

COMMUNITY AMENITY IMPLEMENTING REGULATIONS

**IMPLEMENTING REGULATIONS FOR THE APPLICATION, REVIEW, AND APPRAISAL, OF
PROPOSED COMMUNITY AMENITIES IN EXCHANGE FOR BONUS LEVEL
DEVELOPMENT IN R-MU, O, AND L-S ZONING DISTRICTS**

I. Background and Scope

These regulations implement the policies and laws governing the entitlement of bonus level development projects and the provision of associated community amenities within the City of Menlo Park as established by Menlo Park Municipal Code Chapters 16.43, 16.44, and 16.45, and the City of Menlo Park General Plan Land Use Element Policies LU-4.4 (Community Amenities) and Program LU-4.C (Community Amenity Requirement).

II. Definitions

A. "Applicant" shall mean the original applicant for any development project within the City of Menlo Park and any subsequent applicants for the same development project within the City of Menlo Park.

B. "Applicant's Appraisal" shall mean the appraisal submitted by the Applicant, on or after the date the Applicant submitted their Development Application, by a licensed appraisal firm, that sets a fair market value in cash of the gross floor area of the bonus level of development as set forth more fully in sections 16.43.070(3), 16.44.070(3), and 16.45.070(3), and as more specifically calculated pursuant to the Appraisal Instructions. The Applicant's Appraisal shall be based on a date of value that is within 90 days of the date of the appraisal, but in no event shall the date of value be earlier than the date the Applicant submits its Development Application.

C. "Application Date" means the date that the Applicant submits their Development Application.

D. "Appraisal Instructions" means the instructions for conducting appraisals approved by the City Council through Resolution No. __. An Applicant may elect whether to apply the Appraisal Instructions in effect on the Applicant's project Application Date or any subsequently amended Appraisal Instructions to all appraisals of the Bonus Level Development Value for its project.

E. "Bonus Level Development" means the gross floor area of the Bonus Level Development Project that exceeds the level of intensity, including floor area ratio, density, and/or height that would otherwise be permissible within the underlying zoning district.

F. "Bonus Level Development Project" means those development projects that, pursuant to MPMC sections 16.43.070, 16.44.070, and 16.45.070, provide Community Amenities in exchange for the benefit of developing at a greater level of intensity with an increased floor area ratio, density, and/or increased height than otherwise permissible within the underlying zoning district.

G. "Bonus Level Development Value" means the appraised value of the gross floor area of the bonus level of development as set forth more fully in sections 16.43.070(3), 16.44.070(3), and 16.45.070(3), and as more specifically calculated pursuant to the Appraisal Instructions.

H. "City's Appraisal" means the appraisal commissioned by the Community Development Director by a licensed appraisal firm that sets a fair market value in cash of the gross floor area of the bonus level of development as set forth more fully in sections 16.43.070(3), 16.44.070(3), and 16.45.070(3), and as more specifically calculated pursuant to the Appraisal Instructions. The City's Appraisal shall be based on the same date of value as the Applicant's Appraisal.

I. "Community Amenities Valuation" means the estimated financial value of a community amenity, which value shall equal at least fifty percent (50%) of the Bonus Level Development Value.

J. "Community Amenities List" shall mean the list of approved community amenities adopted and approved by the City Council pursuant to Resolution 6849, and any resolutions amending Resolution 6849.

K. "Development Application" means an application to the City for discretionary review for development of a project, or portion thereof, including but not limited to an architectural control permit, use permit, conditional development permit, development agreement, and/or tentative subdivision maps from the City required to carry out the development of the project.

L. "Existing Applicant" shall mean any applicant for a development project that has submitted a Development Application within the City of Menlo Park or any subsequent applicant for the same development project within the City of Menlo Park, where such applicant has submitted a Development Application on or before August 15, 2023.

M. "Final Appraised Value" means the value determined through the Bonus Level Development Value Appraisal Process provided for in Section 3 of these regulations and shall constitute the City's final determination of the Bonus Level Development Value, which shall be binding on the City and the Applicant. The Final Appraised Value must be based on the same date of value as the Applicant's Appraisal.

N. "Housing Development Project" shall have that meaning set forth in Government Code section 65589.5(h)(2).

O. "Preliminary Application" shall have that meaning set forth in Government Code section 65941.1.

P. "Qualified Appraiser" means an appraiser (i) that is licensed in the State of California as a "Certified General Real Estate Appraiser" and holds the MAI designation from the Appraisal Institute, (ii) has been practicing or working as an appraiser for at least five (5) years in California, (iii) is not an affiliate of the City or Applicant and has no equity investment in Applicant or its affiliates, (iv) who has particular experience with Northern California real property transactions involving commercial and residential developments, and (v) who has no conflict of interest as evidenced by not favoring and/or being adverse to either the City or the Applicant in any other appraisal proceeding.

Q. "Third Party Appraisal" means the appraisal performed by a third party licensed appraisal firm, agreed upon by the City's appraiser and the Applicant's appraiser, that sets a fair market value in cash of the gross floor area of the bonus level of development as set forth more fully in sections 16.43.070(3), 16.44.070(3), and 16.45.070(3), and as more specifically calculated pursuant to the Appraisal Instructions.

