



**SPECIAL AND REGULAR MEETING AGENDA – AMENDED**

**Date:** 7/14/2020

**Time:** 5:00 p.m.

**Regular and Special Meeting Location:** Joinwebinar.com – ID# 303-493-835

This amended agenda moves item D1. to July 16, 2020.

**NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE**

On March 19, 2020, the Governor ordered a statewide stay-at-home order calling on all individuals living in the State of California to stay at home or at their place of residence to slow the spread of the COVID-19 virus. Additionally, the Governor has temporarily suspended certain requirements of the Brown Act. For the duration of the shelter in place order, the following public meeting protocols will apply.

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- How to participate in the meeting
  - Submit a written comment online:  
[menlopark.org/publiccommentJuly14](https://menlopark.org/publiccommentJuly14)\*
  - Record a comment or request a call-back when an agenda topic is under consideration:  
Dial 650-474-5071\*
  - Access the special meeting real-time online at:  
[joinwebinar.com](https://joinwebinar.com) – Special Meeting ID 303-493-835
- \*Written and recorded public comments and call-back requests are accepted up to 1 hour before the meeting start time. Written and recorded messages are provided to the City Council at the appropriate time in their meeting. Recorded messages may be transcribed using a voice-to-text tool.
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Channel 26
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### **Special Session ([Joinwebinar.com](https://www.joinwebinar.com) – ID# 303-493-835)**

#### **A. Call To Order**

#### **B. Roll Call**

#### **C. 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.

[Web form public comment for item C.](#)

#### **D. Study Session**

~~D1. Provide direction to select Transportation Management Association models for further study  
([Staff Report #20-148-CC](#)) – moved to July 16, 2020.~~

#### **E. Consent Calendar**

- E1. Accept the City Council meeting minutes for May 22, 26, and 28, 2020 ([Attachment](#))
- E2. Adopt Resolution No. 6573 notifying Peninsula Library System Joint Powers Authority of City of Menlo Park's intent to withdraw effective July 1, 2021 ([Staff Report #20-145-CC](#))
- E3. Adopt Resolution No. 6564 submitting to the voters a ballot measure authorizing amendment of the City's transient occupancy tax to allow the collection of an additional one percent pursuant to the 2016 Facebook campus expansion development agreement ([Staff Report #20-143-CC](#))
- E4. Approve Resolution No. 6574 to re-authorize a \$5,000 minimum penalty for heritage tree violations until a new penalty schedule is adopted ([Staff Report #20-146-CC](#))
- E5. Authorize the Mayor to sign a letter of support for CARES funding for Caltrain ([Staff Report #20-147-CC](#))
- E6. Award a construction contract to EPS, Inc. dba Express Plumbing for the hydration station project ([Staff Report #20-144-CC](#))
- E7. Approve waiver of late penalties for transient occupancy tax collected between January 1, 2020 and

June 30, 2020, if remitted by October 31, 2020 and receipts are reported to the City monthly  
([Staff Report #20-149-CC](#))

## **F. Regular Business**

- F1. Receive and file the Environmental Quality Commission's 2030 climate action plan and adopt Resolution No. 6575 to adopt the climate action plan as amended with staff's implementation strategy ([Staff Report #20-152-CC](#))

[Web form public comment for item F1.](#)

- F2. Add institutionalized bias reform as a top priority for City staff in 2020-21 and provide input to staff on how to address police ([Staff Report #20-150-CC](#))

## **G. Informational Items**

- G1. City Council agenda topics: July 2020 to September 2020 ([Staff Report #20-142-CC](#))

## **H. City Manager's Report**

## **I. City Councilmember Reports**

## **J. Adjournment**

At every regular meeting of the City Council, in addition to the public comment period where the public shall have the right to address the City Council on any matters of public interest not listed on the agenda, members of the public have the right to directly address the 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 by request by emailing the city clerk at [jaherren@menlopark.org](mailto:jaherren@menlopark.org). 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](http://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](http://menlopark.org/notifyme). Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 7/9/2020)

## Agenda item C Teresa Beltramo, resident

Honorable Members of the City Council,

I am opening a shop on Santa Cruz Ave., selling fine antique furniture, and I would like to express my hope that the Santa Cruz Ave. roadblocks be removed as soon as possible.

The road closure is bad for Menlo Park because:

1. It is not needed for restaurants.
2. It is hurtful to downtown businesses.
3. It is unsafe for pedestrians.

1. It is not needed for restaurants because there is plenty of room for distanced outdoor seating using adjacent parking spaces. Restaurants can be given as many spaces as they need, including on side streets.

2. It hurts businesses because:

- The most convenient parking spaces are eliminated, and overall parking is made even more scarce (we don't have parking structures like Palo Alto).
- Storefronts no longer have exposure to cars driving by.
- Santa Cruz Ave. can no longer be used as a way to find your destination before you park. (People don't always know which back parking lot corresponds to their SCA store.)

3. Pedestrians are less safe because:

- The elderly, or parents with children, must walk farther to their car while carrying bags.
- The cross streets that zig zag across SCA are a hazard to pedestrians who think they are walking on a street with no cars.
- With street parking closed, more cars and people are forced onto the side streets and back parking lots - which is especially unsafe when you have frustrated shoppers trying to find their destination.

So I urge the council to reconsider the roadblocks. This is no longer a theoretical debate. I look out my shop window every day, and there are continually fewer and fewer people walking by.

Downtown Menlo will only be vibrant if it has a critical mass of services to bring people to the downtown. Being able to run errands is a part of the mix. However, people want to be able to run errands quickly, especially with COVID-19, and the last thing they want to do is deal with the maze that is now Santa Cruz Avenue.

Every day that Menlo keeps the SCA roadblocks is another day of people getting used to shopping (and eating) elsewhere.

Thank you for your consideration,

Teresa Beltramo  
Teresa's Antiques



**SPECIAL MEETING MINUTES – DRAFT**

**Date: 5/22/2020**

**Time: 1:00 p.m.**

**Special Meeting Location: Joinwebinar.com – ID# 326-904-987**

**NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE**

On March 19, 2020, the Governor ordered a statewide stay-at-home order calling on all individuals living in the State of California to stay at home or at their place of residence to slow the spread of the COVID-19 virus. Additionally, the Governor has temporarily suspended certain requirements of the Brown Act. For the duration of the shelter in place order, the following public meeting protocols will apply.

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- Watch special meeting:
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[joinwebinar.com](https://joinwebinar.com) – Special Meeting ID 326-904-987
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**Special Session ([Joinwebinar.com](https://www.joinwebinar.com) – ID# 326-904-987)**

**A. Call To Order**

Mayor Taylor called the meeting to order at 1:07 p.m.

**B. Roll Call**

Present: Carlton, Combs, Nash, Mueller (arrived at 1:12 p.m.), Taylor  
Absent: None  
Staff: City Manager Starla Jerome-Robinson, Interim City Attorney Cara Silver, City Clerk Judi A. Herren

City Manager Starla Jerome-Robinson announced the need of an urgent closed session regarding labor at 1:45 p.m.

**ACTION:** Motion and second (Carlton/ Nash) to add a closed session conference to this meeting at 1:45 p.m. with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the American Federation of State, County, and Municipal Employees Local 829 (AFSCME) and Confidential employees; Service Employees International Union Local 521 (SEIU); Menlo Park Police Sergeants Association (PSA); Menlo Park Police Officers' Association (POA); and Unrepresented Management, passed unanimously.

Mayor Taylor requested adding an agenda item to this meeting regarding the creation and appointment to a City Council subcommittee on homelessness in the Bayfront area.

**ACTION:** Motion and second (Nash/ Combs) to add agenda item to this meeting regarding the creation and appointment to a City Council subcommittee on homelessness in the Bayfront, passed unanimously.

The City Council discussed the creation of the subcommittee and their charge of creating emergency response procedures and protocols when addressing the homeless encampment in the Bayfront Area.

**ACTION:** Motion and second (Carlton/ Combs) to create and appoint City Councilmember Mueller and Mayor Taylor to the subcommittee, passed unanimously.

**C. Regular Business – continued from May 19, 2020**

C1. Provide direction on budget balancing measures including program and service reductions for the city manager's proposed fiscal year 2020-21 budget and authorize issuance of notice of intent to layoff affected positions ([Staff Report #20-106-CC](#))

Assistant City Manager Nick Pegueros and Community Services Director Derek Schweigart introduced the item and provided a brief summary of City Council discussion and action taken at the May 19 City Council meeting (Attachment).

The City Council discussed the childcare centers; Belle Haven Child Development Center (BHCCDC)



and the Menlo Children’s Center (MCC).

### **Urgent Closed Session**

Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the American Federation of State, County, and Municipal Employees Local 829 (AFSCME) and Confidential employees; Service Employees International Union Local 521 (SEIU); Menlo Park Police Sergeants Association (PSA); Menlo Park Police Officers’ Association (POA); and Unrepresented Management

Attendees: City Manager Starla Jerome-Robinson, Interim City Attorney Cara Silver, Assistant City Manager Nick Pegueros, Labor Negotiator Charles Sakai

- Pamela Jones spoke in support of labor negotiations considering the impacts of lower paid employees.
- Josie Gaillard spoke in support of labor negotiations.
- Lynne Bramlett spoke in support of the labor negotiations and in favor of higher wage earners taking a larger percentage cut.

The City Council adjourned to the closed session at 2:06 p.m.

The City Council reconvened in open session at 5:37 p.m.

### **Report from Closed Session**

No reportable actions.

#### **D. Adjournment**

Mayor Taylor adjourned the meeting at 5:39 p.m.

Judi A. Herren, City Clerk



## SPECIAL MEETING MINUTES – DRAFT

**Date:** 5/26/2020

**Time:** 5:00 p.m.

**Special Meeting Location:** [Joinwebinar.com](https://www.joinwebinar.com) – ID# 964-426-187

### NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

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- How to participate in the meeting
  - Submit a written comment online:  
[menlopark.org/publiccommentMay26](https://menlopark.org/publiccommentMay26)\*
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Dial 650-474-5071\*
  - Access the special meeting real-time online at:  
[joinwebinar.com](https://www.joinwebinar.com) – Special Meeting ID 964-426-187  
\*Written and recorded public comments and call-back requests are accepted up to 1 hour before the meeting start time. Written and recorded messages are provided to the City Council at the appropriate time in their meeting. Recorded messages may be transcribed using a voice-to-text tool.
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**Closed Session (Teleconference)**

**A. Call To Order**

Mayor Taylor called the meeting to order.

**B. Roll Call**

Present: Carlton, Combs, Nash, Mueller, Taylor  
Absent: None  
Staff: City Manager Starla Jerome-Robinson, Interim City Attorney Cara Silver, Assistant City Manager Nick Pegueros, Labor Negotiator Charles Sakai

**C. Closed Session**

C1. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the American Federation of State, County, and Municipal Employees Local 829 (AFSCME) and Confidential employees; Service Employees International Union Local 521 (SEIU); Menlo Park Police Sergeants Association (PSA); Menlo Park Police Officers' Association (POA); and Unrepresented Management.

Attendees: City Manager Starla Jerome-Robinson, Interim City Attorney Cara Silver, Assistant City Manager Nick Pegueros, Labor Negotiator Charles Sakai

No reportable actions.

Mayor Taylor adjourned the meeting.

**Special Session ([Joinwebinar.com](https://www.joinwebinar.com) – ID# 964-426-187)**

**D. Call To Order**

Mayor Taylor called the meeting to order at 6:58 p.m.

**E. Roll Call**

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

**F. Report from Closed Session**

No reportable actions.

## **G. Consent Calendar**

City Councilmember Nash pulled items G1. and G4.

Mayor Taylor pulled items G2. and G3.

- G1. Accept the City Council meeting minutes for March 24, April 2, 7, 14, 17, 28, May 1, 5 and 6, 2020 ([Attachment](#))

The City Council directed revisions to the April 28 minutes regarding rubberized asphalt and the return of all projects, not limited to the capital improvement projects, for budget considerations.

- G2. Approve a one-year extension to the agreement with the County of San Mateo for animal control services and authorize the city manager to execute the amendment ([Staff Report #20-108-CC](#))

The City Council received clarification regarding sick animals.

- G3. Receive and file the quarterly financial review of General Fund operations as of March 31, 2020 ([Staff Report #20-109-CC](#))

The City Council requested items listed as miscellaneous to include more details in future reports.

- G4. Adopt Resolution No. 6558, preliminary approval of the engineer's report for the Menlo Park Landscaping Assessment District, and Resolution No. 6559, intention to order the levy and collection of assessments for the Landscaping Assessment District for fiscal year 2020-21 ([Staff Report #20-110-CC](#))

The City Council received clarification on the on the funding and directed staff to retain the fund balance and minimize the use of the general fund.

**ACTION:** Motion and second (Nash/ Carlton) to approve the consent calendar including direction provided in items G1. and G4., passed unanimously.

## **H. Regular Business**

- H1. Update the City Council and public on COVID-19 health emergency and the City's response ([Attachment](#))

City Manager Starla Jerome-Robinson made the presentation.

- Adina Levin spoke in support of community activities that support local businesses.

The City Council discussed ways to host virtual Citywide events for the community and the reopening the pools and libraries.

- H2. Approve Resolution No. 6554 amending the City's records retention schedule ([Staff Report #20-096-CC](#)) – **continued from May 12, 2020 meeting**

City Clerk Judi Herren introduced the item.

- Pamela Jones spoke in support of retaining documents indefinitely electronically.

The City Council received information on the various laws which govern the amount of time records are retained and impacts to the City when records are retained past the dates set in the records retention schedule. The City Council received clarification that adoption of this schedule does not allow staff to destroy documents; any record scheduled to be destroyed requires City Council approval.

**ACTION:** Motion and second (Carlton/ Combs) to approve Resolution No. 6554 amending the City's records retention schedule, passed unanimously.

### H3. Direction on the reactivation of advisory bodies ([Staff Report #20-105-CC](#))

City Clerk Judi Herren introduced the item.

- Karen Grove spoke on concerns regarding staff serving on the emergency operations center and as staff liaison to various advisory body's.

The City Council received information on the timeline, process, and estimated costs to reactivate the nine inactive advisory body's. The City Council directed staff to prioritize the Environmental Quality Commission and Finance and Audit Committee and to decrease the timeline for all other body's as appropriate.

**ACTION:** Motion and second (Carlton/ Nash) to approve the reactivation of all advisory body's prioritizing the Environmental Quality Commission and Finance and Audit Committee and decreasing the timeline for all other body's as appropriate, passed unanimously.

### H4. Provide direction on budget balancing measures including program and service reductions for the city manager's proposed fiscal year 2020-21 budget and authorize issuance of notice of intent to layoff affected positions ([Staff Report #20-106-CC](#)) – **continued from May 22, 2020 meeting**

Assistant Administrative Services Director Dan Jacobson made the presentation (Attachment).

The City Council received clarification on the decisions made to tables 2, 3, and 4 at previous City Council meetings and the preservation of childcare programs.

City Council took a break at 8:53 p.m.

City Council reconvened at 9:03 p.m.

The City Council discussed implementation of a contingency budget, overnight parking enforcement, and exploring a panel of experts to advise on actions to promote a strong local economy.

**ACTION:** By acclamation the City Council extended the meeting past 11 p.m., passed unanimously.

The City Council received clarification on reactivation of gymnastics and discussed furlough and cut options.

**ACTION:** Motion and second (Carlton/ Combs) to approve the proposed reductions in Tables 2A, 3, and 4

with the exception of items Nos. 41 and 45, passed unanimously (Attachment).

The City Council discussed the business tax license, transient occupancy tax, and cost recovery options.

**I. Informational Items**

I1. City Council agenda topics: June 2020 to July 2020 ([Staff Report #20-107-CC](#))

**J. City Manager's Report**

None.

**K. City Councilmember Reports**

City Councilmember Mueller reported on the upcoming agenda item regarding the downtown social distancing project.

**L. Adjournment**

Mayor Taylor adjourned the meeting at 11:47 p.m.

Judi A. Herren, City Clerk



## SPECIAL MEETING MINUTES – DRAFT

**Date:** 5/28/2020

**Time:** 4:00 p.m.

**Special Meeting Location:** Joinwebinar.com – ID# 279-059-755

### NOVEL CORONAVIRUS, COVID-19, EMERGENCY ADVISORY NOTICE

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- How to participate in the meeting
  - Submit a written comment online:  
[menlopark.org/publiccommentMay28](https://menlopark.org/publiccommentMay28)\*
  - Record a comment or request a call-back when an agenda topic is under consideration:  
Dial 650-474-5071\*
  - Access the special meeting real-time online at:  
[joinwebinar.com](https://joinwebinar.com) – Special Meeting ID 279-059-755  
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### Special Session ([Joinwebinar.com](https://www.joinwebinar.com) – ID# 279-059-755)

#### A. Call To Order

Mayor Taylor called the meeting to order at 4:09 p.m.

#### B. Roll Call

Present: Carlton, Combs, Nash, Mueller, Taylor

Absent: None

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

#### C. Regular Business

- C1. Adoption of uncodified urgency Ordinance No. 1069 extending temporary moratorium on eviction for non-payment of rent by small business commercial tenants directly impacted by the COVID-19 pandemic ([Staff Report #20-111-CC](#))

Interim City Attorney Cara Silver made the presentation.

The City Council received clarification on judicial council actions on eviction moratoriums.

**ACTION:** Motion and second (Nash/ Carlton) to adopt uncodified urgency Ordinance No. 1069 extending temporary moratorium on eviction for non-payment of rent by small business commercial tenants directly impacted by the COVID-19 pandemic, passed unanimously.

- C2. Provide direction on budget balancing measures including program and service reductions for the city manager's proposed fiscal year 2020-21 budget and authorize issuance of notice of intent to layoff affected positions ([Attachment](#)) – **continued from May 26, 2020 meeting**

Assistant City Manager Nick Pegueros introduced the item.

Assistant Administrative Services Director Dan Jacobson made the presentation ([Attachment](#)).

The City Council discussed the details of the services provided by the police department proposed to be reduced.

**ACTION:** Motion and second (Carlton/ Combs) to remove items 167 and 173 from the budget reduction list, accept proposed funding reductions for items 168, 169, 170, and 171, and reduce item 172 by \$600,000, passed 4-1 (Mueller dissenting) ([Attachment](#)).

City Council took a break at 6:43 p.m.

City Council reconvened at 6:53 p.m.

The City Council discussed the details of the services provided by the public works department proposed to be reduced.

**ACTION:** Motion and second (Carlton/ Nash) to reduce item 174 by \$300,000 and retain \$400,000 for herbicide-free treatments and direct staff and the Park and Recreation Commission to examine herbicide-free treatments to reduce costs, passed unanimously (Attachment).

**ACTION:** Motion and second (Nash/ Carlton) to accept proposed funding reductions for item 176, passed unanimously (Attachment).

**ACTION:** Motion and second (Nash/ Carlton) to remove item 177 from the budget reduction list and directed staff to explore budget reductions related to this item, passed unanimously (Attachment).

The City Council received an update on the budget reductions directed to date.

The City Council discussed the details of the services provided by the community services department proposed to be reduced.

**ACTION:** Motion and second (Nash/ Carlton) to accept proposed funding reduction for item 178, passed 3-2 (Mueller and Taylor dissenting) (Attachment).

**ACTION:** Motion and second (Carlton/ Combs) to remove item 179 from the budget reduction list, passed unanimously (Attachment).

The City Council directed staff to retain funding for childcare.

City Council took a break at 7:36 p.m.

City Council reconvened at 8 p.m.

City Councilmember Carlton was excused at 8:02 p.m. to attend a Peninsula Clean Energy meeting.

City Council took a break at 8:03 p.m.

City Council reconvened at 9:05 p.m.

City Councilmember Carlton returned at 9:12 p.m.

**ACTION:** Motion and second (Mueller/ Combs) to furlough item 182 for six-months, passed unanimously (Attachment).

**ACTION:** Motion and second (Mueller/ Carlton) to accept proposed funding reduction for item 183 and reduce proposed funding by half for items 184, 185, and N/A (reduce long-range planning projects), passed 4-1 (Nash dissenting) (Attachment).

The City Council discussed the details of the services provided by the administrative services department proposed to be reduced.

**ACTION:** Motion and second (Nash/ Combs) to adjust item 186 to .25 position, passed 4-0-1 (Mueller abstaining) (Attachment).

The City Council received an update of the budget reductions directed at this meeting. The City Council discussed and received clarification on the preparation and issuance of layoff notices.

**ACTION:** Motion and second (Carlton/ Combs) to approve the issuance of layoff notices, passed 4-1 (Taylor dissenting).

**D. Adjournment**

Mayor Taylor adjourned the meeting at 10:46 p.m.

Judi A. Herren, City Clerk





**STAFF REPORT**

**City Council**

**Meeting Date:** 7/14/2020

**Staff Report Number:** 20-145-CC

**Consent Calendar:** Adopt Resolution No. 6573 notifying Peninsula Library System Joint Powers Authority of City of Menlo Park's intent to withdraw effective July 1, 2021

**Recommendation**

Staff recommends that City Council adopt the resolution in Attachment A notifying Peninsula Library System Joint Powers Authority (JPA) of City of Menlo Park's intent to withdraw effective July 1, 2021.

**Policy Issues**

The Joint Exercise of Powers Act, as codified in California Government Code section 6500, governs the JPA. The City Council retains sole authority to withdraw from the JPA, subject to the notice provision in the JPA Agreement.

**Background**

In their June 16 closed session on potential legal action, the City Council directed staff to prepare a resolution notifying the JPA of the City's intent to withdraw (Attachment B) effective July 1, 2021, per the withdrawal notification process and timeline set forth in the JPA agreement.

**Analysis**

During the development of the fiscal year 2020-21 operating budget, City departments were tasked with identifying 25 percent reductions to operating expenditures in order to achieve a balanced City operating budget in light of significant projected revenue shortfalls. Library department staff undertook a comprehensive review of all department expenditures and identified the annual membership in the JPA as a significant expenditure that could be eliminated effective July 1, 2020, and replaced with a comparable system that would achieve substantial ongoing cost savings with minimal impact to service delivery to the community.

Upon further analysis and discussion with City Council in public meetings May 22, 29 and June 9, and in closed session with City Council June 16, the City Council determined that withdrawal from the JPA effective July 1, 2021, would provide a more manageable timeframe to facilitate a seamless transition for library users and staff, and would better conform to the withdrawal notification timeline set forth in the JPA agreement which stipulates that withdrawals are effective July 1 and that notice of withdrawal must be provided at least six months in advance. Furthermore, per City Council's direction, staff will develop and issue requests for proposals for an integrated library system platform and interlibrary loan delivery service, then return to City Council with recommendations no later than December 31, 2020 in order to provide a six-month notification and transition period should the recommended service providers be entities other than the JPA.

### **Impact on City Resources**

The notification of intent to withdraw from the JPA will have no impact to City resources during fiscal year 2020-21 because the actual withdrawal would not be effective until July 1, 2021. There will be some staff time and effort needed to develop and issue the requests for proposals during fiscal year 2020-21; however, this can be managed within current staffing levels. The withdrawal from the JPA and transition to a more cost-effective service provider effective July 1, 2021, would result in an estimated \$140,000 in net savings to the general fund in fiscal year 2021-22, including anticipated one-time migration costs in that first year; and an estimated \$160,000 in annual net savings to the general fund in subsequent fiscal years.

### **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. Resolution No. 6573
- B. PLS JPA agreement

Report prepared by:  
Sean Reinhart, Library and Community Services Director

**RESOLUTION NO. 6573**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
NOTIFYING PENINSULA LIBRARY SYSTEM OF WITHDRAWAL FROM THE  
JOINT POWERS AUTHORITY EFFECTIVE JULY 1, 2021**

WHEREAS, the City of Menlo Park is a member of the Peninsula Library System Joint Powers Authority (“JPA”); and

WHEREAS, the City of Menlo Park wishes to withdraw from the JPA effective July 1, 2021; and

WHEREAS, the JPA agreement stipulates that notification of withdrawal shall be in the form of a resolution adopted by the governing body of the party wishing to withdraw; and

WHEREAS, the JPA stipulates that any party wishing to withdraw must do so effective July 1 of any succeeding year and must provide at least six months written notice to the PLS Administrative Council,

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Menlo Park issues this written notification of withdrawal from the JPA effective July 1, 2021.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fourteenth day of July, 2020, 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 fourteenth day of July, 2020.

---

Judi A. Herren  
City Clerk

AMENDMENT TO THE JOINT POWERS AGREEMENT OF THE  
PENINSULA LIBRARY SYSTEM

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THIS AMENDMENT to the joint powers agreement of the PENINSULA LIBRARY SYSTEM (hereinafter called PLS) made and entered into this 1 day of July, 1985, in the County of San Mateo, by and between the undersigned signatories hereto.

W I T N E S S E T H

WHEREAS, the cities of BURLINGAME, DALY CITY, MENLO PARK, REDWOOD CITY, SAN BRUNO, SAN MATEO, SOUTH SAN FRANCISCO and the COUNTY OF SAN MATEO have previously entered into a joint powers agreement for an entity known as PLS; and,

WHEREAS, the parties have entered into a second joint powers agreement providing for a SHARED AUTOMATED CIRCULATION SYSTEM, also known as the PENINSULA LIBRARIES AUTOMATED NETWORK (hereinafter called PLAN); and,

WHEREAS, it is the desire of the parties that PLAN be merged into PLS upon the following terms and conditions.

NOW THEREFORE IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

A. That upon the effective date of this agreement all of the right, title, and interest of PLAN in its assets and obligations shall become the assets and obligations of PLS.

B. That as a result of said merger the joint powers agreement of PLS shall be as follows:

"I. PURPOSE

The purpose of this Joint Powers Agreement is to provide for the exercise of the common power of each of the agencies hereto to provide library services. This common power shall be exercised in a manner consistent with and in furtherance of the objectives of the California Library Services Act (Education Code, Sec. 18,700 et seq.), hereinafter referred to as "Library Services Act", and in such a manner that the entity created hereby shall be eligible for any grant funds that may be payable pursuant to said Act and such other laws of a similar nature both state and federal that now exist or that may from time to time be enacted. This instrument shall be construed in a manner consistent with these objectives. The foregoing, however, shall not be deemed to limit the extent of the powers conferred on the public entity created hereby. PLS shall possess all the powers, prerogatives and authority necessary to plan, operate, and

administer a cooperative library system, and those powers necessary to establish, improve and extend library services.

It is further intended by the parties hereto (a) to enter into this Agreement for the joint sharing of benefits and costs related to an automated circulation system (hereinafter called SYSTEM) for the respective libraries of each party; (b) to recognize the desirability of making such a system available for all libraries operating in San Mateo County.

The parties shall have equal access to the full range of services available from PLS and jointly make decisions regarding the implementation and management of PLS, in accordance with the terms of this Agreement.

## II. NAME AND POWERS

The name of the entity shall be the PENINSULA LIBRARY SYSTEM. Said entity shall have the powers granted to such library systems under the Education Code of the State of California and such other powers as may be necessary to accomplish the purpose of this Agreement.

## III. ADMINISTRATIVE COUNCIL

Administrative Council (hereinafter referred to as "Council") is the governing body of PLS and shall be made up of:

(a) The voting representative of each party hereto who shall be the head librarian of that party or in the absence of the head librarian, the duly appointed alternate as determined by each jurisdiction. Additional non-voting representatives may be appointed with the approval of the Council.

(b) Functions; Powers: The Council shall formulate policy and goals, establish and review programs, approve a budget, direct the administration of this Agreement, establish appropriate committees, including a manager's Review Committee to advise on all matters pertaining to the SYSTEM concerning automation consisting of the chief administrative officer of each participating entity, and shall have such incidental powers as may be necessary and proper to carry out those specifically enumerated.

(c) Not later than October 1, 1985, the Council shall adopt amendments to the existing operations manual. Said amendments shall include, but not be limited to the following subjects:

- (1) Procedures governing eligibility to borrow library materials and participate in library programs.
- (2) Policies regarding circulation and lending.

- (3) What records are to be maintained, procedure for their maintenance, and policies on confidentiality and for disclosure of the records.
- (4) How, and in what manner services are to be performed.
- (5) Committee responsibilities and memberships.

(d) Procedure: The Council shall establish such bylaws for the conduct of the business as may be necessary and proper, provided, however, the following rules with regard to quorum and voting shall apply:

- (1) Quorum: A majority of the voting members of the Council shall constitute a quorum for the transaction of any business.
- (2) Voting: The affirmative vote of a majority of those voting members present shall be necessary for all action taken except the following: (aa) approval of the budget; (bb) a declaration that a party has failed to comply with the terms of this Agreement; (cc) use of SYSTEM by other agencies or organizations; (dd) decisions regarding SYSTEM enhancements and/or expansions; (ee) financial matters; (ff) personnel matters as specified by the Personnel Manual. As to such matters any action taken shall require the affirmative vote of the majority of the entire Council.

#### IV. BYLAWS

At its first meeting the Council shall elect a chairperson and vice-chairperson for PLS from its members, who shall assume the duties of office upon election. Thereafter, PLS shall provide for annual election and rotation of officers in its Bylaws. The most recently published edition of Robert's Rules of Order shall apply to the Council's meetings until amended Bylaws are adopted.

#### V. POWERS OF THE ADMINISTRATIVE COUNCIL:

(a) The Council shall have those powers set forth in Section 6508 and 6509.5 of the Government Code.

#### VI. FISCAL AGENT:

(a) The Treasurer of the City of Daly City is hereby designated as the fiscal agent for PLS to serve until such time as the Council shall designate another Fiscal Agent.

(b) The Council shall designate its fiscal year, maintain a current inventory of the property owned by PLS, and provide for an annual audit of the accounts and records of PLS by a certified public accountant or public accountant. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code and shall conform to generally accepted auditing standards. PLS shall bear the costs of the audit.

## VII. RESPONSIBILITIES OF PARTICIPATING LIBRARIES

### Members of PLS:

- (a) Shall permit any resident borrower in good standing in one member library to borrow library materials circulated by any other member library according to its rules, without discrimination because of the borrower's place of residence and without payment of a nonresident fee.
- (b) Agree to lend circulating books and other materials according to their own rules, on interlibrary loan, to other member libraries.
- (c) Agree to participate in the programs which are a requirement of the California Library Services Act.
- (d) May choose to own, and jointly operate the PLS SYSTEM and other automated systems.
- (e) May participate in the use and operations of the SYSTEM under the terms and conditions of this agreement and the rules, regulations, and standards which may be adopted by the Council.
- (f) Shall be liable for local costs, including acquisition of remote hardware, structural modifications, communications equipment necessary to communicate with the central site, and local conversion expense, including California State Sales Taxes on purchases, where applicable.
- (g) Shall pay all monies owed PLS when due.
- (h) Will regularly participate in the meetings and deliberations of the Council.
- (i) Shall keep those records and statistics which may be required by the Council to document the performance of the SYSTEM.
- (j) Will report to the Council the persons to receive formal notice of actions of the Council.

FAILURE TO COMPLY with these rules and regulations will constitute a breach of this Agreement by a party and, as such, shall be subject to the remedial provisions of the Agreement.

## VIII. MANAGEMENT AND CONTROL OF INDIVIDUAL LIBRARIES.

Nothing contained herein shall be deemed to limit the right of member agencies to administer, manage, direct and control their own libraries and library resources independently, select their own books and other library materials, hire their own personnel, and operate according to the policies and rules established by their own governing bodies, Boards of Trustees, or Chief Administrative officers.

## IX. FUNDING

PLS may apply for and receive such grants as may be provided for by the laws of the state of California or the Federal Government.

#### X. COST ALLOCATION PLAN.

(a) The Council shall determine the membership fee that shall be contributed by each participating party for the operation of the general programs of PLS, excluding the operation of System. Each jurisdiction's fee shall be according to a formula which the Council determines to be fair and equitable. This formula shall be reviewed annually. Exhibit A, attached hereto and made a part hereof, is the existing formula which shall be used until modified or amended by the Council.

(b) The Council shall also determine the share of the total to be contributed by each member for the operation of the central functions of the System. Each jurisdiction's share shall be according to a cost allocation formula which the Council determines to be fair and equitable and may differ from the membership fee for general system programs described above. The existing cost allocation formula is set forth in Exhibit B attached hereto and made a part hereof. This formula shall be reviewed annually. In addition, each jurisdiction agrees to pay for the capital costs and on-going operational expenses of those components of PLS which can be allocated to the jurisdiction directly. Such expenses may include, but are not limited to: purchase of terminals, modems, communication lines, printed forms, and postage costs, as well as maintenance and repair of equipment.

#### XI. CORRECTIVE AND REMEDIAL MEASURES.

Whenever a majority of the Council believes that a participating party has committed a remediable breach of any material obligation set forth in this Agreement, it may give the party notice to that effect with reasonable specificity. The participating party shall use its best efforts to promptly to remedy the breach and shall inform the Council of the nature of the remedial action planned and taken or will respond to any such notice, with an explanation that sets forth reasonable cause of the breach. When a breach does exist that is not remedied within thirty (30) days after notice of it, the Council shall be entitled to seek appropriate relief under this Agreement or otherwise under the law.

#### XII. APPLICABLE LAW

This Agreement shall be governed by, subject to, and construed according to the laws of the State of California, with venue to lie in San Mateo County, California.

#### XIII. APPEAL PROCEDURE

If any party considers that any decision of the Council, or any rule or regulation governing the operation and shared use of the system to be unfair, the Chairperson of the Council shall be notified by the party in writing that the decision is disputed, or



rule or regulation is unfair, and the reasons therefore. The Council shall then resolve the dispute within thirty (30) days and inform the party of its recommendation.

#### XIV. INSTALLATION.

It is understood that the responsibility for the installation of all remote equipment located in the libraries of each party shall rest with the vendor or its agent, unless otherwise provided for by agreement of the Council and vendor.

#### XV. CONFIDENTIALITY OF DATA.

The circulation records of all parties are considered CONFIDENTIAL regardless of the source of inquiry. Employees of each party shall have access to such records to provide for the orderly operation of each library; however, such records shall not be made available to anyone else except pursuant to such process, order, or subpoena as may be authorized by law.

Any problems or conditions relating to the privacy of circulation shall be referred to the head of the applicable library for resolution.

#### XVI. RESPONSIBILITIES OF AUTOMATED CIRCULATION SYSTEM PARTICIPATION

(a) Members of PLS who choose to own and jointly operate the PLS Automated Circulation System (called SYSTEM) shall do so under the terms and conditions of this Agreement and the rules, regulations and standards which may be adopted by the Council. They shall be liable for local costs, including acquisition of remote hardware, structural modifications, communications equipment necessary to communicate with the central site, and local conversion expense, including California State Sales Taxes on purchases where applicable.

(b) The SYSTEM will be available for use by any party hereto for circulation and other transactions on a schedule of hours to be set by the Council. The Council, through its contracts for hardware and software maintenance, shall maintain the equipment in such a fashion as to provide for downtime and response time not exceeding the limits specified in these contracts. No liability shall be assumed by the Council; however, if these limits are exceeded on occasion, it may be necessary to temporarily suspend SYSTEM availability because of operational or maintenance requirements. Whenever possible, prior notice of SYSTEM unavailability will be provided to the libraries. Such suspension shall not be deemed an unreasonable prevention or postponement of SYSTEM use by any party.

(c) The Council shall be advised in writing of any SYSTEM software or hardware enhancement desired by any party. The implementation of all such enhancements shall require the approval by majority vote of the Council members participating in the SYSTEM. If the cost of any SYSTEM enhancement, expansion or

replacement would cause an increase in a party's share of expense of 15% or greater than the previous year's budget, then that party shall have the option to negotiate for a different level of service from the SYSTEM, provided that such a different level of service would not degrade the overall SYSTEM and the cost of such change would be covered by that party.

(d) All central site hardware, including the central processing unit, console disk drives, tape drives, and associated instruments and equipment shall be owned by and be the responsibility of the SYSTEM. The rights to all software that is a part of the system shall reside with SYSTEM, subject to the terms and conditions of the Agreements with any vendor. All computer terminals, modems, and communication equipment necessary for connection to the central site hardware, and any other hardware that is located in the various service outlets operated by the members shall be owned separately by individual jurisdictions. It is understood that the members acquiring the equipment to connect to the central site hardware will acquire such equipment in accordance with the specifications furnished by PLS.

#### XVII. ADMISSION OF NEW ENTITIES.

(a) Any agency which has the power to provide library services may join PLS or SYSTEM upon the application of its governing body and upon the consent of the Council, provided that such agency has agreed to abide by all the terms of this Joint Powers Agreement. The Council shall prescribe the amount of money, if any, that shall be paid by the new agency as a prerequisite to its becoming a participant.

(b) Any agency agreeing to participate in the SYSTEM shall agree to pay the full cost for any modifications to the central SYSTEM which may be required as directed result of this new participation. The Council shall determine that the SYSTEM modifications which may be required will not result in a significant degradation of SYSTEM performance.

(c) Any agency agreeing to participate in the SYSTEM agrees to pay its portion of ongoing costs in such SYSTEM.

#### XVIII. MUTUAL HOLD HARMLESS AND INDEMNIFICATION.

(a) It is agreed that each party shall defend, hold harmless and indemnify PLS and its officers, agents and/or employees from any and all claims for injuries to persons or damage to property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of any other party, their officers, agents and/or employees.

(b) It is further agreed that the PLS shall defend, hold harmless and indemnify any party, its officers, agents and/or employees from any and all claims for injuries to

persons or damage to property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of PLS, its officers, agents and/or employees.

(c) In the event of concurrent negligence of one or more parties, their officers and/or employees, and PLS, its officers, agents and/or employees, then the liability for any and all claims for injuries to persons or damage to property which arise out of the terms of this Agreement shall be apportioned under the California theory of comparative negligence as established presently, or as may be hereafter modified.

#### XIX. INSURANCE.

PLS shall not commence work under this Agreement until all insurance required under this paragraph has been obtained. PLS shall maintain certificates of insurance evidencing the required coverage. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to PLS of any pending change in the limits of liability or of any cancellation or modification of the policy.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or cancelled, the Council, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and recommend to the parties the suspension of all further work pursuant to this Agreement.

(a) Workers' Compensation and Employer's Liability Insurance: PLS shall have in effect during the entire life of this agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage, if required.

(b) Liability Insurance: PLS shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from PLS's operations under this Agreement, whether such operations be by itself or by any sub-contractor or by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be One Million Dollars (\$1,000,000.) combined single limit bodily injury and property damage for each occurrence. All parties and their officers, agents, employees and servants, shall be named as additional insureds on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the parties, and their officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, such other insurance shall be excess insurance only.

Such liability policy shall also provide errors and omissions coverage for all members of the Council.

PLS shall be responsible for defending third party actions against PLS.

(c) Property Insurance: PLS shall acquire and maintain all-risk property insurance to cover full replacement value of all PLS equipment. Such insurance shall include but not be limited to fire and extended coverage, business interruption and extra expense.

#### XX. TIME.

Time is of the essence of this Agreement.

#### XXI. AMENDMENTS.

This Agreement may be amended by approval of two-thirds of the governing bodies of the parties hereto.

#### XXII. DISSOLUTION OF PLS

PLS shall be dissolved by approval of two-thirds of the governing bodies of the parties hereto. Disposition of assets or debts of PLS as determined by the Council shall be made in such a manner that each party shall share in the proceeds or expenses consistent with the prorata investments and prorata operating costs.

#### XXIII. WITHDRAWALS

(a) Any party wishing to withdraw from this Agreement must do so effective on July 1, of any succeeding year and must provide at least six months written notice to the Council. Notice shall be in the form of a resolution adopted by the governing body of the party wishing to withdraw. The signatories to this Agreement recognize that a substantial capital investment is required by each to implement and operate SYSTEM and that withdrawal from this Agreement will cause substantial hardship for all remaining parties.

(b) If a party withdraws from the Agreement according to the terms and conditions set forth herein, said party shall receive a copy of its bibliographic file, borrower file, and item file if such information has been converted and filed in the automated system, contingent on the system's capability.

(c) If a party withdraws from SYSTEM prior to two years from the effective date of this Agreement, the withdrawing party shall reimburse PLS an amount equal to any unpaid balance of that party's share of initial start-up costs and its share of initial central site operating costs.

(d) If the withdrawal from this Agreement results in a decision by the remaining parties that the SYSTEM be terminated, it shall be the responsibility of PLS to dispose

of all the equipment and reimburse the remaining parties from the proceeds of disposal in accordance with a pro-rata formula based on the initial investment.

XXIV. TERMS OF AGREEMENT

This Agreement shall continue perpetually until modified or terminated by the parties hereto."

C. This merger shall be effective on July 1, 1985.

IN WITNESS WHEREOF the parties hereto have set their hand the day and year written.

CITY OF BURLINGAME

BY: [Signature]  
City Manager  
Date: 7/1/85

ATTEST:

By: [Signature]  
City Clerk  
Date: 7-1-85

CITY OF DALY CITY

By: [Signature]  
City Manager  
Date: June 12, 1985

ATTEST:

By: [Signature]  
City Clerk  
Date: June 12, 1985

CITY OF MENLO PARK

By: [Signature]  
City Manager - Michael A. Bedwell  
Date: 6/25/85

ATTEST:

By: [Signature]  
City Clerk  
Date: June 25, 1985

CITY OF REDWOOD CITY

By: [Signature]  
City Manager  
Date: 6/19/85

ATTEST:

By: [Signature]  
City Clerk  
Date: June 20, 1985

CITY OF SAN BRUNO

By: [Signature]  
City Manager  
Date: July 7, 1986

ATTEST:

By: [Signature]  
City Clerk  
Date: 7/3/85

CITY OF SAN MATEO

By: [Signature]  
City Manager  
Date: 7/2/85

ATTEST:

By: [Signature]  
City Clerk  
Date: 7/2/85

CITY OF SO. SAN FRANCISCO

By: [Signature]  
City Manager  
Date: 7/9/85

ATTEST:

By: [Signature]  
City Clerk  
Date: 7/9/85

COUNTY OF SAN MATEO

By: [Signature]  
Chairman  
Board of Supervisors  
Date: August 6, 1985

ATTEST:

By: [Signature]  
Clerk of the Board  
Date: August 6, 1985

EXHIBIT A

PLS Membership Fees 1984/85 1985/86

Formula:  
 Base \$2400  
 + \$0.065 per-capita

<u>Library:</u>	<u>Population:</u> <u>1980 Census</u>	<u>Fee:</u>
Burlingame	26,173	\$4,100
Daly City	78,519	\$7,500
Menlo Park	25,673	\$4,070
Redwood City	54,965	\$5,970
San Bruno	35,417	\$4,700
San Mateo City	77,561	\$7,440
San Mateo County	230,013	\$17,350
<u>South San Francisco</u>	<u>49,393</u>	<u>\$5,610</u>
Total	577,713	\$56,740

EXHIBIT B

SHARED AUTOMATED SYSTEM  
COST ALLOCATION FORMULA

Library	1982-83 Circulation* %	1982-83 Volumes** %	1982-83 Population***%	Total Av. %	Prior %
Burlingame	291,139 8.0	219,391 12.2	33,583 5.7	8.7	[8.3]
Daly City	327,664 9.0	151,283 8.4	79,950 13.5	10.3	[12.6]
Menlo Park	196,136 5.4	111,755 6.2	26,250 4.4	5.3	[5.3]
Redwood City	374,990 10.3	197,008 11.0	55,800 9.4	10.2	[10]
San Bruno	176,426 4.8	89,162 5.0	34,750 5.8	5.2	[5.2]
San Mateo City	520,024 14.3	320,907 17.8	82,867 14.0	15.4	[14]
San Mateo County	1,495,335 41.2	600,151 33.4	230,200 38.8	37.8	[36.8]
So San Francisco	247,328 7.0	107,712 6.0	50,100 8.4	7.1	[7.8]
<b>Total</b>	<b>3,629,042</b>	<b>1,797,369</b>	<b>593,500</b>		

\*1982-83 Circulation to Library's own residents. Statistics from the 1982-83 Direct Loan Survey (includes circulation to Hillsborough)

\*\*1982-83 Volumes as reported to the State Library

\*\*\*1.1.83 Projected Population statistics from the U.S. Bureau of Census

Note: Total Population of San Mateo County - 593,500 (including Hillsborough population of 10,700 allocated 2/3 to Burlingame [7,133] and 1/3 to San Mateo City [3,567])

Formula Revised 3.6.84





## STAFF REPORT

### City Council

Meeting Date:

7/14/2020

Staff Report Number:

20-143-CC

Consent Calendar:

**Adopt Resolution No. 6564 submitting to the voters a ballot measure authorizing amendment of the City's transient occupancy tax to allow the collection of an additional one percent pursuant to the 2016 Facebook campus expansion development agreement**

### Recommendation

Staff recommends that the City Council adopt Resolution No. 6564 to submit to the voters at the General Municipal Election November 3, 2020 a ballot measure authorizing amendment of the City's transient occupancy tax ("TOT") to require the hotel at the Facebook campus expansion project site to collect an additional one percent tax over the citywide rate in accordance with the previously approved Facebook campus expansion development agreement.

