



SPECIAL AND REGULAR MEETING AGENDA

Date: 8/28/2018
Time: 6:00 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

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

6:00 p.m. Closed Session (City Hall - “Downtown” Conference Room, 1st Floor)

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

- CL1.** Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding current labor negotiations with Menlo Park Police Officers’ Association (POA).

Attendees: City Manager Alex McIntyre, City Attorney Bill McClure, Assistant City Manager Nick Pegueros, Administrative Services Director Lenka Diaz

7:00 p.m. Regular Session

- A. Call to Order**
- B. Roll Call**
- C. Pledge of Allegiance**
- D. Public Comment**

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

E. Commission Report

- E1. Housing Commission Quarterly Report

F. Consent Calendar

- F1. Approve the response to the San Mateo County Civil Grand Jury Report “Law Enforcement Officers + Narcan = Lives Saved From Opioid Overdoses” ([Staff Report #18-171-CC](#))
- F2. Approve the response to the San Mateo County Grand Jury Report: “Soaring City Pension Costs – Time for Hard Choices” ([Staff Report #18-167-CC](#))
- F3. Approve the response to the San Mateo County Grand Jury Report: “Cooperative Purchasing – A

Roadmap to More Effective City Procurement” ([Staff Report #18-166-CC](#))

- F4. Adopt Resolution No. 6456 authorizing the Bay Area Water Supply and Conservation Agency to negotiate with the City and County of San Francisco to amend the water supply agreement ([Staff Report #18-164-CC](#))
- F5. Adopt Resolution No. 6458 abandoning 1,470 square feet of public right-of-way adjacent to 815 Bay Road ([Staff Report #18-170-CC](#))

G. Public Hearings

- G1. Consider an appeal of the Planning Commission approval of architectural control for a new mixed-use office and residential building at 840 Menlo Avenue, and consider modifications to the long-term plan for receiving operations at Draeger’s Market at 1010 University Drive ([Staff Report #18-169-CC](#))
- G2. Introduce Ordinance No. 1049 amending Title 12, building and construction, Ordinance No. 1050 amending Title 16, zoning and Ordinance No. 1051 adding Chapter 12.24 to the Municipal Code related to the permit process for electric vehicle charging stations ([Staff Report #18-168-CC](#))

H. Regular Business

- H1. Adopt Resolution No. 6459 to amend the city salary schedule ([Staff Report #18-173-CC](#))

I. Informational Items

- I1. Review of the City’s investment portfolio as of June 30, 2018 ([Staff Report #18-165-CC](#))
- I2. Disclosure of Brown Act violation - rescheduling next steps for Library System Improvement Project ([Staff Report #18-172-CC](#))

J. City Manager's Report

K. Councilmember Reports

L. Adjournment

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

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

Any writing that is distributed to a majority of the City Council by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available for inspection at the City Clerk’s Office, 701 Laurel St., Menlo Park, CA 94025 during regular business hours. Persons with disabilities, who require auxiliary aids or services in attending or participating in City Council meetings, may call the City Clerk’s Office at 650-330-6620.

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City website at menlopark.org/agenda and can receive email notification of agenda and staff report postings by subscribing to the “Notify Me” service at menlopark.org/notifyme. Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 8/23/2018)



STAFF REPORT

City Council
Meeting Date: 8/28/2018
Staff Report Number: 18-171-CC

Consent Calendar: **Approve the response to the San Mateo County Civil Grand Jury Report “Law Enforcement Officers + Narcan = Lives Saved From Opioid Overdoses”**

Recommendation

Staff recommends that the City Council approve the attached response to the 2017 – 2018 San Mateo County Civil Grand Jury report “Law Enforcement Officers + Narcan = Lives Saved From Opioid Overdoses” for the Mayor’s signature.

Policy Issues

There are no policy implications as the City of Menlo Park has already begin to implement the recommendations proposed by the San Mateo County Civil grand jury.

Background

The San Mateo County Civil grand jury conducted an investigation into whether or not law enforcement and public employees within San Mateo County should be trained and equipped to provide emergency opioid overdose medication. The grand jury conducted research into the opioid epidemic effects both nationally and locally. Additionally, the grand jury examined the cost associated with the equipment necessary for effective implementation in the field. The grand jury also conducted several interviews with line level staff, supervisors, and managers at several police agencies within the County.

The grand jury filed a report June 28, 2018 (Attachment B) which contained eight findings and two recommendations for our department. Comments responsive to the findings and recommendations are required to be submitted to the Honorable Judge V. Raymond Swope no later than September 26, 2018. The City’s response must be approved by the City Council at a public meeting.

Analysis

Staff reviewed existing resources, met with subject matter experts and analyzed current industry standards. The Menlo Park response to the San Mateo County grand jury report includes the relevant findings and recommendations gleaned from this analysis.

Impact on City Resources

Approving and submitting a response to the grand jury report has no direct impact on 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 proposes an organizational structure change that will not result in any direct or indirect physical change in the environment.

Public Notice

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

Attachments

- A. City of Menlo Park response letter
- B. San Mateo County Civil grand jury Report

Report prepared by:
William A. Dixon, Commander



August 28, 2018

The Honorable V. Raymond Swope
Superior Court of California, County of San Mateo
400 County Center
Redwood City, CA 94063

RE: Grand Jury Report “Law Enforcement Officers + Narcan = Lives Saved From Opioid Overdoses”

Dear Judge Swope,

The Menlo Park City Council received the above referenced San Mateo County Civil Grand Jury Report in June of 2018. The report identifies certain findings and recommendations, and requests that the City Council respond in writing to those findings no later than September 26, 2018. On August 28, 2018, the Menlo Park City Council held a public meeting and approved this response.

Regarding the “findings” of the San Mateo County Civil Grand Jury, Council is requested to respond with one of the following:

1. Council agrees with the finding.
2. Council disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons thereafter.

Regarding the “recommendations” of the San Mateo County Civil Grand Jury, Council is requested to report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of the publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable with an explanation therefore.

Findings:

F1. Untreated opioid overdose can cause brain damage and death.

Response

The City of Menlo Park agrees with this finding.

F2. Naloxone is a safe, nontoxic drug that can stop and reverse the effects of opioid overdose.

Response

The City of Menlo Park agrees with this finding.

F3. Narcan® is a brand of intranasal naloxone, which can be successfully administered with no more than one hour of training.

Response

The City of Menlo Park agrees with this finding.

F4. Fire department and ambulance paramedics are the only emergency responders within the County currently carrying naloxone.

Response

The City of Menlo Park agrees with this finding.

F5. Law enforcement officers may arrive at the scene of an opioid overdose before paramedics.

Response

The City of Menlo Park agrees with this finding.

F6. Law enforcement officers' risk of accidental exposure to fentanyl derivatives varies based on their roles and responsibilities. Narcotics units, crime suppression units, SWAT teams, K-9 units, and evidence-handling units are at a heightened risk of exposure.

Response

The City of Menlo Park agrees with this finding.

F7. Certain law enforcement officers and Sheriff's Forensic Lab and Coroner's Office personnel are at a heightened risk of exposure to fentanyl derivatives.

Response

The City of Menlo Park agrees with this finding.

F8. Equipping and training officers with the intranasal naloxone is inexpensive and the associated costs can be absorbed into existing programs and budgets.

Response

The City of Menlo Park agrees with this finding.

Recommendations:

The Civil Grand Jury recommends that the Police Department of the City of Menlo Park:

R1. Train and equip law enforcement officers at heightened risk of exposure to fentanyl derivatives with intranasal naxolone as a minimum standard of practice.

Response

This recommendation is currently being implemented for all sworn Menlo Park Police Officers and those employees who face a heightened risk of exposure.

The Menlo Park Police Department has already established an Opioid Medical Aid and Response policy which was approved by the San Mateo County EMS Medical Director. The policy provides direction in identifying, responding to, and administering naxolone during an opioid overdose. Additionally, the policy also provides guidelines for the content of both initial and subsequent refresher training.

The Menlo Park Police Department expects to have all identified personnel trained and equipped with naxolone by December 1, 2018.

R2. Evaluate training and equipping all law enforcement officers with intranasal naxolone in order to protect themselves and the general public.

Response

This recommendation is currently being implemented for all sworn Menlo Park Police Officers and those employees who face a heightened risk of exposure.

The Menlo Park Police Department has already established an Opioid Medical Aid and Response policy which was approved by the San Mateo County EMS Medical Director. The policy provides direction in identifying, responding to, and administering naxolone during an opioid overdose. Additionally, the policy also provides guidelines for the content of both initial and subsequent refresher training.

The Menlo Park Police Department expects to have all identified personnel trained and equipped with naxolone by December 1, 2018.

Sincerely,

Peter Ohtaki
Mayor, City of Menlo Park

Enclosure:
Draft Menlo Park Police Department Opioid Medical Aid and Response policy

Sincerely,

[Your Name]
[Your Position]



LAW ENFORCEMENT OFFICERS + NARCAN = LIVES SAVED FROM OPIOID OVERDOSES¹

ISSUE

Should law enforcement officers and public employees in San Mateo County be trained and equipped to provide emergency opioid overdose medication to prevent deaths?

SUMMARY

The opioid epidemic is not somebody else's problem. Over 42,000 Americans died of opioid overdose in 2016.² In that year, opioid deaths in California exceeded 1,900, including 19 people in San Mateo County (the County).³

Opioids of all varieties can kill. Abuse of heroin and prescription opioids are the leading causes of opioid overdose in the County. New opioids pose an even greater threat. Fentanyl and its derivatives are opioids 50 to 100 times more powerful than prescription opioids (such as Oxycodone) and heroin. While not yet reported being found in the County, carfentanil, an illegal laboratory-created analog that is estimated to be 10,000 times more powerful than morphine, has been increasingly implicated in overdose deaths nationwide.

Carfentanil and other powerful fentanyl derivatives not only endanger the lives of users but also present a potential source of accidental exposure (through skin contact or breathing airborne particles) for law enforcement officers and other first responders.⁴ A lethal dose of Fentanyl may be as low as 2 to 3 milligrams, less than 3 grains of salt.⁵

Opioid overdose may induce respiratory failure which, if left untreated, will lead to severe brain damage and death within minutes.⁶ Administration of naloxone is the standard emergency treatment to reverse opioid overdose. Naloxone is safe, fast acting, and effective, having been used by medical personnel in its injectable form since 1971.⁷

¹ NARCAN® (naloxone HCl) Nasal Spray is the first and only FDA-approved nasal form of naloxone for the emergency treatment of a known or suspected opioid overdose. Use of the term "Narcan" in this report is neither an endorsement of NARCAN nor Adapt Pharma, Inc. Narcan is used in this report as a generic reference to intranasal naloxone.

² Centers for Disease Control. "Understanding the Epidemic" Last modified August 30, 2017. <<https://www.cdc.gov/drugoverdose/epidemic/index.html>>.

³ California Department of Public Health, "San Mateo Numbers at a Glance" *California Opioid Overdose Surveillance Dashboard* (2018). Accessed February 26, 2018. <https://pdop.shinyapps.io/ODdash_v1>

⁴ DEA Public Affairs, "DEA Warning to Police and Public: Fentanyl Exposure Kills" *Drug Enforcement Agency*, June 10, 2016. <<https://www.dea.gov/divisions/hq/2016/hq061016.shtml>>

⁵ U.S. Department of Justice, "A Briefing Guide for First Responder" *Drug Enforcement Agency*, June 6, 2017: 9. <https://www.dea.gov/druginfo/Fentanyl_BriefingGuideforFirstResponders_June2017.pdf>.

⁶ Zawn Villines, "What Happens After a Lack of Oxygen to the Brain" *Spinalcord.com*. Last Modified June 13, 2016. <<https://www.spinalcord.com/blog/what-happens-after-a-lack-of-oxygen-to-the-brain>>

⁷ Food and Drug Administration. "Summary Review for Regulatory Action: NARCAN® (naloxone hydrochloride) nasal spray," *FDA Approved Drug Products*. Last modified January 24, 2017.

<https://www.accessdata.fda.gov/drugsatfda_docs/summary_review/2017/208411s001SumR.pdf>

Equipping law enforcement officers with intranasal naloxone (trade name Narcan®) can expedite treatment for overdose victims and officers who are accidentally exposed to powerful fentanyl derivatives.

Law enforcement officers can be the first to respond to an opioid overdose, particularly in more sparsely populated areas.⁸ Even when paramedics are the first to respond to an overdose, if the scene compromises their safety, paramedics must wait until law enforcement arrives and secures the area before offering medical assistance.

Lethal doses of fentanyl derivatives can be accidentally absorbed, posing a risk of overdose to those individuals whose jobs bring them into potential proximity. In particular, law enforcement officers and employees in the Coroner's Office and the Sheriff's Forensic Laboratory are at heightened risk of exposure.⁹ Equipping these at-risk employees with intranasal naloxone can mitigate their risk from accidental exposure. Police dogs in K-9 units are also at special risk and can also be protected with naloxone.

Law enforcement officers, following approximately one hour of training, can easily administer intranasal naloxone to opioid overdose victims. Available in the United States since November 2015, all first responders in the County are authorized to carry intranasal naloxone subject to being able to fulfill EMS standards and requirements. Although the San Mateo County Joint Narcotics Task Force (the NTF) is currently developing an officer-carry naloxone pilot program, no law enforcement agencies in the County train and equip their personnel to carry and administer intranasal naloxone.¹⁰ The only emergency responders within the County currently carrying naloxone are fire department and ambulance paramedics (paramedics).¹¹

In 2017, the White House Commission on Combating Drug Addiction and the Opioid Crisis concluded: "We must equip all law enforcement in the United States with naloxone to save lives."¹² Over 1,200 law enforcement agencies in 39 states have authorized officers to carry naloxone. In California, 36 law enforcement agencies currently equip officers with naloxone and 6 agencies have approved, but not yet implemented, naloxone programs (Appendix 1).¹³

The 2017-18 San Mateo County Civil Grand Jury recommends that all law enforcement officers in the County, and employees of the Sheriff's Forensic Lab and County Coroner's Office be equipped with intranasal naloxone on their person or in their vehicles as a minimum standard of practice.

⁸ Emergency Medical Services, "When Every Second Counts: San Mateo County Emergency Medical Services System Overview 2015-2016" *County of San Mateo*. Accessed on March 5, 2018.

<https://www.smchealth.org/sites/main/files/file-attachments/ems_annual_final_0.pdf>

⁹ DEA Public Affairs, "DEA Warning to Police and Public: Fentanyl Exposure Kills" *Drug Enforcement Agency*, June 10, 2016. <<https://www.dea.gov/divisions/hq/2016/hq061016.shtml>>

¹⁰ Ibid.

¹¹ Grand Jury interviews with law enforcement agencies and other County officials.

¹² The President's Commission on Combating Drug Addiction and the Opioid Crisis, "Final Report Draft", Presidential Commission Reports. by Chris Christie, Charlie Baker, Roy Cooper, Patrick J. Kennedy, Bertha Madras, and Pam Blondi. Last Modified November 1, 2017: 119.

<https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf>.

¹³ Grand Jury interviews and investigations.

Defined Terms

The County	San Mateo County
K-9	Canine Law Enforcement Unit
Paramedics	Fire department and ambulance paramedics in San Mateo County (County)
NTF	Narcotics Task Force (County)
CDC	Centers for Disease Control and Prevention (Federal)
DEA	Drug Enforcement Administration (Federal)
SWAT	Special Weapons and Tactics Unit (County)
CHS	San Mateo County Health System (County)
EMS	Emergency Medical Services (County)
FDA	U.S. Food and Drug Administration (Federal)
HHS	U.S. Department of Health and Human Services (Federal)
NIDA	National Institute of Drug Abuse
NIH	National Institutes of Health
NCHS	National Center for Health Statistics

BACKGROUND

On October 26, 2017, the U.S. Department of Health and Human Services declared the opioid crisis a nationwide public health emergency.¹⁴ Opioid overdoses killed over 42,000 Americans in 2016 (an average of over 115 per day).¹⁵ More than 2.5 million Americans abused opioids in 2015.¹⁶

¹⁴ Eric D. Harden, "Determination that a Public Health Emergency Exists" *Office of the Assistant Secretary for Preparedness and Response*, Last modified October 26, 2017.

<<https://www.phe.gov/emergency/news/healthactions/phe/Pages/opioids.aspx>>

¹⁵ California Department of Public Health, *San Mateo Numbers at a Glance* (2018).

¹⁶ Department of Health and Human Services, "Key Substance Use and Mental Health Indicators in the United States: Results from the 2015 National Survey on Drug Use and Health" *Substance Abuse and Mental Health Services Administration*. Last modified September 2016. <<https://www.samhsa.gov/data/sites/default/files/NSDUH-FFR1-2015/NSDUH-FFR1-2015/NSDUH-FFR1-2015.pdf>>.

Opioids

Opioids are powerful pain relievers prescribed to alleviate moderate to severe pain.¹⁷ Prescription opioids, including codeine, hydrocodone, morphine, and oxycodone, are among the most prescribed drugs in the country. They are ordinarily safe and reliable when prescribed as part of a strictly supervised, short-term treatment plan to relieve suffering caused by acute pain.¹⁸ But, patients using opioids to treat chronic pain are at risk of abuse and addiction.¹⁹ Among patients who take opioids for more than 30 days in the first year, 47 percent continued to do so for three years or longer.²⁰ The Centers for Disease Control and Prevention (CDC) reports that up to 25 percent of patients who are prescribed opioids for long-term pain management struggle with addiction.²¹ Of the more than 42,000 opioid overdose deaths in 2016, an estimated 14,400 were the result of prescription opioid overdose.²²

In response to the opioid epidemic, the medical community is restricting access to prescription opioids.²³ When opioid abusers lose access to their prescriptions, they often turn to illegal means of obtaining opioids.²⁴ Among the most dangerous opioids they can obtain are certain synthetic opioids, such as fentanyl, carfentanil, and their derivatives (fentanyl derivatives). Fentanyl derivatives are chemically related to, and utilize the same neurological pathways as other opioids such as morphine and codeine. However, fentanyl derivatives can be extraordinarily potent, delivering more than 50 times the dose of opioids as morphine.²⁵

Opioid abusers who have lost their prescriptions are increasingly turning to these fentanyl derivatives due to their relatively low cost, accessibility, and potency. As a result, synthetic opioid-related deaths nationwide have increased from 3,000 in 2013, to 20,100 in 2016 – an increase of over 500 percent.²⁶

¹⁷ National Institute on Drug Abuse, “Opioids” *National Institutes of Health*. Accessed February 26, 2018. <<https://www.drugabuse.gov/drugs-abuse/opioids>>

¹⁸ Ibid.

¹⁹ Brady Dennis, “Opioids are among the most prescribed drugs. Here are the most common versions” *Washington Post*, April 14, 2014. <www.washingtonpost.com/news/to-your-health/wp/2014/04/14/ban-some-pain-killers-here-are-6-common-opioids/>

²⁰ National Institute of Drug Abuse, “Opioid Prescribers Play a Key Role in Stopping the Opioid Overdose Epidemic” *National Institutes of Health*. Last modified March 2017.

<<https://www.drugabuse.gov/publications/improving-opioid-prescribing/improving-opioid-prescribing>>

²¹ Centers for Disease Control and Prevention, “Prescription Opioid Overdose Data” Last Modified August 1, 2017. <<https://www.cdc.gov/drugoverdose/data/overdose.html>> .

²² Ibid.

²³ Bloomberg School of Public Health, and the Clinton Foundation, Clinton Health Matters Initiative, “*The Opioid Epidemic from Evidence to Impact*” Johns Hopkins, October 2017. Pg. 13.

<<https://www.jhsph.edu/events/2017/americas-opioid-epidemic/report/2017-JohnsHopkins-Opioid-digital.pdf>>

²⁴ German Lopez, “The opioid epidemic, explained” *Vox*, December 21, 2017. <<https://www.vox.com/science-and-health/2017/8/3/16079772/opioid-epidemic-drug-overdoses>>

²⁵ “Synthetic Opiates List--Drugs that Derive from Opium,” *Opium.com*, Accessed on February 26, 2018.

<<http://www.opium.org/synthetic-opiates-list-drugs-derive-opium.html>>

²⁶ Josh Katz, “The First County of Fentanyl Deaths in 2016: Up 540% in Three Years” *New York Times*, September 2, 2017. <<https://www.nytimes.com/interactive/2017/09/02/upshot/fentanyl-drug-overdose-deaths.html>>

Naloxone

Naloxone (naloxone hydrochloride) is an opioid antidote that blocks opioid overdose and reverses its symptoms. It is a safe, non-narcotic drug that can be easily administered nasally or by injection.²⁷ Naloxone is considered safe enough to administer as a diagnostic tool with unresponsive patients to eliminate opioid overdose as a possible cause.²⁸ Narcan®, the brand of naloxone that is commonly used by emergency responders, is a nasal aerosol spray.

An opioid overdose may cause respiratory failure, which can lead to asphyxiation, cardiac arrest, and death.²⁹ Once administered, naloxone can reverse the overdose and restore breathing within minutes.³⁰ However, prompt medical attention thereafter is essential because the effects of naloxone can wear off before the opioids.³¹

Timely emergency administration of naloxone is essential. As Figure 1. shows, when opioid overdose causes breathing to stop, permanent damage can result within minutes.³²

Between 30-180 seconds	Loss of consciousness
After one minute	Brain cells begin dying
After three minutes	Brain damage is likely
After five minutes	Coma and brain damage are almost inevitable
After ten minutes	Death is imminent

While paramedics in the County carry naloxone, they may not arrive at the scene of an opioid overdose in time to save the victim. The required Emergency Medical Services (EMS) response times for the County shown in Figure 2. are illustrative. Law enforcement response times may be substantially less.³³

²⁷Centers for Disease Control and Prevention, "Expanding Naloxone use could reduce drug overdose deaths and save lives" CDC Office of Media Relations, April 24, 2015. <<https://www.cdc.gov/media/releases/2015/p0424-naloxone.html>>

²⁸ Grand Jury interview with County official.

²⁹ Department of Health and Human Services, "Opioid Overdose Toolkit" *Substance Abuse and Mental Health Services Administration*, January 2017: 15. <https://store.samhsa.gov/shin/content/SMA14-4742/Overdose_Toolkit.pdf>

³⁰ German Lopez, "How Fentanyl became America's leading cause of overdose deaths" *Vox*, December 21, 2017. <<https://www.vox.com/science-and-health/2017/5/8/15454832/fentanyl-carfentanil-opioid-epidemic>>

³¹ Peter Lurie, et al. "Multiple Naloxone Administrations Among Emergency Medical Service Providers is Increasing" *Journal of Prehospital Emergency Care* (Vol. 21: 4) 2017: 1. <<https://www.tandfonline.com/doi/full/10.1080/10903127.2017.1315203>>

³²Zawn Villines, "What Happens After a Lack of Oxygen to the Brain" (2016)

³³ Grand Jury Interviews with City and County law enforcement leadership.

Figure 2.			
Emergency Medical Services - Permitted Response Times³⁴			
EMS Required Response Times	Area Type	Emergency Ambulance	Fire-Paramedic Non-Transport
Priority Response 1³⁵	Urban/Suburban	< 13 minutes	< 7 minutes
	Rural	< 20 minutes	< 12 minutes
	Remote	< 30 minutes	< 22 minutes
Priority Response 2	Urban/Suburban	< 23 minutes	< 15 minutes
	Rural	< 60 minutes	< 25 minutes
	Remote	< 60 minutes	< 30 minutes

The White House Commission on Opioids made the following recommendation regarding naloxone:

Naloxone is a lifesaver that rapidly reverses opioid overdose. It is the first line of defense in many parts of our country; if we lose someone to overdose we obviously have no chance to treat them and return them to a productive life. We urge you to mandate, with federal assistance, that naloxone be in the hands of every law enforcement officer in the United States...The Federal Government should ensure that naloxone is made available when there is the greatest chance for an overdose.³⁶

DISCUSSION

Equipping law enforcement with naloxone

Equipping law enforcement officers with intranasal naloxone empowers them to protect the public and themselves from opioid overdose. Officer-carry naloxone programs are increasingly common and implemented by law enforcement agencies with minimal training and cost. These programs do not expose officers to criminal or civil liability.³⁷

³⁴ Emergency Medical Services, "When Every Second Counts: San Mateo County Emergency Medical Services System Overview 2015-2016" *County of San Mateo*. Accessed on March 5, 2018.

<https://www.smchealth.org/sites/main/files/file-attachments/ems_annual_final_0.pdf>

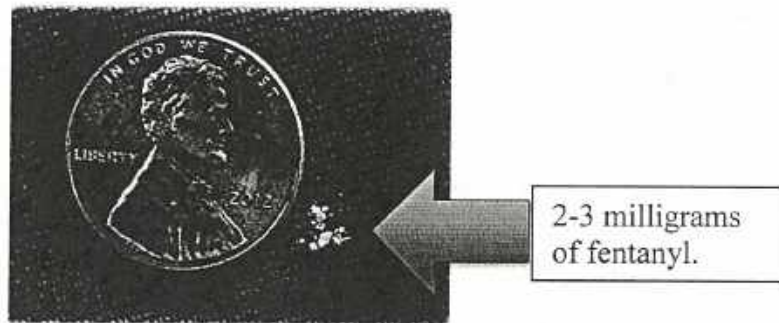
³⁵ Emergency Medical Services, "When Every Second Counts: San Mateo County Emergency Medical Services System Overview 2015-2016" pg. 10.

³⁶ The President's Commission on Combating Drug Addiction and the Opioid Crisis, "Final Report Draft" (2017)

³⁷ California Assembly Bill No. 635, October 10, 2013. <http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0601-0650/ab_635_bill_20130912_enrolled.htm>

Fentanyl derivatives, including fentanyl, carfentanil and other analogs, can be absorbed into the body through any physical contact, including injection, oral ingestion, inhalation, transdermal transmission (through the skin), and contact with any mucus membranes.³⁸ While, in each individual case the size of a lethal dose depends on individual tolerance and body mass, per the Drug Enforcement Administration (DEA), a lethal dose of fentanyl may be as low as 2 to 3 milligrams, the equivalent of a few grains of salt. (See Figure 3.)

Figure 3.



The threat of accidental exposure is present in any instance where an officer is in proximity to fentanyl derivatives. The DEA identified the following situations, among others, as presenting a heightened risk of exposure: while purchasing fentanyl during undercover operations, processing drug evidence containing fentanyl or fentanyl-related substances, and processing non-drug evidence which may be contaminated with these substances or while providing aid to overdose victims.³⁹

While all law enforcement officers in proximity to fentanyl derivatives are at risk of accidental exposure, the degree of risk corresponds to the individual officer's duties. Per DEA's policy guidance and Grand Jury interviews, law enforcement officers in the following units in San Mateo County are at a heightened risk of exposure to fentanyl derivatives: narcotics units, crime suppression units, Special Weapons and Tactics (SWAT) teams, K-9 units,⁴⁰ and evidence-handling units.^{41 42}

Law enforcement officers have been exposed to fentanyl derivatives when responding to opioid overdoses, serving search warrants, supporting national law enforcement actions, and during narcotics operations. Fortunately, however, no law enforcement officers in the County have, as of the date of this report, suffered overdose as the result of accidental exposure to fentanyl

³⁸ U.S. Department of Justice, "A Briefing Guide for First Responder" *Drug Enforcement Agency*, June 6, 2017: 9. <https://www.dea.gov/druginfo/Fentanyl_BriefingGuideforFirstResponders_June2017.pdf>.

³⁹ Ibid.

⁴⁰ K-9's can suffer the full effects of an opioid overdose, and due to the nature of their duties are at heightened risk of exposure. Naloxone is also an effective antidote for opioid overdose in canines. "New drug kits save police dogs from opioid overdoses" *CBS News*, June 1, 2017. <<https://www.cbsnews.com/news/new-drug-kits-save-police-dogs-from-opioid-overdoses/>>. V.S. Copland, S.C. Haskins, J. Patz, "Naloxone reversal of oxymorphone effects in dogs" *American Journal of Veterinary Research* 50 (1989): 1854-8. <<https://www.ncbi.nlm.nih.gov/pubmed/2482683>>.

⁴¹ U.S. Department of Justice, "A Briefing Guide for First Responder" (2017): 13.

⁴² Grand Jury Interviews with law enforcement leadership.

derivatives.⁴³ As fentanyl derivatives continue to become more common in the County, the risk of exposure will continue to increase. The DEA recommends that, where an individual may have been exposed to fentanyl derivatives, immediate medical attention be sought.⁴⁴

Law enforcement agencies across the U.S. have successfully implemented officer-carry naloxone programs. As of December 2016, over 1,200 law enforcement agencies in 39 states have equipped their officers with intranasal naloxone.⁴⁵

As of the date of this report, 40 agencies in 24 California counties have implemented programs for their officers to carry naloxone. Another six agencies have approved an officer-carry naloxone program but have not yet implemented it. For a complete list of agencies that equip officers with Narcan in California, see Appendix 1.

Only eight California agencies have, as of the date of this report, published information regarding officer-administered naloxone “rescues” of overdose victims.⁴⁶ Those eight have reported a total of 103 rescues. As a majority of these agencies have not reported on their rescues, the actual number may well be higher than 103.

Officer-carry naloxone programs can be implemented with as little as one hour of training and can be added into existing annual first aid certification programs.⁴⁷ Such programs are readily available through a variety of sources.⁴⁸ Additionally, using “train-the-trainer” methods, agencies can quickly and efficiently train their entire force with minimal impact.⁴⁹

The Commission on Peace Officer Standards and Training (POST) sets minimum selection and training standards for California law enforcement.⁵⁰ While the POST has yet to establish training protocols for the administration of naloxone, in October 2014 POST and California Emergency Medical Standards Authority began the process of developing course content and competencies for naloxone administration as an “optional skill.”⁵¹

⁴³ Grand Jury Interviews with law enforcement leadership.

⁴⁴ U.S. Department of Justice, “A Briefing Guide for First Responder” (2017): 16.

⁴⁵ “US Law Enforcement Who Carry Naloxone” North Carolina Harm Reduction Coalition Last modified February 12, 2018 <<http://www.nchrc.org/law-enforcement/us-law-enforcement-who-carry-naloxone>>.

⁴⁶ The Grand Jury counts a “rescues,” as an intervention in which a trained officer administered nasal naloxone, the naloxone reversed the effects of an opioid overdose, the patient survived the incident, and the law enforcement agency publicized the results.

⁴⁷ Rian Fisher, Daniel O’Donnell, Bradley Ray, and Daniel Rusyniak “Police Officers Can Safely and Effectively Administer Intranasal Naloxone” *Journal of Prehospital Emergency Care* (Vol. 20:6, 2016): 675-680. DOI: 10.1080/10903127.2016.1182605

⁴⁸ “Law Enforcement Training Safety Videos and Resources” North Carolina Harm Reduction Coalition. Accessed on April 5, 2018 <<http://www.nchrc.org/law-enforcement/law-enforcement-safety-videos-and-resources>>

⁴⁹ Grand Jury Interviews with law enforcement leadership.

