



SPECIAL AND REGULAR MEETING AGENDA – AMENDED

Date: 11/19/2019
Time: 5:30 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

This amended agenda includes an updated title for item J2.

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.

5:30 p.m. State of the City

SC1. Presentation

SC2. Reception

Special Meeting

A. Call To Order

B. Roll Call

C. Pledge of Allegiance

D. Commissioner Reports

D1. Library Commission report ([Staff Report #19-252-CC](#))

E. Consent Calendar

E1. Accept the City Council meeting minutes for October 1, 2019 ([Attachment](#))

E2. Award a construction contract to Guerra Construction Group, appropriate additional project funding, and adopt Resolution No. 6531 to install a passenger loading zone for the Oak Grove Avenue sidewalk and green infrastructure (for stormwater) improvement project ([Staff Report #19-253-CC](#))

E3. Award a construction contract to Pacific Underground Construction, Inc. for the 2019 water main replacement project for Monte Rosa Drive ([Staff Report #19-247-CC](#))

F. Informational Items

F1. City Council agenda topics: December 2019 to January 2020 ([Staff Report #19-240-CC](#))

F2. Update on City's implementation of the Federal Communications Commission's new small wireless facility regulations ([Staff Report #19-254-CC](#))

7:00 p.m. Regular Meeting

G. 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.

H. Consent Calendar

- H1. Waive the second reading and adopt Ordinance No. 1060 amending Chapter 13.24 [Heritage Trees] of Title 13 [Streets, sidewalks and utilities] ([Staff Report #19-255-CC](#))

I. Public Hearing

- I1. Introduce Ordinance No. 1064 to update the transportation impact fee program ([Staff Report #19-256-CC](#))

J. Regular Business

- J1. Request for a subdivision ordinance variance to reduce the front setback requirement for a single-family residential lot at 180 Elliot Drive ([Staff Report #19-257-CC](#))
- J2. **First reading and introduction of Ordinance No. 1062 amending Title 12 [Buildings and Construction] of the Menlo Park Municipal Code to adopt local amendments to the California Building Standards Code, adopt a Resolution No. 6532 ratifying the Menlo Park Fire Protection District ordinance adopting amendments to the 2019 California Fire Code with modifications, and adopt Resolution No. 6530 to direct fines collected for violations of the construction and demolition recycling ordinance (12.48) to be used for zero waste initiatives** ([Staff Report #19-250-CC](#))

K. City Manager's Report

L. City Councilmember Reports

M. 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 Council 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. For appeal hearings, appellant and applicant shall each have 10 minutes for presentations.

If you challenge any of the items listed on this agenda in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of

Menlo Park at, or prior to, the public hearing.

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: 11/14/2019)



STAFF REPORT

City Council

Meeting Date: 11/19/2019

Staff Report Number: 19-252-CC

Commission Report: Library Commission report

Executive Summary

This report provides updates on progress toward the goals outlined in the Library Commission workplan.

Policy Issues

The Library Commission advises the City Council about library policies and services in alignment with City Council priorities and goals. City Council Policy CC-19-004 (Attachment B) was adopted in May and outlines the procedures, roles and responsibilities of the City Council-appointed advisory bodies, including the responsibility to provide periodic progress reports to City Council.

Background

City Council Policy CC-19-004 requires commissions to develop an annual workplan and then report on the status of that workplan to the City Council. The Library Commission unanimously approved their workplan for 2019-2020 at their May 20 meeting. The Commission's workplan was accepted by the City Council June 18.

Analysis

The Library Commission's workplan (Attachment A) guides the work of the Commission for the coming year in alignment with City Council goals, the library's strategic plan, and the needs of the Menlo Park community. Highlights since the last update to City Council in June 2019 include:

- Reviewed and recommended updates to the library use policy and computer use policy.
- Assisted with the dedication of a little free library in the memory of late Commissioner Ester Bugna.
- Expressed support for efforts to establish a citywide Youth Advisory Committee.
- Participated in the conceptual design phase of the new Belle Haven Library project (before the Facebook proposal:)
 - Reviewed and advised plans for public engagement;
 - Convened and participated in public meetings and focus groups; and,
 - Evaluated the preliminary results of the outreach process.
- Affirmed the Library Commission's commitment to support and advise efforts to build a new branch library in the Belle Haven neighborhood per City Council's direction, including by way of Facebook's recent proposal to build a multigenerational community center and library on the site of the Onetta Harris Center, should City Council so decide.

Impact on City Resources

There is no new impact to City resources associated with this update.

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 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. Hyperlink – Library Commission workplan 2019-2020:
menlopark.org/DocumentCenter/View/21776/LC_WP_2019_2020
- B. Hyperlink – City Council Policy CC-19-004: menlopark.org/DocumentCenter/View/21774/CC-19-0004-Commission-Committee-January-2019

Prepared by:
Nick Szegda, Assistant Director of Library Services

Reviewed by:
Sean Reinhart, Director of Library Services



SPECIAL MEETING AGENDA – DRAFT

Date: 10/1/2019
Time: 6:00 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

6:00 p.m. Special Meeting

A. Call To Order

Mayor Mueller called the meeting to order at 6:02 p.m.

B. Roll Call

Present: Carlton, Combs, Nash, Mueller, Taylor
Absent: None
Staff: City Manager Starla Jerome-Robinson, Assistant City Attorney Cara Silver, City Clerk Judi A. Herren

C. Pledge of Allegiance

Mayor Mueller led the Pledge of Allegiance.

D. Commissioner Reports

Item D1. was continued to a future meeting.

D1. Complete Streets Commission update

E. Consent Calendar

City Councilmember Nash pulled item E4.

E1. Approve the response to the San Mateo County Civil grand jury report: “Soaring Pension Costs – Follow-up on grand jury report of 2017-2018” ([Staff Report #19-205-CC](#))

E2. Authorize the city manager to enter into an agreement with Wood Rodgers, Inc. to develop the stormwater master plan ([Staff Report #19-209-CC](#))

E3. Authorize the city manager to enter into an agreement with California Land Management for ranger services at Bedwell Bayfront Park and Kelly Park up to the budgeted amount and appropriate \$21,000 from the undesignated general fund balance for Kelly Park services ([Staff Report #19-203-CC](#))

E4. City Council adopted 2019-20 priorities and work plan quarterly update ([Staff Report #19-208-CC](#))

The City Council received clarification on the completion of priorities.

ACTION: Motion and second (Carlton/ Combs) to accept the City Council adopted 2019-20 priorities and work plan quarterly update, passed unanimously.

ACTION: Motion and second (Carlton/ Combs) to approve the consent calendar, except item E4, passed unanimously.

F. Regular Business

F1. Direction on biennial community survey methodology and vendor ([Staff Report #19-210-CC](#))

Public Engagement Manager Clay Curtin introduced the item.

The City Council discussed the need for statistically significant results. There was also discussion on previous experiences with the two vendors. The City Council created a subcommittee to work on the survey questions for Godbe Research and appointed City Councilmembers Carlton and Nash. City Council requested that work from the subcommittee and staff return to the City Council before being released to the public.

ACTION: Motion and second (Carlton/ Nash) to select Godbe Research as the vendor for biennial community survey, passed unanimously.

F2. Discussion of options for formation of re-districting committee following release of 2020 census information ([Staff Report #19-207-CC](#))

Assistant City Attorney Cara Silver made the presentation ([Attachment](#)).

- Pamela Jones spoke in support of an independent redistricting commission and keeping the charter separate ([Attachment](#)).

The City Council received clarification on the details of an independent and advisory committee and discussed the previous advisory districting committee. The City Council supported public outreach during the districting process.

No action.

F3. Review proposed City Council procedure #CC-19-010 “City Council powers and responsibilities” and provide direction to staff ([Staff Report #19-206-CC](#))

Assistant City Manager Nick Pegueros introduced the item.

Assistant City Manager Pegueros detailed the major changes to the procedure. The City Council provided the following direction: requested that Mayor Pro Tem be included in the agenda setting, updating “Grand Boulevard Initiative Taskforce” name, add to the notes of the Caltrain Modernization Local Policy Maker Group to include Rail Subcommittee members, add to the notes of the County of Santa Clara Community Resources Group for Stanford University to include ad hoc subcommittee on Stanford General Use Permit members, encourage City Council to report out on outside board meetings during City Councilmember Reports at City Council meetings, update the Mayor Pro Tem title to Vice Mayor, and include the Willow Village/ Facebook subcommittee. The City Council requested this item be updated and returned on consent.

No action.

F4. Adopt the City Council's regular meeting schedule for calendar year 2020 ([Staff Report #19-185-CC](#))

The City Council discussed the advantages and disadvantages of a set second and fourth Tuesday meeting schedule. The City Council directed staff to remove the April 14 and 28, 2020 meetings and add April 21, 2020.

ACTION: Motion and second (Combs/ Carlton) to adopt the City Council's regular meeting schedule for calendar year 2020, passed unanimously.

G. City Manager's Report

No report.

H. City Councilmember Reports

City Councilmember Nash announced the Stanford General Use Permit meeting at Palo Alto City Hall on October 22 at 6 p.m.

Mayor Pro Tem Taylor reported out on the Government Alliance on Race and Equity (GARE) training.

Mayor Mueller reported out on the Rail Subcommittee meeting

I. Adjournment

Mayor Mueller adjourned the meeting at 8:08 p.m.

Judi A. Herren, City Clerk

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STAFF REPORT

City Council

Meeting Date:

11/19/2019

Staff Report Number:

19-253-CC

Consent Calendar:

Award a construction contract to Guerra Construction Group, appropriate additional project funding, and adopt Resolution No. 6531 to install a passenger loading zone for the Oak Grove Avenue sidewalk and green infrastructure (for stormwater) improvement project

Recommendation

Staff recommends that the City Council approve the following actions for the Oak Grove Avenue sidewalk and green infrastructure (for stormwater) improvement project (Project):

- Award a construction contract to Guerra Construction Group in the amount of \$526,540 and approve a contingency in the amount of \$52,660
- Appropriate an additional \$326,200 from the general fund unassigned fund balance and transfer to the general capital fund for project construction
- Adopt Resolution No. 6531 to install a passenger loading zone on Oak Grove Avenue (Attachment A)

Policy Issues

The project is consistent with the following provisions of the general plan circulation element:

- Goal CIRC-2: Increase accessibility for and use of streets by pedestrians, bicyclists and transit riders
- Policy CIRC-1.9: Safe Routes to Schools. Support Safe Route to School programs to enhance the safety of school children who walk and bike to school.
- Policy CIRC-2.10: Green infrastructure. Maximize the potential to implement green infrastructure by...(c) taking advantage of opportunities such as grant funding, routine repaving or similar maintenance projects, funding associated with priority development areas, public private partnerships and other funding sources.

Land use element goal LU-7:

- Goal LU-7: Promote the implementation and maintenance of sustainable development, facilities and services to meet the needs of Menlo Park's residents, businesses, workers and visitors.

Background

In July 2017, the City/County Association of Governments (C/CAG) of San Mateo County issued a call for projects under the Safe Routes to School and green streets infrastructure pilot program (Pilot Program.) The Pilot Program aims to fund projects that combine pedestrian access to schools with stormwater treatment (green infrastructure.) Green infrastructure facilities are landscaped areas, in public right-of-way that retain and treat runoff through engineered soil media.

On October 11, 2017, staff proposed the Project to the Complete Streets Commission as a candidate for C/CAG’s Pilot Program. The Commission voted in support of the proposal, and staff submitted a grant application to C/CAG the same month. On March 27, 2018, the City Council authorized the city manager to execute a \$250,000 funding agreement with C/CAG for the Project.

On November 13, 2018, City Council adopted Resolution No. 6470 which includes bicycle lanes on Oak Grove Avenue from Crane Street to Rebecca Lane. During this City Council meeting, residents of 1160 Pine Street contested that street parking removals would limit disabled access to their building. City Council directed staff to further consider a passenger loading zone on Oak Grove Avenue at Pine Street as a follow up to the bicycle lane installation. The possible provision of a passenger loading zone was further assessed as part of the design for this Project.

Analysis

The work to be done generally includes the following improvements along Oak Grove Avenue between Pine Street and Rebecca Lane:

- Installing curbs, gutters and sidewalks on both sides of Oak Grove Avenue
- Installing green infrastructure, landscaping and irrigation
- Extending the right-turn pocket to the Nativity School driveway
- Modifying the curb to provide a passenger loading zone at Oak Grove Avenue and Pine Street

Project plans and specifications were completed in September for construction bidding. On September 26, the City solicited bids from prospective contractors for the Project. The Project plans included the passenger loading zone at Oak Grove Avenue and Pine Street as a bid alternative, so that the cost could be assessed separately from the grant-funded scope of work. Project bids were opened on October 17, with results shown per Table 1.