### Policy Issues

The recommended action is consistent with the City Council's actions and approvals on the Facebook campus expansion project ("Project") in late 2016. In approving the Project, the City Council approved the Facebook campus expansion development agreement ("Development Agreement"), which included a term requiring the hotel on the Project site to charge an additional one percent TOT above the citywide tax rate. This is not a policy decision to increase taxes, but a "housekeeping" item to ensure that the previous policy decision is legally enforceable.

### Background

On November 1, 2016, the City Council approved all requested land use entitlements, environmental review, and agreements for the Project located at 301-309 Constitution Drive, and introduced the ordinances rezoning the property and approving the Development Agreement. On November 15, 2016, the City Council adopted the rezoning and Development Agreement ordinances. The Development Agreement was signed December 14, 2016 and recorded December 16, 2016 as Document No. 2016-1337994 in the San Mateo County Recorder's Office. The Development Agreement includes Section 6.3.7 that provides in relevant part: "As of the date of this Agreement, the City imposes the TOT on applicable hotel room rents and other receipts at the rate of 12 percent (12%.) Facebook hereby agrees that, during the term of this agreement and for so long as the Hotel is operating, the TOT applicable to the Hotel shall be assessed at one percent (1%) above the Citywide TOT rate in effect from time to time (e.g., if the Citywide TOT rate is 12%, the applicable TOT rate for the Hotel shall be 13%.)" The City Council's action in late 2016 completed the land use entitlement and environmental review process for the Project.

At the time of Project approval, Facebook had not identified a hotel operator and any hotel project would be required to return for additional approvals. On February 25, 2019, CitizenM submitted a proposed project to construct a hotel on the Project site. The proposed project included a request to increase the approved number of hotel rooms from 200 to 240 rooms, decrease the number of on-site parking spaces from 245 to

118 parking spaces and obtain design review and approval for the hotel. At the February 11 meeting, the City Council approved the hotel project (4-0-1, with City Councilmember Combs recused,) with additional conditions of approval added to the hotel project related to the transportation impact fee, first source hiring, and potential transportation improvements in the Bayfront Area. Construction of the hotel is anticipated to be complete within the next two years, by late 2021 or early 2022.

## Analysis

Revenue and Tax Code Section 7280 authorizes the City to impose a TOT on a person staying 30 days or less in a hotel, motel or similar lodging. Pursuant to Cal. Const. Art. XIIC Sections 1(a) and 2(b), any new or increased TOT requires a vote of the electorate. Because the TOT is levied on the privilege of occupying a lodging, the tax is imposed on the hotel guest. While the hotel operator has the duty to collect the tax and remit the money to the City, the hotel guest as the payor of the tax would have the right of action to challenge the imposition of a tax above the percentage that was voter approved.

Although pursuant to the Development Agreement the hotel operator agreed to collect and remit the additional one percent tax over the citywide rate<sup>1</sup>, the hotel guest would still have a right of action absent voter approval of the increase.<sup>2</sup> The increase in TOT at the hotel on the Project site which was intended as a general tax imposed for general governmental purposes must be approved at a general election by the majority of the electorate. The City Council called and consolidated the General Municipal Election November 3 by approving Resolution No. 6562. This is the first general election since the approval of the CitizenM hotel project. If the City Council does not put the measure on the ballot, the next opportunity to put the one percent TOT increase consistent with the Development Agreement on the ballot would be at the next general election in 2022.

The fiscal impact analysis (FIA) conducted as part of the entitlement review in 2016 for the Project utilized a 12 percent TOT rate, without the one percent increase, and analyzed the anticipated 200-room hotel. Depending on the hotel room rate charged, the FIA concluded that the anticipated annual TOT revenue could be anywhere between \$842,000 and \$1.6 million per year. On average the hotel was anticipated to generate \$1.2 million in TOT revenue for the City per year. This average number was used to inform the revenue guarantee in the Development Agreement of \$1.25 million per year. Considering the additional 40 rooms, staff anticipates that an increase of one percent in the TOT rate would equate to approx. \$100,000 per year (assuming a 70% occupancy rate.) If the hotel is completed in late 2021 or early 2022, and the increase is not put on the November 2020 ballot, the City could potentially lose between \$50,000 and \$100,000 of additional TOT revenues before the next opportunity to put it on a general election ballot. This amount could vary depending on whether travel continues to be impacted by COVID-19.

Elections Code Section 9222 allows the City Council to place a ballot proposition approving a legislative action on the ballot for approval of the voters. A resolution to submit a ballot measure authorizing amendment of the City's TOT to require the hotel on the Project site to collect an additional one percent over the citywide rate pursuant to the Development Agreement is included as Attachment A. City staff understands that the City Council would prefer given current pandemic conditions not to increase taxes; therefore, to allow the affirmation of the previously approved Development Agreement, the resolution narrowly specifies the question to be submitted to the voters as follows:

Do the People of the City of Menlo Park adopt an ordinance to affirm the additional one percent (1%) Transient Occupancy Tax above the citywide rate for the hotel on the Facebook

<sup>1</sup> The City of Menlo Park currently has a 12 percent TOT rate. For comparison, Redwood City and Cupertino both have a 12 percent TOT rate and Palo Alto has a 15.5 percent TOT rate.

<sup>2</sup> At the November 2010 general election, the voters approved Measure T which approved the Menlo Gateway project development agreement that included a one percent TOT rate increase for the hotel on the project site (Hotel Nia).

Campus Expansion Project site as agreed to in the Facebook Campus Expansion Development Agreement entered into December 14, 2016?

In addition, the resolution identifies the timelines to provide direct arguments for and against the measure, for the city attorney to provide an impartial analysis, and for rebuttal arguments to be submitted to the city clerk and transmitted to the registrar of voters. The Mayor may appoint one or more City Councilmembers to submit an argument in favor of the ballot measure. Any voter or bona fide group of voters may also submit an argument in favor of or against the ballot measure. If more than one argument for or against any measure is submitted, the elections official shall select one of the arguments using specific criteria as outlined in Elections Code Section 9287. The members authorized by the City Council to submit an argument in favor of the ballot measure have priority over any other argument in favor of the measure. The authors of the argument in favor of the ballot measure are entitled to write a rebuttal to the argument against the measure, or to authorize someone else to write the rebuttal. The resolution authorizes the Mayor to appoint a subcommittee to write the argument by the City Council.

### **Impact on City Resources**

According to the San Mateo County chief elections officer and assessor-county clerk-recorder for election services, the estimated cost of submitting the ballot measure to the voters is approximately \$34,400 - \$41,000. In addition, the City will incur costs for the preparation of the impartial analysis and related legal and administrative work. However, it is anticipated that if approved the additional one percent TOT from the hotel on the Project site would provide the City additional general fund revenue as anticipated in the Development Agreement which would likely exceed the cost of the election in the first year of hotel operation.

### **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. 6564

Report prepared by:

Leigh F. Prince, Assistant City Attorney

**RESOLUTION NO. 6564**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK SUBMITTING TO THE VOTERS OF THE CITY OF MENLO PARK AT THE GENERAL MUNICIPAL ELECTION ON NOVEMBER 3, 2020 A BALLOT MEASURE AUTHORIZING AMENDMENT OF THE CITY'S TRANSIENT OCCUPANCY TAX TO ALLOW THE CITY OF MENLO PARK TO COLLECT FROM THE HOTEL ON THE FACEBOOK CAMPUS EXPANSION PROJECT SITE AN ADDITIONAL ONE PERCENT TRANSIENT OCCUPANCY TAX ABOVE THE CITYWIDE RATE PURSUANT TO THE 2016 FACEBOOK CAMPUS EXPANSION DEVELOPMENT AGREEMENT**

WHEREAS, the City Council of the City of Menlo Park entered into the Facebook Campus Expansion Development Agreement ("Development Agreement") on December 14, 2016, which included in Section 6.3.7 agreement that the hotel on the Facebook Campus Expansion Project ("Project") site would assess an additional one percent transient occupancy tax ("TOT") above the citywide TOT in effect as long as the hotel is operating;

WHEREAS, any increased TOT, even one agreed to as part of a development agreement, requires a vote of the electorate at a general election pursuant to California Constitution Article XIII C Sections 1(a) and 2(b); and

WHEREAS, at the time the Development Agreement was entered into, Facebook had not identified a hotel operator and it was anticipated that any hotel project would be required to obtain additional approvals;

WHEREAS, on February 25, 2019, CitizenM submitted a proposed project to construct a hotel on the Project site and on February 11, 2020, the City Council approved the hotel, which is anticipated to be complete by late 2021 or early 2022;

WHEREAS, approval of the additional one percent TOT for the hotel on the Project site would not be an increase in taxes, but an affirmation by the voters of a previously approved term in the Development Agreement; and

WHEREAS, pursuant to the laws of the State of California, the City of Menlo Park in Resolution No. 6562 called a General Municipal Election to be held and consolidated with the Presidential General Election to be held on November 3, 2020 and contracted with the San Mateo County Chief Elections Officer and Assessor-County-Clerk Recorder for election services.

NOW, THEREFORE BE IT RESOLVED that the City of Menlo Park orders as follows:

1. Pursuant to Election Code Section 9222, the City hereby submits to the voters at the General Municipal Election on November 3, 2020 the following ballot measure sponsored by the City Council:

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Do the People of the City of Menlo Park adopt an ordinance to affirm the additional one percent (1%) Transient Occupancy Tax above the citywide rate for the hotel on the Facebook Campus Expansion Project site as agreed to in the Facebook Campus Expansion Development Agreement entered into on December 14, 2016?	YES
	NO

2. If, at the election, the ballot measure set forth above is approved by the voters, Chapter 3.16 of the City of Menlo Park Municipal Code shall be amended as set forth in the ordinance attached hereto as Exhibit A. Pursuant to Election Code Section 9223, the City Clerk of the City of Menlo Park shall cause the attached ordinance to be printed and shall make a copy of the ordinance to any voter upon request.
3. Ballots for said election shall be provided in the form provided by law. On said ballots, in addition to any other printed matter which may be required by law, two voting spaces shall be set off to the right of the ballot measure, in the manner provided by law, one having the word "YES" printed before it and the other having the word "NO" printed before it.
4. Direct arguments for and against the measure shall not exceed 300 words, shall be filed with the City Clerk no later than 5:00 p.m. on Friday, August 14, 2020 and shall otherwise be in accordance with Section 9280 et. seq. of the Elections Code. The Mayor shall appoint a subcommittee to write a ballot argument and rebuttal.
5. The Interim City Attorney shall be directed to provide an impartial analysis of this measure in accordance with Elections Code Section 9280 and to submit that to the City Clerk for transmittal to the Registrar of Voters no later than 5:00 p.m. on Monday, August 24, 2020.
6. Rebuttal arguments are permitted in accordance with Sections 9220 and 9285 of the Elections Code. Rebuttal arguments shall not exceed 250 words and shall be filed with the City Clerk no later than 5:00 p.m. on Monday, August 24, 2020.
7. If, at the election, a majority of the votes cast on the measure are in favor of the measure, then the measure shall be deemed to have been accepted and approved by the voters upon the date that the vote is declared by the City Council and shall go into effect 10 days after that date, pursuant to Section 9217 of the Elections Code.
8. As a general tax imposed for general governmental purposes, the measure requires a simple majority to pass.
9. The full text of the resolution shall not be printed in the Voter Information Pamphlet, but a statement shall appear under the Impartial Analysis informing voters that the information may be obtained from the City Clerk's office and the City's website.
10. The City Clerk is hereby directed to submit a certified copy of this resolution to the Board of Supervisors of the County of San Mateo, and to the appropriate County election officials of San Mateo. The City Clerk is also directed to file a copy of the resolution with the San Mateo County Chief Elections Officer and Assessor-County Clerk-Recorder prior to July 13, 2020.
9. The City Clerk shall certify to the passage and adoption of this resolution.

I, Judi A. Herren, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing City Council resolution was duly and regularly passed and adopted at a meeting of said City Council on the fourteenth day of July 2020, 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 fourteenth day of July 2020.

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Judi A. Herren, City Clerk

**EXHIBIT A**

**ORDINANCE NO. XXXX**

**ORDINANCE OF THE PEOPLE OF THE CITY OF MENLO PARK AMENDING  
CHAPTER 3.16 [TRANSIENT OCCUPANCY TAX] OF TITLE 3 [REVENUE AND  
FINANCE] OF THE MENLO PARK MUNICIPAL CODE**

WHEREAS, the City Council of the City of Menlo Park entered into the Facebook Campus Expansion Development Agreement on December 14, 2016, which included in Section 6.3.7 agreement that the hotel on the Facebook Campus Expansion Project site would assess an additional one percent transient occupancy tax ("TOT") above the citywide TOT in effect as long as the hotel is operating;

WHEREAS, any increased TOT, even one agreed to as part of a development agreement, requires a vote of the electorate pursuant to California Constitution Article XIII C Sections 1(a) and 2(b); and

WHEREAS, at the time the Facebook Campus Expansion Development Agreement was entered into, Facebook had not identified a hotel operator and it was anticipated that any such hotel operator would be required to obtain additional approvals;

WHEREAS, on February 25, 2019, CitizenM submitted a proposed project to construct a hotel on the Project site and on February 11, 2020, the City Council approved the hotel, which is anticipated to be complete by late 2021 or early 2022;

WHEREAS, approval of the additional one percent TOT would not be an increase in taxes, but affirmation of a previously approved term in the Facebook Campus Expansion Development Agreement;

WHEREAS, the People of the City of Menlo Park wish to authorize the amendment of the City's TOT to require the hotel on the Facebook Campus Expansion Project site to collect and remit to the City an additional one percent TOT pursuant to the previously approved terms of the Facebook Campus Expansion Development Agreement.

NOW, THEREFORE, the People of the City of Menlo Park do ORDAIN as follows:

1. ADDITION OF CODE. Section 3.16.035 [Facebook Campus Expansion Development Agreement] is hereby added to Chapter 3.16 [Transient Occupancy Tax] of Title 3 [Revenue and Finance] of the Menlo Park Municipal Code to read as follows:

3.16.035 Facebook Campus Expansion Development Agreement. As agreed to in the Facebook Campus Expansion Development Agreement, the hotel operator on the Facebook Campus Expansion Project site shall charge and each transient shall be subject to and shall pay an additional one percent (1%) above the citywide transient occupancy tax imposed by Municipal Code Section 3.16.030.

2. ENVIRONMENTAL REVIEW. This ordinance is not a project for the purposes of the California Environmental Quality Act.

3. EFFECTIVE DATE. The effective date of this ordinance shall be 10 days after the date when the City Council declares the results of the election at which the ballot measure regarding this ordinance is adopted by a majority vote of the electors voting on the measure.

Effective Date: \_\_\_\_\_, 2020.





## STAFF REPORT

### City Council

Meeting Date:

7/14/2020

Staff Report Number:

20-146-CC

Consent Calendar:

**Approve Resolution No. 6574 to re-authorize a \$5,000 minimum penalty for heritage tree violations until a new penalty schedule is adopted**

### Recommendation

Staff recommends that the City Council adopt Resolution No. 6574 to re-authorize a \$5,000 minimum penalty for heritage tree violations until a new penalty schedule is adopted (Attachment A.)

### Policy Issues

The heritage tree ordinance regulates the removal and pruning of trees of certain size to protect the City of Menlo Park's large, healthy tree canopy over long term. Updating the heritage tree ordinance was prioritized in the 2019 City Council workplan.

### Background

In August 2018, City Council appointed a Heritage Tree Task Force (Task Force) to provide recommendations on updating the heritage tree ordinance. The Task Force met 10 times over a course of a year and city staff presented their findings to the City Council July 16, 2019. City Council reviewed the Task Force recommendations and directed city attorney to draft a new ordinance.

On October 29, 2019, the City Council introduced the ordinance with several amendments and adopted it November 19, 2019. The effective date of the updated heritage tree ordinance was July 1, which provided about six months for implementation. One implementation task was to establish a resolution for City Council to approve a fine.

The previous heritage tree ordinance (Attachment B) in the Menlo Park Municipal Code Section 13.24.070(3) described two different penalties, depending on the situation:

- Any person who violates the ordinance will be fined in an amount not to exceed \$5,000 per violation; and
- If any person illegally removes a tree, the fine shall not exceed \$5,000 per tree or the appraised value of each such tree, whichever amount is higher.

As of July 1, the new heritage tree ordinance (Attachment C) under Section 13.24.100(2) states the civil fine and penalty are established by the City Council by resolution.

### Analysis

Due to the current COVID-19 pandemic and local emergency order, city staff had limited resources to update the civil fine for the amended heritage tree ordinance by the effective date of July 1. As a stopgap measure, the heritage tree ordinance would maintain a similar penalty ordinance until a new penalty

schedule is adopted:

- Any person who violates the ordinance will be fined \$5,000 per violation; and
- If any person illegally removes a tree, the fine shall be \$5,000 per tree or the appraised value of each such tree, whichever amount is higher.

The latest edition of the guide for plant appraisal describes the tree replacement and the trunk formula as the two common tree appraisal methodologies. This is the same manual as used in the previous ordinance to calculate the replacement tree value to determine the civil penalty.

Establishing a fine immediately is important to deter the community from harming the heritage trees and to maintain the City’s canopy. On average, the City experiences 12 to 15 known tree violations that are reported to the city annually. These violations include, but not limited to:

- Completely removing the heritage tree;
- Pruning excessively, which damages the heritage tree’s health;
- Not planting or maintaining tree replacements; and
- Damaging the heritage tree during construction.

Alternative options:

If the City Council does not wish to carry-over the penalty structure from the previous ordinance as a stopgap measure, then staff has identified two options that the City Council could consider. However, an adoption of one of these fees will be deferred to a later date concurrently with the master fee schedule update.

- Adopt the Task Force’s recommendation of a \$10,000 fine.
  - One of the Task Force recommendations was to increase the fine to \$10,000. In the policy analysis written by HortScience | Bartlett consultant, an interview with City of Pleasanton (who had a similar violation policy as Menlo Park’s old heritage tree ordinance) revealed a \$10,000 is a much-needed deterrent.
- Adopt a \$6,820 fine, which reflects an inflation adjustment to the \$5,000 fine.
  - The penalty of \$5,000 was last updated in April 2004. Based on the consumer price index for all urban consumers (CPI-U) from the U.S. Bureau of Labor Statistics, the inflation rate from April 2004 to May 2020 is 36.38 percent (see Table 1 for calculations.) As a result, \$5,000 in 2004 dollars is worth \$6,818.99 in 2020 dollars.

Item	Total
1. Use the unadjusted index CPI-U	April 2004: 188.0 May 2020: 256.394
2. Calculate the increase	68.394
3. Divide the increase by the 2004’s CPI-U	0.3637979
4. Convert to a percentage	36.38%

### **Impact on City Resources**

The civil fine or penalties will be deposited in the heritage tree fund to encourage tree planting and promote tree growth.

### **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. Resolution No. 6574
- B. Hyperlink – previous heritage tree ordinance: [menlopark.org/DocumentCenter/View/18480/Menlo-Park-Heritage-Tree-Ordinance-](https://menlopark.org/DocumentCenter/View/18480/Menlo-Park-Heritage-Tree-Ordinance-)
- C. Hyperlink – current heritage tree ordinance: [menlopark.org/DocumentCenter/View/24684/Ordinance-1060---Heritage-tree-protections](https://menlopark.org/DocumentCenter/View/24684/Ordinance-1060---Heritage-tree-protections)

Report prepared by:  
Joanna Chen, Sustainability Specialist

Reviewed by:  
Christian Bonner, City Arborist

**RESOLUTION NO. 6574****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK RE-AUTHORIZING A \$5,000 MINIMUM PENALTY FOR HERITAGE TREE VIOLATIONS UNTIL A NEW PENALTY SCHEDULE IS ADOPTED**

WHEREAS, on July 16, 2019 the City Council reviewed the Heritage Tree Task Force recommendations and directed the City Attorney to draft a new ordinance incorporating the such recommendations; and

WHEREAS, on October 29, 2019 the City Council introduced Ordinance No. 1060 with several amendments.

WHEREAS, on November 19, 2019 the City Council conducted a second reading and adopted Ordinance No. 1060 amending Chapter 13.24 [Heritage Tree] of Title 13 [streets, sidewalks and utilities]; and

WHEREAS, as of June 30, 2020, Section 13.24.070(3) provided a civil penalty not to exceed five thousand dollars (\$5,000.00) for each violation of the Heritage Tree Ordinance and an amount not to exceed five thousand dollars (\$5,000.00) per tree unlawfully removed, or the appraised value of each such tree, whichever amount is higher.

WHEREAS, on July 1, 2020, Ordinance No. 1060 went in effect; and

WHEREAS, under the provisions of Menlo Park Municipal Code Section 13.24.100(2) the civil fine and penalty are established by the City Council by resolution; and

WHEREAS, due to the current COVID-19 pandemic and local emergency order, city staff had limited resources to update the violation fees for the amended heritage tree ordinance by the effective date of July 1, 2020; and

WHEREAS, as a stopgap measure, the City Council desires to re-authorize the existing penalty schedule until an updated schedule can be adopted;

WHEREAS, the City Council finds that the current penalty is appropriate as a stopgap measure and should be adopted.

NOW, THEREFORE BE IT RESOLVED, the following penalty shall apply to violations of the Heritage Tree Ordinance effective immediately:

1. Any person who commits, allows, or maintains a violation of any provision of chapter 13.24 shall be subject to a civil penalty in an amount of five thousand dollars (\$5,000.00) per violation.
2. Where the violation has resulted in the removal or demise of a heritage tree, the civil penalty shall be five thousand dollars (\$5,000.00) per tree or the appraised value of each such tree, whichever amount is higher. The appraised value for the purposes of this section shall be determined utilizing the most recent edition of the Guide for Plant Appraisal.
3. All penalties shall be payable to the City of Menlo Park.

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 Council on the fourteenth day of July, 2020, 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 fourteenth day of July, 2020.

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Judi A. Herren, City Clerk



**STAFF REPORT**

**City Council**

**Meeting Date:**

**7/14/2020**

**Staff Report Number:**

**20-147-CC**

**Consent Calendar:**

**Authorize the Mayor to sign a letter of support for CARES funding for Caltrain**

**Recommendation**

Staff recommends the City Council authorize the Mayor to sign a letter to the Metropolitan Transportation Commission expressing the City's support for Caltrain to receive financial assistance through the federal Coronavirus Aid, Relief and Economic Security (CARES) Act.

**Policy Issues**

The support letter is consistent with the City's circulation element, goal CIRC-5 to support local and regional transit that is efficient, frequent, convenient and safe.

**Background**

The Bay Area is receiving nearly \$1.3 billion in supplemental Federal Transit Administration (FTA) Urbanized Area Formula (Section 5307) and Rural Area Formula (Section 5311) program funds to support transit agency operations impacted by COVID-19 through the CARES Act (signed March 27.) The Metropolitan Transportation Commission (MTC) is responsible for programming the region's FTA Section 5307 program funds and for working with Caltrans for programming of regional Section 5311 program funds.

The \$1.3 billion in total CARES Act funding is being distributed in 2 phases to allow for the provision of immediate relief as well as to preserve flexibility to more accurately match and reconcile revenue losses. In April 2020, MTC approved a Phase 1 distribution of approximately \$781 million in federal funds to Bay Area transit agencies, equivalent to 61 percent of the region's CARES Act funding.

On July 22, a Phase 2 distribution proposal for approximately \$507 million, the remaining 39 percent balance of the CARES funding, is being presented to the MTC board of directors for action. It is important to emphasize, the CARES Act funds will only stabilize the transit systems – more funding will be needed to address the significant financial challenges faced by transit as a result of the pandemic. The long-term financial stabilization and projection of jobs associated with the transportation sector will require additional resources beyond the CARES Act funding currently appropriated.

**Analysis**

The COVID-19 pandemic has caused a significant loss of ridership for Caltrain (approximately 95 percent.) As a result, the agency has modified transit service while continuing to provide essential transit service to the region for essential workers to get to their jobs and mobility options for residents to get to the grocery store, pharmacies and medical facilities. Ridership levels dropped from 65,000 daily riders to 3,000 daily

riders – with levels as low as 1,500 per day during the shelter-in-place orders. Train frequency has been reduced from a typical level of 92 trains per day, to a low of 42 trains per day. As of June 15, 70 trains per day are currently running with some “limited express” trains and a maximum number of cars to allow for physical distancing while onboard.

Caltrain historically maintains one of the highest commuter railroad farebox recovery ratios in the nation. As a result, the agency is heavily impacted by the dramatic reduction in ticket sales experienced as part of the pandemic. With no other dedicated source of funding, Caltrain relies on fares to cover 70 percent of the system’s operating costs. As such, the CARES funding represents a critical need to stabilize the operations of the system into calendar year 2021.

The proposed letter (Attachment A) expresses support for the MTC staff proposal to allocate the remaining CARES funds. The proposal was guided by significant input from the MTC Blue Ribbon Transit Recovery Task Force (Attachment B) in close consultation with transit operators. Staff recommends that the City Council authorize the Mayor to sign the letter of support for submittal to the MTC board of directors in advance of their consideration of the CARES funding July 22.

### **Impact on City Resources**

This action would not impact city resources.

### **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. Letter of support
- B. Hyperlink – information on the MTC Blue Ribbon Transit Recovery Task Force: [mtc.ca.gov/our-work/fund-invest/investment-strategies-commitments/blue-ribbon-transit-recovery-task-force](https://mtc.ca.gov/our-work/fund-invest/investment-strategies-commitments/blue-ribbon-transit-recovery-task-force)

Report prepared by:  
Nikki Nagaya, Public Works Director

Report reviewed by:  
Justin Murphy, Deputy City Manager



July 14, 2020

Commissioner Scott Haggerty, Chair  
Metropolitan Transportation Commission  
Bay Area Metro Center  
375 Beale St., Suite 800  
San Francisco, CA 94105-2066

Dear Chair Haggerty,

We urge you to support the Blue Ribbon Task Force's recommended tranche 2 CARES Act allocations, with the understanding that the amount allocated to Caltrain will not be sufficient to maintain service through the end of the year.

Caltrain is an essential transit service for thousands of riders that continue to rely on the system to meet their mobility needs, including residents and employees within the City of Menlo Park. As more and more sectors of the Bay Area's economy open up, a growing amount of survey data suggests that former riders will eventually return to the system. Without sufficient funding from tranche 2 of the CARES Act, there is a strong likelihood that Caltrain will need to shut down before they do so. This would create an unacceptable gap in the Bay Area's transit network, stranding riders that depend on the system, and leaving hundreds of the system's workers without a job.

To prevent this, the Metropolitan Transportation Commission should be using CARES funds as they were intended: to protect jobs and preserve service as long as possible. The best way to do this is to base CARES allocations on the actual losses that agencies experience. Caltrain is set to receive \$15 million, but that will not cover the system's fare revenue losses unless ridership returns to an average of 30% of normal levels by the end of the year, which is incredibly unlikely. The other allocation options evaluated by MTC were worse, providing Caltrain with less revenue, increasing the likelihood that Caltrain will shut down in the fall.

According to the most recent economic data, sales tax revenues are recovering faster than MTC's assumptions and ridership is recovering more slowly. If the MTC assumptions prove to be inaccurate, swift steps will be needed to provide additional support to the fare dependent agencies like Caltrain to preserve them as critical services that are essential to the region's recovery efforts.

Sincerely,

Cecilia Taylor, Mayor





## STAFF REPORT

### City Council

Meeting Date:

7/14/2020

Staff Report Number:

20-144-CC

Consent Calendar:

**Award a construction contract to EPS, Inc. dba Express Plumbing for the hydration station project**

### Recommendation

Staff recommends that the City Council proceed with the hydration station project by awarding a construction contract to EPS, Inc. dba Express Plumbing in the amount of \$236,673 (base bid plus Alternate B) and approve a contingency in the amount of \$23,667. The project is funded through the solid waste fund and CalRecycle grants.

### Policy Issues

Installing hydration stations is consistent with the City's climate action plan and community zero waste plan. This proposal was prioritized in the City Council 2019 work plan under zero waste implementation. The contract amount exceeds the city manager's authority and requires City Council approval.

### Background

Hydration stations are drinking fountains with a bottle filling assembly. These units are designed to reduce waste from single-use beverage containers. To date, the City has one indoor touchless hydration station in City Hall and two outdoor stations, one near the Kelly Park restroom, and another at Willow Oaks Park. The Hydration Station Improvement Project proposes to replace existing City water fountains with hydration stations per the Analysis section. The project was incorporated into the City's capital improvement program (CIP) in fiscal year 2019-20.

The driving factors for replacing the City's current drinking fountains are:

1. Replacing damaged or broken drinking fountains
2. Recreation facility users requests for bottle filling (hydration) stations at recreation facilities
3. Reducing contact and spread of viruses/bacteria, such as using indoor touchless bottle filling fountains
4. Encouraging the community to bring reusable bottles to discourage the use/purchase of single-use plastic bottles
5. Using accumulated CalRecycle beverage and container grant funds to offset a portion of the cost of the project

In November 2019, staff solicited bids for the hydration station improvement project, but only received one bid that exceeded the project budget. The lack of bidders was generally due to competing workloads during the holiday season and licensing restrictions which were too restrictive. On January 28, the City Council rejected the bid with the aim to re-advertise the project at a future date and receive more cost-competitive bid responses within the allotted project budget. Staff released a new bid solicitation in February 2020, and the City received four bids as described further below, in the analysis section of this report.

**Analysis**

Community demand and needed replacements of drinking fountains

Before COVID-19, recreation facility users frequently requested bottle filling stations, particularly for refilling bottles during physical activities occurring at the City’s recreation centers. In response, project locations include recreational and administrative buildings at the City Hall complex, the Belle Haven Child Development Center, and City parks. The Onetta Harris Community Center and Belle Haven Community Library was excluded due to on-going efforts to reconstruct this facility tentatively in 2021.

Staff surveyed all outdoor fountains to be replaced by the project and discovered nine units which were not functional or in need of maintenance due to damage, leaks and drainage issues. These locations are referenced in Table 1.

Table 1: List of existing malfunctioning fountains		
Location	Condition	Bid reference*
Kelly Park (basketball court)	Non-functional. Turned off	Base bid
Belle Haven Elementary Playground	Non-functional. Turned off	Base bid
Burgess Park (tennis court)	Non-functional. Turned off	Base bid
Sharon Park	Non-functional. Turned off	Alternate B
Jack Lyle Park	Damaged. Maintenance required	Alternate B
Kelly E. Clark Park	Damaged. Maintenance required	Alternate B
Nealon Park (near daycare)	Damaged. Maintenance required	Base bid
City Hall campus (near fountain)	Damaged. Maintenance required	Base bid
City Hall campus (near city council chambers)	Damaged. Maintenance required	Base bid

\*The base bid and alternate bids are described in the Analysis Section of this report

Hydration station project supports climate action plan and zero waste plan goals

The City’s climate action plan included adopting a zero waste plan to reduce greenhouse gas (GHG) emissions created by the production, transport and disposal of products. GHG emissions created from products is significantly unrepresented in measuring GHG emissions due to lack of data. Nonetheless, the consumption of products, particularly single-use plastics that are used for a few minutes requires significant energy and resources to produce, creating greenhouse gas emissions that contribute to climate change. In addition, the time it takes for these products to break down is decades and produces toxic pollutants.

The City Council adopted a zero waste plan (Attachment B) that identified short-, medium- and long-term goals to reach zero waste by 2035. One of the short-term strategies (No. 8) calls for the promotion of reusable bottles and bottle filling stations.

The angle of a drinking fountain’s waterspout can make it difficult to fill a reusable bottle and sometimes the low pressure makes it nearly impossible to fill a water bottle adequately. Installing hydration stations can create a new social norm to expect water bottle filling stations at all city facilities. This can encourage users

to be more prepared to bring their own reusable bottles or drinking containers, and avoid bringing single-use plastic water bottles. It also provides leadership to the business community by beginning to showcase the types of zero waste infrastructure that can be implemented to promote waste reduction.

#### Project funding from solid waste fund and CalRecycle grant

The project is funded through the solid waste fund and accumulated CalRecycle grants. The solid waste revenue comes from solid waste rates set by the City Council for managing the community's waste. The solid waste fund can only be used for projects and programs related to waste management, such as implementation of the zero waste plan. The solid waste fund cannot be used to fund other sustainability or climate action plan initiatives unrelated to waste management, such as building electrification or electric vehicle infrastructure. If the City Council desires to forgo the hydration station project, the funds would be returned to the solid waste fund.

The City also applies for a CalRecycle beverage and container grant every year. Typically, between \$8,000 and \$10,000 can be awarded in a given year. The city has accumulated \$18,079 in unspent funds. CalRecycle has strict rules for grant expenditures. Projects must reduce single-use beverage containers or increase recycling of beverage containers. Hydration stations are an allowable expenditure under the grant, and the City could continue to recover costs in future funding cycles, potentially adding another \$16,000 for a grand total of \$34,079 to support funding for this project.

#### Bid analysis

On June 9, staff opened bids virtually pursuant to COVID-19 public health requirements. The bid results are summarized in Table 2. The project includes replacing 37 existing water fountains with hydration stations across City parks, buildings, and downtown along Santa Cruz Avenue. The project includes a base bid with two bid alternates. Staff structured the project this way to allow for flexibility in the scope of work should the construction bid exceed the project budget.

The base bid includes hydration stations at Menlo Park's city hall complex and five parks. Four hydration stations in this bid service areas predominantly occupied by staff (City Hall locations I-1 to I-4 per Attachment A.) These units will have limited usage under restricted building occupancy during shelter in place. If City Council desires, the City could attempt to negotiate a deductive change order to remove these locations from the construction contract. Removing locations, I-1 to I-4 would result in a savings of approximately \$20,500. This amount would return to the solid waste fund as a carry over for future applicable projects.

Bid alternate A spans Santa Cruz Avenue and Fremont Park along the City's downtown corridor. Bid alternate B includes Belle Haven's Child Development Center and seven parks. While bid alternates A and B are similar in scale (seven versus eight total hydration stations respectively), bid alternate B includes three locations with fountains in need of repair, as highlighted in Table 1, and was thus considered a higher priority. Specific fountain locations are detailed below and are mapped in Attachment A. Table 2 summarizes the bid results.

- Base bid scope (22 hydration stations across 11 locations):  
City Hall, Main Library, Arrillaga Gym, Arrillaga Recreational Center, Arrillaga Gymnastics, Burgess Pool, City Hall complex, Burgess Park, Nealon Park, Belle Haven Elementary Playground, Kelly Park (Tennis Court), and Bedwell Bayfront Park
- Alternate bid A scope (seven hydration stations across two locations):  
Fremont Park, downtown Santa Cruz Avenue

- Alternate bid B scope (eight hydration stations across eight locations):  
 Belle Haven Child Development Center, Jack W. Lyle Park, Sharon Hills Park, Sharon Park, Stanford Hills Park, Seminary Oaks Park, Hamilton Park, Karl E. Clark Park.

Table 1: Bid results				
Bidder	Base Bid	Alt A bid	Alt B bid	Total bid
Engineer's estimate	\$177,426	\$63,021	\$71,763	\$312,210
EPS, Inc. dba Express Plumbing	\$167,550	\$61,911	\$69,123	\$298,584
Hoi's Construction	\$185,400	\$66,500	\$74,200	\$326,100
Escon Builders	\$224,300	\$52,500	\$57,600	\$334,400
Suarez & Munoz	\$539,900	\$102,900	\$129,900	\$772,700

In summary, the City received four bids of which, EPS, Inc. dba Express Plumbing, offered the lowest total price at \$298,584 (compared to the \$430,900 bid received in 2019.) Staff found the lowest bidder to be well experienced with similar projects. Additionally, staff determined the low bidder to be both responsive and responsible per public contracting code.

### Impact on City Resources

This project is included in the 2019-20 CIP and has \$320,000 in available funding from the Solid Waste Fund. The construction budget varies per bid alternate resulting in four options, as described in Table 3.

Table 1: Bid results				
Bidder	Option 1 base bid	Option 2 base + Alt A	Option 3 base + Alt B	Option 4 base + Alt A + Alt B
Construction subtotal	\$167,550	\$229,461	\$236,673	\$298,584
Contingency (10%)	\$16,755	\$22,946	\$23,667	\$29,858
Construction administration	\$42,000	\$48,000	\$48,000	\$54,000
<b>Total</b>	<b>\$226,305</b>	<b>\$300,407</b>	<b>\$308,340</b>	<b>\$382,442</b>
Project Budget	\$320,000	\$320,000	\$320,000	\$320,000
Funding Gap (appropriation)	-	-	-	(62,442)

In summary, Option 4 exceeds the project budget and requires an appropriation of \$62,442. While Options 1 and 2 are within budget, these scopes of work would not replace all damaged fountains noted in Table 1. By comparison, Option 3 is within the allocated project budget, while maximizing replacement locations and upgrading all existing damaged fountains.

All options include a 10 percent construction contingency in addition to construction administration fees prorated by scope of work (inspections, construction management, etc.) Indoor locations will require

building permits separated by address. Staff recommends that the City Council award a construction contract to EPS, Inc. dba Express Plumbing in the amount of \$236,573 and approve a contingency in the amount of \$23,667 for the hydration station improvement project per Option 3 (base bid plus Alternate B.)

### Alternative project options

At the June 9 meeting, the City Council expressed interest in reevaluating the hydration station project in comparison to other city priorities and budget constraints. Project management was transitioned from the sustainability division to the public works department's capital improvement, facilities and parks maintenance teams. Staff expended approximately \$20,000 to date for administrative and design tasks associated with the project. Such tasks include, but are not limited to, research, site verifications, design of construction documents and specifications, and construction bidding (December 2019 and February 2020 bids.) Continued completion of this project would not impact the sustainability division's work priorities for this year. It will require staff time from the public works (capital improvement, facilities and parks maintenance teams.)

If the City Council desires to forgo the hydration station project to pursue an alternative project or program, the City Council and staff would need to spend additional time to determine and develop a new viable project that meets the funding criteria of the solid waste fund and CalRecycle beverage and container grant.

Given current sustainability staff capacity and City Council prioritization of the climate action plan, staff does not recommend pursuing a new zero waste project to replace this project in fiscal year 2020-21. This year, sustainability staff resources are budgeted for the following waste management activities:

- Analyze and set new solid waste rates for 2021.
- Update the solid waste ordinance to implement state mandates, such as SB 1377 (Short-Lived Climate Pollutants Reduction Act.)
- Explore San Mateo County's request to adopt a new disposable food service ware ordinance that would eliminate takeout single use plastics, and instead use compostable disposable food ware.

Alternatively, the City Council can decide to cancel this project and not pursue another viable project. The project funds would be returned to the solid waste fund, and the City would return the accumulated \$18,079 in grant funds to CalRecycle. While other CIP projects could be prioritized by public works staff if this project is canceled, staff would still need to expend other efforts and find funds to replace or repair the 9 damaged and malfunctioning fountains as listed in Table 1. Thus the opportunity cost and staff time savings to the public works department are negligible when considering the need to design, bid and award a revised project description for only replacement or repair of the malfunctioning fountains. As noted above, this project no longer requires sustainability division staff resources.

### **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. Map of hydration station locations
- B. Hyperlink – community zero waste plan: [menlopark.org/DocumentCenter/View/17480/Community-Zero-Waste-Plan](https://menlopark.org/DocumentCenter/View/17480/Community-Zero-Waste-Plan)

Report prepared by:

Michael Fu, Senior Civil Engineer  
Rebecca Lucky, Sustainability Manager

Report reviewed by:

Christopher T. Lamm, Assistant Public Works Director

**ALTERNATE A BID - NOT INCLUDED WITH AWARD**

NOTATION	FACILITY	LOCATION
O-13	FREMONT PARK	PER PLAN
O-14A TO 14F	CITY DOWNTOWN	ALONG SANTA CRUZ AVE.