⁵⁰ “About POST” *The Commission on Peace Officer Standards and Training*. Accessed on: May 10th, 2018 <https://post.ca.gov/About-Us>

⁵¹ POST Monthly Reports, “Monthly Report: October 2014” *The Commission on Peace Officer Standards and Training* Accessed on May 10th, 2018. <<https://post.ca.gov/October-2014-Report>>

Equipping Officers with intranasal naloxone is inexpensive. The Los Angeles Police Department's (LAPD's) naloxone program provides a cost example for a complete and self-contained Narcan field kit. The LAPD determined that each Narcan field kit costs \$137.95 and should contain:

Figure 4. Narcan Field Kit and Costs

- Narcan atomizer unit (two doses) (\$75.00)
- Bag/pouch (\$4.95)
- Expiration Pull Tight Security Seal (\$17.99)
- Gloves (\$6.00)
- A Safety Shield Face Mask (\$35.00)⁵²



Based on the LAPD numbers, the cost of initially equipping a police department with 50 units of Narcan field kits would be approximately \$6,900. Costs of supplying a unit with Narcan can be reduced to \$75 where only the atomizer unit is purchased (and carried in existing first aid bags), rather than a full field kit. Narcan atomizer units do expire and must be replaced every eighteen to twenty-four months. But the ongoing cost should not be prohibitive. Some County law enforcement agencies stated that the estimated cost of equipping officers with Narcan could be absorbed within existing department budgets.⁵³

Partnerships with public and private entities can further reduce these costs. For instance, the LAPD received a donation of 6,000 Narcan doses from Adapta Pharmaceuticals, Los Angeles Sheriff's Department received 5,000 Narcan doses from the California Department of Public Health, and San Francisco received a donation of 3,600 doses of Narcan from the Drug Overdose Prevention and Education Project.⁵⁴ The Santa Cruz Police Department financed the purchase of Narcan for their initial implementation with funds from Janus, a local nonprofit organization, through a Substance Abuse Block Grant.⁵⁵

⁵² Kevin Bayona, "Factsheet: NARCAN Program" *Los Angeles Police Department Evaluation and Administration Unit*, January 2017. Last modified March 1, 2017. <http://www.lapdpolicecom.lacity.org/031417/BPC_17-0077.pdf>.

⁵³ Grand Jury Interviews with law enforcement leadership.

⁵⁴ "California Comprehensive Overdose Treatment Protection Signed by Governor" *Harm Reduction Coalition* Accessed on February 26, 2018 <<http://harmreduction.org/overdose-prevention/caoverdoseprev/>>.

⁵⁵ Ryan Masters, "Santa Cruz police issue overdose antidote in nasal spray form to officers" *Santa Cruz Sentinel*, December 5, 2016. <<http://www.santacruzsentinel.com/article/NE/20161205/NEWS/161209867>>.

Officer-carry naloxone programs will not expose officers to criminal or civil liability. California Civil Code Section 1714.22 protects trained first responders from professional review, liability in a civil action, or criminal prosecution for possession or administration of an opioid antagonist.⁵⁶ However, an analysis of any possible claims that might be pursued for failure to administer naloxone is beyond the scope of this report.

Opioids in San Mateo County

In February 2017, San Mateo County Health System (CHS) issued the public health alert *Opioid Dependency and Deaths in San Mateo County*.⁵⁷ The alert reported that an estimated 7,800 County residents were dependent upon opioids, that prescription opioid use in adolescents was increasing, and that “the prevalence of synthetic fentanyl laced drugs [in the County] is likely to increase.”⁵⁸ The California Department of Public Health confirmed 19 opioid overdose fatalities in the County during 2016.⁵⁹ Fortunately, rates of opioid abuse, including prescription and street drugs, are currently lower in the County than in many other Bay Area communities.⁶⁰ The CHS updated its February 2017 alert in October 2017, to report that “...the County does not seem to be experiencing anywhere near the same level of morbidity and mortality that other jurisdictions in the United States are experiencing.”⁶¹

San Mateo County has taken steps to address opioid abuse. The CHS is monitoring opioid prescription rates and educating prescribers about best practices. The CHS is also tracking the presence of fentanyl derivatives in the County in conjunction with law enforcement, the Coroner’s Office, and other agencies.

Fentanyl derivatives are becoming more prevalent in the County. The Sheriff’s Forensic Laboratory, which conducts chemical testing on suspect substances seized in law enforcement operations, saw the number of fentanyl samples triple between 2016 and 2017.⁶² The County’s close proximity to San Francisco, a major point of entry for fentanyl derivatives imported from abroad, further exposes County law enforcement and residents to fentanyl derivatives.⁶³

At present, the only first responders in the County authorized to carry naloxone are fire department and ambulance paramedics. While the Sheriff’s Office is considering implementing a naloxone carry program for the NTF, no law enforcement agencies in the County have

⁵⁶ These protections were added by California Assembly Bill No. 635, October 10, 2013. <http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0601-0650/ab_635_bill_20130912_enrolled.htm>

⁵⁷ Scott Morrow, “Public Health Alert: Opioid Dependency and Deaths in San Mateo County” *County of San Mateo Health System* February 7, 2017: 1. <http://www.smchealth.org/sites/main/files/file-attachments/opioid_health_alert_-_020717.pdf>.

⁵⁸ Ibid.

⁵⁹ California Department of Public Health, “San Mateo Numbers at a Glance” *California Opioid Overdose Surveillance Dashboard* (2018).

⁶⁰ Detailed information comparing opioid abuse statistics for the County to other California counties is available at <https://pdop.shinyapps.io/ODdash_v1/>.

⁶¹ Scott Morrow, Greg Gilbert, “Open Letter to Sheriff Bolanos and Police Chiefs in San Mateo County” *County of San Mateo Health System* October 24, 2017.

⁶² Grand Jury Interviews with Sheriff’s Forensic laboratory leadership.

⁶³ Grand Jury Interviews with law enforcement leadership.

authorized officers to carry naloxone. Employees in the Coroner's Office and Forensic Laboratory are also at heightened risk of accidental exposure, and are not equipped with naloxone.

Despite the lack of official authorization, the risk posed by accidental synthetic opioid exposure is such that some individual County employees, including one County official, have purchased intranasal naloxone using their own funds to safeguard themselves and their colleagues. Another County official advised employees to buy their own naloxone to protect themselves.⁶⁴

Arguments against equipping law enforcement with naloxone include:

- The number of "rescues" that law enforcement in the County could make is uncertain, and therefore the public health benefits of officer-carry naloxone programs are uncertain.
- Any program comes with costs, including the "cost" of not pursuing other opportunities to enhance public safety.
- Additionally, there are concerns that law enforcement officers are not medical professionals and should not be relied upon to provide medical treatment to opioid overdose victims.

However, the Grand Jury finds that the potential benefits of officer-carry naloxone programs outweigh these concerns.

- As fentanyl derivatives continue to become more prevalent and more dangerous, it is reasonable to assume--based on "rescues" reported by other agencies--that some lives in the County will be saved if officers carry naloxone.
- The costs of an officer-carry intranasal naloxone program are small; therefore the reasonably expected future benefits outweigh the costs.
- Narcan (which is administered intranasally) is not intravenous naloxone--administration does not require an IV, shot, or other medical procedure. Law enforcement agencies in California and nationwide who have already implemented an officer-carry Narcan program recognize that trained officers are fully capable of administering this safe, fast acting, and effective drug.
- By equipping officers with Narcan, San Mateo County is not pioneering a new program. Rather, the County will be following the recommendations of federal agencies and a White House commission by implementing a program that has already been put in place by over 1,200 police agencies nationwide.

Those who survive an overdose are still in considerable danger. Continuous care, readily accessible, medically assisted treatment for overdose patients, ongoing community education and diligent oversight is essential to protect residents and County personnel from the effects of the opioid epidemic. Equipping officers to carry naloxone is a necessary first step.

⁶⁴ Grand Jury Interviews with law enforcement leadership.

FINDINGS

The 2017-2018 San Mateo County Civil Grand Jury finds the following to be true:

- F1. Untreated opioid overdose can cause brain damage and death.
- F2. Naloxone is a safe, nontoxic drug that can stop and reverse the effects of opioid overdose.
- F3. Narcan[®] is a brand of intranasal naloxone, which can be successfully administered with no more than one hour of training.
- F4. Fire department and ambulance paramedics are the only emergency responders within the County currently carrying naloxone.
- F5. Law enforcement officers may arrive at the scene of opioid overdose before paramedics.
- F6. Law enforcement officers' risk of accidental exposure to fentanyl derivatives varies based on their roles and responsibilities. Narcotics units, crime suppression units, SWAT teams, K-9 units, and evidence-handling units are at a heightened risk of exposure.
- F7. Certain law enforcement officers and Sheriff's Forensic Lab and Coroner's Office personnel are at heightened risk of exposure to fentanyl derivatives.
- F8. Equipping and training officers with intranasal naloxone is inexpensive and the associated costs can be absorbed into existing programs and budgets.

RECOMMENDATIONS

The 2017-2018 San Mateo County Civil Grand Jury recommends that the San Mateo County Sheriff's Office, the Broadmoor Police Protection District, and the Police Departments of Atherton, Belmont, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Foster City, Hillsborough, Menlo Park, Pacifica, Redwood City, San Bruno, San Mateo, and South San Francisco, do the following by December 31, 2018:

- R1. Train and equip law enforcement officers at heightened risk of exposure to fentanyl derivatives with intranasal naloxone as a minimum standard of practice.
- R2. Evaluate training and equipping all law enforcement officers with intranasal naloxone in order to protect themselves and the general public.

The 2017-2018 San Mateo County Civil Grand Jury further recommends that the San Mateo County Coroner do the following by December 31, 2018:

R3. Train and equip Coroner's Office personnel at a heightened risk of exposure to fentanyl derivatives with intranasal naloxone.

The 2017-2018 San Mateo County Civil Grand Jury further recommends that the San Mateo County Sheriff do the following by December 31, 2018:

R4. Train and equip Sheriff's Forensic Lab personnel at a heightened risk of exposure to fentanyl derivatives with intranasal naloxone.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests the following to respond to the foregoing Findings and Recommendations referring in each instance to the number thereof:

- San Mateo County cities and the Broadmoor Police Protection District to respond no later than 90 days after the date of this Grand Jury Report.
- San Mateo County Sheriff to respond no later than 60 days after the date of this Grand Jury Report.
- The San Mateo County Board of Supervisors to respond no later than 90 days after the date of this Grand Jury Report.
- The Coroner to respond no later than 60 days after the date of this Grand Jury Report.

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

METHODOLOGY

The Grand Jury interviewed law enforcement officers from these organizations within the County:

- Belmont Police Department
- Daly City Police Department
- East Palo Alto Police Department
- Menlo Park Police Department
- San Mateo County Narcotics Task Force
- Redwood City Police Department
- San Mateo County Sheriff's Office
- San Mateo Police Department
- South San Francisco Police Department

The Grand Jury interviewed individuals at the County Coroner's Office, the Sheriff's Forensic Laboratory, and the County Health System.

The Grand Jury reviewed numerous publications and materials regarding the opioids epidemic, including without limitation those listed in the bibliography.⁶⁵

⁶⁵ The Grand Jury's source for local statistical and demographic information regarding the opioid crisis comes from the California Department of Public Health's (CDPH) California Opioid Overdose Surveillance Dashboard. https://pdop.shinyapps.io/ODdash_v1/ The CDPH collected this data in conjunction with the Office of Statewide Health Planning and Development, the Department of Justice, and the California Health Care Foundation. Data sources include; Multiple Cause of Death Files, Emergency Department Visit & Inpatient Discharge Data, and Controlled Substance Utilization Review and Evaluation System (CURES) prescription drug data. The Grand Jury also utilized data from county entities. National data is from the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, the Commission on Combating Drug Addiction and the Opioid Crisis Final Report Draft, Drug Abuse, the National Institutes of Health (NIH), National Institute on Drug Abuse, NIDA, Drug Enforcement Administration (DEA), Substance Abuse and Mental Health Services Administration (SAMHSA), North Carolina Harm Reduction Coalition.

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GLOSSARY OF TERMS

Analog - a chemical compound with a molecular structure analogous to another compound.

Antidote - a substance taken to counteract a poison or the effects of a drug.

Derivative- a substance or compound obtained from, or regarded as derived from, another substance or compound.

Opioid - all drugs having morphine-like effects and high abuse and addiction potential, including opiates, semi-synthetic opioids derived from opiates (and synthetic opioids *Not all opioids are opiates, but all opiates are not opioids.* They are listed as Schedule II drugs., Side effects include: constipation, sweating, and increased sensitivity to pain, dependency.

Generic	Brand Name
Hydrocodone	Vicodin, Lorcet, Lortab, Norco, Zohydro
Oxycodone	Percocet, OxyContin, Roxicodone, Percodan
Morphine	MSContin, Kadian, Embeda, Avinza
Codeine	Tylenol with Codeine, Tyco, Tylenol #3
Fentanyl	Duragesic
Heroin	
Hydromorphone	Dilaudid
Oxymorphone	Opana
Meperidine	Demerol
Methadone	Dolophine, Methadose
Buprenorphine	Suboxone, Subutex, Zubsolv, Burnavail, Butrans

Carfentanil - a synthetic opioid analgesic a derivative of fentanyl, 100 times more potent than fentanyl, and 10,000 times more potent than morphine. Two milligrams of carfentanil can be lethal. As a prescription drug, Carfentanil (trade name Wildnil) is sold as a general anesthetic for elephants and other large animals. It can cause respiratory depression in humans, leading to death. Unique derivatives of carfentanil continue to be created, as they can be manufactured at a low cost and cut into heroin.

Fentanyl - a synthetic opioid, an analogue of morphine but 50 to 100 times its strength. Fentanyl is a synthetic that is legally made as a pharmaceutical drug to treat pain, or illegally made and sold as an additive to intensify the effects of other drugs, such as heroin. As a Schedule II prescription drug, it is typically used to treat patients with severe or chronic pain or to manage post-surgical pain. Fentanyl is known by such names as Actiq®, Duragesic®, and Sublimaze® in prescription form. Street names: Fentanyl or for fentanyl-laced heroin are Apache, China girl, China white, dance fever, friend, Goodfella, jackpot, murder 8, tatch, Tango and Cash, and TNT.

Naloxone – an opioid antagonist drug given by injection, nasal inhalation or subcutaneously to block opioid effects in case of overdose. It works within minutes to reverse the effects of opioid overdose; effects last about 30-90 minutes; it is not effective with respiratory depression caused

by non-opioid drugs (such as cocaine, LSD, ecstasy (Molly), sedatives, tranquilizers or marijuana) or alcohol; antagonizes opioid effects such as respiratory depression, analgesia, and miosis. Repeat doses often needed due to naloxone's action time being shorter than the effects of many opioids.

Intranasal Naloxone - a mucosal atomization device, drug is a fine mist sprayed into nasal cavity; works quickly and painlessly in vascular mucosa to absorb naloxone directly into the bloodstream (slightly slower than intramuscular or intra-venous injections), minimal training involved for law enforcement personnel and trained friends or relatives of overdose victims to use; may need repeated doses. Commonly known brand name for intranasal naloxone is Narcan®.

Narcan® - the commercial brand name of the intranasal prescription medicine, naloxone (HCL), used for the treatment of an opioid emergency such as a possible overdose with signs of breathing problems, severe sleepiness or nonresponsiveness. NARCAN Nasal Spray is the FDA-approved nasal form of naloxone for the emergency treatment of a known or suspected life-threatening opioid overdose. The side-effects of Narcan are minimal, though its use may result in symptoms of acute opioid withdrawal in overdose patient.

Opioid Overdose - an opioid overdose (OD) is the body's response to being overwhelmed or poisoned by too much of a substance. Overdoses can be but are not always life-threatening or life ending. They can result in unconsciousness, respiratory depression or failure, sleepiness, contracted pupils, unresponsive, seizures, possible bluish skin color indicating lack of oxygen, cold, clammy skin, irregular or stopped, faint pulse. failed breathing, heart failure, and seizures. Many overdoses are the result of taking drugs of inconsistent or unknown strength or drugs that are mixed with other substances.

Scheduled Drugs - in 1971, under Title II of the Comprehensive Drug Abuse Prevention and Control Act, a federal drug policy was established for the United States regulating the manufacture, import, use, possession and distribution of categories of specific substances. Five Schedules (or classifications) were created, identifying drugs and other substances that met the qualifications and restrictions for each category. The Drug Enforcement Administration (DEA) classifies opioids and other drugs into three schedules (II, III, and IV), based upon their abuse potential and relative risks. For example, Schedule II includes drugs such as heroin or other substances with high potential for abuse, having no medical use, and determined medically unsafe.

APPENDIX 1: CALIFORNIA LAW ENFORCEMENT AGENCIES WITH NASAL NALOXONE PROGRAMS BY COUNTY

COUNTY	DEPARTMENT	DATE STARTED
Alameda	Alameda Sheriff/ K-9	July 2017
Alameda	Fremont	January 2018* ⁶⁶
Alameda	Newark	January 2018*
Amador	Amador Sheriff	November 2017
Butte County	Chico Police	February 2018
Contra Costa	Brentwood Police	March, 2018
Contra Costa	Contra Costa Sheriff	November 2017
Contra Costa	Lafayette Sheriff	November 2017
Contra Costa	Orinda Police	November 2017*
Contra Costa	Pleasant Hill Police	November 2017
Contra Costa	Pinole Police	November 2017*
Contra Costa	San Pablo Police	November 2017*
Fresno	Fresno Police	Spring, 2018
Fresno	Sheriff	November, 2017
Humboldt	Arcata Police	June 2016
Kern	Kern County Sheriff	August 2016
Kings	Hanford Police	August 2017
Kings	Kings County Sheriff	July 2017
Los Angeles	Glendora Police	2015

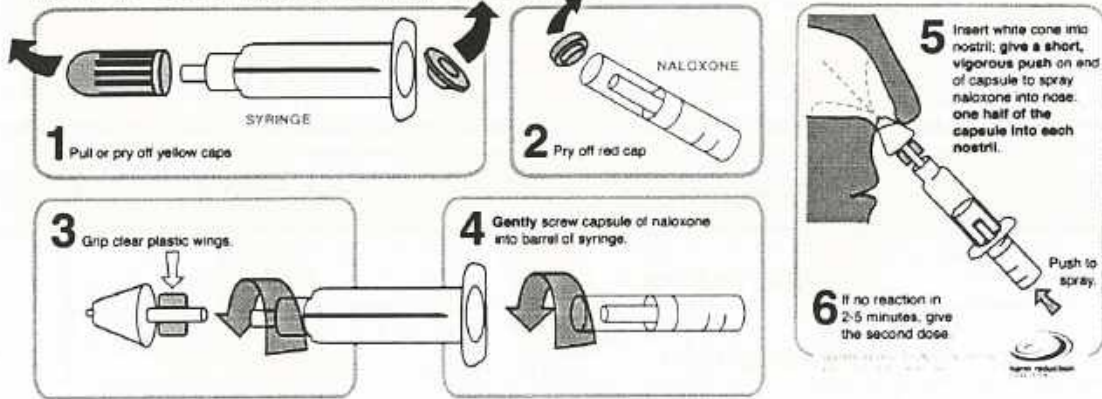
⁶⁶ * Department has approved an officer-carry naloxone program, but deployment is pending completed training.

COUNTY	DEPARTMENT	DATE STARTED
Los Angeles	Long Beach	Fall, 2017
Los Angeles	Los Angeles Police	Spring 2017
Los Angeles	Los Angeles Sheriff	June 2017
Marin	Central Marin Police Authority	April 2017
Marin	Fairfax Police	April 2017
Marin	Marin City Police	April 2017
Marin	San Rafael Police	April 2017
Monterey	Carmel Police	September 2017
Monterey	Pacific Grove Police	September 2017
Monterey	Seaside Police	November, 2017
Nevada	Grass Valley Police	September 2016
Orange	Orange County Sheriff	October 2015
Orange	Anaheim Police	September 2017
Placer	Roseville Police	July 2017
Sacramento County	Sacramento Police	February 2018
Sacramento County	Sacramento Sheriff	February 2018
San Diego	San Diego Sheriff	July 2014
San Francisco	San Francisco Police	March 2015
Santa Barbara	Santa Barbara Sheriff	April 2017
Santa Clara	Campbell Police	March 2017
Santa Cruz	Santa Cruz Police	December 2016

COUNTY	DEPARTMENT	DATE STARTED
Shasta	Redding Police	December 2018
Shasta	Shasta Sheriff	August 2016
Solano	Benicia Police	January 2018
Solano	Vallejo Police	March 2018
Sonoma	Petaluma Police	April 2018
Tehama	Tehama Police	September 2017*

APPENDIX 2: NASAL NALOXONE ADMINISTRATION INSTRUCTIONS

How to Give Nasal Spray Naloxone



Issued: June 28, 2018

**STAFF REPORT****City Council**

Meeting Date: 8/28/2018
Staff Report Number: 18-167-CC

Consent Calendar: Approve the response to the San Mateo County Civil Grand Jury Report: “Soaring City Pension Costs – Time for Hard Choices”

Recommendation

Staff recommends that the City Council approve and sign the attached response to the San Mateo County Civil Grand Jury report, “Soaring City Pension Costs – Time for Hard Choices” dated July 17, 2018.

Policy Issues

There are no policy implications as a result of the City responding to the Civil grand jury.

Background

On July 17, 2018, the San Mateo County Civil grand jury (“Civil grand jury”) filed the report “Soaring City Pension Costs – Time for Hard Choices” (Attachment B) with Honorable V. Raymond Swope, Judge of the Superior Court of the State of California. The report provides background, analysis, and recommendations on the recent and future increases in pension costs for member agencies of the California Public Employee Retirement System.

Analysis

The Civil grand jury report “Soaring City Pension Costs – Time for Hard Choices” contains 14 findings and four recommendations. The City is obligated to respond to the report’s findings and recommendations no later than October 16, 2018, with said response approved by the City Council at a public meeting. The response is attached hereto as Attachment A.

Impact on City Resources

Approving and submitting a response to the Civil grand jury report has no direct impact on City resources. The 2018-19 budget includes contract services funds sufficient to retain consulting services necessary to perform an in-depth analysis of the City’s unfunded pension liabilities and provide additional expert recommendations on areas of opportunity to address unfunded liabilities.

Environmental Review

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

Public Notice

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

Attachments

- A. City of Menlo Park response letter
- B. Civil grand jury report

Report prepared by:

Dan Jacobson, Finance and Budget Manager

Report approved by:

Lenka Diaz, Administrative Services Director



August 28, 2018

Honorable V. Raymond Swope
Judge of the Superior Court
c/o Charlene Kresevich
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: Civil Grand Jury Report: “Soaring Pension Costs – Time for Hard Choices”

Dear Judge Swope:

The City Council of the City of Menlo Park (City) voted at its public meeting on August 28, 2018 to authorize this response to the San Mateo County (SMC) Civil Grand Jury Report “Soaring Pension Costs – Time for Hard Choices” released on July 17, 2018.

Responses to Findings

F1. Each City’s CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported covered payroll for the City’s pension plans in the amount set forth beside its name for that year in Appendix A.

Response: *The City agrees.*

F2. Each City’s CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported contribution payments to CalPERS on the City’s pension plans in the amount set forth beside its name for that year in Appendix A.

Response: *The City agrees.*

F3. Each City’s CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported Unfunded Liabilities (as defined in this report) for the City’s pension plans in the amount set forth beside its name for that year in Appendix A. Each City has been required to make large Amortization Cost (as defined in this report) payments of principal and interest to CalPERS on those Unfunded Liabilities. These payments have diverted money that could otherwise have been used to provide public services or to add to reserves.

Response: *The City agrees.*

F4. Each City’s CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported Funded Percentages (as defined in this report) for the City’s pension plans in the amount set forth beside its name for that year in Appendix A.

Response: *The City agrees.*

F5. Each City's CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported what the Unfunded Liabilities (as defined in this report) for the City's pension plans would have been if the applicable Discount Rate applied to calculate them had been 1 percentage point lower in the amount set forth beside its name for that year in Appendix A.

Response: *The City agrees.*

F6. Each City's CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported general fund total expenditures for that year in the amount set forth beside its name for that year in Appendix A.

Response: *The City agrees.*

F7. In each of the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017, each City's contribution payments to CalPERS on the City's pension plans represented the percentage of that City's general fund total expenditures for that year set forth beside its name for that year in Appendix A in the column entitled "Contribution Payments as % of General Fund Total Expenditures."

Response: *The City agrees.*

F8. In each of the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017, each City's contribution payments to CalPERS on the City's pension plans represented the percentage of that City's covered payroll for the City's pension plans in the amount set forth beside its name for that year in Appendix A in the column entitled "Contribution Rate (i.e., Contribution Payments as % of Covered Payroll)."

Response: *The City agrees.*

F9. In FY 2017-2018, each City (excluding Atherton, Colma, Foster City, Hillsborough, Portola Valley and Woodside) has paid CalPERS for its Normal Costs (as defined in this report) and Amortization Costs (as defined in this report) in the amounts set forth beside its name on Table No. 4. (The Cities of Atherton, Colma, Foster City, Hillsborough, Portola Valley and Woodside are not included in Table No. 4 because the source for that table did not included data for them.)

Response: *The City agrees.*

F10. As a result, among other things, of CalPERS' decreasing its Discount Rate from 7.5 percent to 7 percent by FY 2020-2021, its reduction of future Amortization Periods from 30 to 20 years, and its use of updated mortality assumptions reflecting projected increases in the longevity of Members, each City faces increasing pension contribution payments to CalPERS which are likely to more than double by FY 2024-2025.

Response: *The City agrees.*

F11. Principal and interest payments on each City's Unfunded Liabilities will increasingly impair such City's provision of public services, impair the security of employee salary and pension Benefits, and/or result in proposals for revenue increases. Paying down Unfunded Liabilities early results in large savings. Every City in the county would save substantial money by paying down their Unfunded Liabilities early.

Response: *The City disagrees partially with this finding. The City included Unfunded Liabilities in its 10-year forecast and does not anticipate an impairment to the City's provision of public services, security of employee salary or pension benefits, or the need for revenue increasing measures beyond those which comply with longstanding City policies such as cost recovery targets. The City agrees with the finding that the nominal amount paid would be lower by paying down Unfunded Liabilities early.*

F12. The financial documents for each City reviewed by the Grand Jury show that no City has adopted a long-term financial plan with at least a 10-year time horizon to address rising Normal Costs and Amortization Costs that includes each of the following:

- objectives, such as achieving a target Funded Percentage, eliminating the Unfunded Liabilities over "n" years or maintaining the cities' share of Normal Costs below "n" percentage of payroll,
- policies to achieve these objectives, such as making supplemental payments to CalPERS to reduce their Unfunded Liability, keeping salary increases below the actuarially assumed increase rate, capping the cities' share of Normal Costs, reducing operational costs or increasing revenue,
- measures to implement such policies,
- processes to monitor progress in implementing the measures, and alternative financial strategies, or a "Plan B," that may be used in the event that CalPERS' assumptions are not met in future years.

Response: *The City agrees that it has not developed a long-term financial plan targeted at Normal Costs and Amortization Costs, though disagrees that these factors should be considered independently from a holistic long-term financial plan incorporating all City revenues, resources, and requirements.*

F13. Despite the fact that rising pension costs and Unfunded Liabilities are a significant problem for each City, no City (except for Redwood City, the City of San Mateo, the City of Burlingame, the City of Belmont and the City of Menlo Park) includes specific, annual projections of future pension contribution costs in their budgets published in the finance section of their websites.

Response: *The City agrees with the finding that rising pension costs and Unfunded Liabilities are a concern and, as noted, has acted to include these costs in its annual budgeting process.*

Responses to Recommendations

R1. The Grand Jury recommends that, by December 31, 2018, each City schedule public hearings to engage its residents in addressing the city's increasing pension costs and to develop a long-term plan to address them.

Response: *The City has not yet implemented the recommendation to schedule public hearings, but will implement it in the future with anticipated hearings at regularly scheduled City Council meetings. The City has a past practice of retaining an independent actuary to provide a report to the City Council once every two to three years. With the recent release of the valuation as of June 30, 2017, the City will retain the independent actuary to conduct the necessary analysis and make a report to the City Council at a public meeting. The report will be scheduled as soon as possible following completion of the analysis. In the meantime, the City will continue its implementation of a number of strategies to address pension costs including:*

- *Multiple retirement tiers for "classic" members, cost-sharing provisions in each Memorandum of Understanding with regular City staff,*
- *A General Fund Reserve Policy which dedicates a portion of any surplus toward strategic pension funding opportunities,*
- *Pre-funding of other post-employment benefits (OPEB) which reduces future expenditure requirements which would otherwise compete for City monies.*
- *Further development of its strategic long-term financial plan by incorporating specific pension funding alternatives that may be identified in consultation with the City's independent actuary.*

R2. The Grand Jury recommends that, by December 31, 2018, and annually thereafter, each City publish a report on its website detailing its pension obligations. The report should include, at a minimum, the following:

- a) The City's total pension contribution costs under all plans, and also broken out into subtotals for all Miscellaneous Plans, and all Safety Plans, for each of the 3 preceding fiscal years as well as estimates for such costs in each of the following 10 fiscal years, assuming CalPERS' actuarial assumptions are met.
- b) The City's total Unfunded Liabilities under all plans, and also broken out into subtotals for all Miscellaneous Plans, and all Safety Plans, for each of the 3 preceding fiscal years as well as estimates for such Unfunded Liabilities in each of the next 10 fiscal years, assuming CalPERS' actuarial assumptions are met.
- c) The City's Funded Percentage across all plans, and also broken out into subtotals for all Miscellaneous Plans, and all Safety Plans, for each of the 3 preceding fiscal years as well as estimates for such Funded Percentages in each of the next 10 fiscal years, assuming CalPERS' actuarial assumptions are met.
- d) The percentage of the City's general fund expenditures and covered payroll represented by the pension costs described in (a) above (using estimates of general fund expenditures in future fiscal years).
- e) In addition, estimated information for all projections regarding the next 10 fiscal years set forth in items (a) through (e) above should be presented using a Discount Rate that is 1 percentage point below CalPERS' then-current Discount

Rate.

Response: *The City has not yet implemented this recommendation, but anticipate implementation of this recommendation with the delivery of the independent actuary's report as outlined in response to R2 above.*

R3. The Grand Jury does not recommend specific policies or implementation measures to address pension costs. However, it recommends that, by no later than December 31, 2018, and annually thereafter, each City instruct its staff to deliver a report to the City Council in connection with the City's financial plan evaluating available options to address pension costs and that each City hold public hearings to discuss and consider such options no less than every other fiscal year. These include (but may not be limited to):

- Regular supplemental payments to CalPERS (beyond those required by CalPERS) to accelerate the amortization of their Unfunded Liabilities.
- Irregular supplemental payments to CalPERS (beyond those required by CalPERS), as when a City has a budget surplus or receives special non-recurring revenues.
- Electing to apply shorter Amortization Periods (that is, less than 20 years) to their Unfunded Liabilities.
- Issuing pension obligation bonds.
- Establishing substantial reserves that can be applied in the future to help meet rising pension costs and/or accelerate amortization of Unfunded Liabilities.
- Establishing Section 115 trusts for the exclusive purposes of meeting rising pension costs and/or accelerating amortization of Unfunded Liabilities.
- Reductions in general fund operating costs other than pensions.
- Seeking additional general fund revenues that can be applied directly to paying pension costs or that can offset general fund budget shortfalls that would otherwise occur.
- Keeping employee salary increases at or below the levels assumed by CalPERS.
- Negotiating cost-sharing agreements with employees under which employees pay a portion of the City's pension costs (without at the same time agreeing to offsetting compensation increases).
- Maintaining growth in employee salaries and COLAs at or below the assumed CalPERS rates.
- To the extent allowed by law, consider the recommendation of the League of California Cities to renegotiate employee contracts to bring the pension Benefits of Classic Members in line with PEPRA Members, for future work. In particular, ensure that the salary used to determine final retirement compensation is based on the average of the final 3 years of employment (rather than highest 1 year), and that the salary is not enhanced by "spiking," such as by including overtime, unused vacation or sick leave, purchases of "air time," and the like.