Table 1: Bid results ¹	
Bidder	Bid price (base bid + Alt A bid)
Engineer’s estimate	\$600,000
Guerra Construction Group	\$526,540
Golden Bay Construction	\$589,250
Sposeto Engineering, Inc.	\$688,532
Granite Construction	\$855,576

¹The “Alternate A bid” includes the passenger loading zone while the “Base bid” includes the remaining scope of work.

Of the four bids received, Guerra Construction Group offered the lowest price at \$526,540. Staff found the lowest bidder to be well experienced with similar projects involving sidewalks and green infrastructure upon checking references. Additionally, staff determined the low bidder to be both responsive and responsible per the project contract and public contracting code.

Summary

Staff recommends the City Council approve the following actions for the Project:

- Award a construction contract to Guerra Construction Group in the amount of \$526,540 and approve a contingency in the amount of \$52,660
- Appropriate an additional \$326,200 from the general fund unassigned fund balance and transfer to the

- general capital fund
- Adopt a Resolution to install a passenger loading zone on Oak Grove Avenue and revert back the loading zone on Pine Street to a parking space per Attachment A

Impact on City Resources

The anticipated Project budget is summarized in Table 2, with the expected cost of construction, contingency and administration in the amount of \$701,200. This figure includes a 10 percent contingency based on the construction award and construction administration costs.

This Project is included in the 2019-20 capital improvement program. The City has an available budget of \$375,000 in Measure A funds remaining for the project. Therefore, an appropriation of \$326,200 is requested to meet the budget. At the conclusion of construction of the Project, the City would be reimbursed \$250,000 from the C/CAG green infrastructure and Safe Routes to School program. This amount would offset the City’s general fund contribution for this project to approximately \$76,000.

The appropriation request is partially due to added scope of work during design to include additional landscaping and irrigation design (including coordination with Cal Water) to sustain the proposed planting area. The Project also encumbered costs in hiring a geotechnical consultant to confirm suitable soil conditions and for designing the extended right-turn lane at the Nativity School.

Table 2: Construction budget	
Item	Amount
Construction – base bid	\$510,520
Construction – Alternate A bid	\$16,020
Construction – subtotal	\$526,540
10% Contingency	\$52,660
Construction administration	\$122,000
Total budget	\$701,200
Available funding	(\$375,000)
Appropriation request	\$326,200

Environmental Review

This project is categorically exempt pursuant to California Environmental Quality Act (CEQA) Guidelines §§ 15301(b) 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. Resolution No. 6531

Report prepared by:
Rene Punsalan, Associate Civil Engineer

Report reviewed by:
Michael Fu, Senior Civil Engineer
Christopher Lamm, Assistant Public Works Director

RESOLUTION NO. 6531

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING THE INSTALLATION OF A THREE MINUTE PASSENGER
LOADING AND UNLOADING ZONE ON OAK GROVE AVENUE**

WHEREAS, on November 13, 2018, City Council adopted a resolution to approve the permanent installation of bicycle improvements on Oak Grove Avenue, Crane Street, and University Drive and to remove on-street parking on Oak Grove Avenue and University Drive; and,

WHEREAS, on February 13, 2019, Complete Streets Commission authorized the installation of a loading and unloading passenger zone on Pine Street and requests the loading zone to be reverted back if a vehicle cut-out on Oak Grove is feasible and constructed; and,

WHEREAS, in conjunction with the construction of a vehicle cut-out on Oak Grove Avenue, parking resolution no. 2019-1 states the loading zone on Pine Street is to be reverted back to on-street parking; and,

WHEREAS, the City of Menlo Park, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefore.

WHEREAS, the City of Menlo Park, acting by and through its Complete Streets Commission, having considered and been fully advised in the matter and good cause appearing therefore;

NOW, THEREFORE, BE IT RESOLVED, the City Council of Menlo Park does hereby authorize the installation of a loading and unloading zone on Oak Grove Avenue fronting 1160 Pine Street, revert the loading and unloading zone on Pine Street back to on-street parking, and rescind parking resolution no. 2019-1.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Judi A. Herren, City Clerk

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SPECIAL AND REGULAR MEETING AGENDA

Date: 11/19/2019
Time: 5:30 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

STAFF REPORT RELEASE NOTICE

The Staff Report No. 19-247 for award construction contract for Monte Rosa Water Main project will be available by 5 p.m. on November 14, 2019.

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STAFF REPORT

City Council

Meeting Date: 11/19/2019

Staff Report Number: 19-240-CC

Informational Item: City Council agenda topics: December 2019 to January 2020

Recommendation

The purpose of this informational item is to provide the City Council and members of the public access to the anticipated agenda items that will be presented to the City Council. The mayor and city manager set the City Council agenda so there is no action required of the City Council as a result of this informational item.

Policy Issues

In accordance with the City Council procedures manual, the mayor and city manager set the agenda for City Council meetings.

Analysis

In an effort to provide greater access to the City Council's future agenda items, staff has compiled a listing of anticipated agenda items, Attachment A, through January 28, 2020. The topics are arranged by department to help identify the work group most impacted by the agenda item.

Specific dates are not provided in the attachment due to a number of factors that influence the City Council agenda preparation process. In their agenda management, the mayor and city manager strive to compile an agenda that is most responsive to the City Council's adopted priorities and work plan while also balancing the business needs of the organization. Certain agenda items, such as appeals or State mandated reporting, must be scheduled by a certain date to ensure compliance. In addition, the meeting agendas are managed to allow the greatest opportunity for public input while also allowing the meeting to conclude around 11 p.m. Every effort is made to avoid scheduling two matters that may be contentious to allow the City Council sufficient time to fully discuss the matter before the City Council.

Public Notice

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Attachments

A. City Council agenda topics: December 2019 to January 2020

Report prepared by:
Judi A. Herren, City Clerk

Tentative City Council Agenda

#	Title	Department	Item type
1	Finance and Audit Committee update	ASD	Committee Report
2	Review of the annual report on the status of the transportation impact, storm drainage, recreation-in-lieu, below market rate housing in-lieu and bu	ASD	Consent
3	Receive the comprehensive annual financial report for the fiscal year ended June 30, 2019 - slip sheet	ASD	Regular
4	Adopt a resolution approving the City Council Subcommittee recommendations regarding the 2019-20 community funding allocation	ASD	Regular
5	Amend the 2019-20 adopted budget	ASD	Regular
6	Closed Session - City Manager six-month evaluation	CA	Closed Session
7	Closed Session to discuss City Attorney recruitment	CA	Closed Session
8	Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing for MidPen Gateway Apartments	CDD	Public Hearing
9	Sister City Committee update	CMO	Committee Report
10	Minutes: 10/29 and 11/5	CMO	Consent
11	Receive and file quarterly update on the 2019-20 City Council workplan	CMO	Consent
12	Sister City Committee recommendation to upgrade Bizen, Japan to full Sister City status	CMO	Consent
13	Disband Heritage Tree Task Force	CMO	Consent
14	Minutes: 11/12 and 11/19	CMO	Consent
15	Minutes: 12/10 and 12/17	CMO	Consent
16	City Council agenda topics: December 2019 – February 2020	CMO	Informational
17	City Council agenda topics: January 2020 – March 2020	CMO	Informational
18	Mayor and Sister City Committee honor boy scouts for assistance with the Bizen delegation	CMO	Presentation
19	Presentation: Midpeninsula Regional Open Space District	CMO	Presentation
20	Amend master fee schedule: Zero Waste Occupancy Management Fee and Electric Vehicle Charging Station Fee	CMO	Public Hearing
21	Recognition of the outgoing Mayor	CMO	Regular
22	Selection of the 2020 Mayor and Vice Mayor	CMO	Regular
23	City Council appointments to regional boards, commissions and committees	CMO	Regular
24	Provide direction to the City's voting delegate regarding regional vacancies for the City Selection Committee's December meeting	CMO	Regular
25	Update on Belle Haven multi-generational community center	CMO	Regular
26	Follow up on utility undergrounding - Jan 2020	PW	
27	Authorize the city manager to enter into funding agreements with C/CAG and Caltrans and authorize a design-build approach for the project (Have	PW	Consent

Tentative City Council Agenda

#	Title	Department	Item type
28	Waive second reading and adopt TIF ordinance	PW	Consent
29	Monte Rosa water main bid award	PW	Consent
30	Willows turn restrictions	PW	Regular
31	Adopt resolution for parking restrictions on Santa Cruz between Johnson and Arbor	PW	Regular
32	TIA Guidelines	PW	Study Session
33	Goal setting		

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STAFF REPORT

City Council

Meeting Date:

11/19/2019

Staff Report Number:

19-254-CC

Informational Item:

Update on City's implementation of the Federal Communications Commission's new small wireless facility regulations

Recommendation

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

Policy Issues

The City manages its right of way to promote a variety of, sometimes competing, transportation, mobility and utility uses. In the telecommunications arena, there has been an increasing trend of federal legislation designed to pre-empt and limit local land use authority to regulate placement of telecommunications facilities.

Background

On October 23, 2018, the city attorney provided an informational report to the City Council summarizing the new federal regulations promulgated by the Federal Communications Commission (FCC) September 27, 2018¹. A copy of that report is included as Attachment A. In short, the recent 2018 regulations were designed to expeditiously rollout 5G² small cell technology by removing local regulatory barriers for siting wireless installations in the right of way (ROW.) The 2018 FCC ruling continued the trend of federal preemption over local regulations governing telecommunications.

Definition of small cell sites

The FCC ruling applies only to "small cell sites." Small cell facilities are a type of wireless broadband infrastructure. Generally, "small cell" refers to both the smaller coverage area of the wireless signal, and the smaller size of the infrastructure. Small cell installations generally cover much smaller geographic areas — measured in hundreds of feet — than the traditional macrocell towers that can cover miles in each direction. The antennas are much smaller than those deployed at macrocell sites, and are often attached to buildings, rooftops and structures in public ROW, including utility and light poles and other street furniture. Pole- or ground-mounted equipment accompanying the antenna may also be needed and can be as big as a large refrigerator. This equipment may be in the ROW or mounted on the pole. These facilities help to compliment or stretch tower macrocell coverage and add capacity in high demand areas.

In Menlo Park, small wireless facility applications will most likely involve attachments to existing PG&E utility poles, street lights and traffic lights.

September 27, 2018 FCC ruling

On September 27, 2018, the FCC issued a ruling designed to further promote the expeditious deployment of small cell sites in the public right of way. Portions of the ruling went into effect January 14 and the remaining portions went into effect April 15.

¹ Declaratory Ruling and Third Report and Order, WT Dk. No. 17-79 and WC Dk. No 17-84.

² The term for emerging 5th generation wireless telecommunications standards usually associated with network speeds of 1 Gpbs or more.

The FCC ruling establishes the following new standards for small wireless facilities:

- Broad interpretation of local prohibitions: The FCC order attempts to further limit the city's ability to adopt a regulation that "materially limits or inhibits the ability of wireless carriers."
- Cost-based fees: The FCC ruled that cities are limited to charging fees that are no greater than a "reasonable approximation" of their costs for processing applications and for managing deployments in the right of way. The FCC established a presumptively lawful, nationwide fee schedule for small cell applications as follows:
 - \$500 for a single up-front application that includes up to 5 small wireless facilities, with an additional \$100 for each small wireless facility beyond five, or \$1,000 for non-recurring fees for a new pole to support one or more small wireless facilities;
 - \$270 per small wireless facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to city-owned poles in the ROW.
- Aesthetic regulations: These are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments and (3) published in advance.
- Underground requirements: The FCC ruled that a requirement that all wireless facilities be deployed underground would amount to an effective prohibition and is thus not permitted.
- Quid Pro Quo "in kind service": The FCC discouraged situations where the city makes clear it will approve a deployment only on condition that the provider supply an "in-kind" service or public benefit, such as installing a communications network dedicated to city's exclusive use.
- Non-discriminatory agreements: The City must offer the same terms to all carriers who want to locate on city-owned infrastructure.

In addition, the recent FCC Ruling established a new set of even more restrictive "shot clocks" applicable only to small wireless facilities. These shot clocks are:

- Sixty days for small cell wireless facility attachments to existing poles or structures
- Ninety days for small cell wireless facilities on new poles or structures

Litigation over FCC ruling

As anticipated, following the release of the FCC ruling, lawsuits were filed by municipalities throughout the country. The lawsuits have now been consolidated in the Ninth Circuit Court of Appeals under the lead case titled *City of Portland v. FCC*. The FCC ruling will continue to apply to cities unless and until a court issues an injunction against the ruling.