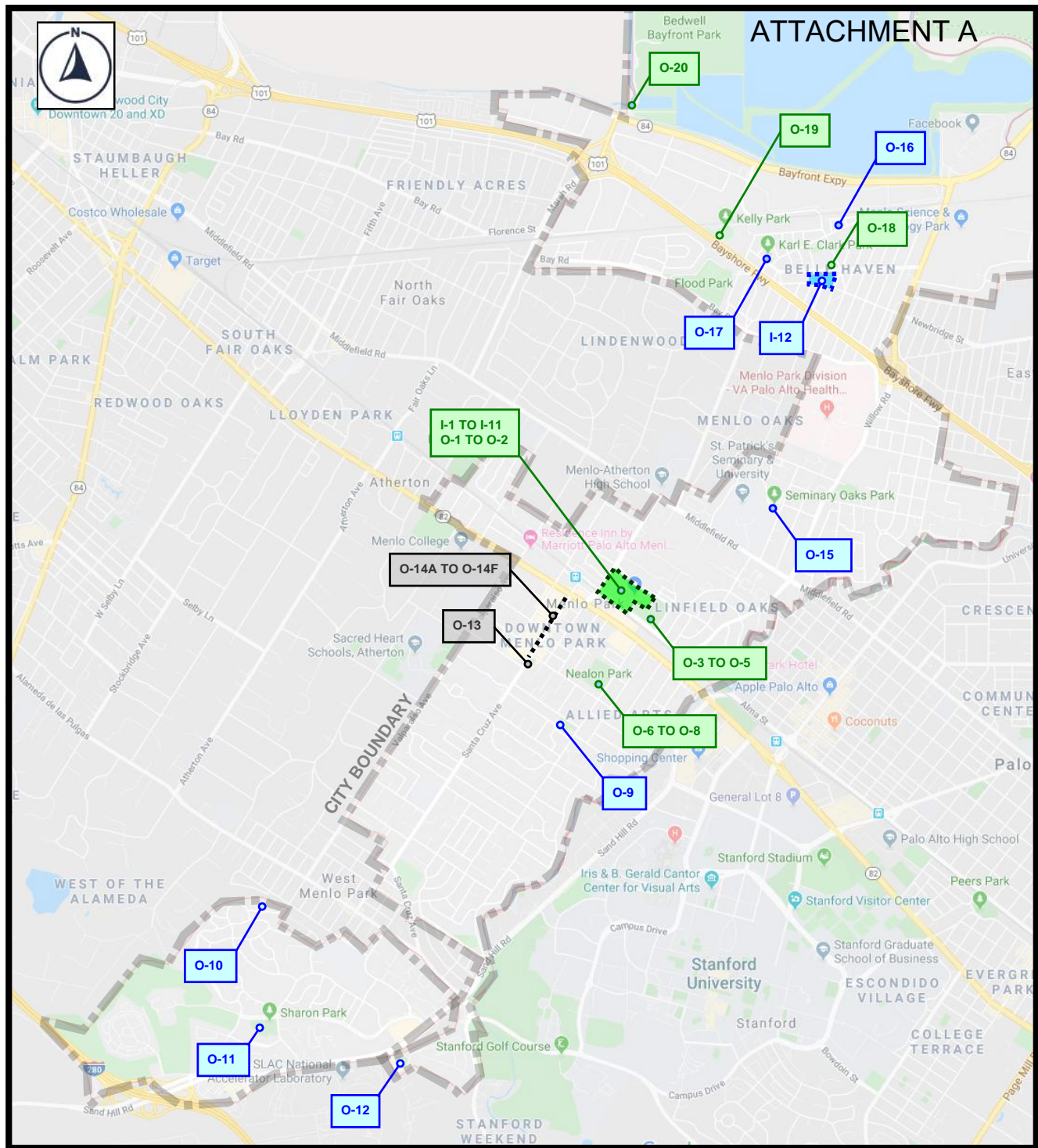
**AWARDED SCOPE OF WORK - OPTION 3**

**ALTERNATE B BID - INCLUDED WITH AWARD**

NOTATION	FACILITY	LOCATION
I-12	BELLE HAVEN CHILD DEV.	MULTI-ROOM
O-9	JACK W. LYLE PARK	PER PLAN
O-10	SHARON HILLS PARK	PER PLAN
O-11	SHARON PARK	PER PLAN
O-12	STANFORD HILLS PARK	PER PLAN
O-15	SEMINARY OAKS PARK	PER PLAN
O-16	HAMILTON PARK	PER PLAN
O-17	KARL E. CLARK PARK	PER PLAN

**BASE BID - INCLUDED WITH AWARD**

NOTATION	FACILITY	LOCATION
I-1	CITY HALL	POLICE BASEMENT
I-2		UPSTAIRS BATH
I-3		UPSTAIRS GYM
I-4		DOWNSTAIRS BATH
I-5	MAIN LIBRARY	LOBBY
I-6		DOWNSTAIRS
I-7	ARRILLAGA GYMNASIUM	LOBBY
I-8	ARRILLAGA REC. CENTER	LOBBY
I-9	ARRILLAGA GYMNASISTICS	LOBBY
I-10	BURGESS POOL	LOBBY
I-11		POOL
O-1	CITY CAMPUS	COUNCIL CHAMBERS
O-2		NEAR FOUNTAIN
O-3	BURGESS PARK	BATHROOM
O-4		BASKETBALL COURT
O-5		TENNIS COURT
O-6	NEALON PARK	BASEBALL FIELD
O-7		TENNIS COURT
O-8		DOG PARK
O-18	BELLE HAVEN ELEM. PLAYGROUND	AT RAILING & BENCH
O-19	KELLY PARK	TENNIS COURT
O-20	BEDWELL BAYFRONT PARK	BATHROOM



**ATTACHMENT A: MAP OF HYDRATION STATION LOCATIONS**  
Page E-6.7



## STAFF REPORT

**City Council**  
**Meeting Date:** 7/14/2020  
**Staff Report Number:** 20-149-CC

**Consent Calendar:** **Approve waiver of late penalties for transient occupancy tax collected between January 1, 2020 and June 30, 2020, if remitted by October 31, 2020 and receipts are reported to the City monthly**

### Recommendation

Staff recommends that City Council waive late penalties for transient occupancy tax (TOT or hotel tax) collected between January 1, 2020 and June 30, 2020, if remitted by October 31, 2020 and receipts are reported to the City on a monthly basis.

### Policy Issues

Chapter 3.16.070 of the Menlo Park Municipal Code (MPMC) specifies remittance of TOT and states:  
Each operator shall, on or before the last day of the month following the close of each calendar quarter, [...] make a return to the tax administrator [...] of the total rents charged and received and the amount of tax collected for transient occupancies.

Chapter 3.16.080 specifies penalties in the form of interest and states:

- (a) Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of 10 percent of the amount of the tax in addition to the amount of the tax.
- (b) Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the 10 percent penalty first imposed.  
[...]
- (d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (e) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

### Background

The stay-at-home order related to the novel coronavirus (COVID-19) public health emergency has resulted in drastically reduced hotel occupancy rates, creating uncertainty for operators within the City of Menlo Park. The City received several requests to defer TOT payment in order to maintain liquidity and in April, the City Council approved the waiver of late penalties for TOT collected between January 1, 2020 and March 31, 2020, if remitted by July 31, 2020. TOT collected in a given quarter is due to the City by the end of the month following that quarter or late penalties are applied unless a temporary waiver is approved.



## **Analysis**

As a general tax, the City is due the TOT collected by hotel operators for short-term stays of 30 days or less. The tax is paid by the short-term rental occupants and typically collected by the short-term rental operator. By waiving late fees for TOT remitted after the regular due date, hotel operators functionally receive an interest-free loan from the City in order to maintain liquidity.

In order to properly complete the fiscal year 2019-20 year-end close accounting procedures and to monitor general fund operations in fiscal year 2020-21, staff recommends that any waiver extension include the requirement that short-term rental operators report occupancy and average room rates to the City on a monthly basis.

As a matter of operational concern, the City has sufficient liquidity in its cash and investment portfolio to operate for at least six months without receiving these collections. The City would forego any interest earned on the receipts during the time of deferral. Due to the extremely low rates on investments currently available to the City under its investment policy, using the local area investment fund (LAIF) daily rate of 1.08 percent as of June 30, 2020, which has been falling rapidly in recent months, such an impact is extremely limited. With estimated collections of \$2.50 million, the estimated foregone earnings are under \$13,300.

In the even that a hotel operator ceases operations due to insolvency, the City does bear some risk of loss. In such a case, the City would make a claim to those TOT collections as part of the bankruptcy proceedings.

## **Impact on City Resources**

The impact on investment earnings is estimated to be \$13,300 or less for the duration of the waiver period.

## **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**

None.

Report prepared by:  
Dan Jacobson, Assistant Administrative Services Director



**STAFF REPORT**

**City Council**

**Meeting Date:**

**7/14/2020**

**Staff Report Number:**

**20-152-CC**

**Regular Business:**

**Receive and file the Environmental Quality Commission's 2030 climate action plan and adopt Resolution No. 6575 to adopt the climate action plan as amended with staff's implementation strategy**

**Recommendation**

Receive and file the Environmental Quality Commission's (EQC) 2030 climate action plan (CAP) (Attachment E) and adopt Resolution No. 6575 to adopt the 2030 CAP as amended with staff's implementation strategy (Attachment A.)

**Policy Issues**

The City's current CAP includes a 27 percent greenhouse gas (GHG) reduction goal by 2020. In 2019, the City Council declared a climate emergency (Resolution 6525) and committed to addressing climate change by adopting a new CAP that provides significant actions to reach carbon neutrality (Resolution No. 6493.) Recently, the City Council also proclaimed in a Black Lives Matter resolution (Resolution No. 6563) an action to prioritize climate action and empower the City's environmental leadership, recognizing that the City's most vulnerable residents are the most affected by this global issue.

**Background**

The City's current CAP was approved by the City Council in 2009, and was updated in 2015 and 2018 (Attachment B.) It was designed to meet a 27 percent GHG reduction target by 2020. The most current data from 2017 shows an 18.6 percent reduction in GHG emissions (Attachment C.)

According to the most recent report (2018) from the United Nations Intergovernmental Panel on Climate Change's (IPCC), human activities since the industrial revolution have already caused a one degree Celsius of global warming. Global warming is likely to reach 1.5 degrees between 2030 and 2052, and the IPCC recommends global warming not exceed 1.5 degrees to avoid drastic and irreversible planetary changes. While this number seems small and far into the future, it is an urgent matter. GHG emissions continue to accumulate with daily human activity, accelerating planetary changes. The planet's resources (land, vegetation, wetlands, ocean, etc.) and available technology are unable to keep pace with removing human-caused GHG emissions from the atmosphere.

Slightest changes in the planet's temperature result in displacement/extinction of species and people, affects agriculture, reduces the availability of freshwater water, increases floods and wildfires, and threatens coastal communities through sea level rise.

To prevent an increase in further warming, the IPCC recommends that GHG emissions would need to fall by about 45 percent from 2010 levels by 2030, reaching 'net zero' around 2050.

The City Council has responded to this urgency by declaring a climate emergency in 2019, and committing to adopt a new CAP that includes actions to reach carbon neutrality. In addition, the City Council recognizes the equity that can be advanced by addressing climate change as it protects members of the community most vulnerable to flooding and sea level rise. It also increases equity beyond the boundaries of the city by protecting other communities that are most vulnerable to climate change impacts.

In December 2019, the City Council held a study session to provide direction on the development of a new CAP (Attachment D.) The City Council expressed general support in developing a CAP 2.0 in 2020 with a focus on reaching carbon neutrality by 2030 using the recommendations from the EQC and the Carbon Neutral Cities Alliance. The City Council discussed shortening the project timeline to complete a new CAP and including wider public engagement on the plan. The City Council appointed a subcommittee to further evaluate public engagement consisting of City Councilmembers Mueller and Nash.

The EQC is an advisory body that provides recommendations and advice to the City Council regarding environmental issues/topics. The EQC has been working above and beyond their role by preparing a draft 2030 CAP for the City Council (Attachment A). A subcommittee of the EQC consisting of Commissioners Galliard, Kabat, and Payne have been working with the guidance and support from City Councilmembers Nash and Mueller and staff to develop the plan presented in Attachment E.

On June 24, the EQC recommended that City Council adopt the draft 2030 CAP in Attachment E that includes a goal to reach carbon neutrality by 2030, and to revisit the plan in one year to incorporate further actions to achieve the goal by 2030. The plan includes investment in six strategies:

1. Convert 100 percent of existing buildings to all-electric by 2030
2. Set citywide goals for increasing electric vehicles (EV) and decreasing gasoline sales
3. Expand access to EV charging communitywide
4. Reduce vehicle miles traveled (VMT) by 25 percent or an amount recommended by the Complete Streets Commission
5. Eliminate the use of fossil fuels from municipal operations
6. By July 2021, develop a climate adaptation plan to protect the community from sea level rise and flooding

As a result of the EQC recommendation June 24, staff has prepared the initial estimated cost, resources requirements, and impacts to other city projects/priorities for City Council consideration before adoption. Staff is recommending focusing on three (Nos. 1, 2 and 5) of the six strategies as shown in the amended EQC's 2030 CAP (Attachment A.) These strategies are timely given current regional and state incentives available, and are bold enough actions to address climate change at a local level.

The initial investment in these strategies would be \$355,000-\$435,000. It is anticipated that most of these strategies can be funded by the CAP implementation program in the 2019-20 capital improvement program carry-over of approximately \$300,000. An additional \$100,000 is necessary for fiscal year 2020-21, which would be considered by the City Council as part of the adoption of the capital improvement plan tentatively scheduled for July 28. This would result in a total of \$400,000 in available funding. These strategies are likely to require additional costs that are difficult to quantify at this time without further evaluation of policies and programs in more depth.

It is also important to note that each of these strategies will require City Council approval before implementing. The City Council also has a policy regarding public engagement, and if the City Council adopts the draft 2030 CAP in Attachment A, staff will prepare a public engagement plan for each strategy for City Council approval at a future meeting in August/September.

## Analysis

Based on the GHG projections analysis in Attachment C, the three focus areas for Menlo Park are:

1. Preventing 200,000 tons of transportation related GHG emissions through shifts to low carbon fuel alternatives.
2. Reducing 80,000 tons of natural gas related GHG emissions in the existing building stock.
3. Preventing 10,000 tons of waste related GHG emissions by achieving the zero waste goal by 2035 (under calculated due to lack of data).

This would result in 290,000 tons of GHG reductions by 2035 to reach carbon neutrality.

### EQC recommends a carbon neutral goal by 2030

The EQC recommends a goal of carbon neutral (zero emissions) by 2030. This is defined as a 90 percent reduction of community GHG emissions (fossil fuel use in building energy use and transportation, and methane from waste) with the remaining 10 percent to be sequestered through carbon sinks (e.g., trees, vegetation, wetlands, etc.) This goal is bolder and more progressive than the state goal of 40 percent by 2030 and 80 percent by 2050. Carbon neutrality can be achieved over time with careful attention to external factors and timing local policy and program opportunities accordingly.

The EQC advises this bolder reduction goal because the risk of severe climate change impacts is becoming more accelerated. The state's goal roughly aligns with those set out by the United Nations 2018 IPCC report. The IPCC states that these reductions are required to have a 50 percent chance of keeping global temperatures below 1.5 degrees C to avoid severe impacts.

However, the IPCC's more recent 2019 report states that certain effects of climate change are happening faster than predicted. The EQC finds it likely that the state's targets will prove to be too weak to keep global temperatures below 1.5 degrees C. The EQC advises that due to this great risk and Menlo Park's demographics and location in the technology capital, there is a unique and timely opportunity for Menlo Park to lead the Bay Area and the state in developing model and innovative policies and programs that can be replicated.

### Staff resources required

The EQC recommends completing all six 2030 CAP strategies this fiscal year. This would be an ambitious goal even under normal operations, considering many of the strategies would be the first of its kind for a local government to undertake and would likely involve deep levels of public engagement before they are formally adopted by the City Council.

Unfortunately, the City is not operating under normal conditions. It has faced a fiscal crisis that continues to be unknown due to the pandemic. This has already included addressing a \$12 million shortfall in revenues that has resulted in delivering a budget that involved eliminating vacant staff positions as well as laying off existing staff. This places added pressure and workloads on existing staff. The pandemic has also shifted some staff positions toward working on emergency services. It has also redirected staff capacity to advance virtual/online government services, further stretching resources and capacity in departments, such as public works and community development. These departments are critical to supporting the proposed 2030 CAP strategies. With City Council prioritization, the city manager's office will assign any available Sustainability Division staffing to manage the projects and coordinate with the EQC. There are inadequate resources and significantly more urgent day-to-day demands in the departments that will be tasked with providing subject matter expertise in the scoping, design and implementation of the plan. Day-to-day priorities that restrict staff capacity include, but are not limited to:

- Building a new community center and library in the Belle Haven neighborhood
- Completing and City Council adoption of the transportation master plan
- Implementing projects in the capital improvement plan
- Implementing the technology master plan and adapting other core services in light of the pandemic
- Transitioning to an online permitting system
- Updating the housing element of the general plan
- Preparing for the adoption of solid waste rates
- Rebuilding the organization following recent budget reductions
- Investing in identification of institutionalized bias in city regulations, operations and organizational culture

These projects are in addition to baseline services these departments already provide to the community and customers that, in many cases, are severely impaired by accommodations required by the pandemic.

Based on the current operational conditions and competing priorities, staff recommends moving forward this year to scope and resource the following three strategies identified in the EQC's 2030 CAP strategies, which are:

1. Convert 100 percent of existing building to all-electric by 2030
2. Expand access to EV charging
3. Eliminate the use of fossil fuels from municipal operations

If the City Council accepts recommended prioritization, the total initial investment would be between \$355,000 to \$435,000 plus an unquantified impact on approved and impending City Council priorities. Carryover funds are currently available in the capital improvement plan under CAP implementation in the amount of approximately \$300,000. An additional \$100,000 is necessary for fiscal year 2020-21, which would be considered by the City Council as part of the adoption of the Capital Improvement Plan tentatively scheduled for July 28. This would result in a total of \$400,000 in available funding.

Initial investment is defined as allowing staff to proceed with the first phase of work that involves evaluating various policy and program options and public engagement. It does not include implementation or ongoing administrative or enforcement support. The first phase would fully analyze benefits and impacts to the community, city operations, and identify risks and possible outcomes to determine if a particular policy or program would meet the overall goal of the strategy with minimal impact to stakeholders/community. This information would be presented to City Council for final decision before implementation.

The rationale for the staff amendments is provided in the table below and have been revised in Attachment A (changes are identified in blue text.)

**Table 1: Rationale and costs for EQC 2030 CAP amendments**

CAP strategy and required resources	Risks, trade-offs and other considerations
<p>Strategy: Convert 100% of existing buildings to all-electric by 2030</p> <p>Initial resources required:                      Sustainability manager (currently budgeted)                      Contract building official \$120,000                      Contract city attorney: \$75,000                      Energy consultant: \$0- \$80,000                      Public engagement costs: TBD in August by City Council</p> <p>Total initial investment:                      \$195,000 to 275,000</p>	<p>Still requires existing building official capacity, which can result in decreased customer service, delayed implementation of technology permits, and longer permit or inspection response times.</p> <p>Investor owned utilities (IOUs) are currently analyzing some possible code options for cities desiring to electrify existing buildings for the next building code cycle. This could help lower costs to the City for a cost benefit analysis. However, in order to meet this strategy’s goal, an analysis of other policy options will likely be needed beyond what the IOUs are offering.</p> <p>The state could implement measures that would significantly reduce this work, such as introducing legislation that no longer allows the purchase of fossil fuel appliances in the state. The City is a member of the Building Decarbonization Coalition and other policy forums on this topic. The Sustainability Manager participates in the policy work group to keep track of federal and state legislation as well as legal advice to adapt this strategy as needed in order to avoid any duplicative efforts occurring regionally, statewide or at the federal level.</p>
<p>Strategy: Set citywide goals for increasing EVs and decreasing gasoline sales</p> <p>Recommendation: Partner with a regional agency to lead, such as Peninsula Clean Energy or San Mateo County. Staff to explore partnership with Peninsula Clean Energy or San Mateo County. Recommend tracking progress on an annual basis instead of monthly, which is consistent with annual CAP reporting measures.</p> <p>Possible annual costs: \$0-\$20,000 per year</p>	<p>Requires sustainability manager and public engagement manager capacity to form initial partnership, set up annual funding (if applicable) and implement local marketing provided by regional agency.</p>
<p>Strategy: Expand access to EV charging</p> <p>Resources Required:                      Sustainability manager (Lead)                      Contract analyst: \$140,000                      Contract legal support: TBD                      Other departments: TBD                      Community engagement: TBD</p> <p>Total initial investment: TBD later this year by City Council, starting at \$140,000 for initial analysis</p>	<p>Work is currently underway as this was a strategy under the 2018 CAP update. Staff is working on preparing an EV infrastructure gap and policy option analysis for existing multifamily developments for City Council consideration this year. The outcome of the City Council direction will further assist in developing costs and determining the impacts to key departments (if applicable.) Likely to involve community development, public works and city attorney.</p>

Strategy: Reduce VMT by 25% or an amount recommended by the Complete Streets Commission

Recommendation: Revisit in 2021-2022 due to related projects underway. See notes in next column.

Staff recommends revisiting in 2021-2022 to evaluate the outcomes of four complementary projects currently underway with existing staff capacity in the Community development and public works departments. The city received a SB2 grant, which will be used to evaluate potential zoning changes, such as increased densities that could incentivize housing development in the Downtown and along the El Camino Real corridor. In addition, the adoption of the City's transportation master plan is needed to guide project prioritization that would assist in reducing VMT. The City Council also recently adopted June 23 new VMT thresholds for environmental review of new development, which helps support this strategy. The City Council will also be providing direction on a Transportation Management Association (TMA) at its July 14 City Council meeting. These projects will support VMT reductions.

To begin work on this strategy this year, the City Council would need to stop existing projects currently underway and consider additional staffing resources in community development and public works.

Strategy: Eliminate the use of fossil fuels from municipal operations

Recommendation: If there are fossil fuel appliances or assets at the end of its life, staff would evaluate a non-fossil fuel option as a replacement. The city will also evaluate discontinuing the use of fossil fuels (natural gas) for the new Belle Haven community center and library. This can be undertaken with current staff. Additional appropriations may be needed for non-fossil fuel assets or appliances that have a cost premium.

The City Council has already taken steps toward this measure by recently adopted a green fleet policy in April.

Strategy: By July 2021, develop a climate adaptation plan to protect the community from sea level rise and flooding

Recommendation: Revisit in 2022 to evaluate regional planning efforts currently underway. See note in next column.

Resilient San Mateo, a flood and sea level rise resiliency district has been formed to support planning and mitigation measures for coastal erosion, sea level rise, and flooding threats up to 2100. Menlo Park is a member of this agency. This work covers Menlo Park's neighborhoods adjacent to the bay and creeks.

The district is comprised of 20 incorporated cities, the City/County Association of Governments, and the County of San Mateo, the purpose of this entity is to cost-effectively implement resilient infrastructure to face these challenges posed by climate change.

There could be duplicative efforts for Menlo Park to develop a standalone adaption plan, resulting in less efficient use of city resources. Funds are currently budgeted only for membership in Resilient San Mateo, not to develop a standalone plan.

See Attachment F for more information on Resilient San Mateo.

### Alternative funding sources

Historically, \$100,000 has been appropriated annually from the general capital fund to the CAP implementation program, any unspent funds are rolled over the next fiscal year. As stated above, the total existing CAP implementation budget is approximately \$300,000, with an additional \$100,000 in fiscal year 2020-21 as part of the CIP adoption tentatively scheduled for July 28.

An option for alternative funding that is recommended by the EQC includes lifting the temporary reduction on the natural gas utility users tax, currently 1 percent through September 30, 2021. For every \$100 in monthly natural gas use, a gas customer currently pays a monthly gas utility user tax of \$1, or \$12 annually. The temporarily reduced tax rate for natural gas of 1% currently provides revenue of \$130,000 per year. If the temporary reduction is lifted, the natural gas utility users tax could return up to the voter approved 3.5 percent. At the maximum rate, for every \$100 in monthly natural gas use, a gas customer pays a monthly gas utility user tax of \$3.50, or \$42 annually. At the maximum rate of 3.5 percent, the City would generate an additional \$325,000 per year in revenue. Natural gas was targeted as an appropriate tax to increase since consumption is directly related to emitting GHG emissions.

The EQC has also been exploring funding from regional agencies that would be interested in or benefit from Menlo Park's CAP policy and program work, particularly Peninsula Clean Energy and San Mateo County.

### Maximizing and strategizing with regional agencies

There are many tasks or puzzle pieces to achieving the desired outcomes of each strategy. Agencies can take ownership of important puzzle pieces that focus on removing barriers to success while at the same time being complimentary to what other agencies are working on to reduce duplicative efforts or overwhelming resources due reduced capacity and budget resources.

For example, in conversations with San Mateo County staff, budget ramifications from the pandemic has frozen five positions in the Office of Sustainability. However, the San Mateo County is focusing on upskilling contractors to perform building electrification work in order to reduce costs. This will be significantly beneficial for Menlo Park should a policy or ordinance be adopted for existing buildings to electrify.

Another agency working on educating contractors and providing financial incentives for electrification is the Bay Area Regional Energy Network (BayREN). The organization is led by the Association of Bay Area Governments (ABAG.)

Peninsula Clean Energy is working on rebates for converting natural gas appliances to electric. In addition, Peninsula Clean Energy and the state is also working on strong financial incentives for EV charging infrastructure for existing commercial and multifamily developments. These financial incentives will also be significantly beneficial for Menlo Park should a policy or ordinance be adopted for existing developments to electrify and install EV charging infrastructure.

Menlo Park's role could be to provide policy that would motivate property owners to take advantage of incentives and create demand for contractors to build their knowledge on electrification of buildings and transportation. Essentially, it could evolve into implementing a carrot and stick approach together (using policy to drive the community toward the available incentives) to achieve the desired outcome.

Rather than one agency trying to tackle all the barriers, such as financial incentives, contractor and property owner education, and developing policy, each agency can own a piece of the puzzle to achieve the desired outcome.



This could also position Menlo Park to receive financial contributions from other cities or agencies that would be interested in or benefit from Menlo Park's work.

#### Other key recommendations of the draft 2030 CAP

The EQC also recommends agreeing to place a cost on GHG emissions to assist in evaluating benefits and costs for strategy policy and program options. The cost of GHG emissions can be calculated in a variety of ways and there is no scientific consensus on which method is most appropriate or useful. Generally, it is used to capture the cost to society due to the damages caused by climate change.

Governments have long struggled with placing a cost on GHG emissions due to the complexity of its impacts on ecosystems, the planet and society. Most attempts at placing a cost on GHG emissions have been through a cap and trade system that creates an incentive/disincentive for reducing/creating GHG emissions. Those that reduce emissions can sell their reductions to companies that are catching up with GHG reductions in an effort to smooth the transition to a GHG free economy. However, this method has been heavily criticized for failing to swiftly make needed changes.

California's cap and trade cost for carbon is expected to be \$60/ton by 2025, which is seen as too low for the damage caused by climate change. The federal government started cap and trade carbon cost at \$15/ton in 2019 with the intent to increase by \$10 every year for the next 10 years. Studies of the global social cost of carbon have found ranges from \$40 to \$200 per ton of GHGs emitted and typically fall at around \$100 per ton.

The EQC is recommending \$130/ton based on the cost of property (real estate value) lost due to sea level rise in Menlo Park.

Another key recommendation from the EQC involves a policy on how the Capital Improvement Plan funds for CAP implementation are used. The EQC recommends using these funds on high impact activities to reduce community-wide GHG reductions, such as policy development, programs, incentives, education and marketing. They recommend that the funds not be used for municipal (city operation) greening projects, and instead explore other sources of funding such as financing.

#### Public engagement strategy after the plan is adopted

The City Council has a public engagement policy. The proposed EQC draft 2030 CAP has primarily been developed by the EQC CAP subcommittee with support and guidance from the City Council CAP subcommittee and the Sustainability Manager. The EQC discussed the CAP at three public meeting in 2019 and two public meetings in 2020 (five total.)

For the June EQC meeting where a final recommendation was made for City Council, staff reached out through email to advertise the meeting and draft 2030 CAP to targeted stakeholders and interest groups such as related commissions, specific key members of the development community, Chamber of Commerce and related environmental nonprofits. Some of the outreach resulted in participation in the meeting, which were mainly members from other commissions and environmental nonprofits.

At the City Council study session in December 2019, the City Council appointed City Councilmembers Mueller and Nash to discuss public engagement of the draft 2030 CAP. The City Council and EQC CAP subcommittees met on numerous occasions, privately, to discuss the strategies and public engagement. Ultimately, the consensus on public engagement for the draft 2030 CAP was to forgo extensive public engagement due to the urgency of climate change. Instead, both subcommittees agreed that public engagement and public consensus for the strategies could be built by starting work on the strategies this year.

As a result, staff plans on bringing a separate item to the City Council in August/September to determine the public engagement plan for the staff recommended CAP strategies to move forward on this year.

Some strategies may require a task force, surveys or consultation with stakeholders. For example, in exploring policy options to convert existing buildings to 100 percent electric, the City Council may want to bring together affected stakeholders and advocates to the table to learn and build upon each other's experience and knowledge to help inform development of a policy for City Council consideration. This would involve deep public engagement with environmental advocates, energy experts, general contractors, commercial/residential property owners and the real estate industry. This could result in crafting a policy with minimal impacts to the affected stakeholders while achieving the desired outcome to electrify existing buildings by 2030.

### **Impact on City Resources**

On January 14, staff transmitted a memo to the City Council regarding staff capacity by functional area to prepare for annual goal setting. At that time, staff advised the City Council that there was insufficient capacity to make progress on existing City Council priorities and anticipated City Council priorities. At their January 28 meeting, the City Council expanded priorities to include the Belle Haven community center and library project without a commensurate reduction in other priorities. On March 11, the COVID-19 local emergency was ratified by the City Council and has fundamentally altered how city services are provided. On June 23, the City Council adopted a budget resulting in substantial service level reductions the effects of which have not fully materialized. Staff continues to advise the City Council that there is insufficient capacity to add new priorities without a degradation of public services, delays in previously approved project timelines, or employee burnout. If the City Council designates the CAP implementation a top priority, staff has the flexibility to manage available resources in a manner that increases the possibility of project success.

The proposed initial investment is estimated to cost between \$355,000 and \$435,000 with an unquantified impact on competing priorities. The direct costs can be funded using the Capital Improvement CAP implementation funds if the City Council approves of an additional \$100,000 appropriation from the general capital fund to the project in fiscal year 2020-21 for a total of \$400,000 in available funds. An additional \$35,000 may need to be appropriated to cover the higher end estimate.

The EV infrastructure work may also need additional resources and funding not currently identified, and will depend on the direction City Council provides later this year as a result of the EV infrastructure policy option and gap analysis. It would likely require additional contract staff and impact current staff that need to supervise the contract staff.

### **Environmental Review**

Adoption of the draft 2030 CAP is intended to serve as a policy framework for future actions and as such is exempt from the California Environmental Quality Act (CEQA) under Section 15262 of the CEQA Guidelines. Further, as the inventory of policy initiatives are all intended to reduce GHG without resulting physical impacts to the environment, adoption of this plan is also exempt under Sections 15378 and 15061(b)(3) of the CEQA Guidelines. To the extent the 2030 CAP proposes specific projects that will have physical results on the environment, additional environmental analysis will be conducted at that time.

## 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 to adopt a 2030 CAP
- B. Hyperlink – CAP update 2018: [menlopark.org/ArchiveCenter/ViewFile/Item/8360](https://menlopark.org/ArchiveCenter/ViewFile/Item/8360)
- C. Community GHG analysis memorandum
- D. Hyperlink – December 10, 2019 study session report: [menlopark.org/DocumentCenter/View/23614/SS1-20191210-CC-Climate-Action-Plan-Update-Direction](https://menlopark.org/DocumentCenter/View/23614/SS1-20191210-CC-Climate-Action-Plan-Update-Direction)
- E. EQC draft 2030 CAP
- F. Hyperlink – Flood and Sea Level Rise Resiliency District information: [resilientsanmateo.org](https://resilientsanmateo.org)

Report prepared by:

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Reviewed by:

Deanna Chow, Assistant Community Development Director

Nicole Nagaya, Public Works Director

Cara Silver, Interim City Attorney

Nick Pegueros, Assistant City Manager

**RESOLUTION NO. 6575****RESOLUTION OF THE MENLO PARK CITY COUNCIL APPROVING AND ADOPTING THE CITY OF MENLO PARK CLIMATE ACTION PLAN**

WHEREAS, in April 2019, the City of Menlo Park continuing its proud history of leadership in sustainability adopted Resolution No. 6493, which, among other actions, resolved to:

1. Adopt a new climate action plan goal to reduce greenhouse gas (GHG) emissions.
2. Take significant action to move toward municipal and community net carbon neutrality in the short term, with maximum efforts to implement carbon reduction actions by 2030.
3. Regularly assess its GHG reduction goals, actions, and policies and provide progress reports and metrics annually.
4. Explore city administrative review and assessment processes to incorporate consideration of GHG reduction impacts/effects for all significant proposed policies, programs or actions approved by City Council.
5. Recognize community environmental justice and commit to keeping the considerations of disadvantaged communities central to the climate planning processes, and to invite and encourage these communities to directly advocate for their specific needs and equity in the environmental justice process.

WHEREAS, in December 2019, the threat of climate change and the urgent need to combat it, the City of Menlo Park adopted Resolution No. 6525, which resolved to:

1. Declare a climate emergency that threatens the economic and social well-being, health and safety, and security of the City of Menlo Park.
2. Commit to educating the City's residents about the climate emergency and working to catalyze accelerated climate action at the local, state, national, and global levels to provide maximum protection for Menlo Park residents as well as all the people and species of the world.
3. Include health, socio-economic, and racial equity in policymaking and climate solutions at all levels and across all sectors as the consequences of climate change have significant impacts on all Menlo Park residents, but especially the young, the elderly, low income or communities of color, and other vulnerable populations and age groups.
4. Join the nation-wide call for regional accelerated climate collaborative action focused on transforming the region, enacting policies that dramatically reduce heat-trapping emissions, and rapidly catalyzing climate action at all levels of government to restore a safe climate.
5. Commit to the completion of the City's climate action plan 2.0 that will include measurable climate-related goals and actions to attain carbon neutrality in advance of the State of California's 2045 goal, and

WHEREAS, the Environmental Quality Commission prepared a 2030 Climate Action Plan, and

WHEREAS, the 2030 climate action plan (exhibit A) includes the goal of zero carbon emissions, or 90 percent reduction in carbon dioxide equivalent (CO<sub>2</sub>e), from 2005 levels by 2030, and

WHEREAS, the City Council recognizes the public health and economic crisis caused by the COVID-19 pandemic and refined proposed strategies resulting in a plan which will provide a 40 percent reduction in CO<sub>2</sub>e from 2005 levels by 2030 with the intent of evaluating the plan regularly and expanding it to include more strategies as public health and economy conditions improve, and

NOW, THEREFORE, BE IT RESOLVED, by the Menlo Park City Council to:

1. Adopt the 2030 climate action plan (Exhibit A).
2. Adopt the goal of zero carbon emissions by 2030 defined as a 90 percent reduction of community GHG emissions (fossil fuel use in building energy use and transportation, and methane from waste) with the remaining 10 percent to be sequestered through carbon sinks.
3. Review the climate action plan annually with intent of including more Bold Plan and Moderate Plan strategies, public health and economic conditions allowing.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the fourteenth day of July, 2020, 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 fourteenth day of July, 2020.

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Judi A. Herren, City Clerk

# DRAFT CLIMATE ACTION PLAN

Prepared by the Environmental Quality Commission's Climate  
Action Plan Subcommittee



A 2030 PLAN TO ELIMINATE CARBON EMISSIONS & PROTECT  
OUR COMMUNITY FROM CLIMATE CHANGE

JUNE 2020

## Contacts

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## INTRODUCTION

Menlo Park is uniquely threatened by climate change and uniquely positioned to tackle it.

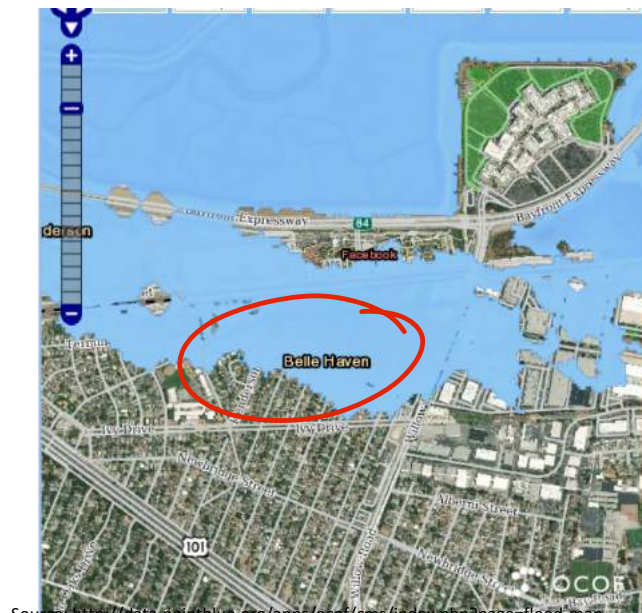
Menlo Park's location on the shore of San Francisco Bay places approximately \$1.3 billion<sup>1</sup> of property in our Belle Haven neighborhood at risk of flooding from climate change by as early as 2070.<sup>2</sup> While it is impossible for Menlo Park alone to halt the global sea level rise that threatens our city, bold climate leadership on our part is perhaps our only hope of keeping sea level below the height of an "affordable" sea wall. The San Francisco Bay Joint Powers Authority estimated in a 2016 feasibility study that a combination of levees and sea walls built along the shoreline of Menlo Park and East Palo Alto to address just three feet of sea level rise would cost approximately \$100 million.<sup>3</sup>

If we do not provide visible and inspiring leadership on climate and global greenhouse gas emissions continue rising at their current rate, no sea wall or levee will save the portion of our city between Route 101 and the Bay. That land, which includes a disproportionate percentage of our city's low income residents and residents of color, will be inundated and residents and businesses will have to permanently relocate. On the other hand, if we take a leadership position and our bold climate action inspires rapid and far reaching climate action by other cities, we may be able to save our Belle Haven neighborhood with a combination of sea walls and levees.

The good news is that if there is any city well positioned to lead on climate action, it is Menlo Park. Located in Silicon Valley, our residents and leaders embrace innovation. Our county (San Mateo) is one of the wealthiest in the country,<sup>4</sup>

<sup>1</sup> According to [County of San Mateo Sea Level Rise Vulnerability Assessment](#) p. 139, sea level rise of 3.3 feet will inundate Menlo Park real estate valued at \$1.288 billion and a rise of 6.6 feet will inundate \$1.621 billion in real estate.

<sup>2</sup> Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group), [Rising Seas in California: An Update on Sea-Level Rise Science, California Ocean Science Trust, April 2017](#). Ranges shown are from the median (50th percentile) to the extreme (99.9th percentile) range of the projections.



Source: <http://data.pointblue.org/apps/ocof/cms/index.php?page=flood-map>

### YEAR: 2070-2100

the Bay is projected to rise 3.3 feet

which means we have the financial resources to tackle the issue of climate change head on. Analysis conducted by members of the Environmental Quality Commission's Climate Action Plan subcommittee shows that every dollar spent now by the City on bold climate action can be expected to save City residents \$100 in future adaptation costs<sup>5</sup> addressing sea level rise alone, not to mention the healthcare costs associated with treating ailments caused by air pollution (see "Natural Gas Phase Out" section below).

Finally, our City Council and staff have already demonstrated a capacity for leadership by passing an innovative all-electric Reach Code that virtually eliminates natural gas from new buildings. At last count, 15 other California cities had adopted a "Menlo Park style" all electric Reach Code for new buildings, proving that courageous action on climate does in fact inspire others to follow.

<sup>3</sup> [Public Draft Feasibility Report, SAFER Bay Project, Strategy to Advance Flood protection, Ecosystems and Recreation along San Francisco Bay, East Palo Alto and Menlo Park](#), October 2016, p. 37.

<sup>4</sup> [https://en.m.wikipedia.org/wiki/List\\_of\\_highest-income\\_counties\\_in\\_the\\_United\\_States](https://en.m.wikipedia.org/wiki/List_of_highest-income_counties_in_the_United_States)

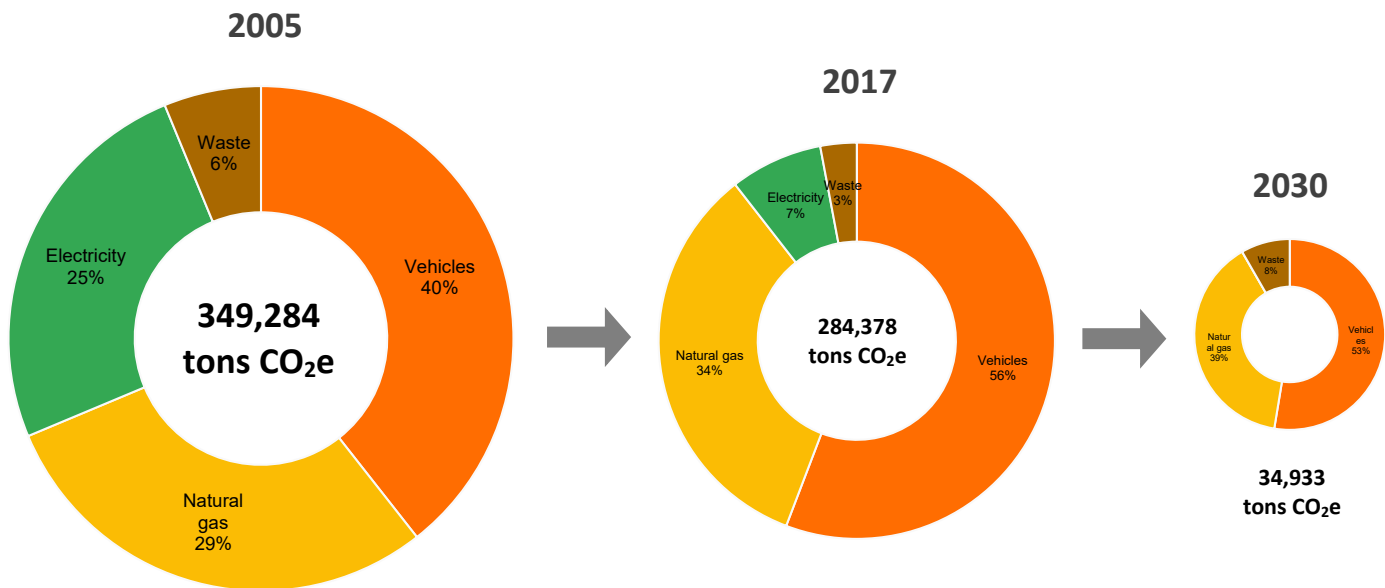
<sup>5</sup> Supporting analysis available in PDF format in Appendix C and in Excel format upon request



# OUR GOALS

In order to address the significant threat to Menlo Park posed by climate change, City Council is considering adopting bold climate goals. At a December 10, 2019 study session, individual City Council members expressed support for a proposed goal of “Zero carbon emissions by 2030,” to be achieved through a 90% reduction in carbon dioxide equivalent emissions (CO<sub>2</sub>e) from 2005 levels, and elimination of the remaining 10% of CO<sub>2</sub>e through direct carbon removal measures. An inventory of greenhouse gas emissions conducted by City staff in December 2019 revealed that emissions in Menlo Park fell from 349,284 tons in 2005 to 284,378 tons of CO<sub>2</sub>e in 2017, a

reduction of 19%. If City Council adopts the recommended “Zero emissions by 2030” goal, the plan will be to reduce community-wide emissions by another 71% for a total reduction of 90% from our 2005 emissions, leaving just 34,933 tons of CO<sub>2</sub>e per year, by 2030. **The Environmental Quality Commission recommends that the City Council formally adopt a goal of achieving “Zero carbon emissions by 2030” broken down into a 90% reduction in community-wide greenhouse gas emissions and removal of the remaining 10% through direct carbon sequestration.**



Menlo Park Community Greenhouse Gas Emissions (metric tons of CO <sub>2</sub> e)			
	2005	2017	2030
Vehicles	137,628	158,686	18,373
Natural gas	102,295	95,742	13,656
Electricity	87,617	21,528	-
Waste	21,745	8,424	2,903
<b>Total Emissions</b>	349,285	284,380	<b>34,933</b>

## OPTIONS FOR ACTION

In order to achieve a goal of “Zero emissions by 2030,” Menlo Park must begin taking bold action immediately. Fortunately the City has already decarbonized its electricity supply by joining with other cities in the County to create a joint powers authority (Peninsula Clean Energy) that sources power mainly from renewables and hydropower. This creates a clean energy stepping stone from which to decarbonize the rest of the City’s economy.

Our next step is to decarbonize all of our buildings and transportation. In an ideal world with more time, the City’s climate goals could be achieved simply by unleashing the power of free enterprise and relying on markets and educated consumers to transform our fossil-fuel dependent economy to one that stops emitting greenhouse gases in time to avert catastrophic climate change. Members of the Climate Action Plan (CAP) subcommittee of the Environmental Quality Commission (EQC), who prepared this plan, certainly would prefer this type of approach, as it limits the role of government and would reduce the likely opposition from some interest groups. However, no matter how carefully the subcommittee considered various incentive- and education-based laissez-faire approaches, none of them appears able to solve the climate problem in time to avert catastrophic change to our daily lives. In fact, the less action the City takes now, the more costly the government intervention will be later to deal with the resulting climate disasters.