Response: *The City has not yet implemented the recommendation but will direct the City's independent actuary to provide analysis and guidance on the various options outlined above as well as present those options to the City Council at a public meeting*

in conjunction with the report described in the City's response to R2. As previously mentioned, the City has implemented a number of available options to mitigate the impact of rising pension costs. The City will continue to evaluate potential opportunities, their relative effectiveness, and conformity with other City policies and goals and incorporate them into the annual budgeting process as appropriate.

R4. The Grand Jury recommends that, by June 30, 2019, each City develop and publish a long-term financial plan to deal with rising pension costs, and update that plan annually. Such a plan should include:

- Specific objectives, such as identifying a target Funded Percentage, eliminating the Unfunded Liabilities over “n” years and maintaining the City's share of Normal Costs at “n” percentage of payroll.
- Policies to achieve these objectives.
- Specific measures to implement the policies.
- A process to monitor progress in implementing the measures and in achieving the objectives.
- Consideration of alternative policies and measures, or a “Plan B,” that may be used in the event that CalPERS's actuarial assumptions, especially the Discount Rate, are not met in future years.

Response: *The City has partially implemented this recommendation by including pension costs in the long-range forecast used in the annual budget process. The City will fully implement it in the future by incorporating recommended plan elements into the annual budgeting process by June 30, 2019.*

Sincerely,

Peter Ohtaki
Mayor

Soaring City Pension Costs – Time for Hard Choices.

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SOARING CITY PENSION COSTS – TIME FOR HARD CHOICES

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[Requests for Responses](#) | [Methodology](#) | [Appendixes](#) | [Bibliography](#) | [Responses](#)

ISSUES

How high will the pension costs of cities within San Mateo County be in the next ten years and what actions can the cities take now to meet those obligations?

SUMMARY

Public pension costs are already eating into city budgets and represent a serious threat to public services in San Mateo County's cities.

In FY 2016-2017, the 20 cities within the county of San Mateo (the Cities) spent a total of \$102 million on their pension plans, representing an average of approximately 13.6 percent of their general fund expenditures. As heavy a financial burden as this is, the Cities' pension costs are projected to double by FY 2024-2025 if new actuarial assumptions made by CalPERS - the administrator of the Cities' pension plans - prove to be correct. Many experts argue, however, that CalPERS' assumptions are unduly optimistic. If these experts are correct, increases in the Cities' pension costs could be even greater.

The most important change in CalPERS' actuarial assumptions is a lowered expectation for the Return on Investment for CalPERS' pension fund assets. Since Return on Investment is expected to pay for the majority of retiree pensions, a lower investment return means that the Cities and their employees must make up the difference by making larger payments into the pension fund. The Cities have no control over CalPERS' assumptions, and each year they must pay the amount of money required by CalPERS. In each City, the city government and employees share a "Normal Cost" of paying for future retiree benefits. These will increase as a result of the changed CalPERS's assumptions. However, each City also has an "Unfunded Liability" that represents the difference between the value of their pension fund assets and the present value of their long-term pension obligations. As a result, the Cities are required to pay "Amortization Costs" (principal plus interest) to CalPERS on their Unfunded Liabilities. Amortization Costs will also increase because of the changed CalPERS' assumptions. On average, the Cities' Normal Costs comprise 41 percent of their total pension payments to CalPERS, while Amortization Costs comprise 59 percent.

The Cities have a number of options for paying steeply rising pension costs, each of which can be implemented on its own, or in combination. First, the Cities can cut public services, reduce employee salaries and benefits, or lay off employees in order to free up additional funds. Second, the Cities can negotiate with bargaining units to increase the employees' share of pension costs. Third, the Cities can attempt to increase revenues from taxes. Fourth, the Cities can use other existing resources, if any, to pay down the Unfunded Liabilities early. The San Mateo Civil Grand Jury of 2017-2018 has found that the last choice could result in large savings for all the

Cities. In one scenario, the savings could exceed \$125 million each for the Cities of San Mateo and Redwood City.

In the course of its investigation, the Grand Jury learned that none of the Cities have adopted long-term financial plans to address their rising pension costs. Some Cities informed the Grand Jury that, while rising pension costs are important, they must be balanced against “other priorities” for new spending. While the Grand Jury understands the desire on the part of the Cities to expand their services in these times of growth and increasing property tax revenues, it is difficult to think of a more important issue for them to address than the looming pension crisis. Currently, the region enjoys unprecedented economic conditions, resulting in higher tax revenues and budget surpluses for many Cities. The Grand Jury asks: If the Cities do not address Unfunded Liabilities now, when will they ever be able to?

The Grand Jury has compiled data regarding pension costs of each of the Cities, which are set forth in Appendix A of this report, as well as aggregate information for all of the Cities. This report also provides a general overview of public pension obligations, the major variables that drive pension cost and Unfunded Liability calculations, including how these variables can understate Unfunded Liabilities. This report describes the options available to the Cities to address the looming budgetary crises they face from rising pension costs.

The Grand Jury recommends that the Cities make addressing pension costs a higher priority and that they engage residents in a discussion about the hard choices that their local governments will have to make. The Grand Jury also recommends that each City develop a financial plan to address rising pension costs. The Grand Jury does not recommend specific policies or implementation measures for the Cities to adopt, but the Grand Jury does identify a number of options for them to consider.

GLOSSARY

- Agency: Any city, county, or other public entity employer that offers a pension plan to its employees through CalPERS. Each of the Cities is, accordingly, an “Agency” for purposes of this report.
- Amortization Cost: Payments by the Cities to CalPERS, to pay down their Unfunded Liability. It includes payments of (a) principal needed to pay off (amortize) the Unfunded Liability over a period of years, plus (b) interest charged by CalPERS on that liability.
- Amortization Period: The number of years over which an Unfunded Liability is to be paid off.
- Benefits or Benefits obligations: Amounts to be paid out of a pension plan’s assets to Members or their beneficiaries.

- Comprehensive Annual Financial Report or CAFR: An annual financial report issued by government entities, such as the Cities.
- CalPERS: The California Public Employees Retirement System, which administers pension plans for all of the Cities.
- County: The government of San Mateo County. The geographic area of San Mateo County is referred to as the “county.”
- Discount Rate: The interest rate used in calculating the present value of future cash flows. CalPERS determines the Discount Rate it will use to calculate each pension plan’s Total Plan Liabilities and Unfunded Liabilities. Under public pension plan accounting rules, the Discount Rate is the same as the annual Return on Investment that CalPERS projects it will earn on plan assets.
- Funded Ratio or Funded Percentage: Measures the extent to which a pension plan’s assets match the present value of its projected future pension obligations. It is the ratio that results from dividing Total Plan Assets by Total Plan Liabilities.
- GASB: The Government Accounting Standards Board. Among other things, it sets financial accounting standards for public service employee pension plans.
- Members: Current and vested former employees of the Cities, or their beneficiaries, who participate in one of the Cities’ CalPERS pension plans.
- Miscellaneous Plans: Pension plans for public service employees who do not provide safety services such as police and fire protection. Miscellaneous Plans are generally less expensive to maintain than Safety Plans.
- Normal Cost: The contribution payments Agencies and their employees make to CalPERS in order to fund the projected lifetime cost (discounted to present value) of Benefits that accrue to current employee Members during that year. It does not include Amortization Costs.
- Return on Investment or Rate of Return: The annual gain or loss on invested pension plan assets. In public pension plans, this is the same as the Discount Rate.
- Safety Plans: Pension plans for public service employees who provide safety services, such as police and fire protection.
- Cities: The 20 cities located within the San Mateo County.

- Total Plan Assets: The current dollar value of all assets within a pension plan (sometimes referred to in CAFRs as “Fiduciary Net Position”).
- Total Plan Liabilities: The present value of all future Benefit obligations under a pension plan (sometimes referred to in a CAFR as “Total Pension Liability”).
- Unfunded Liability: The dollar amount, if any, by which Total Plan Liabilities of a pension plan exceed its Total Plan Assets (sometimes referred to in a CAFR as “Net Pension Liability”).

BACKGROUND

The Cities’ Pension Plans.

Each of the Cities provides its employees with a pension plan administered by CalPERS¹ as an integral part of their compensation package. All of these plans are defined benefit plans² in which future Benefits are determined by a formula that is set at the outset of employment.^{3,4} The Benefits are guaranteed by the Cities and do not depend on how well pension contributions are invested. Benefits are financed from three sources:⁵

¹ See, the Comprehensive Annual Financial Reports (CAFRs) listed in the BIBLIOGRAPHY section below for each of the Cities.

² See, CAFRs for each of the Cities listed in the BIBLIOGRAPHY section below. CalPERS, *Comprehensive Annual Financial Report for the Year Ended June 30, 2017*, p. 7, <<https://www.calpers.ca.gov/docs/forms-publications/cafr-2017.pdf>>.

³ Biggs, Andrew and Smetters, Kent, *Understanding the Argument for Market Valuation of Public Pension Liabilities*, American Enterprise Institute. May 2013, p. 1, <http://www.aei.org/wp-content/uploads/2013/05/-understanding-the-argument-for-market-valuation-of-public-pension-liabilities_10491782445.pdf>. Ruloff, Mark, *Defined Benefit Plans vs. Defined Contribution Plans*, Pension Section News of Society of Actuaries, January 2005 – Issue No. 57, p. 1. Money-Zine, *Defined Benefit versus Contribution Plans*, July 5, 2017, <<https://www.money-zine.com/financial-planning/retirement/defined-benefit-versus-contribution-plans/>>. Investopedia, *How does a defined benefit pension plan differ from a defined contribution plan?*, March 2015, <<https://www.investopedia.com/ask/answers/032415/how-does-defined-benefit-pension-plan-differ-defined-contribution-plan.asp>>.

⁴ In contrast, most private companies’ retirement plans are defined contribution plans, such as 401k’s, where the amounts of future benefit payments vary depending on returns achieved on investments. Greenhut, Steven, *California Still Facing Pension Crisis Even with Good Stock Market Returns*, California Policy Center, July 14, 2017, <<http://reason.com/archives/2017/07/14/dont-let-unions-use-good-returns-to-defl>>.

⁵ CalPERS at a Glance, *CalPERS Communications and Stakeholder Relations*, <<https://www.calpers.ca.gov/docs/forms-publications/calpers-at-a-glance.pdf>>. CalPERS 2017 CAFR, p. 47. Lin, Judy, *Retirement Debt: What’s the problem and how does it affect you?* CalMatters.org, February 21, 2018, <<https://calmatters.org/articles/california-retirement-pension-debt-explainer/>>. Nation, Joe, *Pension Math: How California’s Retirement Spending is Squeezing the State Budget*. SIEPR (Stanford Institute for Economic Policy Research). December 13, 2011, p. 23, <<http://arc.asm.ca.gov/NSR.pdf>>. Nation, Joe and Storms, Evan, *More Pension Math: Funded Status, Benefits, and Spending Trends for California’s Largest Independent Public Employee Pension Systems*. SIEPR (Stanford Institute for Economic Policy Research). February 21, 2012, p. 3, <http://siepr.stanford.edu/sites/default/files/publications/Nation_More_Pension_0.pdf>. Biggs and Smetters, *Understanding the Argument for Market Valuation*, p. 3.

- Current employee contributions to CalPERS of a fixed percentage of their salaries. These contributions go towards Normal Costs and pay for approximately 13 percent of Benefits paid under CalPERS' pension plans).
- Agency (that is, employer) contributions to CalPERS of
 - (i) the Normal Cost of the pension plan for that year (less the employee contributions amounts), plus
 - (ii) if the pension plan has an Unfunded Liability (as do all of the Cities' pension plans⁶), the Amortization Cost (that is, the cost of paying off that Unfunded Liability, including both principal and interest, over a period of years).

These employer contributions pay for approximately 26 percent of Benefits paid under CalPERS' pension plans.⁷

- Return on Investment achieved by CalPERS from investing the contributions made by employees and Agencies between the time that the contributions are made and the date when Benefits payments come due. Historically, these Returns on Investment have paid for approximately 61 percent of Benefits paid under CalPERS' pension plans.⁸

CalPERS determines the contributions that Agencies (that is, employers) must pay to CalPERS to cover future Benefits by calculating:

- (i) Benefits amounts that will have to be paid, based on assumptions that include projected future retirement rates, inflation, wage increases and post-retirement longevity, and
- (ii) Returns on Investment CalPERS expects to earn on employee and Agency contributions.

To the extent that projected costs of Benefits increase unexpectedly, or Returns on Investment fall short of projections, pension plans will have Unfunded Liabilities. The Agencies rather than CalPERS are responsible for paying down all Unfunded Liabilities through increased contributions and the Agencies bear all the risk of CalPERS' projections being wrong.⁹ Agencies

⁶ Appendix A.

⁷ CalPERS at a Glance.

⁸ CalPERS at a Glance.

⁹ The Economist, Buttonwood's Notebook, *The soaring cost of old age, The real problem with pensions*, March 7, 2018, <<https://www.economist.com/blogs/buttonwood/2018/03/soaring-cost-old-age>>. Oliveira, Anthony, *The Local Challenges of Pension Reform*, Bartel Associates, May 24, 2010, p. 4, <http://www.bartel-associates.com/docs/default-source/articles/oliveira_a_the-challenges-of-pension-reform-1.pdf?sfvrsn=2>. Andonov, Aleksander, Bauer, Rob, Cremers, Martijn, *Pension Fund Asset Allocation and Liability Discount Rates*,

have no control over CalPERS' determinations and must pay all contribution increases mandated by CalPERS.¹⁰

Importance of Rate of Return on Investment.

As noted above, Returns on Investments are the primary funding source for meeting Benefits obligations. Accordingly, annual Returns on Investment achieved by CalPERS have a major impact on its ability to fund Benefits payments. As of June 30, 2017, CalPERS reported the following annualized net Returns on Investment over different periods of time:¹¹

- Past 3 years: 4.6 percent
- Past 5 years: 8.8 percent
- Past 10 years: 4.4 percent
- Past 20 years: 6.6 percent

Even small changes in CalPERS' annual Returns on Investments over the long-term can drive substantial changes in its ability to meet Benefit obligations. For example, if a pension plan had an obligation to pay Benefits of \$150 million in 20 years and CalPERS projected that its annual Return on Investment over that time would average 7.5 percent, then CalPERS would need \$35.5 million at the outset to meet that obligation. However, if the actual Return on Investment achieved by CalPERS over that period was only 6.5 percent instead of 7.5 percent, then the pension plan would only have \$124.4 million available to pay Benefits in the 20th year,¹² a shortfall of more than \$35 million on the \$150 million obligation.

Importance of Discount Rates.

To determine the Funded Percentage of a pension plan, CalPERS compares the value of the pension plan's assets (Total Plan Assets) to the present value of the plan's Benefits payment obligations (Total Plan Liabilities).¹³ If the present value of the Benefits obligations is larger than the current value of pension assets, then the plan is not fully funded and has an Unfunded Liability equal to the difference.

In economic terms, the promise to make a future Benefit payment is worth less today than an immediate payment of the same amount. In order to compare the value of a promise to pay a

March 2016, p. 1, <http://www.icpmnetwork.com/wp-content/uploads/2016/05/Rob-Buaer_What-Is-the-Biggest-Challenge-Facing-Public-Plan-Sponsors_Optional.pdf>.

¹⁰ Interviews by Grand Jury.

¹¹ CalPERS, *Investment & Pension Funding Facts at a Glance for Fiscal Year 2016-17*, <<https://www.calpers.ca.gov/docs/forms-publications/facts-investment-pension-funding.pdf>>.

¹² The formula for the 7.5 percent Return on Investment example is: \$150 million / ((1.0 + 0.075)²⁰) = \$35,311,972. The formula for the 6.5 percent Return on Investment example is: \$35,311,972 x (1.065²⁰) = \$124,426,856.

¹³ Biggs and Smetters, *Understanding the Argument for Market Valuation*, p. 1.

Benefit in the future to the value of plan assets today, the value of the promise to make a future payment must first be discounted to its present value. As explained by Messrs. Biggs and Smetters:

“Discounting is a process similar to compound interest. While compound interest begins with a current dollar amount and adds interest to determine the future value, discounting begins with the future value and subtracts interest each year until a present value is arrived at.”¹⁴

Even small changes in the annual interest to be subtracted from the future value (that is, the Discount Rate), significantly impact present value and, consequently, a plan’s Unfunded Liability.¹⁵ See, the section of this report entitled “Increase in Unfunded Liabilities and Decrease in Funded Percentages if a Lower Discount Rate is Used” at p. [16] for an example of the impact on the Cities of a drop of just one percentage point in the Discount Rate. As a result, the Discount Rate selected for this calculation matters a great deal.

Debate Over CalPERS’ Discount Rates and Projected Rates of Return.

Discount rates are set based on CalPERS’ projections for long-term Returns on Investment.¹⁶ The higher the projected Return on Investment, the higher the Discount Rate and the lower the Unfunded Liability. That is often referred to as the “assumed return approach”.¹⁷ Although GASB mandates this method of setting public pension plan Discount Rates,¹⁸ it is controversial.¹⁹ Many economists, academics and commentators claim it understates the size of Unfunded Liabilities.²⁰ They argue that the present value of future Benefit obligations should be

¹⁴ Ibid., p. 4.

¹⁵ Nation, *Pension Math* 2011, pp. 9 and 11.

¹⁶ GASB Statement No. 68, Paragraph 64,

http://www.gasb.org/jsp/GASB/Document_C/DocumentPage?cid=1176160220621&acceptedDisclaimer=true. Mixon, Peter, *Estimating Future Costs at Public Pension Plans: Setting the Discount Rate*. Pensions & Investments, April 29, 2015, p. 1, <http://www.pionline.com/article/20150429/ONLINE/150429853/estimating-future-costs-at-public-pension-plans-setting-the-discount-rate>. Brewington, Autumn, *Making Sense of the Mathematics of California’s Pension Liability*, Hoover Institution, August 21, 2012, <https://www.hoover.org/research/making-sense-mathematics-californias-pension-liability>. Biggs and Smetters, *Understanding the Argument for Market Valuation*, p. 4.

¹⁷ U.S. Government Accountability Office, *Pension Plan Valuation: Views on Using Multiple Measures to Offer a More Complete Financial Picture*, September 30, 2014, p. 2, <https://www.gao.gov/products/GAO-14-264> and <https://www.gao.gov/assets/670/666287.pdf>. Mixon, *Estimating Future Costs at Public Pension Plans*, p. 1. Turner, John, Godinez-Olivares, Humberto, McCarthy, David, del Carmen Boado-Penas, Maria, *Determining Discount Rates Required to Fund Defined Benefit Plans*, Society of Actuaries, January 2017, p. 6, www.actuaries.org/oslo2015/papers/PBSS-Turner&GO&McC&B-P.pdf.

¹⁸ GASB Statement No. 68, Paragraph 64.

¹⁹ Angelo, Paul, *Understanding the Valuation of Public Pension Liabilities – Expected Cost versus Market Price*, In the Public Interest, January 2016, p. 9, <https://www.soa.org/library/newsletters/in-public-interest/.../ip-2016-iss12-angelo.aspx>.

²⁰ Mixon, *Estimating Future Costs at Public Pension Plans*, p. 1. U.S. Government Accountability Office, p. 2. Bui, Truong and Randazzo, Anthony, *Why Discount Rates Should Reflect Liabilities: Best Practices for Setting Public Sector Pension Fund Discount Rates*, Reason Foundation, September 2015, p. 4, <https://reason.org/wp->

based on a Discount Rate that reflects the value of those Benefits payments to the beneficiaries (that is, the amount an investor would pay today in exchange for the right to receive that future cash flow). Noting that obligations to pay Benefits in the future are similar to obligations to make future payments on municipal bonds, they argue that yield rates on municipal bonds having a duration and risk of non-payment similar to pension Benefits obligations are the best yardstick for establishing the value of those Benefit obligations and, accordingly, the Discount Rate.²¹ This approach is sometimes referred to as the “bond-based approach” or “market-based method.”²²

However, other experts, particularly actuarial professionals, argue that this bond or market-based approach does not provide useful information to the Agency sponsoring a pension plan about the cost to that Agency of funding future benefit obligations. They point out that, for purposes of calculating contribution rates, the expected costs of meeting future Benefit obligations are the only relevant consideration and that such costs are best calculated based on “assumed rates of return.”²³ Yet other experts believe that a variation on the assumed rate of return method in which the risk that future additional amortization payments will be necessary is factored into the Discount Rate offers the most useful information.²⁴

This debate has important implications because CalPERS’ assumed Return on Investment (7.5 percent per year from 2012 to the present) is significantly greater than municipal bond yield rates.²⁵ Since CalPERS’ projected Return on Investment exceeds that of municipal bonds yields, the result is greater Discount Rates and smaller present values of Benefit payment obligations and Unfunded Liabilities.

Other experts do not engage in the debate between proponents of the assumed return approach and the bond or market-based approach but focus instead on concerns that CalPERS’ new projection of a 7.0 percent annual Return on Investment – approved in December 2016 but not

[content/uploads/files/pension_discount_rates_best_practices.pdf](#)>. Biggs and Smetters, *Understanding the Argument for Market Valuation*, pp. 2-5. American Academy of Actuaries. *Measuring Pension Obligations: Discount Rates Serve Various Purposes*. American Academy of Actuaries Issue Brief, November 2013, <http://www.actuary.org/files/IB_Measuring-Pension-Obligations_Nov-21-2013.pdf>.

²¹ Bui and Randazzo, *Why Discount Rates Should Reflect Liabilities*, p. 2. U.S. Government Accountability Office, p. 2. Biggs and Smetters, *Understanding the Argument for Market Valuation*, p. 5. American Academy of Actuaries, p. 2.

²² Mixon, *Estimating Future Costs at Public Pension Plans*, p. 2. U.S. Government Accountability Office, p. 2.

²³ American Academy of Actuaries, p. 2. Angelo, *Understanding the Valuation of Public Pension Liabilities*, pp. 9, 11-12. Mixon, *Estimating Future Costs at Public Pension Plans*, p. 2. See also, Nation, *Pension Math* 2011, p. 12, for a chart outlining the arguments for and against public pension systems using high Discount Rates.

²⁴ Turner, *Determining Discount Rates*, p. 3.

²⁵ Boyd, Donald, Kiernan, Peter, *Strengthening the Security of Public Sector Defined Benefit Plans*, The Blinken Report, The Nelson A. Rockefeller Institute of Government. January 2014, pp. 38-39, footnote 12, <www.rockinst.org/pdf/government_finance/2014-01-Blinken_Report_One.pdf>. Angelo, *Understanding the Valuation of Public Pension Liabilities*, p. 10. U.S. Government Accountability Office, pp. 2-3.

yet implemented²⁶ – is unrealistically high. They claim that a more reasonable projection would be 6.0 - 6.5 percent.²⁷ Wilshire Consulting, CalPERS' general consultant, has advised CalPERS' board that it expects the CalPERS' Return on Investment over the next ten years to be just 6.2 percent.²⁸ It should be noted, however, that CalPERS makes Discount Rate decisions based on projected Returns on Investments over 60-year periods, not 10. CalPERS' projected 60-year Returns on Investment are in line with its new 7 percent Discount Rate.²⁹

As noted above, if Discount Rates and projected Returns on Investment are too high, then they understate the size of the Cities' Benefit payment obligations and Unfunded Liabilities.

Importance of Amortization Periods.

If a pension plan has Unfunded Liabilities, CalPERS requires the sponsoring Agency to pay off (amortize) that Unfunded Liability, together with interest accrued at a rate equal to CalPERS' projected Rate of Return,³⁰ through higher annual contribution payments over the Amortization Period. Historically, CalPERS' standard Amortization Period for investment gains and losses

²⁶ League of California Cities, *CalPERS Stays the Course, Adopts a 7 Percent Assumed Rate of Return*, December 22, 2017, <<https://www.cacities.org/Top/News/News-Articles/2017/December/CAIPERS-Stays-the-Course.-Adopts-a-7-Percent-Assum>>.

²⁷ Nation, *Pension Math* 2011, p. 13. Lin, *Retirement Debt*. Munnell, Alicia, *Appropriate discount rate for public plans is not simple*, MarketWatch, October 5, 2015, <<https://www.marketwatch.com/story/appropriate-discount-rate-for-public-plans-is-not-simple-2016-10-05>>.

²⁸ Rose-Smith, Imogen, *How Low Can CalPERS Go?* Institutional Investor.com, November 30, 2016, <<https://www.institutionalinvestor.com/article/b14z9p7tw9pdz0/how-low-can-calpers-go>>. Kasler, Dale, *With investments soft, CalPERS eyes higher contribution rates. What does that mean for workers?* Sacramento Bee, November 21, 2016, <www.sacbee.com/news/business/article116331443.html>. Kasler, Dale, *CalPERS moves to slash investment forecast. That means higher pension contributions are coming.*, Sacramento Bee, December 21, 2016, <<http://www.sacbee.com/news/business/article122088759.html>>. League of California Cities, *CalPERS Stays the Course*.

²⁹ Diamond, Randy, *CalPERS considers 4 asset allocation options; local officials prefer avoiding major changes*, November 14, 2017, p. 2, <<http://www.pionline.com/article/20171114/ONLINE/171119918/calpers-considers-4-asset-allocation-options-local-officials-prefer-avoiding-major-changes>>. CNBC.com, *CalPERS's sees 5.8 percent return with new allocation; below 7 percent goal*, February 8, 2017, <<https://www.cnbc.com/2017/02/08/calpers-sees-58-percent-return-with-new-allocation-below-7-percent-goal.html>>. See also, League of California Cities, *League of California Cities Retirement System Sustainability Study and Findings*, January 2018, p. 29, <[https://www.cacities.org/Resources-Documents/Policy-Advocacy-Section/Hot-Issues/Retirement-System-Sustainability/League-Pension-Survey-\(web\)-FINAL.aspx](https://www.cacities.org/Resources-Documents/Policy-Advocacy-Section/Hot-Issues/Retirement-System-Sustainability/League-Pension-Survey-(web)-FINAL.aspx)>, in which the authors note that CalPERS' determines its Discount Rate based on expectations for returns on investment over a 60 year period.

³⁰ Interviews by Grand Jury. Mendel, Ed, *Old cause of pension debt gets new attention*, Calpensions, July 10, 2017, p. 1, <<https://calpensions.com/2017/07/10/old-cause-of-pension-debt-gets-new-attention/>>. City of La Palma, *CalPERS Update and Additional Payment Discussion*, February 20, 2018, slide 22, <<https://www.cityoflapalma.org/ArchiveCenter/ViewFile/Item/2374>>. Eastman, Becky, *Report on status of Belvedere's employee pension funds*, May 13, 2013, p. 6, <<http://www.cityofbelvedere.org/DocumentCenter/View/1425>>.

was 30 years,³¹ but an Agency could elect a shorter Amortization Period.³² Like home loan repayment terms, the longer the Amortization Period, the lower the annual payment, but the larger the accrued interest costs. Examples of the cost of accrued interest to four of the Cities over different Amortization Periods are given in Table No. 5.

Public Employees Pension Reform Act of 2013 (PEPRA).

In response to soaring public pension Unfunded Liabilities, the California Legislature adopted the California Public Employees Pension Reform Act of 2013 (PEPRA), which imposed significant reductions on state and local government pension benefits, primarily for employees hired after January 1, 2013 (referred to as “New Members”). Employees hired prior to that date are termed “Classic Members.”³³ Classic Members who change public employers retain their “Classic” status.³⁴ Thus, to date, the impact of PEPRA on public pension liabilities has been small.³⁵ However, it will increase over time as Classic Members retire and are replaced by New Members.

Some of the most important changes mandated by PEPRA include:

- Reduced pension benefit formulas for New Members. For New Member employees with Miscellaneous Plans, PEPRA requires a “2 percent at age 62” benefit formula, that is, a New Member retiring at age 62 is entitled to a pension equal to his number of years of

³¹ League of California Cities, *CalPERS Board Reduces Amortization Policy*, February 14, 2018, <<https://www.cacities.org/Top/News/News-Articles/2018/February/CalPERS-Board-Reduces-Amortization-Policy>>. Lowe, Stephanie and Rogers, Frances, *CalPERS Reduces Amortization Period with Impacts to Employer Contribution Rates*, California Public Agency Labor & Employment Blog, Liebert Cassidy Whitmore), March 1, 2018, <<https://www.calpublicagencylaboremploymentblog.com/retirement/calpers-reduces-amortization-period-with-impacts-to-employer-contribution-rates/>>. CalPERS Actuarial Office, *Finance and Administration Committee, Agenda Item 7a, Amortization Policy (Second Reading)*, February 13, 2018, <https://www.calpers.ca.gov/docs/board-agendas/201802/financeadmin/item-7a-00_a.pdf>. Jacobius, Arleen, *CalPERS shortens amortization period to 20 years*, Pensions & Investments, February 14, 2018, <<http://www.pionline.com/article/20180214/ONLINE/180219934/calpers-shortens-amortization-period-to-20-years>>.

³² Interviews by Grand Jury. However, if an Agency selects a shorter Amortization Period, CalPERS does not permit it to reverse that election later. Interviews by Grand Jury.

³³ CalPERS, *Summary of Public Employees Pension Reform Act of 2013 and Related Changes to Public Employees' Retirement Law*, November 27, 2012, pp. 1-2, <http://www.counties.org/sites/main/files/file-attachments/calpers_summary.pdf>.

³⁴ Ibid. CalPERS, *A Guide to CalPERS: When You Change Retirement Systems*, p. 3, <<https://www.calpers.ca.gov/docs/forms-publications/change-retirement-systems.pdf>>.