The order has been challenged on a number of grounds. The major claims asserted are:

- The FCC regulations barring city ability to *inhibit* wireless service exceeds the authority in the statute which only limits city's authority to *prohibit* wireless service (e.g., coverage gap;)
- FCC's requirement that fees exceeding the cost for use of public property are unlawful constitutes a "taking" of public right of way;
- FCC cannot grant access to proprietary state and local property it does not own;
- FCC exceeded its authority in requiring local aesthetic regulations be (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance; and
- FCC's shot clock deadlines for action on applications provide insufficient time to conduct land-use processes requiring public notice and hearing

Below is a projected litigation timetable:

- Cities brief filed– June 10
- FCC response brief filed – August 8
- Cities reply brief due – September 4
- Oral argument -- anticipated late October/mid-December

Analysis

Menlo Park’s current Code requires most wireless facilities to obtain a conditional use permit to locate either on public or private property. Given the new federal law shot clocks it will be extremely challenging for the City to issue a CUP within the prescribed time. As a result of the new shot clocks, many cities have begun updating their wireless ordinances to streamline the siting and permitting process.

As mentioned in the earlier informational item, staff plans on updating its existing wireless regulations to account for the new federal law. The new wireless ordinance will likely streamline the process for siting and permitting wireless facilities in the ROW. It will also contain published design criteria focusing on concealing and camouflaging the facilities as much as possible. It will also contain a tiered system for permitting wireless facilities in the ROW and creating an administrative process for most “collocations.” In addition, the ordinance will contain safeguards for ensuring the structural integrity of the existing support structures. In conjunction with the ordinance update, the City will also be proposing a master license agreement governing wireless attachments to city-owned poles.

Staff has begun the process of updating the ordinance by receiving input from the Planning Commission. However, there are several factors that have caused staff to re-evaluate the immediate need to update its wireless regulations. First, the pending litigation may invalidate some or all of the new FCC requirements. Also, in discussions with the carriers, it appears they are delaying implementation of small cell systems in part because the new 5G technology is not fully developed. Also, small cell sites are receiving more resident opposition than carriers originally anticipated. To address resident complaints regarding the health impacts of the small cell sites, some communities have adopted overly aggressive ordinances which may be subject to subsequent litigation by the carriers.³ Accordingly, the City has not seen a rush on wireless applications as originally anticipated. For these reasons, the city attorney suggests a slower approach to updating the City’s ordinance in hopes that the *City of Portland v. FCC* appellate court decision may provide some additional guidance on the constitutionality of the FCC ruling.

That said, there are at least three requests from wireless carriers to locate on the City’s streetlights in the ROW that staff recommends moving forward. All three requests are on Sand Hill Road. One request involves an extension of an existing lease between a carrier and the City and two requests are for new small cell sites to help increase capacity for Sand Hill Road businesses. So far, the carriers appear willing to partner with the City to install a well-designed facility and to pay market rate rent for use of City infrastructure. It is anticipated these installations will be permitted through a master license agreement that will come forward to the City Council for approval.

Impact on City Resources

Adoption of the ordinance would not result in any fiscal impact. The City is examining whether a cost of service fee study will be necessary to justify new processing fees. There may be additional costs associated with the processing of additional small wireless facility applications.

³ Under federal law, cities are not permitted to take into account the health impacts of wireless technology. That issue is entirely regulated by federal law. Unfortunately, the federal regulations in this area are remarkably outdated placing local communities in a no-win situation.

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. Hyperlink – October 23, 2018 staff report:

menlopark.org/DocumentCenter/View/18839/K2---ATTY-PW---Cell-Site-18-194

Attachments

None.

Report prepared by:

Cara Silver, Assistant City Attorney

Justin Murphy, Public Works Director



STAFF REPORT

City Council

Meeting Date: 11/19/2019

Staff Report Number: 19-255-CC

Consent Calendar:

Waive the second reading and adopt Ordinance No. 1060 amending Chapter 13.24 [Heritage Trees] of Title 13 [Streets, sidewalks and utilities]

Recommendation

Staff recommends that the City Council waive the second reading and adopt Ordinance No. 1060 amending Chapter 13.24 [Heritage Trees] of Title 13 [Streets, sidewalks and utilities] (Attachment A).

Policy Issues

State law requires two City Council actions, a first reading and second reading, to amend or add to a city's municipal code.

Background

Ordinance No. 1060, Attachment A, was first heard at the October 29 City Council meeting where it was approved as amended as tracked in the redline version of Ordinance No. 1060, Attachment B.

Analysis

Following a presentation from staff, public comment, and discussion by the City Council, City Councilmember Combs moved and City Councilmember Nash seconded a motion to adopt Ordinance No. 1060 with the following summarized amendments and detailed in the redline version, Attachment B:

1. Requirement that applicant post a notice on the property containing the heritage tree prior to removal, Section 13.24.050(b)(2.)
2. Clarification of the language in Section 13.24.050 (5) regarding the development related criterion to distinguish between removals based on a tree's interference with a proposed development project and removals due to a tree's interference with an existing building.
3. Addition of an annual reporting requirement regarding the effectiveness of the heritage tree ordinance, Section 12.24.110(2).

Impact on City Resources

To implement the ordinance, city operational costs are expected to increase. As part of the city manager's proposed fiscal year 2020-21 budget, staff anticipated increasing the heritage tree program budget up to \$120,000 annually and will require additional staff or a mix of staff, nonprofit and consulting services.

Environmental Review

As the purpose of the ordinance is to continue the level of tree canopy protection existing in the current ordinance while providing more clarity and better enforcement, the ordinance is exempt from review under the California Environmental Quality Act.

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. 1060 – clean version
- B. Ordinance No. 1060 – redlined Version
- C. Hyperlink – October 29 City Council staff report: menlopark.org/DocumentCenter/View/23253/H1-20191029-CC-Adoption-of-HTO-Amendments

Report prepared by:
Cara Silver, Assistant City Attorney
Rebecca Lucky, Sustainability Manager

ORDINANCE NO. 1060**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING CHAPTER 13.24 [HERITAGE TREES] OF TITLE 13 [STREETS,
SIDEWALKS AND UTILITIES]**

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

SECTION 1. FINDINGS AND DETERMINATIONS.

- A. In August 2018, the City Council appointed a Heritage Tree Task Force (Task Force) to collaborate with staff to review and provide recommendations to update the Heritage Tree ordinance (ordinance);
- B. The Task Force finalized their recommendations to the City Council at the end of June 2019;
- C. On August 12, 2019, the Planning Commission reviewed the proposed updates to the Heritage Tree Ordinance and recommended approval;
- D. On September 12, 2019, the Task Force reviewed the draft ordinance language and administrative guidelines, and recommended approval;
- E. On September 18, 2019, the Environmental Quality Commission reviewed the draft ordinance language and administrative guidelines, and recommended approval;
- F. On October 29, 2019, the City Council reviewed the updated Heritage Tree ordinance;
- G. The City Council finds that the desired outcome of the ordinance update to ensure a significant and thriving population of large healthy trees in Menlo Park for public enjoyment and environmental sustainability while balancing property rights and implementation efficiency was achieved;
- H. City Council finds the ordinance update process evaluated current issues and successes with the existing ordinance and explored options based on evidence and best practices in other communities and industry experts; and
- I. The City Council finds that the preferred options were identified based on increasing clarity, increasing and maintaining canopy, and increasing effectiveness of ordinance implementation, and adopts the following amendments to the Heritage Tree Ordinance (13.24).

SECTION 2. AMENDMENT OF CODE. Chapter 13.24 [Heritage Trees] of Title 13 [Streets, Sidewalks and Utilities] is hereby repealed and replaced with the following:

**CHAPTER 13.24
HERITAGE TREES****Sections:****13.24.010 Intent and purpose****13.24.020 Definitions**

13.24.030 Maintenance and preservation of heritage trees

13.24.040 Removal and major pruning of heritage trees prohibited

13.24.050 Permits and decision making criteria for removal

13.24.060 Appeals

13.24.070 Establishment of heritage tree fund

13.24.080 Administrative guidelines

13.24.090 Heritage tree replacements

13.24.100 Enforcement and violations

13.24.110 Urban forest data collection and reporting

13.24.010 Intent and purpose.

This chapter is adopted with the intent and purpose of promoting the preservation and development of a healthy, diverse tree canopy in Menlo Park, which is highly valued by the community and is vital to the character and health of the city.

Heritage trees are valued for their many contributions to the environment, public health and quality of life of the Menlo Park community. Examples of those benefits include:

- provide shade
- enhance resilience to climate change
- improve air quality
- provide shelter from wind
- prevent erosion and landslides
- protect against flood hazards
- add to the city's scenic beauty and character
- recognize historical significance to our city
- create natural gathering places
- reduce noise pollution
- enhance privacy
- enhance neighborhood property values
- provide habitat for wildlife

This chapter establishes regulations for the removal and replacement of heritage trees, promotion of additional heritage tree planting and public education about the planting, maintenance and preservation of healthy heritage trees following industry best management practices and, consistent with the purposes of this chapter, the reasonable enjoyment of public and private property, protection of property rights, all in alignment with the General Plan.

13.24.020 Definitions.

For purposes of this Chapter, the terms below shall have the following meanings:

1. "Administrative guidelines" means staff-promulgated regulations implementing and interpreting this ordinance.

2. "Applicant" is the person seeking a Permit to remove or perform major pruning on a heritage tree under this Chapter.

3. "Major pruning" is the significant removal of roots or foliage that has the potential to negatively impact the health or structural stability of a heritage tree. Major pruning includes the removal of more than one-fourth of the live branches or roots within a twelve (12) month period.

4. "Public Works Director" shall mean the Public Works Director or their designee, including but not limited to the City Arborist.

5. "Heritage tree" shall mean:

(A) All trees other than oaks which have a trunk with a circumference of 47.1 inches (diameter of fifteen (15) inches) or more, measured fifty-four (54) inches above natural grade.

(B) An oak tree (*Quercus*) which is native to California and has a trunk with a circumference of 31.4 inches (diameter of ten (10) inches) or more, measured at fifty-four (54) inches above natural grade.

(C) A tree or group of trees of historical significance, special character or community benefit, specifically designated by resolution of the city council.

For purposes of Sections 13.24.020 (4) (A) and (B), trees with more than one trunk shall be measured at the diameter below the main union of all multi-trunk trees unless the union occurs below grade, in which case each stem shall be measured as a standalone tree. A multi-trunk tree under twelve (12) feet in height shall not be considered a heritage tree.

13. 24.030 Maintenance and preservation of heritage trees.

1. Any person who owns, controls, or has custody or possession of any real property within the city shall use reasonable efforts to maintain and preserve all heritage trees located thereon in a state of good health pursuant to the provisions of this chapter. Failure to do so shall constitute a violation of this chapter.

2. Any person who conducts any grading, excavation, demolition or construction activity on property shall do so in such a manner as to not threaten the health or viability or cause the removal of any heritage tree.

3. Any work performed within an area ten (10) times the diameter of a heritage tree (i.e., the tree protection zone) shall require submittal and implementation of a tree protection plan for review and approval by the public works director prior to issuance of any permit for grading or construction. The tree protection plan shall be prepared by a City-approved certified arborist and shall address issues related to protective fencing and protective techniques to minimize impacts associated with grading, excavation, demolition and construction. The public works director may impose conditions on any city permit to assure compliance with this section.

13.24.040 Removal and major pruning of heritage trees prohibited.

It is unlawful for any person to remove, or cause to be removed, any heritage tree from any parcel of property in the city, or perform major pruning on a heritage tree, without obtaining a permit; provided, that in case of emergency, when a heritage tree is imminently hazardous or

dangerous to life or property, it may be removed by order of the police chief, fire chief, the public works director or their respective designees. Any person who vandalizes, grievously mutilates, destroys or unbalances a heritage tree without a permit or beyond the scope of an approved permit shall be in violation of this chapter.

13.24.050 Permits and decision-making criteria for tree removal.

a. **Permit Requirement and Removal Criteria.** Any person desiring to remove one or more heritage trees or perform major pruning as described in Section [13.24.020](#) shall apply for a permit pursuant to procedures established by the public works director and shall pay a fee established by the city council. It is the joint responsibility of the property owner and party removing the heritage tree or trees, or portions thereof, to obtain the permit. The public works director may only issue a permit for the removal or major pruning of a heritage tree if he or she determines there is good cause for such action. In determining whether there is good cause, the public works director shall give consideration to the following:

1. **Death.** The heritage tree is dead.
2. **Tree Risk Rating.** The condition of the heritage tree poses a high or extreme risk rating under the International Society of Arboriculture Best Management Practices: Tree Risk Assessment and/or administrative guidelines; and the risk cannot be reasonably abated to a low risk rating with sound arboricultural treatments.
3. **Tree Health Rating.** The heritage tree is (a) dying or has a severe disease, pest infestation, intolerance to adverse site conditions, or other condition and pruning or other reasonable treatments based on current arboricultural standards will not restore the heritage tree to a fair, good or excellent health rating as defined in the Guide for Plant Appraisal, 10th Edition, or its successor manual or the administrative guidelines or (b) likely to die within a year.
4. **Species.** The heritage tree is a member of a species that has been designated as invasive or low species desirability by the public works director in the administrative guidelines.
5. **Development.** The heritage tree interferes with proposed development, repair, alteration or improvement of a site or the heritage tree is causing/contributing to structural damage to a habitable building (excluding amenities, such as walkways, patios, pools and fire pits); and there is no financially feasible and reasonable design alternative that would permit preservation of the heritage tree while achieving the applicant's reasonable development objectives or reasonable economic enjoyment of the property using the methodology established in the administrative guidelines.
6. **Utility Interference.** The removal is requested by a utility, public transportation agency, or other governmental agency due to a health or safety risk resulting from the heritage tree's interference with existing or planned public infrastructure and there is no financially feasible and reasonable design alternative that would permit preservation of the heritage tree.

b. **Notice Requirements.**

1. The City will use its best efforts to maintain a publicly accessible data base of permit applications.
2. Before a heritage tree is removed, notice of removal shall be posted by the applicant on the property containing the heritage tree. When a permit is sought under criteria number 5 (Development) or 6 (Utility), property owners within 300 feet of the exterior boundary of the

property containing the heritage tree shall be noticed by email or mail of the pending application. Failure to receive copies of such notice shall not invalidate any action taken by the City.

