices. Devices identified through this process may be added as Managed Devices and billed at the rates identified in Exhibit A to the XPS Services Contract.
2. **REPAIR SERVICES.**
 - a. For Xerox Contracted Devices, Xerox will provide Basic Maintenance Services per the Equipment Agreement.
 - b. For Non-Xerox Contracted Devices Identified as "Break Fix Service Included" in Exhibit A to the XPS Services Contract, Xerox will keep the Non-Xerox Contracted Devices in good working order as set forth below ("Break Fix Services"). If a Non-Xerox Contracted Device failure cannot be resolved remotely, Xerox will dispatch a service technician to perform Break Fix Services, which will usually be the next business day. For select Non-Xerox Contracted Devices identified on Exhibit B that do not qualify for on-site Break Fix services, Xerox will provide Device Exchange services. On-site Break Fix Services are provided Monday through Friday (excluding New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day) from 8:00AM to 5:00PM local time ("XPS Service Hours"). Technicians are not dispatched for preventative maintenance or cleaning.
 - c. If Xerox determines that a Non-Xerox Contracted Device is beyond repair, or is classified by the OEM as service discontinued, or parts or Supplies are no longer commercially available, Xerox will discontinue Break Fix Service and Client may: (i) replace such device at its own expense with a device that is then supported by Xerox; or (ii) notify Xerox to delete such device from the XPS Services Contract.
 - d. Basic Maintenance Services and Break Fix Services may be initiated by the Tools for networked Managed Devices, or by Client calling the Xerox Help Desk.
 - e. Break Fix Services exclude repairs due to: (i) misuse, neglect, abuse or operation of a Non-Xerox Contracted Device outside of original equipment manufacturer ("OEM") specifications; (ii) failure of the Client PC to comply with the OEM's published specifications; (iii) act of God or other force majeure event; (iv) relocation, alterations, or use of options, accessories, service or supplies not provided by Xerox; (v) failure to perform any Client responsibilities identified herein; or (vi) acts or omissions of Client or any party not affiliated with Xerox.
 - f. Replacement parts may be new or used and all removed, replaced parts become Xerox's property.
3. **SUPPLIES/CONSUMABLE SUPPLIES.**
 - a. For Xerox Contracted Devices, Xerox will provide Consumable Supplies in accordance with the Equipment Agreement.
 - b. For Non-Xerox Contracted Devices Identified in Exhibit A as "Supplies Included", Xerox will furnish the Supplies identified in the XPS Services Contract. Xerox will provide OEM compatible Supplies when available. If Client requires OEM Supplies other than Xerox, Client will be billed for such OEM Supplies. Xerox is not liable for constrained or discontinued Supplies. The Monthly Supplies Shipping Charge Identified in Exhibit A to the XPS Services Contract covers standard ground shipping. The cost of second day, overnight, or other non-standard shipping will be billed to Client.
 - c. Requests for Supplies and Consumable Supplies may be placed by the Tools or by Client calling the Xerox Help Desk. For those Managed Devices that do not proactively communicate low toner or out of toner status or alerts, Client will have to order Supplies or Consumable Supplies directly from the XPS Help Desk when required. To prevent excessive shipment of Supplies or Consumable Supplies, Xerox may: (i) check the current toner level to validate a low toner condition; and (ii) check the metered impression volume since the last shipment to determine if impression volume exceeds the expected yield. If these conditions are not satisfied, Supplies or Consumable Supplies will be billed to Client. Cleaning kits and print media (e.g. paper) may be ordered from the Xerox Help Desk and will be billed to Client. Xerox may not provide Supplies or Consumable Supplies if a current meter read is not received for a networked Managed Device. Supplies and Consumable Supplies are Xerox's property until used by Client, and Client will use them only with the Managed Devices. Upon request, Client will provide an inventory of Supplies and Consumable Supplies in its possession. Upon expiration or termination of the XPS Services, Client will, at Xerox's option and expense, return any unused Supplies and Consumable Supplies to Xerox, permit access to its facilities to permit collection, or dispose of them as directed in writing by Xerox.
4. **XEROX HELP DESK.** The Xerox Help Desk is available during the XPS Service Hours to receive, track, escalate, process and close service issues, remotely resolve certain issues, and process Client requests for Break Fix Services, Basic Maintenance Services, Supplies and Consumable Supplies.
5. **MOVE, ADD, CHANGE, DISPOSE PROCESS.** The Move, Add, Change and Dispose ("MACD") process is used to track and revise the Managed Devices. Under the MACD process, "Adds," "Changes" and "Disposes" may modify the amount billed. For transactions that involve acquisition or termination of Xerox Contracted Devices, the terms of the Equipment Agreement will govern. Early termination or other changes, if any, for a terminated Xerox Contracted Device will be billed according to the terms of the Equipment Agreement.
6. **REPORTING.** Xerox standard monthly reports will be provided for the Managed Devices.
7. **CLIENT RESPONSIBILITIES.** Xerox will not be liable for delays or services failures, including but not limited to implementation delays, if Client does not perform or facilitate completion of its designated responsibilities. Client will:
 - a. Provide a Customer Asset Coordinator ("CAC") as its primary point of contact with Xerox during the start-up, implementation and ongoing delivery of XPS Services. The CAC is authorized to process and approve MACD transactions.
 - b. Provide a Customer IT Contact as its primary contact to Xerox to facilitate IT related activities and processes.
 - c. Provide or validate MACD information and approve changes in Managed Device status as they occur, through the MACD process.
 - d. Notify the Xerox Help Desk if Client wishes to relocate a Managed Device, and Xerox will advise Client if XPS Services are available at the new location.

Xerox Print Services Description of Services



Client: MEMLO PARK, CITY OF

XPS Services Contract Number: 7138403-002

- e. Assure that networked Managed Devices are Simple Network Management Protocol ("SNMP") enabled and can route SNMP over the network.
 - f. Provide a dedicated PC or server, as required, that is connected to Client's network at all times ("Client PC"), and allow Xerox to install, use, access, update and maintain the Tools on the Client PC. The Tools cannot be installed on a PC or server where other SNMP-based applications or other Xerox Tools are installed, because they may interfere with the Tools.
 - g. Ensure that proper virus protection is installed, maintained, and enabled on the Client PC and any servers, desktop workstations, laptop computers and other hardware attached to or hosting any data on Client's network or output environment. Xerox is not responsible for the disruption of XPS Services or loss of functionality of the Tools caused by any of the foregoing. If the Tools become inoperable due to Client implemented changes to its network, Xerox will work with Client to re-install Tools.
 - h. Assist in implementation of the Tools by providing relevant network information such as the IP address ranges or subnets on which networked Managed Devices reside.
 - i. Distribute Supplies and Consumable Supplies within Client's site (or facilitate Xerox contracted on-site resource to perform this task) and install them in Managed Devices and clear paper jams.
 - j. Resolve any Client network or PC hardware or software issues, or Managed Device software or printing issues not caused by a hard device failure.
 - k. Replace Managed Devices cartridges and CRUs (or facilitate Xerox contracted on-site resource to perform this task).
 - l. Respond to calls from service technicians to validate location and inoperable condition of Managed Devices and provide reasonable access to Client's facilities and personnel as required for the performance of XPS Services.
 - m. Ensure that Managed Devices are installed and operating within the OEM's specifications and are readily accessible to the Xerox authorized service representative.
 - n. Submit meter data for networked Managed Devices when such data cannot be provided by the Tools and work with Xerox to enable the Tools to automatically provide meter data from such Managed Devices. If a meter read for a Managed Device has not been provided by the Tools or submitted by Client for 45 days, Xerox may discontinue some or all of the XPS Services for that Managed Device under this DOS.
 - o. Request Basic/Maintenance Services, Break Fix Services, Supplies and/or Consumable Supplies from the Xerox Help Desk for Managed Devices that are not compatible with the Tools.
 - p. Grant or transfer to Xerox sufficient rights to use software owned, licensed or otherwise controlled by Client, as required, solely for the purpose of providing XPS Services.
 - q. Legally dispose of wastes generated from use of Managed Devices and associated Supplies, Consumable Supplies and CRUs.
 - r. Be solely responsible for: (i) determining whether any Managed Devices are under an existing service, warranty, extended warranty and/or supply contract with the manufacturer or a third party dealer, reseller or service provider ("Pre-Existing Contract(s)"); (ii) what action(s), if any, Client should take with respect to Pre-Existing Contract(s); and (iii) the payment of any early termination fees or other charges associated with the termination of any Pre-Existing Contract(s).
8. **PRICING.** The pricing for XPS Services for the Managed Devices is identified in Exhibit A. Xerox may adjust such XPS Services pricing annually and as specified in Exhibit A.
9. **TERMINATION.** Neither party may terminate the XPS Services during the first twelve (12) months after the Services Commencement Date. Thereafter, either party may, upon 90 days written notice to the other party, terminate the XPS Services. In addition, Xerox will have the right to terminate the XPS Services, upon not less than thirty (30) days' notice, if the Services Commencement Date has not occurred, for any reason whatsoever, within ninety (90) days after the date the XPS Services Contract is accepted by Xerox. The expiration or termination of the XPS Services will not affect any of the Equipment Agreement(s), or any other agreement with Xerox under which Client acquired Xerox Contracted Device(s), each of which will remain in full force and effect until the end of its term.
10. **MISCELLANEOUS.** The terms and conditions in this DOS are applicable only to the XPS Services for the Managed Devices covered under the XPS Services Contract and DOS and are not applicable to any other Products under the XPS Services Contract, any other Services Contract, Order or any Equipment Agreement.
11. **DEFINITIONS.** Capitalized terms that are not defined below or elsewhere in this Description of Services have the meaning assigned to them in the XPS Services Contract or Equipment Agreement, including any Orders, amendments or addenda thereto.
- a. **Asset Management Database:** A database that is hosted and maintained by Xerox to facilitate the XPS Services and record and provide reporting on Managed Device activities.
 - b. **CRU:** Client replaceable units or items that an operator can install without service assistance.
 - c. **Device Exchange:** On-site Break Fix Services are not available for a limited number of Managed Device models, which are designated as "Device Exchange" models in Exhibit B to the XPS Services Contract. If a Device Exchange model requires repair, Xerox will ship a replacement device to the Client. Client will then ship the defective unit back to Xerox within a specified timeframe or be billed for the replacement device.
 - d. **Equipment Agreement:** The agreement between Client and Xerox under which Xerox provides Basic/Maintenance Services, as applicable, for a Xerox Contracted Device.
 - e. **Managed Device(s):** The devices identified in Exhibit B of the XPS Services Contract, which may include Xerox Contracted Devices and/or Non-Xerox Contracted Devices, as applicable.
 - f. **Xerox Contracted Device(s):** A Xerox brand device(s) for which Xerox provides Basic/Maintenance Services, as applicable, under an Equipment Agreement.
 - g. **XPS Services:** The services described in this Description of Services ("DOS").
 - h. **XPS Services Contract:** The agreement between Client and Xerox identified above, including any Orders, amendments or addenda thereto, which sets forth the terms and conditions governing this DOS.
 - i. **Supplies:** Toner and Ink for Non-Xerox Contracted Devices, which may be new, remanufactured or reprocessed.

Xerox Print Services Description of Services



Client: MENLO PARK, CITY OF

XPS Services Contract Number: 7138403-002

- J. Non-Xerox Contracted Device(s): A Non-Xerox brand device(s) for which Xerox provides Break Fix Services and Supplies under the XPS Services Contract and/or a Xerox-brand device(s) not under contract with Xerox for Basic/Maintenance Services for which Xerox provides Break Fix Services and Supplies under the XPS Services Contract.



Customer: **MENLO PARK, CITY OF**

Explanation of Exhibit A – Summary of Device Count Variability

Networked Laser Devices – Color – 25	Break-Fix Supplies
Networked Laser Devices – B&W – 18	Break-Fix Supplies
Networked Laser Devices – Color – 2	Supplies Only
Networked Laser Devices – B&W – 0	Supplies Only
Non-Networked Laser Devices – Color – 1	Supplies Only
Xerox Contracted Devices – Color, B&W – 7	Leased Xerox Devices

Summary of Device Count Variability			
Device Type	Black & White / Color	Device Count	Allowed Device Count Variability
Networked Laser Devices	Color	25	10%
Networked Laser Devices	Black & White	18	10%
Networked Laser Devices	Color	2	10%
Networked Laser Devices	Black & White	0	10%
Non-Networked Laser Devices	Color	1	10%
Non-Networked Laser Devices	Black & White	0	10%
Xerox Contracted Devices	Color	6	10%
Xerox Contracted Devices	Black & White	1	10%

Invoice Presentment Statement of Work

Contract / Customer Name: City of Menlo Park
Contract Number: 7138403-002
Contract Services / Effective Date: June 1, 2017

Invoice Requirements

Invoice Delivery Information

Invoicing Delivery Method Required: Client's US Mailing Address and Email Address

Client's email address: <mailto:Xerox-AdminServices@menlopark.org>

Xerox Device and Services Invoice Selections: Invoice at the Contract Level – 3 Sub-totals; 1 Xerox Equip & Software
2. Staffing Mgmt. 3. Additional Value Added Services

Customer Owned / NX Device and Services Invoice Selections (select one):

Summary Page with Detail by location and charge type (recommended for pooling/committed volumes)

Is a Purchase Order required on the invoice? Yes

Offering Selections:

Not Applicable

Reporting Requirements

Reporting Information:

Is Invoice Backup Reporting Required? No

Additional Information

Billing Frequency Information:

Is this contract in agreement to the standard practice to bill monthly minimums in advance, and billable supplies and meters in arrears? Yes

Is this contract in agreement to the standard practice invoice overage (meter/usage reconciliation) of monthly? No

Meter/Usage Reconciliation Selection: Standard Calendar Quarters (i.e Jan-Mar, Apr-Jun, etc.)

Federal Government Information:

Is this contract for a Federal Government Approved Customer? No

Client will setup and self-maintain client data using a provided URL portal. Up to 4 fields, in addition to PO, will be supported on the invoice back-up spreadsheet. The Customer Experience Rep will provide the client with the necessary information for registration and login URLs.

End of Invoice Presentment Statement of Work
Form #

Xerox Device and Services billing system: Xone
Customer Owned/NX and Services billing system: CTC
Date approved: 5/2/2017



SERVICES AND SOLUTIONS AGREEMENT

This Services and Solutions Agreement ("SSA"), Number 7138403, is between City of Menlo Park ("Customer") and Xerox Corporation ("Xerox").

1. **SCOPE AND STRUCTURE.** This SSA sets forth the terms and conditions under which Customer may establish one or more Services Contracts for the acquisition in the U.S. of Services, Maintenance Services and Deliverables from Xerox. This SSA is part of the The Cooperative Purchasing Network Agreement ("TCPN"). In the event of conflict between the terms and conditions of the Maintenance Agreement, this SSA and the TCPN R5245 Contract, the order of precedence will be the Maintenance Agreement, this SSA, Services and Solutions Order or Statement of Work ("SSO" or "SOW") followed by the TCPN R5245 Contract. Each Services Contract under this SSA constitutes a separate contract and will be assigned its own Services Contract Number consisting of the above SSA number followed by a three-digit extension. Each Services Contract will be established when Customer submits and Xerox accepts the first SSO with a new Services Contract Number. Customer may add Services, Maintenance Services, or Deliverables to an existing Services Contract by issuing additional Orders referencing the applicable Services Contract Number. Each Services Contract will consist of the applicable terms and conditions of this SSA, the first SSO and each additional SSO or SOW with the same Services Contract Number. Xerox may provide Services and/or Products through its U.S. affiliates. Capitalized terms are defined in Section 24 unless defined where first used.
2. **ORDERS.**
 - A. Orders may consist of SSOs, SOWs, and/or POs. Each Order must reference an applicable Services Contract Number. Unless otherwise provided in an SSO, terms and conditions of such SSO are applicable to all Orders constituting the applicable Services Contract. Customer POs are for order entry purposes only and will be subject solely to the terms and conditions of the applicable Services Contract, notwithstanding anything contained in any such PO at variance with or in addition to the applicable Services Contract.
 - B. Xerox may accept an Order either by its signature or by commencing performance. Xerox reserves the right to review and approve Customer's credit prior to acceptance of each Order. Customer authorizes Xerox (or its agent) to obtain credit reports from commercial credit reporting agencies.
 - C. Orders may be submitted by hard copy or, in the case of SSOs or POs, by electronic means, and those submitted electronically will be considered (i) a "writing" or "in writing"; (ii) "signed"; (iii) an "original" when printed from electronic records established and maintained in the ordinary course of business; and (iv) a valid and enforceable Order.
3. **TERM.**
 - A. This SSA is effective when signed by Xerox and, unless terminated by either party upon 90 days written notice, continues for 24 months. If this SSA expires or is terminated, each Services Contract will (i) remain in effect until the expiration or termination of all Orders constituting such Services Contract, and (ii) be governed by the terms and conditions of this SSA as if it were still in effect.
 - B. The term of each Order will be set forth in such Order. If an Order is terminated, the term of remaining Orders will continue unaltered.
 - C. Except as otherwise provided in an SOW or unless either party provides notice of termination at least 30 days before the end of its term, an Order will automatically renew on a month-to-month basis.
4. **PERSONNEL.** Xerox personnel engaged hereunder will comply with Customer's internal security and safety policies that (a) are provided to Xerox in writing, (b) are reasonable and customary, and (c) do not conflict with the applicable Services Contract. Customer will provide Xerox with reasonable prior written notice of such policies and any changes thereto. During the term of this SSA and for a period of 1 year thereafter, neither party will, directly or indirectly, actively solicit the employment of the other party's personnel (including their supervisors) and agents engaged under a Services Contract. Employment arising from inquiries received via advertisements in newspapers, job fairs, unsolicited resumes, or applications for employment will not be considered active solicitation. The sole remedy for breach of this restriction is to receive payment, as liquidated damages and not as a penalty, from the breaching party equal to the individual's then current annual salary (or the fees paid to an agent in the previous 12 months), within 30 days of the start date of the individual. Xerox is an independent contractor hereunder.
5. **PRICING, PAYMENT, AND TAXES.**
 - A. **Pricing.** Pricing will be as shown in an Order. Services requested and performed outside Customer's standard working hours will be at Xerox's then-current overtime rate.
 - B. **Payment.** Invoices are payable upon receipt and payment must be received within 30 days after the invoice date. For any payment not received within 10 days of its due date, Customer will pay a late charge equal to

the greater of 5% of the amount due or \$25. Restrictive covenants will not reduce Customer's obligations. If the provision of Services, Products, and/or Maintenance Services begins partially and/or early, Xerox will bill Customer on a pro rata basis, based on a 30-day billing month.

- C. **Taxes.** Customer will be responsible for all Taxes. Taxes will be included in Xerox's invoice unless Customer provides proof of Customer's tax-exempt status.
6. **DEFAULT AND REMEDIES.** Customer will be in default if Xerox does not receive any payment within 15 days after the date it is due, or if Customer breaches any other obligation under this SSA, any Services Contract, or any other agreement with Xerox. If Customer defaults, Xerox, in addition to its other remedies (including the cessation of Services), may require immediate payment of (a) all amounts then due, plus interest on all amounts due from the due date until paid at the rate of 1.5% per month, and (b) any applicable ETCs. Customer will pay all reasonable costs, including attorneys' fees, incurred by Xerox to enforce any Services Contract.
7. **CONFIDENTIAL INFORMATION.** Each party will make reasonable efforts not to disclose the other party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: (a) was in the public domain before, at the time of, or after the date of disclosure through no fault of the non-disclosing party; (b) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (c) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Confidentiality obligations set forth herein will expire 1 year after expiration or termination of this SSA or the last effective Services Contract hereunder, whichever is later; provided however, confidentiality obligations with respect to Xerox Work, Xerox Tools and Xerox Client Tools will not expire unless (a), (b) or (c) above become applicable thereto. The parties do not intend for Customer to disclose confidential technical information hereunder, including, but not limited to, computer programs, source code, and algorithms. Customer will only disclose the same pursuant to a separate written agreement. Upon expiration or termination of this SSA or the last effective Services Contract hereunder, whichever is later, each party will return to the other or, if requested, destroy, all Confidential Information of the other in its possession or control, except such Confidential Information as may be reasonably necessary to exercise rights that survive termination of this SSA.
8. **INTELLECTUAL PROPERTY.** Customer represents and warrants that (a) it owns the Customer Content and Customer Assets or otherwise has the right to authorize Xerox to use same to perform Services, and (b) Customer Content will not contain content that (i) is libelous, defamatory or obscene, (ii) violates any applicable laws, regulations, or (iii) infringes any third party rights. Customer acknowledges and agrees that Xerox does not undertake any obligation or duty whatsoever to determine whether Customer Content may be duplicated without violating a third party's copyright. Xerox, its employees, agents and/or licensors will at all times retain all rights to Xerox Work, Xerox Client Tools and Xerox Tools and, except as expressly set forth herein, no rights to Xerox Work, Xerox Client Tools or Xerox Tools are granted to Customer. If required for royalty reporting purposes, Xerox may disclose Customer's name and address to the third party licensor of certain Xerox Tools. Xerox Tools will be installed and operated only by Xerox. Customer will have access to data and reports generated by the Xerox Tools and stored in a provided database as set forth in the applicable SOW, but Customer will have no rights to use, access or operate the Xerox Tools. Xerox may remove Xerox Tools at any time in Xerox's sole discretion, provided that the removal of Xerox Tools will not affect Xerox's obligations to perform Services. If Xerox Client Tools are included as part of the Services, they may be used by Customer only in conjunction with such Services. Customer agrees not to decompile or reverse engineer any Xerox Work, Xerox Client Tools, or Xerox Tools. Xerox grants Customer a non-exclusive, perpetual fully paid-up, worldwide right to use, display and reproduce Xerox Work and Documentation only as required for use of the Services and Deliverables for Customer's customary business purposes, and not for resale, license and/or distribution outside of Customer's organization. Customer may not sublicense any rights granted to Customer hereunder, but may authorize a third party ("Designee") to use such rights, solely for Customer's benefit and Customer's internal business purposes. Any Designee operating or maintaining the delivered solution must be subject to written confidentiality obligations with respect to Confidential Information that are no less restrictive than those set forth in this SSA. Output of Services is Customer's sole and exclusive property and Xerox will have no rights therein, except as may be required for Xerox to perform Services. Assessments are provided for Customer's internal business use only, and not for resale, license and/or distribution outside of Customer's organization and the implementation of Assessments may not be performed by any third party. Except as expressly set forth in this Section, no other rights or licenses are granted to Customer. Any rights or licenses that are granted to Customer will immediately terminate if Customer defaults with respect to any of Customer's obligations related to such rights or licenses. Xerox reserves the right to terminate such rights or licenses if Customer defaults under any other obligation under a Services Contract.
9. **CUSTOMER RESPONSIBILITIES.**
- A. Customer will (i) provide the Customer Assets that Xerox needs to perform the Services and (ii) grant sufficient rights to enable Xerox and its agents to use all Customer Assets and Customer Content.

- B. During the term of an Order, Customer will permit access to Customer personnel that Xerox needs to perform the Services.
- C. Equipment prices include standard delivery charges for all Equipment and, for Equipment for which Xerox retains ownership, standard removal charges. Non-standard delivery or removal charges will be at Customer's expense.
- D. Customer will legally dispose of all hazardous wastes generated from use of Third Party Hardware and associated supplies.

10. EARLY TERMINATION.

- A. **Equipment.** Equipment included in an Order is being provided for the entire term of the Order. If, prior to the expiration of an Order, Customer terminates Equipment or requires Equipment to be removed or replaced, or Xerox terminates the applicable Order due to Customer's default, Customer will pay all amounts due as of the termination date and the ETCs set forth in the applicable Services Contract.
- B. **Services.** Unless otherwise set forth in an SOW, Customer may terminate or reduce any Services upon 90 days prior written notice without incurring ETCs. Notwithstanding the foregoing, if any Services are terminated (i) by Xerox due to Customer's default, or (ii) by Customer and Customer acquires Services from another supplier within 6 months of the termination of such Services, Customer will pay all amounts due as of the termination date.
- C. **Amortized Services and Third Party Funds.** The cost of certain Services, such as consulting and training, may be amortized over the term of an Order ("Amortized Services"); or Xerox may provide funds to acquire Third Party Hardware, license Third Party Software, or retire debt on existing Third Party Hardware ("Third Party Funds"). Amortized Services and Third Party Funds are collectively referred to as "Funds". The Funds amount is included in the MMC. Notwithstanding Section 10.B above, if an Order is terminated prior to expiration for any reason, or if a unit of Third Party Hardware or any Third Party Software for which Third Party Funds have been provided is removed or replaced prior to expiration, Customer agrees to pay to Xerox (i) all amounts due as of the termination date, and (ii) ETCs equal to the remaining principal balance of the Funds, plus a 15% disengagement fee. Customer will maintain the manufacturer's maintenance agreement for any Third Party Hardware and Third Party Software.

11. INDEMNIFICATION.

- A. Each party, at its expense, if promptly notified by the other and given the right to control the defense, will defend the other from, and pay any settlement agreed to by the indemnifying party or any ultimate judgment for, all claims by third parties for personal injury (including death) or damage to tangible property to the extent proximately caused by the willful misconduct or negligent acts or omissions of the indemnifying party, its employees or agents in connection with this SSA.
- B. Xerox, at its expense, if promptly notified by Customer and given the right to control the defense, will defend Customer from, and pay any settlement agreed to by Xerox or any ultimate judgment for, any claim not identified in (i)-(vi) below or subject to Section 11.C. below that any Services or Deliverables (excluding Third Party Products) infringe a third party's U.S. intellectual property rights. Xerox is not responsible for any non-Xerox litigation expenses or settlements unless Xerox pre-approves them in writing. Excluded herein are claims arising from or relating to: (i) Services performed using Customer Assets, Customer Content or other materials provided to Xerox by Customer for which Customer failed to provide sufficient rights to Xerox; (ii) Services performed, or Deliverables provided, to Customer's direction, specification or design, (iii) infringement resulting from or caused by Customer's misuse or unauthorized modification of systems or products; (iv) use of Services or Deliverables in combination with other products, services or data streams not provided by Xerox if such combination forms the basis of such claim; (v) Customer's failure to use corrections or enhancements to the Services or Deliverables provided by Xerox; and (vi) breach of Customer's representations and warranties in Section 9(b). If the use of the Services or Deliverables (excluding Third Party Products) are enjoined as a result of a claim under this Section, or in the reasonable opinion of Xerox are likely to be the subject of such a claim, Xerox will, at its option and sole expense, exercise any or all of following remedies: (w) obtain for Customer the right to continue to use such Services or Deliverables; (x) modify such Services or Deliverables so they are non-infringing; (y) replace such Services or Deliverables with non-infringing ones; or (z) terminate and/or accept the return of such Deliverables and refund to Customer any amount paid, less the reasonable rental value for the period such Deliverable was available to Customer.
- C. Customer, at its expense, if promptly notified by Xerox and given the right to control the defense, will defend Xerox from, and pay any settlement agreed to by Customer or any ultimate judgment for, all third party claims arising out of or related to Section 11.B(i)-(vi).

- D. The indemnifying party is not responsible for any litigation expenses of the indemnified party or any settlements unless it pre-approves them in writing.
12. **LIMITATION OF LIABILITY.** Xerox will not be liable to Customer, in the aggregate, for any direct damages in excess of the amounts paid by Customer to Xerox during the 12 months prior to the claim or \$50,000, whichever is greater, and neither party will be liable to the other for any special, indirect, incidental, consequential or punitive damages arising out of or relating to this SSA or any Order hereunder, whether the claim alleges tortious conduct (including negligence) or any other legal theory. This limitation of liability is not applicable to: (a) any specific indemnification obligations set forth in this SSA or the Maintenance Agreement; (b) where either party has (i) exceeded the rights to the other party's intellectual property granted to it under this SSA, or (ii) misappropriated or infringed the other party's intellectual property under this SSA.
13. **ASSIGNMENT.** Customer may not assign any of its rights or obligations hereunder. Xerox may assign this SSA and any Orders hereunder, in whole or in part, without prior notice to Customer and may release information Xerox has about Customer to an assignee. Each successive assignee of Xerox will have all of the rights but none of the obligations of Xerox pursuant to this SSA. Customer will continue to look to Xerox for performance of Xerox's obligations hereunder and Customer hereby waives and releases any assignees of Xerox from any such claim. Customer will not assert any defense, counterclaim, or setoff that Customer may have or claim against Xerox against any assignee of Xerox.
14. **FORCE MAJEURE.** Except for payment obligations, neither party will be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by circumstances beyond its reasonable control. The affected party will notify the other party of each such circumstance.
15. **MAINTENANCE SERVICES.**
- A. Except for Equipment identified as "No Svc", Maintenance Services will be provided for the Equipment during Xerox's standard working hours in areas open for repair service. Maintenance Services excludes repairs due to: (i) misuse, neglect or abuse; (ii) failure of the installation site or the PC or workstation used with the Equipment to comply with Xerox's published specifications; (iii) use of options, accessories or products not serviced by Xerox; (iv) non-Xerox alterations, relocation, service or supplies; or (v) failure to perform operator maintenance procedures identified in operator manuals. Replacement parts may be new, reprocessed or recovered and all replaced parts become Xerox's property. Xerox will, as Customer's exclusive remedy for Xerox's failure to provide Maintenance Services, replace the Equipment with an identical model or, at Xerox's option, another model with comparable features and capabilities. Notwithstanding anything to the contrary herein, Xerox will have no obligation to replace Equipment beyond its end of service date. There will be no additional charge for the replacement Equipment during the initial Term. Unless the applicable Order requires Xerox to provide meter readings, Customer will provide them using the method and frequency identified by Xerox. If Customer does not provide a meter reading, Xerox may reasonably estimate the reading and bill Customer accordingly.
- B. **Cartridges.** If Xerox is providing Maintenance Services for Equipment that uses Cartridges, Customer will use only unmodified Cartridges purchased directly from Xerox or its authorized resellers in the U.S. Failure to use such Cartridges will void any warranty applicable to such Equipment. Cartridges packed with Equipment and/or furnished by Xerox as Consumable Supplies will meet Xerox's new Cartridge performance standards and may be new, remanufactured, or reprocessed and contain new and/or reprocessed components. To enhance print quality, Cartridge(s) for many models of Equipment have been designed to cease functioning at a predetermined point. Many Equipment models are designed to function only with Cartridges that are newly manufactured, original Xerox Cartridges or with Cartridges intended for use in the U.S. Equipment configuration that permits use of non-newly manufactured original Xerox Cartridges may be available from Xerox at an additional charge.
- C. **PC/Workstation Requirements.** For Equipment requiring connection to a PC or workstation, Customer must use a PC or workstation that either (i) has been provided by Xerox, or (ii) meets Xerox's published specifications.
16. **CONSUMABLE SUPPLIES INCLUDED.** If specified in an Order, Xerox will provide Consumable Supplies for Equipment. Consumable Supplies are Xerox's property until used by Customer, and Customer will (a) use them only with the Equipment included in the applicable Order, (b) return all Cartridges to Xerox as provided herein, and (c) at the end of the term of the applicable Order, return any unused Consumable Supplies to Xerox at Xerox's expense using Xerox-supplied shipping labels or destroy them in a manner permitted by applicable law. Should Customer's use of Consumable Supplies exceed Xerox's published yields by more than 10%, Xerox will notify Customer of such excess usage. If such excess usage does not cease within 30 days after such notice, Xerox may charge Customer for such excess usage. If Xerox provides paper under a Services Contract, upon 30 days notice, Xerox may adjust paper pricing or either party may terminate the provision of paper.