The key reasons that market approaches alone cannot solve climate change are three-fold:

- 1) markets are currently distorted by the absence of accurate pricing for key externalities, such as the right to dump harmful greenhouse gas emissions into the atmosphere, which today is virtually free to any person or business who wishes to do it, leaving the rest of us bear the ever increasing cost,
- 2) powerful political interest groups such as the fossil fuel industry have successfully spread enough disinformation about climate change that Americans significantly

underestimate the problem and therefore underestimate the actions that must be taken to address it, and

- 3) polluting devices last far too long once installed and we simply do not have enough time for the typical market signals to trickle down to those who determine product offerings and today offer environmentally obsolete products to customers..

Just as the US government stepped in forcefully after the bombing of Pearl Harbor to require that much of America’s free market economy be transformed to support the war effort, so too must the government now step in forcefully and confidently to lead the American public away from the brink of climate disaster.

Thankfully, the actions required of every American citizen to forcefully combat climate change are much less onerous than the food rations or military conscription imposed on World War II-era Americans. We are fortunate that a robust private sector has already provided every technological solution and innovation necessary to almost completely retire fossil fuels as an energy source in America today.

### PERSONAL ACTION

Below is a list of the personal actions that, if every citizen took them, would halt global warming in its tracks:

- Retire all gas vehicles immediately and replace them with electric vehicles, bikes, transit or another form of non-fossil transport
- Replace every gas appliance in a home (including furnace, water heater and stove) with an efficient electric version
- Power every home and car with 100% renewable electricity, either by installing solar panels or purchasing renewable energy from one’s utility
- Consider the greenhouse gas emissions associated with every purchase decision and choose “low-carbon” products and services whenever possible

- Reduce weekly consumption of meat and animal products, a move which has significant ancillary health benefits.

### **GOVERNMENT ACTION**

At the local government level, climate action must focus on eliminating the use of two categories of fossil fuels: 1) gasoline and diesel fuel in vehicles, and 2) natural gas in home appliances. Given the 25-year expected life of a typical gas furnace, it is critical for the City to begin prohibiting the installation of new replacement gas furnaces and water heaters as soon as possible.

In considering the wide-reaching actions and change required to meet the City's proposed climate goals, researchers reviewed dozens of approaches employed by cities all over the world, including:

- A "5-minute city" approach to zoning implemented in Copenhagen, Denmark that drastically reduced vehicle miles traveled (VMT) and made the city more walkable
- A carbon fee on buildings recently implemented in New York City
- An announced plan to end the flow of natural gas in the City of Arcata, California and now being considered by Palo Alto.

After months of weighing each of the dozens of approaches, the CAP subcommittee identified three basic options for action: 1) a Bold Plan with 22 actions to be implemented over one year, 2) a Moderate Plan with 76 actions to be implemented over three years and 3) a Go Slow Plan with no specific actions other than to follow evolving state rules.

### **PLAN CHANGES DUE TO COVID-19 PANDEMIC**

Shortly after the CAP subcommittee fleshed out the three different approaches to climate action described above, the world was gripped by the global pandemic of COVID-19. The pandemic has

significantly affected the context in which this plan is presented, namely:

- The time and attention of City Council and staff has understandably shifted almost entirely to managing the health risks and economic consequences of the pandemic
- Almost overnight, the country has gone from enjoying robust economic growth to experiencing one of the starkest economic recessions in US history
- Due to the economic recession, the City's budget has shrunk dramatically, with a 2020-21 shortfall of \$12.7 million expected as of mid May 2020
- Layoffs of dozens of City staff are expected as a result of the City's budget shortfall
- City commissions, including the Environmental Quality Commission (EQC), have been unable to meet for 4 months, which means the CAP subcommittee has been delayed in vetting the CAP with the EQC

Despite disrupted City operations, the CAP subcommittee continued refining the Climate Action Plan and vetting it with the City Council's CAP subcommittee (distinct from the EQC's CAP subcommittee) to receive their input on what might be politically viable in Menlo Park. The result of that continued work is a significantly pared down plan, presented below. While the CAP subcommittee still believes that the original Bold or Moderate Plans (presented in Appendix B), with their 22 and 76 actions respectively, are in fact what the Climate Crisis requires, we have decided to propose a significantly pared down plan, with the thought that some action is better than no action. This plan includes only the highest impact actions. This does not mean it is the best plan. It means it is only a good subset of the best plan and future efforts should be made to expand it as our ability and the wisdom of doing so becomes ever more apparent.

# THE PLAN

Action	#	Description	2030 GHG Reduction (tons/yr)	Staff Resources	Estimated Cost to City
Convert 100% of existing buildings to all-electric by 2030	1	Two basic options: 1) Announce the “end of flow” of natural gas in the City by 2030 <b>OR</b> 2) Enact a “burn-out ordinance” requiring that when gas appliances expire, they must be replaced by electric (preferably high efficiency heat pump) alternatives; phase in for large commercial, small commercial, residential; may require follow-on compliance ordinance as current permit compliance for residential gas appliances is low; will require follow-up “cash-for-clunkers” program to achieve 2030 goal; relies on PCE subsidies to reduce or eliminate cost differential; may require use of UUT funds to cover additional cost differential for low-income residents. Extend burnout ordinance to expiring air conditioners, to be replaced with heat pumps, eliminating need for separate gas heating.	1) 86,465 <b>OR</b> 2) 51,636  *emission reduction unverified	Sustainability Manager  Contract Building Official  Contract Legal Support  Energy Analysis Consultant	\$195,000 to \$275,000  *Initial investment to provide policy options that would lead to adoption of a policy, ordinance, and/or program
Set citywide goals for increasing EVs and decreasing gasoline sales	2	Announce and promote citywide goals of 1) making all new vehicles be electric by 2025 and 2) reducing gasoline sales each year by 10%, based on the total reported in 2018. Track progress on both goals publicly on an <b>annual monthly</b> basis.	<7,120 *emission reduction unverified	Influence regional agency to lead	\$0-\$20,000
Expand access to EV charging	3	Install or assist building owners in installing EV chargers throughout the City, siting them preferably where they will be used during daylight hours (when solar electricity is abundant on our grid) and also where residents of multi-family housing can access them	7,370 and <13,000 for multifamily *emission reduction unverified	Sustainability Manager  Contract Analyst	\$140,000  *Initial investment cost
Reduce vehicle miles traveled (VMT) by 25% or an amount recommended by the Complete Streets Commission	4	Reduce VMT, especially by gasoline vehicles, through a two-pronged approach: 1) Change zoning to encourage higher density (esp. for housing) near transit 2) Make the City easier to navigate without a car by accelerating implementation of the Transportation Master Plan with an emphasis on developing a clear network of protected pedestrian/bike paths throughout town	31,743  *emission reduction unverified	Explore in 2021 or 2022 after current projects for housing and transportation are completed	TBD
Eliminate the use of fossil fuels from municipal operations	5	Replace 100% of the following municipal assets with efficient electric substitutes for: 1) Gas pool heating equipment 2) Gas and diesel municipal fleet vehicles 3) Gas furnaces 4) Gas hot water heaters 5) Gas-powered gardening equipment	879  *emission reduction unverified	Sustainability Manager  Public Works	Currently budgeted for end of life assets/appliances, and new community center/library

By July 2021, develop a climate adaptation plan to protect the community from sea level rise and flooding	6	By July 2021, develop a climate adaptation plan focused on protecting areas of the community vulnerable to sea level rise and flooding, as forecasted by the National Oceanic and Atmospheric Administration (NOAA) and California State agencies. Consider requiring developers to fund efforts to protect the community.	0	Flood and Sea Level Rise Resiliency District to Lead	TBD
		<b>TOTAL</b> (assumes option 2 is chosen in action #1)	<b>98,748</b>	<b>12,650</b>	<b>\$355,00-</b> <b>\$435,000</b>

You will notice that the plan, as presented, falls well short of the goal of reducing our greenhouse gas emissions by 249,447 tons/yr by 2030. In fact, the plan only addresses 40% of the sought-after reductions. This simplified 6-action plan is significantly scaled back from the more comprehensive plans envisioned before COVID-19 struck, a compromise the CAP subcommittee felt was warranted, given the City's projected budget short-falls. The CAP subcommittee hopes that market momentum in the EV sector will make a significant contribution to the reduction of Menlo Park's greenhouse gas emissions, an effect not accounted for here. **The Environmental Quality Commission expects the significantly truncated six-action plan presented above to be completed within one year and strongly advises City Council to revisit the original, more comprehensive plan in July 2021, so that as the economy improves, those actions can be reincorporated into the plan.**

#### **NATURAL GAS PHASE OUT**

Ending the use of natural gas has multiple benefits, including the avoidance of failures in gas system operations, such as the one that destroyed homes and caused death in Brookline, Massachusetts in 2018 and the one that did even greater harm in San Bruno, California in 2010.

The normal operation of gas appliances in buildings has also been found to cause indoor air pollution that would be illegal outdoors due to its negative health impacts, according to a recent study from UCLA.<sup>6</sup> That study links chronic exposure to the NO<sub>2</sub> emitted from gas stoves to a range of health ailments, including: asthma, lung inflammation, increased risk of respiratory infection, lung and breast cancer and low birth weight in babies. Doctors in a January article in the New England Journal of Medicine wrote the following, "As physicians deeply concerned about climate change and pollution and their consequences, we consider expansion of the natural gas infrastructure to be a grave hazard to human health." They continued, "We also recommend that new residential or commercial gas hookups not be permitted, new gas

appliances be removed from the market, further gas exploration on federal lands be banned, and all new or planned construction of gas infrastructure be halted."<sup>7</sup> It is therefore within the City's normal powers, which are aimed at protecting the health and safety of its citizens, to seriously consider announcing the "End of Flow" (EOF) of natural gas.

This is similar to an approach proposed in the City of Arcata, California whereby the City would explore and pass an ordinance that sets an end date, for example 7/4/2030, for the flow of natural gas to all gas customers within the City limits. This sets a date certain by which community members would want to make any needed electrification updates to their homes for water heating, cooking and space heating. The City could then either stand back and let community members educate themselves on choices that would work for them, or the City could be an active partner to interested citizens, perhaps leading a helpful bulk buying program for: water heaters, heat pump HVAC units, EV chargers and installation services, or performing other joint effort transformation activities. There is already a local model for city-led bulk buying called Sunshares, which performs bulk buying for home solar systems and electric vehicles. While the idea of city-led bulk buying may sound new and different at first, we should realize that the City of Menlo Park already performs bulk buying of commodities and services for its citizens and businesses, including water supply, public safety services, street tree maintenance, roads and sidewalks, etc.

#### **SOURCES OF FUNDS**

Some of the six proposed actions can most likely be implemented by existing staff. The City's Sustainability staff should have the capacity to take on responsibility for actions #1, #2 and #3, perhaps with extra support from a contractor.

~~Action #4 will require the unfreezing of two positions that were requested by the Transportation Department but not funded as part of the 2020-21 budgeting process. Those staff would be dedicated to accelerating the implementation of the~~

<sup>6</sup> UCLA Fielding School of Public Health, "Effects of Residential Gas Appliances on Indoor and Outdoor Air Quality and Public Health in California," April 2020, <https://coeh.ph.ucla.edu/effects-residential-gas-appliances-indoor-and-outdoor-air-quality-and-public-health-california>

<sup>7</sup> New England Journal of Medicine, "The False Promise of Natural Gas," Philip J. Landrigan, M.D., Howard Frumkin, M.D., Dr.P.H., and Brita E. Lundberg, M.D., <https://www.nejm.org/doi/full/10.1056/NEJMp1913663>

~~Transportation Master Plan and continuing the development of a clear network of protected pedestrian/bike paths throughout town in an effort to meet the City's VMT reduction goals.~~

The remaining actions, including the land use aspects of action #4 and actions #5 and #6, would require additional funding from the City's General Fund. Those funds would support additional capacity across a number of departments, including: Public Works, Community Development, Planning and Legal. Other than the General Fund, there are two other potential sources of funds:

- 1) the \$400,000 presented in the 2020-21 Capital Improvement Plan (CIP) as earmarked for implementation of the Climate Action Plan and
- 2) issuing debt or borrowing money<sup>8</sup>.

Saving our community for future generations seems like one of the most prudent uses of borrowed funds ones can imagine. Conversely, if we wait until extra City revenue is available to fund climate action, we will most certainly lose the climate fight.

There will be additional capital expenditures incurred as part of the Climate Action Plan, as well, including:

- Investment in EV charging infrastructure
- Street improvements related to the TMP implementation
- Investment in electric replacements for municipal gas and diesel assets

If funds for these capital expenditures have not already been allocated in the City's Capital Improvement Plan (CIP), an amendment would need to be made to the CIP for that purpose. The EQC's CAP subcommittee recommends **against** using funds currently earmarked in the CIP for climate action to pay for municipal greening projects. Such projects are good candidates for outside financing or borrowing, whereas the CAP funds in the CIP should be focused on high impact activities to reduce community-wide greenhouse

gas reductions, such as policy development, programs, incentives, education and marketing.

## PLAN METRICS

Climate Action Plans have a poor history of being effectively implemented and one reason for that is that progress is typically only measured every five years and with staff turnover, well intentioned plans can go unexamined for years. In order to avoid such an outcome, the CAP subcommittee recommends that a short list of concrete metrics be adopted and that the City Council request quarterly, if not monthly, updates on those metrics.

Key metrics to track include:

1. Number of gas hot water heaters citywide that are replaced with electric versions (data source: Menlo Park Building Department)
2. Number of gas furnaces citywide that are replaced with electric versions (data source: Menlo Park Building Department)
3. Number of utility natural gas accounts terminated (data source: Peninsula Clean Energy or PG&E)
4. Number of new cars registered that are gas vs. EV (data source: DMV)
5. Number of total cars registered that are gas vs. EV (data source: DMV)
6. Gallons of gasoline sold in Menlo Park (data source: City sales tax reports)
7. Percentage of municipal assets converted from gas or diesel to electric (data source: Menlo Park Public Works Department)
8. Vehicle miles traveled, including trips inbound, outbound and within the City (Google Environmental Insights Explorer)
9. Number of other cities that query and/or copy Menlo Park's climate policies and programs (data source: outreach efforts and research by Menlo Park Sustainability staff)

While Sustainability staff and members of the CAP subcommittee question the value of conducting frequent high level greenhouse gas inventories, we do all agree that measurement is important and believe that tracking the specific items listed above will help staff and Council gain insight into the

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<sup>8</sup> An interesting model for borrowing against existing financial assets (such as the City's reserves) has been employed during the COVID recession by leading charitable Foundations who are borrowing at low interest rates against their endowments

in order to continue disbursements,  
<https://www.nytimes.com/2020/06/10/business/ford-foundation-bonds-coronavirus.html>.

effectiveness of the climate actions that the City decides to undertake. County efforts to measure greenhouse gas emissions are expected to continue and will hopefully reflect progress made by cities within the County.

### **METHOD FOR EVALUATING ACTIONS**

The six actions detailed above were selected from over 76 actions included in the original Bold and Moderate Plans, because they offer the City the most potential for Greenhouse Gas Reductions per dollar spent.

Dozens of potential climate actions were considered. Actions took many forms, including: city ordinances, city directives, programs and collaborations. Each action was evaluated for the following key criteria:

- Potential to reduce greenhouse gas (GHG) emissions
- City staff resources required to implement
- City cost to implement
- Out-of-pocket expenses for community members to implement (lifecycle economics for user)
- Political feasibility
- Potential for replication by other cities

The cost estimates above should be viewed as preliminary, requiring further thorough analysis by City staff prior to policy adoption.

### **THE TRUE COST OF CARBON**

As mentioned above, there is in fact a societal cost to burning fossil fuels, sometimes referred to as the “cost of carbon.” There are debates today over how best to calculate that cost. Some say it should be based on the damages caused by those emissions. Others say it should be based on the cost to remove those carbon emissions from the atmosphere, once that becomes possible. In the absence of a global consensus, the EQC’s CAP subcommittee attempted to estimate the cost of carbon to Menlo Park by taking the projected losses from sea level rise in our city alone, \$1.3 billion, and dividing that by the tons of CO<sub>2</sub>e we expect to emit over the next 40 years in a business as usual situation. Using this simple methodology, we arrived at a “cost of carbon” of \$130/ton for Menlo Park.

There are a number of ways the City could use this figure. We could consider levying a tax of \$130/ton on fossil fuels, in order to cover future damages the City will incur, in essence internalizing the externalized “cost of carbon.” Another way to use this figure would be for the City to factor it in to all decisions concerning assets in the City that consume fossil fuels, for example in calculating the true cost to the City of a gasoline-powered police car or the true cost to citizens of a gas furnace.

### **NOTE ON LEADERSHIP**

Saving our City from sea level rise will require collective global action, which Menlo Park can likely only influence through bold leadership. In evaluating the relative effectiveness of various climate actions, the CAP subcommittee noted the significant impact that replicability and demonstration of feasibility of a policy or program had on its potential to generate emissions reductions. If other cities can easily copy a policy or program, it is likely to **catalyze emissions reductions many times greater** than our City’s emissions reductions alone. Therefore, it is strongly advised that City staff favor simplicity and replicability in its design of climate policies and programs and it is further advised that the City invest resources in proactively sharing its climate policies and programs with other cities, counties and government entities.

We must also be nimble and ready to act on economic stimulus opportunities that may present themselves, as the Country attempts to pull itself out of a recession.

### **NOTE ON UTILITY PARTNERS**

An analysis of community member economics for each action revealed that rebates can make or break the economics behind purchasing decisions for equipment like electric vehicles and electric heat pumps for space and water heating, all of which are essential for progress on climate action. The City can greatly increase the political feasibility of many climate actions included in this plan by calling on its local Community Choice Energy (CCE) provider to rapidly deploy the significant capital currently held on its balance sheet to fund rebates on electric replacements of gas appliances. Such rebates can make climate friendly replacements cost effective and that enables city councils like ours to pass ordinances requiring such replacements. In turn,



the new electric devices generate net revenue that rebuilds the CCE's financial reserves.

To this end, Peninsula Clean Energy's board recently signaled its support for local cities' efforts to electrify, voting on May 28, 2020 to invest \$6 million to electrify existing buildings in San Mateo County. This program will reportedly include substantial incentives for: 1) the installation of electric heat pump water heaters, 2) upgrades to electric service panels so they can handle the increased electric demands of all-electric homes, and 3) whole-home electric conversions for low income residents. Such programs are a promising signal that local CCEs intend to help ease the financial burden of converting homes from natural gas to all-electric, since it is not only essential for fighting climate change but also in their long-term financial interest to do so.

#### **NOTE ON EQUITY**

Climate change does not affect all members of society equally. Tragically it disproportionately affects low income people and people of color, as evidenced right here in Menlo Park, where sea level rise is expected to have a devastating impact on residents of our Belle Haven neighborhood. A similar pattern is observed all over the globe, where poor island nations are becoming the first to be wiped off the globe. Climate justice advocate Hop Hopkins illustrates the connection between climate change and racism by explaining how allowing climate change to occur requires that we accept that portions of our local and global communities are "sacrifice zones, and you can't have sacrifice zones without disposable people, and you can't have disposable people without racism."

Meanwhile wealthier segments of society go on emitting greenhouse gases at ten times the rate of poorer segments, unwilling to make even small changes to their purchasing decisions. The COVID crisis has shed a light on the shocking inequity in health outcomes for people of color, some of which can be attributed to well documented racial disparities in exposure to air pollution from fossil fuels. Menlo Park must ask itself whether it wishes to continue contributing to this global and local inequity, or whether it can strongly prioritize leadership in solving these interconnected problems.

Finally, although Menlo Park is situated in one of the wealthiest Counties in the country, that wealth is not equally distributed and some residents may find it difficult to afford at least the capital outlay for the changes recommended in this plan. To address issues of equity, there are a number of options for ensuring that low-income residents have the financial support they need to make the required changes to their homes and vehicles. Both the State and local CCEs have shown a willingness to provide financial subsidies specifically targeted at low income residents. Peninsula Clean Energy recently set aside \$2 million, out of a \$6 million program, just to assist low-income residents with all-electric retrofits of their homes. If the City wishes to further bolster that support, it could consider allowing the Utility User's Tax (UUT) on natural gas sales to increase from its current 1% level to the existing voter-approved level of 3.5%. That would provide an estimated \$500,000 in additional funding every year to low-income families converting gas appliances to all-electric. The City must take an active role in ensuring that low-income residents are not unfairly disadvantaged by the requirements of its Climate Action Plan.

#### **ANOTHER NOTE ON COVID-19**

Lastly, this Climate Action Plan is being presented to City leaders in the midst of a generation-defining event, namely the global COVID-19 pandemic. It is understandable and appropriate that City leaders would devote their immediate attention to protecting the health and wellbeing of our community, as we fight this deadly virus.

As the health emergency wanes, however, the CAP subcommittee hopes that Council members will view the proposed Climate Action Plan as an opportunity for Menlo Park. COVID-19 has jolted us all out of our routines and everyday existence, highlighting in a graphic way our vulnerability as a species. Climate change has the potential to do the same, only on an even greater scale. If we are able to take in the lessons presented to us by this current crisis, we will be better prepared to address the climate crisis that is coming. For example, we should ask ourselves: Do we want to be like South Korea and flatten the carbon "curve" by proactively investing in mitigating the carbon dioxide "contagion"? Or will we delay, like Italy, and only take decisive action once the problem has ballooned? Is it still acceptable to stand by and

watch one window of opportunity after another close before our eyes, leaving us with a much larger problem, the only response to which threatens to destroy our economy? Can we accept that this problem, like COVID, will ravage poor communities and people of color? The choice is ours. How will we act?

This Climate Action Plan presents us with economic opportunities as well. If enacted, this plan will jumpstart a new local market in electric appliance installation, injecting money into the economy and providing hundreds of new jobs, just when they are needed.

Finally, as medical professionals learn more about the adverse health impacts of burning fossil fuels in our homes, the Climate Action Plan offers Menlo Park an opportunity to set a new standard for health and safety in our homes and places of work by removing fossil fuels from our air completely.

Our future is in our hands. It is time to act.

# APPENDIX A

## ORIGINAL PLAN OPTIONS – BOLD, MODERATE AND GO SLOW

Dr. John Holdren, scientific advisor to President Obama, advised that humans have three basic choices when it comes to climate change: 1) mitigate the problem by reducing our emissions, 2) adapt to the problem and try to move out of harm’s

way, or 3) suffer. What every civic leader must do today is pick the mix of those three options that they are willing to bring to their communities.

A summary of the benefits and drawbacks of each plan, from a City official’s perspective, is offered below.

Bold Plan	Moderate Plan	Go Slow Plan
<ul style="list-style-type: none"> <li>• A few bold actions</li> <li>• One-year implementation</li> <li>• Achieves goal of Zero by 2030</li> <li>• Less \$ now (staff resources)</li> <li>• Less \$ later (lower sea walls)</li> <li>• Subject to opposition</li> <li>• Less human suffering</li> <li>• Regional leadership role</li> </ul>	<ul style="list-style-type: none"> <li>• Many moderate actions</li> <li>• Three-year implementation</li> <li>• Makes progress toward goal of Zero by 2030</li> <li>• More \$ now (staff resources)</li> <li>• Some \$ later (sea walls)</li> <li>• Subject to some opposition</li> <li>• Some human suffering</li> <li>• Regional leadership role</li> </ul>	<ul style="list-style-type: none"> <li>• No proactive actions</li> <li>• No specific implementation time</li> <li>• Falls well short of Zero by 2030 goal</li> <li>• Less \$ now (staff resources)</li> <li>• More \$ later (high sea walls)</li> <li>• Subject to some opposition</li> <li>• More human suffering</li> <li>• No regional leadership role</li> </ul>

### THE MODERATE PLAN

The Moderate Plan is a set of 60+ actions (Appendix B), implemented over 3 years, that involve working with the community (residents, businesses and commuters) to assist and compel them to change, while simultaneously working with other cities, the County, the State and utilities to make such change easier. This would be accomplished by changing laws, capabilities and economics in a way that transforms standard practice, similar to the way that our all-electric Reach Codes are transforming standard practice in new construction. Menlo Park is gaining credibility in this area and therefore has a reasonable chance of catalyzing regional change through bold leadership and knowledge sharing.

The Moderate Plan would also seek an expanded vision and commitment from Community Choice Energy providers (CCEs), who will reap considerable benefit in the form of increased net revenue from electrification, just as oil companies will see diminishing revenue. According to this plan, the CCEs would be advised to rapidly deploy

their net revenue, in order to quickly transform the market to support building electrification.

The Moderate Plan is the most time-intensive option of those presented, with significant staff resources deployed in the next three years to pass incremental ordinances that will drive needed behavior change. **Sustainability staff currently estimate that implementing the Moderate Plan would require approximately 6 incremental full time equivalent (FTE) staff for the first year and a similar or smaller number in the remaining two years included in the plan.** These incremental staff resources could be hired as consultants and would not be needed past the 3-year term of the plan.

While the action-intensive approach of the Moderate Plan may seem cumbersome, the CAP subcommittee suspects that the public requires incremental education and a piecemeal approach to rule changes, in order to have time to adjust to change. As such, the Moderate Plan also includes significant public outreach and education efforts to

assist the public and businesses in understanding the benefits of mutual cooperation.

Finally, the Moderate Plan by itself would not guarantee that the City would reach its proposed climate goal of Zero emissions by 2030. Instead, this plan would put us on a path to achieve that goal in a later year or, alternatively, could be seen as laying the groundwork for implementation of additional measures, such as those outlined in the Bold Plan, starting in year 4 of climate action when the public may be more receptive to bolder action.

### **THE BOLD PLAN**

The Bold Plan is much simpler (Appendix B) in that it involves far fewer actions and therefore fewer staff resources to implement. It also has the advantage of nearly guaranteeing achievement of the City's climate goals. It achieves this primarily by announcing to the community that the City will stop the flow of natural gas (a potent greenhouse gas) and restrict the use of gasoline vehicles within City limits by a certain date in the future, possibly by the year 2030. This approach gives community members time to make the needed adjustments to their homes and transportation, all of which are perfectly feasible, within an announced 10-year timeframe.

As for the elimination of gasoline and diesel (GAD) fuels from Menlo Park vehicles, the Bold Plan could include a normal health-and-safety powers type ordinance, requiring the phasing out of underground fuel tanks by 7/4/2030, for example. Any businesses that used underground fuel storage tanks would need to remove them for certain by that date. If climate preservation is being seriously pursued in the next decade and automobile makers follow their plans for electric vehicle production, there will be much lower need for GAD stations left in our area and those that remain will be selling a fraction of the volume of gasoline that they do now. This could mean that, regardless of which climate plan the City pursues, the number of local gasoline stations is likely to drop significantly within the next decade from the current 12 to as few as six. Some locations could be repurposed as EV charging stations with amenities such as a coffee shop, convenience store or car wash.

Another approach to eliminating GAD fuels would be for the City to pass a number of ordinances that reduce the subsidies currently offered to GAD-

powered cars and trucks. Some of the subsidies that could be reduced or eliminated for GAD vehicles include City-provided free parking in downtown lots and free parking on the side of public streets, a subsidy the City already limits overnight in Menlo Park. Both of these measures would encourage reductions in vehicle miles traveled (VMT) in the City, as well as conversions to electric vehicles (EVs). These shifts would also offer residents the ancillary benefits of reduced traffic congestion and/or reduced air pollution.

### **THE GO SLOW PLAN**

The Go Slow Plan (GSP) would entail stepping back from climate leadership and following other entities, if and when they step forward to lead. The City would forgo the opportunity to carve out its own unique approach to problems, as we did with the recent Reach Codes, and would likely end up joining County efforts or copying other Cities' approaches. A Go Slow Plan would likely entail sitting quietly on the sidelines and following plans developed and offered by regional or state entities, as they emerge. The Go Slow Plan is by far the most risky of the plans in that it results in the highest likely damage cost to public and private property from sea level rise and would cause the most human suffering in vulnerable parts of our City. Gut-wrenching decisions will face City officials as they decide how much money to spend delaying the eventual loss of real estate valued at over \$1 billion along our Bay shoreline. One can imagine weighty decisions about what neighborhoods to save resulting in heated disagreement among residents that would tear at the fabric of our community.

Although the Go Slow Plan may look "easy" in the short term, due to the lower staffing requirements and the slower pace of change required now, this approach may in fact prove to be penny wise and pound foolish. In reality, a Go Slow approach simply hands a growing problem to a future City Council, who would have even less time and resources at their disposal to battle climate change and oversee adaptation on multiple fronts.

We understand from the worldwide scientific body, the Intergovernmental Panel on Climate Change (IPCC), that time is of the essence and that in order to have a meaningful impact on climate change, any mitigation efforts must start immediately. This would render the Go Slow Plan scientifically

imprudent, leaving the City Council to choose between: a) implementing the Moderate Plan immediately and simultaneously exploring the Bold Plan for later implementation if needed, b) cutting to the chase and just pursuing the Bold Plan immediately or c) developing a plan they feel would perform better.



**MEMORANDUM**

**Date:** 7/1/2020  
**To:** City Council  
**From:** Sustainability Division  
**Re:** 2005-2017 Greenhouse Gas Inventory

Overview

The City Council adopted its Climate Action Plan in 2009 and has been implementing greenhouse gas (GHG) emission reduction strategies and programs to promote environmentally-sound practices. In order to track progress of these strategies and programs, the City calculates and tracks its GHG emissions. In 2005, the community generated 349,284 tons of GHG emissions<sup>1</sup> in three categories: transportation, solid waste, and building energy use. The City Council has a GHG reduction goal of 27 percent below 2005 levels by 2020. This means Menlo Park's 2020 GHG emission target is 254,977 tons or a 94,307-ton reduction.

The most recent data shows the City has achieved notable emission reductions in the face of continued development but has yet to reach its target. Between 2005 and 2017, communitywide greenhouse gas emissions have decreased to 284,378. This reflects an 18.6 percent decrease. This can be attributed to reductions from:

- Waste related emissions due to the installation of gas capture devices at Ox Mountain landfill (-13,321 tons)
- Building energy related emissions (-72,643 tons) due to:
  - State mandates requiring energy providers, such as Pacific Gas & Electric to obtain power with lower emissions<sup>2</sup> and from renewable sources<sup>3</sup>.
  - Menlo Park subscribing all residents and businesses to a community choice aggregate organization, Peninsula Clean Energy that provides 90% clean and renewable electricity. It should be noted this single measure reduced energy related emissions by 19,637 tons in one year (2016-2017).

While there have been significant decreases in solid waste and building energy use related greenhouse gas emissions, transportation emissions continue to rise. Between 2005 and 2017, transportation emission increased by 15.3 percent or 21,058 tons. Moreover, solid waste related emissions show an increase, up from 5,478 tons in 2013 to 8,424 tons in 2017. This is largely due to the development growth over the last few years.

Community greenhouse gas emissions inventory results

A communitywide greenhouse gas emissions inventory involves measuring the energy, fuel, and solid waste consumed/generated in the community and calculating the resulting quantity of greenhouse gases. The City completed an inventory of its 2005 communitywide greenhouse gas emissions, which serves as its baseline for future years. The initial 2005 inventory was conducted in conjunction with ICLEI-Local

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<sup>1</sup> The industry standard unit for GHG emissions is metric tons carbon dioxide equivalent (MT CO<sub>2</sub>e). These terms can be used interchangeably.

<sup>2</sup> Assembly Bill 32, the California Global Warming Solutions Act (2006) [arb.ca.gov/cc/ab32/ab32.htm](http://arb.ca.gov/cc/ab32/ab32.htm)

<sup>3</sup> Senate Bill X1-2, Renewables Portfolio Standard (2011) [leginfo.ca.gov/pub/11-12/bill/sen/sb\\_0001-0050/sbx1\\_2\\_bill\\_20110412\\_chaptered.pdf](http://leginfo.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sbx1_2_bill_20110412_chaptered.pdf)

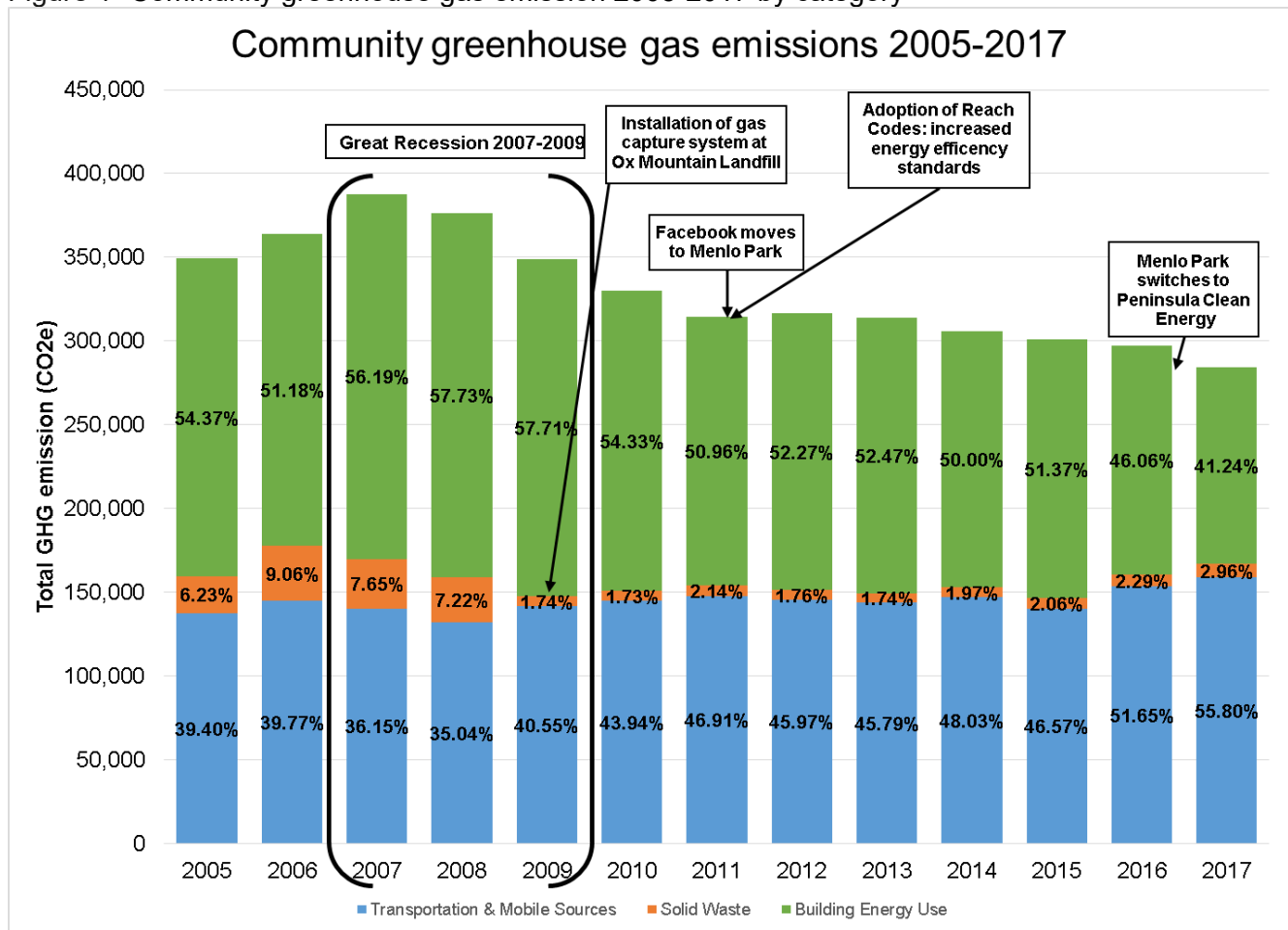
Governments for Sustainability, an organization that specializes in climate change and greenhouse gas inventories for cities and counties. To maintain consistency, staff has continued to use the ICLEI methodology, transitioning from Clean Air and Climate Protection (CACP) software to the ClearPath software suite. Staff used ClearPath to update inventories between 2005 and 2017. There were methodology changes that resulted in slightly different data than previously reported in the past. Attachment A describes the changes in detail.

Greenhouse gas emissions in Menlo Park were measured from:

- Estimated fuel consumption
- Reported solid waste sent to the landfill
- Building energy usage by account type

Figure 1 shows annual communitywide emissions with percentage by category. Figure 2 shows communitywide emissions for the most recent inventory year. As shown in Figures 1 and 2, the most significant source of emissions is transportation (55.8 percent), followed by building energy use (41.24 percent). Inventory data for 2018 and 2019 will not be available until 2020/2021.

Figure 1- Community greenhouse gas emission 2005-2017 by category<sup>4</sup>

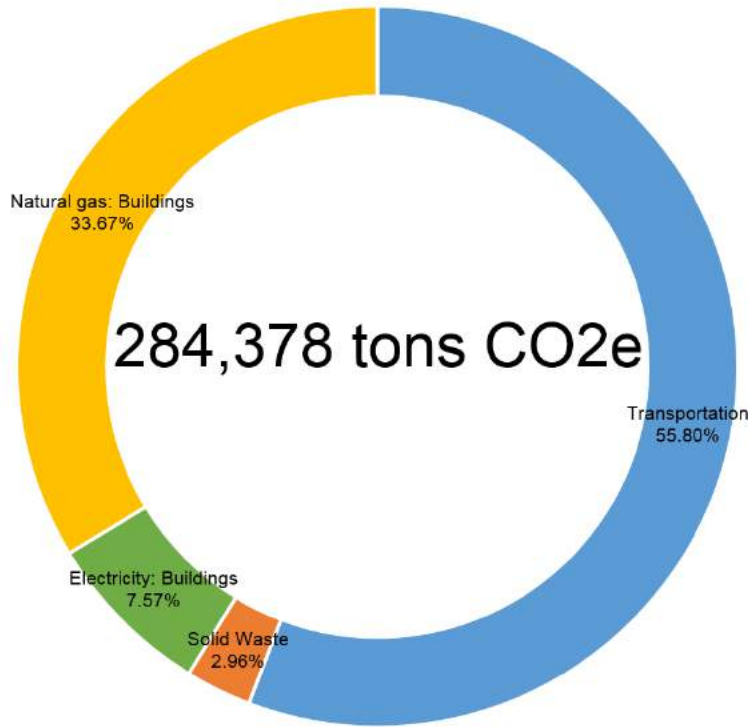


<sup>4</sup> Refer to attachment B for a detailed breakdown by energy account type.



Figure 2-City of Menlo Park communitywide greenhouse gas emissions 2017

# City of Menlo Park communitywide greenhouse gas emissions 2017



Economic/development events are also noted, such as the Great Recession, Facebook’s move to Menlo Park, installation of gas capture devices at Ox Mountain Landfill, and city implemented reduction strategies (adoption of local ordinance, automatic enrollment in Peninsula Clean Energy).

These noteworthy events show while local strategies can affect communitywide greenhouse gas emissions, they can also be influenced by factors outside the City’s purview (e.g. economic event, state or regional efforts, etc.). If the City elects to continue using greenhouse gas inventories as a measure of progress, staff suggests maximizing the impact of local strategies by creating generalized measurable targets or goals by sector (specifically transportation, solid waste, and building energy). This will allow for the most efficient use of City resources and the flexibility to take advantage of economy of scales for participation in region wide efforts or technological innovations.

### Potential Focus Areas for Next Climate Action Plan

From 2005 to 2017 emissions related building energy use has consistently been trending downward. Conversely, transportation and waste related emissions have consistently increased since 2014. A summary of each category’s related emissions is detailed in Attachment B and shows projected growth.





Based on building permit trends and the number of new developments in the planning phase, Menlo Park may experience over the upcoming code cycle (2020-2023) the replacement and rebuild of 100 new homes and the addition of 21 new buildings that include high-rise residential, retail, office and hotels (if approved).

This includes such projects as the proposed 59-acre redevelopment project commonly referred to as the Willow Village Master Plan. This increase in square footage will drive residential and workforce population growth, in turn increasing waste generation and vehicles on the road. However, the City has implemented emissions reduction strategies that staff expects will continue reductions in the building energy use sector that include:

- (1) Automatic enrollment of all Menlo Park electric energy customers in Peninsula Clean Energy that provides 90 percent greenhouse gas free electricity and a goal of 100 percent by 2022<sup>5</sup>
- (2) City Council adoption of the 2020 Reach Codes<sup>6</sup> that prevent the installation of natural gas powered appliances in all new buildings

Both measures are predicted to continue reducing building energy use related emissions modestly, though reductions are anticipated to plateau. **To continue achieving significant reductions related to building energy use, natural gas usage in existing building stock will also have to be reduced.**

After 2013, waste related emissions began to rise and are at risk of continued increase due to an increased population (both residential and employee) producing more waste. Without the implementation of zero or waste reduction strategies, staff predicts an increase over 50 percent of GHG emissions from 2017 to 2035. **The full implementation of the City Council adopted Community Zero Waste Plan can prevent over 10,000 tons of waste related emissions when the City achieves its zero waste goal<sup>7</sup>.**

Staff also predicts without **improvements in transportation demand management or shifts to low carbon fuel alternatives**, overall community greenhouse gas emissions will increase significantly. Estimates of a business as usual case using most recent transportation emissions factors derived from national averages provided by ICLEI-Local Governments for Sustainability<sup>8</sup>, predicts transportation related emissions can increase over 40 percent by 2035. This will add over 200,000 tons of transportation related emissions, roughly 70 of total communitywide greenhouse gas emissions in 2017.

In total, without policy or program measures related to existing buildings, waste, and transportation, the community greenhouse gas inventory is expected to increase 300,000 tons by 2035 as a result of development. In addition, targeting existing development will also be needed if the city seeks carbon neutrality.

Attachment A- Detailed greenhouse gas inventory data by year and methodology changes

Attachment B- GHG Emissions summary by category

<sup>5</sup> Peninsula Clean Energy is a community choice aggregate which provides its customers with electricity from renewable sources:

[menlopark.org/1083/Peninsula-Clean-Energy](http://menlopark.org/1083/Peninsula-Clean-Energy)

<sup>6</sup> The Menlo Park reach codes are a local amendment to the State Building Code that requires electricity as the only fuel source for new buildings (no natural gas): [menlopark.org/1583/Reach-codes](http://menlopark.org/1583/Reach-codes)

<sup>7</sup> The Community Zero Waste Plan outlines a goal to recycle and/or compost at least 73 percent of waste by 2035. To achieve this goal, the community will need to reduce the amount of landfilled materials generated to 3.1 pounds per person per day. [menlopark.org/1132/Community-Zero-Waste-Plan](http://menlopark.org/1132/Community-Zero-Waste-Plan)

<sup>8</sup> National averages produced by ICLEI using U.S. Energy Information Administration data and 2015 Bureau of Transportation Statistics study.

## Attachment A- Greenhouse gas inventory data by year and methodology changes

### Communitywide greenhouse gas emissions 2005-2017

Communitywide greenhouse gas emissions			
Year	Total emissions CO <sub>2</sub> e (tons)	% change CO <sub>2</sub> e (tons) year by year	% change CO <sub>2</sub> e (tons) over baseline
2005	349,284		
2006	364,090	4.24%	4.24%
2007	387,731	6.49%	11.01%
2008	376,435	-2.91%	7.77%
2009	348,934	-7.31%	-0.10%
2010	329,777	-5.49%	-5.58%
2011	314,412	-4.66%	-9.98%
2012	316,761	0.75%	-9.31%
2013	313,981	-0.88%	-10.11%
2014	305,845	-2.59%	-12.44%
2015	300,834	-1.64%	-13.87%
2016	297,239	-1.20%	-14.90%
2017	284,378	-4.33%	-18.58%

### Changes in methodology and measurements

Since the City's last reported inventory in 2013, the calculation of greenhouse gas emissions has been refined. The City has the ability to calculate emissions generated by the community related to water and wastewater emissions, fugitive point sources, landfill process emissions, rail transportation, and more. However, staff elected to calculate greenhouse gas emissions in the three categories (transportation, solid waste, and building energy use) to provide the most accurate measure of progress over the sectors under the City's purview and will receive the greatest impact from local action.