13.24.060 Appeals.

1. Authority to appeal. Removals based on criteria numbers 1 through 4 in section 13.24.050 may only be appealed by the permit applicant as set forth in section 13.24.060 (2) below. Removals based on criteria 5 and 6 may be appealed by the permit applicant or Menlo Park resident. Appeals must be filed on a city approved form and are subject to appeal fees. A permit shall not be issued until all appeals are completed and/or the time for filing an appeal has expired.

2. Criteria 1-4 Appeals. Permit decisions based on criteria numbers 1, 2, 3 or 4 in section 13.24.050 may only be appealed by the permit applicant. Such appeal must be filed within fifteen (15) days of the public works director's written decision and must be in writing. The appeal shall be heard by the City Manager or designee whose decision shall be final.

3. Criteria 5-6 Appeals. Notice of the public works director's decision shall be mailed to all property owners within 300 feet of the exterior boundary of the property where the heritage tree is located. In addition, the applicant shall post a notice on a form supplied by the city on the property in a location visible to the public.

A. Filing Appeal. Within fifteen (15) days of posting, the applicant or any Menlo Park resident may appeal the public works director's decision to the Environmental Quality Commission

B. Review Period for decision making criteria number 5 and 6 of section 13.24.050. If the Permit is timely appealed, the appellant shall have an additional fifteen (15) days to review the project file and to submit written evidence to the city clerk relating to the appeal. The appellant may submit one to five reasonable and feasible alternatives for the permit applicant to explore. If either party would like the appeal body to review third-party expert evidence, such party shall submit the evidence to the city within the review period. No additional removal alternatives/concepts or third party expert testimony will be accepted for review by the Environmental Quality Commission or City Council after the end of the review period.

C. Decision by Environmental Quality Commission. The Environmental Quality Commission shall consider the appeal. The Environmental Quality Commission may only consider removal alternatives/concepts and third party expert evidence submitted to the city during the review period. Within fifteen (15) days following the Environmental Quality Commission's decision, the applicant or any other party to the appeal may appeal the Environmental Quality Commission's decision to the City Council.

D. Planning Commission development related tree removals. When a removal permit is sought in conjunction with a project requiring Planning Commission review, the appeal to the Environmental Quality Commission, if any, should be completed before the Planning Commission takes final action on the development project.

i. If the Environmental Quality Commission approves the heritage tree removal, such approval shall be conditioned upon final approval of the project by the Planning Commission or City Council, as applicable. Following the Environmental Quality Commission's approval of the development related heritage tree removal, any appeal to the City Council is suspended until the Planning Commission acts. Once the Planning Commission makes a final decision on the overall development project that includes the heritage tree removal, any party to the

Environmental Quality Commission appeal may appeal the heritage tree removal decision to the City Council. Such appeal shall be filed with the city clerk within fifteen (15) days of the Planning Commission's decision.

ii. If the Environmental Quality Commission denies the removal permit, the permit applicant may appeal the decision to the City Council before the Planning Commission reviews the related development project. If the applicant does not appeal the permit decision within fifteen (15) days of the Environmental Quality Commission's decision, no appeal may be taken on the removal permit, and the development project shall be redesigned to include plans for retaining the heritage tree.

E. Decision by City Council. The City Council shall consider the appeal. The City Council may only consider removal alternatives/concepts and third party expert evidence submitted to the city during the review period.

4. Alternate appeal body. From time to time, the City Council may by resolution appoint a separate appellate body to hear Permit appeals in lieu of the Environmental Quality Commission.

5. Re-submittal. If an applicant fails to exhaust the appeals set forth in this Chapter or the City Council denies the Permit, the Applicant may not apply for another Permit applicable to that heritage tree for a period of six months from the denial decision.

13.24.070 Establishment of heritage tree fund.

There is hereby established a heritage tree fund. This fund may be used to plant additional trees, to assist with implementation of the Heritage Tree Ordinance and any other purpose established by the administrative guidelines.

13.24.080 Administrative guidelines.

The public works director shall have the authority to adopt and modify administrative guidelines to implement this chapter.

13.24.090 Heritage tree replacements.

1. If a permit for removal of a heritage tree is granted under Section 13.24.050, the applicant shall replace the heritage tree with a tree from a list of species approved by the City Arborist or pay a heritage tree in lieu fee in accordance with this section.

2. For development related removals, the applicant shall provide replacement heritage trees on site in an amount equivalent to the appraised value of the removed heritage tree. The City Arborist shall approve the location, size, species and number of replacement heritage trees. If the appraised value of the removed heritage tree, exceeds the value of the replacement heritage trees that can be accommodated on the property, the applicant shall pay the difference in value to the heritage tree fund.

3. For non-development related removals, the applicant shall provide replacement heritage trees on site, with a tree from a list of species approved by the City Arborist, in an amount based on a replacement matrix based on trunk diameter as set forth in the administrative guidelines. If the property cannot accommodate all replacement trees on site, the applicant may pay an in lieu fee equivalent to the value of the replacement trees not planted on site. The in lieu fee shall be deposited into the heritage tree fund.

13.24.100 Enforcement and violations.

In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available to the city for violation of this chapter:

1. If a violation occurs during development, the city may issue a stop work order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection, and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the public works director and City Attorney, agreed to in writing by the property owner(s), and either implemented or guaranteed by the posting of adequate security as determined by the City Attorney.
2. Any person violating this chapter shall be subject to a civil fine or penalty in the amount established by the City Council by resolution. Civil fines or penalties collected under this chapter shall be deposited into the heritage tree fund.
3. The Code Enforcement Officer, Public Works Director and Building Official or designee are authorized to issue stop work orders, notices of violation, administrative penalties and citations under this chapter and/or pursuant to the administrative guidelines adopted by the Public Works Director.
4. Any citation or penalty received under this chapter may be appealed to the City Manager or designee whose determination shall be final. Such appeal must be filed within fifteen (15) days of receipt of the citation or penalty.
5. Whenever the amount of any administrative fine or penalty or administrative cost incurred by the city in connection with a violation of this chapter has not been satisfied in full within ninety (90) days and/or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien or, in the alternative, a special assessment against the real property on which the violation occurred.
6. The City Attorney may bring a civil action against the violator to abate, enjoin, or otherwise compel the cessation of violation of any provision in this chapter. In a civil action brought pursuant to this chapter in which the City prevails, the court may award to the City all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.
7. The remedies provided in this section may be enforced against both the contractor or other person performing work in violation of this chapter as well as the owner of the real property on which the heritage tree is located.
8. All remedies provided in this section shall be cumulative and are not exclusive.

13.24.110 Urban forest data collection and reporting.

1. The City shall use its best efforts to collect and make publicly available data to monitor the effectiveness of this ordinance.
2. City staff shall submit an annual report to the Environmental Quality Commission on the effectiveness of this Heritage Tree Ordinance.

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. The ordinance update is intended to continue the level of tree canopy protection existing in the current ordinance while providing more clarity and better enforcement, and has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 5. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect July 1, 2020. 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, by posting 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 city council members voting for and against the amendment.

INTRODUCED on this twenty-ninth day of October, 2019.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Ray Mueller, Mayor

ATTEST:

Judi A. Herren, City Clerk

ORDINANCE NO. 1060

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING CHAPTER 13.24 [HERITAGE TREES] OF TITLE 13 [STREETS,
SIDEWALKS AND UTILITIES] ~~AND REPEALING CHAPTER 16.65 [SOLAR
ACCESS] OF TITLE 16 [ZONING]~~**

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

SECTION 1. FINDINGS AND DETERMINATIONS.

- A. In August 2018, the City Council appointed a Heritage Tree Task Force (Task Force) to collaborate with staff to review and provide recommendations to update the Heritage Tree ordinance (ordinance);
- B. The Task Force finalized their recommendations to the City Council at the end of June 2019;
- C. On August 12, 2019, the Planning Commission reviewed the proposed updates to the Heritage Tree Ordinance and recommended approval;
- D. On September 12, 2019, the Task Force reviewed the draft ordinance language and administrative guidelines, and recommended approval;
- E. On September 18, 2019, the Environmental Quality Commission reviewed the draft ordinance language and administrative guidelines, and recommended approval;
- F. On October 29, 2019, the City Council reviewed the updated Heritage Tree ordinance;
- G. The City Council finds that the desired outcome of the ordinance update to ensure a significant and thriving population of large healthy trees in Menlo Park for public enjoyment and environmental sustainability while balancing property rights and implementation efficiency was achieved;
- H. ___ City Council finds the ordinance update process evaluated current issues and successes with the existing ordinance and explored options based on evidence and best practices in other communities and industry experts; and
- I. The City Council finds that the preferred options were identified based on increasing clarity, increasing and maintaining canopy, and increasing effectiveness of ordinance implementation, and adopts the following amendments to the Heritage Tree Ordinance (13.24).

SECTION 2. AMENDMENT OF CODE. Chapter 13.24 [Heritage Trees] of Title 13 [Streets, Sidewalks and Utilities] is hereby repealed and replaced with the following:

CHAPTER 13.24 HERITAGE TREES

Sections:

13.24.010 Intent and purpose

13.24.020 Definitions

13.24.030 Maintenance and preservation of heritage trees

13.24.040 Removal and major pruning of heritage trees prohibited

13.24.050 Permits and decision making criteria for removal

13.24.060 Appeals

13.24.070 Establishment of heritage tree fund

13.24.080 Administrative guidelines

13.24.090 Heritage tree replacements

13.24.100 Enforcement and violations

13.24.110 Urban ~~Forest~~~~forest~~ ~~Data~~~~data~~ ~~Collection~~~~collection~~ and ~~R~~~~reporting~~

13.24.010 Intent and purpose.

This chapter is adopted with the intent and purpose of promoting the preservation and development of a healthy, diverse tree canopy in Menlo Park, which is highly valued by the community and is vital to the character and health of the city.

Heritage trees are valued for their many contributions to the environment, public health and quality of life of the Menlo Park community. Examples of those benefits include:

- provide shade
- enhance resilience to climate change
- improve air quality
- provide shelter from wind
- prevent erosion and landslides
- protect against flood hazards
- add to the city's scenic beauty and character
- recognize historical significance to our city
- create natural gathering places
- reduce noise pollution
- enhance privacy
- enhance neighborhood property values

- provide habitat for wildlife

This chapter establishes regulations for the removal and replacement of heritage trees, promotion of additional heritage tree planting, and public education about the planting, maintenance and preservation of healthy heritage trees following industry best management practices, and, consistent with the purposes of this chapter, the reasonable enjoyment of public and private property, protection of property rights, ~~all and~~ in alignment with the General Plan.

13.24.020 Definitions.

For purposes of this Chapter, the terms below shall have the following meanings:

1. "Administrative guidelines" means staff-promulgated regulations implementing and interpreting this ordinance.
2. "Applicant" is the person seeking a Permit to remove or perform major pruning on a heritage tree under this Chapter.
- ~~32.~~ "Major pruning" is the significant removal of roots or foliage that has the potential to negatively impact the health or structural stability of a heritage tree. Major pruning includes the removal of more than one-fourth of the live branches or roots within a twelve (12) month period.
- ~~43.~~ "Public Works Director" shall mean the Public Works Director or their designee, including but not limited to the City Arborist.
- ~~54.~~ "Heritage tree" shall mean:
 - (A) All trees other than oaks which have a trunk with a circumference of 47.1 inches (diameter of fifteen (15) inches) or more, measured fifty-four (54) inches above natural grade).
 - (B) An oak tree (*Quercus*) which is native to California and has a trunk with a circumference of 31.4 inches (diameter of ten (10) inches) or more, measured at fifty-four (54) inches above natural grade.
 - (C) A tree or group of trees of historical significance, special character or community benefit, specifically designated by resolution of the city council.