17. **EQUIPMENT STATUS.** Unless Customer is acquiring Previously Installed Equipment, Equipment will be either: (a) "Newly Manufactured", which may contain some recycled components that are reconditioned; (b) "Factory Produced New Model", which is manufactured and newly serialized at a Xerox factory, adds functions and features to a product previously disassembled to a Xerox predetermined standard, and contains both new components and recycled components that are reconditioned; or (c) "Remanufactured", which has been factory produced following disassembly to a Xerox predetermined standard and contains both new components and recycled components that are reconditioned. Xerox makes no representations as to the manufactured status of Third Party Hardware.
18. **TITLE, RISK OF LOSS AND PROTECTION OF XEROX'S RIGHTS.** Title to Equipment and Third Party Hardware will remain with Xerox unless purchased by Customer. Risk of loss for the Products will pass to Customer upon delivery. Customer will keep the Products insured against loss and the policy will name Xerox as Loss Payee. Customer hereby authorizes Xerox or its agents to file financing statements necessary to protect Xerox's rights to Equipment and Third Party Hardware.
19. **WARRANTIES AND DISCLAIMERS.**
- A. **Services Warranty.** Xerox warrants to Customer that the Services will be performed in a skillful and workmanlike manner. If the Services do not comply with the service levels in an applicable SOW, Customer will notify Xerox in writing detailing its concerns. Within 10 days following Xerox's receipt of such notice, Xerox and Customer will meet, clarify the Customer's concern, and begin to develop a corrective action plan ("Plan"). As Customer's exclusive remedy for such non-compliance, Xerox will either modify the Services to comply with the applicable service levels or re-do the work at no additional charge within 60 days of finalizing the Plan or another time period agreed to, in writing, by the parties.
- B. **Third Party Product Warranty.** For Third Party Products selected solely by Xerox for an Order, Xerox warrants they will operate substantially in conformance with applicable service levels in the SOW. If, within a reasonable time after provision of such Third Party Products, they cannot be brought into substantial conformance with the service levels in the SOW, and such non-conformance is a result of Xerox's use of such Third Party Products, Customer's exclusive remedy is to receive a refund of any fees paid for the non-conforming Third Party Products upon their return to Xerox. Xerox will pass through to Customer any warranties provided to it by the manufacturer or licensor of Third Party Products to the extent permissible.
- C. **Warranty Disclaimer and UCC Waiver.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, XEROX MAKES NO OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED; AND XEROX DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, AND ANY WARRANTIES RELATING TO DESIGN, PERFORMANCE, FUNCTIONALITY, OR COMPATIBILITY WITH CUSTOMER'S SYSTEMS. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND AS PERMITTED BY APPLICABLE LAW, CUSTOMER WAIVES ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.
- D. The warranties set forth in this SSA are expressly conditioned upon the use of the Services and Deliverables for the purposes for which they were intended or designed, and do not apply to Services or Deliverables subjected to misuse, accident, alteration or modification by Customer or any third party (except as specifically authorized in writing by Xerox). In no event will Xerox be responsible for any failure to perform Services caused by: (i) Customer Assets, Customer Content, or services, maintenance, design implementation, supplies or data streams provided by Customer, Customer's agent or service provider to Xerox for use hereunder, (ii) Customer's failure to contract for the minimum types and quantities of Products required by Xerox to perform the Services, or (iii) Customer's failure to perform its obligations under Section 9.A or 9.B.
20. **SOFTWARE TERMS.**
- A. **Software License.** Xerox grants Customer a non-exclusive, non-transferable license to use in the U.S.: (i) Base Software only with the Equipment with which it was delivered; and (ii) Application Software only on any single unit of Equipment for as long as Customer is current in the payment of all applicable software license fees. Customer has no other rights to Software. The Base Software license will terminate; (y) if Customer no longer uses or possesses the Equipment; or (z) upon the expiration of any Order under which Customer has rented or leased the Equipment (unless Customer has exercised an option to purchase the Equipment). Neither Xerox nor its licensors warrant that Software will be free from errors or that its operation will be uninterrupted. The foregoing terms do not apply to Diagnostic Software or to software/documentation accompanied by a clickwrap or shrinkwrap license agreement or otherwise made subject to a separate license agreement. Third Party Software is subject to license and support terms provided by the vendor thereof.

- B. Software Support.** For Base Software, Software Support will be provided during the initial term of the applicable Order and any renewal period, but not longer than 5 years after Xerox stops taking customer orders for the subject Equipment model. For Application Software, Software Support will be provided as long as Customer is current in the payment of all applicable software license and support fees. Xerox will maintain a web-based or toll-free hotline during Xerox's standard working hours to report Software problems and answer Software-related questions. Xerox, either directly or with its vendors, will make reasonable efforts to: (i) assure that Software performs in material conformity with its user documentation; (ii) provide available workarounds or patches to resolve Software performance problems; and (iii) resolve coding errors for the current Release and the previous Release for a period of 6 months after the current Release is made available to Customer. Xerox will not be required to provide Software Support if Customer has modified the Software. Maintenance Releases or Updates that Xerox may make available will be provided at no charge and must be implemented within 6 months. Feature Releases will be subject to additional license fees at Xerox's then-current pricing. Each Release will be considered Software governed by the provisions of this Section 20 (unless otherwise noted). Implementation of a Release may require Customer to procure, at Customer's expense, additional hardware, and/or software from Xerox or another entity. Upon installation of a Release, Customer will return or destroy all prior Releases. Xerox may annually increase Software license and support fees for Application Software. For State and Local Government Customers, this adjustment will take place at the commencement of each of Customer's annual contract cycles.
- C. Disabling Code.** Software may contain code capable of automatically disabling the Equipment. Disabling code may be activated if: (i) Xerox is denied access to periodically reset such code; (ii) Customer is notified of a default under a Services Contract; or (iii) Customer's license is terminated or expires.
- D. Diagnostic Software.** Diagnostic Software is a valuable trade secret of Xerox. Xerox does not grant Customer any right to use Diagnostic Software. Customer will allow Xerox reasonable access to the Equipment during Customer's normal business hours to remove or disable Diagnostic Software if Customer is no longer receiving Maintenance Services from Xerox.
- E. Title and Rights.** Title and all intellectual property rights to Software and Diagnostic Software will reside solely with Xerox and/or its licensors (who will be considered third-party beneficiaries of Section 20.A. Customer will not, and will not allow its employees, agents, contractors, or vendors to: (i) distribute, copy, modify, create derivatives of, decompile or reverse engineer Software or Diagnostic Software; (ii) activate Software delivered with the Equipment in an inactivated state; or (iii) access or disclose Diagnostic Software for any purpose.
- 21. REMOTE SERVICES.** Certain models of Equipment are supported and serviced using data that is automatically collected by Xerox from the Equipment via electronic transmission from the Equipment to a secure off-site location. Examples of automatically transmitted data include product registration, meter read, supply level, Equipment configuration and settings, software version, and problem/fault code data. All such data will be transmitted in a secure manner specified by Xerox. The automatic data transmission capability will not allow Xerox to read, view, or download any Customer data, documents, or other information residing on or passing through the Equipment or Customer's information management systems.
- 22. DATA SECURITY.** Certain models of Equipment can be configured to include a variety of data security features. There may be an additional cost associated with certain data security features. The selection, suitability, and use of data security features are solely Customer's responsibility. Upon request, Xerox will provide additional information to Customer regarding the security features available for particular Equipment models.
- 23. MISCELLANEOUS.** This SSA and the Services Contract(s) hereunder constitute the entire agreement of the parties as to its subject matter, supersede all prior and contemporaneous oral and written agreements, and will be construed under the laws of the State of New York (without regard to conflict-of-law principles). In the event of any conflict between terms and conditions, the order of precedence will be this SSA, the SSO, and the SOW, except where expressly stated otherwise in this SSA. Customer authorizes Xerox or its agents to communicate with Customer by any electronic means (including cellular phone, email, automatic dialing, and recorded messages) using any phone number (including cellular) or electronic address that Customer provides to Xerox. In any action to enforce this SSA or any Services Contract hereunder, the parties agree to the jurisdiction and venue of the federal or state courts in Monroe County, New York and to waive their right to a jury trial. If a court finds any term of this SSA or any Services Contract to be unenforceable, the remaining terms of this SSA and the Services Contract will remain in effect. The delay or failure by either Party to enforce any right or remedy under this SSA or any Services Contract will not constitute a waiver or forgiveness of such right or remedy. Xerox may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this SSA or any Order, which will be admissible in any action to enforce it, but only SSA or Order held by Xerox will be considered an original. Except for documentation of Equipment replaced by Xerox for reasons other than trade-in, all changes to this SSA or any Order will be made in an amendment signed by both parties. Customer represents that: (a) it has the lawful power and authority to enter into this SSA, (b) the person signing this SSA or any Order is duly authorized

to do so, (c) entering into this SSA will not violate any law or other agreement to which it is a party, (d) it is not aware of anything that will have a material negative effect on its ability to satisfy its payment obligations under this SSA or any Services Contract, and (e) all financial information it has provided, or will provide, to Xerox is true and accurate and provides a good representation of Customer's financial condition. Each party will promptly notify the other, in writing, of any change in ownership, or if it relocates its principal place of business or changes the name of its business. The following four clauses will control over every other provision in a Services Contract: (w) Customer and Xerox will comply with all laws applicable to the performance of its obligations hereunder, (x) in no event will Xerox charge or collect any amounts in excess of those allowed by applicable law, (y) any part of a Services Contract that would, but for this Section, be construed to allow for a charge higher than that allowed under any applicable law, is limited and modified by this Section to limit the amounts chargeable under such Services Contract to the maximum amount allowed by law, and (z) if in any circumstances, an amount in excess of that allowed by law is charged or received, such charge will be deemed limited to the amount legally allowed and the amount received by Xerox in excess of that legally allowed will be applied to the payment of amounts owed or refunded to Customer.


24. DEFINITIONS.

- A. "Application Software" means software and accompanying documentation identified in an Order as "Application Software".
- B. "Assessments" means assessment and recommendation reports created by Xerox in the performance of assessment Services.
- C. "Base Software" means software and accompanying documentation provided with Equipment.
- D. "Cartridges" means Equipment components designated by Xerox as customer replaceable units, including copy/print cartridges and xerographic modules or fuser modules.
- E. "Confidential Information" means this SSA, Orders and certain business information identified as confidential that each party may disclose to the other. Customer Content is considered Customer Confidential Information. Xerox Work, Xerox Tools, and Xerox Client Tools are considered Xerox Confidential Information.
- F. "Consumable Supplies" means black toner (excluding highlight color toner), black developer, Cartridges and, if applicable, fuser agent. For full-color Equipment Orders that include Consumable Supplies, Consumable Supplies also includes, as applicable, color toner and developer. For Equipment identified as "Phaser", Consumable Supplies may also include, if applicable, black solid ink, color solid ink, imaging units, waste cartridges, transfer rolls, transfer belts, transfer units, belt cleaner, maintenance kits, print Cartridges, drum Cartridges, waste trays and cleaning kits.
- G. "Customer Assets" means all hardware, software, and or workspace owned, leased, rented, licensed and/or controlled by Customer, and any services used by Customer that Xerox needs to use or access to enable Xerox to perform the Services.
- H. "Customer Content" means documents, materials, and data provided in hard copy or electronic format by Customer to Xerox containing information about Customer and/or Customer's clients.
- I. "Deliverables" means Products, Output of Services, Assessments, and Documentation.
- J. "Developments" means items created by Xerox and its employees, agents, and/or licensors, including, but not limited to, computer programs, code, reports, operations and procedures manuals, forms, design or other works of authorship or materials, in the course of performing Services.
- K. "Diagnostic Software" means software used by Xerox to evaluate or maintain the Equipment.
- L. "Documentation" means all manuals, brochures, specifications, information, and software descriptions, in electronic, printed, and/or camera-ready form, and related materials customarily provided by Xerox for Customer's use as part of the Services.
- M. "Eligible Affiliate" means any domestic entity which controls, is controlled by, or is under common control with Customer. Control (including the terms controls, controlled by and under common control with) means direct or indirect power to direct the management and policies of an entity.
- N. "Equipment" means Xerox-brand equipment.
- O. "ETCs" means early termination charges paid by Customer in the event of early termination, for loss of bargain and not as a penalty, as more fully defined in this SSA or the applicable Services Contract.
- P. "Feature Releases" means new releases of Software that include new content or functionality.
- Q. "Maintenance Releases" or "Updates" means new releases of Software that primarily incorporate compliance updates and coding error fixes.

- R. "Maintenance Services" means the services provided by Xerox (or a designated servicer) to keep the Equipment in good working order.
 - S. "MMC" means the Monthly Minimum Charge identified in an Order which, along with any Additional Impression Charges, covers the cost for the Services, Products, and Maintenance Services. The MMC may also include lease buyout funds, Third Party Funds, supplemental funds, monthly equipment component amounts, remaining Customer obligations from previous contracts, amounts being financed or refinanced, and Amortized Services. One-time items are billed separately from the MMC.
 - T. "Order" means any (i) SSO, (ii) SOW which references an applicable Services Contract Number and is signed by Customer and Xerox, or (iii) PO.
 - U. "Output of Services" means electronic images created by scanning tangible documents containing Customer Content, or the content of any reports and other materials, created by Xerox specific to and for Customer per the applicable Order, but does not include software.
 - V. "PO" means a Customer-issued purchase order accepted by Xerox that references an applicable Services Contract Number.
 - W. "Pre-existing Work" means items used or incorporated into the Services or Deliverables, or developed or acquired by Xerox independent of performing the Services.
 - X. "Products" means, collectively, Consumable Supplies, Equipment, Software, and Third Party Products.
 - Y. "Releases" means, collectively, Maintenance Releases, Updates, and Feature Releases.
 - Z. "Services" means managed services (e.g. copy center and mailroom services), consultative services, and/or professional services, including, but not limited to, assessment, document management, and imaging and language translation services.
 - AA. "Services Contract" means this SSA together with one or more Orders designated by the same Services Contract Number.
 - BB. "Services Contract Number" means a 10-digit number assigned by Xerox to each Services Contract.
 - CC. "Software" means Application Software and Base Software.
 - DD. "Software Support" means the support and maintenance of software provided by Xerox (or a designated servicer).
 - EE. "SSO" means a Services and Solutions Order issued by Xerox pursuant to this SSA.
 - FF. "SOW" means a statement of work describing Services and Deliverables which (i) is incorporated by reference into an SSO, or (ii) references an applicable Services Contract Number and is signed by Customer and Xerox.
 - GG. "Taxes" means all taxes, fees, or charges of any kind (including interest and penalties) assessed by any governmental entity on this SSA or any Order hereunder or the amounts payable to Xerox under this SSA or any Order. Taxes do not include personal property taxes in jurisdictions where Xerox is required to pay personal property taxes, or taxes on Xerox's income.
 - HH. "Third Party Funds" is defined in Section 10.C.
 - II. "Third Party Hardware" means non-Xerox brand equipment.
 - JJ. "Third Party Products" means, collectively, Third Party Hardware and Third Party Software.
 - KK. "Third Party Software" means non-Xerox brand software.
 - LL. "U.S." means the United States and its territories and possessions.
 - MM. "Xerox Client Tools" means certain Xerox proprietary tools (including any modifications, enhancements, improvements, and derivative works) that are owned by Xerox and are licensed to Customer for its use under an accompanying click wrap license agreement.
 - NN. "Xerox Tools" means certain Xerox proprietary tools (including any modifications, enhancements, improvements and derivative works) used by Xerox to provide certain Services.
 - OO. "Xerox Work" means, collectively, Developments and Pre-Existing Work.
25. **FUNDING.** Customer represents and warrants that all payments due and to become due during Customer's current fiscal year are within the fiscal budget of such year and are included within an unrestricted and unencumbered appropriation currently available for the acquisition of the Products, and it is Customer's intent to use the Products for the entire lease term and to make all payments required under this Agreement or an Order. If (1) through no action initiated by Customer, Customer's governing body does not appropriate funds for the continuation of this Agreement or an Order for any fiscal year after the first fiscal year and has no funds to do so from other sources, and (2) Customer has made a reasonable but unsuccessful effort to find an assignee within Customer's general organization who can continue this Agreement or an Order, this Agreement or the Order may

be terminated. To effect this termination, Customer must, 30 days prior to the beginning of the fiscal year for which Customer's governing body does not appropriate funds for the upcoming fiscal year, notify Xerox that Customer's governing body failed to appropriate funds and that Customer has made the required effort to find an assignee. Customer's notice must certify that canceled Equipment is not being replaced by equipment performing similar functions during the ensuing fiscal year. Customer agrees to release the Equipment to Xerox and, when returned, the Equipment will be in good condition and free of all liens and encumbrances. Customer will then be released from any further payments obligations beyond those payments due for the current fiscal year.

CITY OF MENLO PARK



Signature
Gene Garces

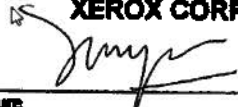
Name (please print)
IT Manager

Title
701 Laurel St.
Menlo Park, CA 94025

Address
7/8/2017

Date

XEROX CORPORATION



Signature
Michelle Yoshino

Name
Xerox General Manager

Title
1857 E. 1st street #200, Santa Ana, CA 92705

Address
08/2/2017

Date

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STAFF REPORT

City Council

Meeting Date:

3/12/2019

Staff Report Number:

19-047-CC

Regular Business:

Approval of seventh amendment to the agreement of services for City Attorney William L. McClure

Recommendation

Staff recommends that the City Council approve of a seventh amendment to the agreement of services for City Attorney William L. McClure (hereinafter, "McClure.")

Policy Issues

There are no direct policy issues presented by the proposed amendment.

Background

The City Council is the hiring authority for the position and services of city attorney. The City entered into a contract with McClure for city attorney services effective September 7, 1993, and has previously amended the contract six times, in 2000, 2002, 2005, 2007, 2011, and 2016.

Analysis

The City Council reviewed McClure's agreement and performance in closed session February 26 and March 5. Following the final closed session, the City Council desired to approve a contract amendment that increases the city attorney's part time salary by \$1,000 per month to \$11,000 per month and provide hourly rate increases for additional work to \$250 per hour for retainer work and \$400 per hour for legal services that are reimbursed by applicants for non-single family home development related work, with no changes in fringe benefits.

The City Council may also consider providing a cash bonus. This bonus would have to be approved in a separate action, as the current agreement does not include a bonus provision. If provided, the bonus would not be included in McClure's pensionable compensation.

Impact on City Resources

There is sufficient funding to cover McClure's agreement amendment provisions in the adopted 2018-19 budget.

Environmental Review

This action is not a project under the California Environmental Quality Act (“CEQA”) and therefore not subject to the provisions of the CEQA Guidelines under Sections 15378 and 15061(b)(3).

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Agreement and six amendments for City Attorney services between the City and William L. McClure
- B. Proposed seventh amendment for City Attorney services between the City and William L. McClure

Report prepared by:

Lenka Diaz, Administrative Services Director


SIXTH AMENDMENT TO AGREEMENT FOR SERVICES OF CITY ATTORNEY

This Sixth Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, as previously amended in 2000, 2002, 2005, 2007 and 2011, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney"). The parties now desire to, and do hereby agree to, amend said Agreement as follows:

1. Effective with the pay period commencing October 2, 2016, Attorney's salary shall be increased to \$10,000.00 per month.
2. Effective October 1, 2016, except for legal services on development projects where the costs are reimbursed by applicants as provided in paragraph 3 of this Amendment, Attorney's firm shall be paid \$225.00 per hour for legal services provided by Attorney and other partners within Attorney's firm, \$200.00 per hour for legal services performed by associates of the firm, and \$110.00 per hour for services performed by paralegals, law clerks and legal assistants, after City is credited the sum of \$11,500 per month against billings for the month as a partial for salary and benefit costs.
3. Effective October 1, 2016, with respect to legal services provided to City for development projects processed by the Community Development Department for which City is reimbursed by the applicant/property owner (other than single family home projects involving a single housing unit), Attorney's firm shall be paid \$350.00 per hour for legal services provided by Attorney and other partners within Attorney's firm, \$240.00 hour for legal services performed by associates of the firm, and \$125.00 per hour for services performed by paralegals, law clerks and legal assistants.
4. Except as modified herein, all of the remaining terms and provisions, shall remain in full force and effect.


Dated: October 11, 2016

CITY OF MENLO PARK

By: 
Mayor

Attest:


City Clerk


William L. McClure

FIFTH AMENDMENT TO AGREEMENT FOR SERVICES OF CITY ATTORNEY


This Fifth Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, as previously amended in 2000, 2002, 2005 and 2007, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney"). The parties now desire to, and do hereby agree to, amend said Agreement as follows:

1. Effective with the pay period ending July 2, 2011, City shall deduct as an after tax item from Attorney's Monthly Salary/Retainer, one half of the amount by which City's Public Employees' Retirement System (CalPERS) employer rate for miscellaneous employees exceeds a 15.850% threshold in accordance with the City's Management Benefit Plan for other non-represented management employees of the City. For 2011-2012 this share is calculated as $16.090\% - 15.850\% / 2 = 0.11\%$ of earnings subject to CalPERS. The amount of Attorney's contribution/deduction to the City's CalPERS rate shall be adjusted annually without further amendment of this Agreement when the City's CalPERS employer rate for miscellaneous employees is adjusted.

2. Effective July 1, 2011, solely with respect to legal services provided to City for development projects processed by the Community Development Department for which City is reimbursed by the applicant/property owner (other than single family home projects involving a single housing unit), Attorney's firm shall be paid \$300 per hour for legal services provided by Attorney and other partners within Attorney's firm, \$240 per hour for other attorneys in Attorney's firm and \$100 per hour for law clerks/paralegals/legal assistants.


3. Except as modified herein, all of the remaining terms and provisions, including but not limited to the hourly rates paid for other legal services and the monthly credit for the monthly retainer as set forth in the Fourth Amendment, shall remain in full force and effect.

CITY OF MENLO PARK

By: 
Mayor

Attest:


City Clerk


William L. McClure


**FOURTH AMENDMENT TO AGREEMENT FOR
SERVICES OF CITY ATTORNEY**

This Fourth Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, as amended in 2000, 2002 and 2005, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney"). The parties now desire to, and hereby agree to, amend said Agreement as follows:


1. Attorney is hereby granted a salary increase of 4.7% to \$9,000 per month retroactive to July 1, 2007.
2. Effective August 1, 2007, Attorney's firm shall be paid \$200 per hour for all legal services provided by Attorney and other partners within Attorney's firm, \$185 per hour for other legal attorneys in Attorney's firm and \$85 per hour for law clerks/paralegal/legal assistants, after City is credited \$10,650 per month for the retainer paid to Attorney each month. These rates shall be utilized for all billings to the City for Retainer Services and Non-Retainer Services alike.
3. Except as modified herein, all of the remaining terms and provisions shall remain in full force and effect.

Dated: August 28, 2007


CITY OF MENLO PARK

By: 
Kelly Fergusson, Mayor

ATTEST:


Sylvia Vonderlinder, City Clerk
9:00P.M.

Dated: August 28, 2007


William L. McClure

THIRD AMENDMENT TO AGREEMENT FOR
SERVICES OF CITY ATTORNEY

This Third Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, as amended in 2000 and 2002, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney"). The parties now desire to, and do hereby agree to, amend said Agreement as follows:

1. Attorney is hereby granted a salary increase of 2.5% retroactive to July 1, 2005.
2. Effective December 1, 2005, Attorney's firm shall be paid \$185 per hour for all legal services provided by Attorney and other partners within Attorney's firm, \$170 per hour for other attorneys in Attorney's firm and \$80 per hour for law clerks/paralegals/legal assistants, after City is credited \$9,850 per month for the retainer paid to Attorney each month. These rates shall be utilized for all billings to the City for Retainer Services and Non-Retainer Services alike.
3. Except as modified herein, all of the remaining terms and provisions shall remain in full force and effect.

Dated: December 19, 2005

CITY OF MENLO PARK

By: 
Mayor

ATTEST


City Clerk

Dated: Dec. 19, 2005

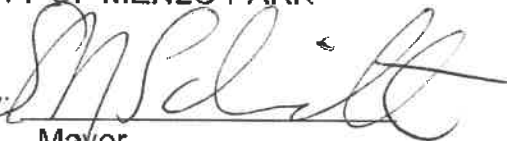

William L. McClure

SECOND AMENDMENT TO AGREEMENT FOR
SERVICES OF CITY ATTORNEY

This Second Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, as amended effective June 1, 2000, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney"). The parties now desire to, and do hereby agree to, amend said Agreement as follows:

1. Attorney is hereby granted a salary increase of 4.5% retroactive to January 1, 2002.
2. Effective April 1, 2002, Attorney's firm shall be paid \$165 per hour for Attorney and other attorneys within Attorney's firm and \$80 per hour for law clerks/paralegals/legal assistants for Retainer Services, after City is credited \$9,000 per month for the first 60 hours of Retainer Services per month provided by Attorney and/or others within his firm.
3. Effective April 1, 2002, Attorney's firm shall be paid \$175 per hour for Attorney and/or Attorney's partners and \$155 per hour for other attorneys in Attorney's firm, and \$80 per hour for law clerks/paralegals/legal assistants for Non-Retainer Services provided to City.
4. Except as modified herein, all of the remaining terms and provisions shall remain in full force and effect.

CITY OF MENLO PARK

By: 
Mayor

Attest:


City Clerk


William L. McClure

#212
433

AMENDMENT TO AGREEMENT FOR
SERVICES OF CITY ATTORNEY

This Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney ("Agreement") dated effective September 7, 1993, by and between the City of Menlo Park ("City") and William L. McClure ("Attorney").

Whereas, the Agreement between City and Attorney has not been amended or updated since 1993; and

Whereas, the compensation of Attorney set forth in the Agreement has not been modified since the effective date of the Agreement; and

Whereas, the services and time commitment required of Attorney have increased over the term of the Agreement without a commensurate increase in compensation; and

Whereas, the parties desire to modify and amend the Agreement as herein after set forth.

NOW, THEREFORE, THE PARTIES AGREE TO AMEND THE AGREEMENT EFFECTIVE JUNE 1, 2000, AS FOLLOWS:

1. Paragraph 4 a. of the Agreement is amended to provide that Attorney shall be paid a monthly salary of Seven Thousand Five Hundred Dollars (\$7,500) for providing the first (sixty) 60 hours of basic Retainer Services each month. All of the remaining terms and provisions of that Paragraph shall remain the same.

2. A new Paragraph 4 b. is hereby added to the Agreement (with the remaining subparagraphs re-lettered), as follows:

"4 b. In the event Attorney (and/or other attorneys or law clerks/paralegal staff under Attorney's direction) put in more than a total of sixty (60) hours for Retainer Services in a month, Attorney's firm shall be paid for such additional time on the basis of the following rates: \$160 per hour for Attorney and other attorneys in Attorney's firm and \$75 per hour for law clerks/paralegal staff. Such services shall be paid for as independent contractor services and not as employment compensation."

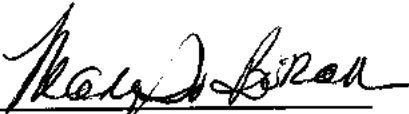
3. Paragraph 4 c. (formerly 4 b) is amended to provide that Non-Retainer Services will be compensated at the regular discounted government rate for Attorney's Firm, as those rates may be adjusted from time to time with not less than thirty (30) day's prior written notice to the City Manager and City Council. As of the effective date of this Amendment, such rates are as follows: \$170 per hour for Attorney and/or Attorney's partners; \$150 per hour for other attorneys in Attorney's Firm (associates and of-counsel); \$100 per hour for research attorneys; and \$75 per hour for law clerks/paralegal staff.

4. Paragraph 7 is amended to provide that Attorney shall use his discretion in delegating work to be performed by attorneys and staff within his firm to provide the best and most cost effective service to the City. Attorney may utilize the services of other attorneys to attend Planning Commission and certain other meetings on a routine basis with the approval of the City Manager. Notwithstanding the foregoing, all services shall be performed under the direction and control and shall be the responsibility of Attorney.

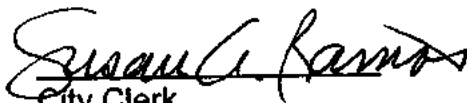
5. Attorney and City shall endeavor to review the terms of this Agreement at least every two years. Either party may request a review at any time.

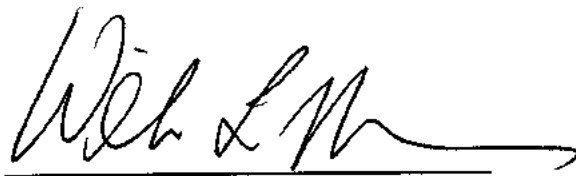
6. Except as modified herein, all of the remaining terms and provisions shall remain in full force and effect.

CITY OF MENLO PARK

By: 
Mary Jo Borak, Mayor

Attest:


City Clerk


William L. McClure

AGREEMENT FOR SERVICES OF CITY ATTORNEY

This Agreement is effective on Sept. 7, 1993, and is made by and between the CITY OF MENLO PARK, a Municipal corporation ("CITY") and WILLIAM L. McCLURE ("Attorney").

RECITALS

WHEREAS, pursuant to California Government Code section 36505, the City Council of CITY may appoint a City attorney; and

WHEREAS, pursuant to Resolution No. 4435, the City Council of CITY appointed Attorney to act as the Interim City Attorney with full power and authority to act as City Attorney until the appointment of a City Attorney; and

WHEREAS, the City Council of CITY wishes to retain and appoint Attorney to act as the City Attorney and to provide legal services to CITY in accordance with the terms and provisions of this Agreement; and

WHEREAS, Attorney wishes to act as the City Attorney and to provide such legal services in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, it is agreed as follows:

1. Designation of City Attorney. Attorney is hereby appointed as the City Attorney for the CITY. Attorney is also appointed as counsel for the Community Development Agency of the CITY ("Agency").

2. Scope of Legal Services to be Provided by Attorney.

a. The following legal services shall be provided to CITY by Attorney or under the direction and supervision of Attorney without additional compensation as a part of the monthly CITY retainer to be paid to Attorney ("Retainer Services"):

(1) Attendance at all regular and special City Council meetings, study sessions, and Agency Board meetings;

(2) Attendance at all Planning Commission meetings (attendance at Planning Commission study sessions upon request only);

(3) Attendance on occasion at other Board and Commission meetings upon request;

(4) Routine legal advice, consultation and opinions to the City Council, City Manager, and Staff on general municipal

matters, including but not limited to areas such as land use, CEQA, general municipal law, civil and criminal enforcement, tort liability, and risk management;

(5) Preparation/review of all proposed ordinances, resolutions, contracts, and related documents pertaining to CITY's business except M.O.U.'s and except as otherwise provided in Paragraph 2b;

(6) Review and advice regarding notices of preparation, draft negative declarations and administrative drafts of EIR's for CITY/Agency projects;

(7) Review of Staff Reports and review/preparation of Findings for CITY projects;

(8) Attendance at meetings with the City Manager and other CITY staff and members of the public as needed regarding routine CITY business;

(9) Telephone and correspondence with members of the public and press regarding routine CITY business;

(10) Assistance/advice to the City Manager and senior management of CITY regarding general personnel matters related to CITY's Personnel Rules & Regulations;

(11) Assistance/advice/correspondence regarding code enforcement and enforcement of state and local laws and codes up to the point of litigation (criminal and civil);

(12) Assistance/preparation of documents in connection with land acquisition or easements up to the point that the City Council authorizes the commencement of eminent domain proceedings;

(13) Review of/assistance with drafting minor General Plan Amendments;

(14) General advice on workers' compensation matters;

(15) Legal advice on general, non-specialized, redevelopment issues; and

(16) Approve selection of outside legal counsel and manage/supervise in conjunction with the City Manager specialized legal services as required in various matters, e.g., bond/assessment proceedings, collective bargaining, personnel, disability and workers' compensation claims.

b. The following legal services shall be provided to CITY by Attorney or under the direction and supervision of Attorney ("Non-Retainer Services"), and Attorney shall be entitled to additional compensation as more particularly set forth in Paragraph 4b of this Agreement for such Non-Retainer Services:

(1) Legal representation for all general liability claims and litigation including investigation, negotiation, and/or settlement of such claims and litigation;

(2) Legal representation in all civil and criminal litigation or arbitration proceedings involving CITY;

(3) Eminent domain proceedings;

(4) Legal services relating to updates and/or major amendments to the General Plan and/or Elements of the General Plan (questions as to whether an amendment is major shall be resolved pursuant to Paragraph 10);

(5) Municipal code review and/or recodification of CITY's Municipal Code;

(6) Negotiation/preparation of Disposition and Development Agreements, Development Agreements, Fiscal Agreements relating to the Agency, and other major agreements that occur from time to time (questions as to whether an agreement is major or minor shall be resolved pursuant to Paragraph 10); and

(7) The negotiation, review, and/or preparation of other documents or agreements where the cost of such negotiation, review, and/or preparation is reimbursed by the applicant.

3. Limitation of Duties. Attorney shall not be required to provide the following services:

a. Administration and legal representation of workers' compensation claims and litigation, except for general legal advice in the area of workers' compensation and review of settlements recommended by the CITY's contract administrators;

b. Negotiation and interpretation of M.O.U.'s and other labor related matters, including disciplinary proceedings, except to provide general legal advice on personnel matters related to the CITY's Personnel Rules & Regulations, and at the request of the CITY, review recommendations of the CITY's contract labor attorneys; and

c. Legal services related to the issuance of municipal bonds, certificates of participation, or other types of capital improvement financing and assessment proceedings, and specialized redevelopment proceedings, including updates and/or major amendments to the Agency Plan.

4. Compensation/Benefits.

a. Attorney shall be paid a monthly salary of Four Thousand Six Hundred Seventy-Four and 59/100 Dollars (\$4,674.59) for providing the Retainer Services set forth in Paragraph 2a of this Agreement ("Monthly Salary/Retainer"). The Monthly Salary/Retainer shall be considered full compensation for the purposes of contributions and withholdings with respect to PERS, income tax withholding, etc., and shall be paid bi-weekly as part of the CITY's regular payroll. In addition, CITY shall provide: Health insurance for Attorney and his spouse and family with Attorney's choice of PERS Health Plans; participation in CITY's dental reimbursement plan for Attorney and Attorney's spouse and family with a maximum reimbursement of One Thousand Six Hundred Dollars (\$1,600.00) per fiscal year; participation in the PERS Retirement System with CITY paying the employee's seven percent (7%) contribution; life insurance of Ten Thousand Dollars (\$10,000.00) for Attorney and One Thousand Five Hundred Dollars (\$1,500.00) for Attorney's spouse. Attorney shall not participate in any other CITY benefits provided to other employees of CITY.

b. For all Non-Retainer Services provided by Attorney or under the supervision and direction of Attorney by other members of Attorney's law firm, Attorney and/or Attorney's firm shall be compensated on the basis of the following reduced/discounted hourly rates: \$150 per hour for Attorney and/or Attorney's partners; \$110-125 per hour for associates of the firm; \$100 per hour for research attorneys; and \$75.00 for paralegals. Charges for Non-Retainer Services shall be billed and paid monthly following review and approval by the City Manager or the City Manager's designee. Any questions about billings that cannot be resolved between the City Manager and Attorney shall be referred to the City Council for resolution in accordance with Paragraph 10.

c. If in the opinion of Attorney and the City Manager it is determined that Attorney's membership in the National

Institute of Municipal Law Offices ("NIMLO") and/or Attorney's attendance at the City Attorney's section of the League of California Cities Spring and Fall Conferences would be in the best interest of the City, City shall reimburse Attorney the actual out-of-pocket expenses reasonably and necessarily incurred by Attorney in joining NIMLO and/or attending such conferences. Reimbursement shall be in accordance with City policies as may be in effect from time to time as adopted by the City Council for reimbursement of such expenses by Councilmembers and/or the City Manager.