III. Community Amenity Application Procedures

A. Applicability. These application procedures shall be limited as follows:

1. Housing Developments Projects shall not be subject to the Community Amenities Hearing requirements of subsection III.B.3.
2. Existing Applicants that have submitted a Community Amenities proposal on or before August 15, 2023 need not submit an initial or final Community Amenities Proposal pursuant to subsections III.B.2.

B. *Procedures*

1. Bonus Level Development Value Appraisal Process. Applicants shall submit an Applicant's Appraisal as required for a Bonus Level Development Project. The appraisal review process set forth in this section shall not begin until the Applicant submits the Applicant Appraisal.

- a) The Applicant's Appraisal shall be an appraisal of Bonus Level Development Value which, pursuant to the Community Amenity Ordinances, shall set forth a fair market value in cash of the gross floor area of the bonus level of development. The Applicant's Appraisal shall adhere to the City's Community Amenity Appraisal Instructions and shall be prepared by a Qualified Appraiser.
- b) Review of Applicant's Appraisal.
 - (1) Within 30 days of receipt of an Applicant's Appraisal, the Community Development Director or their designee shall review the Applicant's Appraisal and either (1) approve the form and content of the appraisal or (2) reject the form and content of the appraisal. The Community Development Director's review for form and content shall be limited to determining that the Applicant's Appraisal was (i) performed by a Qualified Appraiser; (ii) is based on an appropriate date of value; and (iii) is based on a comparable sales approach.
 - (2) Return of Applicant's Appraisal. If the Community Development Director rejects the form and content of the Applicant's Appraisal, the Applicant's Appraisal shall be returned to the Applicant with directions regarding the required modifications to the form and/or content of the Applicant's Appraisal. The Applicant shall resubmit an Applicant's Appraisal that complies with the Community Development Director's directions. The resubmitted Applicant's Appraisal shall be based on the same date of value as the initially submitted Applicant's Appraisal.
 - (3) Appraisal Review Process.
 - (a) If the Community Development Director approves the form and content of the Applicant's Appraisal, the Community Development Director shall obtain the City's own appraisal of the Bonus Level Development Value, which shall constitute the City's Appraisal. The City's Appraisal shall be completed, to the extent possible, within 75 days of the Community Development Director's approval of the form and content of the Applicant's Appraisal and shall be authored by a Qualified Appraiser. If the City's Appraisal cannot be completed within 75 days, the City will provide notice to the Applicant of the reason for the delay and the expected date of completion.
 - (b) The City's Appraisal shall be an appraisal of Bonus Level Development Value which, pursuant to the Community Amenity Ordinances, shall set forth a fair market value in cash of the gross floor area of the bonus level of development. The City's Appraisal shall adhere to the City's Community Amenity Appraisal Instructions and shall be prepared by a Qualified Appraiser.

(c) If the Applicant's Appraisal and the City's Appraisal differ in the determination of the Bonus Level Development Value, the following procedures shall be utilized to determine the Final Appraised Value. If the Applicant's Appraisal and the City's Appraisal differ by:

(i) Less than ten (10) percent of the lower of the two appraisals, the Community Development Director shall approve a Final Appraised Value of the midpoint between the two appraisals. Said midpoint shall be rounded to the nearest \$1,000.

(ii) Ten (10) percent or greater than the value of the lower of the two appraisals, the Applicant shall have the option of revising the Applicant's Appraisal to state a value that is within ten (10) percent of the value of the lower of the two appraisals and accepting a Final Appraised Value that is the midpoint between the two appraisals as set forth in Section III-B-1-(b)-(3)-(c)-(i). If the Applicant chooses not to revise the Applicant's Appraisal, then the Applicant may submit a written request to the City that the Applicant's appraiser and the City's appraiser agree upon and appoint a third appraiser, who shall be a Qualified Appraiser. The Applicant's appraiser and the City's appraiser must agree upon and select a third appraiser within 30 days of the Applicant's written request. If the Applicant's appraiser and City's appraiser fail to agree on the appointment of a third party appraiser, then each party may submit the names of two appraisers, within 10 days after the deadline for the parties' appraisers to select a third appraiser, and a third party appraiser will be selected, at random, by the City Manager, from the names of the submitted appraisers. The Applicant will be notified of the date, time, and place where the selection will occur and will have the opportunity to be present and observe the selection process.

(d) The third appraiser shall review the Applicant's Appraisal and the City's Appraisal and develop an independent Third Party Appraisal. In doing so, the third appraiser may confer with the Applicant's appraiser and the City's appraiser. The Third Party Appraisal shall be an appraisal of Bonus Level Development Value which, pursuant to the Community Amenity Ordinances, shall set forth a fair market value in cash of the gross floor area of the bonus level of development. The Third Party Appraisal shall adhere to the City's Community Amenity Appraisal Instructions and shall be prepared by a Qualified Appraiser.