³⁵ League of California Cities, *2018 Retirement System Sustainability Study*, pp. 2 and 5. Hutchings, Dane, *Closing the Pension Funding Gap*, League of California Cities, slide 4, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwj4wYnghL7bAhUPJ3wKHeqPCW0QFggpMAA&url=https%3A%2F%2Fwww.cacities.org%2FResources-Documents%2FPolicy-Advocacy-Section%2FHot-Issues%2FRetirement-System-Sustainability%2FPension_Gap_Public.aspx&usg=AOvVaw2C02vB9pPOI9v_n_zbeA38>. Redwood City, *Report – FY 2017-18 Mid-Year Budget Study Session and Proposed Process for Development of the FY 2018-19 Budget*, February 26, 2018, p. 10, <<https://www.redwoodcity.org/home/showdocument?id=14650>>.

service, times 2 percent, times his average salary.³⁶ A New Member retiring before age 62 would have a pension that is further reduced. For instance, at age 55, a New Member is entitled to a pension equal to his years of service, times 1.3 percent, times his average salary.³⁷ Many Classic Members are entitled to more generous Benefits. For example, many City of San Carlos Classic employees under Miscellaneous Plans have pensions calculated according to a “2.7 percent at 55” formula.³⁸ Such an employee with 30 years of government service is entitled to a pension equal to 81 percent of their salary at age 55.³⁹ By comparison, a New Member with 30 years of government service would be entitled to a pension equal to just 39 percent of salary at that same age,⁴⁰ or less than 50 percent of what a Classic Member would receive. PEPRAs specifies similar but more complex reductions for New Members under Safety Plans.⁴¹

- Caps on annual salary basis for calculation. PEPRAs also caps the amount of annual salary that can be used to calculate pensions for New Members at \$113,700 (if Social Security is also offered) plus cost of living adjustments (COLAs), or \$136,440 (if Social Security is not offered) plus COLA.⁴² These caps are less than the salaries of many middle and upper management government employees.⁴³ Classic Members are not subject to salary caps in calculating their pensions.⁴⁴
- Averaging of salaries for calculation. PEPRAs requires, in calculating the annual salary used to calculate pensions, that New Members use the average of the three highest consecutive years salary.⁴⁵ In contrast, some public agencies allow Classic Members to use just their highest salary year.
- Prohibition on “spiking” salaries. PEPRAs also prohibits “spiking” salaries used to calculate pensions by including overtime, bonuses, cash payouts for unused vacation or sick leave, severance pay and the like.⁴⁶

³⁶ CalPERS, *Summary Public Employee Reform Act*, p. 2.

³⁷ CalPERS, *Retirement Formulas and Benefit Factors: Your Benefits / Your Future What You Need to Know About Your CalPERS Local Miscellaneous Benefits*, p. 28, <<http://www.reedley.ca.gov/departments/administrative/pdfs/CalPERS%202016-01-01%20Local%20Miscellaneous%20Pub%208.pdf>>.

³⁸ City of San Carlos, Teamsters Group – Benefits Summary 2018, p. 3.

³⁹ CalPERS, *Retirement Formulas and Benefit Factors*, pp. 32-33.

⁴⁰ *Ibid.*, pp. 28-29.

⁴¹ CalPERS, *Summary Public Employee Reform Act*, p. 2.

⁴² *Ibid.*, p. 3.

⁴³ Interviews by Grand Jury.

⁴⁴ CalPERS, *Summary Public Employee Reform Act*, p. 3.

⁴⁵ *Ibid.*, pp. 9-10.

⁴⁶ *Ibid.*, pp. 8-9.

- Prohibition on purchases of “airtime”. PEPRA also prohibits employees from purchasing nonqualified service time (“airtime”), which allows Members to boost their pensions by buying up to five years of additional service credit.⁴⁷

As discussed below, PEPRA may have intended to apply some of these prohibitions to both Classic and New Members. However, whether these provisions apply to Classic Members is currently before the California Supreme Court.

“California Rule”.

A major obstacle to reducing the pension Benefits to be earned by Classic employees in the future is the so-called “California rule,” an interpretation of a 1955 state Supreme Court decision⁴⁸ that public employee pension Benefits, once granted, can never be modified, even for future work, without providing “comparable new advantages,” and that also still leave employees with a “reasonable” pension.⁴⁹ However, in 2016, a Court of Appeal ruled that, under the Supreme Court’s decision, employees only have a vested right to “a ‘reasonable pension’ – not an immutable entitlement to the most optimal formula of calculating the pension.”⁵⁰ At issue in that case was the prohibition on “spiking” discussed above at p. 11. A few months later, another Court of Appeal reached a similar conclusion in upholding a prohibition on the purchasing of “airtime” discussed above at p. 12.⁵¹ However, a third Court of Appeal recently reached a different conclusion, finding that detrimental changes to pension benefits of Classic Members would only be upheld as “reasonable” if supported by “compelling evidence that the required changes ‘bear a material relation to the theory ... of a pension system’ and its successful operation.”⁵² The California Supreme Court is currently considering appeals of all three Court of

⁴⁷ Ibid., pp. 7-8.

⁴⁸ *Allen v. City of Long Beach*, 45 Cal.2d 128 (1955), <<https://scocal.stanford.edu/opinion/allen-v-city-long-beach-26585>>.

⁴⁹ *Allen v. City of Long Beach*, 45 Cal.2d 128 at 131. Beyerdorf, Brian, *The Fate of Public Employee Pensions: Marin’s Revision of the ‘California Rule’*, California Law Review Online, September 2017, p. 1, <www.californialawreview.org/wp-content/uploads/2017/09/Beyerdorf-02-formatted-62-72.pdf>. Walters, Dan, *Jerry Brown, nearing end of terms, defies unions on pensions*, San Francisco Chronicle, November 28, 2017, <<https://www.sfchronicle.com/news/article/Jerry-Brown-nearing-end-of-term-defies-unions-12389814.php>>.

⁵⁰ *Marin Association of Public Employees v. Marin County Employees Retirement Association*, 2 Cal. App. 5th 674 at 680 (1st Dist. 2016), <<https://www.leagle.com/decision/incaco20160817007>>.

⁵¹ *Cal Fire Local 2881 et al., v. California Public Employees’ Retirement System et al.*, 7 Cal. App. 5th 115 (1st Dist. 2016), <<https://www.eastbaytimes.com/wp-content/uploads/2017/01/123016-appellate-court-ruling.pdf>>.

⁵² *Alameda County Deputy Sheriff’s Association, et al. v. Alameda County Employees’ Retirement Assn., et al.*, Case No. A141913, filed January 8, 2018, as modified February 5, 2018, <<https://www.gmsr.com/wp-content/uploads/2018/04/scw-A141913M.pdf>>. Rogers, Frances and Overby, Brett, *California Court of Appeal Issues A Contrary Decision Addressing “Vested Rights” of Public Employees in the Aftermath of PEPRA: Where will the Supreme Court Land?*, California Public Agency Labor & Employment Blog (Liebert Cassidy Whitmore), January 10, 2018, <<https://www.calpublicagencylaboremploymentblog.com/pension/california-court-of-appeal-issues-a-contrary-decision-addressing-vested-rights-of-public-employees-in-the-aftermath-of-pepra-where-will-the-supreme-court-land/>>.

Appeal rulings.⁵³ Acceptance of the “reasonable pension” standard enunciated in the first two Court of Appeal cases could have significant implications for future pension reform efforts, as well as eliminate the pension “spiking” and “air time” practices for both Classic and New Members.

CalPERS’ changes.

CalPERS administers pension plans for Agencies throughout California. CalPERS’ system-wide Funded Percentage (that is, value of current assets divided by the present value of future Benefit payments) is only 68 percent.^{54,55} As discussed below in the section entitled “Unfunded Liabilities and Funded Percentages of the Cities” at p. 16, among private sector pension plans, a Funded Percentage of 80 percent is the threshold below which a plan’s solvency is considered “at risk”.⁵⁶ CalPERS’ reported 68 percent Funded Percentage is based on a Return on Investment and Discount Rate assumption of 7 percent. CalPERS has been criticized in the past for inaccurate assumptions made in its calculations of future Benefits obligations and Returns on Investment.⁵⁷ The May 2017 Roeder Survey of California public pension plans ranked CalPERS a poor 34th out of 37 California public pension plans rated for “funding assumptions.”⁵⁸ However, CalPERS has begun taking actions to strengthen its pension system.

⁵³ Webster, Keeley, *More briefs ask State Supreme Court to weaken California rule on pensions*, The Bond Buyer, February 27, 2018, <<https://www.bondbuyer.com/news/more-briefs-ask-state-supreme-court-to-weaken-california-rule-on-pensions>>. GMSR Appellate Lawyers, *California Supreme Court Watch*, #18-49, <<https://www.gmsr.com/18-49-alameda-county-deputy-sheriffs-assn-v-alameda-county-employees-retirement-assn-s247095-a141913-19-cal-app-5th-61-mod-19-cal-app-5th-945a-contra-costa-county-superior/>>.

⁵⁴ Terando, Scott, *Strategies for Managing the New Reality*, CalPERS, September 15, 2017, slide 8, <<https://www.cacities.org/Resources-Documents/Education-and-Events-Section/Annual-Conference/2017-Handouts/Strategies-for-Managing-the-New-Reality-of-CalPERS>>. CalPERS 2017 CAFR, p. 27. CalPERS, *CalPERS Reports Preliminary 11.2 Percent Investment Return for Fiscal Year 2016-17*, July 14, 2017, p. 1, <<https://www.calpers.ca.gov/page/newsroom/calpers-news/2017/preliminary-fiscal-year-investment-returns>>.

⁵⁵ A Funded Percentage of 68 percent is low compared to CalPERS’ historic Funded Percentages over the last 25 years. For a chart showing these percentages since 1993, see, Fox, Kelly, *CalPERS Update and Path Forward*, December 13, 2017, p. 16, <<https://www.cacities.org/Resources-Documents/Education-and-Events-Section/Fire-Chiefs/2017-Session-Materials/CalPERS-History-and-Pension-Updates>>.

⁵⁶ Nation, *Pension Math* 2011, p. 17. Financial analyst Rick Roeder notes that a public pension plan with a Funded Percentage in the 80-90 percent range is considered “reasonably well funded.” Roeder, Rick, Roeder Financial, *California Pension Systems: Ranking their Funding Assumptions*, May 2017, p. 2, <<http://roederfinancial.com/ramblings.php?ramble=42>>.

⁵⁷ See, for example, the following: Ring, Edward, *Did CalPERS Use Accounting “Gimmicks” to Enable Financially Unsustainable Pensions?*, California Policy Center, January 24, 2018, <<https://californiapolicycenter.org/calpers-use-accounting-gimmicks-enable-financially-unsustainable-pensions/>>. Dolan, Jack, *How a pension deal went wrong and cost California taxpayers billions*, Los Angeles Times, September 18, 2016, <<http://www.latimes.com/projects/la-me-pension-crisis-davis-deal/>>. Malanga, Steven, *The Pension Fund that Ate California*, The City Journal, <<https://www.city-journal.org/html/pension-fund-ate-california-13528.html>>.

⁵⁸ Roeder, Rick, Roeder Financial, *California 2017 Funding Assumption Survey*, May 2017, <<http://roederfinancial.com/RoederSurvey2017.html>>.

CalPERS' reduction of Discount Rate from 7.5 to 7 percent.

In late 2016, CalPERS decided to lower its Discount Rate from 7.5 to 7.0 percent.⁵⁹ This will have the effect of significantly increasing the size of CalPERS' Unfunded Liabilities and, accordingly, the contribution amounts Agencies must pay. One expert has estimated that, for every one quarter percentage point decrease in the Discount Rate, Agency contribution rates (that is, the size of their contribution payments as a percentage of total payroll) go up by approximately 2.5 percentage points.⁶⁰ A 5 percentage point increase in the contribution rate would represent a large increase in payments by the Cities as their average contribution rate in FY 2017-2018 was 27.3 percent.⁶¹ In order to give Agencies time to prepare for these increased costs, CalPERS intends to phase in the change in its Discount Rate from 7.5 to 7 percent over a three-year period as follows⁶²:

- FY 2018-2019: 7.35%
- FY 2019-2020: 7.25%
- FY 2020-2021: 7.00%

To further ease the impact on Agencies of these Discount Rate reductions, CalPERS plans to phase in the resulting contribution payment increases over an additional 5 years.⁶³ As a result, the full cost of the Discount Rate decreases to 7 percent will not be felt by Agencies until approximately FY 2024-2025.⁶⁴ This phasing-in process comes at a cost, however, as it allows interest to continue to accrue on Unfunded Liabilities for a longer time, thereby increasing total costs that the Cities will eventually have to pay.

In late 2017, CalPERS considered lowering its Discount Rate even further, down to 6.75 or even 6.5 percent.⁶⁵ Agencies objected because of the increased contribution costs this would impose on them and CalPERS decided not to lower the Discount Rate below 7 percent.⁶⁶ However, one expert has projected that it is "likely" CalPERS' Discount Rate will be lowered, in a series of steps, down to 6 percent over the course of the next 20 years or so.⁶⁷

⁵⁹ CalPERS, *CalPERS to Lower Discount Rate to Seven Percent Over the Next Three Years*, December 21, 2016, <<https://www.calpers.ca.gov/page/newsroom/calpers-news/.../calpers-lower-discount-rate>>.

⁶⁰ Nation, *Pension Math* 2011, pp. 25-26.

⁶¹ Appendix A.

⁶² CalPERS, *CalPERS to Lower Discount Rate to Seven Percent*. Terando, *Strategies for Managing the New Reality*, slide 6.

⁶³ Mendel, *Old cause of pension debt*, p. 3.

⁶⁴ League of California Cities, *CalPERS Stays the Course*.

⁶⁵ Diamond, *CalPERS considers 4 asset allocation options*, p. 1.

⁶⁶ Ibid. League of California Cities, *CalPERS Stays the Course*.

⁶⁷ Lin, Bianca and Childs, Matthew, *City of Pacifica Miscellaneous and Safety Plans, CalPERS Actuarial Issues – 6/30/15 Valuation Preliminary Results*, Bartel Associates LLC, September 18, 2017, slide 3, <<http://www.cityofpacific.org/civicax/filebank/blobdload.aspx?BlobID=13378>>. Lin, Bianca and Yam, Wai Man, *City of Menlo Park Miscellaneous and Safety Plans, CalPERS Actuarial Issues – 6/30/15 Valuation Preliminary Results*, Bartel Associates LLC, May 2, 2017, slide 10, <<https://www.menlopark.org/DocumentCenter/View/14392/D2-MenloPark-17-05-02-CalPERS-Misc-Safety>>. Lin,

CalPERS' adoption of new mortality rate assumptions.

In 2014, CalPERS adopted new mortality rate assumptions reflecting the fact that retirees are expected to live longer. These assumption changes were projected to have the effect of increasing Agencies' pension contribution costs.⁶⁸

CalPERS' reduction of Amortization Period.

In February 2018, CalPERS reduced its standard Amortization Period from 30 to 20 years.⁶⁹ To “avoid undue disruption” to Agency budgets, CalPERS proposes to implement the new period prospectively only, starting with amortization bases established by its June 30, 2017 valuation. Amortization bases established prior to that date would continue as scheduled under current policy.⁷⁰ Although this change will decrease the Cities' pension costs over the long run (see, Table No. 5 below for examples of such savings), in the near term shortened Amortization Periods will increase their contribution payments.

DISCUSSION

Why are Unfunded Liabilities and Funded Percentages so important?

The Grand Jury chose to study public pension costs and Unfunded Liabilities because they represent a serious threat to public services county-wide and are already eating into public agency budgets.⁷¹ The League of California Cities recently warned:

“Rising pension costs will require cities over the next seven years to nearly double the percentage of their general fund dollars they pay to CalPERS...[U]nder current law, cities have two choices – attempt to increase revenue or reduce services. Given that police and fire services comprise a large percentage of city general fund budgets, public safety, including response time, will likely be impacted.”⁷²

The effects of increasing pension costs are clear:

- As payments consume a larger share of cities' budgets, it becomes more difficult to maintain, much less improve, public services.

Bianca and Yang Kevin, *Redwood City Miscellaneous and Safety Plans, CalPERS Actuarial Issues – 6/30/15 Valuation Preliminary Results*, Bartel Associates LLC, February 13, 2017, slide 7.

⁶⁸ Bartel Associates, LLC, *New CalPERS Assumptions Will Increase Rates*, February 23, 2014, <<http://www.bartel-associates.com/news/2014/02/23/new-calpers-assumptions-will-increase-rates>>.

⁶⁹ Lowe and Rogers, *CalPERS Reduces Amortization Period*. CalPERS, *Agenda Item 7a, Amortization Policy*, p. 1..

⁷⁰ *Ibid.*, p. 4.

⁷¹ Nation, *Pension Math: Public Pension Spending and Service Crowd Out in California, 2003-2030*, October 2, 2017, p. xi, <<https://siepr.stanford.edu/research/publications/pension-math-public-pension-spending-and-service-crowd-out-california-2003>>. League of California Cities, *2018 Retirement System Sustainability Study*, p. 5.

⁷² League of California Cities, *2018 Retirement System Sustainability Study*, p. 1.

- As Unfunded Liabilities increase, cities’ municipal bond ratings may be hurt, which could increase the cost of other public improvement projects that require bonds.
- Public employees may face reduced compensation, reduced COLAs, or layoffs.
- Retired employees may find the security of their pensions threatened (obligations “guaranteed” by the state constitution have been voided in situations of bankruptcy)⁷³.
- Residents may be asked to raise taxes; a difficult “sell” in the present political climate when the reason is to pay for legacy pension costs and not current services.⁷⁴

The Cities’ Pension Costs and Unfunded Liabilities Today.

Appendix A shows each City’s pension costs, Funded Percentage and Unfunded Liabilities for FY 2016-2017 (the most recent year for which information is available), together with a comparison to each of the two immediately preceding fiscal years. A review of Appendix A data on a consolidated basis (shown at the bottom of Appendix A) is also revealing. A discussion of that consolidated data for the Cities follows.

Unfunded Liabilities and Funded Percentages of the Cities.

Two important measures of the health of pension plans are the size of their Unfunded Liabilities and their Funded Percentages. Table No. 1 (below) shows, based on the 7.5 percent Discount Rate then being used by CalPERS, that the Cities’ aggregate Unfunded Liabilities increased by 10.7 percent from FY 2014-2015 to FY 2015-2016 and by another 22.2 percent from FY 2015-2016 to FY 2016-2017. Funded Percentages correspondingly decreased, at an accelerating rate, over these 3 years.

Table No. 1 - Increasing Unfunded Liabilities and Decreasing Funded Percentages			
(\$000)			
	Unfunded Liabilities	Percent Increase in Unfunded Liabilities	Funded Percentage
2016-2017	\$1,215,465	22.2%	70.5%
2015-2016	\$994,535	10.7%	75.1%
2014-2015	\$898,036		76.8%

(See, Appendix A.)

As noted previously, among private sector pension plans, a Funded Percentage of 80 percent is the threshold below which a plan’s solvency is considered “at risk”.⁷⁵ Table No. 1 shows that the Funded Percentage for the Cities’ pension plans, while slightly higher than CalPERS’ system-wide Funded Percentage of 68 percent, has dropped to 70.5 percent, almost 10 percentage points below this 80 percent “at risk” threshold. The Funded Percentages in Table No. 1 would be significantly lower, and the Unfunded Liabilities correspondingly higher, if a lower Discount Rate were applied. This difference is shown in Table No. 2, below.

⁷³ Ang, Kimberly, *What Happens to Public Employee Retirement Benefits When Municipalities Go Bankrupt?*, United States Common Sense, March 10, 2016, p. 3, <<http://govrank.org/research/researchText/45>>.

⁷⁴ Interviews by Grand Jury.

⁷⁵ Nation, *Pension Math* 2011, p. 17.

Increase in Unfunded Liabilities and Decrease in Funded Percentages if a Lower Discount Rate is Used.

The Cities' Unfunded Liabilities and Funded Percentages in Table No. 1 were calculated using CalPERS then-applicable Discount Rate of 7.5 percent. If, however, the Discount Rate had been just one percentage point lower, the Cities' Unfunded Liabilities for FY 2016-2017 would have been approximately 44 percent larger (as shown in Table No. 2) and the corresponding Funded Percentage that year would have been 62.4 percent rather than 70.5 percent, almost 18 percentage points below the 80 percent Funded Percentage standard.

Table No. 2 - Increased Pension Unfunded Liabilities and Decreased Funded Percentages if Discount Rate is Reduced By 1 percentage point				
(\$000)				
Fiscal Year	Unfunded Liabilities based on 7.5 % Discount Rate	Unfunded Liabilities based on 6.5 % Discount Rate	Funded Percentages based on 7.5 % Discount Rates	Funded Percentages based on 6.5 % Discount Rates
2016-2017	\$1,215,465	\$1,755,047	70.5%	62.4%
2015-2016	\$994,535	\$1,515,521	75.1%	66.5%
2014-2015	\$898,036	\$1,399,702	76.8%	68.0%

(See, Appendix A.)

Applying its new Discount Rate of 7 percent (which will be implemented in stages over the three fiscal years ending FY 2020-2021), CalPERS states that its current, system-wide Funded Percentage is 68 percent.⁷⁶ However, if long-term Returns on Investment decrease, or are projected to decrease, below 7 percent, then CalPERS' Funded Percentage (and corresponding Discount Rate) would drop even lower. For example, at a Discount Rate of 6.2 percent, it has been estimated that CalPERS' Funded Percentage would drop by almost 10 percentage points, from 68 to 58.3 percent.⁷⁷

Increasing Pension Contribution Payments.

Increasing Unfunded Liabilities result in larger contribution payment costs. Table No. 3 shows how the Cities' contribution costs have risen from FY 2014-2015 through FY 2016-2017 and how the percentages of cities' payroll and general fund spending consumed by contribution payments have been increasing.

Table No. 3 - Increasing Pension Contribution Payments			
(\$000)			
Fiscal Year	Total Contribution Payments	Contributions as a percent of covered payroll	Contributions as a percent of general fund spending
2016-2017	\$104,986	27.3%	13.6%
2015-2016	\$95,987	27.4%	13.2%
2014-2015	\$85,335	25.5%	12.8%

(See, Appendix A.)

⁷⁶ Terando, *Strategies for Managing the New Reality*, slide 8. CalPERS 2017 CAFR, p. 27. League of California Cities, *2018 Retirement System Sustainability Study*, p. 1.

⁷⁷ Nation, *2011 Pension Math*, p. vii.

The average, statewide percentage of Agencies' general fund budgets projected to be paid to CalPERS in FY 2017-2018 is 11.2 percent.⁷⁸ In comparison, the Cities' pension costs in FY 2016-2017 represented an average of 13.6 percent of their general fund spending.

Percentage of Employer Contribution Paid for Amortization Costs.

All of the Cities have substantial Unfunded Liabilities⁷⁹ and a significant and increasing portion of their contribution payments go to paying Amortization Costs (that is, payments required to pay off Unfunded Liabilities, including accrued interest). Table No. 4 (below) shows that well over half of the Cities' contribution payments in FY 2017-2018 have been applied to payment of Amortization Costs.

Table No. 4 - Percentage of Cities' FY 2017-18 Pension Costs that are Amortization Costs			
(\$000)			
City	2017-2018 Normal Costs	2017-2018 Amortization Costs	% of 2017-2018 Total Contribution Costs for Amortization
Belmont	\$1,473	\$2,046	58.1%
Brisbane	\$989	\$912	48.0%
Burlingame	\$2,552	\$3,183	55.5%
Daly City	\$6,281	\$7,184	53.4%
East Palo Alto	\$1,024	\$635	38.3%
Half Moon Bay	\$174	\$654	79.0%
Menlo Park	\$2,841	\$2,915	50.6%
Millbrae	\$783	\$2,907	78.8%
Pacifica	\$2,084	\$2,043	49.5%
Redwood City	\$8,767	\$12,479	58.7%
San Bruno	\$3,334	\$4,070	55.0%
San Carlos	\$715	\$2,565	78.2%
City of San Mateo	\$6,750	\$11,239	62.5%
South San Francisco	\$5,872	\$9,171	61.0%
	Total	Total	Weighted Average
	\$43,637	\$62,001	58.7%

California Policy Center, *CalPERS Actuarial Report Data – Cities (\$=M)*, <<http://californiapolicycenter.org/wp-content/uploads/2018/02/CalPERS-Actuarial-Report-Data-Cities-and-Counties-w-totals.xlsx>>. The California Policy Center provides pension cost data for 14 of the 20 Cities. Data for Atherton, Colma, Foster City, Hillsborough, Portola Valley and Woodside was not provided.

⁷⁸ League of California Cities, *2018 Retirement System Sustainability Study*, p. 4.

⁷⁹ Appendix A.

Interest Charges on Unfunded Liabilities.

CalPERS charges interest on Unfunded Liabilities at an annual rate equal to the then-current Discount Rate.⁸⁰ Accordingly, the 30-year Amortization Period historically used by CalPERS to amortize Unfunded Liabilities results in interest payments that make up a large percentage of total Amortization Costs. Table No. 5 (below) shows, by way of example, that more than 50 percent of the Amortization Costs paid by South San Francisco, Redwood City, the City of San Mateo, and Daly City go to interest payments. It also shows that, if the Amortization Periods were shortened to 20 years, or even 15, those Cities would realize large savings on interest. Most notably, the City of San Mateo would save \$56 million under a 20-year Amortization Period and \$126 million with a 15-year period. Redwood City would save \$55 million by switching to a 20-year Amortization Period and \$134 million with a 15-year period.

Table No. 5 - Interest payment savings where shorter Amortization Periods are applied							
(\$000)							
City	Interest over 30 years			Interest over 20 years		Interest over 15 years	
	Total payments over 30-years (using 30-year Amortization Period).	Interest payments over 30-years.	Percent of 30-year Amortization Cost payments consisting of interest payments.	Interest payments over 20-years (using 20-year Amortization Period).	Savings compared to 30-year period.	Interest payments over 15-years (using 15-year Amortization Period).	Savings compared to 30-year period
South S.F. ⁸¹	\$390,708	\$206,436	52.8%	\$185,162	\$20,574	\$127,457	\$78,979
Redwood City ⁸²	\$553,787	\$305,671	55.2%	\$250,256	\$55,415	\$171,616	\$134,055
City of San Mateo ⁸³	\$502,874	\$280,510	55.8%	\$224,282	\$56,228	\$153,805	\$126,706
Daly City ⁸⁴	\$371,749	\$201,920	54.3%	\$171,295	\$30,625	\$117,468	\$84,452

Shortening the Amortization Period is only one way that savings on interest can be achieved. Savings can also be made by reducing the size of the Unfunded Liabilities through supplemental

⁸⁰ Interviews by Grand Jury. Mendel, *Old cause of pension debt*, p. 1. City of La Palma, slide 22. Eastman, p. 6. City of Daly City, *Comprehensive Biennial Operating and Capital Budget, Fiscal Years 2017 and 2018*, p. 25.

⁸¹ CalPERS, *Actuarial Valuation – June 30, 2016 Miscellaneous Plan of the City of South San Francisco*, p. 17, <<https://www.calpers.ca.gov/docs/actuarial-reports/2016/south-san-francisco-city-miscellaneous-2016.pdf>>. CalPERS, *Actuarial Valuation – June 30, 2016 Safety Plan of the City of South San Francisco*, p. 17, <<https://www.calpers.ca.gov/page/.../actuarial.../public-agency-actuarial-valuation-reports>>.

⁸² CalPERS, *Actuarial Valuation – June 30, 2016 Miscellaneous Plan of the City of Redwood City*, p. 17, <<https://www.calpers.ca.gov/docs/actuarial-reports/2016/redwood-city-miscellaneous-2016.pdf>>. CalPERS, *Actuarial Valuation – June 30, 2016 Safety Plan of the City of Redwood City*, p. 17, <<https://www.calpers.ca.gov/docs/actuarial-reports/2016/redwood-city-safety-2016.pdf>>.

⁸³ CalPERS, *Actuarial Valuation as of June 30, 2016 for the Miscellaneous Plans of the City of San Mateo*, p. 17, <<https://www.calpers.ca.gov/docs/actuarial-reports/2016/san-mateo-city-miscellaneous-2016.pdf>>. CalPERS *Actuarial Valuation as of June 30, 2016 for the Safety Plans of the City of San Mateo*, p. 17, <<https://www.calpers.ca.gov/docs/actuarial-reports/2016/san-mateo-city-safety-2016.pdf>>.

⁸⁴ CalPERS *Actuarial Valuation as of June 30, 2016 for Miscellaneous Plans of Daly City*, p. 17, <<https://www.calpers.ca.gov/docs/actuarial-reports/2016/daly-city-miscellaneous-2016.pdf>>. CalPERS *Actuarial Valuation as of June 30, 2016 for Safety Plans of Daly City*, p. 17, <<https://www.calpers.ca.gov/docs/actuarial-reports/2016/daly-city-safety-2016.pdf>>.

payments to CalPERS beyond the required contribution amounts. This can be done through a commitment by the Cities to make additional payments on a regular basis that is reflected in the annual budget, and/or by the Cities making additional payments as funds become available, as when there is a budget surplus or non-recurring revenue source. The process is similar to the experience of a credit card holder. If the holder only pays the minimum monthly balance, long-term interest expenses are higher than if the holder pays more than the minimum per month in order to work down the principal amount.

What does the future hold? The Impact of Increasing Pension Costs on the Cities.

Rising Unfunded Liabilities will generate increasing pension costs. A “Key Finding” of the League of California Cities’ January 2018 report is that “City pension costs will *dramatically increase to unsustainable levels*” (emphasis added).⁸⁵ The League reports that the average percentage of its 426-member cities’ general fund spending on CalPERS pension plans will almost double between FY 2006-2007 and FY 2024-2025 (from 8.3 percent to 15.8 percent).⁸⁶

CalPERS projects that the \$3.1 billion in pension costs being paid by member cities in FY 2017-2018 will almost double (to \$5.8 billion) by FY 2024-2025.⁸⁷ The Cities’ projected future pension costs, as estimated by CalPERS, are also projected to almost double during that period,⁸⁸ and some experts project even larger increases.⁸⁹ Table No. 6 sets out CalPERS’ projections for increasing pension costs for 15 of the Cities from FY 2017-2018 through FY 2024-2025 and shows that they will have to pay pension costs that are rising by an average of 13.3 percent per year.

⁸⁵ League of California Cities, *2018 Retirement System Sustainability Study and Findings*, p. 2.

⁸⁶ *Ibid.*, pp. 1 and 4.

⁸⁷ Ring, Edward, *Did CalPERS Use Accounting “Gimmicks ...?”*

⁸⁸ California Policy Center, *CalPERS Actuarial Report Data – Cities (\$=M)*,

<https://californiapolicycenter.org/CalPERS-Actuarial-Report-Data-Cities-and-Counties/>. This source provides pension cost data for 15 of the 20 Cities in the County. Data for Atherton, Colma, Foster City, Hillsborough and Woodside is not included. The weighted average percent increase in costs for these 15 Cities from FY 2017-18 to FY 2024-25 is 92.7 percent.

⁸⁹ See, discussion following Table No. 6 about higher projections by Bartel Associates, LLC and Table Nos. 7.1, 7.2 and 7.3 (below).