5. Litigation Costs. Attorney shall be entitled to be reimbursed by the CITY for all costs advanced on CITY's behalf, such as court costs, filing fees, service of process fees, deposition transcript fees, jurors' fees, witness' fees, investigators' fees, appraisers' fees, or other costs or expenses in connection with litigation involving CITY, except overhead as provided in Paragraph 6.

6. Overhead. Except as expressly provided in this Agreement, Attorney shall pay all overhead incurred in providing legal services to CITY including but not limited to reasonable and necessary office facilities, equipment, books, supplies, secretarial services, word processing, faxes, telephone usage, insurance, office supplies, copying, telephone, etc., (except for CITY stationery and CITY business cards, which shall be provided by CITY).

7. Performance of Services.

a. To the extent possible, all Retainer Services set forth in Paragraph 2a shall be provided by Attorney with the exception of legal research or drafting documents which may be performed by other members of Attorney's firm or when Attorney is unable to act due to illness, vacation, or non-availability. In the event of the non-availability of Attorney for any reason, Attorney shall designate another member of Attorney's firm to act in his absence, subject to consultation with the City Manager and/or the Mayor. Any Retainer Services provided by any member of Attorney's firm shall be compensated by Attorney at his own expense and shall not be billed or charged to CITY.

b. With respect to Non-Retainer Services, such services may be provided by Attorney or by other members of Attorney's firm under the direction and supervision of Attorney.

8. Records, Monthly Statements, and Audit. Attorney and members of Attorney's firm shall maintain accurate records of all time spent by Attorney and members of the firm to the closest 1/10th of an hour and all reimbursable costs advanced by the Attorney or his firm in conjunction with CITY business. Attorney shall keep such records with respect to both Retainer and Non-Retainer Services. Attorney shall render monthly statements to the CITY for the performance of all services showing both the Retainer and Non-Retainer Services performed (including where possible a reference to the person(s) and matter(s) involved for each service performed), the hours spent, the costs advanced, and the amount the Attorney and/or Attorney's firm are entitled to receive, if any, from the CITY for the month. If approved by the City Manager or City Manager's designee, the sums shown to be due by such statement shall be paid to Attorney or Attorney's firm within thirty (30) days after approval. Books of account and the time records of Attorney and other members of Attorney's firm pertaining to business transacted for the CITY shall be open to audit by the City Council, City Manager, or their designee. Time records which may be covered by attorney-client confidentiality shall not become public records, except as otherwise provided by state or federal law.

9. Reports. Attorney shall provide the City Manager and the City Council with reports no less frequently than three times per year on the status of any legal actions in which the CITY is a party. In addition, Attorney shall provide periodic reports on risk management and cost control analysis and recommendations on each as appropriate.

10. Dispute Resolution Regarding Retainer/Non-Retainer Services and/or Billings. In the event of any question or dispute regarding whether or not a specific legal service is covered by the CITY retainer, either the City Manager or the City Attorney may request that such matter be referred to the City Council for resolution. The determination of the City Council or a sub-

committee authorized by the City Council to review such matters shall be final and binding.


11. Outside Law Practice/Conflict of Interest. Attorney shall be allowed to conduct an outside law practice. Attorney shall be responsible to disclose any potential conflict of interest and/or appearance of a conflict of interest involving any matter appearing before the City Council. In the event of a conflict of interest between the CITY and any other outside client of Attorney, Attorney shall assist the CITY in obtaining outside legal counsel to advise the CITY with respect to any matter which might require legal services involving such conflict of interest.

12. Performance Review. The City Council shall review the performance of Attorney at least annually. The first review shall occur no later than August 1, 1994. At the request of Attorney or any member of the City Council, Attorney's performance and/or the terms and provisions of this Agreement may be reviewed and/or modified at any time prior to July 31, 1994.

13. Termination. This Agreement shall remain in effect until terminated by either party hereto. This Agreement may be terminated without cause upon either party giving the other party not less than sixty (60) days prior written notice and may be terminated by either party without notice for cause.

14. Entire Agreement. This Agreement contains the entire agreement between the parties.

CITY OF MENLO PARK

By: 
Mayor - Gail L. Slocum

Attest:


City Clerk - Jaye M. Carr


WILLIAM L. McCLURE

SEVENTH AMENDMENT TO AGREEMENT FOR SERVICES OF CITY ATTORNEY

This Seventh Amendment to Agreement for Services of City Attorney is made with respect to that certain Agreement for Services of City Attorney (“Agreement”) dated effective September 7, 1993, as previously amended in 2000, 2002, 2005, 2007, 2011, and 2016, by and between the City of Menlo Park (“City”) and William L. McClure (“Attorney”). The parties now desire to, and do hereby agree to, amend said Agreement as follows:

1. Effective with the first pay period commencing after March 1, 2019, Attorney’s salary shall be increased to Eleven Thousand Dollars (\$11,000.00) per month.
2. Effective March 1, 2019, except for legal services on development projects where the costs are reimbursed by applicants as provided in paragraph 3 of this Amendment, Attorney’s firm shall be paid \$250.00 per hour for legal services provided by Attorney, other partners and “of counsel” attorneys within Attorney’s firm, \$225.00 per hour for legal services performed by associates of the firm, and \$125.00 per hour for services performed by paralegals, law clerks and legal assistants, after City is credited the sum of \$11,000 per month against billings for the month for Attorney’s salary.
3. Effective March 1, 2019, with respect to legal services provided to City for development projects processed by the Community Development Department for which City is reimbursed by the applicant/property owner (other than single family home projects involving a single housing unit), Attorney’s firm shall be paid \$400.00 per hour for legal services provided by Attorney, other partners and “of counsel” attorneys within Attorney’s firm, \$275.00 per hour for legal services performed by associates of the firm, and \$145.00 per hour for services performed by paralegals, law clerks and legal assistants.
4. Except as modified herein, all of the remaining terms and provisions as previously modified, shall remain in full force and effect.

CITY OF MENLO PARK

By: _____
Mayor

Attest:

City Clerk

William L. McClure

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STAFF REPORT

City Council

Meeting Date:

3/12/2019

Staff Report Number:

19-045-CC

Regular Business:

Biennial review of the El Camino Real/Downtown Specific Plan and direction on plan amendments

Recommendation

Staff recommends that the City Council complete the biennial review of the El Camino Real/Downtown Specific Plan. The review includes consideration of the maximum allowable development status and other informational updates, and direction regarding potential modifications to the specific plan.

Policy Issues

The specific plan's ongoing review requirement was established to ensure that it is functioning as intended, as well as to consider the policy-related implications of various plan aspects. The staff-recommended modifications described in this report are intended to support and enhance the adopted guiding principles and City Council may consider additional modifications and overall policy issues as part of this review.

As the total entitlements approved for net new non-residential square footage has exceeded 80 percent of the maximum permitted square footage, the City Council should consider whether it would like to amend the development cap. Additionally, interest has been expressed by City Councilmembers, advisory commissions and members of the public in increasing the housing cap, with an emphasis on affordable housing. Significant interest has also been expressed in enhanced green and sustainable development standards for the plan area. If the City Council would like to pursue such standards, the City Council should provide direction on which development regulation(s) should be reviewed. Other potential amendments, including greater flexibility on development standards such as maximum building height, and the long-term changes from the 2015 review, including general hotel incentives, the infrastructure project list, and preserving small businesses and retail uses, need more definition, and if the City Council would like staff to pursue these, the City Council should provide direction.

Background

Vision plan and specific plan development

Between 2007 and 2012, the City conducted an extensive long-range planning project for the El Camino Real corridor and the downtown area. The project started with a visioning project (Phase I: 2007-2008) to identify the core values and goals of the community and to define the structure of the second phase of planning. The specific plan process (Phase II: 2009-2012) was a planning process informed by review of an environmental impact report (EIR) and fiscal impact analysis (FIA). A key specific plan goal was the establishment of a comprehensive, action-oriented set of rules, which would establish much greater clarity

and specificity with regard to development, both with respect to rights as well as requirements.

In June 2012, the City Council unanimously approved the El Camino Real/Downtown Specific Plan and related actions, following a unanimous recommendation for approval from the Planning Commission. The specific plan contains extensive standards, guidelines and illustrations for development. Full information on the vision and specific plan projects (including staff reports, meeting video, environmental and fiscal review documents, analysis memos, and workshop presentations and summaries) is available on the City's website (Attachment F.)

Initial review (2013)

The initial implementation of the ongoing review requirement occurred in 2013, at which point the Planning Commission and City Council received public input, discussed a wide range of options, and directed that staff prepare formal amendments for the following topics:

- Revise text to clarify that implementation of the “Burgess Park linkage/open space plaza” public space improvement is not dependent on the high speed rail project;
- Eliminate “Platinum LEED Certified Buildings” as a suggested public benefit bonus element; and
- For new medical/dental office uses on El Camino Real, establish an absolute maximum of 33,333 square feet per development project.

Following that direction in late 2013, the formal revisions were presented and approved in October 2014.

2015 biennial review

On October 6, 2015, staff presented the biennial review for the El Camino Real/Downtown Specific Plan to City Council. Several members of the public spoke and voiced concerns over downtown parking and housing primarily, as well as the jobs-housing balance, and retail and funding mechanisms.

On November 17, 2015, the City Council continued discussion of the biennial review, and City Council gave general direction for staff to pursue the short-term and long-term changes to the specific plan outlined in Attachment B. The November 17, 2015 staff report provides more detailed descriptions of the proposed changes.

Due to the large number of individual development projects as well as ongoing staff vacancies, many of the tasks have not been completed. As noted in Attachment B, a public amenity fund has been created, with a current balance of \$1,286,628. The current balance consists of the first half of the Station 1300 public benefit bonus payment (\$1,050,000) and the payment from the 1010-1026 Alma Street project (\$236,628.) The second half of the Station 1300 public benefit bonus payment, consisting of another \$1,050,000, is due before occupancy of the first building (construction for Station 1300 is expected to be completed by fall or winter 2020.) This fund was envisioned for infrastructure and public space improvements in the plan area. Staff is also seeking direction from City Council for additional ways the funds could be utilized.

An ordinance updating the requirements for electric vehicle charging stations was approved by City Council in 2018. Staff has also completed some work related to updating the development standards for setbacks, sidewalks, signage and parking rates. The short-term items that have not been started are text

edits that may not require intensive work. Staff believes the short-term items should be pursued, especially since many require text changes that would most efficiently be done as part of one update.

At the City Council's March 5 meeting, the City Council adopted their 2019 priorities and work plan providing clarification on priorities for staff and consultant resources in 2019. For 2019, as with 2018, the formation of a TMA (traffic management association) is on the City Council work plan. A request for proposal (RFP) for a feasibility study to explore the formation of a TMA in Menlo Park is expected to be released this spring. As part of their work plan development for 2019, the City Council discussed various options to improve parking and accessibility in the downtown area. As part of the work plan discussion, the City Council deprioritized the study of a new downtown parking structure and has asked staff to return with an analysis of parking and accessible issues in the downtown area. Given the status of the City Council's discussion on the parking structure, the parking structure's status as a proposed long term project may change. Other long-term tasks including general hotel incentives, the infrastructure project list, encouraging affordable housing, and preserving small businesses and retail uses, need more definition, and if the City Council would like staff to pursue these, the City Council should provide direction at its March 12 meeting.

Analysis

Maximum allowable development and recent/current development proposals

The specific plan establishes a maximum allowable net new development cap of 680 residential units and 474,000 square feet of non-residential uses, including retail, office and hotel, which was intended to reflect likely development over the specific plan's intended 20-30-year timeframe. Development in excess of these thresholds requires amending the specific plan and conducting additional environmental review.

The specific plan divided the maximum allowable development between residential and non-residential uses, recognizing the particular impacts from residential development (e.g., on schools and parks) while otherwise allowing market forces to determine the final combination of development types over time.

After the granting of entitlements or building permits for 80 percent or more of either the maximum residential units or maximum non-residential square footage, the specific plan allows the City Council to consider whether it wishes to amend the plan or to make no changes in the plan. Any development proposal that would result in either more residences or more commercial development than permitted by the specific plan would be required to apply for an amendment to the specific plan and complete the necessary environmental review.

The project summary table included as Attachment A represents a summary of applications with square footage implications that have been submitted since the specific plan became effective. As the total entitlements approved for net new non-residential square footage has exceeded 80 percent of the maximum permitted square footage, the City Council should consider whether it would like to amend the development cap.

The table does not include applications that only affect the exterior aesthetics of an existing structure. Staff is also aware of other potential infill development proposals throughout the Specific Plan area, but has not received project applications for these proposals and therefore, they are not included in the table.

The following chart shows the total net new residential units and non-residential square footages that have either approved or pending entitlements and/or an issued building permit:

Table 1: Development totals as of March 2019			
Item		Net new res. units	Net new non-res. units
Total entitlements approved *		489	397,785
Percentage of specific plan maximum allowable development		72%	84%
Total entitlements proposed		20	46,413
Percentage of specific plan maximum allowable development		3%	10%
Total entitlements approved and proposed		509	444,198
Percentage of specific plan maximum allowable development		75%	94%
Specific plan maximum allowable development		680	474,000

* Of the total entitlements approved, 458 new net residential units (67 percent of the maximum allowed development) and 352,898 square feet of net new non-residential square footage (74 percent of the maximum allowed development) either has issued building permits, or in the case of 500 El Camino Real, an approved development agreement.

Any increase to the residential or commercial development maximums would require environmental review. Although the type of environmental review would be dependent on how the development caps are modified, the environmental review would likely take at least a year.

Construction was completed on four new residential units at 612 College Avenue in August 2018. Temporary occupancy was granted in September 2018 for the Park James Hotel, a 61-room boutique hotel at 1400 El Camino Real. The specific plan area has also benefited from the redevelopment of existing structures. The Marriott Residence Inn (555 Glenwood Avenue), the Hotel Lucent (727 El Camino Real), renovation and small expansion of a commercial building at 889 Santa Cruz Avenue, and renovation of an existing commercial development at 1149 Chestnut Street have all completed construction. In addition, construction is in progress for the following approved projects:

- 1295 El Camino Real (new mixed-use residential and commercial development)
- 1020 Alma Street (new office building)
- 650 Live Oak Avenue (new office-residential development)
- 133 Encinal Avenue (new townhome-style development)
- Station 1300 (new mixed-use office, residential and retail development)
- 1275 El Camino Real (new mixed-use development)
- Middle Plaza at 500 El Camino Real (new mixed-use office, residential and retail development)
- 1125 Merrill Street (new mixed-use office and residential development)
- 506 Santa Cruz Avenue (new mixed-use retail, office and residential development)
- 556 Santa Cruz Avenue (new mixed-use retail, office and residential development)

Additionally, the following projects have obtained discretionary approvals but have not yet started construction:

- 1540 El Camino Real (new mixed-use office and residential development)
- 949 El Camino Real (Guild Theater renovation and expansion)
- 840 Menlo Avenue (new mixed-use office and residential development)

- 725 Oak Grove Avenue (renovation and small expansion of a commercial building)

Three applications are pending for new mixed-use developments. A proposal for a new mixed-use commercial and residential development at 201 El Camino Real is proposed at the public benefit bonus level. A portion of this project is in the R-3 zoning district, outside of the specific plan, so only the proposed net new square footage and residential units within the plan are included in the project summary table. The remaining two pending projects are proposed at the base density level:

- 706 Santa Cruz Avenue (new mixed-use retail, office and residential development)
- 115 El Camino Real (new mixed-use commercial and residential development)

The only other pending application that includes the addition of square footage is for a proposed Hampton Inn at 1704 El Camino Real, which is proposed at the public benefit bonus level.

Table 1 does not include a proposed project at 1162-1170 El Camino Real as the project is still in the pre-application stage. This proposal consists of redeveloping the site with a three-story, nine-unit residential development and is scheduled for a Planning Commission study session March 11, 2019. Three of the units would be designated as Below Market Rate (BMR) units, with one unit meeting the requirement for this project and two units meeting the requirement for the combined projects at 506 Santa Cruz Avenue, 556 Santa Cruz Avenue, and 1125 Merrill Street per its BMR agreement.

December 2017 City Council meeting

On December 5, 2017, staff presented an information item to the City Council on the specific plan maximum allowable development. The City Council discussed the next steps to be addressed by staff in the biennial update and provided additional feedback on potential amendments to the specific plan, including additional entertainment uses, possibly combined with a mixed-use parking structure, increases to height limits, and an increase to the number of residential units in the specific plan area, especially in the vicinity of the Caltrain station and other transit.

2018 biennial review

On April 17, 2018, staff presented the biennial review. Several members of the public spoke and expressed an interest in applying the sustainability standards that are applied to the new bayfront area zoning districts, increasing residential unit density, and increasing electric vehicle (EV) charging requirements in the specific plan. Additionally, concerns were expressed by community members regarding public benefits, especially related to improvements to bicycle and pedestrian infrastructure.

The City Council directed staff to bring the possible amendments to the Planning Commission, Environmental Quality Commission, Complete Streets Commission and Housing Commission for their review before returning to the City Council for discussion on larger policy issues such as the development caps. Verbal updates were provided to the Environmental Quality Commission at their meeting May 16, 2018, and to the Complete Streets Commission at their meeting June 13, 2018, encouraging these Commissioners to provide individual input at the Planning Commission meeting. The City Council also directed staff to meet with the local school districts and the fire district on the possible amendments. Several City Councilmembers also noted that the Transportation Master Plan (TMP) should be completed before making decisions on the specific plan. Additional comments were made by City Councilmembers

on the following topics:

Entertainment use and parking structures

Several City Councilmembers expressed a continuing desire for a dedicated entertainment use in the specific plan area, possibly combined with a mixed-use parking structure. As discussed earlier regarding the City Council's 2019 priorities and work plan, given the status of the City Council's discussion on the parking structure, the parking structure's status as a proposed long term project may change.

Before March 5, 2019, the Contract City Attorney indicated that assuming the City owns the parking plazas without other private use restrictions, the City can develop them with parking structures and potentially with other non-parking uses, including an entertainment use (due to a conflict of interest with the city attorney, who leases property within the plan area, the City has contracted with a contract city attorney.) It should be noted that the specific plan currently allows for up to two parking structures, which would not require an amendment to the plan. The specific plan provides three possible locations, in parking plazas one through three, for these two structures, as shown on Figure 6 of the specific plan.

Combining a parking structure with other uses would require specific plan amendments, and the contract city attorney has researched this option and indicated the City can change or add uses to the parking plazas, and may sell the plazas, but cannot lease all or a portion of the properties without approval from owners of the properties that paid assessments. However, the City could transfer the parking plazas to an LLC (limited liability company) or nonprofit corporation controlled by the City, which should then be able to pursue redevelopment of the parking plazas to add structured parking and other non-public uses by leasing the plazas to a private developer or other public entity. In addition to determining the desired uses for the parking plazas, funding would need to be determined and parking-related studies would also likely be needed.

Building heights

Several City Councilmembers expressed a desire to increase height limits, especially along Santa Cruz Avenue, to encourage development. Within the specific plan, most of Santa Cruz Avenue is within the downtown (D) sub-district, which has a maximum building height limit of 38 feet. The portions of Santa Cruz Avenue closest to El Camino Real are in the Station Area East (SA E) and Station Area West (SA W) sub-districts, which allow maximum building heights of 60 feet (west of Alma Street) and 48 feet, respectively.

Housing

The City Council stated an interest in increasing the number of residential units in the specific plan area, including BMR and senior housing units. An increase in the number of residential units above 680 units would require an amendment to the specific plan and additional environmental review. The City Council should provide guidance on the geographic location(s) for increased housing, the maximum densities, and the overall residential development cap.

Sustainability standards

Last year the Environmental Quality Commission (EQC) recommended that the downtown specific plan include green design standards that are similar to ConnectMenlo. In May 2018, the City Council amended the climate action plan strategies to pursue the EQC's recommendation between 2018 and 2020. This

would involve conducting an analysis of possible green design standard options that would work for the type of development in downtown. The preferred option would then be presented to City Council if there was direction to update the downtown specific plan.

Retail

Two City Councilmembers also expressed a desire to foster additional retail development, possibly with help from City funds.

Planning Commission study session

On June 18, 2018, the Planning Commission held a study session to consider potential amendments to the specific plan, including possible increases to the maximum allowable development. Several members of the public spoke and expressed a desire to increase housing in the plan area, including affordable housing. Several members of the public also discussed the need to increase sustainability measures, including a better jobs to housing balance to decrease the need for long commutes. Suggestions from members of the public on ways to increase housing included the construction of residential units on City owned land and less strict development standards, such as height limits, in the specific plan.

Planning Commissioners provided comments on the following topics:

Housing

Planning Commissioners stated an interest in increasing the number of residential units in the specific plan area, including affordable housing. One Commissioner suggested increasing the housing cap but requiring affordable housing beyond what is required by the City's BMR ordinance for any housing beyond the current cap. Commissioners also discussed changes in housing needs since the adoption of the specific plan and options to increase residential developments such as reducing or removing parking requirements and possibly amending some specific plan standards including height limits, and requirements for modulations and building profiles.

Commercial uses

While the Planning Commission did not support allowing large office buildings beyond the commercial caps, several Commissioners voiced a desire to foster retail development and possibly allow small retail or other commercial development, which increases the vibrancy of the plan area, beyond the commercial cap. The benefit of commercial development that may pay in-lieu fees for the parking structures and BMR units was also noted.

Residential housing supply

As noted in the above, the City Council, the Planning Commission and many residents, including individual members of the Housing Commission, have expressed a desire to increase the residential housing supply in the specific plan.

The need for residential development has increased since the adoption of the specific plan. It should be noted though that the height limits currently in the plan resulted from public input throughout the process of creating the plan. Regarding Downtown and Santa Cruz Avenue, the first goal of the vision plan was to retain village character, especially in the downtown area. Several projects have recently been approved in the downtown area, including 706 Santa Cruz Avenue, 506 Santa Cruz Avenue, 556 Santa Cruz Avenue,

and 1125 Merrill Street, all with proposals that conform to the current height limitations.

Housing Commission review

On July 11, 2018, the Housing Commission reviewed potential housing-related specific plan amendments. The Housing Commission expressed a desire to increase the residential cap and facilitate housing by potentially reducing or removing parking requirements, increasing height limits, providing additional affordable housing incentives, and allowing a certain level of residential density through an administrative review process. In addition, the Housing Commission expressed an interest in setting aside City-owned property for residential development and possible expansion of the specific plan area boundaries.

Outreach to school and fire districts

Staff reached out to the Menlo Park City School District, the Sequoia Union High School District and the Menlo Park Fire Protection District. The Menlo Park City School District sent a letter with concerns regarding impacts to the school district due to increased school enrollment with the addition of residential units, which would not result in additional funding for the school district as it is a “community funded” district (Attachment D.) City staff met with the school district staff in September 2018. Staff also received an email from The Menlo Park Fire Protection District outlining a number of concerns, including density, height, and massing of structures along El Camino Real and in downtown, and the lack of a water storage backup for downtown that could be critical if existing infrastructure is damaged due to a natural disaster (Attachment E.) Staff did not receive comments from Sequoia Union High School District.

Next steps

As noted in the City Council’s goal setting and priorities, implementing the specific plan review and amendments is a work plan item. As discussed further under the environmental review and impact to City resources sections of this report, potential changes to the specific plan would require consideration under California Environmental Quality Act (CEQA), and staff believes the work required for the specific plan modifications, including the environmental review required for an increase in the development caps, would require contract services and affect the Planning Division’s ability to process other discretionary projects and plans. If the direction is to proceed with amendments to the specific plan, staff would draft the scope of services, timeline and budget and return to City Council for review.

If the plan was not amended and the development maximums were reached, likely within the next few years on the non-residential/commercial cap, then future development proposals would need to apply for individual increases to the development caps. However; it should be noted that the specific plan recognized the strong redevelopment potential for the 500 El Camino Real site, which took up a large percentage of the development maximums, in addition to the 1300 El Camino project. Future projects will likely be much smaller in scale.

Correspondence

Staff has not received any correspondence as of the writing of this report.

Environmental Review

Specific plan program EIR

The specific plan process included detailed review of projected environmental impacts through a program

environmental impact report (EIR), as required by the CEQA. The final EIR was certified along with the final plan approvals in June 2012.

Project-level review under the specific plan

As specified in the specific plan EIR and the CEQA guidelines, program EIRs provide the initial framework for review of discrete projects. Aside from smaller projects that are categorically exempt from CEQA and require no further analysis, most new proposals are required to be analyzed with regard to whether they would have impacts not examined in the program EIR. This typically takes the form of a checklist that analyzes the project in relation to each environmental category in appropriate detail. Depending on the results of such analysis, the City could determine that the program EIR adequately considered the project, or the City could determine that additional environmental review is required.

Regardless of the CEQA review process, all projects must incorporate feasible mitigation measures included in the specific plan EIR's mitigation monitoring program.

CEQA requirements for potential changes to the specific plan

As noted earlier, potential changes to the specific plan would require consideration under CEQA, although this may vary based on the nature and extent of the changes. Based on the experience with the 2014 changes, staff believes that the currently-recommended short-term and text revisions, not the changes to the development caps or other larger policy issues, could potentially be considered under a negative declaration process, as a result of their nature as enhancements to existing Plan objectives. However, this is not certain until the required initial study is conducted. More substantive changes to the specific plan, including increases to the development caps, could require a more extensive review process, with the likely need for an EIR, which typically requires approximately a year to prepare.

Impact on City Resources

As part of the specific plan adoption, an El Camino Real/Downtown Specific Plan preparation fee was approved. This fee is charged to projects adding square footage, to recover the costs associated with the preparation of the specific plan. The current fee is established at \$1.13/square foot for all net new development, and \$484,778 has been collected to date.

Staff believes the work required for the specific plan modifications, including the environmental review required for an increase in the development caps, would require additional contract services that have been approved in the 2018-2019 fiscal year budget, and would likely need to be augmented as part of the 2019-2020 budget.

The preparation of the specific plan in 2012 required staff resources, consultant and contract attorney services, and operating costs (meeting materials, mailing costs, etc.). The total breakdown of project costs is as follows:

Table 2	
Consultant costs:	\$1,191,390
Contract attorney:	\$100,000
Operating costs:	\$25,000
Staff costs:	\$374,850
Total costs:	\$1,691,240

Considering that an increase in the development caps, as well as the proposed changes to the plan, are a smaller project, the cost could potentially be estimated at about a fourth of the specific plan cost. However, this represents a rough estimate for the purposes of discussion, and staff would need to prepare a more formal cost projection once the overall scope of work is determined.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Project summary table
- B. Short and long term changes to specific plan
- C. El Camino Real/Downtown specific plan project Map
- D. Letter from Erik Burmeister, Superintendent, Menlo Park City School District
- E. Email from Harold Schapelhouman, Fire Chief, Menlo Park Fire Protection District
- F. Hyperlink: menlopark.org/specificplan

Report prepared by:
Corinna Sandmeier, Senior Planner

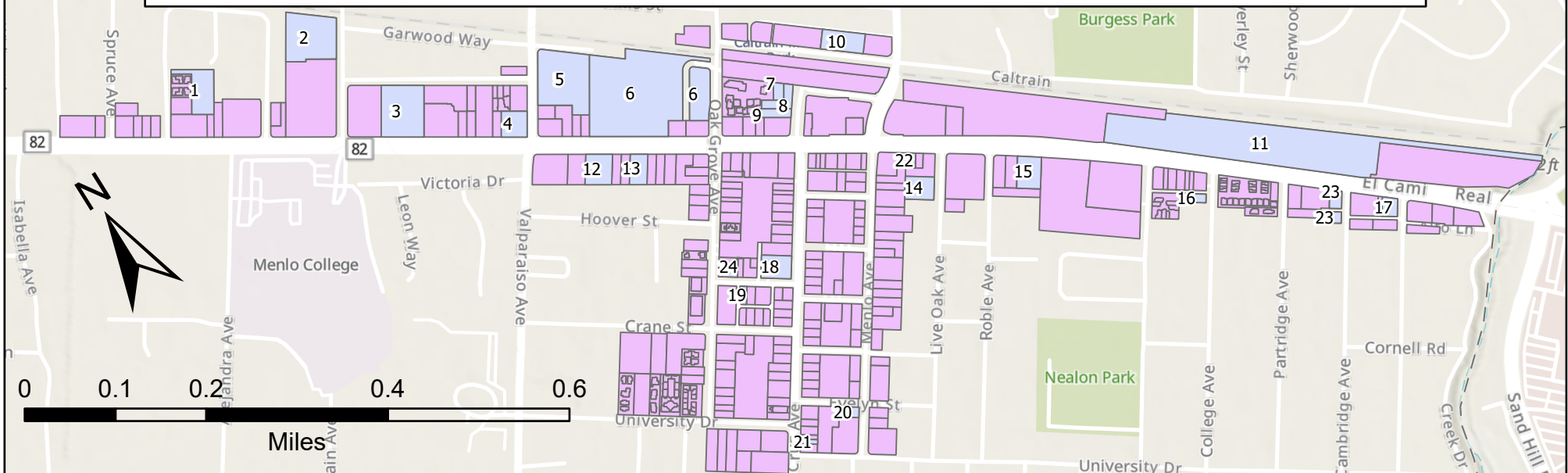
Report reviewed by:
Mark Muenzer, Community Development Director
Deanna Chow, Assistant Community Development Director

Project	Address	Description	Development Level	Entitlement Status	Building Permit Status	Net New Res. Units	Net New Non-Res. SF	Notes Regarding Calculations
Marriott Residence Inn	555 Glenwood Avenue	Conversion of a senior citizens retirement living center to a 138-room limited-service, business-oriented hotel	Public Benefit Bonus	Approved	Issued 11/12/13; Completed 4/30/15	0	71,921	No new square footage was constructed, but the net new vehicle trips associated with the conversion are considered equivalent to the listed square footage
Hotel Lucent	727 El Camino Real	Comprehensive renovation of an existing hotel, including an eight-room expansion	Base	Approved	Issued 5/14/14; Completed 4/10/17	0	3,497	
889 Santa Cruz Ave	889 Santa Cruz Ave	Renovation of an existing commercial building, with small expansion	Base	Approved	Issued on 2/2/17; Completed 10/26/17	0	37	
612 College	612 College Avenue	Demolition of a residence and a commercial warehouse building, and construction of four new residential units	Base	Approved	Issued 9/29/15; Completed 8/13/18	3	-1,620	
1295 El Camino Real	1283-1295 El Camino Real	Demolition of two commercial buildings and construction of a new mixed-use residential and commercial development	Base	Approved	Issued 12/22/2016; Construction in progress	15	-4,474	
1020 Alma St	1010-1026 Alma St	Demolition of existing commercial buildings and construction of new office development	Public Benefit Bonus	Approved	Issued 11/21/16; (Phase 2 issued 10/23/17) Construction in progress	0	15,208	
1400 El Camino Real	1400 El Camino Real	Construction of new 61-room hotel	Public Benefit Bonus	Approved	Issued 11/16/16 (Phase 2 issued 6/15/17); Construction in progress; Temp occupancy granted 9/11/18	0	31,725	
1149 Chestnut Street	1149 Chestnut Street	Renovation of an existing commercial building	Base	Approved	Issued 10/4/16; Completed 2/22/18	0	-536	
1300 El Camino Real	1258-1300 El Camino Real, 550-580 Oak Grove Avenue, and 540-570 Derry Lane	Construction of a new mixed-use office, residential, and retail development	Public Benefit Bonus	Approved	Issued 9/6/17; Construction in progress	183	99,024	The approved SHP 1300 El Camino Real project is credited like an existing building, since it received full CEQA clearance; active square footage also credited
650 Live Oak Ave	650 Live Oak Ave	Demolition of commercial building and construction of new office-residential development	Public Benefit Bonus	Approved	Issued 11/14/17; Construction in progress	15	10,858	Linked with 660 Live Oak Ave proposal, although that parcel is not in the Specific Plan area and as such is not included in this table.
1275 El Camino Real	1275 El Camino Real	Construction of new mixed-use development on a vacant site	Base	Approved	Issued 4/19/18; Construction in progress	3	9,923	
133 Encinal Ave	133 Encinal Ave	Demolition of existing commercial buildings and construction of a new townhome-style development	Base	Approved	Issued 3/24/17; Construction in progress	24	-6,166	
500 El Camino Real	300-550 El Camino Real	Construction of a new mixed-use office, residential, and retail development	Base	Approved	Demo permit issued/other plans under review	215	123,501	
1540 El Camino Real (former Beltramo's)	1540 El Camino Real	Demolition of a retail building and construction of a new mixed-use office and residential development	Base	Approved	n/a	27	17,223	
1125 Merrill St	1125 Merrill St	Demolition of the existing building and construction of a new mixed-use office and residential development	Base	Approved	Demo permit issued/other plans under review	1	2,479	Linked with 506 and 556 Santa Cruz Ave projects, but tallied individually
506 Santa Cruz Ave	502-540 Santa Cruz Ave	Demolition of the existing building and construction of a new mixed-use retail/office/residential development	Base	Approved	Demo permit issued/other plans under review	3	6,090	Linked with 1125 Merrill St and 556 Santa Cruz Ave projects, but tallied individually
556 Santa Cruz Ave	556-558 Santa Cruz Ave	Demolition of the existing building and construction of a new mixed-use retail/office/residential development	Base	Approved	Demo permit issued/other plans under review	-3	4,085	Linked with 1125 Merrill St and 506 Santa Cruz Ave projects, but tallied individually
949 El Camino Real	949 El Camino Real	Renovation of existing Guild Theatre cinema facility into a live entertainment venue	Public Benefit Bonus	Approved	Plans under review	0	6,682	
725 Oak Grove Ave	725 Oak Grove Ave	Renovation and small expansion of an existing commercial building	Base	Approved	n/a	0	1,718	
840 Menlo Avenue	840 Menlo Avenue	Construction of a new mixed-use office and residential development on a vacant parcel	Base	Approved	n/a	3	6,610	
Hampton Inn	1704 El Camino Real	Demolition of existing hotel and construction of a new hotel.	Public Benefit Bonus	Pending	n/a	0	29,228	
706-716 Santa Cruz Avenue	706-716 Santa Cruz Avenue	Demolition of existing commercial building and onstruction of a new mixed-use retail, office, and residential development	Base	Pending	n/a	4	22,731	
115 El Camino Real	115 El Camino Real	Demolition of existing building and construction of a new mixed-use development consisting of commercial space on the first floor, and residential units on the second and third floors	Base	Pending	n/a	4	-6,868	
201 El Camino Real	201 El Camino Real	Demolition of an existing commercial and residential buildings, and construction of new residential/medical office mixed-use building	Public Benefit Bonus	Pending	n/a	12	1,322	
Total Entitlements Approved						489	397,785	
<i>Percentage of Specific Plan Maximum Allowable Development</i>						<i>72%</i>	<i>84%</i>	
Total Entitlements Proposed						20	46,413	
<i>Percentage of Specific Plan Maximum Allowable Development</i>						<i>3%</i>	<i>10%</i>	
Total Entitlements Approved and Proposed						509	444,198	
<i>Percentage of Specific Plan Maximum Allowable Development</i>						<i>75%</i>	<i>94%</i>	
Total Building Permits Issued						243	229,397	
<i>Percentage of Specific Plan Maximum Allowable Development</i>						<i>36%</i>	<i>48%</i>	
Specific Plan Maximum Allowable Development						680	474,000	