The original 2005 emission inventory showed that the community generated 382,153 MT CO<sub>2</sub>e. When updating the communitywide greenhouse gas emission in 2019, the 2005 baseline was recalculated as 349,284 MT CO<sub>2</sub>e. As a result, in addition to calculating greenhouse gas inventories for 2014 to 2017, staff updated all previously calculated inventories (2005 to 2013).

Table 2 compares previously calculated totals, updated inventories with percentage difference, and include 2014-2017 inventories.

Comparison of communitywide greenhouse gas emissions ICLEI methodologies				
Year	CACP software GHG emissions (tons)	ClearPath software GHG emissions (tons)	Percent difference GHG emissions (tons)	
2005	382,153	349,284	-9.41%	
2006	387,036	364,090	-6.30%	
2007	408,692	387,731	-5.41%	
2008	392,203	376,435	-4.19%	
2009	381,028	348,934	-9.20%	
2010	383,543	329,777	-16.30%	
2011	377,669	314,412	-20.12%	
2012	356,521	316,761	-12.55%	
2013	360,427	313,981	-14.79%	
2014	Not calculated	305,845	Not calculated	
2015	Not calculated	300,834	Not calculated	
2016	Not calculated	297,239	Not calculated	
2017	Not calculated	284,378	Not calculated	

The 32,869 ton variation in greenhouse gas inventories can be attributed to staff's decision to remove methane emissions from the decommissioned Marsh Road Landfill (Bedwell Bayfront Park) from the communitywide inventory. In previous community inventories, this emissions source was included, but going forward emissions related to the closed landfill will be tracked in the City's municipal (city government) operations inventory only. Staff made this decision as no new material (trash) is being introduced, emissions related to the closed landfill (Bedwell Bayfront Park) will only continue to decrease over time as waste continues to breakdown, with no new measures being undertaken.

It is also important to note that any greenhouse gas emissions inventory represents an estimate using the best available data and calculation methodologies at the time it was conducted. These estimates are subject to change as better data and calculation methodologies become available.

#### Google Environmental Insights Explorer<sup>9</sup>

The Environmental Insights Explorer (EIE) is a free service which uses exclusive (Google) data sources and modeling capabilities to produce estimates of activity, emissions, and reduction opportunities to select cities. The Environmental Quality Commission Climate Action Plan subcommittee, learned of this no cost, dynamic tool and requested Menlo Park be added to its list of cities in November 2019.

Google EIE provides building and transportation related emissions estimates. These estimates are modeled from underlying information from the Google Maps application (measurements of activity and infrastructure) and advanced machine learning techniques. While primarily based on the Google Maps information, EIE is anonymous, highly aggregated and combined with other data sources (e.g. building outlines and types, overhead imagery, etc.).

<sup>9</sup> Google Environmental Insights Explorer: [insights.sustainability.google/places/ChIJ\\_4ByEbGmj4ARq4nyXY6Zv-s](https://insights.sustainability.google/places/ChIJ_4ByEbGmj4ARq4nyXY6Zv-s)

ICLEI performed a technical review<sup>10</sup> of the EIE data for local GHG inventories and acknowledges its strong potential for streamlining GHG inventory processes, while also providing some data advantages for planning and performance measurements. ICLEI reports, the EIE represents the biggest leap forward in new approaches to develop activity data for GHG performance management and climate action planning.

As noted above, a greenhouse gas emissions inventory represents an estimate and is subject to change as more or different data sources and calculation methodologies, such as EIE, become available. Therefore, EIE estimates differ from the staff calculated emissions:

Comparison of communitywide greenhouse gas emissions with Google estimate			
Emission category	Menlo Park GHG inventory	Google EIE GHG estimate	Difference
Building energy use	117,628 CO2e	207,000 CO2e	89,372 CO2e
Transportation	158,686 CO2e	311,000 CO2e	152,314 CO2e

Building energy use emissions calculation methodology:

City: energy emissions factors specific to Menlo Park energy providers, Pacific Gas & Electric and Peninsula Clean Energy are applied to actual usage data provided by utilities.

Google EIE: energy use is estimated based on aggregated floor spaces, location, size, building type (residential or non-residential), and energy type (e.g. electricity, natural gas, etc.). These energy use estimates are based on regional energy intensity factors (not city specific). Furthermore, EIE energy emissions factor data is a blended average of nearest available emissions factors (i.e. may include emissions factors from energy providers that do not operate in Menlo Park).

Transportation emissions calculation methodology:

City: are an estimate of passenger vehicle travel within (in-boundary) Menlo Park vehicle miles travel estimates from the California Department of Transportation (Caltrans) Highway Performance Monitoring System data and estimated fuel usage derived from fuel vehicle sales tax reported to State of California Board of Equalization- Sales Tax Generator and average gas prices.

Google EIE: uses proprietary data derived from Google Maps Location History data to estimate trips taken within a city's boundaries. These estimates are multimodal (passenger vehicle, bus, cycling, rail, and walking) and including vehicles travelling into (inbound), leaving (outbound), and within (in-boundary). Please note:

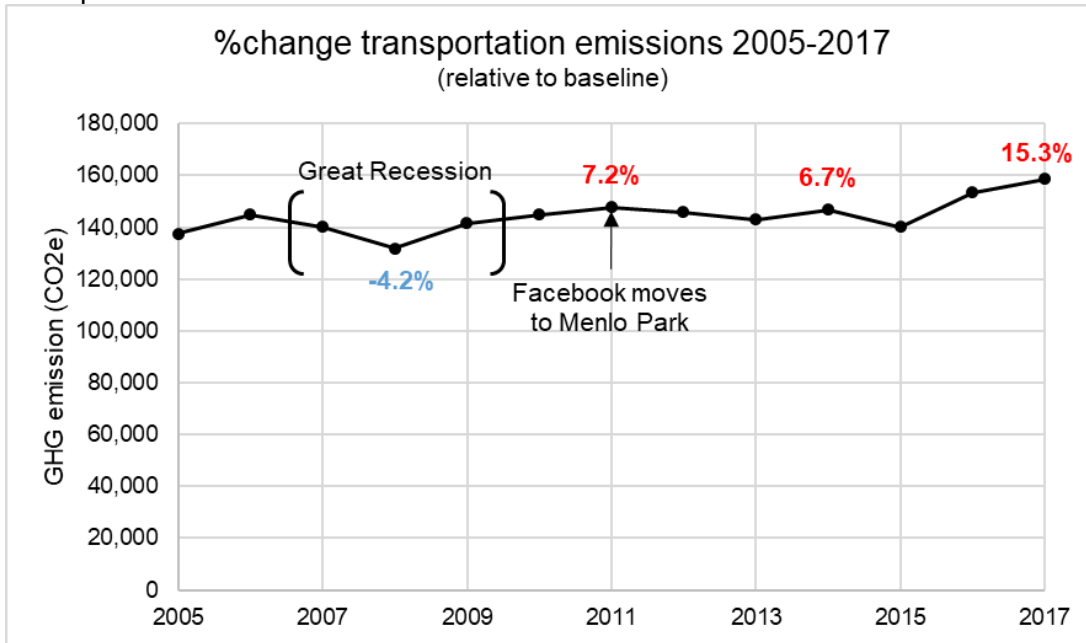
- Cycling, rail, and walking trips do not have related GHG emissions
- EIE estimates for inbound and in-boundary passenger vehicle travel only total 150,270 CO2e (Menlo Park calculated transportation emissions: 158,686 CO2e)
- A number privacy filters, aggregation/anonymization techniques, and inference models have been applied to estimates

<sup>10</sup> Technical review of Google Environmental Insights Explorer Data for Local Greenhouse Gas Inventories: [insights.sustainability.google/assets/papers/Technical%20Review%20of%20Google%20Environmental%20Insights%20Explorer%20Data%20for%20Local%20Greenhouse%20Gas%20Inventories\\_ICLEI-USA%20August%202019.pdf](https://insights.sustainability.google/assets/papers/Technical%20Review%20of%20Google%20Environmental%20Insights%20Explorer%20Data%20for%20Local%20Greenhouse%20Gas%20Inventories_ICLEI-USA%20August%202019.pdf)

## Attachment B- Greenhouse gas Emissions Summary by Category

### Transportation

Transportation related emissions 2005-2017



The transportation category includes emissions related to passenger vehicle travel within Menlo Park. The transportation related emissions are estimated using both vehicle miles travel estimates from the California Department of Transportation (Caltrans) Highway Performance Monitoring System data and estimated fuel usage derived from fuel vehicle sales tax reported to State of California Board of Equalization- Sales Tax Generator and average gas prices. These data sets (vehicle miles traveled and fuel usage) are used to estimate different transportation related greenhouse gases:

- Estimated vehicle miles traveled are used to calculate methane (CH4) and nitrous oxide (N2O) emissions
- Estimated fuel usage is used to calculate carbon dioxide (CO2) emissions

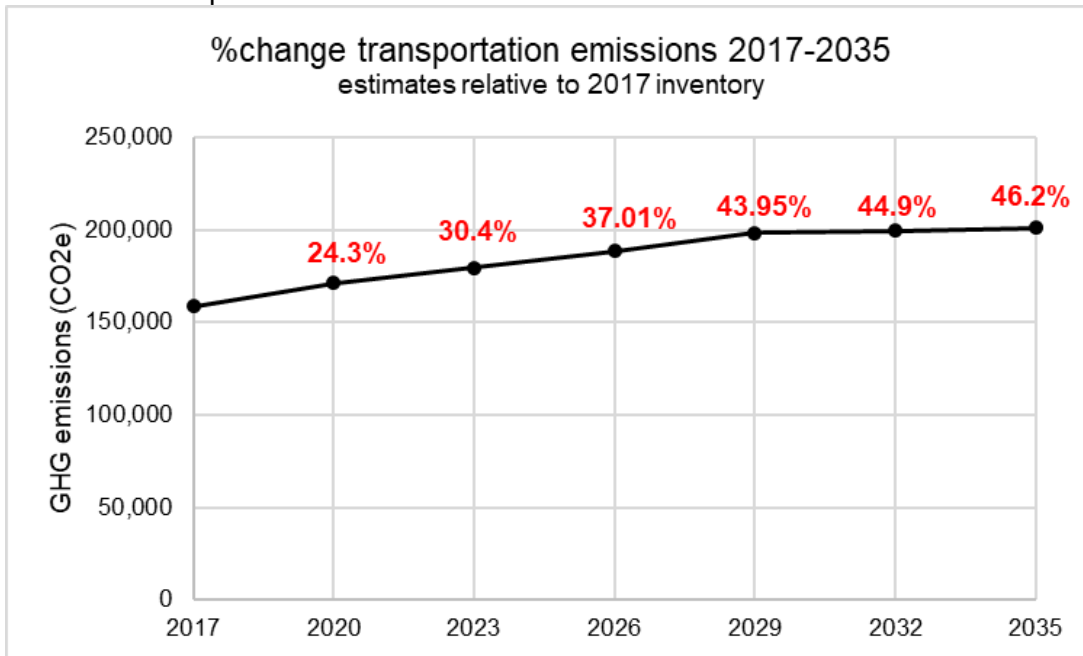
It should be noted, vehicle miles traveled or fuel usage have been used in past inventories to approximate total transportation related emissions independently to prevent double counting. However, this calculation method allows for the use of both since they calculate different GHG emissions.

Transportation		
Year	GHG emissions(tons)	%change (year to year)
2005	137,628	
2006	144,795	5.21%
2007	140,176	-3.19%
2008	131,917	-5.89%
2009	141,478	7.25%
2010	144,892	2.41%
2011	147,475	1.78%
2012	145,627	-1.25%
2013	142,897	-1.87%
2014	146,885	2.79%
2015	140,111	-4.61%
2016	153,518	9.57%
2017	158,686	3.37%

The Bay Area has experienced a period of increased development. In addition to development completed in 2018 and 2019, the City expects the replacement and rebuild of 100 new homes and the addition of 21 new buildings that include high-rise residential, retail, office and hotels over the next three years (2020 to 2023). The estimated daytime (resident and employee) population is estimated to be 64,152 by the end this code cycle (2023).

Without a shift to carbon free fuels or significant reduction in single occupied vehicles, staff predicts a business as usual scenario will result transportation related emissions increasing by 30.4 percent relative to 2017 inventory at the end of this code cycle (2023). Figure 3 shows emission forecast for transportation related emission if no new measures (e.g. transportation demand management, vehicle electrification, etc.) in this category are undertaken over the study period (2017-2035). Emissions factors are based on 2015 national averages.

Estimated transportation related emissions 2005-2017



It is important to note, that while the State has had established vehicle emissions reduction requirements since 2002<sup>11</sup> and in 2012 the California Air Resources Board (CARB) adopted mandates for emissions standards<sup>12</sup>, these program affect new vehicles only. As of 2019, the average age of cars on the road in California is estimated to be 11.2 years<sup>13</sup>. Average car age in the United States has increased since this metric started being tracked and is predicted to increase especially in regions, like the Bay Area, where the cost of living is higher than average.

<sup>11</sup> California Assembly Bill 1493 Vehicular emissions: greenhouse gas emissions (also known as the Pavely legislation) establishing emissions standards for new passenger vehicles manufactured in 2009-2016

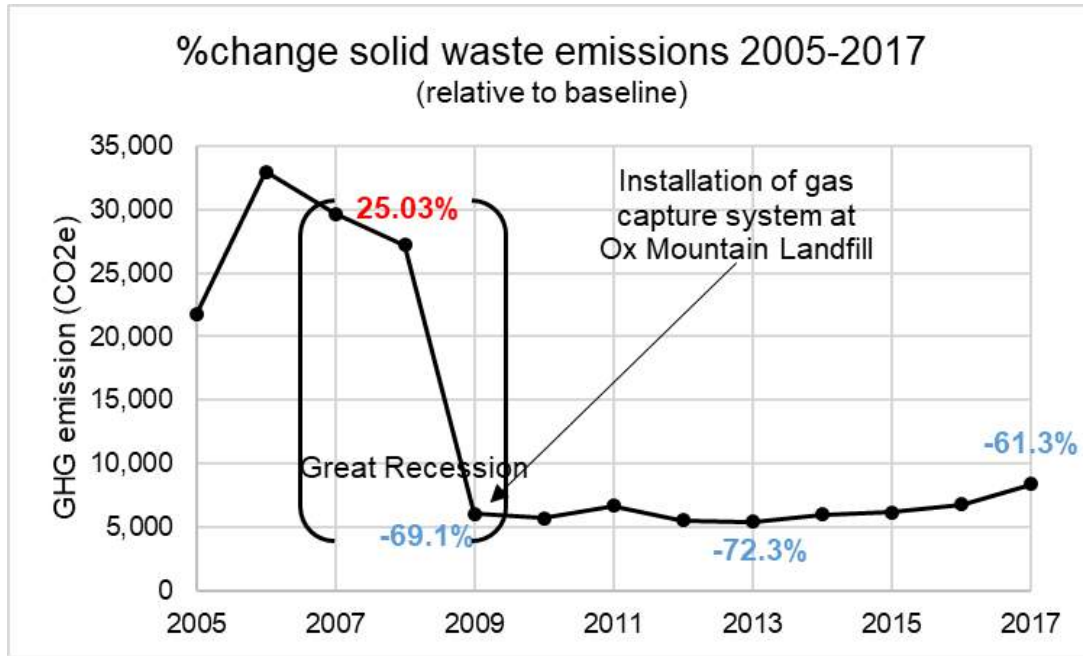
<sup>12</sup>Advanced Clean Car Programs a set of regulations to control emissions from passenger vehicles [arb.ca.gov/our-work/programs/advanced-clean-cars-program/about](http://arb.ca.gov/our-work/programs/advanced-clean-cars-program/about)

<sup>13</sup> Estimate published by Auto Alliance, and Alliance of Automobile Manufacturers using reports and data sets also sourced by U.S. Energy, Vehicles Technologies Office [autoalliance.org/in-your-state/CA/pdf/?export](http://autoalliance.org/in-your-state/CA/pdf/?export)



**Solid Waste**

Solid waste related emissions 2005-2017

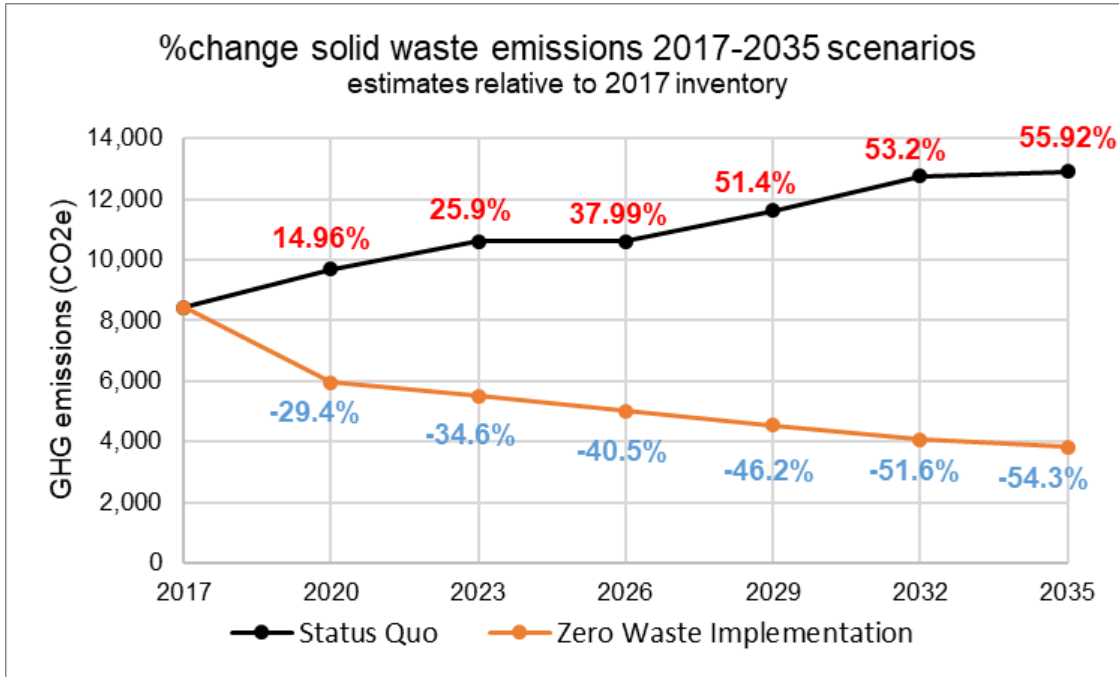


The solid waste category reflects emissions related to total community waste sent to landfill reported to California Department of Resources Recycling and Recovery (CalRecycle).

In 2017, City Council adopted the Community Zero Waste Plan. This plan could reduce waste related emissions by over 50 percent over 2017 levels. This is predicted to prevent approximately 10,000 tons GHG emissions annually. Figure 5 shows emissions forecasts for both status quo (no new measures undertaken) and fully implementation of the Community Zero Waste Plan (reduction of waste per capita from 5.0 to 3.1 pounds per person per day).

Solid Waste		
Year	GHG emissions(tons)	%change (year to year)
2005	21,745	
2006	32,970	51.62%
2007	29,672	-10.00%
2008	27,187	-8.37%
2009	6,077	-77.65%
2010	5,717	-5.92%
2011	6,715	17.46%
2012	5,572	-17.02%
2013	5,478	-1.69%
2014	6,034	10.15%
2015	6,199	2.73%
2016	6,816	9.95%
2017	8,424	23.59%

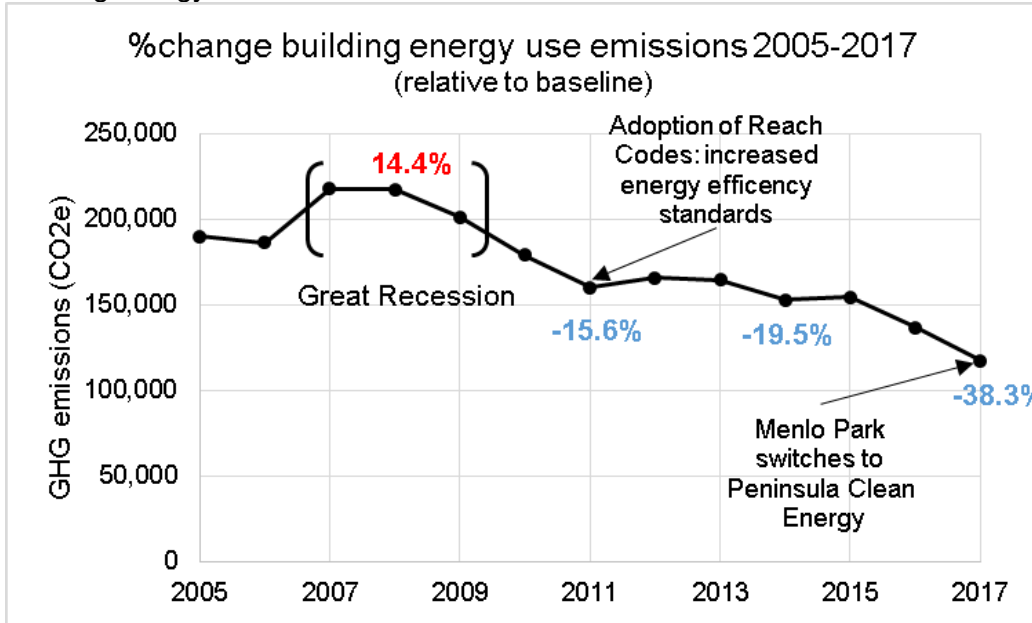
Estimated solid waste related emissions 2017-2035





**Building energy use**

Building energy use related emissions 2005-2017

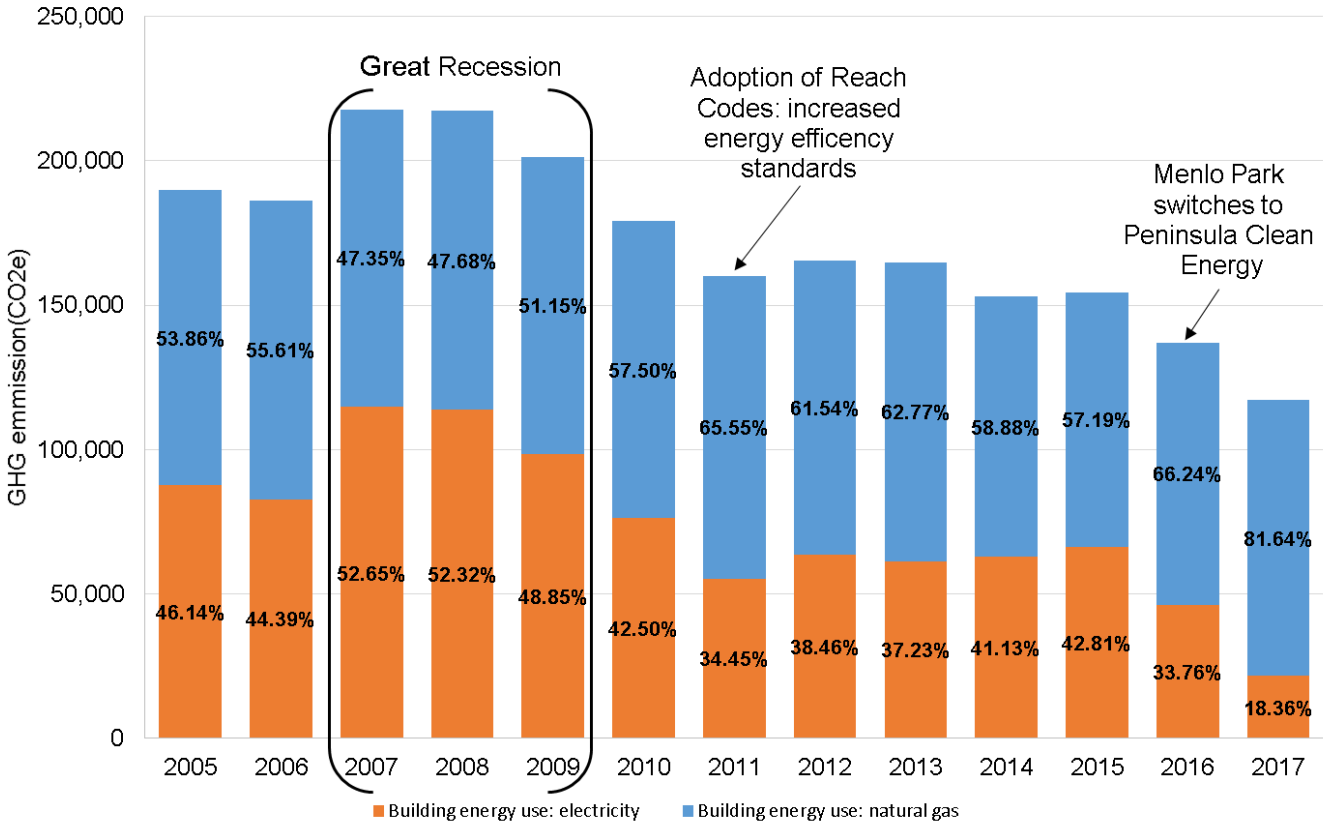


The building energy use category includes both electricity and natural gas consumption reported by Pacific Gas & Electric and Peninsula Clean Energy (2016 and 2017 inventories only). All electricity customers in the City of Menlo Park are automatically enrolled in Peninsula Clean Energy service. Automatic enrollment was a phased, countywide process. Beginning in Fall of 2016, all municipal accounts, small and medium businesses, and 20 percent of residential accounts in San Mateo County were switched to Peninsula Clean Energy service. In April 2017, all San Mateo County electricity customers were switched. As of September 2019, Peninsula Clean Energy services 97.5 percent of all electricity customers in Menlo Park.

Emissions related to electricity consumption will continue to decrease as energy sources increasingly become carbon neutral or free. The emissions related to natural gas are likely to remain unchanged until natural gas powered appliances in existing building stock are replaced. Figure 6 shows the percentage of total building energy use separated by electricity and natural gas.

Building energy use		
Year	GHG emissions(tons)	%change (year to year)
2005	189,911	
2006	186,325	-1.89%
2007	217,883	16.94%
2008	217,331	-0.25%
2009	201,379	-7.34%
2010	179,168	-11.03%
2011	160,222	-10.57%
2012	165,562	3.33%
2013	164,746	-0.49%
2014	152,926	-7.17%
2015	154,524	1.04%
2016	136,905	-11.40%
2017	117,268	-14.34%

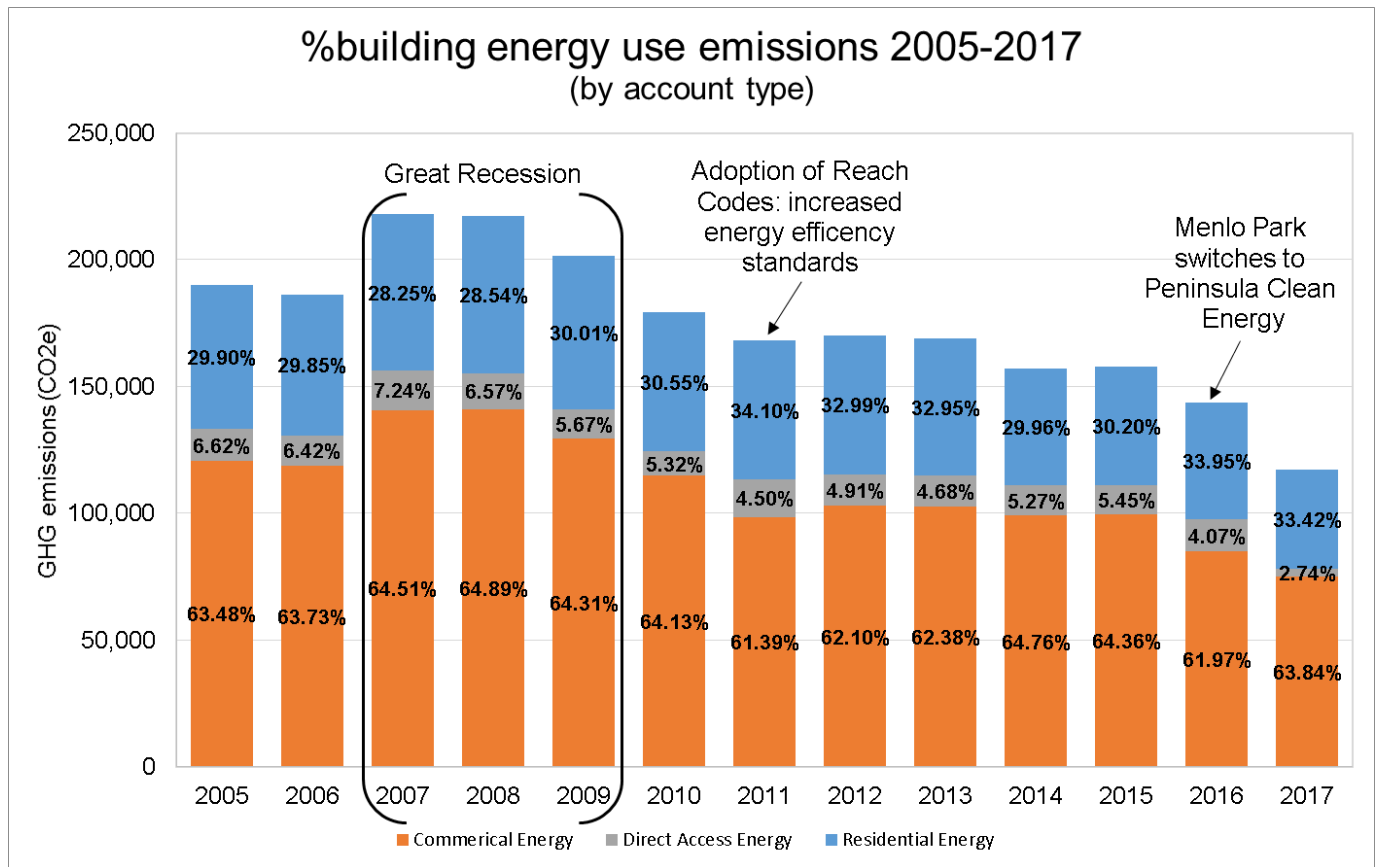
### Total building energy use emissions 2005-2017 (electricity versus natural gas)



Total building energy use: electricity		
Year	GHG emissions (tons)	% change (year to year)
2005	87,617	
2006	82,715	-5.59%
2007	114,718	38.69%
2008	113,712	-0.88%
2009	98,368	-13.49%
2010	76,142	-22.59%
2011	55,203	-27.50%
2012	63,677	15.35%
2013	61,342	-3.67%
2014	62,891	2.53%
2015	66,150	5.18%
2016	46,217	-30.13%
2017	21,528	-53.42%

Total building energy use: natural gas		
Year	GHG emissions (tons)	% change (year to year)
2005	102,295	
2006	103,611	1.29%
2007	103,165	-0.43%
2008	103,621	0.44%
2009	103,012	-0.59%
2010	103,027	0.01%
2011	105,021	1.94%
2012	101,885	-2.99%
2013	103,406	1.49%
2014	90,036	-12.93%
2015	88,375	-1.84%
2016	90,689	2.62%
2017	95,742	5.57%

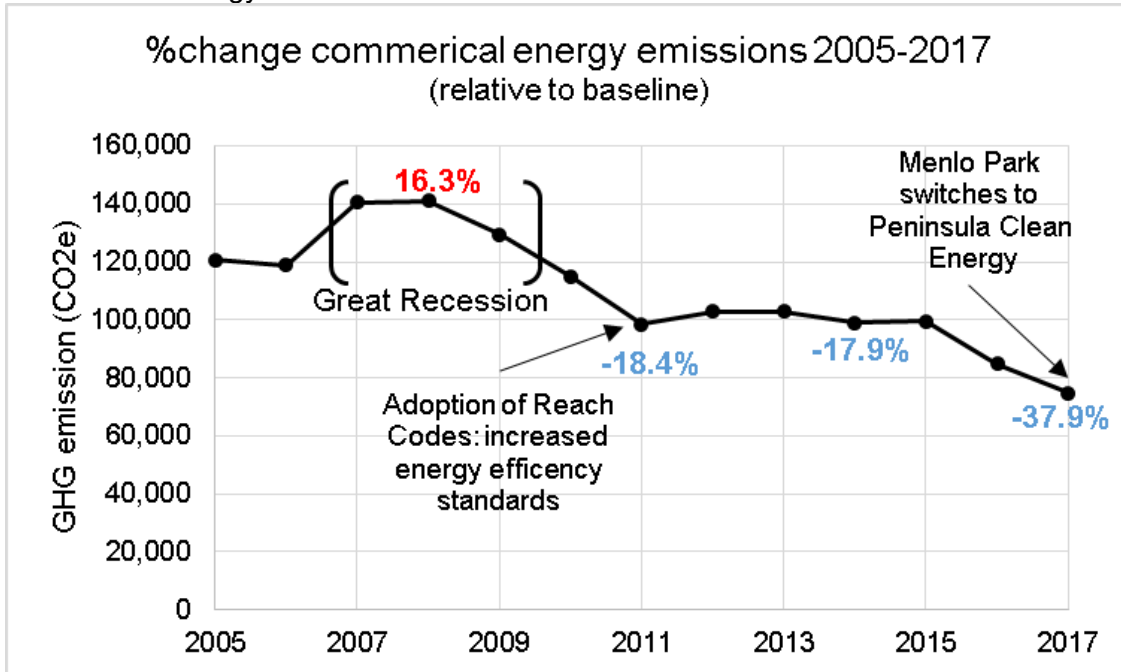
Total building energy use emissions by account type



Below is details of building energy use by account type.



Commercial energy related emissions 2005-2017



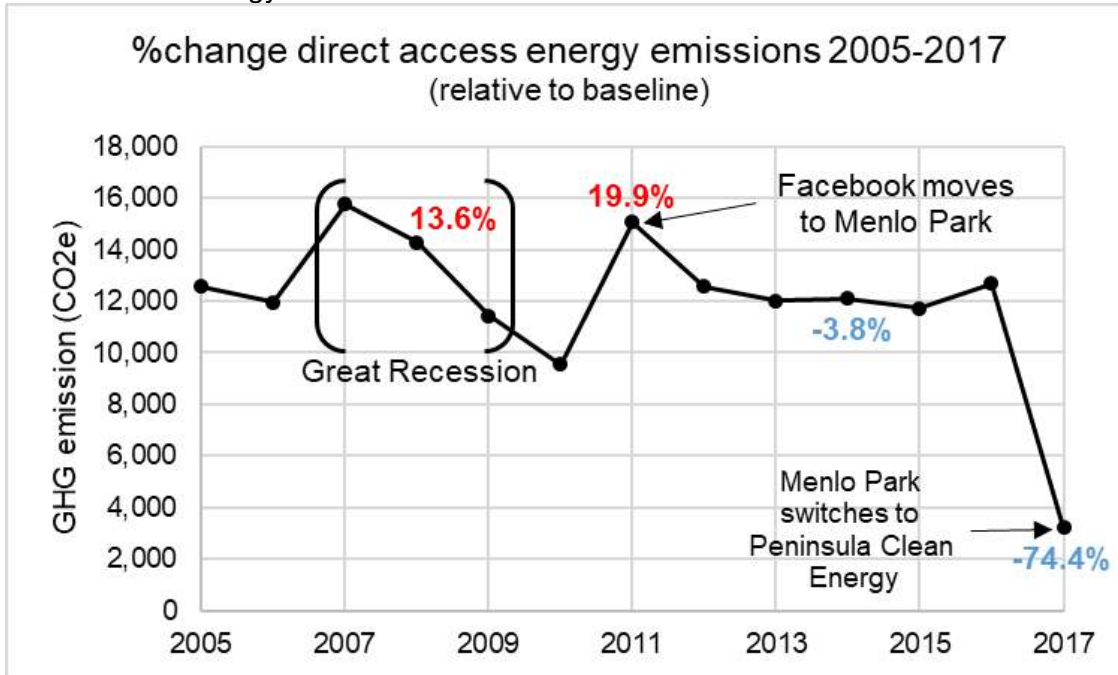
Commercial Energy		
Year	GHG emissions(tons)	%change (year to year)
2005	120,561	
2006	118,744	-1.51%
2007	140,561	18.37%
2008	141,020	0.33%
2009	129,509	-8.16%
2010	114,898	-11.28%
2011	98,363	-14.39%
2012	102,812	4.52%
2013	102,764	-0.05%
2014	99,038	-3.63%
2015	99,445	0.41%
2016	84,842	-14.68%
2017	74,861	-11.76%

The commercial energy category includes both electricity and natural gas consumption reported by Pacific Gas & Electric and Peninsula Clean Energy (2017 inventory only). As of 2017 emissions related to commercial energy use represent approximately 65 percent of building energy use related emissions.

As of September 2019, Peninsula Clean Energy services 1,742 commercial customers and 1 industrial customer (included in commercial energy category). This data also includes usage from customers who opt out (decline) Peninsula Clean Energy service.

Emissions related to electricity consumption will continue to decrease as energy sources increasingly become carbon neutral or free. The emissions related to natural gas are likely to remain unchanged until natural gas-powered appliances in existing building stock is replaced.

Direct access energy related emissions 2005-2017

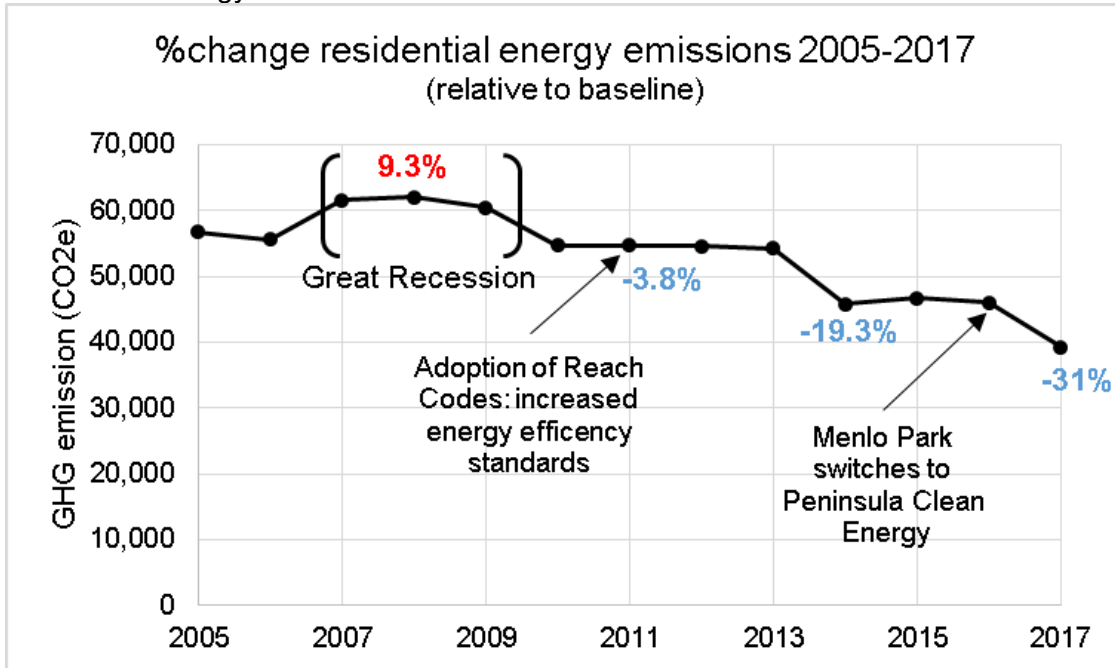


Direct Access Energy		
Year	GHG emissions(tons)	Percent change in emissions
2005	12,575	
2006	11,971	-4.80%
2007	15,769	31.73%
2008	14,283	-9.42%
2009	11,428	-19.99%
2010	9,537	-16.55%
2011	15,073	58.05%
2012	12,580	-16.54%
2013	12,020	-4.45%
2014	12,092	0.60%
2015	11,716	-3.11%
2016	12,696	8.36%
2017	3,218	-74.65%

The direct access energy category reflects electricity consumption reported by Pacific Gas & Electric and Peninsula Clean Energy for direct access customers. As of 2017 emissions related to direct access energy use represent approximately 3 percent of building energy use related emissions.

Emissions related to electricity consumption will continue to decrease as energy sources increasingly become carbon neutral or free.

Residential energy related emissions 2005-2017



Residential Energy		
Year	GHG emissions(tons)	Percent change in emissions
2005	56,775	
2006	55,610	-2.05%
2007	61,553	10.69%
2008	62,028	0.77%
2009	60,442	-2.56%
2010	54,734	-9.44%
2011	54,643	-0.17%
2012	54,618	-0.05%
2013	54,280	-0.62%
2014	45,824	-15.58%
2015	46,659	1.82%
2016	46,006	-1.40%
2017	39,189	-14.82%

The residential energy category includes both electricity and natural gas consumption reported by Pacific Gas & Electric and Peninsula Clean Energy (2017 inventory only). As of 2017 emissions related to residential energy use represent approximately 33 percent of building energy use related emissions.

As of September 2019, Peninsula Clean Energy services 13,728 residential customers. This data also includes usage from customers who opt out (decline) Peninsula Clean Energy service.

Emissions related to electricity consumption will continue to decrease as energy sources increasingly become carbon neutral or free. The emissions related to natural gas are likely to remain unchanged until natural gas-powered appliances in existing building stock is replaced.

# DRAFT CLIMATE ACTION PLAN

Prepared by the Environmental Quality Commission's Climate Action Plan Subcommittee



A 2030 PLAN TO ELIMINATE CARBON EMISSIONS & PROTECT  
OUR COMMUNITY FROM CLIMATE CHANGE

JUNE 2020  
FIRST DRAFT

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# INTRODUCTION

Menlo Park is uniquely threatened by climate change and uniquely positioned to tackle it.

Menlo Park's location on the shore of San Francisco Bay places approximately \$1.3 billion<sup>1</sup> of property in our Belle Haven neighborhood at risk of flooding from climate change by as early as 2070.<sup>2</sup> While it is impossible for Menlo Park alone to halt the global sea level rise that threatens our city, bold climate leadership on our part is perhaps our only hope of keeping sea level below the height of an "affordable" sea wall. The San Francisco Creek Joint Powers Authority estimated in a 2016 feasibility study that a combination of levees and sea walls built along the shoreline of Menlo Park and East Palo Alto to address just three feet of sea level rise would cost approximately \$100 million.<sup>3</sup>

If we do not provide visible and inspiring leadership on climate and global greenhouse gas emissions continue rising at their current rate, no sea wall or levee will save the portion of our city between Route 101 and the Bay. That land, which includes a disproportionate percentage of our city's low income residents and residents of color, will be inundated and residents and businesses will have to permanently relocate. On the other hand, if we take a leadership position and our bold climate action inspires rapid and far reaching climate action by other cities, we may be able to save our Belle Haven neighborhood with a combination of sea walls and levees.

The good news is that if there is any city well positioned to lead on climate action, it is Menlo Park. Located in Silicon Valley, our residents and leaders embrace innovation. Our county (San Mateo) is one of the wealthiest in the country,<sup>4</sup> which means we have the financial resources to tackle the issue of climate change head on. Analysis conducted by members of the



Source: <http://data.pointblue.org/apps/ocof/cms/index.php?page=flood-map>

## YEAR: 2070-2100

the Bay is projected to rise 3.3 feet

Environmental Quality Commission's Climate Action Plan subcommittee shows that every dollar spent now by the City on bold climate action can be expected to save City residents \$100 in future adaptation costs<sup>5</sup> addressing sea level rise alone, not to mention the healthcare costs associated with treating ailments caused by air pollution (see "Natural Gas Phase Out" section below).