Table No. 6 - Increasing Pension Costs for Cities					
(\$000)					
City	2017-2018 Total Pension Costs	2024-2025 Total Projected Pension Costs	Percent Increase from 2017-2018 to 2024-2025	Average Annual Total Pension Cost Increase	Average Annual Percent Increase
Belmont	\$3,518	\$6,039	71.7%	\$360	10.2%
Brisbane	\$1,901	\$3,851	102.6%	\$279	14.7%
Burlingame	\$5,735	\$11,435	99.4%	\$814	14.2%
Daly City	\$13,464	\$28,579	112.3%	\$2,159	16.0%
East Palo Alto	\$1,658	\$2,873	73.3%	\$174	10.5%
Half Moon Bay	\$828	\$1,519	83.5%	\$99	11.9%
Menlo Park	\$5,756	\$11,258	95.6%	\$786	13.7%
Millbrae	\$3,690	\$6,828	85.0%	\$448	12.1%
Pacifica	\$4,127	\$8,899	115.6%	\$682	16.5%
Redwood City	\$21,246	\$39,955	88.1%	\$2,673	12.6%
San Bruno	\$7,404	\$14,695	98.5%	\$1,042	14.1%
San Carlos	\$3,280	\$5,407	64.8%	\$304	9.3%
City of San Mateo	\$17,988	\$33,178	84.4%	\$2,170	12.1%
South San Francisco	\$15,043	\$28,960	92.5%	\$1,988	13.2%
	Total	Total	Weighted Average	Total	Weighted Average
	\$105,638	\$203,477	92.6%	\$13,977	13.2%

California Policy Center, *CalPERS Actuarial Report Data – Cities (\$=M)*, <<http://californiapolicycenter.org/wp-content/uploads/2018/02/CalPERS-Actuarial-Report-Data-Cities-and-Counties-w-totals.xlsx>>. The California Policy Center provides pension cost data for 14 of the 20 Cities. Data for Atherton, Colma, Foster City, Hillsborough, Portola Valley and Woodside was not provided.

Bartel Associates, LLC⁹⁰ projects even larger increases in pension costs than CalPERS. For example, as shown in Table Nos. 7.1, 7.2 and 7.3, Bartel projected in 2017 that pension costs for Redwood City, Menlo Park and Pacifica will more than double from FY 2016-2017 through FY 2024-2025 (which is substantially greater than CalPERS’ projections for those Cities shown in Table 6) and are projected to continue to increase substantially thereafter through FY 2027-2028.⁹¹

⁹⁰ The public pension actuarial consulting firm of Bartel Associates, LLC reports having served as consultants to over 400 public sector clients since 2012 including, within the San Mateo county alone, the Cities of Belmont, Burlingame, Daly City, East Palo Alto, Foster City, Menlo Park, Millbrae, Pacifica, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, and the Town of Hillsborough. See, Bartel website, <<http://www.bartel-associates.com/about-us/client-list>>.

⁹¹ It should be noted that the Bartel Associates, LLC projections on which Table Nos. 7.1, 7.2 and 7.3 rely were set forth in reports dated February 17, 2017, May 2, 2017 and September 18, 2017, respectively. They were based on CalPERS numbers as of June 30, 2015. Last summer, CalPERS issued updated its numbers as of June 30, 2016 and it is expected to issued June 30, 2017 numbers again this summer. Were the Bartel projections to be re-run based on the most recent CalPERS data, they would be somewhat different from those reflected in Table Nos. 7.1., 7.2 and 7.3. Source: Grand Jury interviews.

Table No. 7.1 - Redwood City's projected increases in pension contribution costs from FY 2016-2017 to FY 2024-2025 and FY 2027-2028 ⁹²								
(\$000)								
	Miscellaneous Plans				Safety Plans			
	Pension Costs as a Percent of Payroll (Projected)	Annual Pension Costs (Projected)	Increase in Annual Pension Costs since FY 2016-2017	% Increase in Annual Pension Costs since FY 2016-2017	Pension Costs as a Percent of Payroll (Projected)	Annual Pension Costs (Projected)	Increase in Annual Pension Costs since FY 2016-2017	% Increase in Annual Pension Costs since FY 2016-2017
FY 2027-2028	37.3%	\$16,764	\$8,691	107.7%	67.2%	\$24,771	\$13,246	114.9%
FY 2024-2025	42.7%	\$17,530	\$9,457	117.1%	65.6%	\$22,148	\$10,623	92.2%
FY 2016-2017	26.3%	\$8,073			42.9%	\$11,525		

Table No. 7.2 – Menlo Park's projected increases in pension contribution costs from FY 2016-2017 to FY 2024-2025 and FY 2027-2028 ⁹³								
(\$000)								
(Before ⁹⁴ taking into account any employee cost sharing.)								
	Miscellaneous Plans				Safety Plans			
	Pension Costs as a Percent of Payroll (Projected)	Annual Pension Costs (Projected)	Increase in Annual Pension Costs since FY 2016-2017	% Increase in Annual Pension Costs since FY 2016-2017	Pension Costs as a Percent of Payroll (Projected)	Annual Pension Costs (Projected)	Increase in Annual Pension Costs since FY 2016-2017	% Increase in Annual Pension Costs since FY 2016-2017
FY 2027-2028	33.9%	\$7,190	\$4,140	135.7%	60.5%	\$5,389	\$3,285	156.1%
FY 2024-2025	34.5%	\$6,695	\$3,645	119.5%	58.4%	\$4,756	\$2,652	126.0%
FY 2016-2017	21.2%	\$3,050			32.3%	\$2,104		

⁹² Data in Table No. 7.1 is derived from Lin, Bianca and Yang Kevin, *Redwood City Miscellaneous and Safety Plans, CalPERS Actuarial Issues – 6/30/15 Valuation Preliminary Results*, Bartel Associates LLC, February 13, 2017, slides 17, 18, 29 and 30.

⁹³ Data in Table No. 7.2 is derived from Lin, Bianca and Yam, Wai Man, *City of Menlo Park Miscellaneous and Safety Plans, CalPERS Actuarial Issues – 6/30/15 Valuation Preliminary Results*, Bartel Associates LLC, May 2, 2017, slides 23, 24, 39 and 40, <https://www.menlopark.org/DocumentCenter/View/14392>.

⁹⁴ Menlo Park's projected Miscellaneous Plan annual pension costs in Table No. 7.2 would be approximately 15 percent lower than shown if employee cost sharing were taken into account and its Safety Plan pension costs would be 5 - 9 percent lower. Lin, Bianca and Yam, Wai Man, *City of Menlo Park Miscellaneous and Safety Plans, CalPERS Actuarial Issues – 6/30/15 Valuation Preliminary Results*, Bartel Associates LLC, May 2, 2017, slides 25, 28, 40 and 41.

Table No. 7.3 – City of Pacifica’s projected increases in pension contribution costs from FY 2016-2017 to FY 2024-2025 and FY 2027-2028 ⁹⁵								
(\$000)								
(Before ⁹⁶ taking into account any employee cost sharing.)								
	Miscellaneous Plans				Safety Plans			
	Pension Costs as a Percent of Payroll (Projected)	Annual Pension Costs (Projected)	Increase in Annual Pension Costs since FY 2016- 2017	% Increase in Annual Pension Costs since FY 2016- 2017	Pension Costs as a Percent of Payroll (Projected)	Annual Pension Costs (Projected)	Increase in Annual Pension Costs since FY 2016- 2017	% Increase in Annual Pension Costs since FY 2016- 2017
FY 2027-2028	36.3%	\$4,435	\$2,992	207.3%	71.8%	\$6,186	\$3,910	171.8%
FY 2024-2025	34.4%	\$3,846	\$2,403	166.5%	69.0%	\$5,428	\$3,152	138.5%
FY 2016-2017	16.7%	\$1,443			34.6%	\$2,276		

Pension Information Provided by the Cities Could be Substantially Improved.

Clear information about the Cities’ current and projected pension costs, as well as their plans for meeting these rising expenses in the future, is not readily found in the Cities’ CAFRs, nor (with a few notable exceptions^{97,98,99}) in their most recent budgets published in the finance section of

⁹⁵ Data in Table No. 7.3 is derived from Lin, Bianca and Childs, Matthew, *City of Pacifica Miscellaneous and Safety Plans, CalPERS Actuarial Issues – 6/30/15 Valuation Preliminary Results*, Bartel Associates LLC, September 18, 2017, slides 8, 9, 18 and 19, <http://www.cityofpacifica.org/civicax/filebank/blobdload.aspx?BlobID=13378>.

⁹⁶ Pacifica’s projected Miscellaneous Plan annual pension costs in Table No. 7.3 would be approximately 15, 7.3 and 7 percent lower in FY 2016-17, FY 2024-25 and FY 2027-28 respectively than shown if employee cost sharing were taken into account and its Safety Plan pension costs would be approximately 11, 5.6 and 5.4 percent lower in FY 2016-17, FY 2024-25 and FY 2027-28 respectively. Lin, Bianca and Childs, Matthew, *City of Pacifica Miscellaneous and Safety Plans, CalPERS Actuarial Issues – 6/30/15 Valuation Preliminary Results*, Bartel Associates LLC, September 18, 2017, slides 11, 12, 20, 21, 29, 30.

⁹⁷ Redwood City’s FY 2017-18 Adopted Budget provides projections of projected future pension costs through FY 2030-31, together with a description of steps the city is taking to begin addressing these costs. City of Redwood City, *Report - FY 2017-18 Mid-Year Budget Study Session*. See also, City of Redwood City, *Fiscal Year 2018-2019 Recommended Budget*, pp. 13 and 14, <<http://www.redwoodcity.org/home/showdocument?id=15124>>.

⁹⁸ The City of San Mateo’s FY 2017-18 Adopted Budget includes a table showing how the City’s pension costs will increase from FY 2017-18 through FY 2027-28. City of San Mateo, *Adopted 2017-18 Budget*, p. 11, <<https://www.cityofsanmateo.org/DocumentCenter/View/60043/Adopted-2017-18-Budget>>. The City’s proposed 2018-20 Business Plan also includes annual pension cost projections through FY 2028-29. City of San Mateo, *Proposed 2018-20 Business Plan*, pp. 9, 11, and 65, <<https://www.cityofsanmateo.org/DocumentCenter/View/64801/Proposed-FY-2018-20-Business-Plan>>.

⁹⁹ Menlo Park’s FY 2017-18 budget shows total pension costs for each of the next 10 years. City of Menlo Park, *Adopted Budget, Fiscal Year 2017-18*, p. 48.

their websites.^{100,101,102,103} Appendix B’s guide to locating pension information in CAFRs shows that a certain level of specialized knowledge and concerted effort is required to extract information about pension costs from CAFRs. While the Cities’ published budgets often refer to growing budgetary challenges faced by pension costs, the information provided about costs, especially projected future costs and descriptions of how the Cities are planning to meet them, is generally not set out in a systematic way. The information falls far short of what it should be given the importance and growing urgency of the subject matter.

What can the Cities do About Their Rising Pension Costs?

Develop a Financial Plan.

As with any challenge, the first step is to acknowledge the problem. In the case of pensions, this requires an analysis of future obligations, under various scenarios, over at least a 10-year time horizon. The second step is for each City to develop a long-term financial plan over at least a 10-year time period to address rising costs. Such a plan should include:

- Specific objectives, such as identifying a target Funded Percentage, eliminating the Unfunded Liabilities over “n” years and maintaining the City’s share of Normal Costs at “n” percentage of payroll
- Policies to achieve these objectives, such as making supplemental contributions to CalPERS, making annual contributions to a reserve or IRS Section 115 trust (described below) for the purpose of meeting unanticipated future pension costs, keeping salary increases below the actuarially assumed increase rate, or negotiating cost-sharing

¹⁰⁰ The City of Burlingame provides information about its plans for addressing rising pension costs in Staff Reports and proposed budgets. See for example, Augustine, Carol, Staff Report to Burlingame City Council, July 3, 2017, <<http://burlingameca.legistar.com/gateway.aspx?M=F&ID=145f1c47-afe4-48e6-8c90-7af86841c428.docx>>; Augustine, Carol, Staff Report to Burlingame City Council, March 14, 2018, pp. 11, 12, 27, 28 and 48, <<http://burlingameca.legistar.com/gateway.aspx?M=F&ID=8bf430f2-6a90-46f4-a5e8-bc50ad710524.docx>>; Augustine, Carol, Staff Report to Burlingame City Council, May 9, 2018, <<http://burlingameca.legistar.com/gateway.aspx?M=F&ID=68ce413d-4c73-4e2b-abf2-d2e04b1dde86.docx>>.

¹⁰¹ The Town of Hillsborough’s FY 2018-19 Proposed Budget notes that annual pension costs are projected to double over the next ten years (from \$2.4 to \$5.7 million. The Town also provides a 10-year forecast of expenditures that incorporates data regarding projected pension costs, but the actual pension costs themselves are not broken out. Town of Hillsborough, *FY 2018-19 Proposed Budget*, pp. 27 and 96, <<https://www.hillsborough.net/ArchiveCenter/ViewFile/Item/212>>.

¹⁰² Foster City’s preliminary budget for FY 2018-19 states that, between FY 2017-18 and FY 2022-23, the City’s Miscellaneous Plan contribution rate will rise from 27.9 to 40.8 percent and its Safety Plan contribution rate will rise from 45.2 to 70.4 percent. City of Foster City, *Preliminary Budget Fiscal Year 2018-2019*, p. 10, <https://www.fostercity.org/sites/default/files/fileattachments/financial_services/page/3521/fy_2018-2019_preliminary_budget_published.pdf>. The proposed budget does not include more specific information about dollar amounts represented by these percentages.

¹⁰³ The City of Belmont’s 2018 Budget includes a chart showing increasing pension contribution rates over the next 4 years. City of Belmont, *FY 2018 Budget*, p. 18, <<https://www.belmont.gov/home/showdocument?id=15433>>.

agreements with employees that cap the Cities' share of Normal Costs (which are described below in "Specific Measures for the Cities to Consider")

- Specific measures to implement the policies
- A process to monitor progress in implementing the measures and in achieving the objectives
- Consideration of alternative policies and measures, or a "Plan B," that may be used in the event that CalPERS's Return on Investment assumptions are not met in future years.

Finally, tough decisions need public support. This cannot be achieved without the public being informed about the issue at every step. The Cities' plans should include a public awareness component.

The Cities' CAFRs and budget documents published by the Cities in the finance section of their websites that were reviewed by the Grand Jury show that none of them has adopted a long-term financial plan with all of the components described above.^{104,105,106,107}

Specific Measures for the Cities to Consider.

There are a number of measures that can be taken to meet objectives that might be included in the Cities' long-term financial plans. Some of these are summarized below. Most have been employed by one or more Cities, although not necessarily in a systematic way. Not every City will be in a financial position to take aggressive action now, but there are options, including the following nine:

¹⁰⁴ The City of San Mateo states that it has a plan for eliminating its Unfunded Pension Liabilities; it intends to achieve this by 2050. City of San Mateo, *Adopted 2017-18 Budget*, p. 20.

¹⁰⁵ The City of Foster City plans to "[i]dentify and implement pension sustainability strategies to reduce the City Unfunded Accrued Liability and improve the City funded status with CalPERS" in FY 2018-19. City of Foster City, *Preliminary Budget Fiscal Year 2018-2019*, p. 188.

¹⁰⁶ It should be noted, however that the City of Redwood City does have a five-year plan that provides for supplemental payments to CalPERS (beyond required contributions) of \$0.5 million per year; it has funded a Section 115 pension trust (described below) with an initial \$10.5 million and plans to make additional contributions to the trust of \$1.1 million per year over the next five years, and employee cost sharing. Redwood City also adopted a lower tier, less expensive, pension plan even before the passage of PEPR. See, "Specific Measures for the Cities to Consider" below for references to Redwood City's actions.

¹⁰⁷ In 2014 San Carlos published annual pension cost projections through FY 2035-36. City of San Carlos, *Long-Term Financial Plan*, November 5, 2014, pp. 21 and 22, <<http://www.cityofsancarlos.org/Home/ShowDocument?id=700>>. The City also published a graph showing pension costs through FY 2047-48. City of San Carlos, *City Council Staff Report*, Item 7.b of March 12, 2018 Agenda Packet, p. 117, <<http://sancarlosca.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=2699&Inline=True>>.

(1) Make Supplemental Contributions to CalPERS.

By making supplemental contributions to CalPERS beyond the required payments, the Cities can reduce the amounts on which they are paying interest. The Cities generally cannot earn returns on their reserves equal to the interest rates CalPERS will be charging,¹⁰⁸ so using reserves to make supplemental contributions can result in substantial net savings over the long-term.

Although not a subject of this report,¹⁰⁹ actions taken by the County to reduce its pension costs are instructive. In FY 2011-2012 and FY 2012-2013, the County paid “supplemental contributions” to SamCERA (the plan administrator for the County’s pension plans) to reduce its Unfunded Liability. These were in addition to its Annual Required Contribution (ARC)¹¹⁰ payments.¹¹¹ However, these supplemental contributions were applied to the entire SamCERA system, not the County alone.¹¹² Then, in November 2013, SamCERA and the County signed a Memorandum of Understanding (MOU) to formalize a plan to pay supplemental contributions.¹¹³ Under the MOU, the County made two commitments. First, it agreed to pay supplemental contributions in a lump sum of \$50 million in the initial fiscal year (FY 2013-2014) and then to pay an additional \$10 million in each of the following nine years. Second, the County stated that it intended to maintain a minimum average employer contribution rate of 38 percent of payroll during the 10-year period. Since the ARC would otherwise decrease each year, as the Unfunded Liability is reduced, maintaining a contribution rate higher than the ARC would provide a second source of supplemental payments. For its part, SamCERA committed to establish a Supplemental Contribution Account to receive the supplemental contributions, which would be credited just to the County, rather than all three SamCERA employers. If SamCERA’s actuarial assumptions are met, the County’s supplemental contributions are expected to eliminate the Unfunded Liability within 10 years (FY 2022-2023).¹¹⁴

The MOU includes language stating that the County’s supplemental contributions are not legally binding. However, as of June 30, 2017, the MOU had been implemented on schedule. The

¹⁰⁸ City of Menlo Park, *Adopted Budget, Fiscal Year 2017-18*, p. 48, <<https://www.menlopark.org/ArchiveCenter/ViewFile/Item/6273>>.

¹⁰⁹ Progress made by the County of San Mateo in planning for and reducing its pension costs is the subject of the Grand Jury’s report for 2017-2018, entitled “County Pension Costs – Hard Choices Paying Off.” San Mateo County Civil Grand Jury 2017-2018 report, “County Pension Costs – Hard Choices Paying Off.”

¹¹⁰ Annual Required Contribution (ARC) is the sum of an Agencies’ share of Normal Cost and, if any, the Amortization Cost. ARC is the amount an Agency is legally required to pay to the plan administrator in order to fund a pension plan. See, Brainard, Keith and Brown, Alex, *The Annual Required Contribution Experience of State Retirement Plans, FY01 to FY13*, National Association of State Retirement Administrators, March 2015, p. 2, <https://www.nasra.org/files/JointPublications/NASRA_ARC_Spotlight.pdf>.

¹¹¹ Referred to by SamCERA as the annual “statutory contribution rate.” SamCERA, *2017 Comprehensive Annual Financial Report for the Fiscal Year Ended on June 30, 2017*, p. 49, <https://www.samcera.org/sites/main/files/file-attachments/2017cafr_final.pdf>.

¹¹² County Pension Costs – Hard Choices Paying Off, p. 6.

¹¹³ Memorandum of Understanding Between the County of San Mateo and the San Mateo County Employees’ Retirement System Funding, November 19, 2013.

¹¹⁴ County Pension Costs – Hard Choices Paying Off., p. 7.

County's supplemental contributions, including payments made before the MOU, as well as payments made pursuant to the MOU, total nearly \$139 million, through June 30, 2017.¹¹⁵

In theory, without supplemental contributions, the Unfunded Liability would be paid off at the end of the 15-year Amortization Period used by SamCERA. The benefit of making supplemental contributions to pay off the Unfunded Liability early is to reduce the interest payments that are included in the Amortization Cost. This is substantial. Prior to adoption of the MOU, the County Manager estimated the cumulative savings at \$304 million.¹¹⁶ In 2017 the County Manager reported that the County could expect annual savings approaching \$90 million to \$100 million in principal and interest payments, beginning in FY 2023-2024, assuming the Unfunded Liability has been paid off by that date.¹¹⁷

It should be noted that the County was fortunate in having a non-recurring gain of about \$50 million from the 2014 sale of the County-owned Circle Star Plaza, which helped fund its capital plan.¹¹⁸ The County general fund benefitted from passage of Measure A in 2012, which adds a one-half cent countywide sales tax for 10 years, through April 2023, as well as Measure K (2016) which extended the sales tax through 2043.¹¹⁹

Among the Cities, Redwood City's Preliminary Five-Year Forecast calls for additional payments to CalPERS of \$500,000 per year beyond the required contribution amounts.¹²⁰ As discussed below in "Establish IRS Section 115 non-revocable trusts," at p. 29, Redwood City's Preliminary Five-Year Forecast also calls for the city to annually contribute additional amounts to an irrevocable fund for the purposes of paying pension costs.

In April 2018, the City of San Carlos approved making an additional payment to CalPERS of \$5 million, beyond the required contribution, to pay down a portion of the City's Unfunded Liability.¹²¹ The City estimates that this payment will result in \$4.3 million of net savings over the long-term.¹²²

The City of San Mateo made additional payments to CalPERS of \$1.375 million in FY 2016-17 and \$1.4 million in FY 2017-18. The City's proposed 2018-20 budget recommends continued additional payments to CalPERS out of the general fund in the amounts of \$1.625 million in FY 2018-19 and an additional \$14 million thereafter over the course of approximately the next 10

¹¹⁵ Ibid.

¹¹⁶ Ibid., pp. 7-8.

¹¹⁷ Ibid., p. 8.

¹¹⁸ Torres, Blanca, *San Mateo County cashes in with sale of Circle Star Plaza for \$90.1 million*, The San Francisco Business Times, May 20, 2014, <<https://www.bizjournals.com/sanfrancisco/blog/real-estate/2014/05/circle-star-plaza-griffin-capital-san-mateo-county.html>>.

¹¹⁹ Ballotpedia, *San Mateo County Sales Tax Increase, Measure A (November 2012)*, <[http://ballotpedia/San_Mateo_County_Sales_Tax_Increase,_Measure_A_\(November_2012\)](http://ballotpedia/San_Mateo_County_Sales_Tax_Increase,_Measure_A_(November_2012))>. Ballotpedia, *San Mateo County Sales Tax Increase, Measure K (November 2016)*, <[https://ballotpedia.org/San_Mateo_County,_California,_Sales_Tax,_Measure_K_\(November_2016\)](https://ballotpedia.org/San_Mateo_County,_California,_Sales_Tax,_Measure_K_(November_2016))>.

¹²⁰ Redwood City Report - FY 2017-18 Mid-Year Budget Study Session, pp. 20 and 21. Grand Jury Interviews.

¹²¹ Interviews by Grand Jury. San Carlos, *City Council Staff Report*, Item 9.a of April 9, 2018 Agenda Packet, <<http://sancarlosca.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=2707&Inline=True>>.

¹²² Ibid.

years.¹²³ The City does not indicate how much savings is expected to result from these additional payments.

The City of Foster City's preliminary budget for FY 2018-19 calls for an additional payment to CalPERS of \$2.1 million, representing 4.3% of its projected general fund operating expenditures budget that year.¹²⁴

(2) Make Contributions to a Reserve.

In the current good financial times, most of the Cities have experienced rising revenues and should be able to set their general fund budgets to yield a surplus of revenues over expenses and put the difference into a general fund reserve to be applied in their discretion against future unanticipated, special, or one-time expenses.¹²⁵ A portion of such reserves could be used to manage or smooth payments to CalPERS, consistent with budgetary needs. However, since the Cities retain the right to use these reserves as they deem appropriate, there is no guarantee that these reserves will be applied to pension costs.¹²⁶ Payments into a reserve do not reduce the Amortization Costs charged by CalPERS.

Several of the Cities have established reserves out of their general fund budgets that are earmarked for future increased pension contributions.

Menlo Park. The City has established a "Strategic Pension Funding reserve" which, as of June 30, 2017, held assets of \$3.2 million. That represents approximately 7 months of its annual pension contribution costs of \$5.56 million.¹²⁷ Menlo Park's policy is to assign 25 percent of any general fund operating budget surpluses to this pension reserve.¹²⁸ Based on its expected general fund operating budget surplus of approximately \$2.5 to \$3.5 million in FY 2017-2018, this policy will add another \$625,000 to \$875,000 to the reserve.¹²⁹ However, the Strategic Pension Funding reserve currently represents only approximately 10 percent of the City's total general fund reserves¹³⁰ and, even assuming continued growth in the Strategic Pension Funding reserve similar to FY 2017-2018, would only modestly help pay for increases in the City's expected pension costs over the next 10 years.¹³¹

¹²³ City of San Mateo, *Proposed 2018-20 Business Plan*, pp. 58 and 67.

¹²⁴ City of Foster City, *Preliminary Budget Fiscal Year 2018-2019*, p. 50.

¹²⁵ See, for example, City of Menlo Park, *Adopted Budget, Fiscal Year 2017-18*, pp. 8, 33 – 38; City of San Mateo, *Adopted 2017-18 Budget*, pp. 6, 32, 36; City of Foster City, *Preliminary Budget Fiscal Year 2018-2019*, pp. 47 – 48; City of Belmont, *FY 2018 Budget*, p. 16, 22; City of Brisbane, *Fiscal Years 2016-2017 & 2017-2018, Adopted Two Year Operating Budget*, p. 11, <http://www.brisbaneca.org/sites/default/files/City%20of%20Brisbane_1.pdf>; Town of Portola Valley, *Adopted Budget, Fiscal Year 2017-2018*, p. 4, <<http://www.portolavalley.net/home/showdocument?id=10921>>; Town of Hillsborough, *FY 2017-18 Adopted Budget*, p. 26; Town of Hillsborough, *FY 2018-19 Proposed Budget*, p. 95.

¹²⁶ Interviews by Grand Jury.

¹²⁷ Appendix A.

¹²⁸ City of Menlo Park, *Adopted Budget, Fiscal Year 2017-18*, p. 48.

¹²⁹ Interviews by Grand Jury.

¹³⁰ City of Menlo Park, *Adopted Budget, Fiscal Year 2017-18*, p. 49.

¹³¹ Menlo Park expects its pension costs to almost double to \$10.14 million per year by FY 2027-28. City of Menlo Park, *Adopted Budget, Fiscal Year 2017-18*, p. 48.

Half Moon Bay. The City has established a pension stabilization fund.¹³² As of June 30, 2017, the City reported having approximately \$1 million in the fund¹³³ and its FY 2017-2018 budget provides for the transfer of another \$0.51 million into the fund.¹³⁴ This would bring the fund total to slightly more than \$1.5 million by the end of FY 2017-2018. When compared to Half Moon Bay's pension costs of \$0.59 million in FY 2016-2017,¹³⁵ a \$1.5 million pension stabilization fund represents a reasonable start to the city's preparations for rising pension costs. It compares favorably to Menlo Park's pension reserve, which holds only approximately 7 months' worth of pension costs.¹³⁶ In contrast, Half Moon Bay's fund holds the equivalent of well over 2 years of pension costs.

The City of San Mateo. The city's long-term budget calls for funding an \$8.95 million pension cost reserve, with \$1.4 million to be contributed in FY 2017-2018 and additional annual amounts thereafter equal to 50 percent of certain budget surpluses.¹³⁷ The City of San Mateo's annual pension costs were over \$17.5 million in FY 2016-2017,¹³⁸ so this reserve amount for pension costs is modest.

South San Francisco. The city reports that it established a "CalPERS Stabilization Reserve" with an initial amount of \$3.99 million in FY 2015-2016. It funded this reserve with another \$509,104 in FY 2016-2017 and projects funding it with an additional \$586,968 in FY 2018-2019, for a combined total of approximately \$5.1 million.¹³⁹ This \$5.1 million total would represent 27.3 percent of the City's \$18.7 million in unassigned reserves as of June 30, 2017¹⁴⁰ and roughly 5 months' worth of its FY 2016-2017 pension costs of \$13.3 million.¹⁴¹

Brisbane. The City of Brisbane reports having adopted a policy of allocating 40 percent of unanticipated ending fund balance to be used to be set aside to pay for unfunded pension and OPEB obligations.¹⁴²

¹³² City of Half Moon Bay, *FY 2017-18 Adopted Operating Budget*, pp. 68, 71 and 224, <<https://www.half-moon-bay.ca.us/DocumentCenter/View/940>>.

¹³³ City of Half Moon Bay, California, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2017, p. 102, <<https://www.half-moon-bay.ca.us/DocumentCenter/View/1341>>.

¹³⁴ City of Half Moon Bay, *FY 2017-18 Adopted Operating Budget*, pp. 69 and 71.

¹³⁵ Appendix A.

¹³⁶ Menlo Park's pension costs in FY 2016-17 were approximately \$5.6 million. Appendix A.

¹³⁷ City of San Mateo, *Adopted 2017-18 Budget*, pp. 54 and 117, <<https://www.cityofsanmateo.org/DocumentCenter/View/60043>>.

¹³⁸ Appendix A.

¹³⁹ South San Francisco, Letter from City of South San Francisco to Grand Jury, dated June 11, 2018. City of South San Francisco, *FY 2018-19 Addendum to Adopted FY 2018-19 Biennial Operating Budget*, p. B-5. City of South San Francisco, *FY 2018-19 Operating Budget Study Session*, May 23, 2018, p. 28. City of South San Francisco, *Adopted Biennial Operating Budget and Capital Improvement Program Fiscal Years 2017-19*, p. D-5, <<http://www.ssf.net/home/showdocument?id=2027>>.

¹⁴⁰ City of South San Francisco, Letter from South San Francisco to Grand Jury, dated June 7, 2018.

¹⁴¹ Appendix A.

¹⁴² Brisbane, Letter from City of Brisbane to Grand Jury, dated June 11, 2018. The City's letter does not disclose the estimated amounts that might be set aside as a result of this policy.

(3) Establish IRS Section 115 non-revocable trusts.

The Cities can also put reserves that are set aside for pension costs into non-revocable trusts under Section 115 of the Internal Revenue Code. Contributions to Section 115 trusts are voluntary and can be made as city budgets allow. Funds in such trusts can only be used to pay pension costs.¹⁴³ As with ordinary reserves, the Cities can use funds in Section 115 trusts to manage or smooth payments to CalPERS, consistent with their budgetary needs.¹⁴⁴ The non-revocable feature assures employees, retirees and taxpayers that the funds will be used for pension costs. Another advantage of Section 115 trusts is that they offer different investment choices and risk profiles¹⁴⁵ which can yield higher rates of Return on Investments than the rates available to the Cities for their general fund reserves.¹⁴⁶ Payments into a reserve do not reduce the Amortization Costs charged by CalPERS.

In January 2018 Redwood City deposited \$10.5 million into a Section 115 trust,¹⁴⁷ representing approximately 7 months of its annual pension costs of \$17.7 million in FY 2016-2017.¹⁴⁸ Redwood City's finance group has recommended that the City deposit \$1.1 million per year from general fund reserves into the Section 115 trust over the 5-year period from and including FY 2018-2019 through FY 2022-2023.¹⁴⁹ This \$1.1 million per year would represent slightly less than 50 percent of the estimated \$2.5 million per year increase in pension costs that Redwood City is likely to experience.¹⁵⁰ In FY 2016-2017, the Redwood City Council adopted a general fund reserve policy, where the unreserved portion of the general fund's balance would be 15 percent of anticipated general fund revenues. Any excess balance above a 15 percent reserve threshold would be utilized to fund a Section 115 Trust Account to help pay pension expenses.¹⁵¹

In October 2017 Burlingame contributed \$3.7 million into a Section 115 trust for the purpose of paying pension obligations and, approximately six months later, an additional \$1 million.¹⁵² The

¹⁴³ CalPERS, Finance and Administration Committee, *Proposed California Employers' Pension Prefunding Trust (CEPPT) Legislation*, February 17, 2016, pp. 1-2, 4, <<https://www.calpers.ca.gov/docs/board-agendas/201602/financeadmin/item-6a-00.pdf>>.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ The City of Menlo Park notes that, if it moves funds in its Strategic Pension Funding reserve into a Section 115 trust, it would expect to earn returns on those assets of approximately 4 percent per year, as compared to the approximately 1 percent per year it earns on general fund reserves to due restrictions imposed on available investments for general fund reserves. City of Menlo Park, *Adopted Budget, Fiscal Year 2017-18*, p. 48.