Specific Plan Changes and Next Steps		
SHORT-TERM changes by CITY		Status
Public Amenity Fund	Create a Public Amenity Fund for public benefit bonus financial contributions. Monies would go towards Specific Plan transportation-related projects.	Fund Creation Completed: Additional contributions and use considered on an on-going basis
Electric Vehicle Recharging Stations	Incorporate EV charging station requirements in commercial developments.	Completed: City-Wide Ordinance approved in 2018
SHORT-TERM changes needing text/graphic edits only		Status
Rear Setback	Clarify that rear setbacks apply to Specific Plan area boundary.	Preliminary Work Started
Maximum Setbacks	Allow variances to exceed 50% for districts with maximum front and side setbacks.	Work not Started
Sidewalks	Provide sidewalk standards for streets where no such standards exist.	Preliminary Work Started
Affordable Housing Overlay	Add Affordable Housing Overlay citation in Specific Plan text to reflect existing ordinance that already applies. Allows additional density for affordable housing projects up to public benefit bonus level without the need to prepare an economic analysis and Public Benefit Bonus (PBB) study session.	Work not Started
Hotel Incentives (Allow at Public Benefit Bonus FAR)	Allow hotel uses at the Public Benefit Bonus level without the need to prepare an economic analysis and PBB study session.	Work not Started
Transportation Demand Management (TDM) Programs	Update TDM guidelines and applicable documents to be more explicit about TDM programs in the Specific Plan being required to account for all net new trips	Work not Started
Hotel Parking Rate	Clarify that hotel parking rate would be a range (likely between 0.8 to 1.25 spaces per room) determined through case-by-case review.	Preliminary Work Started
Maximum Sign Area for Larger Parcels	Allow more sign area for larger developments.	Preliminary Work Started
SHORT-TERM changes needing text/graphic edits and potentially research/analysis by CONSULTANT		
Personal Improvement Services Parking Rate	Establish a parking rate for personal improvement service uses, and eliminate the need for case-by-case review.	Preliminary Work Started
Parking Rate Changes in Station Area and Station Area Sphere of Influence	Reduce parking rate based on proximity to Caltrain station.	Preliminary Work Started

LONG-TERM changes needing policy decisions by CITY and research/analysis by CONSULTANT		Status
Hotel Incentives (General)	Explore potential incentives for hotel uses.	Work not Started
Infrastructure Project List, Outreach	Compile a list of public benefit infrastructure projects, including fiscal modeling, costs, and funding mechanisms.	Work not Started
Encourage Housing (esp. Affordable Housing)	Explore incentives for creating more affordable housing.	Work not Started (but part of Housing Commission Policy Recommendations)
Parking In Lieu Fees, Parking Reduction	Explore parking in lieu fees to reduce parking requirements, including potentially establishing a Transportation Management Association (TMA).	RFP for a feasibility study to explore the formation of a TMA in Menlo Park is expected to be released this spring
Preserve Small Businesses and Retail Uses	Explore protections and incentives for retaining small businesses and retail uses.	Work not Started
Downtown Parking Structures	Explore feasibility for a parking garage with a non-parking component (i.e., entertainment, mixed-use).	Preliminary Work Started

El Camino Real/Downtown Specific Plan Projects - March 2019



PLN	ID	Address	Project	Land Use Category	Entitlement Status	Net New Residential Units	Net New Non Residential Square Feet
PLN2012-00092	6	1300 El Camino Real	Station 1300	Mixed-use Development	Approved	183	99,024
PLN2012-00095	5	555 Glenwood Ave	Marriott Residence Inn	Commercial Development	Approved	0	71,921
PLN2012-00102	11	300-550 El Camino Real	Middle Plaza	Mixed-use Development	Approved	215	123,501
PLN2013-00012	15	727 El Camino Real	Hotel Lucent	Hotel	Approved	0	3,497
PLN2013-00063	16	612 College Ave	612 College Avenue	Housing Development	Approved	3	-1,620
PLN2014-00002	20	840 Menlo Ave	840 Menlo Ave	Mixed-use Development	Approved	3	6,610
PLN2014-00042	12	1283-1295 El Camino Real	1285 El Camino Real	Mixed-use Development	Approved	15	-4,474
PLN2014-00054	2	133 Encinal Ave	133 Encinal Ave	Housing Development	Approved	24	-6,166
PLN2014-00068	14	650 Live Oak Ave	650 Live Oak Ave	Mixed-use Development	Approved	15	10,858
PLN2014-00087	10	1010-1026 Alma St	1020 Alma St	Commercial Development	Approved	0	15,208
PLN2015-00056	4	1400 El Camino Real	1400 El Camino Real	Commercial Development	Approved	0	31,725
PLN2015-00089	13	1275 El Camino Real	1275 El Camino Real	Mixed-use Development	Approved	3	9,923
PLN2016-00032	19	1149 Chestnut St	1149 Chestnut St	Commercial Development	Approved	0	-536
PLN2016-00076	21	889 Santa Cruz Ave	889 Santa Cruz Ave	Commercial Development	Approved	0	37
PLN2016-00085	1	1704 El Camino Real	Hampton Inn	Hotel	Pending	0	40,004
PLN2016-00111	18	706-716 Santa Cruz Ave	706 Santa Cruz Ave	Mixed-use Development	Pending	4	22,731
PLN2017-00054	3	1540 El Camino Real	1540 El Camino Real	Mixed-use Development	Approved	27	17,223
PLN2017-00096	7	1125 Merrill St	1125 Merrill St	Mixed-use Development	Approved	1	2,479
PLN2017-00097	8	506 Santa Cruz Ave	506 Santa Cruz Ave	Mixed-use Development	Approved	3	6,149
PLN2017-00098	9	556 Santa Cruz Ave	556 Santa Cruz Ave	Mixed-use Development	Approved	-3	4,085
PLN2018-00008	17	115 El Camino Real	115 El Camino Real	Mixed-use Development	Pending	4	-6,868
PLN2018-00019	22	949 El Camino Real	Guild Theatre	Commercial Development	Approved	0	6,682
PLN2018-00061	23	201 El Camino Real	201 El Camino Real	Mixed-use Development	Pending	12	1,322
PLN2018-00075	24	725 Oak Grove Avenue	725 Oak Grove Avenue	Commercial Development	Approved	0	1,718

Menlo Park City School District
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Board of Education
 David Ackerman
 Stacey Jones
 Joan Lambert
 Caroline Lucas
 Terry Thygesen

Superintendent
 Erik Burmeister

Assistant Superintendent
 Jammie Behrendt

Director of Student Services
 Stephanie Sheridan

Chief Business & Operations
 Officer
 Ahmad Sheikholeslami

September 4, 2018

Mark Muenzer
 Community Development Director
 City of Menlo Park
 701 Laurel Street
 Menlo Park, CA 94025

RE: Response to Menlo Park El Camino Real/Downtown Specific Plan Biennial Review

Dear Mr. Mark Muenzer,

Thank you for informing us about the City's plan to review El Camino Real/Downtown Specific Plan and seeking our input. We understand the need for plans to be periodically updated and appreciate the process the City is undertaking.

As a PK-8 elementary district that serves the plan area, Menlo Park City School District will be directly impacted by the developments in El Camino Real/Downtown area and any changes to the El Camino Real/Downtown Specific Plan. MPCSD will need to be included in the conversation and the potential impacts to the school district must be considered by the City Council in their decision making process. We welcome your request to meet in September to further discuss our concerns and to better understand the input process. Please email my assistant Lanita Villasenor (lvillasenor@mpcsd.org) with potential meeting dates and times in September 2018. I hope that City Manager Alex McIntyre will be able to attend and I will also ask my Chief Business and Operations Officer, Ahmad Sheikholeslami, to attend as well.

Our main concern with the current El Camino Real/Downtown Specific Plan and any proposed changes is the level of Maximum Allowable Development for residential units in the plan area. As a "Community Funded" school district, MPCSD does not receive additional funding with increased enrollment. Increased residential units will increase student enrollment. The added fiscal impact from the increased students will not be offset by the additional income generated by new property tax revenue. Since 2012, when the El Camino Real/Downtown Specific Plan was approved and Fiscal Impact Report was prepared many factors have changed. The following additional factors need to be considered by the City:

- The District has seen a higher Student Generation Ratios (SGR) for multi-housing and smaller apartment units than assumed in the Fiscal Impact Study. The District has seen an increase in the SGR with the increased cost of housing and demand for desirable schools with multi-housing and smaller apartment units.
- Actual cost per student have increased to about \$16,000 per student for 2017/18. These increases were not considered in the Fiscal Impact Study, which used the average cost of \$12,121 per student from

2011/12. This is a 32% increase, which greatly outpaces any cost of living adjustments during this period.

- The Fiscal Impact Study did not include the impact of a large portion of the housing being exempt from property tax. The 215 units being constructed by Stanford University will be staff housing and exempt from property tax.
- Another important source of revenue for the District are its parcel tax revenues which accounts for about 16% of the District's revenues. Because many of the new developments are rentals they are considered a single parcel tax, while there may be as many as 200 units in the complex. The current parcel tax rate for 2017/18 is \$1053. The impact from the loss of parcel tax revenues was not considered thoroughly in the Fiscal Impact Study.
- In 2011/12, the District was completing its Measure U Bond program to accommodate its anticipated facilities needs; however, based on actual enrollment growth and planned increases in housing, the District was forced to build a new elementary school and seek an additional \$23 million dollars through Measure W Bond measure.
- Developer fee funds *do not cover* the facility impacts from enrollment growth as is evident by the need to pass multiple bond measures for new facilities.
- The District planned its district wide maximum capacity for 3,200 students and took in consideration the current downtown specific plan. Any further increase in housing will adversely impact capacity to house additional students. The District has no more room to expand its schools without severe impacts to playground space and safely operating a school.
- The increase in enrollment has also impacted the District need for space related to operations, maintenance and transportation. The District has very limited space for the storage and its maintenance, operations and transportation needs that have grown with a larger student population. Any further increases to the student population will further exacerbate the situation.
- The additional 680 units of allowable housing units are all in the Encinal Elementary School boundary area for K-5. While these new units may be in close proximity to the Encinal school, the journey lacks safe walking and biking paths to the school. Key sections of Laurel Avenue and Encinal Avenue near the Encinal School do not even have sidewalks for safe walking paths. There is also no safe passage to cross the El Camino Real for student to Encinal or Hillview School. This lack of biking and walking infrastructure is aggravating an already impacted transportation situation for the local schools. Public benefit dollars from these projects must be geared for major transportation improvements for safe walking and biking to local schools.
- The City should also consider amending its "Public Benefit Bonus and Structured Negotiation" section in the El Camino Real/Downtown Specific Plan for projects that seek adjustment to the base project requirements. The benefits for consideration should include and be given additional weight that provides benefit to the local schools, which they are impacting.
- The El Camino Real/Downtown Specific Plan should gear its housing goals and projects towards a greater housing diversity that includes senior housing and BMR housing for critical government

employees including school staff. Strategic housing planning can provide the City with the needed housing and lessen the impact on local schools.

- The reality is that any increase in housing that doesn't mitigate the financial and facility impacts of increased student enrollment will either result in increased taxes on our shared constituent property owners or a dramatic decrease in educational quality and services that our community has come to appreciate and expect.

I look forward to our conversation on the El Camino Real/Downtown Specific Plan and discussing our concerns in the near future.

Sincerely,



Erik Burmeister
Superintendent

C: Alex McIntyre, Menlo Park City Manager
Deanna Chow, Menlo Park Assistant Community Development Director/Planning
Corinna Sandmeier, Menlo Park Senior Planner
Ahmad Sheikholeslami, MPCSD Chief Business and Operations Officer

From: [Schapelhouman, Harold](#)
To: [Sandmeier, Corinna D](#)
Cc: [Johnston, Jon](#); [Schapelhouman, Harold](#); "[Cremin, Tim](#)"; [Kneier, Michelle](#)
Subject: Menlo Park El Camino Real/Downtown Specific Plan Biennial Review - Menlo Park Fire District Update
Date: Monday, September 24, 2018 11:05:24 PM
Attachments: [Menlo Park El Camino Real - Downtown Specific Plan Draft EIR Response August 11, 2010.doc](#)

Hello Corinna

My apologies for the delayed response but today was the first day in many weeks Fire Marshal Johnston and I had time to sit down and review your request and information.

This evening, I went back through my records on what we had sent to the City starting in 2010, when they started this process (See the attached). I do have some updated comments related to how we, as a public safety provider and responder, see this opportunity to comment in 2018. I would be happy to put these in official letter form if needed.

High Speed Rail at grade level and Electrification:

Since there appears to be no turning back from directly placing high density, multi-story, residential housing next to a rail line located at grade level that will be electrified in order to support more frequent and faster rail service, all efforts should be focused on creating a reasonable, safer speed through such a highly populated area. While others blindly and altruistically only see the benefits of this combination of elements, the Fire Rescue Services live in a consequence management driven world where we will need to plan for the worst, hope for the best and consider options like speed reduction as an in-perfect solution to help mitigate potential threats to a new at risk population being placed directly next a high speed rail corridor.

Recommendations: Speed reduction, grade separated crossings, security fencing, frequent rail and bridge inspections along with a Shake Alert monitoring system that can slow or stop trains should be discussed with the Council and Fire Board.

El Camino Real:

We continue to be opposed to lane reductions and bicycle paths on El Camino Real. The realities of more proposed growth and development is that its supports more people and thus vehicle trips in some form. The fact is that the City needs to completely re-open El Camino Real to increase its capacity as a major thoroughfare for the movement of people using passenger vehicles and other larger vehicles that provide goods and services to the community and region. In addition, the synchronization and elimination of some traffic signals will also improve flow and decrease cut through traffic. Not everyone will take the train, walk or ride a bicycle and the use of vehicles is a daily reality for most.

Recommendation: El Camino Real is a Primary Emergency Response Route for First Responders and one of the few ways for the community to access Stanford Hospital and its Trauma Center during times of medical emergency. The Complete Street Tool Box was NOT created with First Responder involvement and it is inadequate and flawed. A recent San Mateo County Traffic Analysis identified that 50% of traffic impacts are related to vehicle accidents, which begs the question why are first responders not being included or involved in these transportation discussions, decisions and groups?

We do not support bike lanes and recommend the roadway be opened up to full capacity.

Building Heights, Density and Water Supply:

We need to closely collaborate, coordinate and review new proposed projects and structure heights (38 to 65 feet) in relationship to massing, street scape features like sidewalks, planters, trees, parking areas, bicycle lanes, access and water supply. Especially in the very tight areas along El Camino Real and in the Down Town Menlo Park areas in the plan. Water Supply infrastructure has improved but the rear parking areas behind Santa Cruz Avenue continue to NOT have water supply or fire hydrants, yet the goal to equip newly sprinklered structures with Fire Department Connections (FDC) that are accessible only to the rear of these structures is operationally problematic and challenging, especially without a more focused and expansive water supply network.

Recommendation: Any increase in heights, massing or occupancy will need to equally be met with improved Firefighter access (Aerial Ladder Truck) and improved water supply accessibility with an improved emergency water supply network concept. The Downtown does not have a water storage backup which could be critical if the existing infrastructure was damaged, or inoperable, due to natural disaster like an earthquake. The tight density of structures could lead to the loss of multiple structures, or an entire block from fire spread, if a fire started.

Fire District Improvements and Future Deployment:

The Fire District has almost finished rebuilding Fire Station 6 in Downtown Menlo Park. This new resilient, modern structure will allow for more Firefighters and equipment to safely operate from this location when needed in the future. Currently, three Firefighters are assigned to a new 2018 Fire Engine. The project should be completed by the end of the year.

The Fire District has just started its process to rebuild Fire Station 4 on the Alameda where it plans to add an Aerial Ladder Truck and four personnel to an already existing three personnel assigned to an Engine Company, once the new Fire Station is completed. This added unit with its unique capability will support emergency operations not only in Sharon Heights, West Menlo and Atherton, but also larger and taller structures proposed within the Down Town Area and El Camino Real corridor.

Recommendation: The Fire District welcomes any discussion with staff or Council on these topics or related to funding necessary to rebuild critical infrastructure, purchase of new apparatus and equipment and increased staffing related to the impacts proposed by this plan and within the broader totality of circumstance associated with growth within all areas of the City of Menlo Park needed to have a large enough effective force.

Thank you

Harold Schapelhouman, Fire Chief

August 11, 2010

Karl Heisler
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I have reviewed the DRAFT Menlo Park El Camino Real / Downtown Specific Plan and all subsequent correspondence related to this proposal.

The Fire District is in support of any type of plan that the City and residents believe improves their quality of life, sustainability and overall safety of the community. As a rule, the District tries not to get in the way of what the community wants to do but rather believes that it should have the ability and necessary time to evaluate proposals based upon impacts to public safety and emergency response.

It has become clear to me that there has been a breakdown in communications between the City and the Fire District during this process somewhere between the "Notice of Preparation" sent out by Thomas Rogers, Associate Planner with the City of Menlo Park dated December 15, 2009 which was never received by the Fire District and the first time that we were made aware of the progress and process of this Draft Environmental Impact Report (DEIR) on July 14, 2010 which consisted of a three page e-mail sent to Fire Marshal Aus.

After our phone conversation on August 4, 2010 I reviewed the e-mail information you sent me, the subsequent 350 page draft plan and what Elizabeth Kanner with your agency had sent Chief Aus on July 14, 2010.

For the purposes of the DEIR the District would like to submit the following information to fully clarify its position for the public record.

Menlo Park Fire Protection District Description and Impacts:

The Menlo Park Fire Protection District (MPFPD) was created in 1916 as an independent Special District that is currently governed by 5 elected officials who over see a Fire Chief that manages the agency. The Fire District provides emergency services consisting of fire, fire prevention, emergency medical, hazardous materials, disaster preparedness and public education as well as other important related emergency services to approximately

93,000 residents of the Town of Atherton, Cities of East Palo Alto and Menlo Park as well as some unincorporated areas of San Mateo County, State Highways 101, 280, 84 (Dumbarton Bridge), San Francisco Bay and Federal facilities located within its boundaries. The Fire District participates in the San Mateo County Automatic Aid, Expanded Alarm and Move and Cover Plans as well as has an Automatic Aid agreement with the City of Palo Alto Fire Department located in Santa Clara County and is finalizing an agreement for Mutual Aid with the City of Fremont Fire Department located in Alameda County.

The Fire District has seven (7) fire stations and one (1) administrative office building that are spread throughout its 33-square-mile service area. As a minimum, each Fire Station is staffed with three personnel and one Fire Engine. Fire Station 1 is up-staffed with three additional personnel who are assigned to the District's only 100 foot aerial ladder truck. A Battalion Chief provides shift supervision for each of the three Fire Battalions bringing the minimum daily emergency staffing to 25 personnel. With 97 designated "safety" positions, the per 1000 resident to firefighter ratio is essentially one firefighter to 1000 residents and facility distribution averages one Fire Station to every 4.7 square miles of area within the Fire District. The total number of full time equivalent employees is 110 consisting of emergency safety and support personnel.

The Fire District responded to over 8,000 calls for emergency service in 2009 of which approximately 62% were emergency medical incidents, 11% were service calls, 9% were good intent calls, 4% were fire calls and 2% were hazardous conditions calls. Dispatch services are provided on a contractual basis by the San Mateo County Public Safety Communications Center (PSC) for all of the Fire agencies in San Mateo County. When a call for service is made PSC dispatches the closest available and appropriate unit or resource regardless of jurisdiction.

Each Engine Company is staffed with at least one advanced life support paramedic and all line suppression personnel are certified as emergency medical technicians (EMT's). Paramedic ambulance transport service is provided under contract between the County of San Mateo and American Medical Ambulance Response (AMR).

The project area identified in the plan is serviced primarily by Menlo Park Fire Station 6 located at 700 Oak Grove Avenue. Station 6 is located within the proposed project area and was built in 1953 and is in need of replacement. On July 31, 2008 the Fire District purchased property behind the Fire Station in order to establish enough functional space to rebuild and modernize the existing facility and to accommodate future growth anticipated by proposed plans like this and additional development elsewhere within the community.

Station 6 is staffed by three personnel assigned to a Fire Engine. Last year the Fire Engine responded to over 1,200 emergency calls for service and was the third busiest Fire Engine in the Fire District and in the top 1/3 of busiest Engine Companies in San Mateo County.

Due to the downturn in the economy, funds have not been allocated to rebuild the Fire Station but it has been established by the Fire Board and Fire Chief as the District's second most important facilities and capital improvement project. Funds have been allocated to conduct a Phase 1 scoping and design of a significantly improved and larger facility which will be able to effectively serve the current and anticipated needs of the community for the next 75 years. Beverly Prior Architects located in San Francisco, California has been retained to conduct this work.

The plan area is also served respectively by Menlo Park Fire Stations 1, 3 and 4. Station 1 is located at 300 Middlefield Road in Menlo Park and is approximately 1.17 miles and 3 minutes away from the plan area, Station 3 is located at 32 Almendral Avenue in Atherton approximately 1.66 miles and 4 minutes away from the plan area and Station 4 is located at 3322 Alameda De Las Pulgas in Menlo Park approximately 2.22 miles and 6 minutes from the plan area.

Under target standards established within the San Mateo County Emergency Medical Services Joint Powers Agreement a time standard of 6.59 minutes has been established for closest medical first response unit and the proposed plan area would not be underserved based upon this standard.

Under Fire first response two standards are referenced within the Fire Community they consist of the Insurance Services Office (ISO) distance standards of 1.5 miles maximum travel distance for Fire Engines and 2.5 miles maximum travel distance for Aerial Ladder Trucks.

In addition the National Fire Protection Association (NFPA) Standard 1710 for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments 2010 edition identifies under section 4.1.2.1 that 240 seconds or less travel time for the arrival of first arriving engine company at a fire suppression incident and 480 seconds or less travel time for the deployment of an initial first alarm assignment at a fire suppression incident including an aerial ladder truck.

Again the proposed plan area does not appear to be underserved given the current distribution of existing resources but several variables do exist which create concerns for the Fire District specifically as it applies to aerial ladder truck response which are material to this plan and may create conditions which could lead to the area being underserved and create impacts to the plan given the 20 – 30 year proposed life span of the document.

Under the current configuration Truck One responds from Fire Station 1 located at 300 Middlefield Road approximately 1.97 miles and 5 minutes away from the farthest point of the plan area and well within the ISO and NFPA standard. However, if the location of the Truck was changed to Fire Station 2 located at 2290 University Avenue in East Palo Alto or Fire Station 77 located at 1467 Chilco Avenue in Menlo Park to accommodate and better serve other proposed development projects such as the Bohannon Gateway

Project and other development in Eastern Menlo Park the Fire District would not be able to adequately maintain acceptable life safety time or distance standards associated with the response of aerial ladder trucks under either standard within the plan area. Even if the District were to replace the existing Fire Engine at Fire Station 6 with an aerial ladder truck which has not been budgeted, the 1950's era fire station was not designed to accommodate a piece of equipment as large as an aerial ladder truck. While the Station is being designed to accommodate an aerial ladder truck, currently no funds are available or have been designated to rebuild the Fire Station due to the economic downturn.

Based upon the "Intensity" section of the plan on page E-20 and identified as section E.3.1, proposed and allowable building heights from 38 – 60 feet with set-backs of up to 20 feet and upper floor massing set-backs which use a 45 degree angle will create tactical operational challenges that can only be mitigated by an aerial ladder truck and essentially create "low rise" multi-story operational issues anytime a structure is over 3 stories in height or beyond the reach of 24 foot ground ladders carried on Fire Engines.

In addition, time delays associated with existing and proposed daily Cal-Train and proposed High Speed Rail schedules and plans along with time specific traffic congestion along the primary response route at El Camino Real and Ravenswood Avenue could further realistically extend response times for the existing resources responding from Fire Station 1 which consists of the 100 foot aerial ladder truck and Battalion Chief who typically serves as the Incident Commander for all Fire District related emergency incidents within the plan area.

The Fire District and the City of Menlo Park have recently agreed to equally fund the cost of a master plan and nexus study aimed at addressing the impacts of mid to high rise development within the City of Menlo Park associated with Aerial Ladder Truck need, proper distribution and potential cost recovery associated with impact fees that can only be authorized by the Menlo Park City Council.

The Fire District believes that this agreement should be referenced in the draft document under Section G.3 Key Actions to implement the specific plan on page B-15, G-14 and specifically page G-20 which lists potential funding sources and impact fees as a bullet point.

Impacts to emergency response and pedestrian safety within the proposed plan area do not appear to be adequately addressed to the satisfaction of the Fire District. For example, the modified "street scapes" appear to increase side walk area along Santa Cruz Avenue which is appealing but would emergency vehicles be able to safely negotiate existing traffic and have room to safely pass other motorists when responding to an emergency along this area? If additional or larger trees were added would the Fire District be able to access existing buildings roof area's with the aerial ladder truck?

Under the plans "Vision Goals" on page A-17 the 12 listed goals adopted by the City Council on July 15, 2008 are progressive and realistic but seem to be lacking one critical

element - Emergency Response, we would suggest adding this element which could say “To not adversely impact or interrupt critical emergency response to the community”.

Chapter G “Implementation” references the relationship of the draft plan to the Menlo Park General Plan on page G-3, specifically it states that under Government Code Section 65451, that a specific plan must include a statement of relationship of the specific plan to the General Plan. An element of cities General Plan is the Seismic Safety and Safety Element document developed in 1976.

While the plan document states “may of the goals and policies in the general plan documents remain relevant, although others may not reflect physical and economic changes in desired futures within the plan area”. The Fire District believes the Seismic Safety and Safety Element Document developed in 1976 is not adequate and I sent an e-mail on June 8, 2010 e-mail to City Manager Glen Rojas offering to “work with the City to update the Seismic Safety and Safety Information”.

Under the “Sustainability” section C-5 on page C-19 many relevant and valuable points are listed with the exception of a critical life safety and sustainability “green” device – Fire Sprinklers!

With over 100 years of available data on these devices which have been proven time after time to significantly reduce the effects of fire and average property loss from one-half to two-thirds in any kind of property where they are used, fire sprinklers preserve property, reduce and minimize the toxic and environmentally damaging affects of dangerous smoke by-products on the environment and most importantly save lives.

As witnessed in two recent “down town” Menlo Park fires in the proposed plan area on Santa Cruz Avenue, very similar fires one with a sprinkler system and the other without resulted in significantly more damage and loss being sustained by the non-sprinklered building than the building where sprinklers had been installed and what of business sustainability after a fire which is not referenced anywhere but is a very real and relevant issue.

Nearly 2/3 of the commercial down-town business District lacks sprinkler systems and this causes additional tactical and operational concerns as the plan proposes to “leverage” existing public-parking plazas with in-fill development or multi-story parking garages listed on page B-12 and other areas of the document that may create access and water supply challenges associated with tactical fire operations in non-sprinklered structures.

In relationship to a proper risk mitigation analysis, page B-11 references focusing higher density development in proximity to the Train Station and directly along the rail corridor. The Fire District fully supports this concept if the average speed of the trains is slowed to mitigate the additional risk created by placing high density populations in close proximity to existing rail lines or if the proposed High Speed Rail system is located in a trench or tunnel.

If the not, the Fire District would offer this word of caution to the City and in relationship to this plan, while rare, the potential for rail derailments always exists, speed mitigation and placement of potential High Speed Rail sub-surface will dramatically reduce the risk to the public especially since the proposed plan encourages placing “residential and public amenities, arranged in a compact manner, in close proximity to transit”.

As a sponsor of one of the Countries National Urban Search and Rescue Teams, the Fire District has trained and worked with other National Responders in our system that have experienced rail emergencies and derailments such as the Metro-Link incident in Southern California first hand. We also recently provided training to members of Japans Rescue Service who have also experienced similar incidents in densely populated urban environments in their country.

The Fire District would be interested in working with the City to establish a realistic risk analysis and management plan section that we would recommend be provided in conjunction with this plan. We are not opposed to the concept but it is our business to see this issue from the complex angle of emergency response. We have long been concerned by this concept perpetuated by Urban Planning which seems to not fully address the potential risk to the public based upon the potentially catastrophic results of a high speed transit incident.

Summary:

The development of the Specific Plan Area and resulting increase in the number of employees, customers, and potential residents would result in an incremental increase in calls for fire, medical and emergency services. The construction and operations of projects could affect the Menlo Park Fire Protection District’s (MPFPD) response times but more than likely would not require additional staff.

Based upon the cumulative affect of other proposed projects within the City as well as the overall potential presented within this plan over a 20 – 30 year time period, the Fire District may need to modify it’s existing emergency unit deployment plan and the location of it’s existing aerial ladder truck and replace an existing engine company at Fire Station 6 with a second aerial truck essentially placing these trucks on the eastern and western sides of the Fire District based upon the potential addition of low and high rise structures and additional density within the City.

Fire Station 6 located at 700 Oakgrove Avenue is located within the proposed plan area and is need of replacement. The Station was built in 1953 and no longer adequately meets the current and future needs of the Fire District or the community we serve. In 2008 the Fire District purchased additional property behind the Station in order to establish enough functional area to be used to support a new, modern, expanded, code compliant and environmental sensitive Fire Station but the economic downturn has postponed this project due to funding challenges. A new station is being designed to accommodate larger apparatus such as an aerial ladder truck. The proposed plan further solidifies the need for

the Fire District and the City to improve this existing hub Fire Station as a corner stone for adequate, timely and centrally located emergency response to the proposed plan area.

Finally, the current tentative agreement between the City and the Fire District to jointly fund a master plan and nexus study aimed at addressing the impacts of mid to high rise development specifically as it applies to the need for and the support of an additional aerial ladder truck and facility to house it should be used as a vehicle for improvement not only for the pending Gateway development but also this plan. The concept of developers who specifically build multi-story structures over three stories in height to pay their “fair share” of the costs to mitigate associated impacts on required changes to Fire District deployment and emergency apparatus configuration seems timely, needs to be included in the DEIR and move forward.

If you have any questions, please don't hesitate to contact me.

Thank You

Harold Schapelhouman, Fire Chief



STAFF REPORT

City Council

Meeting Date:

3/12/2019

Staff Report Number:

19-046-CC

Regular Business:

Second reading and adoption of Ordinance No. 1053 to add residential tenant relocation assistance requirement and discussion of establishing a community housing fund to assist lower income tenants

Recommendation

Staff recommends the City Council:

1. Waive second reading and adopt Ordinance No. 1053, the attached tenant relocation assistance ordinance
2. Adopt Resolution No. 6488 establishing a community housing fund to assist in payment of relocation assistance benefits to tenants and establishment of criteria

Policy Issues

At its August 22, 2017, meeting, the City Council identified tenant relocation assistance as a priority one item for consideration as part of the enhanced housing policies list referred to the Housing Commission for study and consideration.