Finally, our City Council and staff have already demonstrated a capacity for leadership by passing an innovative all-electric Reach Code that virtually eliminates natural gas from new buildings. At last count, 15 other California cities had adopted a "Menlo Park style" all electric Reach Code for new buildings, proving that courageous action on climate does in fact inspire others to follow.

<sup>1</sup> According to [County of San Mateo Sea Level Rise Vulnerability Assessment](#) p. 139, sea level rise of 3.3 feet will inundate Menlo Park real estate valued at \$1.288 billion and a rise of 6.6 feet will inundate \$1.621 billion in real estate.

<sup>2</sup> Griggs, G, Árvai, J, Cayan, D, DeConto, R, Fox, J, Fricker, HA, Kopp, RE, Tebaldi, C, Whiteman, EA (California Ocean Protection Council Science Advisory Team Working Group), [Rising Seas in California: An Update on Sea-Level Rise Science, California Ocean Science Trust, April 2017](#). Ranges shown are from the median (50th percentile) to the extreme (99.9th percentile) range of the projections.

<sup>3</sup> [Public Draft Feasibility Report, SAFER Bay Project, Strategy to Advance Flood protection, Ecosystems and Recreation along San Francisco Bay, East Palo Alto and Menlo Park](#), October 2016, p. 37.

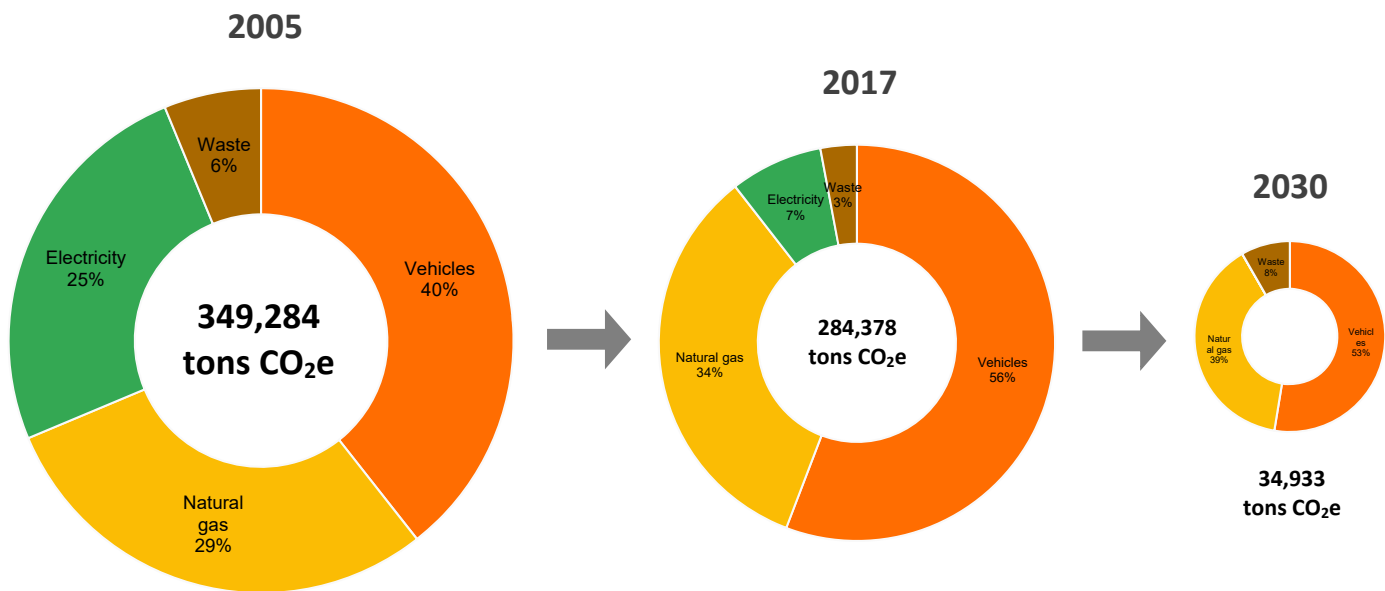
<sup>4</sup> [https://en.m.wikipedia.org/wiki/List\\_of\\_highest-income\\_counties\\_in\\_the\\_United\\_States](https://en.m.wikipedia.org/wiki/List_of_highest-income_counties_in_the_United_States)

<sup>5</sup> Supporting analysis available in PDF format in Appendix C and in Excel format upon request

# OUR GOALS

In order to address the significant threat to Menlo Park posed by climate change, City Council is considering adopting bold climate goals. At a December 10, 2019 study session, individual City Council members expressed support for a proposed goal of “Zero carbon emissions by 2030,” to be achieved through a 90% reduction in carbon dioxide equivalent emissions (CO<sub>2</sub>e) from 2005 levels, and elimination of the remaining 10% of CO<sub>2</sub>e through direct carbon removal measures. An inventory of greenhouse gas emissions conducted by City staff in December 2019 revealed that emissions in Menlo Park fell from 349,284 tons in 2005 to 284,378 tons of CO<sub>2</sub>e in 2017, a

reduction of 19%. If City Council adopts the recommended “Zero emissions by 2030” goal, the plan will be to reduce community-wide emissions by another 71% for a total reduction of 90% from our 2005 emissions, leaving just 34,933 tons of CO<sub>2</sub>e per year, by 2030. **The Environmental Quality Commission recommends that the City Council formally adopt a goal of achieving “Zero carbon emissions by 2030” broken down into a 90% reduction in community-wide greenhouse gas emissions and removal of the remaining 10% through direct carbon sequestration.**



Menlo Park Community Greenhouse Gas Emissions (metric tons of CO <sub>2</sub> e)			
	2005	2017	2030
Vehicles	137,628	158,686	18,373
Natural gas	102,295	95,742	13,656
Electricity	87,617	21,528	-
Waste	21,745	8,424	2,903
<b>Total Emissions</b>	349,285	284,380	<b>34,933</b>

# OPTIONS FOR ACTION

In order to achieve a goal of “Zero emissions by 2030,” Menlo Park must begin taking bold action immediately. Fortunately the City has already decarbonized its electricity supply by joining with other cities in the County to create a joint powers authority (Peninsula Clean Energy) that sources power mainly from renewables and hydropower. This creates a clean energy stepping stone from which to decarbonize the rest of the City’s economy.

Our next step is to decarbonize all of our buildings and transportation. In an ideal world with more time, the City’s climate goals could be achieved simply by unleashing the power of free enterprise and relying on markets and educated consumers to transform our fossil-fuel dependent economy to one that stops emitting greenhouse gases in time to avert catastrophic climate change. Members of the Climate Action Plan (CAP) subcommittee of the Environmental Quality Commission (EQC), who prepared this plan, certainly would prefer this type of approach, as it limits the role of government and would reduce the likely opposition from some interest groups. However, no matter how carefully the subcommittee considered various incentive- and education-based laissez-faire approaches, none of them appears able to solve the climate problem in time to avert catastrophic change to our daily lives. In fact, the less action the City takes now, the more costly the government intervention will be later to deal with the resulting climate disasters.

The key reasons that market approaches alone cannot solve climate change are three-fold:

- 1) markets are currently distorted by the absence of accurate pricing for key externalities, such as the right to dump harmful greenhouse gas emissions into the atmosphere, which today is virtually free to any person or business who wishes to do it, leaving the rest of us bear the ever increasing cost,
- 2) powerful political interest groups such as the fossil fuel industry have successfully spread enough disinformation about climate change that Americans significantly underestimate the problem and therefore underestimate the actions that must be taken to address it, and

- 3) polluting devices last far too long once installed and we simply do not have enough time for the typical market signals to trickle down to those who determine product offerings and today offer environmentally obsolete products to customers..

Just as the US government stepped in forcefully after the bombing of Pearl Harbor to require that much of America’s free market economy be transformed to support the war effort, so too must the government now step in forcefully and confidently to lead the American public away from the brink of climate disaster.

Thankfully, the actions required of every American citizen to forcefully combat climate change are much less onerous than the food rations or military conscription imposed on World War II-era Americans. We are fortunate that a robust private sector has already provided every technological solution and innovation necessary to almost completely retire fossil fuels as an energy source in America today.

## PERSONAL ACTION

Below is a list of the personal actions that, if every citizen took them, would halt global warming in its tracks:

- Retire all gas vehicles immediately and replace them with electric vehicles, bikes, transit or another form of non-fossil transport
- Replace every gas appliance in a home (including furnace, water heater and stove) with an efficient electric version
- Power every home and car with 100% renewable electricity, either by installing solar panels or purchasing renewable energy from one’s utility
- Consider the greenhouse gas emissions associated with every purchase decision and choose “low-carbon” products and services whenever possible
- Reduce weekly consumption of meat and animal products, a move which has significant ancillary health benefits.

## GOVERNMENT ACTION

At the local government level, climate action must focus on eliminating the use of two categories of fossil fuels: 1) gasoline and diesel fuel in vehicles, and 2) natural gas in home appliances. Given the 25-year expected life of a typical gas furnace, it is critical for the City to begin prohibiting the installation of new replacement gas furnaces and water heaters as soon as possible.

In considering the wide-reaching actions and change required to meet the City's proposed climate goals, researchers reviewed dozens of approaches employed by cities all over the world, including:

- A "5-minute city" approach to zoning implemented in Copenhagen, Denmark that drastically reduced vehicle miles traveled (VMT) and made the city more walkable
- A carbon fee on buildings recently implemented in New York City
- An announced plan to end the flow of natural gas in the City of Arcata, California and now being considered by Palo Alto.

After months of weighing each of the dozens of approaches, the CAP subcommittee identified three basic options for action: 1) a Bold Plan with 22 actions to be implemented over one year, 2) a Moderate Plan with 76 actions to be implemented over three years and 3) a Go Slow Plan with no specific actions other than to follow evolving state rules.

#### **PLAN CHANGES DUE TO COVID-19 PANDEMIC**

Shortly after the CAP subcommittee fleshed out the three different approaches to climate action described above, the world was gripped by the global pandemic of COVID-19. The pandemic has significantly affected the context in which this plan is presented, namely:

- The time and attention of City Council and staff has understandably shifted almost entirely to managing the health risks and economic consequences of the pandemic
- Almost overnight, the country has gone from enjoying robust economic growth to experiencing one of the starkest economic recessions in US history
- Due to the economic recession, the City's budget has shrunk dramatically, with a 2020-21 shortfall of \$12.7 million expected as of mid May 2020
- Layoffs of dozens of City staff are expected as a result of the City's budget shortfall
- City commissions, including the Environmental Quality Commission (EQC), have been unable to meet for 4 months, which means the CAP subcommittee has been delayed in vetting the CAP with the EQC

Despite disrupted City operations, the CAP subcommittee continued refining the Climate Action Plan and vetting it with the City Council's CAP subcommittee (distinct from the EQC's CAP subcommittee) to receive their input on what might be politically viable in Menlo Park. The result of that continued work is a significantly pared down plan, presented below. While the CAP subcommittee still believes that the original Bold or Moderate Plans (presented in Appendix B), with their 22 and 76 actions respectively, are in fact what the Climate Crisis requires, we have decided to propose a significantly pared down plan, with the thought that some action is better than no action. This plan includes only the highest impact actions. This does not mean it is the best plan. It means it is only a good subset of the best plan and future efforts should be made to expand it as our ability and the wisdom of doing so becomes ever more apparent.

# THE PLAN

Action	#	Description	2030 GHG Reduction (tons/yr)	Est. Staff Time Req'd (hrs)	Est. Cost to City
Convert 100% of existing buildings to all-electric by 2030	1	Two basic options: 1) Announce the “end of flow” of natural gas in the City by 2030 <b>OR</b> 2) Enact a “burn-out ordinance” requiring that when gas appliances expire, they must be replaced by electric (preferably high efficiency heat pump) alternatives; phase in for large commercial, small commercial, residential; may require follow-on compliance ordinance as current permit compliance for residential gas appliances is low; will require follow-up “cash-for-clunkers” program to achieve 2030 goal; relies on PCE subsidies to reduce or eliminate cost differential; may require use of UUT funds to cover additional cost differential for low-income residents. Extend burnout ordinance to expiring air conditioners, to be replaced with heat pumps, eliminating need for separate gas heating.	1) 86,465 <b>OR</b> 2) 51,636	1,000 <b>OR</b> 1,500 (TBD)	TBD
Set citywide goals for increasing EVs and decreasing gasoline sales	2	Announce and promote citywide goals of 1) making all new vehicles be electric by 2025 and 2) reducing gasoline sales each year by 10%, based on the total reported in 2018. Track progress on both goals publicly on a monthly basis.	7,120	150 (TBD)	TBD
Expand access to EV charging	3	Install or assist building owners in installing EV chargers throughout the City, siting them preferably where they will be used during daylight hours (when solar electricity is abundant on our grid) and also where residents of multi-family housing can access them	7,370	2,000 (TBD)	TBD
Reduce vehicle miles traveled (VMT) by 25% or an amount recommended by the Complete Streets Commission	4	Reduce VMT, especially by gasoline vehicles, through a two-pronged approach: 1) Change zoning to encourage higher density (esp. for housing) near transit 2) Make the City easier to navigate without a car by accelerating implementation of the Transportation Master Plan with an emphasis on developing a clear network of protected pedestrian/bike paths throughout town	31,743	6,000 (TBD)	TBD
Eliminate the use of fossil fuels from municipal operations	5	Replace 100% of the following municipal assets with efficient electric substitutes for: 1) Gas pool heating equipment 2) Gas and diesel municipal fleet vehicles 3) Gas furnaces 4) Gas hot water heaters 5) Gas-powered gardening equipment	879	1,000 (TBD)	TBD
By July 2021, develop a climate adaptation plan to protect the community from sea level rise and flooding	6	By July 2021, develop a climate adaptation plan focused on protecting areas of the community vulnerable to sea level rise and flooding, as forecasted by the National Oceanic and Atmospheric Administration (NOAA) and California State agencies. Consider requiring developers to fund efforts to protect the community.	0	2,000 (TBD)	TBD
		<b>TOTAL</b> (assumes option 2 is chosen in action #1)	<b>98,748</b>	<b>12,650</b>	<b>TBD</b>

You will notice that the plan, as presented, falls well short of the goal of reducing our greenhouse gas emissions by 249,447 tons/yr by 2030. In fact, the plan only addresses 40% of the sought-after reductions. This simplified 6-action plan is significantly scaled back from the more comprehensive plans envisioned before COVID-19 struck, a compromise the CAP subcommittee felt was warranted, given the City's projected budget short-falls. The CAP subcommittee hopes that market momentum in the EV sector will make a significant contribution to the reduction of Menlo Park's greenhouse gas emissions, an effect not accounted for here. **The Environmental Quality Commission expects the significantly truncated six-action plan presented above to be completed within one year and strongly advises City Council to revisit the original, more comprehensive plan in July 2021, so that as the economy improves, those actions can be reincorporated into the plan.**

### **NATURAL GAS PHASE OUT**

Ending the use of natural gas has multiple benefits, including the avoidance of failures in gas system operations, such as the one that destroyed homes and caused death in Brookline, Massachusetts in 2018 and the one that did even greater harm in San Bruno, California in 2010.

The normal operation of gas appliances in buildings has also been found to cause indoor air pollution that would be illegal outdoors due to its negative health impacts, according to a recent study from UCLA.<sup>6</sup> That study links chronic exposure to the NO<sub>2</sub> emitted from gas stoves to a range of health ailments, including: asthma, lung inflammation, increased risk of respiratory infection, lung and breast cancer and low birth weight in babies. Doctors in a January article in the *New England Journal of Medicine* wrote the following, "As physicians deeply concerned about climate change and pollution and their consequences, we consider expansion of the natural gas infrastructure to be a grave hazard to human health." They continued, "We also recommend that new residential or commercial gas hookups not be permitted, new gas appliances be removed from the market, further gas exploration on federal lands be banned, and all

new or planned construction of gas infrastructure be halted."<sup>7</sup> It is therefore within the City's normal powers, which are aimed at protecting the health and safety of its citizens, to seriously consider announcing the "End of Flow" (EOF) of natural gas.

This is similar to an approach proposed in the City of Arcata, California whereby the City would explore and pass an ordinance that sets an end date, for example 7/4/2030, for the flow of natural gas to all gas customers within the City limits. This sets a date certain by which community members would want to make any needed electrification updates to their homes for water heating, cooking and space heating. The City could then either stand back and let community members educate themselves on choices that would work for them, or the City could be an active partner to interested citizens, perhaps leading a helpful bulk buying program for: water heaters, heat pump HVAC units, EV chargers and installation services, or performing other joint effort transformation activities. There is already a local model for city-led bulk buying called Sunshares, which performs bulk buying for home solar systems and electric vehicles. While the idea of city-led bulk buying may sound new and different at first, we should realize that the City of Menlo Park already performs bulk buying of commodities and services for its citizens and businesses, including water supply, public safety services, street tree maintenance, roads and sidewalks, etc.

### **SOURCES OF FUNDS**

Some of the six proposed actions can most likely be implemented by existing staff. The City's Sustainability staff should have the capacity to take on responsibility for actions #1, #2 and #3, perhaps with extra support from a contractor.

Action #4 will require the unfreezing of two positions that were requested by the Transportation Department but not funded as part of the 2020-21 budgeting process. Those staff would be dedicated to accelerating the implementation of the Transportation Master Plan and continuing the development of a clear network of protected pedestrian/bike paths throughout town in an effort to meet the City's VMT reduction goals.

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<sup>6</sup> UCLA Fielding School of Public Health, "Effects of Residential Gas Appliances on Indoor and Outdoor Air Quality and Public Health in California," April 2020, <https://coeh.ph.ucla.edu/effects-residential-gas-appliances-indoor-and-outdoor-air-quality-and-public-health-california>

<sup>7</sup> *New England Journal of Medicine*, "The False Promise of Natural Gas," Philip J. Landrigan, M.D., Howard Frumkin, M.D., Dr.P.H., and Brita E. Lundberg, M.D., <https://www.nejm.org/doi/full/10.1056/NEJMp1913663>

The remaining actions, including the land use aspects of action #4 and actions #5 and #6, would require additional funding from the City's General Fund. Those funds would support additional capacity across a number of departments, including: Public Works, Community Development, Planning and Legal. Other than the General Fund, there are two other potential sources of funds:

- 1) the \$400,000 presented in the 2020-21 Capital Improvement Plan (CIP) as earmarked for implementation of the Climate Action Plan and
- 2) issuing debt or borrowing money<sup>8</sup>.

Saving our community for future generations seems like one of the most prudent uses of borrowed funds ones can imagine. Conversely, if we wait until extra City revenue is available to fund climate action, we will most certainly lose the climate fight.

There will be additional capital expenditures incurred as part of the Climate Action Plan, as well, including:

- Investment in EV charging infrastructure
- Street improvements related to the TMP implementation
- Investment in electric replacements for municipal gas and diesel assets

If funds for these capital expenditures have not already been allocated in the City's Capital Improvement Plan (CIP), an amendment would need to be made to the CIP for that purpose. The EQC's CAP subcommittee recommends **against** using funds currently earmarked in the CIP for climate action to pay for municipal greening projects. Such projects are good candidates for outside financing or borrowing, whereas the CAP funds in the CIP should be focused on high impact activities to reduce community-wide greenhouse gas reductions, such as policy development, programs, incentives, education and marketing.

## PLAN METRICS

Climate Action Plans have a poor history of being effectively implemented and one reason for that is that progress is typically only measured every five

years and with staff turnover, well intentioned plans can go unexamined for years. In order to avoid such an outcome, the CAP subcommittee recommends that a short list of concrete metrics be adopted and that the City Council request quarterly, if not monthly, updates on those metrics.

Key metrics to track include:

1. Number of gas hot water heaters citywide that are replaced with electric versions (data source: Menlo Park Building Department)
2. Number of gas furnaces citywide that are replaced with electric versions (data source: Menlo Park Building Department)
3. Number of utility natural gas accounts terminated (data source: Peninsula Clean Energy or PG&E)
4. Number of new cars registered that are gas vs. EV (data source: DMV)
5. Number of total cars registered that are gas vs. EV (data source: DMV)
6. Gallons of gasoline sold in Menlo Park (data source: City sales tax reports)
7. Percentage of municipal assets converted from gas or diesel to electric (data source: Menlo Park Public Works Department)
8. Vehicle miles traveled, including trips inbound, outbound and within the City (Google Environmental Insights Explorer)
9. Number of other cities that query and/or copy Menlo Park's climate policies and programs (data source: outreach efforts and research by Menlo Park Sustainability staff)

While Sustainability staff and members of the CAP subcommittee question the value of conducting frequent high level greenhouse gas inventories, we do all agree that measurement is important and believe that tracking the specific items listed above will help staff and Council gain insight into the effectiveness of the climate actions that the City decides to undertake. County efforts to measure greenhouse gas emissions are expected to continue and will hopefully reflect progress made by cities within the County.

## METHOD FOR EVALUATING ACTIONS

The six actions detailed above were selected from over 76 actions included in the original Bold and

in order to continue disbursements,  
<https://www.nytimes.com/2020/06/10/business/ford-foundation-bonds-coronavirus.html>.

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<sup>8</sup> An interesting model for borrowing against existing financial assets (such as the City's reserves) has been employed during the COVID recession by leading charitable Foundations who are borrowing at low interest rates against their endowments

Moderate Plans, because they offer the City the most potential for Greenhouse Gas Reductions per dollar spent.

Dozens of potential climate actions were considered. Actions took many forms, including: city ordinances, city directives, programs and collaborations. Each action was evaluated for the following key criteria:

- Potential to reduce greenhouse gas (GHG) emissions
- City staff resources required to implement
- City cost to implement
- Out-of-pocket expenses for community members to implement (lifecycle economics for user)
- Political feasibility
- Potential for replication by other cities

The cost estimates above should be viewed as preliminary, requiring further thorough analysis by City staff prior to policy adoption.

### THE TRUE COST OF CARBON

As mentioned above, there is in fact a societal cost to burning fossil fuels, sometimes referred to as the “cost of carbon.” There are debates today over how best to calculate that cost. Some say it should be based on the damages caused by those emissions. Others say it should be based on the cost to remove those carbon emissions from the atmosphere, once that becomes possible. In the absence of a global consensus, the EQC’s CAP subcommittee attempted to estimate the cost of carbon to Menlo Park by taking the projected losses from sea level rise in our city alone, \$1.3 billion, and dividing that by the tons of CO<sub>2</sub>e we expect to emit over the next 40 years in a business as usual situation. Using this simple methodology, we arrived at a “cost of carbon” of \$130/ton for Menlo Park.

There are a number of ways the City could use this figure. We could consider levying a tax of \$130/ton on fossil fuels, in order to cover future damages the City will incur, in essence internalizing the externalized “cost of carbon.” Another way to use this figure would be for the City to factor it in to all decisions concerning assets in the City that consume fossil fuels, for example in calculating the true cost to the City of a gasoline-powered police car or the true cost to citizens of a gas furnace.

### NOTE ON LEADERSHIP

Saving our City from sea level rise will require collective global action, which Menlo Park can likely only influence through bold leadership. In evaluating the relative effectiveness of various climate actions, the CAP subcommittee noted the significant impact that replicability and demonstration of feasibility of a policy or program had on its potential to generate emissions reductions. If other cities can easily copy a policy or program, it is likely to **catalyze emissions reductions many times greater** than our City’s emissions reductions alone. Therefore, it is strongly advised that City staff favor simplicity and replicability in its design of climate policies and programs and it is further advised that the City invest resources in proactively sharing its climate policies and programs with other cities, counties and government entities.

We must also be nimble and ready to act on economic stimulus opportunities that may present themselves, as the Country attempts to pull itself out of a recession.

### NOTE ON UTILITY PARTNERS

An analysis of community member economics for each action revealed that rebates can make or break the economics behind purchasing decisions for equipment like electric vehicles and electric heat pumps for space and water heating, all of which are essential for progress on climate action. The City can greatly increase the political feasibility of many climate actions included in this plan by calling on its local Community Choice Energy (CCE) provider to rapidly deploy the significant capital currently held on its balance sheet to fund rebates on electric replacements of gas appliances. Such rebates can make climate friendly replacements cost effective and that enables city councils like ours to pass ordinances requiring such replacements. In turn, the new electric devices generate net revenue that rebuilds the CCE’s financial reserves.

To this end, Peninsula Clean Energy’s board recently signaled its support for local cities’ efforts to electrify, voting on May 28, 2020 to invest \$6 million to electrify existing buildings in San Mateo County. This program will reportedly include substantial incentives for: 1) the installation of electric heat pump water heaters, 2) upgrades to electric service panels so they can handle the increased electric demands of all-electric homes, and 3) whole-home electric conversions for low income residents. Such programs are a promising



signal that local CCEs intend to help ease the financial burden of converting homes from natural gas to all-electric, since it is not only essential for fighting climate change but also in their long-term financial interest to do so.

#### **NOTE ON EQUITY**

Climate change does not affect all members of society equally. Tragically it disproportionately affects low income people and people of color, as evidenced right here in Menlo Park, where sea level rise is expected to have a devastating impact on residents of our Belle Haven neighborhood. A similar pattern is observed all over the globe, where poor island nations are becoming the first to be wiped off the globe. Climate justice advocate Hop Hopkins illustrates the connection between climate change and racism by explaining how allowing climate change to occur requires that we accept that portions of our local and global communities are “sacrifice zones, and you can’t have sacrifice zones without disposable people, and you can’t have disposable people without racism.”

Meanwhile wealthier segments of society go on emitting greenhouse gases at ten times the rate of poorer segments, unwilling to make even small changes to their purchasing decisions. The COVID crisis has shed a light on the shocking inequity in health outcomes for people of color, some of which can be attributed to well documented racial disparities in exposure to air pollution from fossil fuels. Menlo Park must ask itself whether it wishes to continue contributing to this global and local inequity, or whether it can strongly prioritize leadership in solving these interconnected problems.

Finally, although Menlo Park is situated in one of the wealthiest Counties in the country, that wealth is not equally distributed and some residents may find it difficult to afford at least the capital outlay for the changes recommended in this plan. To address issues of equity, there are a number of options for ensuring that low-income residents have the financial support they need to make the required changes to their homes and vehicles. Both the State and local CCEs have shown a willingness to provide financial subsidies specifically targeted at low income residents. Peninsula Clean Energy recently set aside \$2 million, out of a \$6 million program, just to assist low-income residents with all-electric retrofits of their homes. If the City wishes to further bolster that support, it could consider allowing the Utility

User’s Tax (UUT) on natural gas sales to increase from its current 1% level to the existing voter-approved level of 3.5%. That would provide an estimated \$500,000 in additional funding every year to low-income families converting gas appliances to all-electric. The City must take an active role in ensuring that low-income residents are not unfairly disadvantaged by the requirements of its Climate Action Plan.

#### **ANOTHER NOTE ON COVID-19**

Lastly, this Climate Action Plan is being presented to City leaders in the midst of a generation-defining event, namely the global COVID-19 pandemic. It is understandable and appropriate that City leaders would devote their immediate attention to protecting the health and wellbeing of our community, as we fight this deadly virus.

As the health emergency wanes, however, the CAP subcommittee hopes that Council members will view the proposed Climate Action Plan as an opportunity for Menlo Park. COVID-19 has jolted us all out of our routines and everyday existence, highlighting in a graphic way our vulnerability as a species. Climate change has the potential to do the same, only on an even greater scale. If we are able to take in the lessons presented to us by this current crisis, we will be better prepared to address the climate crisis that is coming. For example, we should ask ourselves: Do we want to be like South Korea and flatten the carbon “curve” by proactively investing in mitigating the carbon dioxide “contagion”? Or will we delay, like Italy, and only take decisive action once the problem has ballooned? Is it still acceptable to stand by and watch one window of opportunity after another close before our eyes, leaving us with a much larger problem, the only response to which threatens to destroy our economy? Can we accept that this problem, like COVID, will ravage poor communities and people of color? The choice is ours. How will we act?

This Climate Action Plan presents us with economic opportunities as well. If enacted, this plan will jumpstart a new local market in electric appliance installation, injecting money into the economy and providing hundreds of new jobs, just when they are needed.

Finally, as medical professionals learn more about the adverse health impacts of burning fossil fuels in our homes, the Climate Action Plan offers Menlo Park an opportunity to set a new standard for

health and safety in our homes and places of work  
by removing fossil fuels from our air completely.

Our future is in our hands. It is time to act.

# APPENDIX A

## ORIGINAL PLAN OPTIONS – BOLD, MODERATE AND GO SLOW

Dr. John Holdren, scientific advisor to President Obama, advised that humans have three basic choices when it comes to climate change: 1) mitigate the problem by reducing our emissions, 2) adapt to the problem and try to move out of harm's

way, or 3) suffer. What every civic leader must do today is pick the mix of those three options that they are willing to bring to their communities.

A summary of the benefits and drawbacks of each plan, from a City official's perspective, is offered below.

Bold Plan	Moderate Plan	Go Slow Plan
<ul style="list-style-type: none"> <li>• A few bold actions</li> <li>• One-year implementation</li> <li>• Achieves goal of Zero by 2030</li> <li>• Less \$ now (staff resources)</li> <li>• Less \$ later (lower sea walls)</li> <li>• Subject to opposition</li> <li>• Less human suffering</li> <li>• Regional leadership role</li> </ul>	<ul style="list-style-type: none"> <li>• Many moderate actions</li> <li>• Three-year implementation</li> <li>• Makes progress toward goal of Zero by 2030</li> <li>• More \$ now (staff resources)</li> <li>• Some \$ later (sea walls)</li> <li>• Subject to some opposition</li> <li>• Some human suffering</li> <li>• Regional leadership role</li> </ul>	<ul style="list-style-type: none"> <li>• No proactive actions</li> <li>• No specific implementation time</li> <li>• Falls well short of Zero by 2030 goal</li> <li>• Less \$ now (staff resources)</li> <li>• More \$ later (high sea walls)</li> <li>• Subject to some opposition</li> <li>• More human suffering</li> <li>• No regional leadership role</li> </ul>

### THE MODERATE PLAN

The Moderate Plan is a set of 60+ actions (Appendix B), implemented over 3 years, that involve working with the community (residents, businesses and commuters) to assist and compel them to change, while simultaneously working with other cities, the County, the State and utilities to make such change easier. This would be accomplished by changing laws, capabilities and economics in a way that transforms standard practice, similar to the way that our all-electric Reach Codes are transforming standard practice in new construction. Menlo Park is gaining credibility in this area and therefore has a reasonable chance of catalyzing regional change through bold leadership and knowledge sharing.

The Moderate Plan would also seek an expanded vision and commitment from Community Choice Energy providers (CCEs), who will reap considerable benefit in the form of increased net revenue from electrification, just as oil companies will see diminishing revenue. According to this plan, the CCEs would be advised to rapidly deploy their net revenue, in order to quickly transform the market to support building electrification.

The Moderate Plan is the most time-intensive option of those presented, with significant staff resources deployed in the next three years to pass incremental ordinances that will drive needed behavior change. **Sustainability staff currently estimate that implementing the Moderate Plan would require approximately 6 incremental full time equivalent (FTE) staff for the first year and a similar or smaller number in the remaining two years included in the plan.** These incremental staff resources could be hired as consultants and would not be needed past the 3-year term of the plan.

While the action-intensive approach of the Moderate Plan may seem cumbersome, the CAP subcommittee suspects that the public requires incremental education and a piecemeal approach to rule changes, in order to have time to adjust to change. As such, the Moderate Plan also includes significant public outreach and education efforts to assist the public and businesses in understanding the benefits of mutual cooperation.

Finally, the Moderate Plan by itself would not guarantee that the City would reach its proposed climate goal of Zero emissions by 2030. Instead,

this plan would put us on a path to achieve that goal in a later year or, alternatively, could be seen as laying the groundwork for implementation of additional measures, such as those outlined in the Bold Plan, starting in year 4 of climate action when the public may be more receptive to bolder action.

### **THE BOLD PLAN**

The Bold Plan is much simpler (Appendix B) in that it involves far fewer actions and therefore fewer staff resources to implement. It also has the advantage of nearly guaranteeing achievement of the City's climate goals. It achieves this primarily by announcing to the community that the City will stop the flow of natural gas (a potent greenhouse gas) and restrict the use of gasoline vehicles within City limits by a certain date in the future, possibly by the year 2030. This approach gives community members time to make the needed adjustments to their homes and transportation, all of which are perfectly feasible, within an announced 10-year timeframe.

As for the elimination of gasoline and diesel (GAD) fuels from Menlo Park vehicles, the Bold Plan could include a normal health-and-safety powers type ordinance, requiring the phasing out of underground fuel tanks by 7/4/2030, for example. Any businesses that used underground fuel storage tanks would need to remove them for certain by that date. If climate preservation is being seriously pursued in the next decade and automobile makers follow their plans for electric vehicle production, there will be much lower need for GAD stations left in our area and those that remain will be selling a fraction of the volume of gasoline that they do now. This could mean that, regardless of which climate plan the City pursues, the number of local gasoline stations is likely to drop significantly within the next decade from the current 12 to as few as six. Some locations could be repurposed as EV charging stations with amenities such as a coffee shop, convenience store or car wash.

Another approach to eliminating GAD fuels would be for the City to pass a number of ordinances that reduce the subsidies currently offered to GAD-powered cars and trucks. Some of the subsidies that could be reduced or eliminated for GAD vehicles include City-provided free parking in downtown lots and free parking on the side of public streets, a subsidy the City already limits overnight in Menlo Park. Both of these measures would encourage reductions in vehicle miles traveled (VMT) in the City, as well as conversions

to electric vehicles (EVs). These shifts would also offer residents the ancillary benefits of reduced traffic congestion and/or reduced air pollution.

### **THE GO SLOW PLAN**

The Go Slow Plan (GSP) would entail stepping back from climate leadership and following other entities, if and when they step forward to lead. The City would forgo the opportunity to carve out its own unique approach to problems, as we did with the recent Reach Codes, and would likely end up joining County efforts or copying other Cities' approaches. A Go Slow Plan would likely entail sitting quietly on the sidelines and following plans developed and offered by regional or state entities, as they emerge. The Go Slow Plan is by far the most risky of the plans in that it results in the highest likely damage cost to public and private property from sea level rise and would cause the most human suffering in vulnerable parts of our City. Gut-wrenching decisions will face City officials as they decide how much money to spend delaying the eventual loss of real estate valued at over \$1 billion along our Bay shoreline. One can imagine weighty decisions about what neighborhoods to save resulting in heated disagreement among residents that would tear at the fabric of our community.

Although the Go Slow Plan may look "easy" in the short term, due to the lower staffing requirements and the slower pace of change required now, this approach may in fact prove to be penny wise and pound foolish. In reality, a Go Slow approach simply hands a growing problem to a future City Council, who would have even less time and resources at their disposal to battle climate change and oversee adaptation on multiple fronts.

We understand from the worldwide scientific body, the Intergovernmental Panel on Climate Change (IPCC), that time is of the essence and that in order to have a meaningful impact on climate change, any mitigation efforts must start immediately. This would render the Go Slow Plan scientifically imprudent, leaving the City Council to choose between: a) implementing the Moderate Plan immediately and simultaneously exploring the Bold Plan for later implementation if needed, b) cutting to the chase and just pursuing the Bold Plan immediately or c) developing a plan they feel would perform better.

## Agenda item F1 Catherine Martineau, resident

July 10, 2020 Via email: city.council@menlopark.org

Dear Mayor Taylor, Vice Mayor Combs, and Councilmembers,

On June 24, on behalf of Canopy, Scott Marshall wrote to the members of the Environmental Quality Commission (EQC) and the Climate Action Plan (CAP) subcommittee, urging them to go much further in the CAP in recognizing the climate-change and other benefits of protecting and planting trees and increasing the city's tree canopy. Scott also spoke at the EQC meeting that was reviewing the draft CAP and, in particular, recommended incorporating an urban forest master plan into the CAP. Our requests were denied on grounds of budget and weighing down the path to carbon neutrality. This denial is short-sighted. Nature-based climate solutions are among the least costly climate strategies and offer a wealth of co-benefits. They should be fully integrated into the city's CAP.

The CAP is a long-term plan. Its bold goal is zero emissions by 2030. Although your time and the city staff's time and attention have necessarily shifted to addressing the health risks and economic consequences of the COVID-19 pandemic, the CAP should look beyond the current crisis. Moreover, the pandemic underscores the need for a robust tree canopy in every neighborhood. While we all stay closer to home, the green in our own neighborhoods matters more.

Trees play a direct role in combating climate change by sequestering carbon, combating the urban heat island effect, cooling buildings, and promoting walking and biking on city streets. A single tree can both store hundreds of pounds of carbon over its lifetime and reduce energy use by a home or business. Trees also remove pollutants from air and water, reduce stormwater runoff, provide habitat for wildlife, increase property values, muffle noise, create green spaces to enjoy, and improve public health--both physical and mental. Now is the perfect time to look to trees: they provide a low-cost strategy that comes with more co-benefits than any other.

One of the recommendations of the 2018-19 Heritage Tree Task Force was to develop an urban forest master plan. As far as we know, work on this recommendation has not started and, additionally, the implementation of the Heritage Tree Protection Ordinance update has been delayed. While Pandemic-related budgetary constraints and disruptions are understandable, it is worth noting that several surrounding communities, including Palo Alto and Mountain View, already have urban forest master plans. The CAP provides an opportunity for Menlo Park to ensure a consistent, coordinated, efficient approach to both climate change and urban forestry.

The six-step pared down plan leaves out nature-based climate solutions entirely. The June 2020 draft CAP includes Moderate and Bold Plans that mention "Carbon Removal" in their lists of actions. Under both, the city would research options for achieving 10% carbon removal. The Moderate Plan mentions trees through exploring a plan for reforestation with the Peninsula Open Space Trust or other partner, conducting an Arbor Day mass tree planting, and increasing the urban tree canopy in Belle Haven. These proposals do not go far enough. By comparison, Palo Alto's draft Sustainability and Climate Action Plan includes an express Natural Environment section with goals and key actions; Sacramento's Mayor's Commission on Climate Change Final Report includes specific Urban Greening and Forestry recommendations in its section on Community Health and Resiliency.

The CAP should include specific actions to gain all the advantages that nature-based climate-change solutions provide, such as:

- Prepare an urban forest master plan to measure the city's tree canopy cover, establish a baseline for carbon storage of the tree canopy, and address canopy inequities across the city.
- Increase the city-wide tree canopy to a specified percentage by 2030, to be determined in the urban forest master plan.
- Coordinate implementation of the urban forest master plan, heritage tree protection ordinance, parks and recreation and water systems facilities master plans, and other city-wide functions through interdepartmental collaboration of the City's sustainability leadership team.
- Ensure no net tree canopy loss for all private and public development and CIP projects.

On behalf of the Canopy board and advocacy committee, thank you for your consideration.

Warm regards,

Catherine Martineau  
Executive Director

Agenda item F1  
Ingrid Rogers, resident

I strongly support the action plan to phase out fossil gas use in homes & buildings of Menlo Park. I am also in favor of advancing the transition to electric vehicles and reducing traffic to make the City easier to navigate without a car. Every effort to eliminate the use of fossil fuels is important and imperative. Please adopt Resolution #6575.

Agenda item F1  
Pamela Sperli, resident

I fully support item #f-1 Menlo Park's proposal to go carbon neutral by 2030. Thanks to city council efforts to protect our future!

Agenda item F1  
Andrea Chan, resident

Thank you for your consideration and effort to adopt the 2030 climate action plan, I am very much for the City of Menlo Park showing the way.



Agenda item F1  
Michael Crager, resident

I am in favor of the climate action plan for Menlo Park to become carbon neutral by 2030. We need to stop watching the climate disaster unfold in slow motion and take drastic action now!

Agenda item F1  
Lee Crager, resident

I am in favor of Menlo Park adopting a plan to be carbon neutral by 2030. If adopted, I will feel proud to live in a city that is thinking about future generations.

Agenda item F1  
Ruedi Brunner, resident

I fully support Menlo Park in taking strong action today with the 2030 climate action plan, for a better tomorrow.

Agenda item F1  
Ken Rogers

I support the new 2030 Climate Action Plan.

## Agenda item F1 Adina Levin, resident

The Complete Streets Commission has taken a straw poll, and supports the recommendation with the following comments and additions

- 1) Many thanks to the EQC for moving this forward at a difficult time during the pandemic recession, because the climate crisis is not waiting.
- 2) Second, thank you for including VMT reduction as an important strategy, since transportation is the largest source of greenhouse gas emissions.

We support the strategies proposed by the EQC as follows:

Reduce vehicle miles traveled (VMT) by 25%: Reduce VMT, especially by gasoline vehicles, through a two-pronged approach: 1) Change zoning to encourage higher density (esp. for housing) near transit 2) Make the City easier to navigate without a car by accelerating implementation of the Transportation Master Plan with an emphasis on developing a clear network of protected pedestrian/bike paths throughout town

With regard to resources, the staff report recommends to "Explore in 2021 or 2022 after current projects for housing and transportation are completed"

There are staff positions to implement the transportation master plan and land use planning that are frozen in the current budget, that may need to be unfrozen in order to advance this measure. At the meeting where it approved the current budget, City Council members expressed a willingness to use up to a million dollars in reserves to advance goals that are expected to be coming forward, and they specifically referenced the Climate Action Plan. Therefore, we recommend that the Council unfreeze the needed positions in line with the Council's willingness to use reserves to advance the CAP.

3) There are two provisions relating to electric vehicles, which we support.

- a) Set citywide goals for increasing EVs and decreasing gasoline sales. Announce and promote citywide goals of 1) making all new vehicles be electric by 2025 and 2) reducing gasoline sales each year by 10%, based on the total reported in 2018. Track progress on both goals publicly on an annual monthly basis. For implementation, the plan proposes to "Influence regional agency to lead"
- b) Expand access to EV charging. Install or assist building owners in installing EV chargers throughout the City, siting them preferably where they will be used during daylight hours (when solar electricity is abundant on our grid) and also where residents of multi-family housing can access them  
Implementation via Sustainability Manager, Contract Analyst

Many thanks to the EQC. We urge the Council to approve the Climate Action Plan with funding to move forward.



## STAFF REPORT

### City Council

Meeting Date:

7/14/2020

Staff Report Number:

20-150-CC

Regular Business:

**Add institutionalized bias reform as a top priority for City staff in 2020-21 and provide input to staff on how to address police**

### Recommendation

Staff recommends the City Council add institutionalized bias reform as a top priority for City staff in 2020-21.

### Policy Issues

Menlo Park municipal code section 2.08 delegates daily operations of City services to the city manager. The City Council has received numerous requests to explore police reform, inequity in provision of City services, discriminatory zoning regulations among other forms of institutionalized discrimination against both residents and non-residents. While the concerns have overlap, they all require dedication of resources currently devoted to other services, projects or City Council top priorities.

### Background

The City Council's top priorities, based on action taken in 2019 and January 28 to update priorities based on Facebook's offer to build a new community center and library, include Transportation master plan, Chilco Street improvement project, Middle Avenue pedestrian and bicycle rail crossing planning, Heritage tree ordinance update, and the Belle Haven community center and library project. Before the COVID-19 pandemic local emergency, the City Council initiated its annual goal setting process; however, it was not concluded.

### Analysis

Staff seeks City Council direction on a new top priority project to improve the lives of residents and non-residents in Menlo Park when interacting with the City Council, senior leadership and employees. Options identified include:

#### Elevate the conversation on racial equity

Prior to the COVID-19 pandemic local emergency, the City Council initiated its annual goal setting process; however, it was not concluded. In that process the staff summarized the following actions to operationalize racial equity efforts identified by City Councilmembers and community members.