For purposes of Sections 13.24.020 (4) (A) and (B), trees with more than one trunk shall be measured at the diameter below the main union of all multi-trunk trees unless the union occurs below grade, in which case each stem shall be measured as a standalone tree. ~~A m~~Multi-trunk trees under twelve (12) feet in height shall not be considered a heritage tree.

13. 24.030 Maintenance and preservation of heritage trees.

1. Any person who owns, controls, or has custody or possession of any real property within the city shall use reasonable efforts to maintain and preserve all heritage trees located thereon in a state of good health pursuant to the provisions of this chapter. Failure to do so shall constitute a violation of this chapter.
2. Any person who conducts any grading, excavation, demolition or construction activity on property shall do so in such a manner as to not threaten the health or viability or cause the removal of any heritage tree.

3. Any work performed within an area ten (10) times the diameter of a heritage tree (i.e., the tree protection zone) shall require submittal and implementation of a tree protection plan for review and approval by the public works director ~~or his or her designee~~ prior to issuance of any permit for grading or construction. The tree protection plan shall be prepared by a City-approved certified arborist and shall address issues related to protective fencing and protective techniques to minimize impacts associated with grading, excavation, demolition and construction. The ~~director of public works~~ public works director ~~or his or her designee~~ may impose conditions on any city permit to assure compliance with this section.

13.24.040 Removal and major pruning of heritage trees prohibited.

It is unlawful for any person to remove, or cause to be removed, any heritage tree from any parcel of property in the city, or perform major pruning on a heritage tree, without obtaining a permit; provided, that in case of emergency, when a heritage tree is imminently hazardous or dangerous to life or property, it may be removed by order of the police chief, fire chief, the public works director or their respective designees. Any person who vandalizes, grievously mutilates, destroys or unbalances a heritage tree without a permit or beyond the scope of an approved permit shall be in violation of this chapter.

13.24.050 Permits and ~~decision-making~~ decision-making criteria for tree removal.

a. Permit Requirement and Removal Criteria. Any person desiring to remove one or more heritage trees or perform major pruning as described in Section 13.24.020 shall apply for a permit pursuant to procedures established by the public works director and shall pay a fee established by the city council. It is the joint responsibility of the property owner and party removing the heritage tree or trees, or portions thereof, to obtain the permit. The ~~director of public works~~ public works director ~~or his or her designee~~ may only issue a permit for the removal or major pruning of a heritage tree if he or she determines there is good cause for such action. In determining whether there is good cause, the public works director shall give consideration to the following:

1. Death. The heritage tree is dead.
2. Tree Risk Rating. The condition of the heritage tree poses a high or extreme risk rating under the International Society of Arboriculture Best Management Practices: Tree Risk Assessment and/or administrative guidelines; and the risk cannot be reasonably abated to a low risk rating with sound arboricultural treatments.
3. Tree Health Rating. The heritage tree is (a) dying or has a severe disease, pest infestation, intolerance to adverse site conditions, or other condition and pruning or other reasonable treatments based on current arboricultural standards will not restore the heritage tree to a fair, good or excellent health rating as defined in the Guide for Plant Appraisal, 10th Edition, or its successor manual or the administrative guidelines or (b) ~~the heritage tree is~~ likely to die within a year.
4. Species. The heritage tree is a member of a species that has been designated as invasive or low species desirability by the public works director in the administrative guidelines.
5. Development. The heritage tree interferes with proposed development, repair, alteration or improvement of a site or ~~the heritage tree habitable building that~~ is causing/contributing to structural damage to a habitable building (excluding amenities, such as walkways, patios, pools and fire pits); and there is no financially feasible and reasonable design alternative that would

permit preservation of the heritage tree while achieving the applicant's reasonable development objectives or reasonable economic enjoyment of the property using the methodology established in the administrative guidelines.

6. Utility Interference. The removal is requested by a utility, public transportation agency, or other governmental agency due to a health or safety risk resulting from the heritage tree's interference with existing or planned public infrastructure and there is no financially feasible and reasonable design alternative that would permit preservation of the heritage tree.

b. Notice Requirements.

1. The City will use its best efforts to maintain a publicly accessible data base of permit applications.

2. Before a heritage tree is removed, notice of removal shall be posted by the applicant on the property containing the heritage tree. When a permit is sought under ~~Criteria~~ ~~criteria~~ ~~No.~~ ~~number~~ 5 (Development) or 6 (Utility), property owners within 300 feet of the exterior boundary of the property containing the ~~h~~Heritage ~~t~~Tree shall be noticed by email or mail of the pending application. Failure to receive copies of such notice shall not invalidate any action taken by the City.

13.24.060 Appeals.

1. Authority to appeal. Removals based on criteria numbers 1 through 4 in section 13.24.050 may only be appealed by the permit applicant as set forth in section 13.24.060 (2) below. Removals based on criteria 5 and 6 may be appealed by the permit applicant or Menlo Park resident. Appeals must be filed on a city approved form and are subject to appeal fees. A permit shall not be issued until all appeals are completed and/or the time for filing an appeal has expired.

2. Criteria 1-4 Appeals. Permit decisions based on criteria numbers 1, 2, 3 or 4 in section 13.24.050 may only be appealed by the permit applicant. Such appeal must be filed within fifteen (15) days of the public works director's written decision and must be in writing. The appeal shall be heard by the City Manager or designee whose decision shall be final.

3. Criteria 5-6 Appeals. Notice of the public works director's decision shall be mailed to all property owners within 300 feet of the exterior boundary of the property where the heritage tree is located. In addition, the applicant shall post a notice on a form supplied by the city on the property in a location visible to the public.

A. Filing Appeal. Within fifteen (15) days of posting, the applicant or any ~~person~~ Menlo Park resident may appeal the public works director's decision to the Environmental Quality Commission

B. Review Period for decision making criteria number 5 and 6 of section 13.24.050. If the Permit is timely appealed, the appellant shall have an additional fifteen (15) days to review the project file and to submit written evidence to the city clerk relating to the appeal. The appellant may submit one to five reasonable and feasible alternatives for the permit applicant to explore. If either party would like the appeal body to review third-party expert evidence, such party shall submit the evidence to the city within the review period. No additional removal alternatives/concepts or third party expert testimony will be accepted for review by the Environmental Quality Commission or City Council after the end of the review period.

C. Decision by Environmental Quality Commission. The Environmental Quality Commission shall consider the appeal. The Environmental Quality Commission may only consider removal alternatives/concepts and third party expert evidence submitted to the city during the review period. Within fifteen (15) days following the Environmental Quality Commission's decision, the applicant or any other party to the appeal may appeal the Environmental Quality Commission's decision to the City Council.

D. Planning Commission development related tree removals. When a removal permit is sought in conjunction with a project requiring Planning Commission review, the appeal to the Environmental Quality Commission, if any, should be completed before the Planning Commission takes final action on the development project.

i. If the Environmental Quality Commission approves the heritage tree removal, such approval shall be conditioned upon final approval of the project by the Planning Commission or City Council, as applicable. Following the Environmental Quality Commission's approval of the development related heritage tree removal, any appeal to the City Council is suspended until the Planning Commission acts. Once the Planning Commission makes a final decision on the overall development project that includes the heritage tree removal, any party to the Environmental Quality Commission appeal may appeal the heritage tree removal decision to the City Council. Such appeal shall be filed with the city clerk within fifteen (15) days of the Planning Commission's decision.

ii. If the Environmental Quality Commission denies the removal permit, the permit applicant may appeal the decision to the City Council before the Planning Commission reviews the related development project. If the applicant does not appeal the permit decision within fifteen (15) days of the Environmental Quality Commission's decision, no appeal may be taken on the removal permit, and the development project shall be redesigned to include plans for retaining the heritage tree.

E. Decision by City Council. The City Council shall consider the appeal. The City Council may only consider removal alternatives/concepts and third party expert evidence submitted to the city during the review period.

45. Alternate appeal body. From time to time, the City Council may by resolution appoint a separate appellate body to hear Permit appeals in lieu of the Environmental Quality Commission.

56. Re-submittal. If an applicant fails to exhaust the appeals set forth in this Chapter or the City Council denies the Permit, the Applicant may not apply for another Permit applicable to that heritage tree for a period of six months from the denial decision.

13.24.070 Establishment of heritage tree fund.

There is hereby established a heritage tree fund. This fund may be used to plant additional trees, to assist with implementation of the ~~H~~Heritage Tree Ordinance and any other purpose established by the administrative guidelines.

13.24.080 Administrative guidelines.

The public works director ~~or their designee~~ shall have the authority to adopt and modify administrative guidelines to implement this chapter.

13.24.090 Heritage tree replacements.

1. If a permit for removal of a heritage tree is granted under Section 13.24.050, the applicant shall replace the heritage tree with a tree from a list of species approved by the City Arborist or pay a heritage tree in lieu fee in accordance with this section.
2. For development related removals, the applicant shall provide replacement heritage trees on site in an amount equivalent to the appraised value of the removed heritage tree. The City Arborist shall approve the location, size, species and number of replacement heritage trees. If the appraised value of the removed heritage tree, exceeds the value of the replacement heritage trees that can be accommodated on the property, the applicant shall pay the difference in value to the heritage tree fund.
3. For non-development related removals, the applicant shall provide replacement heritage trees on site, with a tree from a list of species approved by the City Arborist, in an amount based on a replacement matrix based on trunk diameter as set forth in the administrative guidelines. If the property cannot accommodate all replacement trees on site, the applicant may pay an in lieu fee equivalent to the value of the replacement trees not planted on site. The in lieu fee shall be deposited into the heritage tree fund.

13.24.100 Enforcement and Violationsviolations.

In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available to the city for violation of this chapter:

1. If a violation occurs during development, the city may issue a stop work order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection, and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the public works director and city-City attorneyAttorney, agreed to in writing by the property owner(s), and either implemented or guaranteed by the posting of adequate security as determined by the city-City attorneyAttorney.
2. Any person violating this chapter shall be subject to a civil fine or penalty in the amount established by the City Council by resolution. Civil fines or penalties collected under this chapter shall be deposited into the heritage tree fund.
3. The Code Enforcement Officer, Public Works Director and Building Official or designee are authorized to issue stop work orders, notices of violation, administrative penalties and citations under this chapter and/or pursuant to the administrative guidelines adopted by the Public Works Director.
4. Any citation or penalty received under this chapter may be appealed to the City Manager or designee whose determination shall be final. Such appeal must be filed within fifteen (15) days of receipt of the citation or penalty.
5. Whenever the amount of any administrative fine or penalty or administrative cost incurred by the city in connection with a violation of this chapter has not been satisfied in full within ninety (90) days and/or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien or, in the alternative, a special assessment against the real property on which the violation occurred.
6. The City Attorney may bring a civil action against the violator to abate, enjoin, or otherwise compel the cessation of violation of any provision in this chapter. In a civil action brought pursuant to this chapter in which the City prevails, the court may award to the City all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.

7. The remedies provided in this section may be enforced against both the contractor or other person performing work in violation of this chapter as well as the owner of the real property on which the heritage tree is located.

8. All remedies provided in this section shall be cumulative and are not exclusive.

13.24.110 Urban ~~Forest~~~~forest~~ ~~Data~~~~data~~ ~~Collection~~~~collection~~ and ~~R~~reporting.

1. The City shall use its best efforts to collect and make publicly available data to monitor the effectiveness of this ordinance.

2. ~~City staff shall submit an annual report to the Environmental Quality Commission on the effectiveness of this Heritage Tree Ordinance.~~

~~SECTION 3. REPEAL OF CODE. Chapter 16.65 [Solar Access] of Title 16 [Zoning] is hereby repealed in its entirety.~~

SECTION 34. 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 45. 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. The ordinance update is intended to continue the level of tree canopy protection existing in the current ordinance while providing more clarity and better enforcement, and has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 56. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect July 1, 2020. 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, by posting- 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 city council members voting for and against the amendment.

INTRODUCED on this twenty-ninth day of October, 2019.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on this —twelfth day of —, November, 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: 11/19/2019

Staff Report Number: 19-256-CC

Public Hearing: Introduce Ordinance No. 1064 to update the transportation impact fee program

Recommendation

Staff recommends that the City Council introduce an ordinance (Attachment A) to update Chapter 13.26 of the Municipal Code, which defines the transportation impact fee (TIF) program, and review the draft resolution (Attachment B) of the new rates, proposed for adoption December 10.

Policy Issues

The TIF program is defined in Section 13.26 of the Municipal Code. The fees are updated by the City Council's adoption of a resolution identifying the new fees. City Council adoption of the updated ordinance language is required through introduction (first reading) and adoption (a second reading) of the ordinance. The planned effective dates for the ordinance updates and proposed fees are summarized in the Analysis section below.