Background

High rent increases are being reported throughout the Bay Area, along with reports of lower-income households losing their apartments due to inability to pay rent, having to work multiple jobs, double up in overcrowded apartments, or move to other communities. Forty-four (44) percent of Menlo Park residents rent their homes citywide and 57 percent rent their homes in the Belle Haven neighborhood. In the five year period from January 2014 to January 2019, the average 1-bedroom and 2-bedroom unit rents have increased 37 percent (from \$2,317 to \$3,179) and 24 percent (from \$3,330 to \$4,147), respectively.

The City Council has taken several steps to address these issues, including amending its below market rate (BMR) ordinance to require additional on-site affordable units, adoption of a minimum lease ordinance, adoption of a tenant anti-discrimination ordinance and amendment of its BMR guidelines to allow homeless individuals and residents who lost their homes following the 2008 economic downturn to qualify for BMR housing. The City's most recent effort has been development of a tenant relocation assistance ordinance with assistance from the Housing Commission.

On February 12, 2019, the City Council conducted a study session on the tenant relocation assistance ordinance developed by the Housing Commission. As there were differing policy views, the City Council provided some general feedback and directed staff to return with two different tenant relocation ordinances – one to be modeled after Redwood City's recently adopted tenant relocation ordinance and the second based on the Housing Commission's ordinance. The City Council also provided feedback that a community fund should be explored to provide relocation assistance for tenants who were at risk of homelessness, or

to assist landlords who could not afford to make payments.

On February 26, 2019, the City Council conducted a public hearing on the two alternative ordinances. The City Council voted 3-2 to introduce the tenant relocation assistance ordinance (Attachment A) modeled after Redwood City. The ordinance would apply to all properties consisting of more than four rental units. Relocation payments would be available to tenant households whose annual household income does not exceed 80 percent (80%) of the area median household income for San Mateo County as adjusted for household size according to the Department of Housing and Urban Development (HUD) and displaced for the following reasons:

1. The landlord seeks to withdraw all rental housing units from the rental housing market per the Ellis Act
2. The landlord seeks to recover possession to demolish or otherwise remove a residential rental housing unit from residential rental housing use after having obtained all proper permits from the city, if any such permits are required
3. The landlord seeks to recover possession to remodel, renovate or rehabilitate the unit(s) resulting in permanent displacement of tenants
4. The landlord seeks the conversion of a building into a condominium, community apartment or stock cooperative
5. A change of real property from a residential use to a non-residential use that requires a city permit

The following displacements would be exempt from the ordinance:

1. Conversion of a mobile home park
2. A landlord's compliance with an enforcement order of the city's chief building official for which the property owner has been ordered to pay relocation expenses under state or federal law
3. The residential household is required to vacate the rental unit due to damage resulting from a natural disaster or accident outside the control of the landlord
4. Temporary displacement where tenants have been provide with alternative housing on-site or nearby provided that such displacement shall be for a period of no more than one year; and
5. Expiration of a lease that was not extended by the operation of Civil Code Section 1945

Under the ordinance, the landlord would be responsible for paying relocation payments equivalent to three months of the HUD-published fair market rent (FMR) for San Mateo County for a comparable sized unit. Special circumstance households would be eligible for one additional month of rent.

At the February 26, 2019, meeting, the City Council also expressed an interest in establishing a community housing fund to provide relocation assistance to some of the displacements not covered by the City's ordinance and the Mayor appointed Mayor Pro Tem Taylor and City Councilmember Combs to meet with staff to develop criteria for the fund.

Analysis

On March 4, 2019, Mayor Pro Tem Taylor and City Councilmember Combs met with staff. Below is a summary of the subcommittee's discussion.

Fund purpose

The subcommittee agreed that the primary purposes of the fund should be to provide financial assistance to lower income households not covered by the City's tenant relocation ordinance in an attempt to avoid homelessness.

Eligibility criteria

The subcommittee discussed the need to have an income threshold that would appropriately capture

households most in jeopardy of becoming homeless. The subcommittee reviewed Menlo Park data from the American Community Survey, which estimated that 31.5 percent of households have incomes below \$75,000. Accordingly, the subcommittee discussed income limits of 50 or 60 percent of the area median household income for San Mateo County as adjusted for household size according to HUD. The subcommittee did not make a final recommendation on the income threshold and the below table below shows the income limits for these options based on household size.

Household size	Very low-income (50% AMI)	HOME limit (60% AMI)	Low-income (80% AMI)
1-person	\$51,350	\$61,620	\$82,200
2-persons	\$58,650	\$70,380	\$93,950
3-persons	\$66,000	\$79,200	\$105,700
4-persons	\$73,300	\$87,960	\$117,400
5-persons	\$79,200	\$95,040	\$126,800
6-persons	\$85,050	\$102,060	\$136,200
7-persons	\$90,900	\$109,080	\$145,600
8-persons	\$96,800	\$116,160	\$155,000

The subcommittee also discussed whether tenants holding certain jobs should be given priority. The subcommittee noted the value of a wide variety of jobs in our community and did not feel comfortable using this criterion as a basis for distinction. The subcommittee also noted there were ongoing discussions about increasing housing assistance for certain job sectors, such as teachers, and that the community housing fund should be broader. The subcommittee also felt it was important to specify some qualifying length of tenancy to avoid potential abuse and provide maximum opportunity for tenants with existing connections to the community to stay housed within Menlo Park.

As for displacement triggers, the subcommittee felt the displacement trigger should be focused on significant rent increases that caused a tenant to vacate a unit. The Housing Commission previously vetted this criterion and the subcommittee felt comfortable with the consumer price index plus 5 percent threshold. This would address community members' concerns about rapidly increasing rents but in a way that would not involve the legal risk of a Costa-Hawkins challenge. Finally, the subcommittee discussed whether the fund should be used for landlord hardship cases and decided that for now it would be better to focus on the narrow category of tenant needs. As an overall guiding principle, the subcommittee noted a desire to keep the criteria simple so the fund could be administered in an efficient manner.

Given this discussion, the following criteria were discussed for City Council's consideration:

1. Tenant household should have an income eligibility requirement of 50 percent or 60 percent AMI (area median income) to be selected by the City Council.
2. Tenants who were currently receiving housing benefits in the form of Section 8 rental subsidies or other government assistance would not be entitled to benefits.
3. Tenants who had previously received any form of tenant relocation assistance from a landlord would be not be entitled to benefits.
4. Tenants who were forced to relocate following notice of a significant rent increase were eligible for benefits.

5. Tenants must have resided in the unit for 12 months or more to be eligible for benefits.

Relocation assistance amount

While there was not a consensus on the payment amount, the subcommittee agreed that the City's goal should be to assist more tenants with smaller payments than to provide greater payments to fewer households. Several alternative payment structures emerged from the discussion:

1. Alternative 1 (Emergency security deposit): Provide 1 month of HUD-published FMR
2. Alternative 2 (Tiers based on length of tenancy):
 - For tenants residing in the unit for 12-24 months: 1 month
 - For tenants residing in the unit for 25-36 months: 2 months
 - For tenants residing in the unit for over 36 months: 3 months
3. Alternative 3 (incentive to stay in Menlo Park):
 - For tenants who find a rental outside of Menlo Park: 1 month
 - For tenants who find a rental within Menlo Park: 2 months

Fund administration

The subcommittee discussed a range of administration options, including staff level, Housing Commission, City Council and third-party administration. Ultimately, the subcommittee felt it was important to prescribe clear criteria that could be easily administrated at a staff level. Staff administration would reduce fund overhead, provide the most expedient way to disburse funds to tenants and best secure privacy of tenants' financial information. Accordingly, the subcommittee recommended that fund administration be assigned to the deputy community development director with regular progress reports provided to the Housing Commission. For internal control purposes, staff recommends that the fund administration be assigned to the city manager who is authorized, by resolution, to delegate administration to any staff member with the ability to administer the program.

The subcommittee discussed best practices regarding disbursement of funds and recommended that payments be made directly to a tenant's new landlord to ensure proper use of funds for security deposits/rent and increased efficiency. Staff would develop further guidelines and procedures to ensure proper use of funds.

Funding sources

The subcommittee had extensive conversations about funding sources. The city manager reviewed the current available funds and determined that the general fund would be the most appropriate. The subcommittee suggested that the City Council provide the initial seed money for the fund, with requests to be made to the California Apartment Association (CAA), Silicon Valley Association of Realtors (SILVAR) and large residential developers for contributions. Additionally, the subcommittee suggested soliciting donations from other large developers with an interest in preserving an economically diverse Menlo Park housing stock. The subcommittee discussed applying for Measure A/K grant funding but noted that it would take time to put together a competitive application. It was also noted that some of these grant funds were already targeted for new housing production.

Staff recommends that the City contribute initial seed funding of \$100,000. The subcommittee requested staff return to the City Council shortly before the initial funding is exhausted to provide a progress report and seek City Council direction on whether additional city funding should be used. Ongoing revenue streams were discussed, including a business license tax or fee for rental properties or use of the BMR funds. Given the uncertainty of the funding level and amount of need, the attached resolution (Attachment B) clarifies that tenants meeting the designated criteria are not guaranteed payment.

Resolution and program guidelines

If approved, the attached resolution would establish the community housing fund and incorporate some draft guidelines for fund administration. The resolution provides authority to the city manager or designee to adopt additional program guidelines necessary to implement the community housing fund.

Impact on City Resources

The tenant relocation assistance payments under the ordinance would be made by the landlord to the tenant directly. However, management of the program would have impacts on staff time and resources. The ordinance provides that the City would pass through its administrative costs to the landlord.

At the last City Council meeting, the councilmembers inquired about Redwood City's fee structure. When the fee was originally proposed, Redwood City staff estimated the administrative costs would be approximately 10 percent of the relocation payment. Thus if the landlord were responsible for a relocation payment of \$8,427 (three months rent for 2-bedroom unit), using the original Redwood City estimate, the administrative fee would be \$843.00. In Redwood City, rather than adopt this fee, the City Council requested its staff conduct a fee study to better determine the associated staff costs. That study has yet to be completed.

The City Council may ultimately establish the fee at any level, provided it does not exceed the estimated cost of service. Staff will return with a cost of service report for further City Council consideration.

As to the community fund payments, the initial seed funding of \$100,000 would be taken from the undesignated General Fund balance. In addition, the initial implementation will have staff impacts. At this time, the exact amount is unknown but it is believed that this can be absorbed into the Housing Division operations, at least initially.

Environmental Review

This action is not a project under the California Environmental Quality Act ("CEQA") and therefore not subject to the provisions of the CEQA Guidelines under Sections 15378 and 15061(b)(3).

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Ordinance No. 1053 – Tenant relocation assistance ordinance
- B. Resolution No. 6488 – Establishing a community housing fund for tenant relocation assistance

Report prepared by:

Clay J. Curtin, Assistant to the City Manager

Cara Silver, Assistant City Attorney

ORDINANCE NO. 1053**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ADDING
CHAPTER 8.55 OF THE MENLO PARK CODE REGARDING TENANT
RELOCATION ASSISTANCE**

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

SECTION 1. FINDINGS AND DETERMINATIONS.

- A. There are 12,347 residential units in Menlo Park. Of those, 6,927 (or 56 percent) units are owner occupied and 5,420 (or 44 percent) units are tenant occupied. In the Belle Haven neighborhood, 57 percent of the total population are tenants.
- B. The City of Menlo Park currently does not regulate rent increases or reasons for evictions from residential property and certain aspects of public peace, health, and safety are not adequately protected due to the lack of regulation.
- D. The California Housing Partnership Corporation estimates there is a shortage of 25,882 affordable rental homes to accommodate low-income renters in San Mateo County, which has a population of 748,732 and 106,289 renting households, according to the U.S. Census.
- E. The report Displacement in San Mateo County: Consequences for Housing, Neighborhoods, Quality of Life, and Health found that after being displaced, only 21 percent of households reported staying in the same neighborhood (within 1 mile of their previous home). Thirty-three percent of households left San Mateo County, generally moving to the Central Valley or eastern communities in the East Bay.
- F. The rents in San Mateo County and Menlo Park in particular have been steadily increasing. Increasing rents combined with a housing shortage places substantial pressure on the existing city residents who rent housing. In particular, rising rents can lead to tenant displacement of longstanding residents.
- G. On August 22, 2017, the City Council directed City Staff to prioritize housing policies, with tenant relocation assistance being part of the priority one recommended policies.
- H. On July 11, 2018, the Housing Commission held a regular public meeting to discuss and consider for recommendation to City Council for adoption of a draft tenant relocation assistance ordinance.
- I. On August 8, 2018, the Housing Commission held an additional regular public meeting to discuss and consider for recommendation to City Council for adoption of a draft tenant relocation assistance ordinance.
- J. The Commission scheduled two additional community meetings, one at the Menlo Park Senior Center, September 12, 2018, and one at the City Council Chambers, September 13, 2018, in order to hear additional public comment on the matter.

- K. According to the Legal Aid Society of San Mateo County (“Legal Aid”), at least 20 “no fault” eviction notices were issued within the past 32 months in Menlo Park and this sample of eviction activity, self-reported by the Menlo Park residents who elected to consult a lawyer, is a fraction of the total. Legal Aid further reports that at least an additional 10 Menlo Park households reported rent increases of more than ten percent (10%) during the past 32 months. Again, this fractional sampling does not capture the full-scale of significant rent increases in the city.
- L. This data is also supported by reports received by the City from tenants and community organizations that indicate at least 20 instances of “no fault” evictions and at least 10 instances of tenants having received rent increase notices greater than 10 percent (10%) since December 2015.
- M. Tenants evicted in Menlo Park are forced to incur substantial costs related to new housing including, but not limited to, move-in costs, moving costs, new utility hook-ups, payments for temporary housing, and lost work time seeking housing. Move-in costs commonly include first and last month’s rent plus a security deposit equal to one month’s rent, leading to total relocation expenses in excess of three months’ rent.
- N. The impacts of evictions are particularly significant on low-income, elderly, and disabled tenants and tenants with minor children, justifying an additional payment for households with these tenants.
- O. In light of the numerous concerns noted herein, including but not limited to, the current threat to the public peace, health and safety by the fact that tenants are not adequately protected due to the lack of regulation and the adverse impacts that would result from displacement of City residents, this measure is necessary to preserve the public peace, health, and safety of the community.
- P. In enacting this ordinance, the City is exercising its right to regulate and monitor the basis for eviction.

SECTION 2: ADDITION OF CODE. Chapter 8.56 [Tenant Relocation Assistance] of Title 8 [Peace, Safety and Morals] is hereby added to the Menlo Park Municipal Code to read as follows:

**Chapter 8.56
TENANT RELOCATION ASSISTANCE**

Sections:

- 8.56.010 Short Title, Authority and Applicability
- 8.56.020 Purpose
- 8.56.030 Definitions
- 8.56.040 Requirement to Provide Relocation Assistance
- 8.56.050 Relocation Assistance
- 8.56.060 Relocation Assistance Payments
- 8.56.070 Tenant Displacement Notices
- 8.56.080 Landlord Submittal Requirements
- 8.56.090 Alternative Mitigation
- 8.56.100 Administrative Regulations

- 8.56.110 Mitigation not Exclusive
- 8.56.120 Retaliation prohibited
- 8.56.130 Failure to comply

8.56.010 Short Title, Authority, and Applicability

- A. This Chapter shall be known and may be cited as the "Relocation Assistance Ordinance."
- B. The requirements established pursuant to this Chapter are adopted under the authority of California Constitution Article XI, Section 7, which provides: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws," and in accordance with the purpose set forth in the ordinance codified in this Chapter.
- C. This Chapter shall apply to the extent permitted by the statutes and laws of the State of California.

8.56.020 Purpose

The primary purpose for relocation assistance is to minimize disruption to tenants and their families caused by a need for relocation by addressing financial impacts. Securing replacement housing generally requires a significant amount of money for expenses related to a physical move, such as first and last month's rent and security deposits. Projects assisted with Federal and State funds are subject to requirements to provide relocation assistance to households displaced by those projects. There is currently no state mandate for landlords to assist displaced tenants by compensating for relocation costs. While an unanticipated move may be challenging for any tenant, it is especially difficult for extremely low, very low and low income households.

8.56.030 Definitions

The following words and terms as used in this Chapter shall have the meaning respectively ascribed thereto:

- A. Application. Any application required to be submitted to the City for discretionary or ministerial approval of a land use change or improvement of real property that will result in a permanent displacement of a residential household.
- B. Displace or Displacement. The vacating of one (1) or more rental units on properties with five (5) or more units by residential households upon notice from the landlord as the result of or to enable any of the following:
 - 1. The landlord seeks to withdraw all rental housing units from the rental housing market as provided in Government Code Section 7060, et seq.;
 - 2. The landlord seeks to recover possession to demolish or otherwise remove a residential rental housing unit from residential rental housing use after having obtained all proper permits from the City, if any such permits are required;
 - 3. The landlord seeks to recover possession to remodel, renovate or rehabilitate the unit(s) resulting in permanent displacement of tenants;
 - 4. The landlord seeks the conversion of a building into a condominium, community

apartment or stock cooperative, as those terms are defined in California Government Code and Business and Professions Code; or

5. A change of use of real property from a residential use to a nonresidential use that requires a permit from the City.
- C. For the purposes of this Chapter, a displacement does not include a vacation of a rental unit as the result of the following:
1. A conversion of any portion of a mobile home park regulated and processed pursuant to Chapter 28 of this code;
 2. A landlord's compliance with an enforcement order of the City chief building official for which the property owner has been ordered to pay relocation expenses pursuant to Health and Safety Code Section 17975, et seq., or any other state or federal law;
 3. The residential household is required to vacate the rental unit due solely to damage resulting from an earthquake, fire, flood, natural disaster, civil disturbance, or accident outside the control of the landlord; or
 4. Temporary displacement where tenants have been provided with alternative housing on-site or nearby provided that such displacement shall be for a period of no more than one year.
 5. Expiration of a lease that was not extended by the operation of Civil Code Section 1945.
- D. Eligible residential household. A displaced residential household whose annual household income does not exceed eighty (80) percent of the area median household income for San Mateo County as adjusted for household size according to the United States Department of Housing and Urban Development, as may be adjusted from time to time, and whose rental payments to the landlord remain current through the date of displacement. The presumption of eligibility specified in the preceding sentence shall not apply where the landlord provides evidence of any of the following circumstances:
1. The residential household's occupancy ended due to the expiration of a term lease or termination of a month to month rental agreement and the tenancy was not extended by the operation of Civil Code Section 1945; or
 2. The residential household (a) is in the process of being evicted pursuant to the terms of the rental agreement for failure to pay rent or other breach of the rental agreement; or (b) has been found guilty of unlawful detainer pursuant to Subdivisions 2, 3, 4 or 5 of Section 1161 of the Code of Civil Procedure as evidenced by a final judgment of a court of competent jurisdiction; or (c) has entered into a stipulated agreement in an unlawful detainer action which requires vacation of the premises; or
 3. The residential household received written notice, before entering into a written or oral agreement to become a tenant, that an application to convert their rental unit to another use was on file with the City or had already been approved and would result in their displacement.
- E. Landlord. An owner, lessor or sublessor of property (including any person, firm, corporation or other entity) who receives or is entitled to receive rent for the use of any rental unit, or the

agent, representative or successor of any of the foregoing.

- F. Lease. Any form of rental agreement, whether written or oral.
- G. Rental unit. A habitable structure offered for rent and used as a place of permanent or customary and usual abode of a residential household. Rental units include a building, a group of buildings or a portion of a building used and/or designed as dwellings. A rental unit shall not include:
 - 1. A room or any other portion of any residential unit which is occupied by the landlord or a member of the landlord's immediate family.
 - 2. Properties where four (4) or fewer dwelling units are located on one (1) lot, including single-family, duplex, tri-plex, or four-plex homes, and accessory dwelling units.
 - 3. A mobile home.
 - 4. Housing accommodation in hotels, motels, inns, tourist homes and boarding or lodging houses.
 - 5. A unit in a common-interest development where units are owned by different individuals who share ownership of common areas and facilities.
 - 6. An on-site manager's living unit.
 - 7. A unit where the tenancy is an express condition of, or consideration for, employment by a landlord.
- H. Residential household. Any person or group of persons entitled to occupy a rental unit under a valid lease or rental agreement (written or oral) with the landlord.
- I. Special-circumstances households. An eligible residential household with any of the following characteristics:
 - 1. At least one (1) member is sixty-two (62) years of age or older.
 - 2. At least one (1) member qualifies as disabled as defined by Title 42, United States Code, Section 423 or handicapped as defined by California Health and Safety Code Section 50072.
 - 3. A household with one (1) or more minor children (under 18 years of age) who are legally dependent (as determined for federal income tax purposes).
 - 4. A household that has occupied their unit as their primary residence for five (5) or more consecutive years.
- J. Tenant. A tenant, subtenant, lessee, sublessee or any other person entitled to use or occupancy of a rental unit under a valid lease or rental agreement (written or oral) with the landlord.
- K. Third-party agency. Relocation assistance specialist, agency and/or other third-party agency hired by the City and paid for by the landlord to assist with the relocation assistance process set forth in this ordinance.
- L. Primary Residence. A primary residence is a dwelling unit where a person has been physically present and that the person regards as home. A person may only have one primary residence at

any given time. Evidence of a person's primary residence includes, but is not limited to, documentation from income tax statements or a driver's license. If a property has multiple dwelling units, including an accessory dwelling unit or apartment complex, each dwelling and accessory dwelling shall be considered a separate residence subject to the primary residence requirement.

8.56.040 Requirement to Provide Relocation Assistance

Any landlord that shall cause the permanent displacement of residential households shall be subject to paying eligible residential households relocation assistance in accordance with the provisions of this Chapter.

8.56.050 Relocation Assistance

- A. The landlord shall provide relocation assistance, where required by Sec. 8.56.040, to eligible residential households in accordance with the following requirements, unless an alternative mitigation strategy as defined in section 8.56.090, below, has been approved by the City:
 - 1. A full refund of a tenant's security deposit, except for funds that may be necessary to repair tenant's damage to property in rental units that will be reoccupied before undergoing renovation or demolition.
 - 2. A sixty (60) day subscription to a rental agency service. The costs of a rental agency shall be fair and reasonable based on current market pricing.
 - 3. The cash equivalent of three (3) months' rent shall be paid to the residential household renting a unit. The amount to be paid shall be calculated at the time the relocation application is approved by the City based on the most recent Department of Housing and Urban Development's Fair Market Rent calculation for San Mateo County for a similar-sized unit with the same number of bedrooms.
 - 4. Special-circumstances households will be paid one (1) additional month of rent for a maximum of four (4) months' rent.
 - 5. An administrative fee as set forth in Section 8.56.060(F) below.

8.56.060 Relocation Assistance Payments

- A. Third-party processing. The City shall hire a third-party agency to provide tenant relocation assistance. Landlord shall pay the fees for the third-party agency and shall deposit sufficient funds with the third-party agency and/or City (as determined by the City) when an application is filed to cover the estimated cost of the relocation assistance services. The third-party agency shall provide bilingual assistance, as necessary, and hold an informational meeting with tenants, respond to questions, verify current household incomes, disperse checks to eligible households and provide an accounting of dispersed funds to the landlord and City.
- B. Payments escrow account. The landlord shall open an escrow account with an entity qualified to provide escrow services within the State of California and deposit relocation assistance funds into that account no later than thirty (30) days after filing an application that will be used by the third-party agency for relocation assistance payments to eligible residential households. The amount of the

deposit shall be determined by the Community Development Director or his/her designee and unused funds shall be returned to the landlord after all relocation assistance has been paid as verified by the third-party agency.

- C. Relocation assistance claims. Tenants requesting relocation assistance must provide the necessary information to the third-party agency who will determine their eligibility for relocation assistance and eligible residential households must complete a claim form. Tenants must file a claim before the date to vacate as stated on the notice of termination in order to be eligible for relocation assistance payments. After determination of eligibility, half of the relocation assistance shall be paid to eligible residential households within fifteen (15) days of the date the claim form is submitted to the third-party agency and the remaining half shall be paid when the household vacates the unit.
- D. Payments to eligible residential households. Relocation assistance is paid per rental unit, not per tenant. If multiple households or individuals occupy a rental unit, relocation assistance shall be paid to the household or individual entitled to occupy a rental unit under a valid lease or rental agreement (written or oral) with the landlord.
- E. Verification of payment. Before issuance of demolition permits, building permits or other City permits that would result in the removal of a rental unit subject to this Chapter, the City must receive verification from the third-party agency that all eligible residential households who applied and qualified for assistance have received relocation assistance. This verification shall be submitted in a form acceptable to the City.
- F. Administrative costs. The City shall collect the administrative fee in an amount to be set by resolution of the City Council.

8.56.070 Tenant Displacement Notices

- A. Notice of intent. No later than thirty (30) days after filing an application, either the landlord or the landlord's agent shall notify each residential household residing on the subject real property that the landlord has filed an application with the City. The notice shall be sent by regular and certified mail and posted on the door of each rental unit. The landlord must submit evidence of compliance with this section to the City in order for the application to be deemed complete.

For each such notice, the landlord shall use a notice of intent form provided by the City that shall contain the following information:

1. The name and address of the current property owner and the project developer;
2. A description of the application(s) being filed and a general time frame to complete the work described in the application;
3. An explanation of the relocation assistance available to eligible residential households and special-circumstances households, information on eligible residential household incomes and the procedure for submitting claims for relocation assistance;
4. Contact information for the third-party agency that will be assisting with the relocation assistance process. This contact information and a brief explanation of the

purpose of the notice shall be translated into non-English languages as provided by the City;

5. The residential household's right to receive written notice for each hearing and right to appear and be heard at land use hearing, if applicable; and
 6. Other information deemed necessary or desirable by the Community Development Department.
- B. Notice of intent verification. The landlord or agent of the landlord shall submit to the City a duplicate copy of the notice of intent form given to each residential household and a declaration indicating that each notice was sent by regular and certified mail and posted on the door of the rental unit.
- C. Notice of application approval. No later than fifteen (15) days after receiving final approval of a project application (including any appeal period), the landlord or the landlord's agent shall notify each residential household residing on the subject real property that the application has been approved. The notice shall be sent by regular and certified mail and posted on the door of each rental unit.
- D. Notice of termination. Landlord shall provide a written notice of termination to all tenants subject to displacement pursuant to Civil Code Section 1946 and Section 1946.1.

8.56.080 Landlord Submittal Requirements

Concurrent with the filing of an application, the landlord shall provide the Community Development Department with the address number of each unit in the rental development, the monthly rents for those units and the names of every member of the residential household who is a signatory on a written lease or rental agreement for that unit, the household income as shown on the lease or rental agreement and the number of household members included on the lease or rental agreement. Where there is no written lease or rental agreement, the landlord shall provide the name of every person the landlord considers to be a resident under an oral lease or rental agreement.

8.56.090 Alternative Mitigation

- A. All applications governed by this section shall be required to submit the required information; however, the landlord may also submit an alternative mitigation strategy that meets the goals of this section. An alternative strategy may include, but shall not be limited to, providing other mitigation and concessions to tenants such as permanent relocation of displaced tenants into similar apartments on-site or nearby, ongoing rent concessions or suitable notice and other elements of mitigation that would serve the goals and purposes of this Chapter. Prior to submitting any alternative mitigation strategy, a landlord shall discuss the strategy with existing tenants and make good faith efforts to arrive at an alternative mitigation strategy that is acceptable to existing tenants. Evidence of tenant agreement with an alternative mitigation strategy may be submitted to the City for review. With each such alternative submission, the landlord shall provide complete information as determined necessary by the Community Development Director.

After an alternative mitigation strategy is submitted, the landlord shall provide notice of the

submission by regular and certified mail and posted on the door of each rental unit. Tenants shall have fourteen (14) days from the date notice is posted or mailed, whichever is later, to submit comments on the alternatives to the Community Development Director.

Alternative mitigation proposals shall be approved or denied by the Community Development Director. Within seven days of the decision, the City shall provide notice of the decision to the landlord and all tenants. The Landlord or tenants may appeal any decision of the Community Development Director to the City Manager or designee within fourteen (14) days after notice is provided.

- B. Landlord's temporary withdrawal of residential rental units from the market shall not be subject to this Chapter for any units where, in the opinion of the Community Development Director, the landlord has provided suitable alternative temporary replacement housing accommodations on-site or nearby.

8.56.100 Administrative Regulations

The Community Development Director may, from time to time, promulgate regulations implementing the provisions of this Chapter, violations of which shall be considered a violation of this section.

8.56.110 Mitigation Not Exclusive

Nothing in this section shall be interpreted to interfere with the City's ability and/or obligation to require relocation assistance for displaced tenants who are not covered by this Chapter.

8.56.120 Retaliation prohibited

Commencement of eviction proceedings against a tenant for exercising his or her rights under this Chapter shall be considered a retaliatory eviction. Under Civil Code Section 1942.5, it is illegal for a landlord to retaliate against a tenant for lawfully and peaceably exercising his or her legal rights.

8.56.130 Failure to comply

A landlord's failure to comply with any requirement of this Chapter may be asserted by a tenant as an affirmative defense in an action brought by the landlord to recover possession of the rental unit. Additionally, any attempt to recover possession of a rental unit in violation of this Chapter shall render the landlord liable to the tenant for damages permitted by law in a civil action for wrongful eviction. The tenant may also seek injunctive relief and money damages for wrongful eviction and/or failure to pay relocation assistance. A landlord may seek money damages for a tenant's failure to reimburse relocation assistance if the tenant ultimately fails to vacate the rental unit after receipt of a notice of termination. The prevailing party in an action for wrongful eviction and/or failure to pay relocation assistance or reimburse relocation assistance shall recover costs and reasonable attorneys' fees.

SECTION 3. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") under Sections 15378 and 15061(b)(3) of the of the CEQA Guidelines.

SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect 30 days following adoption.

INTRODUCED on the ___ day of _____, 2019.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the ___ day of _____, 2019, by the following vote:

AYES:	Councilmembers:
NOES:	Councilmembers:
ABSENT:	Councilmembers:
ABSTAIN:	Councilmembers:

APPROVED:

Mayor

ATTEST:

Judi A. Herren, City Clerk

RESOLUTION NO. 6488**RESOLUTION OF THE CITY COUNCIL ESTABLISHING THE COMMUNITY HOUSING FUND TO ASSIST VERY-LOW INCOME TENANTS WITH RELOCATION ASSISTANCE**

WHEREAS, there are 12,347 residential units in Menlo Park. Of those, 6,927 (or 56 percent) units are owner occupied and 5,420 (or 44 percent) units are tenant occupied. In the Belle Haven neighborhood, 57 percent of the total population are tenants;

WHEREAS, the City of Menlo Park currently does not regulate rent increases or reasons for evictions from residential property and certain aspects of public peace, health, and safety are not adequately protected due to the lack of regulation;

WHEREAS, The California Housing Partnership Corporation estimates there is a shortage of 25,882 affordable rental homes to accommodate low-income renters in San Mateo County, which has a population of 748,732 and 106,289 renting households, according to the U.S. Census;

WHEREAS, the report Displacement in San Mateo County: Consequences for Housing, Neighborhoods, Quality of Life, and Health found that after being displaced, only 21 percent of households reported staying in the same neighborhood (within 1 mile of their previous home). Thirty-three percent of households left San Mateo County, generally moving to the Central Valley or eastern communities in the East Bay;

WHEREAS, the rents in San Mateo County and Menlo Park in particular have been steadily increasing. Increasing rents combined with a housing shortage places substantial pressure on the existing city residents who rent housing. In particular, rising rents can lead to tenant displacement of longstanding residents;

WHEREAS, on August 22, 2017, the City Council directed City Staff to prioritize housing policies, with tenant relocation assistance being part of the priority one recommended policies;

WHEREAS, according to the Legal Aid Society of San Mateo County ("Legal Aid"), at least 20 "no fault" eviction notices were issued within the past 32 months in Menlo Park and this sample of eviction activity, self-reported by the Menlo Park residents who elected to consult a lawyer, is a fraction of the total. Legal Aid further reports that at least an additional 10 Menlo Park households reported rent increases of more than ten percent (10%) during the past 32 months. Again, this fractional sampling does not capture the full-scale of significant rent increases in the city;

WHEREAS, this data is also supported by reports received by the City from tenants and community organizations that indicate at least 20 instances of "no fault" evictions and at least 10 instances of tenants having received rent increase notices greater than 10 percent (10%) since December 2015;

WHEREAS, tenants evicted in Menlo Park are forced to incur substantial costs related to new housing including, but not limited to, move-in costs, moving costs, new utility hook-ups, payments for temporary housing, and lost work time seeking housing. Move-in costs commonly

include first and last month's rent plus a security deposit equal to one month's rent, leading to total relocation expenses in excess of three months' rent;

WHEREAS, the impacts of evictions are particularly significant on low-income, elderly, and disabled tenants and tenants with minor children, justifying an additional payment for households with these tenants;

WHEREAS, on March 12, 2019, the City Council adopted a tenant relocation ordinance which applies to a limited number of displacement; and

WHEREAS, in light of the numerous concerns noted herein, including but not limited to, the current and immediate threat to the public peace, health and safety by the fact that tenants are not adequately protected due to the lack of regulation and the adverse impacts that would result from displacement of City residents, this measure is necessary to preserve the public peace, health, and safety of the community.