Elevate the conversation on racial equity:

- Year 1 – mandatory training all executive and management staff, City Council, city attorney
- Year 2 – mandatory training all commissioners, new City Councilmember(s), new executive and management staff members; operational equity self-assessment;
- Years 3-5 – continued training, process reengineering and organizational change.

As outlined above, the initial focus includes training and organizational equity self-assessment. The Government Alliance on Race and Equity (GARE) is one organization commonly referenced as a resource in this effort. An affiliate of GARE, Race Forward, recently launched a series of online training titled "Building Racial Equity." The program is in high demand, and training costs \$400 per registrant. Staff is attempting to obtain a quote for a dedicated Menlo Park training for City Council consideration.

### Police reform

As discussed in Attachment A, the City Council may consider prioritizing a police reform framework in response to lived experiences shared by community members, visitors, and tragic events in police departments outside of Menlo Park.

In addition to Attachment A, June 16, Vice Mayor Combs and City Councilmember Mueller requested the addition of the following items for the City Council agenda as soon as is practicable.

- A. For City Council consideration, direction to the City Management to agendize for City Council discussion and to report in detail on the City website, the Menlo Park Police Department's progress with goals identified in the 8cantwait campaign (Attachment B:)
  - Require de-escalation
  - Duty to intervene
  - Require warning before shooting
  - Exhaust all other means before shooting
  - Require comprehensive reporting
  - Ban chokeholds and strangleholds
  - Ban shooting at moving vehicles
  - Require use of force continuum
- B. For City Council consideration, direction to the city manager to draft a support letter to legislature on behalf of the City Council, for the Mayor's signature on behalf of the City Council, in support of California SB 1392 - Peace Officer Decertification (Sen. Bradford.) SB 1392 would create a statewide process to automatically revoke the certification of a peace officer following the conviction of certain serious crimes or termination from employment for cause or misconduct. (See SB 1392 Fact Sheet Attached, text of the Bill has been amended by the Author. A request has been made of current text for city council consideration.) Additionally, should the City Council support the text of the bill upon review, we would propose the City Council consider direction to the city manager for a letter from the City Council soliciting support for SB 1392 to other cities in San Mateo County.
- C. For City Council consideration and discussion, review of the policy concerning and restricting the use of rubber bullets by the Menlo Park police department.

### Institutionalized bias reform

Institutionalized bias is defined as "practices, scripts, or procedures that work to systematically give advantage to certain groups or agendas over others. Institutionalized bias is built into the fabric of institutions."<sup>1</sup> Often, the adverse impacts on those who are not advantaged by the biases are invisible to the individual inflicting the bias. For example, a generally accepted bias is providing residents with priority registration in library and community services classes. The extent to which other policies may not be acceptable is unknown at this time. The City does not have an anti-bias policy. Absent a policy that

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<sup>1</sup> Source: <https://www.britannica.com/topic/institutionalized-bias>

establishes a common language and metrics to measure compliance; there is limited ability to hold the City Council, senior leadership and employees accountable.

To affect long-lasting organizational change, staff recommends that the City Council designate institutionalized bias reform a top priority project for 2020-21. As a top priority, the city manager has the discretion to strategically realign resources to meet key milestones in the project plan. The realignment of resources may prolong the delivery of lower priority projects or impact public service levels. If approved, staff will develop a project plan that begins with an anti-bias policy and assess the resources required to identify institutionalized bias. Staff will seek City Council approval of the plan August 11. Staff will also work with the Interim police chief, once appointed, to develop a plan to assess institutionalized bias reform specific to Menlo Park's police department.

### **Impact on City Resources**

City Council direction on this item has not been budgeted and will require additional analysis to assess costs, both direct and indirect.

### **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. Staff report from Interim City Attorney Cara Silver: "City Council discussion and direction regarding City response and action to residents and visitors' requests for local police reform"
- B. Hyperlink – 8cantwait website: [8cantwait.org](http://8cantwait.org)

Report prepared by:  
Nick Pegueros, Assistant City Manager





## STAFF REPORT

**City Council**  
**Meeting Date:** 7/14/2020  
**Staff Report Number:** 20-151-CC

**Regular Business:** **City Council discussion and direction regarding City response and action to residents and visitors' requests for local police reform**

### Recommendation

Staff recommends the City Council provide direction to staff on which police reform activities to study and pursue with the Menlo Park police department (MPPD) and how to prioritize such initiatives.

### Policy Issues

This report follows up on a series of discussions the City Council has had related to residents and visitors' requests for local police reform.

### Background

The nation is in the midst of a public outcry for police reform since George Floyd was murdered by police in Minneapolis. Peaceful demonstrations have occurred throughout the country, including Menlo Park. Protestors are not simply asking for piecemeal or incremental reform among police departments. People are also asking for systemic changes. They want to reimagine policing.

On June 4, the Mayor and police chief conducted a Town Hall to answer community questions regarding policing practices. On June 18, the City of Menlo Park conducted a Town Hall and follow up City Council discussion on residents' concerns over local policing. Residents voiced concerns about overpolicing in Belle Haven, calls for reforms in policing and criminal justice, increased reporting of citizen complaints and use of force; reallocation of police officers; requests for racial and ethnic breakdown analysis of people arrested, warned or otherwise stopped; diversity recruitment and increased funding for education, homeless, mental health and other social services.

Staff believe these are critical public policy concerns to study and address with the MPPD and other relevant staff, and also acknowledge that meaningful engagement is substantially more challenging in light of the current public health crisis.

### Implementing new policies

In the past couple of years, the California legislature has adopted a few bills dealing with police reform. A summary of recent reform measures and MPPD's response to those measures is included in Attachment A. Key reform bills introduced this legislative session are also included in Attachment A.

Statewide legislation can be difficult to pass for several reasons. In California, police officers have protection under the Public Safety Officers Procedural Bill of Rights Act (POBR.)<sup>1</sup> POBR shields most police personnel records from public disclosure, imposes a regimented process for investigation police misconduct and imposing discipline and provides police officers with a civil cause of action against the City for POBR violations. That said, recent legislation SB 1421 (see Attachment A) now requires disclosure of some police personnel documents. Any local ordinances requiring disclosure of police personnel records must comply with State law.

Menlo Park police officers are represented by local police unions and officers' terms of employment are established by union contracts. If police reforms involve "wages, hours, and other terms and conditions of employment," the City must go through a negotiating process before imposing such reforms. On the other hand, some reforms, such as use-of-force policies fall outside the scope of representation and the City can impose new policies without negotiating with the police union.<sup>2</sup> New policies should be studied and discussed with the MPPD and other relevant staff members.

## Analysis

Policing and racial equity issues can require different approaches to community dialogue as many residents have indicated they fear retaliation and desire confidentiality. On the other hand, it is important to distinguish comments on local experiences from experiences with non-Menlo Park law enforcement. The MPPD publishes a year-end review showing the number of citizen complaints received as well as the number of internal affairs investigations the department has initiated on its own. (See Attachment B for the latest report covering 2019.) As part of the community's ongoing effort to learn more about institutional bias and racism, it is important to recognize that many complaints may go unreported. It is also important to study and learn what policies the MPPD is currently implementing to address these concerns and what further action should be explored and implemented. This dialogue is also challenging when traditional forums are unavailable due to social distancing protocols and staffing resources are limited. Finding the appropriate forums for conducting outreach will be a continuing process for the City. The City anticipates employing a series of approaches, including telephone town halls, facilitated conversations and community forums.

Continuing to receive feedback and involve the community in the planning stages is imperative. The City Council has also expressed a desire to develop a work plan that prioritizes actions. To assist in framing this policy discussion, staff has begun to categorize some of the suggestions heard to date into immediate, medium and longer-term action items.

The below list is not intended to be comprehensive, but illustrates the range of initiatives that could be discussed or explored.

### 1. Immediate action

- A. Recruit interim police chief to replace retiring Chief Bertini. It is hoped that the interim police chief will assist the City in studying and implementing some of the immediate and medium term initiatives.

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<sup>1</sup> POBR is codified at Government Code Section 3300 *et seq.*

<sup>2</sup> *San Francisco Police Officers' Association v. San Francisco Police Commission* (2018) 27 Cal.App.5th 676. However, the City may be required to meet and confer over any negotiable impacts or effects of the policy change identified by the union.

- B. Retain police reform consultant to assist City staff and interim chief in reviewing and implementing overall reforms. This may also include specialized outside legal services.
  - C. Cancel the order for the mobile operation command center vehicle. The City Council directed staff to take this action June 23 and MPPD is in the process of completing.
  - D. Mayor and City Council to endorse the Obama Foundation Mayor's Pledge. This pledge was created by the Obama Foundation. It asks mayors and city councils to promise to review their police department policies and make reforms if needed after getting feedback from the community. The Mayor's Pledge calls for the following steps:
    - 1. REVIEW your police use of force policies.
    - 2. ENGAGE your communities by including a diverse range of input, experiences and stories in your review.
    - 3. REPORT the findings of your review to your community and seek feedback.
    - 4. REFORM your community's police use of force policies.
  - E. Disclose and describe how police department policies address the recommendations of "Eight Can't Wait."
  - F. Increase frequency of racial and cultural diversity training. MPPD currently participates in bi-annual racial and cultural diversity training through POST.
2. Medium term actions (July – September 2020)
- A. Begin recruitment for permanent police chief.
  - B. Meet with community stakeholders regarding concerns, objectives and future community engagement.
  - C. Based on feedback received in these meetings and feedback received regarding other community forums, develop additional listening opportunities for City Council and staff to hear from residents their concerns about racism and policing and alternative service delivery models.
  - D. Analyze mutual aid issues.
  - E. Refine use of force policy language in advance of state law which will become effective January 2021. MPPD has already updated Policy 300 to conform to law, but additional updates may be explored.
  - F. Increase information easily available to the public on police use of force, complaints against officers, and demographic reporting on both consensual encounters as well as all stops, detentions and arrests. New State legislation that goes into effect as to smaller cities, such as Menlo Park, in 2023 will require extensive reporting designed to address racial profiling. MPPD has begun to implement this new legislation. (See Attachment A for summary of legislation and Attachment C for list of reporting requirements.)
  - G. Explore re-allocation of some or all of the Facebook development agreement funds designated for "safety" toward other uses. Attachment D contains an audit of the safety funds used to date as requested by the Mayor and City Council.
  - H. Explore additional ways to make the Neighborhood Services Center more accessible for community policing.
3. Longer term additional action (October 2020 and beyond)
- A. Consider establishing an independent policy advisory commission and adopt implementing ordinance. The city manager and interim city attorney have had discussions with the National Association for Civilian Oversight of Law Enforcement (NACOLE), a nonprofit organization that works to enhance accountability and transparency in policing and build community trust through civilian oversight. NACOLE's FAQ's on civilian oversight commissions is included as Attachment E. Also, a survey conducted by NACOLE of different types of existing oversight commissions and models is included as Attachment F. Note many oversight boards are structured to review police misconduct and recent reform advocates have emphasized the need to also focus on preventing

- misconduct through review of policies and other actions (Attachment G.)
- B. Explore available models for re-allocating police resources toward social services, such as Eugene, Oregon's CAHOOTS (Crisis Assistance Helping out on the Streets) program, where a duo of a mental health professional and a medic respond to help people in mental crisis situations.
  - C. Explore models for re-organizing the police department as a public safety department, such as Sunnyvale and Rhonert Park's combined police, fire and EMT department where officers rotate duties.
  - D. In developing modifications to the fiscal year 2020/21 City budget consider allocating resources to support racial, education, housing and health and safety equity across the city. These efforts would also strengthen the City's commitment to diversity, equity and inclusion within the City organization and in the provision of City services.

### **Impact on City Resources**

There have been significant financial impacts resulting from the federal, state and local emergencies, both in terms of revenue losses and additional expenditures.

### **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. Summary of recent police reform legislation and MPPD's response
- B. MPPD's 2019 year-end review
- C. RIPA reporting requirements
- D. Audit of Facebook development agreement safety funds
- E. NACOLE's FAQ's on independent oversight commissions
- F. NACOLE's survey of independent oversight commission models
- G. Hyperlink – [cnn.com/2020/06/25/us/police-reform-civilian-oversight-invs/index.html](https://www.cnn.com/2020/06/25/us/police-reform-civilian-oversight-invs/index.html)

Report prepared by:

Nick Pegueros, Assistant City Manager

Dave Bertini, Police Chief

Cara Silver, Interim City Attorney

## Summary of Recently Enacted and Currently Pending Police Reform Legislation

Updated July 1, 2020

### Recent Police Legislation

The State legislature has passed several recent bills pertaining to police reform. Below is a summary of the key legislation and MPPD's response if applicable.

#### Use of Force

On August 19, 2019, Governor Newsom signed AB 392 which redefines the circumstances under which the use of lethal force by a peace officer is considered justifiable. The law is intended to encourage law enforcement to increasingly rely on alternative methods such as less-lethal force or de-escalation techniques. Under the new law, lethal force by a peace officer is only justifiable "when necessary in defense of human life." This law went into effect on January 1, 2020. While generally viewed as positive reform, some criticize this legislation as not adequately defining "defense of human life."

MPPD updated Policy 300 "Use of Force" in January 2020.

On September 12, 2019, the Governor signed SB 230 which requires law enforcement agencies to have a policy regarding a minimum standard for peace officer use of force. Each agency's policy shall include, among other things: the use of de-escalation techniques and other alternatives to force; when to apply deadly force; factors for reporting, evaluating, and reviewing all use-of-force incidents; and when officers may draw a firearm.

Under the new law, agencies must implement their use-of-force policies by January 1, 2021 as well as make them accessible to the public. MPPD has made Policy 300 "Use of Force" available on the City's website and is currently implementing in advance of the 2021 timeframe.

#### Training

AB 392 requires the Commission on Peace Officer Standards and Training (POST) to implement courses for the regular and periodic training of law enforcement officers in the use of force. The new law also requires the Commission to develop uniform, minimum guidelines that law enforcement agencies can use to develop their own use of force policies as required above.

MPPD's police officers participate in all required POST trainings and the department has developed its own series of briefings training.

#### Internal Affairs Investigations

The personnel files of public entity employees are confidential under California law. For police officers, personnel information and internal affairs (IA) investigations are protected from disclosure under State law<sup>1</sup> and only disclosable through mandated motion procedure in a civil or criminal case. Recently, there have been several reforms in this area making certain types of records disclosable in response to a Public Records Act request. The most significant is SB

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<sup>1</sup> The Public Safety Officers Procedural Bill of Rights Act is codified at Government Code 8300 *et seq.*

1421 (effective January 1, 2019) which requires disclosure of three different categories of officer misconduct:

- Officer-involved shootings and certain uses of force;
- Sustained findings of sexual assault by officer; and
- Sustained findings of certain types of dishonesty.

Following passage of SB 1421, the City received numerous media requests and requests from residents for this information. The City Attorney's Office prepared the responsive records (i.e. redacted personnel information of victims and witnesses) and disclosed the records, which included two officer involved shootings, which occurred in 2006 and 2014, one use of force involving a bean bag gun that occurred in 2017, and one IA investigation concerning an officer's investigation report.

MPPD discloses the number of citizen complaints and internal affairs conducted each year in its year-end review forwarded to the Council. (The latest report is included as Attachment B.) MPPD is not large enough to have its own IA department, although every sergeant and command staff member is trained in conducting internal affairs investigations along with Skelly and POBR. The Administrative Sergeant is assigned to conduct IAs. Most of MPPD's IA investigations are conducted internally, although for larger investigations MPPD has used an outside law firm (Liebert Cassidy Whitmore) and an outside investigator (Bradley Zook, retired Palo Alto Police Department Captain) with special IA training. Under the police union memorandum of understanding with the City, police officers are entitled to appeal termination or discipline to "binding arbitration." Advocates of police reform criticize "binding arbitration" provisions as they have traditionally resulted in the overturning or reduction of discipline. However, because these provisions are contained in existing union contracts, they are difficult to remove.

### Racial Profiling Data

In 2015, AB 953 (The Racial and Identity Profiling Act sometimes referred to as RIPA) was passed. In addition to requiring the collection of data regarding citizen complaints that allege racial or identity profiling, AB 953 requires all law enforcement agencies in California to collect perceived demographic<sup>2</sup> and other detailed data regarding pedestrian and traffic stops. A reporting template is included in Attachment C. Large police departments (called Wave 1 agencies) began reporting requirements in July 2018. Smaller agencies (including Menlo Park) do not start reporting until 2023, the practical reason being that California is attempting to test the record keeping software and perfect it before full implementation. The current reporting requirements are quite cumbersome and it is hoped that the Wave 1 agencies will devise more streamlined procedures that will assist smaller agencies. It is important to note that the current RIPA law only mandates demographic reporting of police arrests or detentions/citations. The reporting does not apply to "consensual" encounters.<sup>3</sup> Some of the community concern voiced

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<sup>2</sup> The legislation requires officers to record "perceived" demographic data, including race/ethnicity, in an effort to address racial profiling. As driver licenses do not contain race/ethnicity, this legislation relies on officers' ability to "perceive" race/ethnicity.

<sup>3</sup> There are three types of police/citizen encounters: (1) Consensual encounters which do not require reasonable suspicion or probable cause as long as a reasonable person would feel free to leave or decline to speak with the police; (2) investigatory detentions which authorize the police to briefly detain a

at town halls related to consensual encounter which would not be covered by the new RIPA legislation.

In anticipation of this reporting requirement, the MPPD has established an internal RIPA committee in January of 2020, with members from all levels of the organization to explore the process for accomplishing these new requirements. A special module in the Computer Aided Dispatch (CAD) and Records Information Management System (RIMS) was purchased to collect this data. The committee is also exploring the manner in which larger departments are collecting this “real-time” data from officers who are not assigned to a patrol vehicle which have installed mobile computers (motorcycle officers, detectives, etc). The department was in the process of beta testing the process starting in July of 2021 (1.5 years prior to the legal mandate), but are now exploring beginning the data collection as soon as January 2021.

AB 953 also mandated that the state create the Racial Identity and Profiling (RIPA) Board, to provide public reports with the objective of eliminating racial and identity profiling and improving diversity and racial and identity sensitivity in law enforcement. As mandated by law, each year, California’s RIPA Board must produce a report on the past and current status of racial and identity profiling with policy recommendations for eliminating it. The first report was issued in 2020 using 2018 data.<sup>4</sup> More information on AB 953 is here: <https://oag.ca.gov/ab953>. Since Menlo Park’s reporting requirement does not occur until 2023, these reports do not contain Menlo-Park specific data.

### **Pending State Legislation**

State Sen. Steven Bradford, D-Gardena, introduced SB 731, which would create a process for the state to decertify law enforcement officers convicted of certain crimes or terminated for misconduct. Currently, California is one of five states without some form of de-certification process for crimes and serious misconduct. The City Attorney’s Office is monitoring this legislation.

AB 1299 would require law enforcement agencies to complete misconduct investigations of their officers and notify the state’s Commission on Peace Officer Standards and Training so the findings can be reviewed by any department that next hires the police officer. Specifically, it is designed to address a “loophole” where the officer voluntarily resigns to avoid an unfavorable investigation finding. Under the proposed legislation, misconduct includes complaints that would likely result in the termination, demotion or suspension of an officer for 30 days or more, if the charges were sustained. The City Attorney’s Office is monitoring this legislation.

Sen. Nancy Skinner, D-Berkeley, the author of SB 1421, continues to work to broaden and revise the 2018 law, discussed above. The City Attorney’s Office is monitoring this legislation.

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person for further investigation where the officer has reasonable suspicion to believe the person stopped is involved in criminal activity; and (3) an arrest which must be supported by probable cause.

<sup>4</sup> The records include data on the demographic information of the stopped individuals as perceived by the officer. The demographic information includes race/ethnicity, gender, LGBT identity, age, disability status, and English fluency, as well as a range of descriptive information designed to provide context for the reason for the stop, what occurred during the stop, and the resolution of the stop. The purpose of collecting this data is to attempt to systematically document and analyze detentions and/or searches of all individuals to determine whether disparities occur depending on race and/or identity.

News Flash Home

The original item was published from 1/27/2020 8:52:00 PM to 2/28/2020 12:00:01 AM.

Posted on: January 27, 2020

## **[ARCHIVED] 2019 in review: Police release annual crime statistics and complaint data**

The Police Department continues to work with our community partners, residents and businesses toward the goal of a safer city. The Police Department releases its annual crime statistics and complaint data on its website and the city's open data portal.

Police officers contact the public in several ways, including response to calls received by the dispatch center, flag downs or requests made in public, along with officer initiated activities (which range from traffic to pedestrian stops). Not all service calls result in written reports or citations. Officers use their discretion, experience, knowledge of laws/policies and communication skills to resolve situations.

All department employees (sworn officers and professional staff) working in the community have been wearing body cameras since 2014 in an effort to strengthen staff's performance and accountability, enhance department transparency, document encounters with the public, and investigate and resolve complaints and staff-involved incidents.

In 2019, the Police Department responded to nearly 24,000 calls for service, conducted over 10,000 traffic stops, over 8,000 pedestrian and bicycle stops, wrote more than 3,500 reports and arrested 1,130 individuals. The calls for service do not reflect the thousands of walk-ins to the police lobby and phone calls where professional staff, including administration, records and parking, provides services directly to the public (i.e., police report copies, vehicle releases, parking enforcement/permits, media inquiries, general questions, property/evidence, etc.).

The 2019 crime statistics show an increase in reported violent crime (homicide, rape, robbery and aggravated assault); 47 incidents in 2019 over 40 reported in 2018. This increase can be partially attributed to an increase in reported rapes from seven in 2018 to 14 reported in 2019 along with a change in reporting criteria for sexual assaults, and 13 robberies in 2019 compared to eight in 2018. There were no reported homicides in 2019 and clearance rates for violent crimes (the percentage of crimes that are solved) increased from 70 percent in 2018 to 74 percent in 2019.

Property crimes (burglary, larceny, auto theft and arson) rose 27 percent in comparison to 2018. The increase in property crimes has effected the entire State of California due to a thriving economy along with changes in legislation dealing with property crimes and narcotic violations, which have lessened penalties and the ability to incarcerate offenders.

The Police Department investigated 10 internal affairs cases, six of which were based on complaints and 4 of which were department initiated. It should be noted that the six complaints are out of 42,338, or 0.01 percent of contacts with the public. This is over a 50 percent decrease from 2018 where 17 internal affairs investigations were conducted. When reviewing internal and personnel complaints, it is important to look at the number and types of service calls officers

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respond to within the evaluated period. It is inevitable that with 42,338 public contacts, there will be situations where a member of the public is not satisfied with the service received and has the right to file a complaint.

The top cause for internal investigation in 2019 was for conduct (4 investigations). Out of the 10 internal affairs investigations:

- One was sustained
- One was not sustained
- Two were exonerated
- Three are pending
- Two concluded with no finding
- One was unfounded
- None were found to be frivolous
- No complaints were withdrawn

A "sustained" finding means that evidence from the internal investigation indicated the complaint was founded. The sustained complaint in 2019 was for a policy violation.

A "not sustained" finding means the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation(s).

For a complaint to be "exonerated" there must be proof that the officer's actions were consistent with department policies and protocols. This occurs quite frequently since all employees working in the community now wear body cameras.

A complaint is considered "pending" when the complainant is facing criminal charges and laws prohibit police personnel from questioning the complainant until the charges are adjudicated.



A complaint is "closed with no finding" when the complainant fails to disclose promised information needed to further the investigation, the complainant is no longer available or the department member is no longer employed by the department.

For a complaint to be determined "unfounded," it must be demonstrated that the alleged actions did not occur or did not involve our personnel.

A finding of "frivolous" is reached when, the investigation found that the complaint is one that is "totally and completely without merit" or is taken "for the sole purpose of harassing the officer."

A finding of "withdrawn" is reached when the complainant affirmatively indicated the desire to withdraw the complaint.

The use of body cameras has allowed supervisors to review incidents mentioned by complainants immediately. This review allows for an examination of a situation as it happened based upon the facts, as opposed to recollection.

With all this factored into the equation, 10 internal affairs investigations per year is an acceptable number, but we will always strive toward zero.

[Contact Police Chief Dave Bertini](#)



**AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS**

Additional data values for the stop of a student in a K-12 public school are listed in red.

1. **Originating Agency Identifier** (prepopulated field)
2. **Date, Time, and Duration of Stop**  
Date: (e.g., 01/01/19)  
Start Time (approx.): (e.g. 1530)  
Duration of Stop (approx.): (e.g. 30 min.)
3. **Location**
  - Report one (listed in order of preference): block number and street name; closest intersection; highway and closest highway exit. If none of these are available, the officer may report a road marker, landmark, or other description, except cannot report street address if location is a residence.
  - City: \_\_\_\_\_
  - Check here to indicate stop is of a student at K-12 public school: \_\_\_\_\_
    - Name of -12 Public School \_\_\_\_\_
4. **Perceived Race or Ethnicity of Person Stopped** (select all that apply)
  - Asian
  - Black/African American
  - Hispanic/Latino(a)
  - Middle Eastern or South Asian
  - Native American
  - Pacific Islander
  - White
5. **Perceived Gender of Person Stopped** (may select one from options 1-4 AND option 5, if applicable, or just option 5)
  1. Male
  2. Female
  3. Transgender man/boy
  4. Transgender woman/girl
  5. Gender nonconforming
6. **Person Stopped Perceived to be LGBT (Yes/No)** (“Yes” must be selected if “Transgender” was selected for “Perceived Gender”)
7. **Perceived Age of Person Stopped** (input the perceived, approximate age)
8. **Person Stopped Has Limited or No English Fluency (check here if Yes \_\_\_\_\_)**
9. **Perceived or Known Disability of Person Stopped** (select all that apply)
  - Deafness or difficulty hearing
  - Speech impairment or limited use of language
  - Blind or limited vision
  - Mental health condition
  - Intellectual or developmental disability, including dementia
  - Disability related to hyperactivity or impulsive behavior
  - Other disability
  - None

## AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS

Additional data values for the stop of a student in a K-12 public school are in listed in red.

### 10. Reason for Stop (select one - the primary reason for the stop only)

- Traffic violation
  - Specific code (CJIS offense table; select drop down) and
  - Type of violation (select one)
    - Moving violation
    - Equipment violation
    - Non-moving violation, including registration violation
- Reasonable suspicion that person was engaged in criminal activity
  - Specific Code (drop down; select primary if known) and
  - Basis (select all applicable)
    - Officer witnessed commission of a crime
    - Matched suspect description
    - Witness or victim identification of suspect at the scene
    - Carrying suspicious object
    - Actions indicative of casing a victim or location
    - Suspected of acting as a lookout
    - Actions indicative of a drug transaction
    - Actions indicative of engaging in a violent crime
    - Other reasonable suspicion of a crime
- Known to be on parole/probation/PRCS/mandatory supervision
- Knowledge of outstanding arrest warrant/wanted person
- Investigation to determine whether person was truant
- Consensual encounter resulting in search
- Possible conduct warranting discipline under Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7 (select specific Educ. Code section & subdivision)
- Determine whether student violated school policy

A brief explanation is required regarding the reason for the stop and must provide additional detail beyond the general data values selected (250-character maximum).

### 11. Stop Made in Response to a Call for Service (Yes/No) (Select “Yes” only if stop was made in response to call for service, radio call, or dispatch)

#### 12A. Actions Taken by Officer(s) During Stop (select all that apply)

- Person removed from vehicle by order
- Person removed from vehicle by physical contact
- Field sobriety test conducted
- Curbside detention
- Handcuffed or flex cuffed
- Patrol car detention
- Canine removed from vehicle or used to search
- Firearm pointed at person
- Firearm discharged or used
- Electronic control device used
- Impact projectile discharged or used (e.g. blunt impact projectile, rubber bullets or bean bags)
- Canine bit or held person
- Baton or other impact weapon used
- Chemical spray used (e.g. pepper spray, mace, tear gas, or other chemical irritants)
- Other physical or vehicle contact
- Person photographed

## AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS

Additional data values for the stop of a student in a K-12 public school are in listed in red.

- Asked for consent to search person
  - Consent given
  - Consent not given
- Search of person was conducted
- Asked for consent to search property
  - Consent given
  - Consent not given
- Search of property was conducted
- Property was seized
- Vehicle impound
- Admission or written statement obtained from student
- None

### 12B. Basis for Search (if search of person/property/both was conducted; select all that apply)

- Consent given
- Officer safety/safety of others
- Search warrant
- Condition of parole/probation/PRCS/mandatory supervision
- Suspected weapons
- Visible contraband
- Odor of contraband
- Canine detection
- Evidence of crime
- Incident to arrest
- Exigent circumstances/emergency
- Vehicle inventory (for search of property only)
- Suspected violation of school policy

A brief explanation is required regarding the basis for the search and must provide additional detail beyond the general data values selected (250-character maximum). This field is not required if basis for search is “condition of parole/probation/PRCS/mandatory supervision.”

### 12C. Contraband or Evidence Discovered, if any (during search/in plain view; select all that apply)

- None
- Firearm(s)
- Ammunition
- Weapon(s) other than a firearm
- Drugs/narcotics
- Alcohol
- Money
- Drug paraphernalia
- Suspected stolen property
- Cell phone(s) or electronic device(s)
- Other contraband or evidence

### 12D. Basis for Property Seizure (if property was seized; select all that apply)

- Safekeeping as allowed by law/statute
- Contraband
- Evidence
- Impound of vehicle

**AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS**

Additional data values for the stop of a student in a K-12 public school are in listed in red.

- Abandoned property
- Suspected violation of school policy

**Type of Property Seized** (select all that apply)

- Firearm(s)
- Ammunition
- Weapon(s) other than a firearm
- Drugs/narcotics
- Alcohol
- Money
- Drug paraphernalia
- Suspected stolen property
- Cell phone(s) or electronic device(s)
- Vehicle
- Other contraband or evidence

**13. Result of Stop** (select all that apply)

- No action
- Warning (verbal or written): Code/ordinance cited (drop down)
- Citation for infraction: Code/ordinance cited (drop down)
- In-field cite and release: Code/ordinance cited (drop down)
- Custodial arrest pursuant to outstanding warrant
- Custodial arrest without warrant: Code/ordinance cited (drop down)
- Field Interview Card completed
- Noncriminal transport or caretaking transport (including transport by officer, transport by ambulance, or transport by another agency)
- Contacted parent/legal guardian or other person responsible for the minor
- Psychiatric hold (Welfare & Inst. Code, §§ 5150, 5585.20.)
- Referred to U.S. Department of Homeland Security (e.g., ICE, CBP)
- Referral to school administrator
- Referral to school counselor or other support staff

**14. Officer's Identification (I.D.) Number** (prepopulated field)

**15. Officer's Years of Experience** (total number of years worked as a peace officer)

**16. Type of Assignment of Officer** (select one)

- Patrol, traffic enforcement, field operations
- Gang enforcement
- Compliance check (e.g. parole/PRCS/probation/mandatory supervision)
- Special events (e.g. sports, concerts, protests)
- Roadblock or DUI sobriety checkpoint
- Narcotics/vice
- Task force
- K-12 public school, including school resource officer or school police officer
- Investigative/detective
- Other (manually specify type of assignment)



July 8, 2020

To: Menlo Park Mayor and City Council

From: Starla L. Jerome-Robinson, City Manager  
Cara E. Silver, Interim City Attorney

Subject: Financial Accounting of General Fund Expenditure of Facebook “City Services” Funds

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Introduction

At the budget hearings, the City Council requested an accounting of the city services funds made by Facebook and allocated to police service. This report serves as this accounting. In summary, Facebook has currently paid a total of \$4,578,750 in city services funds to the City, the City has expended \$1,933,687 in connection with the Community Response Team and there remains a balance of \$2,645,063 funds. In addition, under the Amended Development Agreement, Facebook owes the City an additional \$2,315,250 in city services funds as of July 1, 2020. Facebook’s final two payments under the Amended Development Agreement are due on July 1, 2021 and July 1, 2022.

Development Agreement Terms

On November 1, 2016, the City Council approved the Facebook Campus Expansion Project and the Development Agreement by introducing Ordinance No. 1021 (“Enacting Ordinance”). The City Council conducted a second reading and adopted the Enacting Ordinance on November 15, 2016, making it effective on December 16, 2016. The Development Agreement was recorded on December 16, 2016, in the Official Records of the County of San Mateo.

On February 7, 2017, Applicant applied for modifications to the approved Facebook Campus Expansion Project, including but not limited to, changes to the design and the height of buildings and changes to the location of the parking (“Revised Project”). As part of the Revised Project, Facebook requested an Amendment to the Development Agreement.

On November 7, 2017, the City Council reviewed the Revised Project, and voted to approve the project and introduce the ordinance adopting the Amendment to the Development Agreement. On November 14, 2017, the City Council conducted a second reading on the ordinance approving the Amendment to the Development Agreement, making it effective on December 15, 2017.

The Amendment to the Development Agreement includes additional revenue (\$11.25 Million present value) for city services that benefit the safety of the community, and the use of the funds would be in the sole discretion of the City. This payment would be made in five equal installments of \$2,250,000, adjusted by the Consumer Price Index. The language provides:

4. In addition to the local community benefits to be provided by Facebook pursuant to Section 9 of the Development Agreement, Facebook shall contribute a total of Eleven Million Two Hundred Fifty Thousand Dollars (\$11,250,000) to the City's general fund to be spent on services that benefit the safety of local community but otherwise in the sole discretion of the City (the "City Services Contribution"). Payment of the City Services Contribution shall occur in five equal installments over a five-year period (i.e., \$2,250,000 per year for five years). The annual payments shall be payable on July 1 of the City's fiscal year, and the first payment will be payable on July 1, 2018. The amount of the payment each fiscal year shall be adjusted based upon the Consumer Price Index for All Urban Consumers for San Francisco-Oakland-San Jose as measured from February to February (<https://data.bls.gov/cgi-bin/surveymost>). The City agrees to provide an annual update to Facebook regarding the City's use of the City Services Contribution as part of the annual review process required by Section 12.1 of the Development Agreement. The City Services Contribution shall not be payable if Facebook elects to terminate this Amendment pursuant to Section 6 of this Amendment.

At the time the Amendment to the Development Agreement was approved, the parties contemplated that these funds would be used for the police department's community response team (sometimes referred to as CRT or Beat 4). However, the Amendment language does not require the City to use these funds for police services. Instead, it simply requires the funds to "be spent on services that benefit the safety of local community" and clarifies the City shall have "sole discretion" over such expenditures.

#### Use of City Service Contribution to Date

Included as Attachments 1 and 2 to this report are accountings of the funds used in FY 2018-19 and FY 2019-20. In summary, in FY 2018-19, \$2,250,000 was received from Facebook and \$195,853 expended leaving a balance of \$2,054,147. In FY 2019-20, \$2,328,750 was received and 1,737,834 expended leaving a balance of \$590,916. Attachments 1 and 2 show the detail on the expenditures which were related to assembling and funding the CRT team. Thus, the City has a total unexpended balance of \$2,645,063 to date. Note that the expenditures in the first fiscal year were low as the City was in the process of onboarding new police officers to staff the CRT team. Further, vehicles for these officers were not purchased until the following year, reducing the first fiscal year and increasing the second year expenditures. The expenditures for FY 2019-20 are just estimates as this fiscal year has not yet been closed out and audited.

The balance remaining in this fund will be earmarked in the general fund for uses approved under the Amended Development Agreement. As discussed above, such funds can be used in the Council's sole discretion for continued funding of the CRT or for other qualifying services benefiting the safety of the local community.

#### Attachments

- 1: FY 2018-19 Accounting of Facebook Funds
- 2: FY 2019-20 Accounting of Facebook Funds

Cc: Nick Pegueros, Assistant City Manager  
Justin Murphy, Deputy City Manager

20/07/07-08:33 * * * * * -- CITY OF MENLO PARK FY 2019 (CF PROD) FY 2019 -- * * * * * * July 07 2020			
<b>GL787 Facebook - 0010027 Report Format 109</b>		<b>GL Period* 13 ending June 30, 2019 Transaction status 3</b>	
<b>Prj 0010027 FB - Community Response Team</b>		<b>Ending Balance</b>	
<b>Total Revenues</b>		<b>-2,250,000</b>	
<b>Acc 510 SALARIES AND WAGES</b>		<b>131,249</b>	
<b>Acc 520 FRINGE BENEFITS</b>		<b>62,504</b>	
<b>Acc 530 OPERATING EXPENSE</b>		<b>2,100</b>	
<b>Total Expenses</b>		<b><u>195,853</u></b>	
<b>Excess of Revenue</b>		<b>-2,054,147</b>	
<b>Prj 0010027 FB - Community Response Team</b>			
<b>Carry Over to FY 19/20</b>		<b>-2,054,147</b>	



20/07/07-08:33 * * * * * -- CITY OF MENLO PARK FY 2019 (CF PROD) FY 2019 -- * * * * * July 07 2020			
GL787 Facebook - 0010027 Report Format 109		<b>GL Period* 13 ending June 30, 2019 Transaction status 3</b>	
			<b>Ending Balance</b>
Prj 0010027 FB - Community Response Team			
100 10101100271793 Reimbursement Revenue			-2,250,000
<b>Total Revenues</b>			<b>-2,250,000</b>
Acc 510 SALARIES AND WAGES			
100 10101100275101 Salaries - Regular			90,038
100 10101100275102 Salaries - Overtime			17,392
100 10101100275105 Comp Time			229
100 10101100275107 Vacation Paid			4,887
100 10101100275110 Special Pay			1,108
100 10101100275120 Sick Leave			259
100 10101100275123 Holiday			1,224
100 10101100275124 School			138
100 10101100275125 Floating Holiday			2,463
100 10101100275133 Special Merit			5,220
100 10101100275134 Post Incentive			8,029
100 10101100275151 Uniform Allowance			260
Acc 510 SALARIES AND WAGES			131,249
Acc 520 FRINGE BENEFITS			
100 10101100275211 Retirement (Pers)			43,432
100 10101100275212 Health Insurance			13,002
100 10101100275214 Dental Insurance			2,209
100 10101100275215 Medicare & FICA			1,887
100 10101100275216 Life Insurance & Disability			845
100 10101100275218 Excess Medical			1,129
Acc 520 FRINGE BENEFITS			62,504
Acc 530 OPERATING EXPENSE			
100 10401100275322 Employee Training			2,100
Acc 530 OPERATING EXPENSE			2,100
Total Expenses			195,853
<b>Prj 0010027 FB - Community Response Team</b>			<b>-2,054,147</b> <--what's left from 2018/19
<b>Carry Over to FY 19/20</b>			<b>-2,054,147</b>

20/07/07-08:47 * * * * * -- CITY OF MENLO PARK FY 2020 (CF PROD) FY 2020 -- * * * * * July 07 2020			
GL787 Facebook - 0010027 Report Format 109		<b>GL Period* 13 ending June 30, 2020 Transaction status 1</b>	
			<b>Ending Balance</b>
<b>Prj 0010027 FB - Community Response Team</b>			
<b>Carry over from FY: 18/19</b>			<b>-2,054,147</b>
<b>Total Revenues - 19/20</b>			<b>-2,328,750</b>
<b>Acc 510 SALARIES AND WAGES</b>			<b>908,058</b>
<b>Acc 520 FRINGE BENEFITS</b>			<b>446,376</b>
<b>Acc 530 OPERATING EXPENSE</b>			<b>89,984</b>
<b>Acc 560 FIXED ASSETS &amp; CAPITAL OUTLAY</b>			<b>237,499</b>
<b>Acc 580 REPAIRS &amp; MAINTENANCE</b>			<b>55,917</b>
<b>Total Expenses</b>			<b><u>1,737,834</u></b>
<b>Excess of Revenue FY: 19-20</b>			<b>-590,916</b>
<b>Prj 0010027 FB - Community Response Team Current available fund</b>			<b>-2,645,063 **</b>
<i>**FY 19-20 is not closed; additional expenditures wil decrease the available fund</i>			

20/07/07-08:47 * * * * * -- CITY OF MENLO PARK FY 2020 (CF PROD) FY 2020 -- * * * * * July 07 2020			
GL787 Facebook - 0010027 Report Format 109		<b>GL Period* 13 ending June 30, 2020</b>	<b>Transaction status 1</b>
			<b>Ending Balance</b>
<b>Prj 0010027 FB - Community Response Team</b>			
<b>Carry over from FY: 18/19</b>			(2,054,147)
100 10101100271793 Reimbursement Revenue			(2,328,750)
Total Revenues			(2,328,750)
Acc 510 SALARIES AND WAGES			
100 10101100275101 Salaries - Regular			623,662
100 10101100275102 Salaries - Overtime			99,975
100 10101100275104 Salaries - Temp Help			388
100 10101100275105 Comp Time			6,063
100 10101100275107 Vacation Paid			35,548
100 10101100275111 Night/Weekend Differential			34
100 10101100275112 Bilingual			1,575
100 10101100275116 Out of Class			1,895
100 10101100275120 Sick Leave			9,096
100 10101100275123 Holiday			42,407
100 10101100275124 School			112
100 10101100275133 Special Merit			41,180
100 10101100275134 Post Incentive			39,723
100 10101100275137 Cafeteria Plan			180
100 10101100275151 Uniform Allowance			6,220
Acc 510 SALARIES AND WAGES			908,058
Acc 520 FRINGE BENEFITS			
100 10101100275211 Retirement (Pers)			281,782
100 10101100275212 Health Insurance			80,644
100 10101100275214 Dental Insurance			14,755
100 10101100275215 Medicare & FICA			14,055
100 10101100275216 Life Insurance & Disability			5,777
100 10101100275218 Excess Medical			8,572
100 10101100275291 Workers Comp Internal Svc Chrg			23,850
100 10101100275292 OPEB Internal Svc Chrg			16,940
Acc 520 FRINGE BENEFITS			446,376
Acc 530 OPERATING EXPENSE			
100 10101100275318 Police Dept Supplies			7,294
100 10101100275322 Employee Training			25,200
100 10101100275343 General Liability Internal Svc			21,438
100 10101100275391 Miscellaneous			50
100 10401100275318 Police Dept Supplies			9,002
100 10401100275322 Employee Training			27,000
Acc 530 OPERATING EXPENSE			89,984
Acc 560 FIXED ASSETS & CAPITAL OUTLAY			
100 10101100275651 Vehicles			237,499
Acc 560 FIXED ASSETS & CAPITAL OUTLAY			237,499
Acc 580 REPAIRS & MAINTENANCE			

100 10101100275831 Communications Maintenance				55,917	
Acc 580 REPAIRS & MAINTENANCE				55,917	
Total Expenses				1,737,834	
Excess of Revenues - FY 19/20				(590,916)	
Prj 0010027 FB - Community Response Team Current available fund				(2,645,063)	**
<i>**FY 19-20 is not closed; additional expenditures wil decrease the available fund</i>					

## National Association for Civilian Oversight of Law Enforcement

*Building Public Trust Through Law Enforcement Accountability and Transparency*



- What are the benefits of police oversight?
- Oversight Models: Is one model better than another?
- What are the features of an effective police oversight body?
- What are the steps a community should take in establishing effective police oversight?
- How can NACOLE help community members/city officials implement or improve oversight?
- What should the qualifications and training be for oversight practitioners?
- What types of complaints should be accepted?
- Is it necessary for an oversight authority to conduct investigations?
- Who should make the final determination as to whether the allegations in a complaint should be sustained and what corrective actions, or disciplinary measures should be imposed?
- Should the oversight entity have subpoena power?

## FAQs

Didn't find the answer you were looking for below? Contact Us

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### What are the benefits of police oversight?