Background

State Government Code Sections 66000 through 66008 (also known as AB1600 or the Mitigation Fee Act) set requirements for establishing and using impact fees for funding public improvements, amenities and services. The City must follow a prescribed process and make certain determinations regarding the purpose and use of the fees and establish a "nexus" or connection between a development project or class of projects and the public improvement being financed with the fee. In addition, the fee revenue must be segregated from the general fund in order to avoid the commingling of public improvement fees.

On November 5, City Council accepted the nexus study (Attachment C) and reviewed the draft resolution and ordinance. The staff report from November 5, which includes more detailed relevant background and analysis, is also linked in Attachment D for ease of reference. The November 5 staff report also included copies of the proposed ordinance and resolution with staff-recommended fee rates. No changes to either document have been proposed as of the publication of this report November 7. On November 5, the City Council also appointed an ad hoc subcommittee of Mayor Pro Tem Taylor and City Councilmember Nash to work with staff to provide alternative rates for certain land uses for discussion November 19.

Analysis

Staff is recommending that the City Council conduct a public hearing and introduce the ordinance to update the fee program language to be consistent with the current circulation element and clarify staff titles. Staff also requests the City Council provide a recommendation on the proposed TIF rates if alternative land use incentives are desired. Staff recommended rates are listed in the draft resolution. Staff is scheduling a meeting with Mayor Pro Tem Taylor and City Councilmember Nash to discuss possible alternative rates,

which staff anticipates the subcommittee would present at the City Council meeting November 19 for consideration. In addition, the list of grandfathered projects will be finalized for the December 10 meeting.

A second reading of the ordinance and adoption of the updated fees would be scheduled for the December 10 City Council meeting. If the City Council adopts the resolution and ordinance at their December meeting, the ordinance changes would go into effect in 30 days and the fees would go into effect in 60 days as shown in Table 1.

Table 1: Proposed schedule	
Date	Task
November 19	City Council public hearing of updated TIF rates and first reading of the ordinance update
December 10	City Council adoption of updated TIF rates and second reading of the ordinance update
January 9, 2018	Ordinance changes go into effect
February 8, 2020	New TIF rates go into effect

Impact on City Resources

The cost to complete the TIF program update is included in the city budget as part of the TMP project. No additional resources are being requested at this time. The study establishes the TIF for the City to receive revenue dedicated to transportation improvements within the City from new developments. The new fee would not cover the full cost of the improvements and some improvements would require additional funding to implement. This funding could include other City funding sources, regional funds, federal sources and grants. Fees in the program would need to accumulate prior to construction of the projects and therefore, may be constructed after developments are occupied. Community input on projects would be needed on individual projects, prior to implementation. The new fee does not require that all the improvements in the plan be constructed and the program will need to be evaluated on a regular basis to assess changes in growth projections, improvements modifications and cost information.

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 will not result in any direct or indirect physical change in the environment. Individual improvements identified in the study will be required to undergo the applicable environmental review process prior to implementation.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Notification for the public hearing as required by Government Code sections § 66018 and § 6062a was provided November 1 and November 8 in the Daily News.

Attachments

- A. Draft Ordinance No. 1064
- B. Resolution
- C. Hyperlink – TIF Nexus study: menlopark.org/DocumentCenter/View/23281/F2-Att-C-Draft-City-of-Menlo-Park-Transportation-Impact-Fee-Nexus-Study
- D. Hyperlink – November 5 staff report: menlopark.org/DocumentCenter/View/23284/F2-20191105-TIF-study-CC

Report prepared by:
Kristiann Choy, Acting Transportation Manager

Report reviewed by:
Nicole H. Nagaya, Interim Public Works Director

ORDINANCE NO. 1064

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING CHAPTER 13.26 [TRANSPORTATION IMPACT FEE] OF TITLE
13 [STREETS, SIDEWALKS AND UTILITIES] OF THE MENLO PARK
MUNICIPAL CODE**

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

SECTION 1. The City Council of the City of Menlo Park hereby finds and determines that:

A. On behalf of the City, Whitlock & Weinberger Traffic Engineering Consultants, conducted a Transportation Impact Fee Study, gathering and analyzing information to update the Transportation Impact Fee for development projects.

B. The Transportation Impact Fee Study establishes a nexus among the trips associated with development projects, their impacts on the transportation system, and the cost to improve the City's impacted transportation system.

C. Based on the Transportation Impact Fee Study, the City is updating its Transportation Impact Fee. Updating the Transportation Impact Fee fulfills General Plan Circulation Element Program CIRC-6.C that require the City to update the fee to ensure that new and expanded development is paying its fair share of circulation improvement costs for all modes of transportation. Further, updating the City's Transportation Impact Fee also complies with Mitigation Measure TRANS-1b from the certified Environmental Impact Report for the 2016 General Plan Update that requires the City to update the Transportation Impact Fee Program to mitigate impacts from future development projects.

SECTION 2. Chapter 13.26 [Transportation Impact Fee] of Title 13 [Streets, Sidewalks and Utilities] of the Menlo Park Municipal Code is hereby amended, to read, as follows with additions shown in underline and deletions in strikeout:

Chapter 13.26

TRANSPORTATION IMPACT FEE

13.26.010	Authority
13.26.020	Application
13.26.030	Intent and purpose
13.26.040	Definitions
13.26.050	Fee requirement
13.26.060	Fee payment
13.26.070	Authority for additional mitigation
13.26.080	Fee credit
13.26.090	Appeal
13.26.100	Refund of fee
13.26.110	Accumulation and use of funds
13.26.120	Adjustment of fee
13.26.010	Authority

This chapter is enacted pursuant to the Mitigation Fee Act contained in Government Code Sections 66000 et seq.

13.26.020 Application

This chapter applies to fees charged as a requirement of development approval to defray the cost of certain transportation improvements required to serve development within the City of Menlo Park. This chapter does not replace normal subdivision map exactions or other measures required to mitigate site specific impacts of a development project including, but not limited to, mitigations pursuant to the California Environmental Quality Act; regulatory and processing fees; fees required pursuant to a development agreement; funds collected pursuant to a reimbursement agreement that exceed the developer's share of public improvement costs; or assessment district proceedings, benefit assessments, or taxes.

13.26.030 Intent and purpose

The City Council of the City of Menlo Park declares that:

A. Adequate transportation improvements are needed to protect the health, safety, and general welfare of the citizens to facilitate transportation and to promote economic well being within the City;

B. The City of Menlo Park provides transportation improvements and services for residents, businesses, and employees within the City;

C. Individual transportation improvements are part of an integrated system serving and providing benefits to the entire City;

D. Improvements to the existing transportation systems in the City are needed to mitigate the cumulative impacts of developments;

E. All types of development require and use the transportation system;

F. ~~It is the stated goal of the General Plan Circulation Element Policy CIRC-3.4 states that the city should strive to maintain Level of Service D or better shall be maintained~~ at all City-controlled signalized intersections during peak hours, except at the intersection of Ravenswood Avenue and Middlefield Road and at intersections along Willow Road from Middlefield Road to US 101, ~~as defined in the City of Menlo Park General Plan~~ and the City should work with Caltrans to ensure that average stopped delay on local approaches to State-controlled signalized intersections does not exceed LOS E;

G. There are not adequate public funds available to maintain the Level of Service as ~~defined~~ identified in the General Plan in the City;

H. In order to ensure that the Level of Service as stated in the General Plan is maintained, and to promote the health, safety, and general welfare of the community, it is necessary that development pay a fee representing its share of costs of the necessary improvements;

I. The ~~transportation traffic~~ impact fee is based upon the evidence that development generates additional residents, employees, and customers, which in turn place an additional cumulative burden upon the local transportation system and should be expected to pay a share of the new facilities, as more fully described in the City of Menlo Park Transportation Impact Fee Study;

J. The purpose of this fee is to help provide adequate transportation improvements to serve cumulative development within the City. However, the fee does not replace the need for all site-specific transportation improvements that may be needed to mitigate the impact of specific projects upon the City's transportation system;

K. The transportation improvements for which the fee will be used are identified in the Transportation Impact Fee Study, as modified from time to time. Nothing in this chapter commits the City to construct all of the transportation improvements identified in the Transportation Impact Fee Study, as modified from time to time.

13.26.040 Definitions

The following definitions apply to this chapter:

A. Transportation improvements include all street and intersection improvements and related facilities and equipment identified in the Transportation Impact Fee Study, as modified from time to time.

B. Gross floor area shall be calculated in accordance with the definition of gross floor area in the most recent version of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

C. Land use categories included in the Transportation Impact Fee Study are as defined in the most recent version of the ITE Trip Generation Manual.

D. Other Uses. The Public Works Director or designee ~~Transportation Manager~~ shall determine the appropriate land use category for any use not included in the Transportation Impact Fee Study, based on a similarity of use and peak hour trip characteristics of the use as indicated in the most recent version of the ITE Trip Generation Manual or calculate the fee based on the per trip fee in the Transportation Impact Fee Study, as modified from time to time.

13.26.050 Fee requirement

A. General. The amount of the proposed fee shall be established by resolution of the City Council and shall be based upon the following considerations:

1. Development will pay fair-share cost of transportation improvements described in the Transportation Impact Fee Study.

2. Each type of development shall contribute to the needed improvements as described in the Transportation Impact Fee Study.

B. Types of Development Subject to the Fee. The fee shall be applicable to new development in all land use categories identified in the City's zoning ordinance, any construction adding

additional floor area to a lot with an existing building, new single-family and multi-family dwelling units, and changes of use from one land use category to a different land use category.

C. Amount. The amount of the fee shall be determined by the methodology set forth in the Transportation Impact Fee Study and more particularly shown on the table of rates attached to the resolution approving the fee, as modified from time to time. Any use that does not fit into the identified rates will be determined based on Section 13.26.040(D), Other Uses.

D. The Public Works Director or designee ~~Transportation Manager~~ shall have authority to render final determinations regarding the appropriate classification of land use and the correct calculation of gross floor area for a particular development project as it relates to the calculation of the traffic impact fee.

13.26.060 Fee payment

The transportation impact fee shall be paid in full to the City of Menlo Park before a building permit is issued. The fee shall not apply to any project that has received discretionary planning review approval prior to the effective date of this ordinance, except for any project that is subject to an existing development agreement that requires the payment of fees.

13.26.070 Authority for additional mitigation

Fees collected pursuant to this chapter are not intended to replace or limit requirements to provide mitigation of traffic impacts not mitigated by the transportation impact fee and created by a specific project, and imposed upon development projects as part of the development review process.

13.26.080 Fee credit

A. The Public Works Director or designee ~~Transportation Manager~~ may adjust the fee imposed pursuant to this chapter in consideration for certain facilities or improvements constructed or paid for by the developer. A developer is entitled to credit for the reasonable cost of the improvements, as determined by the Public Works Director or designee ~~Transportation Manager~~, if the improvement is identified in the Transportation Impact Fee Study.

B. For new construction, a developer shall receive credit toward the fee based on the gross floor area of existing buildings and/or the number of residential units which are being demolished and the predominant historical use as determined by the Public Works Director or designee ~~Transportation Manager~~.

C. For a change of use, a developer shall receive credit toward the fee based on the gross floor area of existing buildings and/or number of residential units for which there is a change of use based on the predominant historical use as determined by the Public Works Director or designee ~~Transportation Manager~~.

13.26.090 Appeal

A. The developer of a project subject to this chapter may appeal the imposition and/or calculation of the fee at any time after the final determination of the fee by the Public Works

Director or designee Transportation Manager and before payment of the fee without protest to the City Council.

B. The appellant shall state in detail the factual basis for the appeal and shall bear the burden of proof in presenting substantial evidence to support the appeal.

C. The City Council shall uphold the fee and deny the appeal if it finds that there is a reasonable relationship between the development project's impact on transportation facilities and the amount of the fee. The City Council shall consider the land use category determination, and the substance and nature of the evidence, including the fee calculation method, supporting technical documentation, and the appellant's technical data. Based on the evidence, the City Council may also modify the fee.

13.26.100 Refund of fee

A. If a building permit or use permit expires, is canceled, or is voided and any fees paid pursuant to this chapter have not been expended, no construction has taken place, and the use has never occupied the site, the Public Works Director or designee Transportation Manager may, upon the written request of the applicant, order the return of the fee, less administrative costs.

B. The City Council shall make a finding with respect to any fee revenue not expended or committed five years or more after it was paid. If the City Council finds that the fee revenue is not committed, it shall authorize a refund to the then owner of the property for which the fee was paid, pursuant to Government Code Section 66001 or successor legislation.

13.26.110 Accumulation and use of funds

A. Transportation Impact Fee Fund. The City shall deposit the fees collected under this chapter in a special fund, the Transportation Impact Fee fund, designated solely for transportation improvements.

B. Use of Funds. The fees and interest earned on accumulated funds shall be used only to complete the transportation improvement projects specified in the Transportation Impact Fee Study, as modified from time to time, or to reimburse the City for such construction if funds were advanced by the City from other sources.