¹⁴⁷ Redwood City Report – FY 2017-18 Mid-Year Budget Study Session, p. 10. City of Redwood City, *Fiscal Year 2017-2018 Adopted Budget*, Budget Message, pp. 13 and 28, <<http://webapps.redwoodcity.org/files/finance/main/1.-Redwood-City-CA-Adopted-FY-17-18-Budget-.pdf>>.

¹⁴⁸ Appendix A.

¹⁴⁹ City of Redwood City, *Fiscal Year 2018-2019 Recommended Budget*, p. 174, <<http://www.redwoodcity.org/home/showdocument?id=15124>>.

¹⁵⁰ Table No. 7.1, above shows that Redwood City's pension costs (Miscellaneous and Safety plans) are projected to increase by \$20.1 million between FY 2016-17 and FY 2024-25. \$20.1 million / 8 years = \$2.5 million in increases per year.

¹⁵¹ City of Redwood City, 2017 CAFR, p. v of Letter of Transmittal.

¹⁵² Letter from City of Burlingame to Grand Jury, dated June 7, 2018. Augustine, Carol, Staff Report to Burlingame City Council, March 14, 2018, pp. 11 and 12.

City's proposed FY 2018-19 budget recommends contributing another \$3.4 million to the Section 115 trust,¹⁵³ which would bring total funds in the trust to \$8.1 million. The City's five-year forecast projects ongoing annual contributions to the Section 115 trust in the amounts of \$2.7 million in FY 2019-20, \$2.1 million in FY 2020-21, \$1.5 million in FY 2021-22 and \$1.21 million in FY 202-23.¹⁵⁴ If the additional FY 2018-19 contribution of \$3.4 million is made, the \$8.1 million total Section 115 trust amount would represent 29 percent of Burlingame's projected total general fund reserves of \$28.19 million at the end of FY 2017-2018, of which \$9.15 million will be unassigned¹⁵⁵ and approximately 19 months' worth of its \$5.3 million in pension costs in FY 2016-2017.

The City of Brisbane also reports having recently established a Section 115 trust to help pay any unexpected increases in pension payment obligations. The City's financial plan calls for it to put aside funding for additional payments into the 115 trust.¹⁵⁶

(4) Negotiate Cost-Sharing Arrangements with Employees.

The Cities can reduce their pension costs through cost-sharing agreements with employees under which employees agree to pay a portion of the Cities' Normal Costs. For example, the City of Menlo Park has negotiated cost-sharing agreements with non-sworn employees under which those employees will pay an additional amount equal to 50 percent of the City's future pension cost increases and agreements with sworn employees under which they will pay a portion of the City's pension costs equal to 3 percent of total payroll.¹⁵⁷ Redwood City has also negotiated cost-sharing agreements with employees under which those employees pay a portion of the City's Normal Costs,¹⁵⁸ as have Atherton,¹⁵⁹ Burlingame,¹⁶⁰ Hillsborough,¹⁶¹ and Millbrae.¹⁶²

(5) Pension Obligation Bonds (POBs).

Another option is to accelerate repayment of Unfunded Liabilities with the proceeds of pension obligation bonds issued by the City. Where the interest rate being charged by CalPERS on Unfunded Liabilities is higher than the interest rate on the bonds, this can result in savings for a City. For example, in FY 2003-2004, Daly City issued \$36.2 million in pension obligation bonds and applied the proceeds to reduce its Unfunded Liabilities. At the time, CalPERS was charging annual interest of 8.25 percent on Unfunded Liabilities and the interest on the bonds was only 5.973 percent. According to Daly City, the difference between the interest rate charged by

¹⁵³ Burlingame, Letter from City of Burlingame to Grand Jury, dated June 7, 2018.

¹⁵⁴ Burlingame, Email from City of Burlingame to Grand Jury, dated June 9, 2018. See also, Augustine, Staff Report March 14, 2018, p. 48 for information on the portion of these payments that will be made out of the general fund.

¹⁵⁵ City of Burlingame, *Fiscal Year 2017-18 Adopted Budget*, p. xiii.

¹⁵⁶ Brisbane, Letter from City of Brisbane to Grand Jury, dated June 11, 2018. The City's letter does not disclose the amount(s) contributed into its Section 115 Trust.

¹⁵⁷ City of Menlo Park, *Adopted Budget, Fiscal Year 2017-18*, p. 48.

¹⁵⁸ Redwood City Report - FY 2017-18 Mid-Year Budget Study Session, p. 10.

¹⁵⁹ Town of Atherton, *Fiscal Year 2017/18 Operating & Capital Improvement Budget*, p. 4, <<http://www.ci.atherton.ca.us/ArchiveCenter/ViewFile/Item/2535>>.

¹⁶⁰ City of Burlingame, *Fiscal Year 2017-18 Adopted Budget*, p. xviii.

¹⁶¹ Interviews by Grand Jury.

¹⁶² City of Millbrae, Letter from City of Millbrae to Grand Jury, dated June 11, 2018.

CalPERS, and the lower rate paid to bondholders, resulted in \$7 million in net present value savings.¹⁶³ However, these bonds did not solve Daly City's pension problems. As of June 30, 2017, Daly City had a remaining unpaid balance of \$22.8 million on these bonds, which mature on August 1, 2022.¹⁶⁴ In evaluating Daly City's total Unfunded Liabilities and pension costs in Appendix A, the reader should take into account that Appendix A does not reflect Daly City's outstanding balance on the bonds, nor the annual costs of repayments of principal and interest on the bonds (which totaled approximately \$3.54 million in FY 2016-2017).¹⁶⁵ If these amounts were included, then Daly City's FY 2016-2017 Unfunded Liabilities in Appendix A would rise from \$139.86 million to \$162.66 million and its annual pension costs would rise from \$11.63 million to \$15.17 million. Daly City's interest payments on the bonds, however, do remain lower than the interest it would otherwise have had to pay on Unfunded Liabilities.

In 2013, the City of San Bruno issued \$13.2 million in pension obligation bonds.¹⁶⁶ The City of Brisbane issued \$4.7 million in pension obligation bonds in 2006 and took out a \$1.6 million loan in 2013 to pay off certain pension obligations,¹⁶⁷ and the City of Burlingame issued \$33 million in pension obligation bonds in 2007.¹⁶⁸

An analysis of the risks and benefits of pension obligation bonds is beyond the scope of this report. See the Government Finance Officers Association's analysis of pension obligation bonds for an analysis of the reasons not to issue such bonds.¹⁶⁹

(6) Shorten Amortization Periods.

The Cities may instruct CalPERS to shorten the Amortization Period of their Unfunded Liabilities. That would increase their contribution costs in the short-term but decrease aggregate interest costs over the long-term.¹⁷⁰ Such a decision, however, is irrevocable. Once it has shortened an Amortization Period at the request of an Agency, CalPERS will not subsequently increase it at the request of the Agency.¹⁷¹ The City of Palo Alto, although outside the borders of the county, has stated that it is looking at this option.¹⁷² In essence, asking CalPERS to shorten

¹⁶³ City of Daly City, *Comprehensive Biennial Operating and Capital Budget, Fiscal Years 2017 and 2018*, p. 25, <<http://www.dalycity.org/Assets/Departments/Finance+and+Administration/Operating+Budget+2017-2018.pdf>>.

¹⁶⁴ City of Daly City, 2017 CAFR, p. 15.

¹⁶⁵ City of Daly City, 2017 CAFR, p. 53.

¹⁶⁶ City of San Bruno, *Fiscal Year 2013-14 City Council Adopted General Fund, Enterprise Funds, Internal Service Funds and Special Revenue Funds Operating Budget*, p. K-4,

<https://www.sanbruno.ca.gov/civicax/filebank/blobdload.aspx?BlobID=23046>

¹⁶⁷ City of Brisbane, 2014 CAFR, pp. 54, 55 and 59,

<<http://brisbaneca.org/sites/default/files/brisbane%20cafr%20ocr.pdf>>.

¹⁶⁸ City of Burlingame, 2010 CAFR, p. 60,

<https://www.burlingame.org/document_center/Finance/Comprehensive%20Annual%20Financial%20Reports/CAFR%2009-10.pdf>. City of Burlingame, *Fiscal Year 2017-18 Adopted Budget*, p. x.

¹⁶⁹ League of California Cities, *2018 Retirement System Sustainability Study*, pp. 6 and 33.

¹⁷⁰ Lin, Bianca and Yam, Wai Man, *City of Menlo Park Miscellaneous and Safety Plans, CalPERS Actuarial Issues – 6/30/15 Valuation Preliminary Results*, Bartel Associates LLC, May 2, 2017, p. 48.

¹⁷¹ Interviews by Grand Jury.

¹⁷² Keene, James, Palo Alto City Manager, Letter to Tamara L. Davis, Deputy Manager, Jury Services, Santa Clara County Civil Grand Jury, January 30, 2017, p. 1, (Updated response to 2011-12 Santa Clara County Civil Grand

the Amortization Period is a more structured way to achieve the same goal as making supplemental contributions to CalPERS beyond the required contribution. CalPERS has announced that it will be phasing in a 20-year amortization schedule for all member Agencies.¹⁷³ However, Agencies remain free to elect more aggressive reductions in their Amortization Periods.

(7) Keep Salary Increases Within the Rate Assumed by CalPERS.

Calculations of future Benefit obligations are based, in part, on assumptions CalPERS makes about future salary increases by the Cities. Cities can impact the size of their contribution payments over time by ensuring that future employee salary increases do not exceed CalPERS's assumed amounts.

(8) Reduce Operating Costs.

Painful though it may be, the Cities can reduce operating costs to create additional reserves, which they could then apply to pension costs. Redwood City's finance group has warned of "future recessionary impacts that loom in the future"¹⁷⁴ and notes that, to meet these challenges, it recommends reducing operating costs by \$3.7 million in the FY 2018-2019 budget (primarily through reductions in budgeted headcount, including police and firefighters) and another \$2.3 million in FY 2019-2020.¹⁷⁵ Indeed, Redwood City's finance group stated that rising pension costs are the biggest factor driving the city's efforts to reduce operating costs.¹⁷⁶

Daly City describes its increasing pension costs as a "major challenge for the City's budget in coming years."¹⁷⁷ It is in the process of cutting operating costs through, among other things, a freeze on filling six vacant police officer positions and eliminating nine firefighter positions through attrition. Daly City notes that its general fund has a structural budget deficit of approximately \$6 million in the biennial budget for FY 2016-2017 and 2017-2018 and that it is drawing down existing general fund reserves to close this budget gap.¹⁷⁸ The Town of Colma notes that "Rising costs of health care and pension rates are placing extraordinary pressure on the fiscal health of most California municipalities, including the Town of Colma" and, among other responses to this pressure, has elected to terminate its retiree health premium payments programs for all employees hired after January 1, 2017.¹⁷⁹

Jury report, *An Analysis of Pension and Other Post-Employment Benefits*,
<http://www.scsccourt.org/court_divisions/civil/cgj/2012/responses/pension/02.03.17%20Response%20-%20Palo%20Alto.PDF>.

¹⁷³ League of California Cities, *CalPERS Board Reduces Amortization Policy*. Lowe and Rogers, *CalPERS Reduces Amortization Period with Impacts to Employer Contribution Rates*. CalPERS Actuarial Office, *Finance and Administration Committee, Agenda Item 7a*. Jacobius, Arleen, *CalPERS shortens amortization period to 20 years*.

¹⁷⁴ Redwood City, *Report - FY 2017-18 Mid-Year Budget Study Session*, pp. 7 and 11.

¹⁷⁵ City of Redwood City, *Fiscal Year 2018-2019 Recommended Budget*, pp. 9, 18 and 19.

¹⁷⁶ Interviews by Grand Jury.

¹⁷⁷ City of Daly City, *Adopted Comprehensive Biennial Operating and Capital Budget, Fiscal Years 2017 and 2018*, p. 26.

¹⁷⁸ *Ibid.*, at p. 7.

¹⁷⁹ Town of Colma, *FY 2017-18 Adopted Budget*, p. 8.

(9) Seek New Revenue.

Although raising additional revenues for the purpose of paying down pension obligations may be difficult, it may still be possible for the Cities to supplement their funding of services through new revenue sources to protect them from cuts that might otherwise have to be made to pay rising pension costs. Redwood City's finance group notes that the City has increased revenues by approximately \$2 million per year through higher development fees and that it is in the process of developing a phased approach to cannabis regulation as a result of which it expects to generate at least \$0.3 million a year in additional taxes.¹⁸⁰ Redwood City is also exploring the possibility of implementing new solid waste fees to support street sweeping and parking enforcement services. The city's finance group concludes that: "Without new revenues, staff projects deficits beginning in FY 2019-20."¹⁸¹ These deficits are projected to reach \$6.6 million per year in the general fund budget by FY 2022-2023.¹⁸² In November 2016, Daly City residents voted on Measure V, a five-year supplemental parcel tax of \$162 per parcel for the purpose of restoring police and fire personnel and related operational costs. Measure V was defeated by a vote of 53 to 47 percent.¹⁸³

Measures That Appear Unavailable at this Time.

Several more obvious strategies appear to be off the table at this time:

(a) Renegotiating employee pension formulas.

As described in BACKGROUND (pages 12-13), the California Rule, a California Supreme Court interpretation of the state constitution, appears to prohibit even prospective reductions in pension Benefits for existing employees. As noted, cases challenging that interpretation are currently before the California Supreme Court. In the event that the Supreme Court loosens the California Rule, local jurisdictions may be able to renegotiate pension Benefits with their employees. Under PEPRA, Benefits for "New Members" hired after January 1, 2013, are much lower than for the "Classic Members" hired prior to that date. The California League of Cities "supports a change in state law or judicial precedent to allow employers to negotiate plan changes with classic CalPERS members" and suggests "converting all currently deemed "Classic" employees to the same provisions (Benefits and employee contributions) currently in place for "PEPRA" employees for all future years of service."

¹⁸⁰ Redwood City, *Report - FY 2017-18 Mid-Year Budget Study Session*, p. 12.

¹⁸¹ *Ibid.*

¹⁸² City of Redwood City, *Fiscal Year 2018-2019 Recommended Budget*, p. 174.

¹⁸³ Ballotpedia, *Daly City, California, Parcel Tax for Police and Fire Departments, Measure V (November 2016)*, <[https://ballotpedia.org/Daly_City,_California,_Parcel_Tax_for_Police_and_Fire_Departments,_Measure_V_\(November_2016\)](https://ballotpedia.org/Daly_City,_California,_Parcel_Tax_for_Police_and_Fire_Departments,_Measure_V_(November_2016))>.

(b) Adopting a defined contribution pension plan for new employees.

As noted in BACKGROUND (page 4), defined contribution (as opposed to defined benefit) plans such as 401k plans relieve municipalities of the risks and uncertainties of below-projected investment returns and other assumptions about the future (for example, mortality rates). A large percentage of private companies have now adopted this approach¹⁸⁴ but they may be compensating for this, at least in part, with salaries that are greater than public agency salaries. As of 2009, only 7 percent of private-sector employees had their sole pension plan in the form of a defined benefit plan, down from 62 percent in 1975.¹⁸⁵ The Cities could achieve much greater certainty with respect to future pension costs if they could switch to a defined contribution plan for new employees. However, CalPERS does not currently offer defined contribution plans as an option for its member agencies and it requires that all new employees of the member Agencies participate in CalPERS' pension plans.¹⁸⁶ As a result, the Cities could only offer defined contribution plans to new employees in addition to, rather than in place of, existing pension plans with the result that defined contribution plans would increase, rather than reduce, overall costs for the Cities. In addition, offering only defined contribution plans could put the Cities at a significant employee recruiting and retention disadvantage compared to private industry unless the Cities increased salaries to rates more competitive with private industry.

(c) Withdrawing from CalPERS.

Several cities have considered the possibility of withdrawing from CalPERS altogether in order to have more flexibility and visibility into their future pension costs. However, CalPERS' termination payment requirements are prohibitive.¹⁸⁷ The City of Palo Alto determined that, in order to leave CalPERS, it would first need to "immediately deposit" in excess of \$1 billion to the CalPERS Pension Trust, and then establish a new deferred compensation plan for employees.¹⁸⁸ A City of San Carlos official advised the Grand Jury that withdrawal from CalPERS is effectively "impossible" because of the high termination fees imposed by CalPERS.

Conclusion.

Most of the Cities do not yet appear to have adopted a long-term financial plan to address their rising pension costs. They have not adopted target Funded Percentages for their plans, dates for achieving them, or plans for monitoring progress against their targets. Thus far, they have not made it a priority to provide clear, regular and public disclosure to their residents of their future projected pension costs and Unfunded Liabilities, nor the cuts in services that they will make, or

¹⁸⁴ Since 1980, when participation in defined benefits plans was at its peak in the United States, 30.1 million people participated in defined benefit plans. That number has dropped by 40 percent over the past 30 years. Money-Zine, *Defined Benefit versus Contribution Plans*, July 5, 2017, p. 2, <<https://www.money-zine.com/financial-planning/retirement/defined-benefit-versus-contribution-plans/>>.

¹⁸⁵ Nation, *Pension Math* 2011, p. 3, footnote 11.

¹⁸⁶ Interviews by Grand Jury.

¹⁸⁷ Interviews by Grand Jury.

¹⁸⁸ Keene, James, Palo Alto City Manager, Letter to Tamara L. Davis.

increases in revenues they will seek, in response to rapidly increasing pension costs. Where projected pension costs are disclosed, they are often based on CalPERS projections for returns on investment that some experts argue are optimistic, and residents are not apprised of the potential for far greater costs should another recession occur, or other CalPERS assumptions prove inaccurate.

The steps necessary to address the pension crisis are unpleasant to think about, much less implement. Indeed, some of the Cities have advised the Grand Jury that, while important, amortization of Unfunded Liabilities must be balanced against “other priorities” for new spending.¹⁸⁹ While the Grand Jury understands the desire on the part of the Cities to expand city services in these times of economic growth and increasing property tax revenues, it is difficult to think of a more important issue for the Cities to focus on than the looming pension crisis. Currently, the county enjoys good economic conditions. Its unemployment rate recently dropped to 2.1 percent.¹⁹⁰ Many of the Cities are experiencing rising revenues.¹⁹¹ If the Cities do not address Unfunded Liabilities in a decisive way now, when will they ever be able to? The next recession may well reduce CalPERS’ Returns on Investment below their projected level, resulting in even larger Unfunded Liabilities and higher pension costs. The next recession may also reduce or eliminate the Cities’ budget surpluses, making it harder for them to cope.¹⁹² Now is the time for the Cities to engage their residents in the issue and, with the residents’ support, take the difficult actions necessary to secure a bright future for their communities.

FINDINGS

- F1. Each City’s CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported covered payroll for the City’s pension plans in the amount set forth beside its name for that year in Appendix A.
- F2. Each City’s CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported contribution payments to CalPERS on the City’s pension plans in the amount set forth beside its name for that year in Appendix A.
- F3. Each City’s CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported Unfunded Liabilities (as defined in this report) for the City’s pension plans in the amount set forth beside its name for that year in Appendix A. Each City has been required to make large Amortization Cost (as defined in this report) payments of principal and interest to CalPERS on those Unfunded Liabilities. These payments have diverted money that could otherwise have been used to provide public services or to add to reserves.

¹⁸⁹ Interviews by Grand Jury.

¹⁹⁰ Glover, Mark, *California sets a new record for lowest unemployment rate*, The Sacramento Bee, January 19, 2018, <www.sacbee.com/news/business/article/195571634.html>.

¹⁹¹ See footnote 125 above.

¹⁹² Redwood City notes that the current expansion phase of the economy has now lasted for eight years, and that, historically, expansionary cycles only last an average of five years. It cautions that the economy is in a “late stage of expansion” and that prudent long-term budgeting requires the city to “proactively prepare for future recessionary impacts that loom in the future.” Redwood City, *Report - FY 2017-18 Mid-Year Budget Study Session*, p. 11.

- F4. Each City's CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported Funded Percentages (as defined in this report) for the City's pension plans in the amount set forth beside its name for that year in Appendix A.
- F5. Each City's CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported what the Unfunded Liabilities (as defined in this report) for the City's pension plans would have been if the applicable Discount Rate applied to calculate them had been 1 percentage point lower in the amount set forth beside its name for that year in Appendix A.
- F6. Each City's CAFR for the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017 reported general fund total expenditures for that year in the amount set forth beside its name for that year in Appendix A.
- F7. In each of the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017, each City's contribution payments to CalPERS on the City's pension plans represented the percentage of that City's general fund total expenditures for that year set forth beside its name for that year in Appendix A in the column entitled "Contribution Payments as % of General Fund Total Expenditures."
- F8. In each of the fiscal years ending June 30, 2015, June 30, 2016 and June 30, 2017, each City's contribution payments to CalPERS on the City's pension plans represented the percentage of that City's covered payroll for the City's pension plans in the amount set forth beside its name for that year in Appendix A in the column entitled "Contribution Rate (i.e., Contribution Payments as % of Covered Payroll)."
- F9. In FY 2017-2018, each City (excluding Atherton, Colma, Foster City, Hillsborough, Portola Valley and Woodside) has paid CalPERS for its Normal Costs (as defined in this report) and Amortization Costs (as defined in this report) in the amounts set forth beside its name on Table No. 4. (The Cities of Atherton, Colma, Foster City, Hillsborough, Portola Valley and Woodside are not included in Table No. 4 because the source for that table did not include data for them.)
- F10. As a result, among other things, of CalPERS' decreasing its Discount Rate from 7.5 percent to 7 percent by FY 2020-2021, its reduction of future Amortization Periods from 30 to 20 years, and its use of updated mortality assumptions reflecting projected increases in the longevity of Members, each City faces increasing pension contribution payments to CalPERS which are likely to more than double by FY 2024-2025.
- F11. Principal and interest payments on each City's Unfunded Liabilities will increasingly impair such City's provision of public services, impair the security of employee salary and pension Benefits, and/or result in proposals for revenue increases. Paying down Unfunded Liabilities early results in large savings. Every City in the county would save substantial money by paying down their Unfunded Liabilities early.
- F12. The financial documents for each City reviewed by the Grand Jury show that no City has adopted a long-term financial plan with at least a 10-year time horizon to address rising Normal Costs and Amortization Costs that includes each of the following:

- objectives, such as achieving a target Funded Percentage, eliminating the Unfunded Liabilities over “n” years or maintaining the cities’ share of Normal Costs below “n” percentage of payroll,
- policies to achieve these objectives, such as making supplemental payments to CalPERS to reduce their Unfunded Liability, keeping salary increases below the actuarially assumed increase rate, capping the cities’ share of Normal Costs, reducing operational costs or increasing revenue,
- measures to implement such policies,
- processes to monitor progress in implementing the measures, and
- alternative financial strategies, or a “Plan B,” that may be used in the event that CalPERS’ assumptions are not met in future years.

F13. Despite the fact that rising pension costs and Unfunded Liabilities are a significant problem for each City, no City (except for Redwood City, the City of San Mateo, the City of Burlingame, the City of Belmont and the City of Menlo Park) includes specific, annual projections of future pension contribution costs in their budgets published in the finance section of their websites.

RECOMMENDATIONS

- R1. The Grand Jury recommends that, by December 31, 2018, each City schedule public hearings to engage its residents in addressing the city’s increasing pension costs and to develop a long-term plan to address them.
- R2. The Grand Jury recommends that, by December 31, 2018, and annually thereafter, each City publish a report on its website detailing its pension obligations. The report should include, at a minimum, the following:
- a) The City’s total pension contribution costs under all plans, and also broken out into subtotals for all Miscellaneous Plans, and all Safety Plans, for each of the 3 preceding fiscal years as well as estimates for such costs in each of the following 10 fiscal years, assuming CalPERS’ actuarial assumptions are met.
 - b) The City’s total Unfunded Liabilities under all plans, and also broken out into subtotals for all Miscellaneous Plans, and all Safety Plans, for each of the 3 preceding fiscal years as well as estimates for such Unfunded Liabilities in each of the next 10 fiscal years, assuming CalPERS’ actuarial assumptions are met.
 - c) The City’s Funded Percentage across all plans, and also broken out into subtotals for all Miscellaneous Plans, and all Safety Plans, for each of the 3 preceding fiscal years as well as estimates for such Funded Percentages in each of the next 10 fiscal years, assuming CalPERS’ actuarial assumptions are met.
 - d) The percentage of the City’s general fund expenditures and covered payroll represented by the pension costs described in (a) above (using estimates of general fund expenditures in future fiscal years).

- e) In addition, estimated information for all projections regarding the next 10 fiscal years set forth in items (a) through (e) above should be presented using a Discount Rate that is 1 percentage point below CalPERS' then-current Discount Rate.

R3. The Grand Jury does not recommend specific policies or implementation measures to address pension costs. However, it recommends that, by no later than December 31, 2018, and annually thereafter, each City instruct its staff to deliver a report to the City Council in connection with the City's financial plan evaluating available options to address pension costs and that each City hold public hearings to discuss and consider such options no less than every other fiscal year. These include (but may not be limited to):

- Regular supplemental payments to CalPERS (beyond those required by CalPERS) to accelerate the amortization of their Unfunded Liabilities.
- Irregular supplemental payments to CalPERS (beyond those required by CalPERS), as when a City has a budget surplus or receives special non-recurring revenues.
- Electing to apply shorter Amortization Periods (that is, less than 20 years) to their Unfunded Liabilities.
- Issuing pension obligation bonds.
- Establishing substantial reserves that can be applied in the future to help meet rising pension costs and/or accelerate amortization of Unfunded Liabilities.
- Establishing Section 115 trusts for the exclusive purposes of meeting rising pension costs and/or accelerating amortization of Unfunded Liabilities.
- Reductions in general fund operating costs other than pensions.
- Seeking additional general fund revenues that can be applied directly to paying pension costs or that can offset general fund budget shortfalls that would otherwise occur.
- Keeping employee salary increases at or below the levels assumed by CalPERS.
- Negotiating cost-sharing agreements with employees under which employees pay a portion of the City's pension costs (without at the same time agreeing to offsetting compensation increases).
- Maintaining growth in employee salaries and COLAs at or below the assumed CalPERS rates.
- To the extent allowed by law, consider the recommendation of the League of California Cities to renegotiate employee contracts to bring the pension Benefits of Classic Members in line with PEPRA Members, for future work. In particular, ensure that the salary used to determine final retirement compensation is based on the average of the final 3 years of employment (rather than highest 1 year), and that the salary is not enhanced by "spiking," such as by including overtime, unused vacation or sick leave, purchases of "air time," and the like.

R4: The Grand Jury recommends that, by June 30, 2019, each City develop and publish a long-term financial plan to deal with rising pension costs, and update that plan annually. Such a plan should include:

- Specific objectives, such as identifying a target Funded Percentage, eliminating the Unfunded Liabilities over “n” years and maintaining the City’s share of Normal Costs at “n” percentage of payroll.
- Policies to achieve these objectives.
- Specific measures to implement the policies.
- A process to monitor progress in implementing the measures and in achieving the objectives.
- Consideration of alternative policies and measures, or a “Plan B,” that may be used in the event that CalPERS’s actuarial assumptions, especially the Discount Rate, are not met in future years.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests that the City Councils of each of the following respond to the foregoing Findings and Recommendations referring in each instance to the number thereof:

- The Town of Atherton
- The City of Belmont
- The City of Brisbane
- The City of Burlingame
- The Town of Colma
- The City of Daly City
- The City of East Palo Alto
- The City of Foster City
- The City of Half Moon Bay
- The Town of Hillsborough
- The City of Menlo Park
- The City of Millbrae
- The City of Pacifica
- The Town of Portola Valley
- The City of Redwood City
- The City of San Bruno
- The City of San Carlos
- The City of San Mateo
- The City of South San Francisco
- The Town of Woodside

In responding to the foregoing Findings and Recommendations, each city and town should understand references to “[E]ach City” as referring only to itself. No city or town should be responding as to an entity other than itself.

METHODOLOGY

The Grand Jury reviewed each of the documents listed in “BIBLIOGRAPHY” below. In addition, the Grand Jury interviewed representatives of 6 of the Cities, the County, and an independent public pensions expert.

APPENDIX A – CITIES’ PENSION DATA

(Based on the Cities’ Annual Financial Reports for FY 2014-2015, FY 2015-2016 and FY 2016-2017)

All dollar amounts in thousands.