**A:** Police oversight can benefit not only the individual complainant, but also the larger community, police and sheriff's departments, and even elected or appointed officials. The actual benefits that occur depend on how well the involved groups work together and the type of model implemented. Some potential benefits are:

1. Complainants are given a place to voice concerns outside of the law enforcement agency.
2. Oversight can help hold the police or sheriff's department accountable for officer's actions.
3. Oversight agencies can help improve the quality of the department's internal investigations of alleged misconduct.
4. The community at large can be reassured that discipline is being imposed when appropriate, while also increasing the transparency of the disciplinary process.
5. When the oversight agency confirms a complainant's allegation(s), complainants may feel validated.
6. And similarly, when the oversight agency exonerates the officer, the officer may feel vindicated.
7. Oversight agencies can help improve community relations by fostering communication between the community and police agency.
8. Oversight agencies can help reduce public concern about high profile incidents.
9. Oversight agencies can help increase the public's understanding of law enforcement policies and procedures.
10. Oversight agencies can improve department policies and procedures. Policy recommendations can prevent issues by identifying areas of concern and subsequently offering options to improve policing.
11. Oversight agencies can assist a jurisdiction in liability management and reduce the likelihood of costly litigation by identifying problems and proposing corrective measures before a lawsuit is filed.
12. Mediation has multiple benefits to both citizens and police officers. If the oversight agency provides mediated solutions, it can help complainants feel satisfied through being able to express their concerns to the specific police officer in a neutral environment. Mediation can also help police officers better understand how their words, behaviors and attitudes can unknowingly affect public perceptions.
13. By establishing an oversight system, public officials are provided the opportunity to demonstrate their desire for increased police accountability and the need to eliminate misconduct.

All of these potential benefits help to support the goals of community-oriented policing, which seeks to utilize problem solving techniques to work in a cooperative effort with the community to proactively address concerns.

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## **Oversight Models: Is one model better than another?**

**A:**

Oversight systems can take a wide variety of forms and operate under a wide range of authorities. [1]

Each jurisdiction will have to carefully assess the needs of the community and the cost-benefits of the oversight program they adopt. The key question is whether the oversight system is sufficiently independent—in terms of political, professional and financial independence and authority—to do what is needed and what is asked of it.

It is helpful to think in terms of the goals of the community and what is being asked of the local oversight system. Specifically, what level of funding and how much authority should be given to the oversight agency in order to shoulder its identified tasks and succeed. The oversight agency's mission should bear some relationship to the size of the police department, the department's funding levels, and the level of trust or mistrust within the community—particularly among those segments of the community that historically have been the subjects of over-policing or bias-based policing.

1. Ongoing Monitoring/Auditing Authorities: Typically these systems allow for the oversight agency to be actively engaged in each, if not all, of the steps related to the complaint process.

1. Caution: When communities adopt language referring to an oversight “monitor,” it should be distinguished from monitors created as the result of federal consent decrees or court ordered monitoring through litigation brought by the US Department of Justice to end “patterns and practices” of unconstitutional policing under federal law.

More accurately, programs stemming from the adoption of a local ordinance or charter amendment to establish a “monitoring” program typically provide some form of ongoing *review or audit* of the complaint process. Communities should not think that calling the director of a local civilian oversight program a “monitor” will lead to the same broad powers and complex programs that make up the components of federal consent decrees.

To add to the confusion, the title of auditor is often assigned to the director of an oversight program even though few people in this role conduct audits in the technical sense of the word. Likewise, the title *ombudsperson* can be misleading as the heads of oversight programs are not advocates for complainants or the public but rather advocate for and work to forward a system that results in improved police performance and accountability. Increasingly, new oversight agencies simply refer to the executive directors of the programs as directors or executive directors.

1. How it Works: The work of monitors, auditors or ombudspersons in the context of locally adopted civilian oversight typically results in a process that is *ongoing* and engaged with each, if not all, of the steps involved in when a person in the community complains about the

conduct of a police employee or employees in a particular situation. A full range of authorities under this type of system would result in engagement with each of the following steps.

1. Complaint intake—the monitor/auditor/ombudsman/director oversees the process for ensuring:

i. Complaints are able to be received from a wide variety of sources—including in-person, telephonically, electronically, anonymously and through third persons with sufficient knowledge of the underlying circumstances;

ii. That the system is accessible through a variety of means (including in person, telephone, electronically);

iii. Individuals with limited English proficiency or special needs have access to the system;

iv. That complainants are not discouraged from filing a report and are free from retaliation;

v. The individuals receiving and screening complaints are well trained in conducting what is essentially an initial investigation;

1. Complaint classification—i.e., if proven would the alleged facts result in a finding of misconduct on the part of the named officer in violation of a specific policy or policies?

2. Investigation—assignment, plan, interviews, gathering evidence (reports, phone records, CCT, in-car, ECW or body-camera videos, medical records, etc. And requiring further investigation if information is incomplete.

3. Report Writing—reviewing the investigative reports to determine whether the investigation was timely, thorough and objective.

4. Analysis—after the investigation is complete:

i. Analyzing information to determine whether facts are sufficient to prove (the usual standard is preponderance of evidence) the policy was violated,

ii. Identify issues of supervision or training.

iii. If there is authority to weigh in on or recommend corrective or disciplinary measures, the monitor may assess whether these measures were imposed in an even-handed manner consistent with the department's disciplinary matrix.

iv. Alternative Dispute Resolution—the oversight program may be involved in administering or coordinating mediation programs.



1. **Strengths:** These types of agencies can be effective in identifying strengths and weaknesses in how complaints are handled, identifying areas of weakness—particularly bias—in investigations, spotting gaps in training, policy and supervision within the police department, providing opportunities for dialogue and understanding between the police and individuals and groups within the community, assessing the effectiveness of early warning systems and determining whether discipline is consistent and fair.
2. **Weaknesses:** These systems are often charged with collecting data and reporting trends. Because they are almost always complaint driven, it often takes many months to collect data that is reflective of a “trend.” Problems that exist within the police department may be systemic but are underreported because the police conduct affects people unlikely to complain—including disabled, people whose socio-economic status leaves them vulnerable and isolated. Other groups such as individuals working in sex trades or involved in gangs are not likely to report even the most egregious police misconduct. When members of marginalized groups do complain, the problem may appear to be an aberration when it is actually commonplace. Unless there is the staff and time to track the outcomes of criminal prosecutions, the oversight agency may not be aware of cases that are not filed, are dismissed or where evidence is suppressed due to police misconduct. Such data can be of use in effecting better training, clearer policy and reducing risk and liability related to the police department.
3. **Review Systems:**
  1. These systems typically allow the oversight body to review only cases that are closed.
  2. **How it Works:** An individual or a Board / Commission is authorized to review Internal Affairs (IA) investigations of complaints, find them adequate or not, and state whether it agrees or disagrees with the IA findings. Often such boards may recommend further investigation and/or make policy and training recommendations.
    - i. Oversight agencies with professional staff typically review all of the IA investigations and provide feedback. This includes reviewing interviews, recordings, evidence and IA reports checking to insure the IA investigation was thorough, timely and unbiased.
    - ii. Smaller agencies or volunteer review agencies may only be able to provide full review of selected cases.
    - iii. In some instances, agencies have the authority to require additional investigation but unless there is adequate time to review and return it to the department, it may be too late to have any practical effect on the outcome.

iv. Review boards frequently hold their meetings in public. How these meetings are conducted and what can be made public depends to a great extent on state law and union contracts.

1. Strengths: These systems can provide greater transparency and an additional layer of civilian and greater involvement by the community. When they make recommendations, the department may be more inclined to take action.
2. Weaknesses: These systems sometimes lack the independence they need to be effective. If the review board is all-volunteer, they can review only a limited number of cases. The time commitment can be overwhelming as all members not only need to review cases, they need to go through systematic training. Attendance at NACOLE conferences and workshops can be helpful. Local attorneys and civil rights or advocacy groups may provide training opportunities. But each and every review board member needs to be trained and this is expensive in terms of both time and money. It is often tempting to rely primarily on the police department to provide the training. The review board may become too dependent on the police department and recognized as such by the larger community.

1. Investigative Authority:

1. This allows for investigations to be conducted by the oversight agency and does not rely on investigators from within the police department. This can be particularly effective when the local police department has lost the confidence of the community to investigate itself.

In some instances, authority may be granted to monitoring type agencies or review agencies to contract with outside investigators to conduct investigation of complaints as needed. This usually occurs under a prescribed set of circumstances—typically when it is clear the general public would have no confidence in law enforcement investigators being impartial in the specific matter.

1. How it Works: An Oversight Agency or a Board/Commission is authorized to investigate the class of complaints and allegations identified in its establishing authority. Once the complaint is lodged and identified as being under the jurisdiction of the oversight agency, the oversight agency may:

- i. Identify the relevant police policy or policies that, if supported by evidence, constitute the basis of the complaint and allegations.

- ii. Conduct interviews of witnesses including civilian witnesses, police witnesses.

iii. Gather evidence including photographs, sound and video recordings, receipts, and documents relevant to the complaint.

iv. Prepare an investigative report identifying the witnesses interviewed and summaries of their testimonies; weigh the evidence and credibility; identify any gaps in the investigation due to lost or unavailable documents, unavailable or uncooperative witnesses, etc.

v. Make recommendations or findings as to whether the evidence supports the allegation(s). In some oversight systems, the agency has the authority to recommend and/or impose discipline.

#### 1. Who Conducts the Investigations:

i. Trained, skilled investigators that work within the specific oversight agencies or commissions should perform the work.

ii. It is not necessary, or even desirable, that the investigators be formally trained law enforcement officers. What is necessary is that the investigators be well trained. There are certified investigation programs within the US; for example, civilian investigators frequently work for public defenders at the state and federal level. It is important that they receive ongoing training.

iii. Agencies that rely on volunteers should not attempt conducting investigations.

#### 1. Strengths:

i. This system can help rebuild the trust of the community-particularly in communities in which confidence in the police department's ability to investigate itself has been compromised by a history of lackluster or inadequate investigations.

ii. This system avoids conflicts inherent in many internal affairs departments in which investigators are rotated from, then back into, other units such as patrol, SWAT, or investigations.

#### 1. Weaknesses:

i. It adds to the size of the staff and thus costs to run the program; however, the city/county has to pay for investigators regardless of whether they are within the oversight agency or within the police department's internal affairs program.

ii. Police departments are often resistant to having non-police investigators conducting investigations.

iii. Working through the necessary administrative changes and possible challenges by local police unions may take additional time and political will.

iv. As with all oversight programs this authority will only address issues related to specific, individual complaints and may not help identify systemic issues.

#### 1. Hearings Boards

1. Some oversight systems conduct hearings, hearing testimony or argument and rendering decisions.

i. Evidentiary Hearings: Some larger review boards have the authority to hold evidentiary hearings on complaints. This requires support staff to organize materials, forums and assist with findings and report writing

ii. Appeals: Some larger review boards have the authority to hear appeals filed by either the named officer or the complainant and overturn any decision made by the Chief of Police or other command staff responsible for making decisions based on the IA reports and recommendations.

1. Strengths: These boards and functions can be effective in keeping the complaint system from being, or appearing to be, a closed system in which only police command staff and officers have any direct responsibility or control over the outcome of complaints from community members.

2. Weaknesses: They require additional professional and support staff. Review board members will require specific training on conducting hearings that guarantee the procedural and substantive rights of all sides.

#### 3. Administrative Prosecutorial Units

1. This is a fairly new development that has found success in the city of New York. It involves a special unit of attorneys and investigators responsible for investigating and prosecuting administrative complaints against police department employees.

2. How it Works: Allegations are investigated and based on the outcome of the investigation, the case is dismissed or moves forward to an evidentiary hearing before an administrative law judge. The judge's findings and conclusions are forwarded to a police executive for a final determination.

3. Strengths: Unlike most oversight systems addressing the complaint process, this system is highly independent from the police department and the standards for objectivity and thoroughness are high. The percentage of sustained allegations is over 85%, far above the norm for other oversight systems.

4. Weaknesses: This system is being employed by one of the largest cities in the nation. The resources are beyond the reach of most communities. Counties or regions might find pooling resources a worthwhile investment.
4. Systemic Audits of High Risk Police Programs
    1. A few metropolitan areas have adopted a program of conducting systemic audits of high-risk police activities such as stops, arrests, and searches and high risk programs including property units, SWAT, vice and gang units. These audits are conducted according to Generally Accepted Government Accountability Standards (GAGAS).
    2. Oversight agencies or Inspectors General establish a schedule for auditing the performance specific divisions and programs much the same a financial auditor audits the procedures and policies of a business, non-profit or government agency. Within the police context these audits can uncover unconstitutional policing, problems with supervision and weaknesses in police training and existing policies.
    3. Strengths: Auditing programs are efficient in detecting trends and common practices and are statistically reliable. They can be done using in-house resources or by contract with outside agencies. Audits are useful in confirming strengths within a program or department and can accurately measure progress over time. Unlike oversight agencies that concentrate on how complaints are handled, audits can be used to establish the level of professional, constitutionally based policing throughout the department.
    4. Weaknesses: Auditing programs require special training and significant independence.
1. HYBRID SYSTEMS
    1. Most communities now realize that oversight is not a one-size-fits-all proposition. Many oversight practitioners are finding that it is less useful to talk about models and more useful to talk about options of authority.
    2. The powers and authorities granted to an oversight agency can be combined in any manner that works best for each individual community. While a volunteer review board may not have the resources to insure each complaint and investigation is handled in a manner that guarantees transparency and accountability, it does add an important layer of involvement, communication and trust building. Review of closed cases might be frustrating for some, while other communities may choose to commit resources that are adequate to insure each review is thorough and the opportunity for feedback and change is genuine.

**Is one form of oversight better than another?**

1. Many oversight agencies have merged features from the different systems to address their specific needs.
2. As with any oversight systems or any combination of authorities, it can be an uphill battle to empower civilians to engage in processes that have traditionally been entirely within the bailiwick of the police. Accusations of “meddlesome amateurs,” “interfering with the police,” and “Monday morning quarterbacking,” may be among the kindest responses policy makers face from critics of civilian oversight. If systems are too weak to be effective they will fail or simply wither before healthy change in police culture can be achieved.
3. One of the first questions to consider is whether the oversight system will focus on the traditional realm of complaints or if the community sees a broader role for oversight.
4. Communities may find they are better off granting authority that may never need to be used than they would be in withholding authority that may be needed at a critical time.
5. Diluted systems should be avoided. Inadequate funding, lack of independence and the lack of access to critical information will make a skeptical public even more skeptical and will not result in the cultural change in policing the oversight system was created to address.
6. If the investment is made and pays off in improved police performance, it should help identify high-risk law enforcement employees, reduce litigation against the city or county and lower the amount of damage awards. In short the program may help pay for itself.
7. Greater confidence in law enforcement also pays off in reduced crime and safer communities, as more people are willing to report crime and testify in criminal cases.
8. Each model derives its authority and powers from the implementing law(s), ordinance(s), and/or charter of its jurisdiction (typically its city or county). A charter amendment may be desirable to ensure the oversight program becomes a permanent part of local government and cannot be eliminated without another charter amendment.
9. All oversight bodies have limited authority and civilian oversight alone cannot ensure police accountability. Genuine change must be seen as desired by law enforcement leadership. And oversight must be seen as contributing to the solution.

Additional internal and external mechanisms will be needed. Consider characteristics of the population, law enforcement agency, statutes, and collective bargaining agreements when deciding what type of system will best suit your community’s unique needs and resources.

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[1] A detailed study was conducted in 2005 by the Police Assessment Resource Center, PARC, this information while highly relevant is 10 years old and with the increased number of federal consent decrees, cities have found

ways to strengthen their oversight systems. <https://www.parc.info/.../Review-of-National-Police-Oversight-Models-Feb-...>

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## What are the features of an effective police oversight body?

**A:** There is no right answer as to what an effective police oversight body “must” look like. As many of the FAQ’s point out, flexibility is key. You can still get to the right outcome through different mechanisms. However, here are some features, some tangible, some not, which are key to effective police oversight:

1. Independence. The oversight body must be separate from all groups in order to garner trust by being unbiased.
2. Adequate funding. Oversight bodies must have enough funding and spending authority to fulfill the duties set forth in the enabling legislation. This includes enough money for adequate staff and money to train that staff.
3. Access to all critical pieces. This includes access to all necessary information and evidence in an investigation, but it also means access to decision makers in both the law enforcement agency and elected officials.
4. Rapport. The talent, fairness, dedication, and flexibility of the key participants- in particular the oversight director, chief elected official, police chief or sheriff, and union president. The rapport between the chief players can be far more important to the success of the oversight system than the systems structure. [1]
5. Ample authority. Whatever the oversight model chosen, it must have enough authority to be able to accomplish those goals.
6. Ability to review police policies, training and other systematic issues. Many see this as one of the most important roles an effective oversight agency can have. This ability shifts the focus on being reactive to past events to proactive with the possibility to resolve issues before they begin.
7. Community/Stakeholder Support and Outreach. Maintaining community interest is important for sustaining an agency through difficult times when cities or government jurisdictions may need to cut services for budget reasons. [2]
8. Transparency. Systematic reporting provides transparency and accountability to the community, and typically includes complaint analysis and other observations about the law enforcement organization and its practices. Reporting also increases public confidence in the oversight agency, as much of the work related to complaint investigations may be confidential and protected from public disclosure.[3]

[1] [1] Peter Finn. [Citizen Review of Police: Approaches and Implementation](#), p. xi (Nat'l Institute of Justice 2001).

[2] <http://nacole.org/wp-content/uploads/Oversight-in-the-United-States-Attard-and-Olson-2013.pdf>

[3] <http://nacole.org/wp-content/uploads/Oversight-in-the-United-States-Attard-and-Olson-2013.pdf>

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## What are the steps a community should take in establishing effective police oversight?

- A:** 1) You must first have a core group of citizens who are sufficiently concerned about the issue and who are willing to unite and work together over an extended period of time. This core group should seek out training and support resources prior to the establishment of a formal planning or advisory committee. If not, the voice of the community risks being marginalized once professional stakeholders become involved in the process.
- 2) Begin by framing the public discussion and inviting public input. Emphasize that the purpose is to improve trust between police and the community by ensuring public confidence in the agency through accountability and transparency. The end goal is to deliver the most professional and effective police services possible to the community. Invite police officials and union representatives to be a part of the conversation from the start. Get their input and make it clear to them that their suggestions and concerns are valuable to the process.
1. Acquire/develop and publicize data that clearly demonstrates a local need for civilian oversight (costs of past lawsuits, history of injuries, high ratio of use of force to arrest, lack of public confidence in policing agency, etc.).
- 3) Establish a planning or advisory committee composed of elected officials, legal advisors, police officials, police union representation and community advocates. Begin to meet regularly to educate the group on the pros and cons of various oversight models, legal requirements, collective bargaining limitations, etc.
1. Identify sources of resistance and issues of contention and begin to address the concerns or neutralize the resistance.
  2. A skilled negotiator or professional mediator may be helpful if communication becomes difficult or begins to break down.



4) Identify sources of technical assistance such as NACOLE, the Department of Justice, local bar associations and practitioners of civilian oversight in other jurisdictions. Visit oversight agencies in other jurisdictions to learn from their staff and observe their procedures.

5) Identify the proposed agency's objectives and scope.

1. What type of complaints will be accepted? How many complaints do you expect annually? Will the agency make both disciplinary and policy/training recommendations? Who shall be the final decision maker for complaint disposition? What should happen when there is a disagreement between the police department and the oversight agency? What will be the public reporting requirements for the oversight agency? Will the agency offer mediation? Will the agency have subpoena authority? How will the agency's effectiveness be measured? How will elected officials hold the oversight agency accountable?

6) Based upon the agreed objectives and scope, select an agency structure:

1. Citizen Review Board model with or without independent investigative authority and mandate for policy recommendations.
2. Monitor, Auditor, Ombudsman or Inspector General model with or without independent investigative authority and mandate for policy recommendations.

7) Determine whether the oversight agency will be created by ordinance or within the municipal charter. Generally, it is better to have it created within the city charter, as a municipal ordinance is typically easier to overturn.

8) Identify staffing needs

1. Decide on type and number of staff

1.

i.

Administrator/ombudsman/monitor/IG

1. How will the director be selected and what are the director's terms and qualifications of employment?

2. How can the director be reappointed or removed?

3.

ii. Volunteer board members

1. If the agency will be volunteer based, how many volunteer hours per week/month will it take for a volunteer to perform competently?

2. How will the volunteer board members be selected?

3. What are the qualifications (and disqualifications) for being a board member?

4.

iii. Administrative assistant(s)

5.

iv. Investigators

6. v. Legal counsel  
(Corporation Counsel or outside legal counsel)
2. Consider how training and development will be regularly provided to agency staff and/or volunteers.
- 9) Develop a specific and detailed budget estimate and work to secure political support of elected officials for full funding.
- 10) Present the proposal to the public and allow time for public input and feedback. Work with community advocacy organizations to build public support for the proposal to ensure its passage.

In the end, you should advocate for the most effective structure possible that can be created within the current local political context, but recognize that compromises may have to be made to secure its initial passage. Revisions to the law that would strengthen the agency can be proposed at a subsequent point in time when the political context may be more amenable.

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## How can NACOLE help community members/city officials implement or improve oversight?

- A:** The mission NACOLE is to enhance fair and professional law enforcement responsive to community needs. NACOLE also:
1. Provides for the establishment, development, education, and technical assistance of/for the civilian oversight of law enforcement.
  2. Develops a national forum to provide an informational and educational clearinghouse and a publication resource of educational information for the public and organizations in the field of civilian oversight of law enforcement.
  3. Encourages the highest ethical standards in organizations that help oversee law enforcement.
  4. Educates the public by developing mechanisms to enhance police and community relations, educate law enforcement agencies, and encourage law enforcement to respond with sensitivity to citizens' issues and complaints.
  5. Provides, for a reasonable fee, consulting services to states, counties, cities and towns to assist in the design or refinement of oversight mechanisms.
  6. Provides training to staff members and volunteers of oversight agencies.
  7. Provides technical assistance and advice to jurisdictions that are considering the creation or revitalization of oversight bodies.

8. Identifies best practices as they emerge from the experiences of members.
9. Encourages networking, communication and information-sharing to counter the isolation inherent in the profession.
10. Furnishes information to government officials and community representatives that will support their advocacy of oversight in their states, counties, cities and towns.
11. Educates members by organizing an annual training conference that highlights best practices in the rapidly evolving world of citizen oversight through a program featuring guest speakers, panel discussions and workshops.

Connects members to one another through informal and formal networks of people who freely share their expertise and experiences in citizen oversight.

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## What should the qualifications and training be for oversight practitioners?

**A:** Being a practitioner in civilian oversight of law enforcement requires one to meet certain qualification standards and to receive ongoing training. However, training and work qualifications are different for directors, investigators, supervisors, and board members. The NACOLE website provides a list of training topics and qualifications for full time practitioners and volunteer board members [create links to relevant NACOLE pages].

For agency directors (including auditors, monitors, and ombudsmen), NACOLE recommends at minimum a Bachelor's degree in a related field, but a Master's degree, Juris Doctorate, or PhD is highly desirable. At least four years of legal or administrative experience are recommended, along with prior supervisory or managerial experience. An agency director must be innovative and possess good judgment, objectivity and integrity. An agency director must be able to work effectively with a wide array of professional and elected stakeholders as well as with a multicultural community. An agency director should have exceptional communication skills and the ability to address both community and institutional concerns. The agency director must be able to manage people and organizations by setting goals, developing and implementing programs, supervising and managing personnel, and developing and managing a budget. An agency director must be resilient and possess strong diplomatic skills. A director must also possess knowledge of general legal principals and statutory law as well as practices and procedures related to conducting investigations and administrative hearings. A director of a civilian oversight agency should have

strong knowledge of the rules and regulations governing police operations, organization and administration.

A supervisory investigator should have a Bachelor's degree and at least five years of experience conducting civil, criminal or factual investigations. Supervisory investigators should possess the ability to plan, conduct and supervise complex investigations and provide training and supervision for other investigators. A supervisory investigator must have the ability to review and edit the work of other investigators to ensure that an investigation is thorough and the factual findings and analyses are sound. Supervisory investigators must have knowledge of criminal justice procedures and the ability to establish investigative procedures and standards consistent with best practices in civilian oversight. A supervisory investigator should also possess a commitment to civilian oversight and strong communication skills.

First line investigators for civilian oversight agencies should have a Bachelor's degree in a related field and three years of experience conducting civil, criminal or factual investigations. Oversight investigators should have knowledge of investigative techniques and procedures and the ability to conduct detailed factual interviews with aggrieved individuals, witnesses and police officers. Investigators should possess knowledge of evidence handling and preservation procedures, of skip-tracing techniques to locate witnesses and of legal and criminal justice procedures. Investigators must have the ability to conduct investigations in an objective and independent manner. Investigators must be able to produce clear, concise, well-organized and thorough investigative reports and communicate professionally and courteously with individuals from a wide variety of cultural and socio-economic backgrounds. Investigators must be resourceful and demonstrate sound judgment in collecting and developing facts and have the ability to analyze and apply relevant laws and regulations to the facts of a case.

For an oversight agency to be perceived as credible and legitimate, board or commission members must also acquire the knowledge and skills necessary to perform their assignment responsibly. The types and depth of relevant training depend on the role, duties and authority of the board or commission. Each agency must critically assess the tasks and functions its members will perform and determine the skills, expertise or training they need to acquire in order to perform their duties.

Board and commission members should receive an initial orientation to civilian oversight including a review of the variety of models of civilian oversight. Members should be provided with an historical account of the establishment of their oversight agency and receive training on the charter, ordinance, or municipal code which established the oversight agency. Members should also be informed of the expectations the local community and government stakeholders have of the oversight agency. Additional education should include laws governing public records and public meetings;

confidentiality requirements; state and local laws that affect an officer's rights and privacy; case law on stops and detentions, search and seizure and the rights of an arrestee; as well as the steps in the criminal justice process including arrest, booking, arraignment, bail, hearings, and trial.

Members should receive information on the history, organization and evolution of the local law enforcement agency and should be exposed to police training on a wide variety of police practices and procedures, including: patrol; rules of conduct; procedures for detention, arrest, booking, transport, and provision of medical care; use of force guidelines including defensive tactics, takedown and pain compliance maneuvers, handcuffing techniques, baton use, use of less lethal and restraint devices, and use of firearms. Members should receive training on procedures for the investigation and review of shootings and in-custody deaths, first amendment activities, and policies for dealing with mentally disturbed individuals and people under the influence of drugs or alcohol. Members should also become familiar with the history, culture, and concerns of the communities served by the law enforcement agency, in particular the public's potential concern with biased based policing and racial profiling.

Finally, members should receive specific training on their oversight agency's operations and procedures including complaint intake, investigation, mediation and disciplinary procedures; evaluating credibility, reaching findings and due diligence requirements; procedures for hearings and meetings; and developing policy recommendations. Ride-alongs with members of the local police agency should also be provided to board and commission members.

See the NACOLE webpage [here](#) [create link] for potential sources for training.

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## What types of complaints should be accepted?

**A:** Filing a complaint against a police officer should be relatively easy with as many access points as possible. The types of complaints that an agency chooses to accept will have major implications on staffing needs, system costs, and case processing delays. A lot will depend on the nature and level of distrust of police and/or a lack of confidence in the ability of the police to treat complaints objectively and take their complaints seriously. When determining what complaints will be accepted, the following factors, along with the authority/jurisdiction of the oversight agency must be considered:

### 1. I. Form

A. Readily-accessible complaint forms will likely be available at the oversight agency, local police station, or online. The complaint process usually begins with the complainant submitting a complaint form or making a verbal complaint against an officer. Citizens can also call the agency and request that a form be mailed to them. Complaint forms can also be submitted via fax, hand delivery, or email.

B. Under some Investigative models, anonymous complaints are not always accepted where specific incidents are investigated and a complainant's identity can be crucial during the investigation. A complainant's identity may also be required at the conclusion of an investigation if the complainant is needed to testify at an adversarial hearing. Anonymous complaints are more commonly accepted under the function of an Auditor/Monitor/Ombudsman model, where the identity of the complainant is not necessarily required to review broad policies and practices.

C. Complaint forms may require a signature under the penalty of perjury. This may have a chilling effect on a person's willingness to file a complaint. The reason for the language is to deter false allegations against the police. One way to minimize the chilling effect while still minimizing the number of false allegations is to not have the language on the initial complaint form, but an agency might choose to include it if/when the complainant provides a sworn statement to the oversight agency. Caution: it should be remembered that complainants and witnesses are usually not trained observers. What they observe and experience represents an individual, and therefore potentially limited, perspective on events. Statistically, most people do not like to complain and they encouraged what they experienced from their perspective without the worry of being punished if a formal investigation results in a finding that they were mistaken as to some of the facts.

D. Requiring complainants and witnesses to be Mirandized before submitting a formal complaint is discouraged because it is often associated with being in police custody and/or being arrested on the suspicion of committing a crime. Such a practice could have a chilling effect on individuals coming forward to file complaints.

## **1. II. Initial Intake**

A. Who Does the Civilian Complain to? Civilian oversight agencies often foster a greater sense of trust among citizens with regards to how complaints against the police will be resolved. Some jurisdictions require that copies of all initial complaints (that fall within the agency's jurisdiction) are forwarded to the oversight agency, while other jurisdictions permit the law enforcement agency to receive and investigate complaints and forward their findings to the oversight agency for review. There are also jurisdictions where the police department and the oversight agency both independently investigate the same allegations of misconduct, sometimes concurrently.

B. Thus, during the initial intake of a formal complaint form, the oversight agency will likely have a classification process by which the subject matter jurisdiction of a complaint can be evaluated. This assessment may also include a determination of whether the nature of the complaint is suitable for mediation or other non-investigative options such as conciliation, or rapid resolution.

1. What should an agency do when it receives information regarding allegations not within its jurisdiction?

- 1) Refer the entire complaint to internal affairs?
- 2) Only refer the allegations that are not within its jurisdiction and investigate the rest of the complaint?
- 3) Should the agency have authority to investigate the entire complaint if it has jurisdiction over at least one of the allegations?

Regardless of the particular intake process, oversight agencies are often required to notify the police department of the complaint when it is received and provide copies of materials gathered in the initial intake process. Similarly, police departments are expected to forward complaint information to the oversight agency. Protocols for sharing information and accessing data must be established to foster transparency and accountability. Professional data bases are recommended as they ensure data are collected and stored and can be analyzed efficiently.

### 1. III. Subject Matter

A. The types of complaints that should be investigated include allegations that, if proven true, would represent misconduct under the police department's policies and procedures. For example, this may include use of unnecessary or excessive force; unlawful arrests; searches and seizures; theft or destruction of property; first amendment violations; dishonesty; violation of local, state, or federal laws and police regulations; failure to provide identification; failure to provide a service or allegations that bias toward the complainant or suspect was evidenced through language or behavior demonstrating a bias based factors such as race, ethnicity, immigrant status, socio economic status, age, sex, sexual orientation, gender identification.

B. Subject matter jurisdiction for each oversight agency will usually be defined in the ordinance/local statute that governs the oversight process.

### 1. Standing

Depending on the jurisdiction and contingent upon the oversight agency's function, a number of parties may have standing to file a complaint. As mentioned, some jurisdictions accept anonymous complaints and third party

complaints. Other jurisdictions require each victim of police misconduct to file his or her own complaint, while others allow witnesses to file on behalf of victims who do not file their own complaint. Often times, parents may file complaints on behalf of minor children. Furthermore, some agencies can self-initiate their own investigation.

### 1. V. Time Restrictions

A statute of limitations is regularly put in place to ensure timely filing. Without such a restriction, an agency's ability to acquire evidence decreases after a significant period of time and witness recollections of an incident are likely to diminish. However, the need to preserve the quality of an investigation must be balanced with the need to ensure that complainants are not overly constricted in their ability to file a complaint. Exceptions to the time restrictions may be made when a complainant has been incarcerated or hospitalized.

Oversight agencies therefore may establish a reasonable timeline that clearly defines how long a citizen has to file a complaint, when the agency must complete the investigation, and when potential discipline of the officer must be imposed. One year is commonly allowed for citizens to file complaints. However, oversight agencies may be granted discretion to extend the time frame for a complainant's non-availability based on circumstances beyond his/her control.

Many agencies have a 180-day rule for the time to complete an investigation. Exceptions for this rule may be given for factors such as a showing of "good cause," i.e., complexity, number of witnesses, staffing shortages, etc. Like jurisdiction, time restrictions, if there are any, are usually written into the ordinance/local statute governing the oversight process.

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## Is it necessary for an oversight authority to conduct investigations?

**A:** A. In the world of civilian oversight, oversight systems come in a wide variety of shapes and sizes—much depends on what the community is hoping to achieve through oversight and what it can invest in the new agency. Many civilian oversight agencies are hybrids with a variety of features that may or may not include the ability to conduct investigations that are independent from the law enforcement agencies that seek to improve (create a link to [FAQ #2](#)). To varying degrees, an oversight agency can be structured for a specific function: investigating, reviewing, or auditing.

B. The investigative function tends to be implemented when there is a high level of community mistrust in the local law enforcement agency's ability or



willingness to conduct thorough and impartial investigations. Under this model, the oversight agency is specifically empowered to conduct independent investigations and must have access to the relevant documents, files, and electronic databases of the law enforcement agency. Ideally, an oversight agency with investigative authority should employ specially trained investigators to conduct interviews, acquire evidence, and write reports. Therefore, the funding necessary to hire a qualified investigator should be made available in the oversight agency's annual budget. Qualification standards for oversight investigators can be found here [create link to Wechtner's guidelines]. In addition to independently collecting evidence and interviewing complainants and witnesses, an oversight agency with an investigative function should have direct access to officers for the purpose of conducting interviews or the ability to sit in on an interview and ask questions during the officer's interview with internal affairs.

C. Under the review systems of civilian oversight, sworn officers from inside the policing agency conduct the investigation and submit the closed investigative files and report to the oversight body which then analyzes the quality of the investigation and may then make recommendations or request further investigation. Agencies based solely on the review model typically do not have independent investigative authority nor the capacity or resources to conduct independent investigations.

D. Similarly, agencies that feature ongoing auditing may or may not include investigative authority. In some situations an oversight agency has investigative powers when needed, but it is not necessary for the oversight authority to conduct separate investigations for every complaint. An oversight agency's mission usually involves tracking a complaint from intake to outcome to identify troubling or unconstitutional patterns and practices for the purpose of recommending policies and training that will correct the problem. Sometimes, simply examining relevant data provided by the policing agency can identify a problem. In some instances, separate and independent investigations may be required to ensure the accuracy of the data being analyzed or when public confidence in the police to investigate themselves in a specific matter is absent. In some cases, an oversight agency may find it necessary to construct an investigative method that acquires or produces new information that the policing agency does not have or is unwilling to release to the oversight agency.

E. What is necessary in any investigation is that it is, and is perceived to be, timely, objective, unbiased and thorough.

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## Who should make the final determination as to whether the allegations in a complaint should be sustained and what corrective actions, or disciplinary measures should be imposed?

**A. Oversight Agencies With Authority Over the Final Outcome:** Within the current oversight landscape, few existing oversight agencies have the authority to make final determinations as to the outcome of an investigation. This authority is more common in oversight agencies that have developed within the context of the city being under a federal consent decree to reform its police department. However, there are also some well-established agencies that have the authority to make these final, binding determinations without having received the authority through consent decree requirements. These can take the form of hearing boards that take evidence and testimony and render findings of facts and conclusions of law and determine whether the allegations within the complaint should be sustained or dismissed after weight the relevant evidence. These oversight systems, such as in Portland, Oregon, also have an appeals process in which either the complainant or the officer may appeal the decision.

**B. A New Trend?** In the city of New York, a specialized prosecutorial unit is in place that investigates cases and presents their case to a specialized administrative judge—at the same time, the officers' right to counsel is also preserved and they are defended in front of the same judge. After receiving the recommendation of these special administrative courts, a ranking police executive either accepts or rejects the recommendations of the court. In this system, well over 80% of the allegations are sustained.

**C. Oversight Agencies that Make Non-Binding Recommendations:** The majority of oversight agencies are limited to making recommendations to the police department as to what the outcome should be based on a review of the evidence that has been collected, presented and analyzed.

i. The imposition of corrective measures (such as training) or discipline (typically based on a disciplinary matrix that ensures discipline is consistent and even-handed) is left to the police department itself and usually falls to the chief of police, commissioners or a command staff executive.

ii. A police executive or body having the authority to reject the findings of an investigative oversight agency may lead to a number of foreseeable problems. This type of authority may be seen as undermining the oversight process and may result in a lack of the community's support for, and cooperation with, the police department. Thought should be given as to whether the police executive or commission with the authority to reject oversight recommendations should justify his or her decision in writing as the absence of a well-reasoned justification raises issues of bias and a possible lack of respect for the oversight process and the community. What will always

be problematic and possibly frustrating is when the oversight agency and the police department can review the same evidence and come up with divergent conclusions. The police department's should rest with the Chief, Command Staff executive or Commissioner--recommendations should not be the result of a popularity contest with supervisors and separate levels of command staff weighing in on the outcome.

iii. Some agencies are governed by rules similar to those in Washington D.C. In that community, the police chief is bound by the findings of the Office of Police Complaints, but retains the discretion to determine the discipline to be imposed. Under the D.C. system, if the Office of Police Complaints investigates an allegation of misconduct and dismisses it, the department cannot discipline the officer for that allegation.

iv. Oversight agencies that make recommendations may find it useful to track the number of cases in which its recommendations are rejected and report this information to policy makers and to the public.

v. The oversight agency that performs reviews of investigations may also use information used in the review process to make recommendations as to policy changes or training programs that are needed. Enabling legislation can establish the level to which such recommendations are binding on the police department and what exemptions, if any, are necessary or allowed.

vi. In all instances, a realistic analysis of budget and training must be part of the process of setting up the system and determining the scope of its authority. Few members of volunteer boards have the time to devote to review detailed reports, conduct hearings, and draft findings and or orders. In jurisdictions in which review boards select only a sample of cases to review, it will be difficult to ensure that all civilian complaints receive equal treatment.

**1. Police Commissions with broad powers:** A police commission, composed of civilians, that has absolute authority to hire, fire, demote, suspend, and terminate officers can work well in larger communities that can afford to compensate commissioners for what are full-time positions. Establishing an effective oversight system that engages civilians will be only of their many duties.

i. The commission will be responsible for setting up a civilian complaint system and ensuring it has sufficient independence from the police department, involves civilians in meaningful ways that allow the program to function effectively and free from pressure from the police department. This includes determining what role oversight will take in complaint intake, investigating, adjudicating, recommending corrective measures and making policy and training recommendations.

ii. In general terms it may be necessary to remove disciplinary power from the chief of police if community trust is so eroded as to make confidence in the department's ability to investigate and discipline its officers impossible. The ultimate goal is to restore community trust and foster healthy relationships between the community and law enforcement. Depending on the level of trust that exists, removing some powers from the chief of police may be a necessary, but hopefully temporary, measure to ensure accountability.

Each community will have to make these decisions based on their specific needs and what they deem as necessary to transform police departments into open and accountable parts of local government. Some communities choose to allow a chief of police to retain broad discretion; the community then relies on the transformational effects of providing the chief with additional information from non-police sources and publicizing the chief's record in taking appropriate disciplinary and corrective measures. Other communities have come to the conclusion that where a pattern of overlooking or condoning misconduct has been established, placing the disciplinary authority outside the police department may speed the process of promoting consistency and fairness.

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## Should the oversight entity have subpoena power?

### **A:**

1. Independent oversight agencies need the ability to obtain necessary information in order to be an effective overseer. Depending on the enabling legislation, this may include compelling testimony or evidence. However, access to this information from the police department may be achieved through either organizational structure or subpoena power or both. Police departments can, and often do, issue a general order compelling full cooperation with administrative investigations.
2. Where subpoena power is often most useful is to compel information from witnesses outside the police department. For example, a thorough investigation may require compelling the production of CCT video at or near the site of an incident. Such evidence often proves dispositive.
3. Some Internal Affairs departments may refuse to subpoena evidence from police officers they are investigating. This limitation can severely impact an investigation and result in an unnecessarily inconclusive outcome. For example identified police officers may have used their personal cell phones in the process of violating policies and procedures—obtaining these records is necessary if the investigation is to be thorough and objective.

4. Subpoena power is only one of many tools in the toolbox and many older oversight agencies do not have it. [1] Furthermore, obtaining subpoena power and issuing subpoenas do not come without challenges and also require the ability to be able to take the matter to a court of law to enforce the subpoena. It is important to note, that if you are unable to obtain subpoena power, you may simply have to work around the barrier and obtain information through other sources.
5. Trying to secure subpoena power by the oversight entity can involve lengthy negotiations or even court battles with officers' unions or police agencies that consume significant time and cost. Some even question whether having subpoena power serves any useful purpose[2]. In order to protect the rights of police officers, federal courts limit who can force officers to testify and when that testimony can be taken[3]. If the oversight agency lacks the ability to compel officer testimony, subpoena power often adds nothing. Moreover, in some jurisdictions, state courts further curtail subpoena power, which has limited some agencies power to issue administrative subpoenas to those issued by approval of a court[4]. Make sure to check your own jurisdiction to see whether there are any additional limits in place.
6. If you are able include subpoena power in the agency's enabling legislation, by all means, include it. If you are unable to, this is not a roadblock to effective civilian oversight.

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[1] Peter Finn. Citizen Review of Police: Approaches and Implementation, 99-100 (Nat'l Institute of Justice 2001).

[2] Id.

[3] *Garrity v. New York*, 385 U.S. 493 (1967)

[4] See *State v. Miles*, 160 Wn. 2d 376 (2006).

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**STAFF REPORT**

**City Council**

**Meeting Date:** 7/14/2020  
**Staff Report Number:** 20-142-CC

**Informational Item:** City Council agenda topics: July 2020 to September 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 September 8. 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**

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

**Attachments**

A. City Council agenda topics: July 2020 to September 2020

Report prepared by:  
Judi A. Herren, City Clerk

## Tentative City Council Agenda

#	Title	Department	Item type
1	Previous years' salary schedule amendments	ASD	Regular
2	City Council Policy #CC-01-1996 as recommended by the City Council Community Funding sub-committee, approve revisions	ASD	Consent
3	Award 2020 street preventative maintenance contract	CDD	Consent
4	School is first related to prop 13	CDD	Consent
5	123 Independence Dr EIR contract authorization	CDD	Consent
6	BAE inclusionary study	CDD	Regular
7	Check-in on Santa Cruz Closure	CDD	Informational
8	Short term rental regulation recommendation	CDD	Regular
9	USGS property information	CDD	Informational
10	Y-Plan Presentation (FB study)	CDD	Presentation
11	Adoption of a resolution to make changes to the Community Zero Waste Plan strategies and implementation timelines	CMO	Regular
12	City Council Priorities	CMO	Regular
13	Conflict of interest code update, resolution adoption	CMO	Consent
14	Adopt Climate Action Plan 2030	CMO	Regular
15	BHCCL Update	CMO	Informational
16	Community electronic vehicle infrastructure policy and program analysis	CMO	Study Session
17	Proclamation: RethinkWaste trash to art contest winners	CMO	Proclamation
18	Solid waste rates	CMO	Study Session
19	CDC grant report	LCS	Informational
20	CDE contract for FY20/21	LCS	Consent
21	700-800 El Camino Real, purchase and sale agreement	PW	Closed Session
22	Adopt the 2020-21 capital improvement plan	PW	Regular
23	Authorize the City Manager to enter into an agreement with SZS Engineering for the ADA Self Evaluation and Transition Plan	PW	Consent
24	Provide an update on the water system operations and capital projects since COVID-19	PW	Study Session
25	Approval of Bayfront Canal Drainage Easement	PW, CA	Regular
26	Approval of MOU with FSLR re Flood Control project	PW, CA	Regular