13.26.120 Adjustment of fee

The transportation impact fee authorized by this chapter, implementing Council resolutions, and supporting documentation, including the Transportation Impact Fee Study, as modified from time to time, may be reviewed from time to time in order to make any findings required by State law, and to make any adjustments in the amount of the fee. The fee shall automatically increase annually on July 1st based upon the Engineering News Record Construction Cost Index for the San Francisco Bay Area.

SECTION 3. 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 enforceable, 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. The City Council hereby finds that this ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines, because there is no possibility of significant environmental effects occurring as a result of the adoption of this ordinance.

SECTION 5. This ordinance shall take effect thirty (30) days after its passage and adoption. Within fifteen (15) days of its adoption this ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the nineteenth day of November, 2019.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Ray Mueller, Mayor

ATTEST:

Judi A. Herren, City Clerk

DRAFT RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ADOPTING UPDATED TRANSPORTATION IMPACT FEE RATES**

WHEREAS, the City Council of the City of Menlo Park carefully reviewed and considered and received public comment regarding the Transportation Impact Fee Nexus Study by the professional transportation consulting firm, Whitlock & Weinberger Traffic Engineering Consultants, at the November 5, 2019 City Council meeting; and,

WHEREAS, pursuant to Section 13.26.050 of the Menlo Park Municipal Code, the amount of the transportation impact fee shall be established by resolution of the City Council; and

WHEREAS, the updated transportation impact fee rates will rescind and replace the supplemental transportation impact fees adopted in Resolution No. 6257; and

WHEREAS, in determining the transportation impact fee rates, the City Council of the City of Menlo Park considered that: (a) developments should pay fair-share cost of transportation improvements described in the Transportation Impact Fee Nexus Study; (b) each type of development should contribute to the needed improvements as described in the Transportation Impact Fee Nexus Study; and (c) that certain types of developments as described in the attachment, should be incentivized through a further reduction or waiver in fees.

NOW, THEREFORE BE IT RESOLVED, the City of Menlo Park, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefor do hereby accept the Transportation Impact Fee Nexus Study, rescind Resolution No. 6257 and adopt the transportation impact fee rates attached hereto and shall increase annually pursuant to Section 13.26.120 in accordance with the Engineering News Record Construction Cost Index for the San Francisco Bay Area without further action by the Council, and shall be effective 60 days from the adoption of this resolution.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Judi A. Herren, City Clerk

Transportation Impact Fee Rates (10-23-19)*

Office	\$17.60	per sq. ft.
Research and Development	\$7.50	per sq. ft.
Manufacturing	\$10.26	per sq. ft.
Warehousing	\$2.91	per sq. ft.
Restaurant	\$17.60	per sq. ft.
Retail	\$17.60	per sq. ft.
Single-Family	\$7,577.62	per unit
Multi-Family	\$4,286.33	per unit
Hotel	\$9,184.99	per room
Medical Office	\$52.97	per sq. ft.
Childcare	\$2.91	per sq. ft.
Secondary Dwelling Unit	\$0.00	per unit

* Fee will be updated July 1st of each year based on Municipal Code Section 13.26.120

Fee Waivers and Reductions

Land Use	Waiver or Reduction
Restaurant	Tied to office fee
Retail	Tied to office fee
Single-Family	Reduced to 50 percent of maximum allowable
Multi-Family	Reduced to 50 percent of maximum allowable
Childcare	Tied to warehousing fee
Secondary Dwelling Unit	Waived

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STAFF REPORT

City Council
Meeting Date: 11/19/2019
Staff Report Number: 19-257-CC

Regular Business: **Request for a subdivision ordinance variance to reduce the front setback requirement for a single-family residential lot at 180 Elliot Drive**

Recommendation

Staff recommends the City Council approve the request for a variance to reduce the subdivision ordinance front setback to allow the construction of additions to a nonconforming single-story, single-family residence in the R-1-U (single family urban residential) zoning district, at 180 Elliot Drive. The recommended actions are included in Attachment A.

Policy Issues

Each variance request is considered individually. The City Council should consider whether the required Subdivision Ordinance variance findings can be made for the proposal. The subdivision ordinance front setback requirement differs from the zoning ordinance setback requirements, which often results in a greater setback than the required 20-foot front setback established in the zoning ordinance. This lack of consistency has created some confusion and could burden development on a small subset of properties within the City. As a separate item, staff may evaluate whether to modify the front setback requirements in the subdivision ordinance to reduce this burden.

Background

Site location

The subject property is located in the Willows neighborhood at 180 Elliot Drive, at the bend one block west of the Laurel School upper campus. The adjacent parcels along Elliot Drive are also located within the R-1-U (single-family urban) zoning district, and contain primarily single-story, single-family residences. The neighboring lots on this bend are also regulated by the subdivision ordinance for establishing the front setback. Similar to the proposed project, the adjacent property at 188 Elliot received a front setback variance through the zoning ordinance variance process. The area represents a variety of architectural styles, with the majority featuring a traditional ranch design. A location map is included as Attachment B.

Subdivision ordinance variance

The majority of the development regulations governing what can be built, and where, on a property are found within the zoning ordinance. However, the other titles of the Municipal Code may also affect the development of a project site. Title 15, the subdivision ordinance, specifies that for lots on a curve, where the radius of the curve is less than 100 feet, the front setback shall extend to the point at which the width of the lot outside the setback meets the minimum lot width for the zoning district. Staff developed a subdivision ordinance front setback handout to aid in illustrating this requirement to applicants (Attachment C.) A request to build within the subdivision ordinance front setback, such as the proposed addition at 180 Elliott,

requires a variance from the subdivision ordinance. The ordinance specifies that the City Council is the deciding body for such variance requests, whereas the Planning Commission would be the acting body for variance requests from development regulations set by the zoning ordinance. The subdivision ordinance variance request does not require review and input from the Planning Commission prior to City Council review and action on the requested variance.

Analysis

Project description

The applicant is proposing interior modifications and additions to an existing single-story, single-family residence at 180 Elliott Drive in the Willows neighborhood. The existing residence sits 24 feet from the curved front property line, and thus is nonconforming with respect to the subdivision front setback of 61 feet. The existing house is also nonconforming with respect to the right side and rear setbacks as outlined in the zoning ordinance. The proposed additions would be located on the right side, at the front and rear of the building. The proposed 387 square-foot addition at the front of the residence would meet the required side setback and comply with the standard 20-foot front setback and all other development regulations for the R-1-U zoning district, but would require a variance from the subdivision ordinance front setback requirement. This request is discussed in more detail in the variance request section below. The existing nonconforming walls would remain, with the structural members retained. The proposed 187 square-foot addition at the rear would largely replace the massing of an existing enclosed sun porch and meet all required setbacks and comply with all the development regulations for the R-1-U zoning district. A use permit for the nonconforming structure is not required for the proposed additions and modifications since the proposed scope of work would not exceed the use permit valuation threshold for nonconforming structures.

The site features two small fruit trees on the left side of the lot and one 13-inch mimosa tree on the right side that would conflict with the proposed addition at the front. The proposed location of the construction was selected to reduce impacts to the trees at the left and the fruit trees, which are proposed to remain. The mimosa tree is proposed for removal, but due to its size does not require a heritage tree removal permit. A data table summarizing parcel and project attributes is included as Attachment D. The project plans and the applicant's project description letter are included as Attachments E and F, respectively.

Variance request

As part of this proposal, the applicant is requesting a variance to modify the required subdivision ordinance front setback from approximately 61 feet to 20 feet to allow an addition and covered entry to the front of the existing home. The variance request is limited to the subdivision ordinance front setback for the front addition.

The applicant has provided a variance request letter that is included as Attachment G and outlines the applicant's justification for the proposed variance. The required variance findings are evaluated below in succession. All findings are required to be met in order for a variance to be granted.

- A. That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the same vicinity;
 - a. The applicant has indicated that the request would not constitute a special privilege, in part due to the fact that the standard minimum front setback of 20 feet for the zoning district would be maintained. Staff similarly finds that the implementation of the development regulations would meet the first finding, by preventing special privilege.
- B. That because of special circumstances applicable to the subject property, including size, shape,

topography, location or surroundings, the strict literal application of this title is found to deprive subject property of privileges enjoyed by other properties in the vicinity;

- a. In their letter, the applicant describes the site characteristics, highlighting that the subdivision ordinance front setback would preclude construction on the first 61 feet of the 108-foot deep lot, and that when the 20-foot required rear setback is subtracted there is approximately 27 feet of buildable area. Staff recognizes the lot shape, specifically the narrow angle of the side property lines from the curved frontage that result in a significantly greater subdivision ordinance front setback, as a special circumstance, and finds the limitations on the buildable area through application of the title deprives the subject property development potential that another lot with a curved frontage or a typical rectangular lot would enjoy.
- C. That under the circumstances of this particular case, the variance, rather than the sections at issue in this title, actually carries out the spirit and intent of this title.
- a. The applicant refers to the variance as necessary for an egalitarian implementation of regulations, in the hope that they can follow the same setbacks that other lots within the R-1-U district follow. To this end, they have prepared a design that would meet all the development regulations for the R-1-U zoning district. In looking at the spirit and intent of the title, the title was adopted for “the purpose of promoting the public health, safety, convenience and general welfare...” and staff believes that this finding can be made due to the fact that the zoning ordinance requirements would be met and that the variance would maintain the development pattern of the zoning district.

Staff believes the proposed scale of the addition would be consistent with the neighboring properties, and the overall neighborhood. As outlined in the above section, staff believes that the variance request to allow construction of the addition within the front setback established by the subdivision ordinance is justifiable.

Correspondence

Staff has not received any correspondence regarding this item. The applicant has indicated in their project description letter that they showed the plans to their neighbors and received support without criticism.

Impact on City Resources

The project sponsor is required to pay planning, building and public works permit fees, based on the City's master fee schedule, to fully cover the cost of staff time spent on the review of the project.

Environmental Review

The project is categorically exempt under Class 1 (Section 15301, “Existing Facilities”) of the current California Environmental Quality Act (CEQA) Guidelines.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Public notification also consisted of publishing a notice in the local newspaper and notification by mail of owners and occupants within a 300-foot radius of the subject property.

Attachments

- A. Recommended actions
- B. Location map

Staff Report #: 19-257-CC

- C. Hyperlink – subdivision ordinance front setback handout:
menlopark.org/DocumentCenter/View/12768/Subdivision-Ordinance-Front-Setback
- D. Data table
- E. Hyperlink – Project plans:
menlopark.org/DocumentCenter/View/23410/5-180-Elliot-Drive---Att-E---Plan-Set
- F. Project description letter
- G. Variance letter

Report prepared by:
Ori Paz, Associate Planner

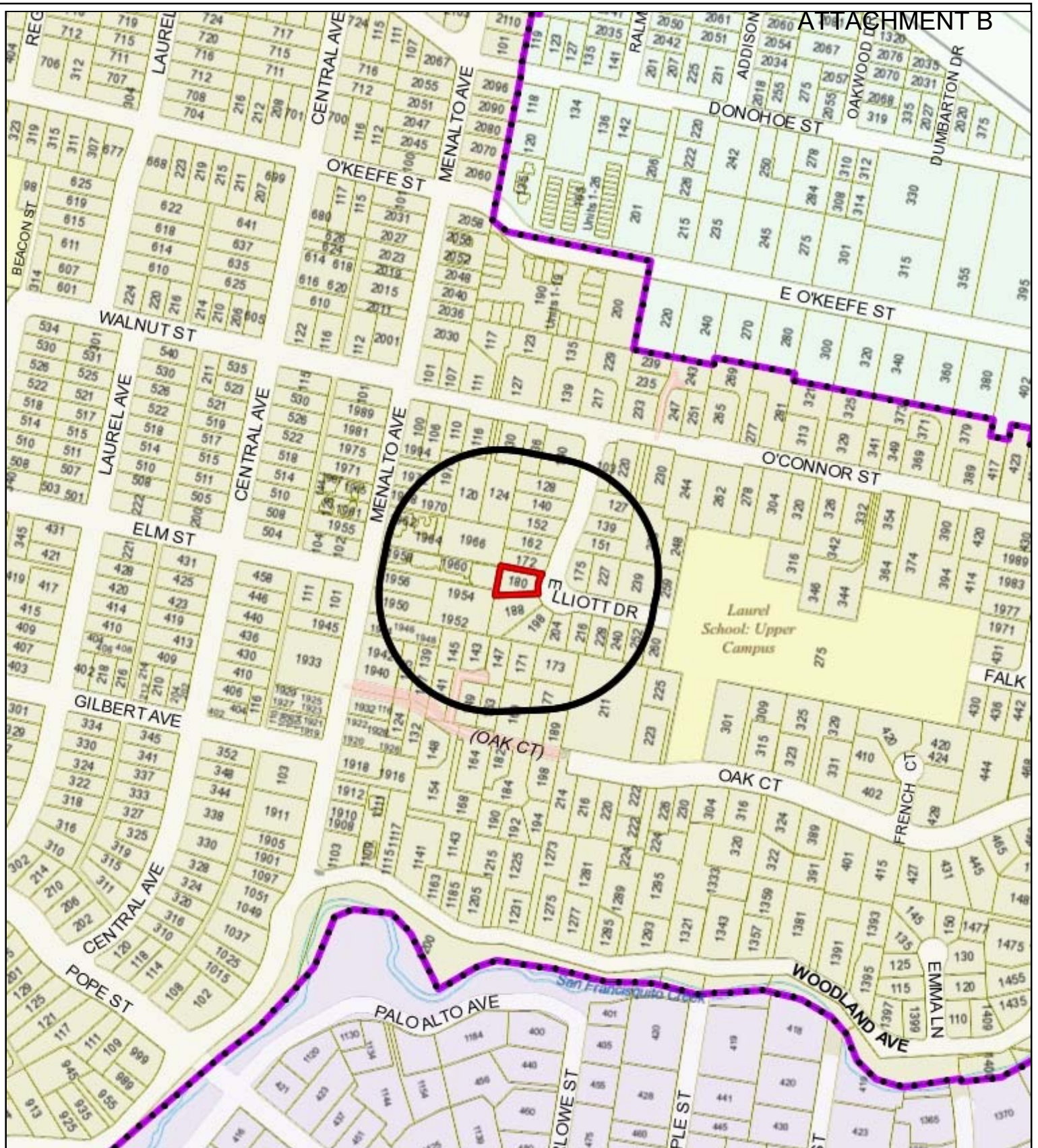
Report reviewed by:
Deanna Chow, Interim Community Development Director