CITIES	Fiscal Year	Covered Payroll	Contribution Payments	Contribution Rate (i.e., Contribution Payments as % of Covered Payroll)	Unfunded Liability	Funded Percentage	Unfunded Liability if Discount Rate Is Reduced 1 Percentage Point	General Fund Total Expenditures	Contribution Payments as % of General Fund Total Expenditures*
Atherton	2016-2017	\$4,327	\$1,155	26.7%	\$13,982	74.3%	\$21,344	\$11,437	10.1%
	2015-2016	\$4,261	\$617	14.5%	\$10,674	80.4%	\$17,326	\$10,611	5.8%
	2014-2015	\$3,988	\$826	20.7%	\$9,253	81.9%	\$16,088	\$11,622	7.1%
Belmont	2016-2017	\$15,198	\$3,582	23.6%	\$32,835	72.0%	\$48,680	\$18,344	19.5%
	2015-2016	\$11,794	\$4,191	35.5%	\$26,626	76.2%	\$41,855	\$16,800	24.9%
	2014-2015	\$14,176	\$2,788	19.7%	\$25,059	76.7%	\$39,412	\$16,777	16.6%
Brisbane	2016-2017	\$7,916	\$1,713	21.6%	\$18,227	74.8%	\$27,989	\$15,521	11.0%
	2015-2016	\$7,101	\$883	12.4%	\$13,952	79.9%	\$23,410	\$14,850	5.9%
	2014-2015	6,152	1,153	18.7%	12,074	82.2%	\$21,119	\$13,247	8.7%
Burlingame	2016-2017	\$18,617	\$5,294	28.4%	\$57,694	73.4%	\$86,051	\$49,707	10.7%
	2015-2016	\$17,654	\$3,840	21.8%	\$46,987	77.8%	\$75,062	\$47,459	8.1%
	2014-2015	16,713	3,822	22.9%	41,762	80.1%	\$69,042	\$44,405	8.6%
Colma	2016-2017	\$4,031	\$1,048	26.0%	\$9,449	74.2%	\$14,008	\$13,323	7.9%
	2015-2016	\$3,749	\$937	25.0%	\$7,747	74.7%	\$11,969	\$13,410	7.0%
	2014-2015	\$3,604	\$939	26.1%	\$6,885	76.1%	\$10,724	\$12,948	7.3%
Daly City	2016-2017	\$40,070	\$11,631	29.0%	\$139,861	75.7%	\$213,918	\$77,139	15.1%
	2015-2016	\$42,608	\$12,081	28.4%	\$112,195	80.0%	\$185,217	\$79,062	15.3%
	2014-2015	42,226	8,862	21.0%	99,631	81.9%	\$169,965	\$72,649	12.2%
East Palo Alto	2016-2017	8,464	1,493	17.6%	9,459	74.1%	13,750	\$18,109	8.2%
	2015-2016	\$8,408	\$1,372	16.3%	\$8,112	78.4%	\$12,086	\$17,735	7.7%
	2014-2015	7,926	1,477	18.6%	7,856	70.6%	\$11,417	\$16,524	8.9%
Foster City	2016-2017	\$19,875	\$7,209	36.3%	\$69,207	68.7%	\$98,575	\$36,416	19.8%
	2015-2016	\$18,724	\$5,294	28.3%	\$56,390	76.7%	\$84,686	\$33,048	16.0%
	2014-2015	17,696	4,552	25.7%	50,458	78.2%	\$77,534	\$31,322	14.5%
Half Moon Bay	2016-2017	\$2,423	\$594	24.5%	\$9,502	74.6%	\$14,557	\$10,418	5.7%
	2015-2016	\$2,014	\$583	28.9%	\$7,319	80.1%	\$12,332	\$8,781	6.6%
	2014-2015	1,987	529	26.6%	6,736	81.6%	\$11,620	\$8,352	6.3%
Hillsborough	2016-2017	\$8,661	\$2,158	24.9%	\$22,387	74.5%	\$34,262	\$21,224	10.2%
	2015-2016	\$9,089	\$1,893	20.8%	\$17,187	80.2%	\$28,063	\$19,693	9.6%
	2014-2015	8,625	1,605	18.6%	14,770	79.8%	\$25,822	\$18,721	8.6%

*Note: Covered Payroll amounts in CAFRs may include compensation paid to certain employees whose activities are not accounted for as part of General Fund activities, and their compensation would not be included in General Fund Total Expenditures. As a result, the percentage of General Fund Total Expenditures represented by Covered Payroll may somewhat overstate the percentage represented by General Fund Covered Payroll. Some experts have estimated that this might result in an overstatement of the percentage by 10 – 30 percent, such that a Contribution Payment as a % of General Fund Total Expenditures of 10 percent might actually be somewhere between 7 and 9 percent.

CITIES	Fiscal Year	Covered Payroll	Contribution Payments	Contribution Rate (i.e., Contribution Payments as % of Covered Payroll)	Unfunded Liability	Funded Percentage	Unfunded Liability if Discount Rate Is Reduced 1 Percentage Point	General Fund Total Expenditures	Contribution Payments as % of General Fund Total Expenditures*
Menlo Park	2016-2017	\$23,112	\$5,565	24.1%	\$50,993	74.4%	\$77,514	\$47,314	11.8%
	2015-2016	\$19,868	\$4,747	23.9%	\$38,881	79.3%	\$64,170	\$42,565	11.2%
	2014-2015	19,969	4,228	21.2%	34,371	81.2%	\$58,596	\$40,581	10.4%
Millbrae	2016-2017	\$6,165	\$2,335	37.9%	\$42,769	74.1%	\$62,676	\$25,494	9.2%
	2015-2016	\$5,835	\$2,064	35.4%	\$34,256	78.4%	\$53,883	\$22,514	9.2%
	2014-2015	6,871	1,400	20.4%	28,989	78.6%	47,979	\$18,201	7.7%
Pacifica	2016-2017	\$15,720	\$3,736	23.8%	\$44,400	77.5%	\$70,650	\$28,781	13.0%
	2015-2016	\$15,000	\$2,749	18.3%	\$32,841	82.7%	\$56,750	\$27,358	10.0%
	2014-2015	\$14,365	\$2,739	19.1%	\$28,089	85.0%	\$52,855	\$25,354	10.8%
Portola Valley	2016-2017	\$1,442	\$116	8.1%	\$524	91.8%	\$1,382	\$4,361	2.7%
	2015-2016	\$1,072	\$84	7.8%	\$82	98.6%	\$881	\$4,303	2.0%
	2014-2015	\$993	\$1,019	102.6%	\$957	83.0%	\$1,706	\$5,587	18.2%
Redwood City	2016-2017	\$62,098	\$17,722	28.5%	\$215,202	65.7%	\$298,653	\$112,142	15.8%
	2015-2016	\$57,352	\$17,363	30.3%	\$177,937	70.1%	\$257,798	\$101,684	17.1%
	2014-2015	\$54,275	\$16,467	30.3%	\$164,149	71.6%	\$240,111	\$95,856	17.2%
San Bruno	2016-2017	\$25,173	\$6,344	25.2%	\$78,198	70.7%	\$114,180	\$43,244	14.7%
	2015-2016	\$21,315	\$4,434	20.8%	\$61,771	75.6%	\$96,281	\$38,882	11.4%
	2014-2015	\$20,532	\$4,979	24.3%	\$53,531	78.4%	\$86,637	\$36,738	13.6%
San Carlos	2016-2017	\$11,047	\$2,134	19.3%	\$47,009	63.3%	\$64,530	\$33,182	6.4%
	2015-2016	\$10,486	\$2,601	24.8%	\$40,263	67.3%	\$57,293	\$41,264	6.3%
	2014-2015	\$8,480	\$2,296	27.1%	\$27,741	75.5%	\$42,824	\$29,067	7.9%
San Mateo (City)	2016-2017	\$58,645	\$17,537	29.9%	\$197,822	66.2%	\$271,523	\$103,992	16.9%
	2015-2016	\$52,345	\$15,908	30.4%	\$168,693	70.1%	\$240,459	\$95,779	16.6%
	2014-2015	\$49,788	\$13,860	27.8%	\$159,585	71.4%	\$228,588	\$88,078	15.7%
South San Francisco	2016-2017	\$48,954	\$13,300	27.2%	\$152,786	68.4%	\$216,103	\$92,367	14.4%
	2015-2016	\$40,396	\$13,938	34.5%	\$130,042	72.2%	\$191,669	\$86,795	16.1%
	2014-2015	\$34,478	\$11,403	33.1%	\$124,085	73.2%	\$184,305	\$76,805	14.8%
Woodside	2016-2017	\$1,996	\$323	16.2%	\$3,164	72.3%	\$4,702	\$6,801	4.8%
	2015-2016	\$1,809	\$409	22.6%	\$2,578	75.8%	\$4,325	\$6,638	6.2%
	2014-2015	\$1,640	\$389	23.7%	\$2,053	79.1%	\$3,356	\$6,107	6.4%

Totals & Weighted Averages	2016-2017	\$383,935	\$104,986	27.3%	\$1,215,467	70.5%	\$1,755,047	\$769,315	13.6%
	2015-2016	\$350,879	\$95,987	27.4%	\$994,535	75.1%	\$1,515,516	\$729,230	13.2%
	2014-2015	\$334,484	\$85,335	25.5%	\$898,036	76.8%	\$1,399,702	\$668,939	12.8%

APPENDIX B - HOW TO FIND PENSION DATA IN THE CITIES' CAFRS

Set forth below is a guide to where information compiled in Appendix A can be found in the Cities' CAFRs.

Amount of Employer Contributions to Pension Plans: This information is set forth in the "Required Supplemental Information" section of the CAFR, in the "Schedule(s) of Contributions" for the pension plans. Sometimes a separate Schedule of Contribution is included for each pension plan, other times only an aggregate number for all plans is given.

Covered Payroll for Pension Plans: This information is set forth in the "Required Supplemental Information" section of the CAFR, in the "Schedule(s) of Contributions" for the pension plans. Where the CAFR has a separate Schedule of Contributions for each pension plan, it will also show the payroll specific to that plan's employees. Where plan information is aggregated, then the payroll number will also be aggregated.

Amount of Unfunded Liabilities: This information is set forth in the "Required Supplemental Information" section of the CAFR, in the "Schedule of Proportionate Share of The Net Pension Liability" as "Plan's proportionate share of the Net Pension Liability (Asset)." Note: The amounts given for "covered payroll" in this schedule should not be relied upon as they often apply to the year (either one or two years prior) in which pension assets and liabilities were last measured, rather than the fiscal year covered in the CAFR itself. For information as to covered payroll during the current fiscal year, rely only on the information is set forth in the "Required Supplemental Information" section of the CAFR, in the "Schedule(s) of Contributions" for the pension plans.

Funded Percentage of Pension Plan. This information is set forth in the "Required Supplemental Information" section of the CAFR, in the "Schedule of Proportionate Share of The Net Pension Liability" as "Plan's proportionate share of Fiduciary Net Position as a Percentage of Plan's Total Pension Liability." As used in CAFRs, "Fiduciary Net Position" refers to the total assets in the pension plan. Hence, the Funded Percentage of a pension plan is equal to its "Fiduciary Net Position" divided by "Total Pension Liability." The term, "Net Pension Liability" refers to the difference between plan assets ("Fiduciary Net Position") and plan liabilities ("Total Pension Liability"). The amounts given for "covered payroll" in this schedule should not be relied upon as they often apply to the year (either one or two years prior) in which pension assets and liabilities were last measured, rather than the fiscal year covered in the CAFR itself. For information as to covered payroll during the current fiscal year, rely only on the information is set forth in the "Required Supplemental Information" section of the CAFR, in the "Schedule(s) of Contributions" for the pension plans.

Total Assets, Total Liabilities and Total Unfunded Liabilities of Pension Plan: This information, if provided in the CAFR, is set forth in the "Required Supplemental Information" section of the CAFR, in the "Schedule of Changes in the Net Pension Liability and Related Ratios" as (i) "Plan

Fiduciary Net Position – ending (b)” with respect to plan assets, (ii) “Total Pension Liability – ending (a)” with respect to total plan liabilities, and (iii) “Net Pension Liability – ending (a) - (b)” with respect to unfunded pension liabilities. Note: In many CAFRs the amount of unfunded pension liabilities (“Net Pension Liabilities”) and the Funded Percentage of the pension plan are given, but the total assets amount (“Plan Fiduciary Net Position”) and the total liabilities amount (“Total Pension Liability”) are not given. They can, however, be calculated in the following way. To derive total liabilities, simply divide the Unfunded Liability amount (“Net Pension Liabilities”) by 1 minus the Funded Percentage for the fund. To derive total assets (“Plan Fiduciary Net Position”) simply subtract the Unfunded Liabilities amount (“Net Pension Liability”) from the amount of total plan liabilities (“Total Pension Liability”). Where the aggregate Funded Percentage of all pension plans is not given in a CAFR, it can be derived simply by dividing the sum of all of the plan asset amounts for each plan by the sum of all plan liabilities for each plan.

The following example will demonstrate the foregoing. Assume the CAFR provides the following information:

Net Pension Liability under Miscellaneous Plan is \$15 million.

Funded percentage under Miscellaneous Plan is 75%.

Net Pension Liability under Safety Plan is \$20 million.

Funded percentage under Safety Plan is 80%.

Accordingly,

Total liabilities under the Miscellaneous Plan are \$60 million ($\$15\text{M net pension liability} / (1 - 75\% \text{ Funded Percentage}) = \60 million)

Total assets under the Miscellaneous Plan are \$35M ($\$60\text{M total liabilities amount minus } \$15\text{M net pension liability} = \35M)

Total liabilities under the Safety Plan are \$100M ($\$20\text{M net pension liability} / (1 - 80\% \text{ Funded Percentage}) = \100M)

Total assets under Safety Plan are \$80M ($\$100\text{M total liabilities amount minus } \$20\text{M net pension liability} = \80M)

Total liabilities under all pension plans are \$160M ($\$60\text{M under Miscellaneous Plan and } \$100\text{M under Safety Plan}$)

Total assets under all pension plans are \$105M ($\$35\text{M under Miscellaneous Plan plus } \$80\text{M under Safety Plan}$)

Aggregate Funded Percentage under all plans is 65.6% (\$105M aggregate total assets divided by \$160M aggregate total liabilities).

Unfunded Liabilities Where Discount Rate Is Increased/Decreased by 100 Points (i.e., 1 percentage point): This information is set forth in the section of “Notes to Basic Financial Statements” describing the pension plans under the heading “Sensitivity of Proportionate Share of Net Pension Liability to Changes in the Discount Rate.” It is sometimes provided separately for each pension plan and other times only an aggregate number for all pension plans is given.

General Fund Spending by City: This information is found in the “Government Fund Financial Statements” section of the CAFR in the “Statement of Revenue, Expenditures and Changes in Fund Balances, Governmental Funds for the Year Ended _____”.

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Issued: July 17, 2018

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**STAFF REPORT****City Council**

Meeting Date: 8/28/2018
Staff Report Number: 18-166-CC

Consent Calendar: **Approve the response to the San Mateo County Civil Grand Jury Report: “Cooperative Purchasing – A Roadmap to More Effective City Procurement”**

Recommendation

Staff recommends that the City Council approve and sign the attached response to the San Mateo Civil County Grand Jury report, “Cooperative Purchasing – A Roadmap to More Effective City Procurement” dated July 19, 2018.

Policy Issues

There are no policy implications as a result of the City responding to the Civil grand jury.

Background

On July 18, 2018, the San Mateo County Civil grand jury (“Civil grand jury”) filed the report “Cooperative Purchasing – A Roadmap to More Effective City Procurement” (Attachment B) with Honorable V. Raymond Swope, Judge of the Superior Court of the State of California. The report reviews the organizational approaches of purchasing and procurement in the County and Cities of San Mateo.

Analysis

The Civil grand jury report “Cooperative Purchasing – A Roadmap to More Effective City Procurement” contains 13 findings and six recommendations, of which only two apply to the City of Menlo Park. The City is obligated to respond to the report’s findings and recommendations no later than October 17, 2018, with said response approved by the City Council at a public meeting. The response is attached hereto as Attachment A.

Impact on City Resources

Approving and submitting a response to the Civil grand jury report has no direct impact on 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 proposes an organizational structure change that will not result in any direct or indirect physical change in the environment.

Public Notice

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

Attachments

- A. City of Menlo Park response letter
- B. Civil grand jury report

Report prepared by:

Dan Jacobson, Finance and Budget Manager

Report approved by:

Lenka Diaz, Administrative Services Director



August 28, 2018

Honorable V. Raymond Swope
Judge of the Superior Court
c/o Charlene Kresevich
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: Civil Grand Jury Report: “Cooperative Purchasing – A Roadmap to More Effective City Procurement”

Dear Judge Swope:

The City Council of the City of Menlo Park (City) voted at its public meeting on August 28, 2018 to authorize this response to the San Mateo County (SMC) Civil Grand Jury Report “Cooperative Purchasing – A Roadmap to More Effective City Procurement” released on July 19, 2018.

Responses to Findings

F1. All 20 of the cities in the County purchase goods and services through decentralized purchasing systems.

Response: *The City agrees that it utilizes a decentralized purchasing model.*

F2. Decentralized purchasing systems successfully allow the Cities to procure goods and services at fair market prices while minimizing labor costs.

Response: *The City agrees.*

F3. The creation of a centralized purchasing department to provide the organization with advanced procurement services and guidance can be cost prohibitive.

Response: *The City agrees.*

F4. While city employees receive training on municipal purchasing guidelines and policies, many employees who conduct purchasing operations as a secondary responsibility are not trained or instructed to negotiate optimum prices by leveraging market power.

Response: *The City agrees.*

F5. City employees who conduct purchasing operations as a secondary responsibility often do not identify commonly purchased goods that other departments

also purchase and so miss the opportunity to negotiate lower costs which could be obtained by purchasing the items in bulk for multiple departments.

Response: *The City agrees.*

F6. Cooperative purchasing practices allow multiple public entities to collaboratively purchase goods and services, thereby gaining economies of scale that they would otherwise not have.

Response: *The City agrees, though notes that the marginal decrease in per-unit price gained by a greater economy of scale does not necessarily translate to a lower total acquisition cost.*

F7. Cooperative purchasing practices are compatible with decentralized purchasing systems and can allow the Cities to leverage their collective market power, without changing existing purchasing systems.

Response: *The City agrees, to the extent that the increased transaction and coordination costs associated with using a cooperative purchasing agreement are factored into the total acquisition cost.*

F8. Adoption of cooperative purchasing practices, including piggyback agreements and cooperative purchasing agreements, can enable all Cities to obtain lower prices on goods and services.

Response: *The City agrees that per-unit costs can be lowered through cooperative purchasing practices, but notes that these are not the only elements of total cost.*

F9. Each city has limited communications with each other regarding procurement best practices, shared purchasing challenges, and purchasing solutions.

Response: *The City agrees.*

F10. The County of San Mateo's Procurement Division is the only remaining public centralized purchasing department at the City and County level within San Mateo County.

Response: *The City agrees that its purchasing practices are not centralized.*

F11. Collaboration between the Cities and the Procurement Division through cooperative purchasing practices could achieve significant cost savings for both the Cities and the County.

Response: *The City disagrees partially with this finding. The City believes that some cost savings for procurement of goods and services are likely, but is unable to quantify the magnitude of this savings, particularly net of the additional coordination*

requirements of staff and systems, requirements which are not cost-free, on the City's part.

F12. The Procurement Division presently lacks the operational capacity to fully collaborate with the Cities.

Response: *The City has no basis for agreement or disagreement with this finding.*

F13. There are no formal channels for communication between the County and the Cities regarding procurement cooperation opportunities.

Response: *The City agrees.*

Responses to Recommendations

The 2017-2018 San Mateo County Civil Grand Jury recommends that each City undertake the following by no later than February 1, 2019:

R1. Increase the use of cooperative purchasing practices, including piggyback contracts and joint procurement agreements.

Response: *The recommendation requires further analysis as to the requirements, costs, and benefits of increasing the City's use of cooperative purchasing practices with other entities. The City's Finance and Budget Manager will conduct an analysis to be completed no later than January 18, 2019.*

R2. Share with other Cities and the County Procurement Division their procurement needs in order to identify opportunities for cooperative procurements between the Cities and the County.

Response: *The City has not yet implemented this recommendation, but will share its largest 10 categories of purchases by top vendor category with all other Cities and the County by February 1, 2019.*

Sincerely,

Peter Ohtaki
Mayor

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**COOPERATIVE PURCHASING—A ROADMAP TO MORE EFFECTIVE CITY PROCUREMENT**

[Issue](#) | [Summary](#) | [Glossary](#) | [Background](#) | [Discussion](#) | [Findings](#)
[Recommendations](#) | [Requests for Responses](#) | [Methodology](#) | [Bibliography](#) | [Responses](#)

ISSUE

How can cities in San Mateo County save taxpayer money by adopting cooperative procurement practices?

SUMMARY

The 20 cities in San Mateo County (the Cities) spent \$425 million and the County of San Mateo (the County) \$300 million on goods and services in FY 2015-16, for an estimated total in purchasing of \$725 million.¹² The Cities and the County could spend millions less – without increasing costs – by increasing the use of “piggyback³” contracts and cooperative purchasing agreements. The Cities and the County could save the most money, an estimated annual savings between 5 and 15 percent, through cooperatively purchasing goods and services with the County’s Procurement Division for a total annual savings between \$35 million and \$108 million.

All of the Cities procure goods and services through decentralized purchasing systems in which individual municipal departments are authorized to identify the need for a good or service, conduct the appropriate selection process, and place a purchase order, under the supervision of their city’s finance department and or city manager. Decentralized purchasing systems successfully allow cities to procure goods and services at fair market prices while minimizing labor costs associated with centralized procurement departments by assigning purchasing functions to individual departments.

However, the Grand Jury found that while city employees receive training on municipal purchasing guidelines and policies, many employees who conduct purchasing operations as a secondary responsibility are not trained and or instructed to negotiate optimum prices by leveraging market power.⁴

Further, in exchange for minimizing labor and related costs, the Cities have forfeited the benefits associated with a centralized purchasing system. Under a centralized purchasing system, trained and experienced purchasing agents, located in a central purchasing department, are responsible

¹ California State Controller’s Office, *Schedule of Total City Expenditures by Major Object Classification*, Accessed On: October 2017 <https://bythenumbers.sco.ca.gov/City-Expenditures/Schedule-of-Total-City-Expenditures-by-Major-Objec/q6pc-n5bp>.

² San Mateo County Civil Grand Jury, “San Mateo County Procurement Division Recommendations Follow-Up” *Superior Court of California San Mateo County*, June 21, 2017: 2.
<http://www.sanmateocourt.org/documents/grand_jury/2016/procurement.pdf>

³ A form of intergovernmental cooperative purchasing in which an entity will be extended the same pricing and terms of a contract entered by another entity. Generally, the originating entity will competitively award a contract that will include language allowing for other entities to utilize the contract, which may be to their advantage in terms of pricing, thereby gaining economies of scale that they would otherwise not receive if they competed on their own.

⁴ Clifford McCue, Jack Pitzer “Centralized vs. Decentralized Purchasing: Current Trends in Governmental Procurement Practices” *Journal of Public Budgeting, Accounting, and Financial Management* (Vol 12, Issue: 3) 2000: 400. <https://www.emeraldinsight.com/doi/pdfplus/10.1108/JPBAFM-12-03-2000-B003>.

for all purchasing functions. Due to centralized purchasing authority, purchasing agents are better able to identify goods and services with a high potential for savings and then leverage their experience, greater knowledge of markets, and their municipality's market power to negotiate better terms, including lower prices, with vendors.

This report identifies ways the Cities can attain the cost-saving benefits of centralized purchasing systems while retaining the benefits of a decentralized purchasing system.

Three approaches can improve decentralized purchasing systems without increasing staffing and operations costs:

(1) Increase the use of "piggybacking" to access beneficial terms of contracts previously entered by public entities.

(2) Utilize cooperative purchasing agreements to allow Cities to obtain volume discounts among themselves, even without County participation.

(3) Collaborate with the County's Procurement Division to negotiate lower prices for common goods and services.

If these changes resulted in even a conservative five percent average savings on procurements, the County could save more than \$15 million and the Cities collectively could save more than \$21.25 million per year.

GLOSSARY and ABBREVIATIONS

California Association of Public Procurement Officials (the CAPPO): The CAPPO is a nonprofit organization dedicated to maintaining the highest standards of professional behavior and ethical conduct in public purchasing. As the oldest public procurement association in the United States, CAPPO works to provide tools to buyers in the public sector that will help them develop their professional skills for their benefit and the benefit of their agencies.

California Department of General Services (the DGS or General Services?): The DGS serves as business manager for the state of California. The DGS provides a variety of services to state agencies, including procurement and acquisition solutions.

Centralized Procurement: Centralized procurement means that a single department controls and manages the purchasing for the whole organization. Ideally a manager oversees the purchasing department regarding what materials need to be purchased and in what quantity.⁵

City-County Procurement Cooperation (C-CPC): C-CPC is a term for practices, if adopted, that will allow Cities and the County to save millions of dollars on procurement each year.

Cooperative Purchasing Agreements: A type of procurement in which multiple purchasing entities collaborate in purchasing to increase their market power, thereby gaining access to lower prices.

⁵ Effia Soft, "Centralized vs. Decentralized Purchasing" *Effiasoft.com* Accessed on May 20, 2018 <https://effiasoft.com/centralized-vs-decentralized-purchasing>.

All 20 cities in San Mateo County (the Cities): the Town of Atherton, the City of Belmont, the City of Brisbane, the City of Burlingame, the Town of Colma, the City of Daly City, the City of East Palo Alto, the City of Foster City, the City of Half Moon Bay, the Town of Hillsborough, the City of Menlo Park, the City of Millbrae, the City of Pacifica, the Town of Portola Valley, the City of Redwood City, the City of San Bruno, the City of San Carlos, the City of San Mateo, the City of South San Francisco, and the Town of Woodside.

Decentralized Procurement: Purchasing control and authority is granted to local branches or departments. They have the authority to purchase items necessary as per their requirements.⁶

Piggyback Contracts: A form of intergovernmental cooperative purchasing in which an entity will be extended the same pricing and terms of a contract entered by another entity. Generally, the originating entity will competitively award a contract that will include language allowing for other entities to utilize the contract, which may be to their advantage in terms of pricing, thereby gaining economies of scale that they would otherwise not receive if they competed on their own.⁷

San Mateo County Finance Officers Group (the SAMFOG): The SAMFOG is an informal professional group for municipal finance officers in San Mateo County to share information and resources.

County of San Mateo Procurement Division (the PD): The PD provides procurement services to all county departments and acts as a regulatory mechanism to help County departments obtain maximum value for each dollar spent while maintaining compliance with all relevant county, state and federal laws, ordinances, and policies.

Volume Discount: A Volume Discount is an incentive offered to a buyer that results in a decreased cost per unit of goods or materials when purchased in greater numbers. Sellers often offer a volume discount to entice buyers to purchase in larger quantities. The seller can move more goods or materials, and the buyer receives a more favorable price for the goods.⁸

BACKGROUND

The 20 cities in San Mateo County together purchased approximately \$425 million of in goods and services in FY 2015-16, representing an estimated 35 percent of their General Fund spending.^{9,10} In a time defined by rising labor costs, exploding pension program payments, and other municipal budget constraints, spending on goods and services still represents a significant portion of a city's discretionary spending.¹¹

⁶ Effia Soft, "Centralized vs. Decentralized Purchasing" *Effiasoft.com*

⁷ Principles and Practices of Public Procurement "Use of Cooperative Contracts for Public Procurement" *California Association of Public Procurement Officials* Accessed on August 28, 2017: 1. <http://c.ymcdn.com/sites/www.cappo.org/resource/collection/FBBFC7BF-369D-43DE-B609-3D41BA05D10E/Cooperative%20Contracts.pdf>.

⁸ "Quantity Discount" *Investopedia*, Accessed on: May 20, 2018 <https://www.investopedia.com/terms/q/quantity-discount.asp#ixzz5F2r4B9Sp>.

⁹ California State Controller's Office, *Schedule of Total City Expenditures by Major Object Classification* (2017).

¹⁰ *ibid.*

¹¹ Interviews with City Finance Officials.

While every city in the County operates its own purchasing system, all cities share common practices and operations.¹² These commonalities stem from shared state and federal regulatory requirements, adherence to generally accepted best practices, and similar economic pressures.¹³ By identifying systemic purchasing challenges and common solutions, cities have the potential to achieve consequential cost savings.

In addition to benefiting from cost savings, the effective and efficient purchasing of goods and services is essential to the proper function of municipal government. When purchasing fails to achieve the highest standard of excellence, the quality and variety of services fall and the potential for wasting taxpayer money increases.

Advantages of Decentralized Procurement Practices

In decentralized purchasing systems, individual departments are responsible for: (a) identifying the need for a good or service, (b) conducting the appropriate vendor selection process, and (c) placing a purchase order for the good or negotiating a contract for services.¹⁴ In contrast, under a centralized purchasing system, individual departments still identify the need for a good or service, but a central purchasing department is responsible for conducting the appropriate selection process, negotiating with the vendor, and purchasing the good or service.¹⁵

Although these processes might appear identical—a city entity identifies goods and services for purchase, competitively bids the product, and purchases it from a vendor—fundamental operational differences and outcomes exist between these two systems.

Historically, limited supply chains and less competitive markets for goods and services required municipalities to rely on specialized purchasing agents for competitive purchasing.¹⁶ These purchasing agents, working in central purchasing departments, could negotiate directly with producers to secure lower prices for goods and services.¹⁷ Specialized purchasing roles also gave agents substantial expertise and experience in their field that today’s employees cannot accumulate.¹⁸

However, as the market for goods and services has grown more competitive (a result of globalization, the internet, lower transportation costs, and gains to economic productivity) prices have fallen, leading many to believe that the need for specialized purchasing agents has

¹² Interviews with City Finance Officials, Grand Jury Review of City Procurement Documents.

¹³ Interviews with City Finance Officials.

¹⁴ Clifford McCue, Jack Pitzer “Centralized vs. Decentralized Purchasing: Current Trends in Governmental Procurement Practices” (2000): 4.

¹⁵ *ibid.*

¹⁶ “Centralized vs. Decentralized Purchasing: Current Trends in Governmental Procurement Practices” *Journal of Public Budgeting, Accounting, and Financial Management* (2000).

¹⁷ Money Matters “Centralized & Decentralized Purchase: Suitability, Merits and Detriments” *Accountlearning.com* Accessed on March 28, 2018. <https://accountlearning.com/centralized-decentralized-purchase-suitability-merits-demerits-differences>.

¹⁸ *Ibid.*

diminished.^{19,20} Additionally, the high cost of labor in the San Francisco Bay Area, coupled with the economic contractions in 2002 and 2008, has placed pressure on public entities to reduce costs by consolidating positions.²¹ Under these pressures, decentralized purchasing became the norm throughout the San Mateo County and California.²²

Common Practices in Decentralized Purchasing Systems

In its investigation, the Grand Jury learned that the cities in San Mateo County generally regulate their decentralized purchasing systems through three primary mechanisms--graduated purchasing authority levels, competitive bidding requirements, and budget controls.

All of the Cities delegate purchasing authority to different levels of city employees based on the size of the purchase; higher ranking employees must approve costlier purchases.²³ While the exact purchasing authority levels vary between cities, Figure 1 is an example of the allocation of purchasing authority levels for the City of San Mateo. This graduated purchasing authority system, which is like those in other cities, gives individual departments the power to make smaller purchases quickly at market prices, while subjecting larger purchases to increasing scrutiny.

FIGURE 1		
<i>Award Authorization and Competitive Bidding Requirement Levels for the City of San Mateo</i> ²⁴		
Purchase Levels	Authority Required to Approve Purchase	Competitive Bidding Requirement
Purchases over \$100,000	City Council	Formal Bid Procedure (RFP)
Purchases between \$50,000 and \$99,999	City Manager	Open Market Procedures
Purchases between \$25,000 and \$49,999	Department Head	Open Market Procedures
Purchase under \$25,000	Division Manager	Open Market Procedures

The Cities also regulate decentralized purchasing systems through competitive bidding requirements.²⁵ These requirements are meant to ensure fair market prices by requiring purchasers to obtain multiple vendor bids and to select the lowest responsible bidder.²⁶ As with purchasing authority, competitive bidding requirements follow a graduated approval system

¹⁹ Michael Sposi, “The Effect of Globalization of Market Structure, Industry Evolution and Pricing” *Federal Reserve Bank of Dallas, Globalization and Monetary Policy Institute 2013 Annual Report*, May 31, 2013: 24. <https://www.dallasfed.org/~media/documents/institute/annual/2013/annual13f.pdf>

²⁰ Clifford McCue, Jack Pitzer “Centralized vs. Decentralized Purchasing: Current Trends in Governmental Procurement Practices” (2000) 400.

²¹ Ibid.

²² Interview with City Finance Officials.

²³ Grand Jury Review of City Procurement Documents.

²⁴ Grand Jury Review of City Procurement Documents.

²⁵ Grand Jury Review of City Procurement Documents.