NOW, THEREFORE, IT IS RESOLVED that:

1. The City Council hereby establishes a Community Housing Fund to assist very-low income tenants with relocation assistance in accordance with the program guidelines presented to the City Council on the twelfth of March, 2019, incorporated herein as Exhibit A.
2. This resolution shall become effective upon the effective date of Ordinance No. 1053 (tenant relocation ordinance).

I, Judi A. Herren, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing City Council resolution was duly and regularly passed and adopted at a meeting by said City Council on the twelfth day of March, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twelfth day of March, 2019.

Judi A. Herren
City Clerk

EXHIBIT A

Community Housing Fund Program Guidelines Adopted by City Council Resolution No. 6488 Dated March 12, 2019

1. Purpose of Fund

The primary purposes of the Community Housing fund is to provide financial assistance to lower income households not covered by the City's tenant relocation ordinance in an attempt to avoid displaced households from becoming homeless due to the inability to pay increased rent.

2. Definitions

For the purposes of these guidelines, the terms below shall have the following meanings.

2.1 "Base Rent" means the rent for a rental unit required to be paid by the tenant to the landlord in the month immediately preceding the effective date of the rent increase. Base rent shall not include ancillary services including, but not limited, to pet deposits, storage, additional parking or utility pass-throughs.

2.2 "Administrator" shall mean the city manager or designee

2.3 "Household" shall have the meaning defined in Section 6.1.1 of the City's Below Market Rate Guidelines.

2.4 "Rental Unit" means any housing unit offered for rent or lease in the City of Menlo Park, except Rental Unit shall exclude:

- a. Any housing unit that is subject to a recorded affordable housing regulatory agreement that requires that the housing unit be rented at restricted rents to income-qualified tenants as defined by the regulatory agreement;
- b. Secondary Dwelling Units as defined by Chapter 16.79; and
- c. Owner occupied Single Family Residences where a room is rented to a third party.

2.5 "Significant Rent Increase" means a proposed rent increase that raises the rent, or proposed multiple rent increases that cumulatively raise the rent during any twelve (12) month period, to an amount more than the previous year's Consumer Price Index for all Urban Consumers for the San Francisco-Oakland-Hayward area, published by the U.S. Department of Labor, Bureau of Labor Statistics (CPI) plus five percent (5%) above the base rent that was in place at the beginning of such twelve (12) month period.

2.6 "Tenant" means a tenant, subtenant, lessee, sublessee or any other person entitled to use or occupancy of a rental unit under a valid lease or rental agreement (written or oral) with the landlord.

3. Eligibility Criteria

3.1 *Requirements.* In order to be eligible for assistance under the Community Housing Fund, tenants must meet all of the following criteria:

- a. Tenant must reside within incorporated Menlo Park as its primary residence.

- b. The tenant household shall earn no more than 60 percent of the area median household income for San Mateo County as adjusted for household size according to the latest data published by the Department of Housing and Urban Development (HUD). For reference, the table below shows the 2018 qualifying income by household size.

Household size	HOME limit (60% AMI)
1-person	\$61,620
2-persons	\$70,380
3-persons	\$79,200
4-persons	\$87,960
5-persons	\$95,040
6-persons	\$102,060
7-persons	\$109,080
8-persons	\$116,160

- c. Tenant was forced to relocate following service of significant rent increase.
- d. Tenant resided in the rental unit for 12 months or more.

3.2 *Exceptions.* The following Tenants shall not be eligible for assistance.

- a. Tenants who are currently receiving housing benefits in the form of Section 8 rental subsidies or other government assistance.
- b. Tenants who have previously received any form of tenant relocation assistance from a landlord.
- c. Tenants having assets as defined in the City's BMR Guidelines in excess of \$50,000 or as determined by the Administrator and published in the program guidelines.

4. Relocation Assistance Payments

4.1 *Payment amount.* [City Council should select one of the below three alternatives.]

- a. Alternative 1 (Emergency Security Deposit): Eligible tenants may receive a relocation assistance payment in the amount of one month of fair market rent for a comparable size rental unit as established by HUD.
- b. Alternative 2 (Tiering based on tenant tenure):
- For tenants residing in the unit for 12-24 months: one (1) month of fair market rent for a comparable size rental unit as established by HUD.
 - For tenants residing in the unit for 25-36 months: two (2) months of fair market rent for a comparable size rental unit as established by HUD.
 - For tenants residing in the unit for over 36 months: three (3) months of fair market

rent for a comparable size rental unit as established by HUD.

c. **Alternative 3 (Incentive to stay in Menlo Park):**

- For tenants who find a rental unit outside of Menlo Park: one (1) month of fair market rent for a comparable size rental unit as established by HUD.
- For tenants who find a rental within Menlo Park: two (2) months of fair market rent for a comparable size rental unit as established by HUD.

4.2 Payment Disbursement. In its discretion, the City may elect to make payments directly to the new landlord or to the tenant. If payments are made to the tenant, the tenant shall provide the City with a receipt showing that they have tendered a security deposit or first month rent to a new landlord.

5. Community Housing Fund Administration

5.1 Administration. The Administrator shall be responsible for administering funds under this program.

5.2 Applications. Requests for relocation assistance payments may be submitted to the Director for review and determination in accordance with these guidelines. The Administrator's decision shall be final.

5.3 Reports. The Administrator shall provide regular reports to the Housing Commission on the status of the program and accounting of the funds.

5.4 Staff Guidelines. The Administrator shall have the authority to develop an application form and program administrative guidelines to ensure proper use of funds.

5.5 Privacy. The Administrator shall keep Tenant's financial information confidential.

6. Entitlement to Funding

6.1 No representations. Nothing in these guidelines shall guarantee entitlement to payment from this the Community Housing Fund. Further, the fund has a limited amount of funding and no permanent revenue stream has yet been identified. Neither the City nor its private partners have made any representation that they intend to supplement the fund after it has been depleted.

6.2 Disbursement order. The fund shall be administered to complete applications on a first come, first served basis.



STAFF REPORT

City Council
Meeting Date: 3/12/2019
Staff Report Number: 19-023-CC

Regular Business: Discuss and provide direction on the City's travel policy and/or adopt Resolution No 6485 rescinding City Council Procedure No. CC-18-001 and adopting City Council Procedure No. CC-19-002 titled "City of Menlo Park Travel, Meal and Lodging Policy"

Recommendation

Staff recommends that the City Council discuss and provide direction on the City's travel policy and/or adopt a resolution rescinding City Council Procedure #CC-18-001 and adopting City Council Procedure #CC-19-002 titled "City of Menlo Park Travel, Meal and Lodging Policy" (Attachments A and B.)

Policy Issues

State law authorizes city councilmembers to be reimbursed for travel, meals, lodging, and other actual and necessary expenses. Such reimbursement must be made in accordance with a written policy adopted at a public meeting. The City's current travel policy was last updated September 11, 2018 and the City Council directed staff to come back with some additional modifications pertaining to City Council travel.

Background

Policies for reimbursement of travel related expenses vary from city to city. State law does prescribe some threshold standards, especially as it relates to reimbursement of city councilmember travel. Because of these special restrictions, this report focuses on city councilmember travel. The updated policy though more broadly applies to city councilmembers, city employees and other local officials (such as appointed Menlo Park commissioners, City Attorney and City Manager.)

City councilmembers may be reimbursed for actual and necessary expenses incurred in the performance of official duties.¹ If a city reimburses city councilmembers for such expenses, the city council must adopt at a public meeting a written policy governing payment.² In addition, if a city provides any type of compensation or payment of expenses to city councilmembers, then all of the city councilmembers are required to have at least two hours of ethics training every two years.³

State law also contains safeguards to ensure that public funds are used efficiently. City councilmembers must use government and group rates offered by a conference or a provider of transportation or lodging services for travel and lodging when available. All expenses that do not fall within the City's travel reimbursement policy or the Internal Revenue Service reimbursable rates must be approved by the City

¹ Government Code Section 36514.5.

² Government Code Section 53232.2(b).

³ Government Code Section 53235.

Council, in a public meeting before the expense is incurred. City Councilmembers must submit expense reports showing that expenses meet the existing policy together with receipts documenting each expense. City councilmembers must provide brief reports on meetings attended at the expense of the City at the next regular City Council meeting. Finally, all expense reports are public record.⁴

The Institute for Local Government has prepared a sample travel policy to assist local agencies (Attachment D.)

On September 11, 2018, the City Council updated its travel policy to align better with the ILG model policy. In addition the City Council requested staff to come back with an amended policy to address some additional City Council related travel policies related primarily to sister/friendship city and foreign travel. For reference, the September 11, 2018 staff report is included as Attachment C.

Analysis

On September 11, 2018, the City Council reviewed and approved the updated travel policy. In addition, it requested the City Attorney to come back with the following additional items for discussion and inclusion in the policy:

1. include a list of examples of typical reimbursable conferences and meetings as contained in old policy;
2. add explicit language that city councilmembers may not sign any official document on behalf of the City unless preapproved by City Council and that any foreign document submitted for signature must be translated into English;
3. travel paid by third parties requires a Fair Political Practices letter pre-authorizing travel where it is unclear whether an exception to the gift or income restrictions applies;
4. attach to the travel policy a template letter requesting third parties offering travel gifts to provide the schedule of public appearances, informing them that individual city councilmembers do not have authority to sign official City documents unless the full City Council pre-approves, requesting advance copies (and translations) of any documents city councilmember is requested to sign and other pertinent information;
5. for sister or friendship city travel, any city staff reimbursement requires pre-approval by City Council;
6. self-paid sister or friendship City Council travel does not require City Council approval, but City Council should be informed in advance of travel; and
7. City Councilmembers will comply with communications policy when traveling for City business

These items have been incorporated into the updated travel policy and discussed in more detail below.

Examples of reimbursable conferences/meetings (item 1)

A sample list of regularly attended conferences and meetings has been incorporated into the updated policy.

Signing documents on behalf of the city (item 2)

The updated travel policy clarifies that individual city councilmembers may not sign official city-related documents unless such documents have been pre-approved by the City Council. If the official documents are not written in English, they must be translated into English before the City Council approves signature.

Travel paid by third parties (items 3 and 4)

In some instances, travel costs paid for by third parties will be considered a gift and if valued at over \$470 is not permitted under State law. In other situations, such will not be considered a gift or income and is

⁴ Government Code Sections 53232.2 and 53232.3.

permitted (for instance travel paid for by a 501(c)(3) organization.) In situations when the city councilmember or City Attorney cannot readily determine how to classify the offer to pay for travel, the new policy now requires the city councilmember to request guidance from the Fair Political Practices Commission (FPPC.)

For greater transparency, the updated policy also requires the city councilmember to submit a template letter to any third party paying for travel outlining the City's travel policies and requesting advance information regarding public appearances and official documents requested to be signed.

Sister/Friendship city travel (items 5 and 6)

In the past the City has had an ad hoc policy approving sister/friendship city travel. Formerly city councilmembers paid for their own travel for this purpose. The new policy clarifies that if city councilmembers pay for their own travel, it does not require prior City Council approval, but the City Council must be informed in advance. The City Council, however, must pay for any travel paid for by the City.

Communications policy (item 7)

The updated policy clarifies that when traveling, the City Council should comply with the communications policy in the City Council procedures manual. This provision reads:

Speaking for the "City": Similar to written correspondence, when members are requested to speak to groups or are asked the City Council's position on an issue, the response should reflect the position of the City Council as a whole. Of course, a councilmember may clarify their vote on a matter by stating, for example, "While I voted against "X," the City Council voted in support of it." When representing the City at meetings or other venues, it is important that those in attendance gain an understanding of the City Council's position rather than that of an individual councilmember.

(See procedures manual, Menlo Park City Council, Chapter 4, pp. 21-22.)

In addition, under State law and the City's existing policy, after attending any meeting/conference for which a City official seeks City reimbursement, city councilmembers must report out at the next City Council meeting.

Next Steps

Staff has prepared a resolution in the event the City Council desires to adopt the policy included as Attachment A. The City Council can also give direction to staff to make modifications to the draft travel policy and bring it back to the City Council for approval.

Impact on City Resources

It is not anticipated that this updated policy will result in the expenditure of any additional funds.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it is a minor change that will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours

prior to the meeting.

Attachments

- A. Draft updated travel policy
- B. Resolution No. 6458 adopting updated travel policy
- C. September 11, 2019 staff report on updates to travel policy: hyperlink – <https://www.menlopark.org/DocumentCenter/View/18596/H4---Travel-policy-update>
- D. Institute for Local Government has prepared a sample travel policy: hyperlink – http://www.ca-ilg.org/sites/main/files/file-attachments/sample_reimbursement_policy_1_06.pdf

Report prepared by:

Cara Silver, Assistant City Attorney

Nick Pegueros, Assistant City Manager

Approved by:

William L. McClure, City Attorney

Travel, Meal, and Lodging Policy

City Council Procedure #CC-18-001 #CC-19-002

Adopted September 11, 2018 Adopted February 12, 2019

Resolution No. 6460 XXXX



Findings

Whereas, the City of Menlo Park takes its stewardship over the use of its limited public resources seriously.

Whereas, public resources should only be used when there is a substantial benefit to the City.

Whereas, such benefits include:

- The opportunity to discuss the community's concerns with regional, state and federal officials;
- Participating in regional, state and national organizations whose activities affect the City;
- Attending educational seminars designed to improve an official or employee's skill and information levels; and
- Promoting public service and morale by recognizing such service.

Whereas,

- Legislative and other regional, state and federal agency business is frequently conducted over meals
- Sharing a meal with regional, state and federal officials is frequently the best opportunity for a more extensive, focused and uninterrupted communication about the City's policy concerns;
- Each meal expenditure must comply with the limits and reporting requirements of local, state and federal law.

Whereas, this policy provides guidance to City officials and employees on the use and expenditure of City resources, as well as the standards against which those expenditures will be measured.

Whereas, this policy satisfies the requirements of Government Code sections 53232.2 and 53233.3.

Whereas, this policy supplements the definition of actual and necessary expenses for purposes of state laws relating to permissible uses of public resources.

Whereas, this policy supplements the definition of necessary and reasonable expenses for purposes of federal and state income tax laws.

Whereas, this policy also applies to any charges made to a City credit card, cash advances or other line of credit.

Applicability and Definitions

This policy shall apply to all City officials and City employees.

City officials. City officials shall mean the City Council and officials appointed by the City Council including Board, Commission and Committee members, the City Attorney and the City Manager, and others the City Council designates to represent the City.

City employees. City employees shall mean all employees in the exempt, competitive, part-time and temporary services, including appointees of the City Manager and contractual employees. The City Manager is authorized to adopt additional rules and regulations to implement this policy for City employees.

Authorized expenses

City funds, equipment, titles, and staff time must only be used for authorized City business. Expenses incurred in connection with the following types of activities generally constitute authorized expenses, as long as the other requirements of this policy are met:

- Communicating with representatives of regional, state and federal government on City adopted policy positions;
- Attending educational seminars designed to improve an official or employee's skill and information levels;
- Participating in regional, state and national organizations whose activities affect the City's interests;
- Recognizing service to the City (for example, thanking a longtime employee with a celebration of nominal value and cost);
- Attending City events;
- Implementing a City Council approved strategy for attracting or retaining businesses to the City, which will typically involve at least one staff member.

All other expenditures require prior approval by the City Council for officials or City Manager for employees. The following expenses also require prior City Council or City Manager approval:

- International travel;
- Expenses exceeding \$2,000 per trip.

Examples of organizations that host seminars, conferences, and meetings applicable to City operations and eligible for reimbursement under this policy include, but are not limited to:

- [Association of Bay Area Governments \(ABAG\)](#)
- [California Debt and Investment Advisory Commission \(CDIAC\)](#)
- [California Public Employees' Retirement System \(CalPERS\)](#)
- [City/County Associations of Governments of San Mateo County \(C/CAG\)](#)
- [Joint Venture Silicon Valley](#)
- [League of California Cities](#)
- [Menlo Park Chamber of Commerce](#)
- [National League of Cities \(NLC\)](#)
- [San Mateo County Council of Cities](#)
- [San Mateo County Economic Development Association \(SaMCEDA\)](#)
- [San Mateo County/Redwood City Chamber of Commerce](#)
- [San Mateo County Transportation Authority \(SCMTA\)](#)
- [Santa Clara County Cities Association](#)
- [Silicon Valley Economic Development Alliance](#)
- [Sister Cities International](#)
- [Professional organizations e.g., American Planning Association, American Public Works Association, California Parks and Recreation Society, Government Finance Officers Association, etc.](#)

Examples of personal expenses that the City will not reimburse include, but are not limited to:

- The personal portion of any trip;
- Political or charitable contributions or events;
- Family or guest expenses, including partner's expenses when accompanying a City official or employee on agency-related business, as well as children- or pet-related expenses;
- Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other cultural events;

- Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
- Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the approving authority before the expense is incurred.

Sister City and Foreign Travel

For sister or friendship city travel, any city official or staff reimbursement requires pre-approval of the City Council. If a council member is paying for their own sister or friendship city travel, City Council travel approval is not required, but the traveling council member should inform the City Council in advance of travel.

Individual council members shall not have authority to sign city-related official documents individually or on behalf of the City Council unless the document has been pre-approved by the City Council. Any foreign document submitted for signature must be translated into English.

Travel Paid for By Third Parties

City official travel paid by third parties requires a Fair Political Practices letter pre-authorizing travel where it is unclear whether an exception to the gift or income restrictions applies.

Third parties offering travel to City officials shall be requested to provide the schedule of public appearances and shall be informed that individual city officials or staff do not have the authority to sign official City documents unless the City Council pre-approves. A template letter is attached to this policy. [Note this letter will be prepared when staff finalizes the policy.]

Enforcement and cost control

All expenses are subject to audit and verification that they comply with this policy. *Note- Moved from another section.*

The Administrative Services Director is responsible for enforcing this policy. In the event the Administrative Services Director is uncertain as to whether a request complies with this policy, such individual must seek resolution from the requestor's approving authority. *Note- Moved from another section.*

To conserve City and keep expenses within community standards for public officials and employees, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

Transportation

The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Government and group rates must be used when available.

Airfare. To identify the lowest airfare, City officials and employees should use an online travel search engine that compares flights across major airlines. Baggage handling fees for one checked bag shall be reimbursed.

Automobile. Mileage driving using an official or employee's personal vehicle to conduct City business shall be reimbursed at Internal Revenue Service (IRS) rates in effect on the date of travel for all miles driven in the conduct of official business in excess of the official or employee's regular commute. The IRS rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable.

Car Rental. Charges for rental vehicles may be reimbursed under this provision if more than one City official or employee is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation.

Ride Share/Taxis/Shuttles. Ride share, taxis or shuttles fares may be reimbursed when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time efficiency.

Airport Parking. Long-term parking must be used for travel exceeding 24-hours.

Lodging

Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. Government and group rates must be used when available.

Conferences/Meetings. If lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question if such rates are available at the time of booking. If group rates are not available at time of booking, the City official or employee shall secure the most economical lodging in close proximity of the conference/meeting venue.

Other Lodging. Lodging rates that are equal to or less than government rates or the IRS per diem rates for the applicable area are presumed to be reasonable and hence reimbursable for purposes of this policy. A City official or employee may stay with a friend or relative while attending an out-of-town meeting or conference; however, the City will not reimburse for any payment to the friend or relative for lodging, meals or transportation.

Meals

Meals while traveling overnight. City officials and employees will receive a daily per diem allowance to cover the cost of meals and incidentals in accordance with [federal government per diem tables](#) for the city/region of travel.

Business Meeting Meals. In the conduct of official city business, officials will be reimbursed actual meal and beverage expenses not to exceed the [federal government per diem for Menlo Park](#), before tax and gratuities. Tax and gratuities will also be reimbursed.

Other expenses

Internet. City officials or employees will be reimbursed for Internet access connection and/or usage fees away from home, not to exceed \$15.00 per day, if Internet access is necessary for official business.

Telecommunication expenses. City officials/employees will be reimbursed for actual telecommunication expenses incurred on City business. No reimbursement is made for use of personal cell phones.

Gratuities. Gratuities of up to fifteen (15) percent will be reimbursed for services customarily subject to gratuity.

Reimbursement from other entities. Expenses for which City officials/employees receive reimbursement from another agency are not reimbursable.

Cash advances **Policy**

From time to time, it may be necessary for a City official or employee to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the Administrative Services Director five business days prior to the need for the advance with the following information:

- The purpose of the expenditure(s);
- The benefits of such expenditure(s) to the residents of Menlo Park;
- The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
- The dates of the expenditure(s).

Any unused advance must be returned to the City treasury within two business days of the City official or employee's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

~~In the event the Administrative Services Director is uncertain as to whether a request complies with this policy, such individual must seek resolution from the City Council.~~ *Note: This verbiage moved to "Enforcement and cost control"*

Credit card use

The City does not issue credit cards to individual office holders but does have an agency credit card for selected City expenses. City officials or employees may use the City's credit card for such purposes as airline tickets and hotel reservations by following the same procedures for cash advances. Receipts documenting expenses incurred on the City credit card and compliance with this policy must be submitted within five business days of use.

City credit cards may not be used for personal expenses, even if the City official or employee subsequently reimburses the City.

Expense report content and submission deadline

All cash advance expenditures, credit card expenses and expense reimbursement requests must be submitted on an expense report form provided by the City. All expenses reported on the form must comply with the City's policies relating to expenses and use of public resources. The information submitted on the form is a public record. Penalties for misusing public resources and violating the City's policies include loss of reimbursement privileges, restitution, civil and criminal penalties as well as additional income tax liability.

Expense reports must document that the expense in question met the requirements of this policy. For example, if the meeting is with a legislator, the City official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.

City officials and employees must submit their expense reports within 30 days of an expense being incurred, accompanied by receipts documenting each expense. Detailed restaurant receipts for official business meetings, in addition to any credit card receipts, are also part of the necessary documentation. No documentation is required for daily per diem allowances.

Inability to provide such documentation in a timely fashion may result in the expense being borne by the City official or employee.

Audits of expense reports

~~All expenses are subject to verification that they comply with this policy.~~ *Note: This verbiage moved to "Enforcement and cost control"*

Authorization for travel and other related expenses

Attendance of City officials at conferences, seminars and meetings shall be subject to prior approval by the City Council. Approval by the City Council shall occur with the adoption of the annual budget. For out-of-state travel, the prior approval of a majority of the City Council obtained during a public meeting is required.

The City Manager or his/her designee shall authorize and approve travel and reimbursement expenses for City employees. Out-of-state travel must be approved by the City Manager. City employees may not authorize nor approve reimbursement for their own travel and business expenses. The City Manager may adopt additional procedures to implement this policy as it relates to City employees.

Reports to City Council Special rules for City Council members

City Council members will comply with the communications policy in Chapter 4 of the Procedures Manual when traveling for City business.

City council members may not sign any official document on behalf of the City unless pre-approved by City Council.

At the first City Council meeting following any meeting/conference for which a City official seeks City reimbursement, the official shall briefly report on the meeting/conference. No reimbursement shall be provided until the report is given to the City Council.

If multiple City officials attended, a joint report may be made. The report may be made orally or in writing.

Compliance with laws

City officials and City employees should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

Violation of this policy

Under state law, use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

- Loss of reimbursement privileges,
- A demand for restitution to the City,
- The agency's reporting the expenses as income to the City official or City employee to state and federal tax authorities,
- Civil penalties of up to \$1,000 per day and three times the value of the resources used, and
- Prosecution for misuse of public resources.

Legislative history

Action	Date	Notes
Adoption by City Council motion	March 12, 1991	Established City Council Procedure #CC-91-002
Adoption of Resolution No. 6460	September 11, 2018	Replaced City Council Procedure #CC-91-002 with #CC-18-001
Adoption of Resolution No. XXX	February 12, 2019	Replaced City Council Procedure #CC-18-001 with #CC-19-002

RESOLUTION NO. 6485

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
RESCINDING CITY COUNCIL PROCEDURE NO. CC-18-001 AND
ADOPTING CITY COUNCIL PROCEDURE NO. CC-19-002 TITLED CITY
OF MENLO PARK TRAVEL, MEAL AND LODGING POLICY**

WHEREAS, this policy provides guidance to City officials and employees on the use and expenditure of City resources, as well as the standards against which those expenditures will be measured.

WHEREAS, this policy satisfies the requirements of Government Code sections 53232.2 and 53233.3.

WHEREAS, this policy supplements the definition of actual and necessary expenses for purposes of state laws relating to permissible uses of public resources.

NOW, THEREFORE, IT IS RESOLVED that the City Council of the City of Menlo Park hereby rescinds Procedure No. CC-18-001 adopted September 11, 2018 and in its place adopts the City Council Procedure No. CC-19-002 titled City of Menlo Park Travel, Meal and Lodging Policy recommended by staff and presented to the City Council on the twelfth day of February, 2019, incorporated herein as Exhibit A.

I, Judi A. Herren, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing City Council resolution was duly and regularly passed and adopted at a meeting by said City Council on the twelfth day of February, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twelfth day of February, 2019.

Judi A. Herren, City Clerk



STAFF REPORT

City Council
Meeting Date: 3/12/2019
Staff Report Number: 19-030-CC

Regular Business: **Approval of City Council appointments to various City Council subcommittees and liaisons to outside agencies**

Recommendation

Staff recommends that the City Council approve the City Council appointments to various City Council subcommittees and liaisons to outside agencies.

Background

At the January 12, 2019 City Council meeting, City Council completed its annual appointments to regional JPA Boards and outside agency advisory bodies that have requested Menlo Park's participation. In addition to the external appointments, the City Council also appointed City Councilmembers to serve as voting members on certain City Council advisory committees, to serve on standing and ad hoc City Council subcommittees, and to serve as liaisons to other City Council advisory commissions.

As provided in Attachment A, certain City Council appointments to subcommittees and liaisons to outside agencies require update.

Impact on City Resources

There is no impact on City resources associated with this action outside of any associated membership dues, meeting related expenses, and/or staff assistance required and budgeted.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it is a minor change that will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. January 2019 City Council appointments

Report prepared by:
Judi A. Herren, City Clerk

City Council Subcommittees	2019 Member 1	2019 Member 2
New: City Council Ad Hoc Subcommittee on Belle Haven Neighborhood Library Advisory Committee	Taylor	Nash
New: City Council Ad Hoc Subcommittee on Education Equity	Mueller	Taylor
New: City Council Ad Hoc Subcommittee on Facebook/Willow Village		
New: City Council Ad Hoc Subcommittee on Housing		
New: City Council Ad Hoc Subcommittee on Minimum Wage		
New: City Council Ad Hoc Subcommittee on Willow/101		
City Council Ad Hoc Subcommittee on Stanford General Use Permit	Taylor	Nash
City Council Standing Subcommittee of Community Grant Funding	Carlton	Taylor
City Council Standing Subcommittee on Rail	Mueller	Combs
Sunset: City Council Ad Hoc Subcommittee on City Manager Recruitment	Mueller	Nash

Outside Agency Liaisons	2019 Member 1	2019 Member 2
New: Menlo Park Fire Protection District		

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STAFF REPORT

City Council

Meeting Date: 3/12/2019

Staff Report Number: 19-039-CC

Informational Item: City Council and commission/committee annual attendance report for March 2018 – February 2019

Recommendation

This is an informational item and does not require City Council action.

Policy Issues

City Council policy requires an annual attendance report (Attachment A) for each commission/committee and the City Council.

Background

For advisory bodies to function effectively and accomplish their respective goals and work plans, it is important that all members be active participants by attending the regularly scheduled monthly or quarterly commission meetings.

In accordance with City Council policy CC 19-0004 (Attachment B), a report regarding advisory body attendance annually in March reflecting data for the previous 12 months. This data is collected from the meeting minutes of each commission/committee and the City Council.

Analysis

Before the posting of a meeting agenda, staff liaisons communicate with their respective commission members, to ensure a quorum will be met in order to properly conduct the commission meeting. In most cases, commissioners advise the staff liaison in advance of their absence and typically, absences are due to pre-planned vacations or scheduled work travel and are considered reasonable. Overall, commission liaisons have reported the absences do not have a significant impact on discussion or deliberation of agenda items.

Because the City places a high value on the work of the commissions and strives to provide sufficient support to all commissioners in order to facilitate their work, removal from a commission appointment is rarely recommended and instead staff liaisons prefer to reach out to the commissioners falling in the 67 percent or below category to determine the reasons for the absences and assess the ability to continue in their commission service.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it proposes an organizational structure change that will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. The attendance report and policy update were also shared with each commission.

Attachments

- A. Attendance data for each advisory body
- B. CC-19-004 Commissions/Committees policies and procedures, roles and responsibilities

Report prepared by:
Judi A. Herren, City Clerk

BELLE HAVEN NEIGHBORHOOD LIBRARY ADVISORY COMMITTEE						Mar 2018	Apr 2018	May 2018	June 2018	July 2018	Aug 2018	Sept 2018	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019
Second Wednesday of the month	Appointed	Re-appointed	Total no. of meetings	Total meetings attended	Percentage attended												
Cebraire, Jacqueline	1/16/2018		5	5	100%		1	1		1	1	1					
Cline, Rich	1/16/2018		5	0	0%												
Gonzalez, Veronica	1/16/2018		4	3	75%		1	1			1	*					
Halaby, Betsy	1/16/2018		5	4	80%		1	1		1		1					
Keith, Kirsten	1/16/2018		5	4	80%		1	1		1	1						
Lai, Tiffanie	1/16/2018		5	3	60%			1			1	1					
Lubana, Pushpinder	3/13/2018		5	4	80%			1		1	1	1					

* not on committee

- no March meeting
- 4/18/18 Cline absent
- 5/15/18 Cline absent
- 5/15/18 Lubana arrived at 7:38 p.m.
- 5/15/18 Keith arrived at 7:49 p.m.
- no June meeting
- 7/16/18 Cline absent
- 8/13/18 Cline absent
- 9/10/18 Cline absent
- 9/10/18 Gonzalez absent
- 9/10/18 Keith absent
- 9/24/18 Gonzalez resigned
- no October meeting
- no November meeting
- no December meeting
- no January meeting
- no February meeting

CITY COUNCIL						Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb
TUESDAYS (VARIES)		Total no.	Total meetings	Percentage	2018	2018	2018	2018	2018	2018	2018	2018	2018	2018	2019	2019	
Appointed	Re-appointed	of meetings	attended	attended													
Carlton, Catherine		27	24	89%	3	3	2	2		2	1	2	1	3	2	3	
Cline, Rich		20	18	90%	3	3	2	1		3		3	1	2	*	*	
Combs, Drew	12/11/2018	9	9	100%	*	*	*	*		*	*	*	*	3	3	3	
Keith, Kirsten		20	18	90%	2	3	2	2		3	1	2	1	2	*	*	
Mueller, Ray		27	25	93%	3	3	2	2		3		3	1	3	2	3	
Nash, Betsy	12/11/2018	9	9	100%	*	*	*	*		*	*	*	*	3	3	3	
Ohtaki, Peter		20	20	100%	3	3	2	2		3	1	3	1	2	*	*	
Taylor, Cecilia	12/11/2018	9	9	100%	*	*	*	*		*	*	*	*	3	3	3	

* not on City Council

3/13/18 Carlton call in
3/13/18 Carlton excused at 10:25 p.m.
3/13/18 Keith call in 11:25 p.m.
3/13/18 Keith excused at 11:25 p.m.
3/27/18 Carlton arrived at 8:59 p.m.
3/27/18 Keith absent
4/24/18 Keith call in
6/19/18 Cline absent
07/17/18 meeting cancelled
8/6/18 Carlton call in at 8:55 p.m.
8/28/18 Carlson absent
9/11/18 Cline absent
9/11/18 Mueller absent
10/29/18 Carlton absent
10/29/18 Keith absent
11/13/18 Carlton call in at 8:59 p.m.
12/4/18 Ohtaki called in
12/11/18 Carlton arrived at 7:32 p.m.
1/22/19 Carlton absent
1/22/19 Mueller absent
1/29/19 Carlton call in
2/12/19 Carlton call in

COMPLETE STREETS						Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb
Second Wednesday of the month	Appointed	Re-appointed	Total no. of meetings	Total meetings attended	Percentage attended	2018	2018	2018	2018	2018	2018	2018	2018	2018	2019	2019	
Berhoozi, Katie	5/3/2016		12	12	100%	1	1	1	1	1	1	1	1	1	1	1	
Goldin, Evan	1/29/2019		1	1	100%	*	*	*	*	*	*	*	*	*	*	*	
Kirsch, William	5/7/2013	5/16/2017	12	11	92%	1	1	1	1	1	1	1	1	1	1	1	
Lee, Lydia	5/6/2014	4/24/2018	12	10	83.33%	1	1	1	1	1	1	1	1	1	1	1	
Levin, Adina	4/16/2013	5/6/2014 & 4/24/2018	12	10	83%	1	1	1	1	1	1	1	1	1	1	1	
Mazzara, Philip	5/7/2013	5/6/2014 & 4/24/2018	12	9	75.00%	1	1	1	1	1	1	1	1	1	1	1	
Meyer, Michael	8/20/2013	5/16/2017	12	7	58%	1	1	1	1	1	1	1	1	1	1	1	
Nash, Betsy	10/13/2015	4/24/2018	10	9	90.00%	1	1	1	1	1	1	1	1	1	*	*	
Walser, Bianca	11/15/2011	5/5/2015	12	10	83.33%	1	1	1	1	1	1	1	1	1	1	1	
Weiner, Jonathan	6/3/2014	5/3/2016	12	12	100%	1	1	1	1	1	1	1	1	1	1	1	

* not on commission

- 4/11/18 meeting cancelled
- 6/13/18 Levin arrived at 7:08 p.m.
- 7/11/18 Meyer absent
- 7/11/18 Weiner absent
- 8/8/18 Lee absent
- 8/8/18 Meyer absent
- 8/8/18 Nash absent
- 9/12/18 Levin absent
- 9/12/18 Mazzara absent
- 10/10/18 Walser absent
- 10/10/18 Meyer excused 9:33 p.m.
- 11/14/18 Kirsch absent
- 11/14/18 Levin absent
- 11/14/18 Meyer absent
- 12/12/18 Lee absent
- 12/12/18 Mazzara absent
- 1/9/19 Mayer absent
- 1/9/19 Mazzara excused 9:01 p.m.
- 2/13/19 Levin arrived at 7:07 p.m.
- 2/13/19 Berhoozi arrived at 8:22 p.m.