180 Elliot Drive – Attachment A: Recommended Actions

LOCATION: 180 Elliot Drive	PROJECT NUMBER: PLN2019-00076	APPLICANT: Challen Yee	OWNER: Challen Yee
PROPOSAL: Request for a variance to modify the subdivision ordinance front setback to allow the construction of additions to a nonconforming single-story, single-family residence in the R-1-U (Single Family Urban Residential) zoning district.			
DECISION ENTITY: City Council	DATE: November 19, 2019	ACTION: TBD	
VOTE: TBD (Carlton, Combs, Mueller, Nash, Taylor)			
ACTION:			
<ol style="list-style-type: none"> 1. Make a finding that the project is categorically exempt under Class 1 (Section 15301, “Existing Facilities”) of the current California Environmental Quality Act (CEQA) Guidelines. 2. Make the following findings as per Section 15.32.020 of the Subdivision Ordinance pertaining to the granting of a variance to permit a 20-foot front setback for the addition to the residence: <ol style="list-style-type: none"> a. That the variance shall be subject to review relative to the development regulations for the R-1-U zoning district and other requirements of the Zoning Ordinance and that the standard conditions of approval will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the same vicinity; b. That the shape of the lot constitutes a special circumstances applicable to the subject property, and that the strict literal application of this title is found to deprive subject property of privileges enjoyed by other properties in the vicinity, specifically the developable area would be excessively limited by the 61-foot front setback; c. That the proposed size and location of the addition would comply with the standard Zoning Ordinance setback requirements and follow the development pattern of the subject zoning district and therefore the variance, rather than the sections at issue in this title, actually carries out the spirit and intent of this title. 3. Approve the variance to permit a 20 foot setback for the proposed addition to the residence. 4. Approve the variance subject to the following standard conditions: <ol style="list-style-type: none"> a. Development of the project shall be substantially in conformance with the plans prepared by Studio TRW consisting of eight plan sheets, attached to this report and approved by the City Council on November 19, 2019, except as modified by the conditions contained herein, subject to review and approval of the Planning Division. b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies’ regulations that are directly applicable to the project. c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project. d. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval by the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes. e. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and 			

180 Elliot Drive – Attachment A: Recommended Actions

LOCATION: 180 Elliot Drive	PROJECT NUMBER: PLN2019-00076	APPLICANT: Challen Yee	OWNER: Challen Yee
PROPOSAL: Request for a variance to modify the subdivision ordinance front setback to allow the construction of additions to a nonconforming single-story, single-family residence in the R-1-U (Single Family Urban Residential) zoning district.			
DECISION ENTITY: City Council	DATE: November 19, 2019	ACTION: TBD	
VOTE: TBD (Carlton, Combs, Mueller, Nash, Taylor)			
<p>ACTION:</p> <p>significantly worn sections of frontage improvements. The plans shall be submitted for review and approval of the Engineering Division.</p> <p>f. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to the issuance of grading, demolition or building permits.</p> <p>g. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance.</p>			



City of Menlo Park

Location Map
180 Elliot Drive



Scale: 1:4,000

Drawn By: OP

Checked By: DMC

Date: 11/19/2019

Sheet: 1

180 Elliot Drive – Attachment C: Data Table

	PROPOSED PROJECT	EXISTING PROJECT	ZONING ORDINANCE
Lot area	6,445.0 sf	6,445.0 Sf	7,000 sf min.
Lot width	65.0 ft.	65.0 ft.	65 ft. min.
Lot depth	110.3 ft.	110.3 ft.	100 ft. min.
Setbacks			
Front	20.0 ft.	24.2 ft.	61.1* ft. min.
Rear	19.3 ft.	19.3 ft.	20 ft. min.
Side (left)	7.5 ft.	7.5 ft.	6.5 ft. min.
Side (right)	5.3 ft.	5.3 ft.	6.5 ft. min.
Building coverage	2,569.1 sf 39.9 %	2,002.6 Sf 31.1 %	2,578.4 sf max. 40.0 % max.
FAL (Floor Area Limit)	2,549.1 sf	2,002.6 sf	2,800.0 sf max.
Square footage by floor	1,967.2 sf/1st 400.8 sf/ garage 27.1 sf/ porches 174.0 sf/ greenhouse	1,399.8 sf/1st 400.8 sf/garage 174.0 sf/ greenhouse 28.0 sf/shed	
Square footage of buildings	2,569.1 sf	2,002.6 sf	
Building height	16.2 ft.	15.5 ft.	28 ft. max.
Parking	2 covered	2 covered	1 covered/1 uncovered
Note: Areas shown highlighted indicate a nonconforming or substandard situation.			

Trees	Heritage trees	2**	Non-Heritage trees
	Heritage trees proposed for removal	0	Non-Heritage trees proposed for removal
			4***
			1
			New Trees
			0
			Total Number of Trees
			5

*Setback established by the Subdivision Ordinance

**One tree is on the neighboring lot to the left and one is a street tree in the public right-of-way.

***One tree is on the neighboring lot to the left.

October 28, 2019

**180 ELLIOTT DR.
PROJECT DESCRIPTION**

The project intends to add additional living space to the front and rear of the existing single story home, matching the style and finish of the new sections to that of the existing structure.

The existing house represents a typical example of a single-story ranch house found throughout this area of California. The exterior wall finish is sand-finish, cream colored, painted stucco over 2x4 stud framed walls, featuring white vinyl windows and white painted minimal trim, save for the front door, which is stained wood veneer of a nondescript style. There is a small portion of painted wood shiplap siding around the front entry and one side of the garage. The roof is dark brown asphalt shingle, typical of the neighborhood, again over wood rafter frame, and features exposed, painted 2x4 rafter tails, minimally overhanging, with a painted aluminum gutter. No fascia board is present.

There have been some additional elements added to the house since its original conception, in the form of a rear, unheated sunroom, featuring a yellowing, corrugated, translucent plastic and polycarbonate roof over wood trellis frame, enclosed by floor to ceiling glass patio doors. The front entry also appears to have been updated, and has plastic Grecian columns holding up a small roof that extends over the exterior landing and has a curved ridge and painted vertical 4x wood trim enclosing the gable end.

Without the requested variance to the front setback, siting the front addition and new entry would be impossible. The design proposes a new living room and entry at the front of the home, which would allow owners to have a public area to greet their guests without needing them to traverse through the more private areas of the house. Given a large family, a fourth bedroom is a necessity, hence the conversion of the unheated sunroom into a bedroom and more centrally located living space. Furthermore, the additional area at the front, including the entry porch, would help reduce the prominence of the existing garage, improving the look of the house from the street.

These additional areas appear to pose no issue for the immediate neighbors either. The new components of the home would also fit well into the neighborhood. These additional areas respect neighboring properties by building out, not up, while also keeping the new elements from encroaching beyond established distances to neighboring structures. New elements of the home would also continue the style of the existing home by matching existing roofing, siding, trim and window materials leading to an expansion of a home that already fits well into the neighborhood.

As a matter of respectful outreach to their neighbors, the Owners have shown the submitted plans and elevations to their neighbors at 172 Elliott, those who would be most affected by the new additional area, and have received support without criticism.

Sincerely,

Travis Wood
(on behalf of Challen Yee and Leona Lee, owners, 180 Elliott Dr)

October 28, 2019

**180 ELLIOT DR.
VARIANCE FINDINGS**

This proposal requests an alleviation of the subdivision front setback requirements on the subject property at 180 Elliot Dr. The request is for a variance to reduce the subdivision ordinance front setback from 61'-0 3/4" to 20'-0". This encroachment would allow for the proposed additional area to be legal and conforming and for the property owners to enjoy usage of their land in a similar manner to their neighbors.

"The City Council may grant variances from the foregoing requirements, when all of the following conditions are found to apply:"

(1) *"That any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the same vicinity;"*

The request for this variance is not based upon a desire for special privileges over other properties in the same vicinity or zoning distinction (R-1-U) but instead to be granted the right to use this narrow, triangular shaped parcel with curved frontage, in a manner consistent with other lots of similar size in the vicinity. Without alleviation, not only can alterations not be made to an aging home but the usage of a significant portion of the property's legally allowed coverage and floor area cannot be used. The encroachment would allow for typical modifications that other properties with the standard 20' setback could easily achieve.

(2) *"That because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict literal application of this title is found to deprive subject property of privileges enjoyed by other properties in the vicinity;"*

Due to strict literal application of the front setback calculation for this lot there is condition created whereby any potential significant repair or replacement of the majority of the existing home, regardless of proposed project, not to mention the currently proposed additional living space, is invalidated. The subject property is an unusual shape, being a rather slender and small pie slice with a curved frontage. It is substandard in regards to lot width at its frontage and overall lot size. Under this section, the subject property has its front setback set at a point roughly 61 feet into a lot, a projection of the curved front property line. However, the lot is only ~108' deep, and the deep front setback, when combined with a rear setback of 20', standard in the R-1-U district, results in a sliver of only ~27' of buildable area. This would make updating a home built in the 1950s challenging if not impossible, as much of the existing home would be considered nonconforming as more than 50% of it resides within the front setback. Were this property not to feature a curved frontage, but instead be a rectangular lot in the R-1-U district, the property would enjoy the standard 20' front setback for this zoning district and 100% of the existing residence and the planned addition would reside within the new front setback.

Additionally, while there is some area adjacent to the existing master bedroom that could be expanded into, there is a large redwood tree (approx. 36" diameter) on the neighboring property close to the boundary line, and any expansion into that space would likely affect the root zone of the tree.

(3) *"That under the circumstances of this particular case, the variance, rather than the sections at issue in this title, actually carries out the spirit and intent of this title. (Prior code § 24.10(2))."*

The subdivision ordinance does not seem intended to deprive unlucky owners of unusually shaped lots with curved frontages and substandard, though still otherwise useful, dimensions of the right to build in a similar manner to their neighbors with more conventionally shaped lots. If the requirements of Chapter

15 were to be applied strictly in this case, it create unnecessary hardship for the Owners. The Variance request, if granted, provides the more egalitarian approach, allowing the Owners not a privilege but a right to use their property in a similar manner others in their zoning district and neighborhood.

Thank you to the City Council for their consideration of this request.

Sincerely,

Travis Wood
(on behalf of Challen Yee and Leona Lee, owners, 180 Elliott Dr)

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SPECIAL AND REGULAR MEETING AGENDA

Date: 11/19/2019
Time: 5:30 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

STAFF REPORT RELEASE NOTICE

The Staff Report No. 19-250 for first reading and introduction of Ordinance No. 1062 amending Title 12 [Buildings and Construction] of the Menlo Park Municipal Code to adopt local amendments to the California Building Standards Code, adopt a Resolution ratifying the Menlo Park Fire Protection District Ordinance adopting amendments to the 2019 California Fire Code with modifications, and adopt Resolution No. 6530 to direct fines collected for violations of the construction and demolition recycling ordinance (12.48) to be used for zero waste initiatives will be available by 5 p.m. on November 14, 2019.

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 the City Clerk's Office at 650-330-6620. (Posted 11/7/2019.)

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