(e) If the Third Party Appraisal is greater than City's Appraisal, then the City's Appraisal of the Bonus Level Development Value shall become the Final Appraised Value. If the Third Party Appraisal is less than the Applicant's Appraisal, then the Applicant's Appraisal of the Bonus Level Development Value shall become the Final Appraised Value. If the Third Party Appraisal's determination of the Bonus Level Development Value is between the values determined by the City's Appraisal and the Applicant's Appraisal, then the Final Appraised Value shall be average of the two appraisals that are closest in value to each other.

c) Applicant shall bear all costs and expenses incurred by the City in reviewing the Applicant's Appraisal and determining Bonus Level Development Value, including but not limited to staff time, costs and expenses associated with preparing the City's Appraisal and Third Party Appraisal.

2. Initial Community Amenities Proposal. Following the determination of the Final Appraised Value, Applicant shall submit an initial community amenities proposal which shall include a statement that the Applicant is proposing (1) a community amenity(ies) from the list of community amenities adopted by City Council Resolution No. 6849, as that Resolution may be amended, (2) a community amenity in-lieu payment, or (3) community amenity(ies) not on the list of community amenities adopted by City Council Resolution No. 6849, as that Resolution may be amended, and instead proposed to be provided through a development agreement, or (4) any combination of the above. The Applicant may propose multiple community amenities as alternatives in its initial community amenities proposal. Applicant need not, but may provide any other plans, specifications and/or details in the initial community amenities proposal, which will enable the City Council to consider the merits of the proposed community amenity(ies).

3. Community Amenities Proposal Hearing.

a) To the extent feasible, within 45 days of submittal of the initial community amenities proposal, but no later than 75 days from submittal of the initial community amenities proposal, the City Council shall hold a Community Amenities Proposal Hearing to consider the community amenities proposed by the Bonus Level Development Project.

(1) Early Staff Report Release. The staff report for the Community Amenities Proposal hearing shall be released a minimum of 15 days in advance of the City Council meeting.

b) Hearing Procedures. The following procedures shall apply to Community Amenities Proposal Hearings:

(1) Staff Report. Staff shall provide a staff report in advance of the Hearing which includes (1) a brief summary of the proposed project, (2) a summary of the proposed community amenities and/or in-lieu payment, and (3) an analysis as to whether the proposed community amenities are on the Community Amenities List, not on the Community Amenities List and therefore subject to approval through a development agreement, and/or required by existing City laws or regulations, and

(2) Hearing. At the hearing, the applicant and staff may present their evaluations to the City Council. Because no CEQA action on the project will have been taken, the hearing will provide an opportunity for the City Council to hear, consider and/or provide feedback on conceptual community amenities proposals, but no final approval on community amenities shall take place.

(3) Community Amenities Proposal Resolution. After hearing testimony, taking public comment, and deliberating, the City Council shall adopt a resolution which includes the following:

(a) A statement that the Council has considered the proposed community amenities and/or in-lieu payment proposal and finds that some, all or none of the community amenities and/or in-lieu payment proposal bear a reasonable relationship to the increased intensity of development and increased effects on the surrounding community, and that the community amenities and/or in-lieu fee address identified community needs.

(b) A statement affirming or recommending modifications to applicant's initial community amenity proposal.

(c) The Community Amenities Proposal Resolution memorializes the City Council's determination that the Initial Community Amenities Proposal is appropriate for the Bonus Level Development Project and does not indicate the City Council's approval of or intent to approve the proposed project.

4. NOP Release. Where a Notice of Preparation (NOP) is to be prepared for the Bonus Level Development project, the NOP shall be released following the Community Amenities Proposal Hearing.

5. Final Community Amenities Proposal.

a) Following the Community Amenities Proposal Hearing, Applicants shall submit a Final Community Amenities Proposal. The Final Community Amenities Proposal shall contain, at a minimum, the following information:

(1) Response to feedback from the Community Amenities Proposal Hearing, if any.

(2) A statement that the Applicant is proposing (1) the community amenity(ies) and/or in-lieu payment recommended by the City Council in the Community Amenities Proposal Hearing (if applicable), or (2) a statement and description of any other community amenity(ies) and/or in lieu payment being proposed which were not recommended by the City Council.

(3) An evaluation of the proposed community amenity(ies) value, documenting that the proposed value, at a minimum, meets the minimum required Community Amenities Valuation, subject to review and determination by the City.

b) In the circumstances in which the proposed community amenity is modified between the community amenities proposal hearing and final community amenities proposal, staff shall provide an informational item on a city council agenda describing said modifications.

IV. Community Amenities In-lieu Payments

A. Pursuant to MPMC sections 16.43.070(4)(b), 16.44.070(4)(b), and 16.45.070(4)(b), applicants may propose a community amenities in-lieu payment, instead of proceeding with the provision of a community amenity or amenities on the Community Amenities List. For non-housing development projects, Community Amenity in-lieu payments are subject to Planning Commission and City Council (on appeal) approval pursuant to the review procedures set forth in sections III.B.1 through III.B.5, herein

B. Expenditure of Community Amenities In-lieu payments. The in-lieu fee revenues shall be deposited in a restricted community amenities fund to be used to implement the community amenities identified in the list adopted by city council resolution.