ENVIRONMENTAL QUALITY						Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb
Third Wednesday of the month	Appointed	Re-appointed	Total no. of meetings	Total meetings attended	Percentage attended	2018	2018	2018	2018	2018	2018	2018	2018	2018	2018	2019	2019
Dickerson, Joyce	6/7/2016		4	2	50%	1			1			*	*		*		*
Kabat, Tom	4/24/2018		6	6	100%	*	*	1	1			1	1		1		1
London, Janelle	5/3/2016		8	7	88%	1	1	1				1	1		1		1
Marshall, Scott	1/24/2012	5/5/2015	8	8	100%	1	1	1	1			1	1		1		1
Martin, Deborah	6/22/2013	5/16/2017	8	7	88%		1	1	1			1	1		1		1
Payne, James	4/24/2018		6	6	100%	*	*	1	1			1	1		1		1
Price, Ryann	4/24/2018		6	6	100%	*	*	1	1			1	1		1		1
Turley, Rebecca	1/29/2019		1	1	100%	*	*	*	*			*	*		*		1

* not on commission

6/30/18 London absent

6/30/18 Price excused at 8:04 p.m.

7/18/18 meeting cancelled

7/19/18 Joyce Dickerson resigned

08/15/18 meeting cancelled

9/19/18 meeting cancelled

11/21/18 meeting cancelled

1/16/19 meeting cancelled

FINANCE AND AUDIT						Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	
Quarterly or as needed	Appointed	Re-appointed	Total no. of meetings	Total meetings attended	Percentage attended	2018	2018	2018	2018	2018	2018	2018	2018	2018	2019	2019		
						Combs, Drew	12/18/2018		1	1	100%	*	*	*		*		*
Mueller, Ray	12/12/2017		6	1	17%													1
Ohtaki, Peter	12/12/2017		5	4	80%	1	1	1				1						*
Royse, Roger	4/24/2018		4	2	50%	*	*			1		1						
Shepherd, Ron	5/16/2017		6	6	100%	1	1	1		1		1						1
Tronson, Soody	10/13/2015	5/3/2016 & 4/30/2018	6	5	83%	1		1		1		1						1

* not on committee

- 3/5/18 Mueller absent
- 4/20/18 Mueller absent
- 5/30/18 Mueller absent
- 5/30/18 Royse absent
- 5/30/18 Tronson absent
- 7/27/18 meeting cancelled
- 7/31/18 Mueller absent
- 7/31/18 Ohtaki absent
- 9/10/18 Mueller absent
- 9/10/18 Ohtaki excused at 10:30 a.m.
- 10/15/18 meeting cancelled
- 12/3/18 meeting cancelled
- 2/6/19 Mueller excused 7:50 p.m.

HERITAGE TREE TASK FORCE						Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb
As needed	Appointed	Re-appointed	Total no. of meetings	Total meetings attended	Percentage attended	2018	2018	2018	2018	2018	2018	2018	2018	2018	2018	2019	2019
Carlton, Catherine	8/6/2018		5	0	0%												*
Cole, Sally	8/6/2018		6	5	83%						1	1	1		1		1
Combs, Drew	8/6/2018		6	4	67%						1	1		1			1
Judas, Jen	8/6/2018		6	5	83%						1	1	1	1			1
LeMieux, Kimberly	8/6/2018		6	5	83%							1	1	1	1		1
LeMieux, Tom	8/6/2018		6	6	100%						1	1	1	1	1		1
Marshall, Scott	8/6/2018		6	6	100%						1	1	1	1	1		1
Martineau, Catherine	8/6/2018		6	5	83%						1	1		1	1		1
Nash, Horace	8/6/2018		6	6	100%						1	1	1	1	1		1
Ordonez, Carolyn	8/6/2018		6	6	100%						1	1	1	1	1		1
Sammut Johnson, Sally	8/6/2018		6	5	83%						1	1	1	1			1
Shepherd, Ronald	8/6/2018		4	2	50%						1		1		*		*

* not on task force

Heritage Tree Task Force formed June 2018

8/23/2018 Carlton absent

8/23/2018 K. LeMieux absent

9/13/18 Carlton absent

9/13/18 K. LeMieux absent

9/13/18 Judas excused at 9:30 p.m.

9/13/18 Ordonez excused at 9:30 p.m.

10/25/18 Carlton absent

10/25/18 Combs absent

10/25/18 Martineau absent

11/14/18 Carlton absent

11/14/18 Cole absent

11/14/18 Shepherd absent

11/14/18 K. LeMieux arrived at 7:11 p.m.

12/5/18 Shepherd resigned

2/13/19 Cole arrived at 7:45 p.m.

HOUSING			Total no. of meetings	Total meetings attended	Percentage attended	Mar 2018	Apr 2018	May 2018	June 2018	July 2018	Aug 2018	Sept 2018	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019	
Second	Wednesday of the month	Appointed																Re-appointed
Dodick, Julianna	2/14/2012	5/5/2015	11	7	63.64%	1	1		1	1		1		1	1			
Grove, Karen	7/18/2017		11	10	90.91%	1		1	1	1	1	1	1	1	1	1		1
Horst, Rachel	4/24/2018		9	8	88.89%	*	*	1	1	1	1		1	1	1	1		1
McGraw-Scherer, Meg	5/6/2016		11	10	90.91%	1	1	1	1		1	1	1	1	1	1		1
McPherson, Wendy	4/24/2018		9	8	88.89%	*	*	1	1	1	1		1	1	1	1		1
Merriman, Nevada	5/16/2017		11	9	81.82%	1	1	1		1		1	1	1	1	1		1
Tate, Michele	12/10/2013	5/16/2017	11	8	73%	1	1	1	1	1	1			1				1

* not on commission

- 5/9/18 Dodick absent
- 6/13/18 Merriman absent
- 7/11/18 Tate excused at 8:28 p.m.
- 7/11/18 McGraw-Sherer absent
- 8/8/2018 Dodick absent
- 8/8/2018 Merriman absent
- 10/10/18 Dodick absent
- 10/10/18 Tate absent
- 1/9/19 meeting cancelled
- 12/12/18 Tate absent
- 2/6/19 Dodick absent

LIBRARY			Total no. of meetings	Total meetings attended	Percentage attended	Mar 2018	Apr 2018	May 2018	June 2018	July 2018	Aug 2018	Sept 2018	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019
Third Monday of the Month	Appointed	Re-appointed															
Bugna, Ester	5/16/2017		12	11	92%	1	1	1	1	1	1	1	1	1	1		1
Chambers, Ashley	4/24/2018		10	7	70%	*	*	1	1	1		1	1		1		1
Cohen, Alan	4/24/2018		10	7	70%	*	*		1	1	1	1		1	1	1	
Hadrovic, Katie	4/24/2018		10	9	90%	*	*	1	1	1		1	1	1	1	1	1
Leep, Kristen	5/12/2015		12	11	91.67%	1	1	1	1		1	1	1	1	1	1	1
Lemons, Kristina	5/12/2015		12	8	66.67%	1	1	1		1			1		1	1	1
Pandey, Noopur	4/24/2018		10	7	70%	*	*	1	1	1	1		1		1		1

* not on commission

3/19/18 Leep arrived 6:38 p.m.

7/9/18 Lemons arrived 6:42 p.m.

7/16/18 meeting cancelled

8/20/18 Chambers absent

8/20/18 Lemons absent

8/20/18 Hadrovic absent

10/15/18 Cohen absent

11/19/18 Chambers absent

11/19/18 Lemons absent

11/19/18 Pandey absent

12/17/18 Bugna excused at 7:50 p.m.

1/28/19 Bugna absent

1/28/19 Chambers absent

1/28/19 Pandey absent

2/25/19 Cohen absent

2/25/19 Hadrovic arrived 6:48 p.m.

PARKS AND RECREATION			Total no. of meetings	Total meetings attended	Percentage attended	Mar 2018	Apr 2018	May 2018	June 2018	July 2018	Aug 2018	Sept 2018	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019
Fourth Wednesday of the month	Appointed	Re-appointed															
Baskin, Jennifer	5/3/2016		8	6	75%	1			1			1		1		1	1
Harris, Christopher	1/28/2014	5/16/2017	8	6	75%	1		1	1			1		1		1	
Johnson, Jennifer	5/3/2016		8	8	100%	1		1	1	1		1		1		1	1
Lane, Laura	5/5/2015		8	5	63%			1		1		1		1		1	
Palefsky, Marianne	4/16/2013	5/5/2015	8	8	100%	1		1	1	1		1		1		1	1
Payne, Dana	4/24/2018		7	7	100%	*		1	1	1		1		1		1	1
Staley Shenk, Sarah	5/16/2017		8	5	63%	1		1	1					1			1

* not on commission

- 3/28/18 Lane absent
- 4/25/18 meeting cancelled
- 5/23/18 Baskin absent
- 5/23/18 Lane arrived at 6:38 p.m.
- 6/27/18 Lane absent
- 6/27/18 Shenk arrived at 6:37 p.m.
- 7/25/18 Baskin absent
- 7/25/18 Harris absent
- 7/25/18 Staley Shenk absent
- no August meeting
- 10/24/18 meeting cancelled
- 12/19/18 meeting cancelled
- 2/27/19 Harris absent
- 2/27/19 Lane absent

PLANNING			Total no. of meetings	Total meetings attended	Percentage attended	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb
Twice a month on Mondays (varies)						2018	2018	2018	2018	2018	2018	2018	2018	2018	2018	2018	2018
Appointed	Re-appointed																
Barnes, Andrew	5/3/2016		22	21	95%	2	2	2	2	2	1	1	2	1	2	2	2
Combs, Drew	4/29/2014	4/24/2018	18	17	94%	2	2	2	2	1	2	1	2	1	2	*	*
Doran, Michael	1/29/2019		2	2	100%	*	*	*	*	*	*	*	*	*	*	*	2
Goodhue, Susan	5/12/2015		22	19	86%	2	1	2	1	2	2		2	1	2	2	2
Kennedy, Camille	4/24/2018		18	15	83%	*	*	2	2	2	1	1	1	1	2	2	1
Onken, John	10/9/2012	5/5/2015	22	20	91%	2	2	2	2	1	2	1	1	1	2	2	2
Riggs, Henry	5/3/2016		22	20	91%	2	2	2	2	2	2	1	1	1	2	2	1
Strehl, Katherine	4/30/2013	5/16/2017	22	18	82%	2	2	2		2	2	1	2	1	2	1	1

* not on commission

- 4/23/18 Goodhue absent
- 6/4/18 Goodhue absent
- 6/4/18 Strehl absent
- 6/18/18 Strehl absent
- 7/30/18 Combs absent
- 7/30/18 Onken absent
- 8/13/18 Barnes absent
- 8/13/18 Kennedy absent
- 9/17/18 Goodhue absent
- 9/17/18 Riggs arrived at 7:04 p.m.
- 10/8/18 Onken absent
- 10/8/18 Riggs absent
- 10/22/18 Kennedy absent
- 11/5/18 Combs arrived at 7:08 p.m.
- 12/11/18 Combs resigned
- 1/14/19 Strehl absent
- 2/11/19 Kennedy absent
- 2/11/19 Riggs absent
- 2/11/19 Strehl absent

SISTER CITY						Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb
Quarterly or as needed			Total no.	Total	Percentage	2018	2018	2018	2018	2018	2018	2018	2018	2018	2019	2019	
	Appointed	Re-appointed	of meetings	meetings	attended												
Carlton, Catherine	12/12/2017	1/29/2019	5	3	60%			1			1						1
Clendenin, Jym	4/30/2016	4/30/2016	5	5	100%	1		1			1			1			1
Combs, Drew	1/29/2019		1	1	100%	*		*			*			*			1
Helmers, Joseph	10/30/2017		3	2	67%	1					1			*			*
Holch, Kristy	4/30/2016		5	4	80%	1		1						1			1
Ohtaki, Peter	12/12/2017	12/1/2018	4	4	100%	1		1			1			1			*
Schumacher, Carol	4/30/2016	4/30/2016	5	3	60%	1		1			1						
Soffer, Stuart	1/29/2019		1	1	100%	*		*			*			*			1
Yang, George	10/30/2017		5	2	40%						1			1			

* not on committee

- 3/28/18 Carlton absent
- 3/28/18 Yang absent
- no April meeting
- 5/16/18 Helmerts absent
- 5/16/18 Yang absent
- 5/16/18 Schumacher 27 min late
- 11/20/18 Joseph Helmerts resigned
- 11/14/18 Carlton absent
- 11/14/18 Schumacher absent
- no December meeting
- no January meeting
- 2/27/19 Schumacher absent
- 2/27/19 Yang absent

TRANSPORTATION MASTER PLAN OVERSIGHT AND OUTREACH COMMITTEE					Mar 2018	Apr 2018	May 2018	June 2018	July 2018	Aug 2018	Sept 2018	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019
As needed	Appointed	Total no. of meetings	Total meetings attended	Percentage attended												
Bailey, Diane	8/29/2017	6	6	100%	1		1			1	2			1		
Barnes, Andrew	8/29/2017	6	6	100%	1		1			1	2			1		
Carlton, Catherine	8/29/2017	6	3	50%	1						1			1		
Cebrian, Jacqueline	8/29/2017	6	5	83%	1		1				2			1		
DeCardy, Chris	8/29/2017	6	5	83%	1		1			1	1			1		
Keith, Kirsten	8/29/2017	6	4	67%	1		1			1	1					
Levin, Adina	8/29/2017	6	5	83%	1		1			1	2					
Riggs, Henry	8/29/2017	6	6	100%	1		1			1	2			1		
Staley Shenk, Sarah	8/29/2017	6	3	50%	1					1	1					
Strehl, Katherine	8/29/2017	6	2	33%	1					1						
Wolosin, Jen	8/29/2017	6	6	100%	1		1			1	2			1		

5/30/18 Carlton absent
 5/30/18 Staley absent
 5/30/18 Strehl absent
 8/30/18 Carlton absent
 8/30/18 Cebrian absent
 9/5/18 DeCardy late
 9/5/18 Carlton absent
 9/5/18 Strehl absent
 9/25/18 Keith absent
 9/25/18 Staley Shenk absent
 9/25/18 Strehl absent

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Procedure #CC-19-0004
 Effective 3/5/2019
 Resolution No. 6477

ATTACHMENT B



Purpose
To define policies and procedures and roles and responsibilities for Menlo Park appointed commissions and committees.
Authority
Upon its original adoption, this policy replaced the document known as "Organization of Advisory Commissions of the City of Menlo Park."
Background
<p>The City of Menlo Park currently has eight active Commissions and Committees. The active advisory bodies are: Complete Streets Commission, Environmental Quality Commission, Finance and Audit Committee, Housing Commission, Library Commission, Parks and Recreation Commission, Planning Commission, and the Sister City Committee. Those not specified in the City Code are established by City Council ordinance or resolution. Most of these advisory bodies are established in accordance with Resolution 2801 and its amendments. Within specific areas of responsibility, each advisory body has a primary role of advising the City Council on policy matters or reviewing specific issues and carrying out assignments as directed by the City Council or prescribed by law.</p> <p>Seven of the eight commissions and committees listed above are advisory in nature. The Planning Commission is both advisory and regulatory and organized according to the City Code (Ch. 2.12) and State statute (Government Code 65100 et seq., 65300-65401).</p> <p>The City has an adopted Anti-Harassment and Non-Discrimination Policy (CC-95-001), and a Travel and Expense Policy (CC-91-002), which are also applicable to all advisory bodies.</p>
Policies and Procedures
<p><u>Relationship to City Council, staff and media</u></p> <ul style="list-style-type: none"> • Upon referral by the City Council, the commission/committee shall study referred matters and return their recommendations and advise to the City Council. With each such referral, the City Council may authorize the City staff to provide certain designated services to aid in the study. • Upon its own initiative, the commission/committee shall identify and raise issues to the City Council's attention and from time to time explore pertinent matters and make recommendations to the City Council. • At a request of a member of the public, the commission/committee may consider appeals from City actions or inactions in pertinent areas and, if deemed appropriate, report and make recommendations to the City Council. • Each commission/committee is required to develop an annual work plan which will be the foundation for the work performed by the advisory body in support of City Council annual work plan. The plan, once finalized by a majority of the commission/committee, will be formally presented to the City Council for direction and approval no later than September 30 of each year and then reported out on by a representative of the advisory body at a regularly scheduled City Council meeting at least annually, but recommended twice a year. The proposed work plan must align with the City Council's adopted work plan. When modified, the work plan must be taken to the City Council for approval. The Planning Commission is exempt from this requirement as its functions are governed by the Menlo Park municipal code (Chapter 2.12) and State law (Government Code 65100 et seq, 65300-65401). • Commissions and committees shall not become involved in the administrative or operational matters of City departments. Members may not direct staff to initiate major programs, conduct large studies or establish department policy. City staff assigned to furnish staff services shall be available to provide general staff assistance, such as preparation of agenda/notice materials and minutes, general review of

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-01-0004

Effective 1/29/2019

2

department programs and activities, and to perform limited studies, program reviews, and other services of a general staff nature. Commissions/Committees may not establish department work programs or determine department program priorities. The responsibility for setting policy and allocating scarce City resources rests with the City's duly elected representatives, the City Council.

- Additional or other staff support may be provided upon a formal request to the City Council.
- The staff liaison shall act as the commission/committee's lead representative to the media concerning matters before the commission/committee. Commission/Committee members should refer all media inquiries to their respective liaisons for response. Personal opinions and comments may be expressed so long as the commission/committee member clarifies that his or her statements do not represent the position of the City Council.
- Commission/Committee members will have mandatory training every two years regarding the Brown Act and parliamentary procedures, anti-harassment training, ethics training, and other training required by the City Council or State Law. The commission/committee members may have the opportunity for additional training, such as training for chair and vice chair. Failure to comply with the mandatory training will be reported to the City Council and may result in replacement of the member by the City Council.
- Requests from commission/committee member(s) determined by the staff liaison to take one hour or more of staff time to complete, must be directed by the City Council.

Role of City Council commission/committee liaison

City Councilmembers are assigned to serve in a liaison capacity with one or more city commission/committee. The purpose of the liaison assignment is to facilitate communication between the City Council and the advisory body. The liaison also helps to increase the City Council's familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, City Councilmembers may elect to attend commission/committee meetings periodically to observe the activities of the advisory body or simply maintain communication with the commission/committee chair on a regular basis.

City Councilmembers should be sensitive to the fact that they are not participating members of the commission/committee, but are there rather to create a linkage between the City Council and commission/committee. In interacting with commissions/committee, City Councilmembers are to reflect the views of the City Council as a body. Being a commission/committee liaison bestows no special right with respect to commission/committee business.

Typically, assignments to commission/committee liaison positions are made at the beginning of a City Council term in December. The Mayor will ask City Councilmembers which liaison assignments they desire and will submit recommendations to the full City Council regarding the various committees, boards, and commissions which City Councilmembers will represent as a liaison. In the rare instance where more than one City Councilmember wishes to be the appointed liaison to a particular commission, a vote of the City Council will be taken to confirm appointments.

City Staff Liaison

The City has designated staff to act as a liaison between the commission/committee and the City Council. The City shall provide staff services to the commission/committee which will include:

- Developing a rapport with the Chair and commission/committee members
- Providing a schedule of meetings to the City Clerk's Office and commission/committee members, arranging meeting locations, maintaining the minutes and other public records of the meeting, and preparing and distributing appropriate information related to the meeting agenda.
- Advising the commission/committee on directions and priorities of the City Council.
- Informing the commission/committee of events, activities, policies, programs, etc. occurring within the scope of the commission/committee's function.
- Ensuring the City Clerk is informed of all vacancies, expired terms, changes in offices, or any other changes to the commission/committee.

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-01-0004
Effective 1/29/2019

3

- Providing information to the appropriate appointed official including reports, actions, and recommendations of the committee/commission and notifying them of noncompliance by the commission/committee or chair with City policies.
- Ensuring that agenda items approved by the commission/committee are brought forth in a timely manner taking into consideration staff capacity, City Council priorities, the commission/committee work plan, and other practical matters such as the expense to conduct research or prepare studies, provided appropriate public notification, and otherwise properly prepare the item for commission/committee consideration.
- Take action minutes; upon agreement of the commission, this task may be performed by one of the members (staff is still responsible for the accuracy and formatting of the minutes)
- Maintain a minute book with signed minutes

Recommendations, requests and reports

As needed, near the beginning of City Council meetings, there will be an item called "Commission/Committee Reports." At this time, commissions/committees may present recommendations or status reports and may request direction and support from the City Council. Such requests shall be communicated to the staff liaison in advance, including any written materials, so that they may be listed on the agenda and distributed with the agenda packet. The materials being provided to the City Council must be approved by a majority of the commission/committee at a commission/committee meeting before submittal to the City Council. The City Council will receive such reports and recommendations and, after suitable study and discussion, respond or give direction.

City Council referrals

The City Clerk shall transmit to the designated staff liaison all referrals and requests from the City Council for advice and recommendations. The commissions/committees shall expeditiously consider and act on all referrals and requests made by the City Council and shall submit reports and recommendations to the City Council on these assignments.

Public appearance of commission/committee members

When a commission/committee member appears in a non-official, non-representative capacity before the public, for example, at a City Council meeting, the member shall indicate that he or she is speaking only as an individual. This also applies when interacting with the media and on social media. If the commission/committee member appears as the representative of an applicant or a member of the public, the Political Reform Act may govern this appearance. In addition, in certain circumstances, due process considerations might apply to make a commission/committee member's appearance inappropriate. Conversely, when a member who is present at a City Council meeting is asked to address the City Council on a matter, the member should represent the viewpoint of the particular commission/committee as a whole (not a personal opinion).

Disbanding of advisory body

Upon recommendation by the Chair or appropriate staff, any standing or special advisory body, established by the City Council and whose members were appointed by the City Council, may be declared disbanded due to lack of business, by majority vote of the City Council.

Meetings and officers

1. *Agendas/notices/minutes*

- All meetings shall be open and public and shall conduct business through published agendas, public notices and minutes and follow all of the Brown Act provisions governing public meetings. Special, canceled and adjourned meetings may be called when needed, subject to the Brown Act provisions.
- Support staff for each commission/committee shall be responsible for properly noticing and posting all regular, special, canceled and adjourned meetings. Copies of all meeting agendas, notices and minutes shall be provided to the City Council, City Manager, City Attorney, City Clerk and other

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-01-0004
Effective 1/29/2019

4

appropriate staff, as requested.

- Original agendas and minutes shall be filed and maintained by support staff in accordance with the City's adopted records retention schedule.
- The official record of the commissions/committees will be preserved by preparation of action minutes.

2. *Conduct and parliamentary procedures*

- Unless otherwise specified by State law or City regulations, conduct of all meetings shall generally follow Robert's Rules of Order.
- A majority of commission/committee members shall constitute a quorum and a quorum must be seated before official action is taken.
- The chair of each commission/committee shall preside at all meetings and the vice chair shall assume the duties of the chair when the chair is absent.
- The role of the commission/committee chair (according to Roberts Rules of Order): To open the session at the time at which the assembly is to meet, by taking the chair and calling the members to order; to announce the business before the assembly in the order in which it is to be acted upon; to recognize members entitled to the floor; to state and put to vote all questions which are regularly moved, or necessarily arise in the course of the proceedings, and to announce the result of the vote; to protect the assembly from annoyance from evidently frivolous or dilatory motions by refusing to recognize them; to assist in the expediting of business in every compatible with the rights of the members, as by allowing brief remarks when undebatable motions are pending, if s/he thinks it advisable; to restrain the members when engaged in debate, within the rules of order, to enforce on all occasions the observance of order and decorum among the members, deciding all questions of order (subject to an appeal to the assembly by any two members) unless when in doubt he prefers to submit the question for the decision of the assembly; to inform the assembly when necessary, or when referred to for the purpose, on a point of order to practice pertinent to pending business; to authenticate by his/her signature, when necessary, all the acts, orders, and proceedings of the assembly declaring it will and in all things obeying its commands.

3. *Lack of a quorum*

- When a lack of a quorum exists at the start time of a meeting, those present will wait 15 minutes for additional members to arrive. If after 15 minutes a quorum is still not present, the meeting will be adjourned by the staff liaison due to lack of a quorum. Once the meeting is adjourned it cannot be reconvened.
- The public is not allowed to address those commissioners present during the 15 minutes the commission/committee is waiting for additional members to arrive.
- Staff can make announcements to the members during this time but must follow up with an email to all members of the body conveying the same information.
- All other items shall not be discussed with the members present as it is best to make the report when there is a quorum present.

4. *Meeting locations and dates*

- Meetings shall be held in designated City facilities, as noticed.
- All commissions/committees with the exception of the Planning Commission, Finance and Audit Committee and Sister City Committee shall conduct regular meetings once a month. Special meetings may also be scheduled as required by the commission/committee. The Planning Commission shall hold regular meetings twice a month. The Finance and Audit Committee and Sister City Committee shall hold quarterly meetings.
- Monthly regular meetings shall have a fixed date and time established by the commission/committee. Changes to the established regular dates and times are subject to the approval of the City Council. An exception to this rule would include any changes necessitated to fill a temporary need in order for the commission/committee to conduct its meeting in a most efficient and effective way as long as proper and adequate notification is provided to the City Council and made available to the public.

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-01-0004
Effective 1/29/2019

5

The schedule of Commission/Committee meetings is as follows:

- Complete Streets Commission – Every second Wednesday at 7 p.m.
- Environmental Quality Commission – Every third Wednesday at 6:00 p.m.
- Finance and Audit Committee – Third Wednesday of every quarter at 5:30 p.m.,
- Housing Commission – Every first Wednesday at 6:30 p.m.
- Library Commission – Every third Monday at 6:30 p.m.
- Parks and Recreation Commission – Every fourth Wednesday at 6:30 p.m.
- Planning Commission – Twice a month at 7 p.m.
- Sister City Committee – Quarterly; Date and time to be determined

Each commission/committee may establish other operational policies subject to the approval of the City Council. Any changes to the established policies and procedures shall be subject to the approval of the City Council.

5. *Off-premises meeting participation*

While technology allows commission/committee members to participate in meetings from a location other than the meeting location (referred to as “off-premises”), off-premises participation is discouraged given the logistics required to ensure compliance with the Brown Act and experience with technological failures disrupting the meeting. In the event that a commission/committee member believes that his or her participation is essential to a meeting, the following shall apply:

- Any commission/committee member intending to participate from an off-premise location shall inform the staff liaison at least two weeks in advance of the meeting.
- The off-premise location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at the off-premise location.
- The off-premise location must be accessible to the public and be ADA compliant.
- The commission/committee member participating at a duly noticed off-premises location does not count toward the quorum necessary to convene a meeting of the commission/committee.
- For any one meeting, no more than one commission/committee member may participate from an off-premise location.
- All votes must be by roll call.

6. *Selection of chair and vice chair*

- The chair and vice chair shall be selected in May of each year by a majority of the members and shall serve for one year or until their successors are selected.
- Each commission/committee shall annually rotate its chair and vice chair.

G. Memberships

Appointments/Oaths

- The City Council is the appointing body for all commissions/committees. All members serve at the pleasure of the City Council for designated terms.
- All appointments and reappointments shall be made at a regularly scheduled City Council meeting, and require an affirmative vote of not less than a majority of the City Council present.
- Before taking office, all members must complete an Oath of Allegiance required by Article XX, §3, of the Constitution of the State of California. All oaths are administered by the City Clerk or his/her designee.
- Appointments made during the middle of the term are for the unexpired portion of that term.

Application and selection process

- The application process begins when a vacancy occurs due to term expiration, resignation, removal or death of a member.
- The application period will normally run for a period of four weeks from the date the vacancy occurs.

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-01-0004

Effective 1/29/2019

6

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.

- 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.
- 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 email are accepted; however, the form submitted must be signed.
- After the deadline of receipt of applications, the City Clerk shall schedule the matter at the next available regular City Council meeting. All applications received will be submitted and made a part of the City 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.
- Upon review of the applications received, the City 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 City Council.
- If an interview is requested, the date and time will be designated by the City Council. Interviews are open to the public.
- The selection/appointment process by the City 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 City Council present shall be appointed.
- Following a City 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.
- An orientation will be scheduled by the City Clerk following an appointment (but before taking office) and a copy of this policy document will be provided at that time.

Attendance

- 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 City 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.
- 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.
- When reviewing commissioners for reappointment, overall attendance at full commission meetings will be given significant consideration.

Compensation

- 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).

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-01-0004
Effective 1/29/2019

7

Conflict of interest and disclosure requirements

- A Conflict of Interest Code has been updated and adopted by the City Council and the Community Development Agency pursuant to Government Code §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 30 days of appointment and annually thereafter. A statement is also required within 30 days after leaving office.
- 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

- In most cases, members shall be residents of the City of Menlo Park and at least 18 years of age.
- Current members of any other City commission/committee are disqualified for membership, unless the regulations for that advisory body permit concurrent membership. Commission/Committee members are strongly advised to serve out the entirety of the term of their current appointment before seeking appointment on another commission/committee.
- 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.
- There shall be seven (7) members on each commission/committee with the exception of:
 - Finance and Audit Committee – five (5) members
 - Housing Commission – seven (7) members
 - Complete Streets Commission – nine (9) members
 - Library Commission – eleven (11) members

Reappointments, resignations, removals

- Incumbents seeking a reappointment are required to complete and file an application with the City Clerk by the application deadline. No person shall be reappointed to a commission/committee who has served on that same body for two consecutive terms; unless a period of one year has lapsed since the returning member last served on that commission/committee (the one year period is flexible subject to City Council's discretion).
- Resignations must be submitted in writing to the City Clerk, who will distribute copies to City Council and appropriate staff.
- The City Council may remove a member by a majority vote of the City Council without cause, notice or hearing.

Term of office

- Unless specified otherwise, the term of office for all commission/committee shall be four (4) years unless a resignation or a removal has taken place.
- If a person is appointed to fill an unexpired term and serves less than two years, that time will not be considered a full term. However, if a person is appointed to fill an unexpired term and serves two years or more, that time will be considered a full term.
- Terms are staggered to be overlapping four-year terms, so that all terms do not expire in any one year.
- If a member resigns before the end of his/her term, a replacement serves out the remainder of that term.

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-01-0004
Effective 1/29/2019

8

Vacancies

- Vacancies are created due to term expirations, resignations, removals or death.
- Vacancies are listed on the City Council agenda and posted by the City Clerk in the City Council Chambers bulletin board and on the city website.
- Whenever an unscheduled vacancy occurs in any commission/committee, a special vacancy notice shall be posted within 20 days after the vacancy occurs. Appointment shall not be made for at least 10 working days after posting of the notice (Government Code 54974).
- On or before December 31 of each year, an appointment list of all regular advisory commissions/committees of the City Council shall be prepared by the City Clerk and posted in the City Council Chambers bulletin board and on the City's website. This list is also available to the public. (Government Code 54972, Maddy Act).

Roles and Responsibilities

Complete Streets Commission

The Complete Streets Commission is charged primarily with advising the City Council on multi-modal transportation issues according to the goals and policies of the City's general plan. This includes strategies to encourage safe travel, improve accessibility, and maintaining a functional and efficient transportation network for all modes and persons traveling within and around the City. The Complete Streets Commission's responsibilities would include:

- Coordination of multi-modal (motor vehicle, bicycle, transit and pedestrian) transportation facilities
- Advising City Council on ways to encourage vehicle, multi-modal, pedestrian and bicycle safety and accessibility for the City supporting the goals of the General Plan
- Coordination on providing a citywide safe routes to school plan
- Coordination with regional transportation systems
- Establishing parking restrictions and requirements according to Municipal Code sections 11.24.026 through 11.24.028

Environmental Quality Commission

The Environmental Quality Commission is charged primarily with advising the City Council on matters involving environmental protection, improvement and sustainability. Specific focus areas include:

- Preserving heritage trees
- Using best practices to maintain city trees
- Preserving and expanding the urban canopy
- Making determinations on appeals of heritage tree removal permits
- Administering annual Environmental Quality Awards program
- Organizing annual Arbor Day Event; typically a tree planting event
- Advising on programs and policies related to protection of natural areas, recycling and waste reduction, environmentally sustainable practices, air and water pollution prevention, climate protection, and water and energy conservation.

Finance and Audit Committee

The Finance and Audit Committee is charged primarily to support delivery of timely, clear and comprehensive reporting of the City's fiscal status to the community at large. Specific focus areas include:

- Review the process for periodic financial reporting to the City Council and the public, as needed
- Review financial audit and annual financial report with the City's external auditors
- Review of the resolution of prior year audit findings
- Review of the auditor selection process and scope, as needed

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-01-0004

Effective 1/29/2019

9

Housing Commission

The Housing Commission is charged primarily with advising the City Council on housing matters including housing supply and housing related problems. Specific focus areas include:

- Community attitudes about housing (range, distribution, racial, social-economic problems)
- Programs for evaluating, maintaining, and upgrading the distribution and quality of housing stock in the City
- Planning, implementing and evaluating City programs under the Housing and Community Development Act of 1974
- Members serve with staff on a loan review committee for housing rehabilitation programs and a first time homebuyer loan program
- Review and recommend to the City Council regarding the Below Market Rate (BMR) program
- Initiate, review and recommend on housing policies and programs for the City
- Review and recommend on housing related impacts for environmental impact reports
- Review and recommend on State and regional housing issues
- Review and recommend on the Housing Element of the General Plan
- The five most senior members of the Housing Commission also serve as the members of the Relocation Appeals Board (City Resolution 4290, adopted June 25, 1991).

Library Commission

The Library Commission is charged primarily with advising the City Council on matters related to the maintenance and operation of the City's libraries and library systems. Specific focus areas include:

- The scope and degree of library activities
- Maintenance and protection of City libraries
- Evaluation and improvement of library service
- Acquisition of library materials
- Coordination with other library systems and long range planning
- Literacy and ESL programs

Parks and Recreation Commission

The Parks and Recreation Commission is charged primarily with advising the City Council on matters related to City programs and facilities dedicated to recreation. Specific focus areas include:

- Those programs and facilities established primarily for the participation of and/or use by residents of the City, including adequacy and maintenance of such facilities as parks and playgrounds, recreation buildings, facilities and equipment
- Adequacy, operation and staffing of recreation programs
- Modification of existing programs and facilities to meet developing community needs
- Long range planning and regional coordination concerning park and recreational facilities

Planning Commission

The Planning Commission is organized according to State Statute.

- The Planning Commission reviews development proposals on public and private lands for compliance with the General Plan and Zoning Ordinance.
- The Commission reviews all development proposals requiring a use permit, architectural control, variance, minor subdivision and environmental review associated with these projects. The Commission is the final decision-making body for these applications, unless appealed to the City Council.
- The Commission serves as a recommending body to the City Council for major subdivisions, rezoning's, conditional development permits, Zoning Ordinance amendments, General Plan amendments and the environmental reviews and Below Market Rate (BMR) Housing Agreements associated with those projects.
- The Commission works on special projects as assigned by the City Council.

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-01-0004
Effective 1/29/2019

Sister City Committee

The Sister City Committee is primary charged with promoting goodwill, respect and cooperation by facilitating cultural, educational and economic exchanges

- Develop a mission statement and program plan consisting of projects, exhibits, contacts and exchanges of all types to foster and promote the objectives of the mission statement
- Implement the approved program plan upon request of the City Council
- Keep the community informed concerning the Sister City program
- Advise the City Council on matters pertaining to any sister city affairs
- Perform other duties as may be assigned to the committee by the City Council

Special Advisory Bodies

The City Council has the authority to create standing committees, task forces or subcommittees for the City, and from time to time, the City Council may appoint members to these groups. The number of persons and the individual appointee serving on each group may be changed at any time by the City Council. There are no designated terms for members of these groups; members are appointed by and serve at the pleasure of the City Council.

Any requests of city commissions or committees to create such ad hoc advisory bodies shall be submitted in writing to the City Clerk for City Council consideration and approval.



STAFF REPORT

City Council

Meeting Date:

3/12/2019

Staff Report Number:

19-048-CC

Informational Item:

Update on proposed Cable JPA purchase of the Mid-Pen Media Center building at 900 San Antonio Road, Palo Alto, CA, using member agencies' PEG fees

Recommendation

This is an informational item and does not yet require City Council action.

Policy Issues

The current joint exercise of powers agreement grants sole authority to the City of Palo Alto to make related decisions, on behalf of Cable JPA member agencies. The proposed purchase of a large real estate asset on behalf of the JPA member agencies using member agencies' public, educational and governmental (PEG) fees has raised concerns and staff may return in the future to receive City Council direction on possible changes to the Cable JPA agreement.

Background

In 1983, the cities of Menlo Park, Palo Alto, East Palo Alto, the Town of Atherton and portions of unincorporated San Mateo and Santa Clara counties entered into a Joint Exercise of Powers Agreement (JPA) for purposes of obtaining cable television service for residents, businesses and institutions within these jurisdictions. The JPA gives the City of Palo Alto the sole authority to grant and administer the cable franchise process on behalf of its members. Palo Alto, on behalf of the JPA members, provides for such activities as franchise and PEG fee collection, PEG oversight, customer service and the like with respect to all state franchise holders.

The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) went into effect January 1, 2007. DIVCA established a state franchising system administered by the Public Utilities Commission for video service providers. DIVCA allows the City to exact a fee from video service providers with state-issued franchises for public, education and governmental channel purposes. In 2008, the City Council adopted an ordinance, amending Chapter 5.69 of the Menlo Park Municipal Code, to establish a PEG fee of \$0.88 per residential subscriber per month.

At the time, the City had the option of selecting its existing PEG fee of \$0.88 per subscriber or establishing a fee of 1 percent of the video service provider's gross video service revenues. The City adopted the \$0.88 PEG fee because it yielded 30 percent more than the 1 percent fee. DIVCA requires the City to reauthorize the \$0.88 PEG fee by ordinance at the expiration and renewal of each state video franchise. The term of a state franchise is 10 years.

AT&T's State Video Franchise was renewed March 30, 2017. In late 2017, the City Council adopted an ordinance reauthorizing a PEG support fee of \$0.88 per residential subscriber per month that applies to AT&T and Comcast under their respective renewed State video franchises.

Menlo Park and the JPA have designated the Media Center, as their Community Access Organization, to operate and manage PEG channels and to promote PEG access. The Media Center (formerly the Mid-Peninsula Access Corporation) has served in this capacity since the early 1990s. In this role, the Media Center administers the JPA's seven local PEG channels, broadcasts local community programs, provides gavel-to-gavel coverage of local government meetings, offers video production classes and workshops to community members, and provides local election coverage. Palo Alto forward all PEG fee revenues received by JPA members from franchise holders (currently AT&T and Comcast) to the Media Center in support of these services. Federal law restricts the use of PEG fees to capital expenditures and Menlo Park's share of the PEG fee revenues total approximately \$90,000 annually (or 88 cents per subscriber per month).

On May 10, 2016, the Palo Alto auditor issued the Cable Franchise and PEG Fee Audit, which included a finding that the Media Center had been using PEG fees for operating expenses, rather than solely for capital expenses, which is the only use permitted by federal law (the full audit is available as Attachment A). The Palo Alto City Council directed staff to work with the Media Center to correct this practice, preferably in a way that enables the Media Center to continue operations. The Media Center currently places PEG fees in a restricted account that can only be used for capital expenditures.

Going forward, Palo Alto staff has proposed a way to ensure continuity of operations based on the funds restriction that entails the JPA using member agencies' PEG fees to purchase the Media Center's video production and training facility at 900 San Antonio Road. This would ensure that PEG fees are used for capital costs as required by federal law, while providing the Media Center a stream of funds to close the gap in its operating budget for a term of years that will be determined in further negotiations (likely 20 years or more). This idea is further explained in the January 28, 2019, staff report to the Palo Alto City Council (Attachment B).

Analysis

Due to the fact that the Cable JPA is organized under a joint exercise of powers agreement and is not set up as a separate joint powers agency (entity), Menlo Park staff have raised several questions about the proposed plan. Several of these concerns were shared in previous Cable JPA Working Group meetings and in a January 9, 2019, meeting between Menlo Park and Palo Alto staff.

On January 9, 2019, Menlo Park shared some of its initial concerns (Attachment C) and requested further dialogue and clarifications before moving forward. These concerns included the liquidity of the asset, ownership of the asset, JPA governance questions (including that member agencies should be asked for explicit approval of this use of their funds), compliance with federal law governing the use of PEG funds, overhead and ongoing costs, reliability of future revenues, and others.

In accordance with the current JPA joint exercise of powers agreement, Palo Alto staff sought authority from the Palo Alto City Council, as the sole voting authority of the Cable JPA, to enter into negotiations to purchase the Media Center building using all member agencies' funds. The staff report presented to the Palo Alto City Council did not identify all of the concerns received from Menlo Park for this potential purchase. Nevertheless, the Palo Alto City Council approved the item unanimously.

Proposed agreements

Following the approval, Palo Alto is preparing its plan for how the transaction could take place. Palo Alto staff is now in the early stages of vetting the building purchase with the other JPA jurisdictions and reports that they will seek JPA endorsement of the arrangement before returning to the Palo Alto City Council for approval of a real estate purchase agreement, a building use agreement, and a new PEG access services

agreement.

The terms of the real estate purchase agreement include use of JPA member agencies' PEG fees to pay the Media Center for the building over time, by making a series of fixed installment payments (likely over 20-30 years). The parties would negotiate the number and amount of the installment payments, and the term of the agreement, after the purchase price of the building has been finalized.

For the building use agreement, Palo Alto proposes authorizing the Media Center's continued provision of PEG access support services and use of the building for that purpose, allowing the Media Center to occupy the building on a rent-free basis. The Media Center would be responsible for taxes, insurance, maintenance/repair, and capital costs on the property. The Media Center would also have exclusive possession of the building, and the building's primary use would be PEG activities. When not needed for PEG purposes, the Media Center would be allowed to use otherwise-idle studio space, meeting space, and production facilities and equipment for non-PEG activities within the ambit of the Media Center's nonprofit charter, including fee-bearing professional services. However, PEG-related activities shall predominate, and the parties will agree to cap the Media Center's non-PEG activities in the building in terms of time used, amount of space used, and/or revenue value of PEG versus non-PEG activities. The income from all of the Media Center's non-PEG activities in the building shall be used exclusively to finance the Media Center's PEG services.

The PEG access services agreement between the JPA and Media Center would conform to the terms of the Real Estate Purchase Agreement and the Building Use Agreement. The term of the PEG Access Support Services Agreement would be consistent with the term of the Real Estate Purchase and the Building Use Agreements.

Project costs

Palo Alto expects the JPA and the Media Center will agree on a purchase price for the building (land and facility) based on a recent market appraisal obtained by the Media Center, that is currently being updated, using a firm approved by the City of Palo Alto and a preliminary market analysis performed by Palo Alto staff. While the ultimate building purchase is still unknown (estimated at \$7-\$10 million), related expenses including legal costs, property assessment fees and others are being incurred and paid with monies from the JPA member agencies.

One of the risks identified by both Menlo Park and Palo Alto staff members was the uncertainty of future PEG revenues. The amount of PEG fee revenue received by the JPA on an annual basis has remained fairly stable over the years, ranging from \$313,000 to a high of \$347,000 (in calendar year 2014) over the past decade. However, the traditional cable market has started to decline as subscribers "cut the cord" and move away from cable to cheaper internet delivered services. This trend is expected to accelerate in coming years. Since broadband services are not subject to PEG fees, this exodus will impact PEG revenue.

Also, it is possible that future changes in the legal environment could result in reductions or elimination of PEG revenue. If legal changes or changes in the commercial cable market reduce or eliminate PEG revenue in the future, PEG funds may not be available or sufficient to make the fixed installment payments to the Media Center. In that case, JPA jurisdictions may be obligated to identify alternative funding sources for the building purchase payments, or the parties could renegotiate the terms of the building purchase arrangement.

It is important to note that the Federal Communications Commission (FCC) is considering adopting new rules that could reduce franchise fee revenue in the future. The FCC has proposed treating the value of all non-monetary cable franchise obligations, such as the JPA's seven local PEG channels, as "franchise fees" counted against the 5 percent franchise fee cap. Palo Alto has joined a coalition of local governments

to oppose the FCC's proposal. It is unknown whether or not the FCC will upend decades of consistent treatment of what counts toward the franchise fee cap. Given the JPA's reliance on franchise fees as a source of General Fund revenue and the pending FCC threat, it is unlikely that the JPA would be willing to allocate a portion of its franchise fee revenue to the Media Center.

Next steps

The Cable JPA Working Group, which normally meets quarterly, is planning to meet on a monthly basis as this project moves forward. Menlo Park staff will continue to participate in the Cable JPA Working Group. Staff anticipates further discussion and evaluation of the current Cable JPA governance model. Staff may return to the City Council with further project updates or consideration of changes to the joint exercise of powers agreement before the Palo Alto City Council considers final approval of the real estate purchase and other agreements.

Impact on City Resources

Currently no direct city funds are being used, however, Menlo Park-generated monies currently held by the City of Palo Alto as the lead agency of the Cable JPA are being expended for costs related to the ongoing negotiations.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Cable Franchise and PEG fee audit –
hyperlink: www.cityofpaloalto.org/civicax/filebank/documents/54299
- B. January 28, 2019, City of Palo Alto staff report seeking authority to negotiate agreements for the purchase of the Media Center Building
- C. Menlo Park concerns shared with Palo Alto staff January 9, 2019

Report prepared by:

Clay J. Curtin, Assistant to the City Manager



City of Palo Alto City Council Staff Report

(ID # 9804)

Report Type: Action Items

Meeting Date: 1/28/2019

Summary Title: Approval to Negotiate Agreements for Purchase of Media Center Building Using PEG Fees

Title: Request for Approval to: 1) Negotiate Agreements With Midpeninsula Community Media Center (Media Center) to Purchase its Building at 900 San Antonio Road, Using PEG Fees; and 2) Negotiate a new Agreement Between the City of Palo Alto (on Behalf of the Joint Powers) and the Media Center for Public, Education, and Government (PEG) Access Channel Support Services; Approval of Amendment Number 2 to Agreement Number C12142180 Between the City of Palo Alto (on Behalf of the Joint Powers) and the Media Center to Extend the Existing Agreement to June 30, 2019

From: City Manager

Lead Department: Administrative Services

Recommendation

Staff recommends that the City Council:

- 1) Direct staff to negotiate agreements (real estate purchase and building use) to purchase the Media Center's building at 900 San Antonio Road, using cable television public, education and government (PEG) fees.
- 2) Direct staff to negotiate a new agreement between the City of Palo Alto, on behalf of the Joint Powers, and the Media Center for PEG access channel support services that will conform to the terms of the real estate purchase and building use agreements.
- 3) Approve Amendment No. 2 to Agreement No. C12142180 between the City of Palo Alto, representing the Joint Powers communities, and the Media Center (attached as Attachment A) to extend the existing agreement for 6-months to June 30, 2019, to allow time to complete the new arrangement for the use of PEG fees.

Background

In 1983, a Joint Powers Agreement (JPA) was entered into by Palo Alto, East Palo Alto, Menlo Park, the Town of Atherton and portions of San Mateo and Santa Clara counties for the purpose of obtaining cable television services within these jurisdictions. The JPA gives Palo Alto the sole authority to administer cable franchises and act on behalf of the JPA jurisdictions. Cable

franchise holders provide various forms of compensation (franchise fees and PEG fees) for the use of the JPA's public rights-of-way.

The City of Palo Alto's Cable Television Ordinance provides that the City may designate a nonprofit access management entity (Access Corporation) to operate the JPA's PEG channels and provide PEG access support services. The Media Center (formerly the Mid-Peninsula Access Corporation) has served in this capacity since the early 1990's. In this role, the Media Center administers the JPA's seven local PEG channels, broadcasts local community programs, provides gavel-to-gavel coverage of local government meetings, offers video production classes and workshops to community members, and provides local election coverage. Palo Alto forwards all PEG fee revenues received by JPA members from franchise holders (currently AT&T and Comcast) to the Media Center in support of these services. PEG fees total approximately \$325,000 on an annual basis (or 88 cents per subscriber per month).

In 2000, as part of the sale of Palo Alto's locally owned cable system, Cable Co-op, to AT&T, a \$17 million charitable donation was given to the Access Corporation (the donation amounted to \$10 million after tax). The Access Corporation used a portion of this donation (approximately \$4 million) to purchase and upgrade a video production and training facility located at 900 San Antonio Road in Palo Alto to replace the facility previously provided by Cable Co-op. The remainder of the donation monies remain in Media Center reserves as well as fund a portion of the Media Center's annual operating budget, in amounts ranging from \$150,000 to \$900,000 in recent years due to PEG revenue restrictions.

The federal Cable Act restricts the use of PEG fee revenue to capital expenditures. In 2007, the California Digital Infrastructure and Video Competition Act (DIVCA) went into effect. DIVCA gave cable operators the option of switching from locally negotiated to state-issued franchises. Both of the JPA's cable operators (Comcast and AT&T) now have state-issued franchises. This change eliminated the means through which localities, like the JPA, could protect PEG fees from the federal Cable Act's capital cost limitation.

In May 2016, the Palo Alto Auditor issued the Cable Franchise and PEG Fee Audit, which included a finding that the Media Center had been using PEG fees for operating expenses, rather than solely for capital expenses, which is the only use permitted by federal law (the full audit can be found here: www.cityofpaloalto.org/civicax/filebank/documents/54299). The Council directed staff to work with the Media Center to correct this practice, preferably in a way that enables the Media Center to continue operations. The most viable option involves the JPA using PEG fees to purchase the Media Center's video production and training facility at 900 San Antonio Road. This will ensure that PEG fees are used for capital costs as required by federal law, while providing the Media Center a stream of funds to close the gap in its operating budget for a term of years that will be determined in further negotiations (likely 20 years or more).

Discussion

The City has reached tentative agreement with the Media Center, subject to Council direction, on many of the key terms of a potential facility purchase arrangement, as described below:

1. The JPA and the Media Center will agree on a purchase price for the building (land and facility) based on a recent market appraisal obtained by the Media Center, that is currently being updated, using a firm approved by the City to incorporate several unsolicited offers to purchase the facility, and a City staff preliminary market analysis.
2. The JPA will use PEG fees to pay the Media Center for the building over time, by making a series of fixed installment payments. The parties will negotiate the number and amount of the installment payments, and the term of the agreement, after the purchase price of the building has been finalized.
3. The parties will enter into a Real Estate Purchase Agreement to document the terms of the building purchase. The building title will pass from the Media Center to the JPA at the inception of the building purchase arrangement.
4. The parties will also enter into a Building Use Agreement. In return for the Media Center's continued provision of PEG access support services and use of the building for that purpose, the Media Center will occupy the building on a rent-free basis. The Media Center will be responsible for taxes, insurance, maintenance/repair, and capital costs on the property.
5. The Media Center will have exclusive possession of the building, and the building's primary use will be PEG activities. When not needed for PEG purposes, the Media Center may use otherwise-idle studio space, meeting space, and production facilities and equipment for non-PEG activities within the ambit of the Media Center's non-profit charter, including fee-bearing professional services. However, PEG-related activities shall predominate, and the parties will agree to cap the Media Center's non-PEG activities in the building in terms of time used, amount of space used, and/or revenue value of PEG versus non-PEG activities. The income from all of the Media Center's non-PEG activities in the building shall be used exclusively to finance the Media Center's PEG services.
6. After the Real Estate Purchase Agreement and Building Use Agreement are finalized, the JPA and Media Center will negotiate a new PEG Access Support Services Agreement that conforms to the terms of the Real Estate Purchase Agreement and the Building Use Agreement. The term of the PEG Access Support Services Agreement will be consistent with the term of the Real Estate Purchase and the Building Use Agreements (expected to be 20 years or more).
7. The Real Estate Purchase Agreement will reflect that on completion of all scheduled payments, the JPA's payments to the Media Center for the building will cease. The JPA will be obligated to use and maintain the building for PEG purposes for the life of the asset.
8. The JPA and Media Center may agree to meet and confer if there are changes in the legal environment or commercial cable market that significantly impact the existence or amount of PEG fees.

The building purchase arrangement described above would allow the Media Center to continue operations for many years to come, thus preserving a nonprofit community service organization that is greatly valued by the JPA communities. In addition, the JPA communities would own a facility that is dedicated to PEG purposes. Staff seeks Council direction on this proposed arrangement and recommends that the City proceed to negotiate the necessary agreements for the purchase of the Media Center building.

Staff also recommends that the Council approve a 6-month extension to the existing PEG Access Support Services Agreement between the City of Palo Alto, representing the Joint Powers communities, and the Media Center to allow time to finalize the Real Estate Purchase and Building Use Agreements, and negotiate a new conforming PEG Access Support Services Agreement.

Staff is in the early stages of vetting the building purchase with the other JPA jurisdictions. Staff plans to obtain JPA endorsement of the arrangement prior to returning to Council for approval of the Real Estate Purchase Agreement, the Building Use Agreement, and the new PEG Access Services Agreement.

Risks

The amount of PEG fee revenue received by the JPA on an annual basis has remained fairly stable over the years, ranging from \$313,000 to a high of \$347,000 (in calendar year 2014) over the past decade. However, the traditional cable market has started to decline as subscribers “cut the cord” and move away from cable to cheaper Internet delivered services. This trend is expected to accelerate in coming years. Since broadband services are not subject to PEG fees, this exodus will impact PEG revenue.

Also, it is possible that future changes in the legal environment could result in reductions or elimination of PEG revenue. If legal changes or changes in the commercial cable market reduce or eliminate PEG revenue in the future, PEG funds may not be available or sufficient to make the fixed installment payments to the Media Center. In that case, JPA jurisdictions may be obligated to identify alternative funding sources for the building purchase payments, or the parties could renegotiate the terms of the building purchase arrangement.

On the other hand, it is possible that federal law could liberalize, allowing PEG revenues to be used for operating as well as capital costs. In that case, the Media Center may seek a term allowing them to repurchase the building. Contract terms regarding these contingencies will need to be negotiated between the JPA and the Media Center, in close consultation with legal counsel to ensure compliance with federal law.

There are also inherent risks and responsibilities in owning the Media Center’s building. Following the audit in 2016, PEG fees have been placed in a restricted account managed by the Media Center while the parties work-out a new arrangement for the use of these funds. This account currently totals approximately \$700,000. A portion of this money could be used to

establish a reserve to cover unanticipated building-related capital needs. This reserve could also be used to offset potential reductions in PEG revenue for a period of time, similar to a rate stabilization reserve.

The City of Palo Alto maintains a Cable Agency Fund that holds proceeds from JPA cable audit settlements. The JPA has established a Cable Fund reserve policy that stipulates that as franchise agreements are audited, receipts are deposited in this fund. Historically, these funds have been used to support the JPA's institutional network (a fiber network that connects local schools, and government entities). However, as this project is nearing completion, these funds could be available to cover other building contingencies (as of June 30, 2018 these funds totaled \$691,816).

Alternatives

Staff has considered two alternatives to the building purchase arrangement. The first option involves allocating a portion of the JPA jurisdictions' 5% franchise fees to the Media Center. Currently, those fees are deposited into the JPA jurisdictions' General Funds. Using franchise fees for Media Center operations is not desirable because it results in a reduction of General Fund revenues for each JPA jurisdiction. To cover the Media Center's entire operating budget gap, each JPA jurisdiction would need to allocate the following amount to the Media Center on an annual basis: Palo Alto \$157,000; Menlo Park \$88,000; East Palo Alto \$26,000; Atherton \$32,000; Stanford \$17,000; San Mateo County \$5,000.

It is important to note that the FCC is considering adopting new rules that could reduce franchise fee revenue in the future. The FCC has proposed treating the value of all non-monetary cable franchise obligations, such as the JPA's seven local PEG channels, as "franchise fees" counted against the 5 percent franchise fee cap. The City has joined a coalition of local governments to oppose the FCC's proposal. It is unknown whether or not the FCC will upend decades of consistent treatment of what counts toward the franchise fee cap. Given the JPA's reliance on franchise fees as a source of General Fund revenue and the pending FCC threat, it is unlikely that the JPA would be willing to allocate a portion of its franchise fee revenue to the Media Center.

The second alternative involves using Cable Fund reserves to defray a portion of the Media Center's operating costs for several years. This is a short-term solution since Cable Fund resources are limited (available balance of \$691,816 as of June 30, 2018) and there is no on-going source of revenue to replenish Cable Fund reserves.

Resource Impact

The JPA receives PEG fee revenue of approximately \$325,000 annually and franchise fee revenue of approximately \$1.8 million annually from cable franchise holders. The PEG fee revenue has been held in a separate account pending direction on the building purchase option. This report recommends dedicating future PEG fee revenue to the purchase of the Media Center building. Franchise fee revenue would continue to be distributed to JPA members based on the percentage of cable subscribers in each jurisdiction (after deducting the City's administrative expenses).

Policy Implications

The recommendations in this report are consistent with Council direction to restrict the use of PEG fees to capital costs while preserving the Media Center's operational budget funding.

Attachments:

- Attachment A: Amendment No. 2 to Agreement No. C12142180

Attachment A

**AMENDMENT NO. 2 TO CONTRACT NO. C12142180
BETWEEN THE CITY OF PALO ALTO ON BEHALF OF THE JOINT POWERS AND THE
MIDPENINSULA COMMUNITY MEDIA CENTER, INC.
FOR PUBLIC, EDUCATION AND GOVERNMENT ACCESS CHANNEL SUPPORT SERVICES**

This Amendment No. 2 to Contract No. C12142180 ("Contract") is entered into December 11, 2018, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and MIDPENINSULA COMMUNITY MEDIA CENTER, INC., a California nonprofit corporation, located at 900 San Antonio Rd, Palo Alto, CA 94303 ("CONSULTANT").

RECITALS

- A. The Contract was entered into between the parties for the provision of public, education and government access channel support services.
- B. CITY intends to extend the term to June 30, 2019.
- C. The parties wish to amend the Contract.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

SECTION 1. Section 2 TERM is hereby amended to read as follows:

"SECTION 2. TERM. The term of this Agreement shall be from December 31, 2018 through June 30, 2019, unless terminated earlier pursuant to Section 19 of this Agreement."

SECTION 2. Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

**MIDPENINSULA COMMUNITY
MEDIACENTER, INC.**

DocuSigned by:
Sue Purdy Pelosi
247E365D839A44D
Sue Purdy Pelosi

APPROVED AS TO FORM:

President

Certificate Of Completion

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Document Pages: 1	Signatures: 1
Certificate Pages: 2	Initials: 0
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Time Zone: (UTC-08:00) Pacific Time (US & Canada)	250 Hamilton Ave
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Financial Project Consultant
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Signing Complete	Security Checked	12/11/2018 2:09:12 PM
Completed	Security Checked	12/11/2018 2:09:12 PM

Payment Events

Status

Timestamps

Media Center Building Purchase
January 9, 2019, meeting

Attendees: Melissa Cavallo, City of Palo Alto
Clay Curtin, City of Menlo Park
Cara Silver, City of Menlo Park

Action Items:

1. Make sure the building can be sold (e.g., if PEG revenue goes away, etc.) and, if sold, the proceeds belong to the Cable Joint Powers
2. Structure the transaction so that the building is owned by the Cable Joint Powers
 - Determine if there a need to establish a separate legal entity (Joint Powers Agency) to hold title to the building (or do entities hold title in joint tenancy)
 - Determine if/how to amend the Joint Exercise of Powers Agreement to facilitate the transaction
 - Menlo Park PEG fees should only go towards an asset it owns (otherwise it could be considered a gift of public funds)
 - Ensure use of Menlo Park (and other partners) PEG fees are going towards a capital asset/program
3. Determine how to pay for the legal and other fees necessary to complete the building purchase (e.g., use Cable Fund reserves, deduct from franchise fee revenue, etc.)
 - Obtain appropriate approval for anticipated expenditures and payment plan
4. Consider using a portion of PEG fees to fund JPA Member capital needs



STAFF REPORT

City Council

Meeting Date: 3/12/2019
Staff Report Number: 19-049-CC

Informational Item: City Council adopted fiscal year 2019-20 budget principles and 2019 priorities and work plan

Recommendation

This is an informational item and does not require City Council action.

Policy Issues

The City Council conducts an annual goal setting session to provide the policy direction necessary for staff to prioritize the allocation of City resources both through the end of the fiscal year and for the upcoming year. With clear priorities from the City Council, staff then develop the annual operating budget and the five-year capital improvement program (CIP) budget for the upcoming fiscal year. The City's fiscal year begins July 1.

Background

The City Council held its annual goal setting session as a special meeting Saturday, February 2, to review the 10-year financial forecast and proposed fiscal year 2019-20 budget principles, receive an update on 2018 City Council work plan, and provide some guidance to staff on projects to consider for prioritization in 2019. The City Council did not provide direction on the prioritization of projects for 2019, deferring such action to February 26. At their meeting on February 26, the City Council received staff's presentation on the agenda item and heard public comment. Due to time, the City Council closed public comment and deferred discussion and action to March 5. On March 5, the City Council took action on staff's recommendations, Attachment A. No new projects were added to the list however, the City Council directed several changes to the staff recommendation.

Analysis

Staff is in the process of formatting the City Council adopted 2019 priorities and work plan document following City Council approval on March 5. Given the timing of the work plan's approval and the need to begin the budget process, staff is presenting this summary to document the City Council's actions to adopt the fiscal year 2019-20 budget principles and the 2019 priorities and work plan.

Budget principles

As part of the annual goal setting process, staff requests City Council approval of the budget principles that will be used to guide the development of the upcoming fiscal year budget. At the February 2 meeting, the City Council directed staff to add two significant modifications to the staff proposed changes. On March 5 the City Council voted 4-1 to approve the following budget principles for the upcoming fiscal year:

Promote the City's long-term fiscal sustainability

- Monitor and report on changes in CalPERS liabilities and include those changes in the City's 10-year financial forecast; actively pursue strategies to reduce pension costs as opportunities arise
- Incorporate a budgetary assumption for salary savings resulting from employee vacancies in the current year budget and the 10-year financial forecast
- Actively pursue revenue enhancements and strive to achieve full cost recovery for all fee-based services, except where the City Council sees a clear public interest in providing a subsidy
- Find areas, which may include shared services, to provide more efficient use of funds

Enhance and maintain core City services and infrastructure

- Strive to balance the resources and requirements of each area of the City in an equitable manner
- Prioritize City Council adopted initiatives and strategies that contribute to the quality of life in Menlo Park
- Evaluate one-time revenues for highest and best investment
- Recognize the benefit of leveraging near term investments for long-term gains in financial sustainability and/or quality of life

Manage staff capacity to efficiently deliver services to the community

- Invest in new technologies that drive efficiency and productivity
- Incorporate programs and initiatives that strengthen Menlo Park's standing as an employer of choice to retain and attract highly qualified personnel
- Proactively manage the loss of institutional knowledge through documentation of procedures, practices, and processes and succession planning efforts including the ability to provide for overlap in critical positions at the discretion of the city manager

Communicate the City's financial position

- Continue to refine the budget document and provide additional finance-related communication to enhance the public's access to the City's financial information
- Document, review, and maintain proper internal controls over the City's resources with transparency

CIP budget project prioritization

New for 2019, the request that the City Council consider and approve prioritization of existing CIP budget projects. The CIP contains nearly 80 distinct capital improvement projects; many carried over from prior years that are underway. Staff categorized the approved projects in relative priority based on several factors as outlined in Attachment A. Tier 1 indicates that a project will receive the highest relative priority for staff and consultant resources. Tier 2 indicated that a project will receive significant resources only after the higher tier projects have received the necessary resources. Tier N/A indicates that a project is not currently competing for resources. Staff is committed to completing the projects outlined in the CIP budget, regardless of tiers.

In their review of staff's recommendation, the City Council directed that the downtown parking structure study project return to the City Council for further discussion. The City Council voted 5-0 to approve staff's recommended CIP prioritization as revised and presented at the February 26 meeting.

2019 top priorities

As part of the annual goal setting process, staff requests that the City Council identify its top priorities for the year. As a "top priority" project, staff will strategically realign all available resources necessary to achieve the milestones outlined in the project description. If there is a challenge meeting major milestones for a top

priority project, staff may choose to strategically defer work on other projects to keep the top priority project on schedule, to the greatest extent possible. While the focus will be on the top priority projects, staff will continue to work diligently on all the projects included in the work plan. Also, staff will continue to work on the CIP and deliver daily services to the community. The City Council voted 5-0 to approve staff's recommended CIP prioritization as revised and presented at the February 26 meeting as follows:

- Transportation master plan (lead department: public works)
- Chilco Street improvement project (lead department: public works)
- Middle Avenue pedestrian and bicycle rail crossing (lead department: public works)
- Heritage tree ordinance update (lead department: city manager's office)
- Belle Haven Branch library (lead department: library)

2019 work plan

In addition to the top priorities, the annual goal setting process identifies a number of other projects of importance to the City Council for work in 2019. The City Council voted 5-0 to approve staff's recommended work plan as presented on February 26 with two revisions. The first revision added the word "and accessibility" to the project titled develop and implement near-term downtown parking strategies. The second revision removed the "teacher housing – flood school site" project. The 2019 work plan contains of the following projects:

- Formation of a transportation management association
- El Camino Real/ Downtown specific plan update
- Market affordable housing preservation
- Short-term rental ordinance
- Single-Family residential design review
- Develop and implement near-term downtown parking and accessibility strategies
- Zero waste implementation
- Implement the information technology master plan (year 2; land management)

Impact on City Resources

There is no impact on City Resources.

Environmental Review

This action is not a project under the California Environmental Quality Act ("CEQA") and therefore not subject to the provisions of the CEQA Guidelines under Sections 15378 and 15061(b)(3).

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

A. Hyperlink: <https://www.menlopark.org/DocumentCenter/View/20789/E2---Work-plan>

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