²⁶ Qualified bidder with the lowest or best bid price, and whose business and financial capabilities, past performance, and reputation meet the required standards.

based on size of purchase. For smaller purchases of commodity items where competition already exists between vendors (e.g., paper products and other office supplies), the Cities allow for purchases on the open market without multiple bids. However, for larger purchases where generally less competition exists between vendors, stricter bidding requirements apply. Competitive bidding requirements range from requiring informal bids and formal bids to issuing a Request for Proposals.

Departmental budget controls are another regulatory check on decentralized purchase systems.²⁷ Budget controls require city finance officials to confirm that any proposed purchase fits within a department's budget prior to authorizing a purchase order. As a result of these controls, a department proposing to make a substantial purchase is incentivized to seek the lowest responsible price.²⁸

DISCUSSION

The Limitations of Decentralized Purchasing Systems

While the Cities' decentralized purchasing systems have technically achieved the goals of obtaining fair market prices while minimizing labor costs, such decentralized purchasing approaches are not designed to use the Cities' collective marketing power, together with that of the County,²⁹ to obtain optimum prices and terms.

In modern supply chains, few goods and services have fixed prices. Rather, prices are generally negotiable, with outcomes contingent on factors like the quantity being purchased, the potential for future sales, the present level of market demand, the vendor's available stock, and profit margins.³⁰ Often, the given market price—the price quoted on a store shelf or business' website—does not represent this variance.³¹

In the private sector, dedicated buyers with deep expertise and experience take advantage of that knowledge and their firms' market power to negotiate lower prices.³² Depending on the particular good, buyers can often negotiate prices 30 to 40 percent below "market." For some goods, like software, savings upwards of 50 percent are attainable.³³

²⁷ Grand Jury Review of City Procurement Documents.

²⁸ Interviews with City Finance Officials.

²⁹ Market Power represents a firm's or, in this case, city's capacity to negotiate prices better than the going market price. Market power can be exerted through negotiation, buying in bulk, buying "higher" (e.g. buying from a wholesaler) in the supply chain, etc.

³⁰ Henry Hazlitt, "How Should Prices Be Determined" Foundation for Economic Education, February 1, 1967. Accessed On: June 6, 2012 <https://fee.org/articles/how-should-prices-be-determined>.

³¹ Krishna, Aradhna, Richard Briesch, Donald Lehmann, and Hong Yuan (2002), "A Meta-Analysis of the Impact of Price Presentation on Perceived Savings." *Journal of Retailing* 78 (2), 101–18. <https://www8.gsb.columbia.edu/researcharchive/articles/969>.

³² Severin Borenstein "Understanding Competitive Pricing and Market Power in Wholesale Electricity Markets" *The Electricity Journal* July 2000: 50. <<http://faculty.haas.berkeley.edu/borenste/mba212/Elecjo00mktPower.pdf>>

³³ Seeking Alpha Editorial Board "Chart: Software Companies - Gross Profit Margins" *seekingalpha.com* May 7, 2006. Accessed On: June 12, 2018 <https://seekingalpha.com/article/10166-chart-software-companies-gross-profit-margins>.

The Cities' shift from centralized to decentralized purchasing systems evolved over time on a local basis, with individual cities responding to the immediate needs and available resources. Regardless of a particular city's path towards decentralized purchasing, cities lost the expertise necessary to negotiate these kinds of savings. Apart from some employees in public works and engineering departments, most purchasing activities are a secondary responsibility for the employees responsible for their department's procurement function.³⁴ While these employees all receive training on municipal purchasing guidelines and policies, they often lack training and familiarity with advanced procurement practices.³⁵ For many cities, training employees in purchasing practices found in a centralized purchasing department is prohibitively expensive.³⁶

This loss of purchasing expertise has real financial consequences. For instance, most of the Cities' employees are unaware of and untrained in the use of cooperative purchasing databases.³⁷ Cooperative purchasing databases, like the California Department of General Services' (DGS's) State Contracts Index Listing and State Leveraged Procurement Agreements, are databases of pre-negotiated contracts for common goods and services, for prices lower than market.³⁸ By not piggybacking on these pre-negotiated contracts, the Cities miss the opportunity to purchase a wide range of products at lower prices.

Employees in decentralized systems often do not identify commonly purchased goods that other departments are also buying and so miss the opportunity to negotiate lower costs which could be obtained by purchasing the items in bulk for multiple departments.³⁹ While finance officers do track purchases on a departmental level, only the City of San Mateo has a staff position dedicated to tracking the cost, type, quantity, and frequency with which all city departments are purchasing products.⁴⁰ In cities that fail to track products purchased across multiple departments, finance officers cannot identify goods (like office supplies, furniture, automobile parts) and services (like translators), that could be purchased in bulk through a volume discount contract. In effect, each individual department pays for goods and services at a price that is higher than could be achieved through purchasing at the municipal level.⁴¹

Conversely, in centralized purchasing systems a dedicated staff of purchasing agents specializes in securing the lowest prices for goods and services.⁴² Purchasing agents have the training, resources, time, and specialization to identify the best vendors and negotiate below-market prices through leveraging their city's market power.⁴³ Purchasing agents have the authority and capacity to unlock low prices by buying in bulk, authorizing long term contracts, and negotiating volume discounts. Centralized purchasing agents also have acquired specific purchasing

³⁴ Interviews with City Finance Officials.

³⁵ Interviews with City Finance Officials.

³⁶ Interviews with City Finance Officials.

³⁷ Interviews with Finance Officials.

³⁸ Procurement Division "Leveraged Procurement Agreements (LPAs) *California Department of General Services* Accessed on April 5, 2018. <<http://www.dgs.ca.gov/pd/Programs/Leveraged.aspx>>

³⁹ Money Matters "Centralized & Decentralized Purchase: Suitability, Merits and Detriments" 2018.

⁴⁰ Interview with City Finance Officials.

⁴¹ Ibid.

⁴² Clifford McCue, Jack Pitzer "Centralized vs. Decentralized Purchasing: Current Trends in Governmental Procurement Practices" 2000.

⁴³ Ibid.

knowledge over the course of their careers, knowledge which enables them to access lower prices through hidden markets.⁴⁴

Cooperative Purchasing Solutions

In the course of its investigation, the Grand Jury learned that each City could adopt three practices which would improve its decentralized purchasing system without increasing staffing and operations costs: (1) utilizing piggybacking to access pre-negotiated contracts, (2) collaborating with other Cities to purchase goods through the use of cooperative purchasing agreements, and (3) collaborating with San Mateo County's Procurement Division to negotiate lower prices for common goods and services.

1. Utilize Piggyback Contracts

Piggybacking on pre-negotiated contracts with favorable pricing allows Cities to benefit from those terms without changing their purchasing practices. Per the California Association of Public Procurement Officials, Piggybacking (a "Piggyback Cooperative") is:

A form of intergovernmental cooperative purchasing in which an entity will be extended the same pricing and terms of a contract entered by another entity. Generally, the originating entity will competitively award a contract that will include language allowing for other entities to utilize the contract, which may be to their advantage in terms of pricing, **thereby gaining economies of scale that they would otherwise not receive if they competed on their own** (Emphasis added).⁴⁵

Piggyback contracts are widely used by public entities in California and nationwide.⁴⁶ Piggyback contracts can be to the benefit of both the vendor and the public entity that negotiated the original cost (the originating entity), as well as any other public entities that ultimately utilize the contract (piggybacking entities). Benefits can accrue to the vendor by increasing the potential volume of sales under the agreement, which results in increased product sales.

The Grand Jury's investigation revealed that although some Cities have used piggyback contracts in the past, the practice is currently underutilized.⁴⁷ In fact, the Grand Jury found during its interviews that City employees at the departmental level were generally unaware of: (a) the existence of piggyback contracts, (b) the possible cost savings from piggyback contracts, (c) the numerous piggyback contract databases, and (d) how to use a piggyback contract in a decentralized purchasing system.

When asked why they did not make greater use of piggyback contracts, officials from seven of the Cities expressed concerns about compatibility with their City's legal

⁴⁴ Interview with City Finance Officials.

⁴⁵ Principles and Practices of Public Procurement "Use of Cooperative Contracts for Public Procurement" *California Association of Public Procurement Officials* (2017) 1.

⁴⁶ Interviews with City Finance Officials.

⁴⁷ Interviews with City Finance Officials.

requirements.⁴⁸ They also expressed concern that the time necessary to train department-level employees to use piggyback contracts and, subsequently, the time spent selecting the best contract, would be costlier than potential savings. Those officials were also concerned that existing piggyback contracts would not reflect their city's purchasing policies, such as environmental and local purchasing preference requirements.⁴⁹

While these concerns are legitimate, approaches to piggyback contracting, such as the one illustrated below, are available:

- The City's Finance Office identifies the most commonly purchased goods and services across all city departments.
- The City Finance Office, in conjunction with city attorneys, searches piggyback contract databases for compatible contracts on the most common goods and services and evaluates whether such contracts would follow the city's purchase preference requirements.
- Once compatible contracts have been identified and confirmed with vendors, the City Finance Office disseminates an internal list of preferred vendors for the specific goods and services covered by these contracts, in accordance with the municipality's preferred vendor requirements.
- Individual city departments conduct normal purchasing activities, using the list of preferred vendors when applicable.

2. Utilize Cooperative Purchasing Agreements

The Cities generally provide comparable services to residents using similar resources and procedures.⁵⁰ Accordingly, they often purchase nearly identical goods and services. Yet, by purchasing common goods and services individually, each city can only leverage its own market power to negotiate lower prices. Were the Cities to collaborate with one another in their purchases of common goods and services, they would increase their purchasing power and facilitate the negotiation of lower prices.

Cooperative purchasing agreements, in which multiple public entities collaborate in purchasing to increase their market power, are not new to the Cities.⁵¹ They have successfully achieved significant cost savings in the past through cooperative purchasing agreements. Most notably, in 2015, all of the Cities, together with the County, jointly entered into a cooperative purchasing agreement with Turbo Data Systems Inc. for common parking ticket citation and adjudication services. In this arrangement, the Cities paid the County to hire a consultant, issue a request for proposal (an RFP), and evaluate the responses with a committee consisting of representatives from Belmont, Burlingame, Daly City, San Mateo, and South San Francisco.⁵² This committee, on behalf of all member agencies, selected Turbo Data Systems as the best candidate.

⁴⁸ Interviews with City Finance Officials.

⁴⁹ Interviews with City Finance Officials.

⁵⁰ Interviews with City Finance Officials.

⁵¹ Interviews with City Finance Officials.

⁵² Grand Jury Review of City Procurement Documents.

By utilizing a collaborative purchase agreement when selecting Turbo Data systems, Cities realized an estimated savings approaching 35 to 40 percent of original costs.⁵³ Before negotiations, Turbo Data charged processing fees of \$1.28 for electronic citations and \$1.35 for hand-written citations. These rates were lowered to \$0.50 and \$0.80 for electronic and hand-written citations, respectively.⁵⁴ Based on the number of citations issued, the County saved approximately \$17,000 per year under the new agreement. A city's approximate savings varied with the number of citations but were consistent with the County's rates. For smaller cities which lacked the market power to achieve the pre-contract rates achieved by the County, savings exceeded 45 percent.⁵⁵

Moreover, by paying a nominal sum to San Mateo County to conduct the RFP process, cities were able to produce a superior RFP at a significantly lower cost than had each city issued its own request.⁵⁶

The Turbo Data Systems cooperative purchasing agreement serves as model of what these agreements can achieve. When asked why they did not make greater use of cooperative purchasing agreements, City officials responded that they had difficulty identifying goods and services to collaboratively purchase. They attributed this difficulty to the limited communication channels among city finance officers and the deprioritization of the purchasing function in finance departments.⁵⁷ For instance, while the San Mateo County Finance Officer Group (SAMFOG), which consists of all City finance officials, meets on a bimonthly basis, procurement is rarely discussed. Despite these difficulties, city officials recognized that cooperative purchasing agreements have earned Cities significant savings.

To help expand the use of cooperative purchasing agreements, the Grand Jury asked city officials to identify commonalities between goods and services that could be purchased cooperatively. Finance officials reported that goods and services best suited for cooperative purchase are:

- Common: products which are purchased by multiple or all Cities
- Homogeneous Products that are substantially similar
- Discrete: Products that are measurable in individual units such that they can be individually purchased
- Foreseeable: Products whose purchase can be predicted, allowing the Cities time to negotiate and prepare a cooperative purchasing agreement

3. Collaborate with the County's Purchasing Division

The highest potential for cost savings, while maintaining the Cities' decentralized purchasing systems, can be achieved through collaboration with the County of San Mateo (City-County

⁵³ Grand Jury Review of City Procurement Documents.

⁵⁴ Ibid.

⁵⁵ Grand Jury Review of City Procurement Documents.

⁵⁶ Interviews with City Finance Officials.

⁵⁷ Interviews with City Finance Officials.

Procurement Cooperation or C-CPC).

Unlike the Cities, the County maintains a hybrid centralized/decentralized purchasing system, which includes a dedicated procurement division. Under the County's system, the County of San Mateo's Procurement Division (PD) is generally responsible for purchases of goods that are greater than \$5,000, while individual departments retain responsibility for smaller purchases.⁵⁸ The PD employs a staff of specialized buyers to fulfill its purchasing functions. In FY 2015-2016, the County spent more than \$300 million on goods and services.⁵⁹

Collaborating with the County's Procurement Department (PD) provides a unique opportunity for C-CPC to maximize cost savings for all parties.

As described above, specialized purchasing agents in centralized purchasing departments have the training, experience, and resources to identify superior vendors and negotiate lower prices using their entity's market power. Were the Cities to collaborate with the PD in their purchases of common goods and services, they could increase their purchasing power and thereby facilitate even greater savings than from their own intercity cooperative purchasing agreements.

This example demonstrates one way the Cities could collaborate with the PD:

- The PD coordinates with City finance officers to identify the common goods and services used by participating entities.
- The PD competitively negotiates and awards contracts for those goods and services that allow for the Cities to piggyback on the contract.
- During negotiations, PD purchasing agents implement volume-discounting, such that the participation of any of the Cities thereafter unlocks lower prices for all parties.
- Once the PD finalizes these contracts, City finance officers disseminate internal lists of preferred vendors under these agreements, in accordance with the Cities' preferred vendor requirements, to their respective departments.
- To minimize impact on City employees, and thereby increase transition costs, authorized city employees should be able to buy goods and services in a method similar to their current systems.

For instance, buyers would search the County Purchasing System for the desired goods, generate a purchase order through the system, and that pending order would be sent to the appropriate city purchasing authority for review and approval.

Upon approval, the County Purchasing System executes the order, sending it to the vendor. The County Purchasing System also tallies the order for discounts, recording and reporting to the City the initial savings from negotiated prices and additional volume discounts.

⁵⁸ Interview with County Finance Officials.

⁵⁹ San Mateo County Civil Grand Jury, "San Mateo County Procurement Division Recommendations Follow-Up" (2017) 2.

The Cities and County can implement these processes, without substantially changing their existing procurement processes.⁶⁰ City finance departments already create preferred vendor lists and disseminate them to departments. The PD's purchasing agents already conduct negotiations with vendors to unlock volume-based discounts. Indeed, the increased cost savings are unlocked by combining preexisting and previously independent operations as to maximize the negotiating power of all parties involved.

Given that the Cities and the County spend over \$725 million per year, and assuming only a 1 percent average cost saving, for example, municipalities in San Mateo County would save upwards of \$7 million. In a review of the federal government's Strategic Sourcing,⁶¹ the Government Accountability Office found that, "when strategic sourcing was used, annual savings was along the lines of 5-20 percent."⁶² While the mechanisms by which federal government's Strategic Sourcing achieved savings is equivalent to C-CPC, Strategic Sourcing's larger scale means C-CPC is unlikely to achieve 20 percent savings. The Grand Jury estimates that a 5-15 percent annual savings spread is achievable through C-CPC.

When the 5-15 percent annual average savings spread is applied to C-CPC, projected savings are between \$15 million and \$45 million for the County and \$21.25 million and \$63.75 million for the Cities, for a total savings of \$108.75 million.

There is precedent for C-CPC within the County and throughout California. As previously discussed, the Cities and the County have already achieved significant savings through cooperatively purchased goods and services. Because of this cooperation, the Cities and the County are familiar with cooperative purchasing agreements and piggyback contracts. As such, C-CPC would not be introducing new purchasing methods, but rather be introducing a formal mechanism by which the Cities and County could expand and formalize the use of cooperative purchasing practices to achieve greater savings.

Other counties and the State of California have successfully adopted similar C-CPC practices. For instance, in 1999 Los Angeles County created a cooperative purchasing program with the cities with its jurisdiction for the purchase of recycled paper goods.⁶³ Under this program, cities could join Los Angeles County in purchasing recycled paper such that participating entities benefitted from greater purchasing power. Per the Los Angeles County Procurement Program website, 26 cities participate in the program, with the City of Los Angeles and County of Los Angeles alone saving \$84,000 and \$40,000 per year, respectively.⁶⁴ Similarly, Alameda County uses cooperative purchasing with cities to achieve its Strategic Vision for environmental

⁶⁰ Interviews with City Finance Officials.

⁶¹ Strategic Sourcing is the term for cooperative purchasing between federal agencies overseen by the Office of Federal Procurement Policy.

⁶² Charles Clark, "Government Doesn't use Bulk-Purchasing Initiative Enough, Auditors Say" *Government Executive* October 4, 2014. Accessed On: May 15, 2018. <<https://www.govexec.com/contracting/2012/10/government-doesnt-use-bulk-purchasing-initiative-enough-auditors-say/58590/>>

⁶³ Department of Public Works "Los Angeles County Procurement Programs" *The County of Los Angeles* Accessed on April 20, 2018 <https://dpw.lacounty.gov/epd/awards/procurement.cfm>.

⁶⁴ Ibid.

sustainability and economic growth.⁶⁵ Specifically, Alameda County invites public entities within its jurisdiction to piggyback on green contracts, in order to achieve lower prices, defray the higher costs associated with sustainable materials, and promote environmental sustainability among public agencies.⁶⁶ To facilitate this C-CPC, Alameda County opens its Procurement Department and Contracts Team to support and facilitate local public agencies piggybacking on sustainable contracts.⁶⁷ While both Los Angeles County and Alameda County leveraged cooperative purchasing to achieve environmental objectives, the success of these programs underscores the effectiveness of City-County Procurement Cooperation for achieving cost savings.

However, there are barriers to collaboration between the Cities and the County. The Grand Jury has already issued three reports (in 2004, 2015, and 2017), identifying dysfunction within the County's procurement system. Among other issues, the 2016-2017 Grand Jury identified that the PD's subordination to a Deputy Director of Human Resources, is inconsistent with best practices set forth by the Institute for Public Procurement and the California Association of Public Procurement Officials and inconsistent with the operational practices of 45 California Counties.⁶⁸ The 2016-2017 Civil Grand Jury concluded that the Procurement Division manager lacked sufficient independent authority to implement the changes necessary to improve County procurement. Moreover, as of the date of this writing, the County's Procurement Division manager position is vacant with the County's most recent director having left for employment with another public entity.

While the PD is not functioning well now, the County can take steps to improve the PD's function. Revising the County's purchasing process to allow effective cooperation between the Cities and the County will not only grant access to aforementioned savings, but also lower current operational costs. To that end, the Grand Jury has identified nine checkpoints along the pathway toward City-County Procurement Cooperation. The first three checkpoints are steps the County can take to prepare for C-CPC. The remaining checkpoints are actions the PD needs to take in order to implement C-CPC.

⁶⁵ "Strategic Vision 2026" *The County of Alameda*, Accessed on April 20, 2018
<http://www.acgov.org/government/strategic.htm>.

⁶⁶ "Piggybacking" *The County of Alameda*, Accessed on: April 20, 2018
<https://www.acgov.org/sustain/what/purchasing/bids/piggyback.htm>.

⁶⁷ Stop Waste "Piggybacking for Green Purchasing" *The County of Alameda*, Accessed on: April 20, 2018
<https://www.acgov.org/sustain/documents/PiggybackingResources.pdf>.

⁶⁸ San Mateo County Civil Grand Jury, "San Mateo County Procurement Division Recommendations Follow-Up": 5-6.

Checkpoints on the Pathway toward City-County Procurement Cooperation

- 1. Move the PD into an Appropriate Department** Per the CAPPO, “the placement of the procurement (division) should be operationally distinct from other departments and divisions within the entity.”⁶⁹

When subordinate to another department, procurement lacks the authority and credibility to effectively regulate the entity’s procurement system and/or effectively negotiate with vendors.

“In the Grand Jury’s opinion, these bureaucratic layers reduce the authority and effectiveness of the procurement function.”⁷⁰

The PD would be more appropriately located as a direct report to the County Manager.⁷¹
- 2. Hire Experienced Buyers** Implementation of C-CPC requires the PD to be staffed with buyers who have procurement management experience.

Procurement management experience is essential for (a) implementing structural changes required for C-CPC, (b) managing current PD buyers, and (c) negotiating deep discounts with vendors.
- 3. Develop and Insert Piggyback Language into County Contracts** Piggyback contracts are the vehicles through which the Cities and the County can combine their purchasing power, gain access to deep discounts, and save millions of dollars.

The PD must develop and insert piggyback language into procurement contracts where applicable.
- 4. Create and Distribute to the Cities a Register of Open Contracts** For the Cities to piggyback on the County’s contracts, the Cities must first be aware of available contracts.

⁶⁹ “Use of Cooperative Contracts for Public Procurement” *California Association of Public Procurement Officials* (2017): 1.

⁷⁰ *Ibid.* 5.

⁷¹ *Ibid.* 8.

The PD should create and distribute to city finance officers a searchable register of open contracts, including:

- the goods and services
- the terms and conditions
- the vendor
- other pertinent information

5. Identify the Goods and Services with the Highest Potential Savings in Conjunction with the Cities.

To focus the PD’s efforts and secure the greatest savings for the Cities and the County, the PD needs to identify the goods and services with the highest potential savings.

To this end, the PD should survey the Cities to identify (a) the most commonly purchased category and classes of goods and services and (b) the goods and service with the highest potential discounts.

6. Ensure County Purchasing Software Can Track Key Indicators

Volume discounts on goods and services are predominately earned through “steps” (e.g., the first 100 purchases are discounted at 10 percent, purchases 101-200 are discounted at 15 percent, and purchases 200+ are discounted at 20 percent.

To achieve discounts, purchasing software must be able to track key indicators. These indicators include:

- Purchases, by vendor
- Purchases, by category
- Purchases, by date
- Purchases, by buyer
- Vendor Performance

The PD should ensure their current procurement system can track these performance indicators.

7. Ensure County Purchasing Software Can Accommodate City Purchases

To effectively track purchases such that the County can accurately distribute rebates to the Cities, the PD must track the number and variety of purchases by City.

Operational costs can be minimized by allowing City employees to place purchase orders to vendors through the PD procurement system.

The PD should ensure their current procurement system can accommodate this purchasing arrangement.

8. Negotiate Discounted Contracts for those Goods and Services

City participation in C-CPC requires County negotiated contracts to offer a better deal than the Cities could achieve on their own.

Once the goods and services with the highest potential for savings have been identified, the PD’s buyers should negotiate leveraged contract with vendors, achieving maximum savings through discounting.

9. Distribute and Report Discounts to the Cities on a Consistent Basis

In a volume-based discount contract, discounts are based on the total sales in a given accounting period. Often, discounts take the form of a rebate; however, the exact specifications will depend on the product and the contract.

The PD should develop the tools to effectively report and distribute discounts to cities.

While implementing the changes necessary to allow C-CPC will come at a cost, the benefits accrued from crossing these checkpoints will go to great lengths to address the current “dysfunction” in the PD, in addition to the potential savings from C-CPC.⁷² The County’s Purchasing Compliance Committee identified in “Purchasing Redesign Report, Procurement of Goods” 48 deviations from best practices and issued 84 recommendations for improving the County’s procurement process. Notable findings included:

1. “It is unclear who is supposed to monitor the purchasing process.”⁷³
2. “Departments and Purchasing Unit staff sometimes go around purchasing procedures but there is no way to know when this happens; when it is discovered there is no follow up or action taken and is not clear who should take that action or when.”⁷⁴
3. “Staff often do not know that processes, rules, and regulations exist.”⁷⁵
4. “Written documents such as handbooks, reference tools and other materials have not been updated, sometimes for more than 10 years”⁷⁶
5. “There are no methods to monitor if the County is receiving the best value or if purchases are consistent from one department to another (maybe one department is paying more than another for the same item).”⁷⁷
6. “There is no system in place to know if/when current processes either save the County money or lose money.”⁷⁸
7. “No data is collected and used to monitor performance of the overall purchasing process.”⁷⁹
8. “We have no way of knowing if we are being fiscally responsible.”⁸⁰

⁷² San Mateo County Civil Grand Jury, “San Mateo County Procurement Division Recommendations Follow-Up”: 4.

⁷³ Ibid. 18.

⁷⁴ Ibid. 18.

⁷⁵ Ibid. 18.

⁷⁶ Ibid. 20.

⁷⁷ Ibid. 19.

⁷⁸ Ibid. 19.

⁷⁹ Ibid. 20.

⁸⁰ Ibid. 19.

From the Grand Jury's prior reports and the County's Purchasing Compliance Committee's report, it is eminently clear that the Purchasing Division requires significant reform. The Grand Jury recommends that the County develop and study a plan to achieve the Checkpoints on the Pathway towards City-County Procurement Cooperation within current plans to improve the Purchasing Division.

The Grand Jury recognizes that the implementation of C-CPC will require upfront investment by the County before significant savings can be achieved. To the extent the County determines the cost of implementing this plan would result in greater cost to the County not recouped by cost savings, the County could propose a cost sharing fee for those Cities accessing the collective purchasing program. City officials expressed pleasure with the RFP cost sharing arrangement for the Turbo Data Systems contract and expressed willingness to participate in cost sharing arrangements when those contracts would allow their city to access greater savings.

As the County continues to improve the PD, beginning with a Controller's Office Audit to be completed by December 31, 2018,⁸¹ achieving these nine checkpoints may unlock C-CPC and tens of millions of dollars in potential savings each year.

FINDINGS

- F1. All 20 of the cities in the County purchase goods and services through decentralized purchasing systems.
- F2. Decentralized purchasing systems successfully allow the Cities to procure goods and services at fair market prices while minimizing labor costs.
- F3. The creation of a centralized purchasing department to provide the organization with advanced procurement services and guidance can be cost prohibitive.
- F4. While city employees receive training on municipal purchasing guidelines and policies, many employees who conduct purchasing operations as a secondary responsibility are not trained or instructed to negotiate optimum prices by leveraging market power.
- F5. City employees who conduct purchasing operations as a secondary responsibility often do not identify commonly purchased goods that other departments also purchase and so miss the opportunity to negotiate lower costs which could be obtained by purchasing the items in bulk for multiple departments.
- F6. Cooperative purchasing practices allow multiple public entities to collaboratively purchase goods and services, thereby gaining economies of scale that they would otherwise not have.
- F7. Cooperative purchasing practices are compatible with decentralized purchasing systems and can allow the Cities to leverage their collective market power, without changing existing purchasing systems.

⁸¹ Ibid. 27.

- F8. Adoption of cooperative purchasing practices, including piggyback agreements and cooperative purchasing agreements, can enable all Cities to obtain lower prices on goods and services.
- F9. Each city has limited communications with each other regarding procurement best practices, shared purchasing challenges, and purchasing solutions.
- F10. The County of San Mateo's Procurement Division is the only remaining public centralized purchasing department at the City and County level within San Mateo County.
- F11. Collaboration between the Cities and the Procurement Division through cooperative purchasing practices could achieve significant cost savings for both the Cities and the County.
- F12. The Procurement Division presently lacks the operational capacity to fully collaborate with the Cities.
- F13. There are no formal channels for communication between the County and the Cities regarding procurement cooperation opportunities.

RECOMMENDATIONS

The 2017-2018 San Mateo County Civil Grand Jury recommends that each City undertake the following by no later than February 1, 2019:

- R1. Increase the use of cooperative purchasing practices, including piggyback contracts and joint procurement agreements.
- R2. Share with other Cities and the County Procurement Division their procurement needs in order to identify opportunities for cooperative procurements between the Cities and the County.

The 2017-2018 San Mateo County Civil Grand Jury recommends that the County of San Mateo do the following by no later than February 1, 2019:

- R3. Increase the use of cooperative purchasing practices, including the development and insertion of piggyback language into County contracts, with the Cities.
- R4. Share with the Cities the County's procurement needs to identify opportunities for further cooperative purchasing.
- R5. Relocate the County's Procurement Division into an appropriate reporting structure, such that the Procurement Division shall report directly to the County Manager.

The 2017-2018 San Mateo County Civil Grand Jury recommends that the County of San Mateo do the following by no later than July 1, 2019.

- R6. Develop and study a plan to achieve the Checkpoints on the Pathway towards City-County Procurement Cooperation within current plans to improve the Purchasing Division, including:
- a. Hire experienced buyers.
 - b. Create and distribute to the Cities a register of open contracts.
 - c. Ensure the County's purchasing software can track key indicators.
 - d. Ensure the County's purchasing software can accommodate city purchases.
 - e. Identify, in conjunction with the Cities, the goods and services with the highest potential savings.
 - f. Negotiate discounted contracts for those goods and services.
 - g. Distribute and report discounts to the Cities on a consistent basis.

REQUESTS FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests the following to respond to the foregoing Findings and Recommendations referring in each instance to the number thereof:

- The City Councils of The Town of Atherton, the City of Belmont, the City of Brisbane, the City of Burlingame, the Town of Colma, the City of Daly City, the City of East Palo Alto, the City of Foster City, the City of Half Moon Bay, the Town of Hillsborough, the City of Menlo Park, the City of Millbrae, the City of Pacifica, the Town of Portola Valley, the City of Redwood City, the City of San Bruno, the City of San Carlos, the City of San Mateo, the City of South San Francisco, and the Town of Woodside to respond no later than 90 days after the date of this Grand Jury Report.
- San Mateo County Board of Supervisors to respond no later than 90 days after the date of this Grand Jury Report.

Each City Council and the County Board of Supervisors should respond to the findings and recommendations with respect to their own policies, procedures, and operations, not in regards to the Cities and the County as a whole.

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown Act.

METHODOLOGY

Documents

The Grand Jury reviewed the following documents:

- Purchasing Policy Manuals or equivalent documents from: the Town of Atherton, the City of Belmont, the City of Brisbane, the City of Burlingame, the Town of Colma, the City of Daly City, the City of East Palo Alto, the City of Foster City, the City of Half

Moon Bay, the Town of Hillsborough, the City of Menlo Park, the City of Millbrae, the City of Pacifica, the Town of Portola Valley, the City of Redwood City, the City of San Bruno, the City of San Carlos, the City of San Mateo, the City of South San Francisco, and the Town of Woodside.

- The California Association of Public Procurement Officials, Inc.:
Best Practices: Global Procurement Best Practices
- The Turbo Data Contract between San Mateo County and Turbo Data Systems Inc.
- Memo to the Burlingame City Council: Turbo Data Contract Recommendation
- Memo to the San Mateo County Board of Supervisors: Turbo Data Contract Recommendation

Interviews

- The Grand Jury conducted interviews with City Procurement Officers, City Management, County Procurement Officers, and County Management.

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Issued: July 19, 2018



STAFF REPORT

City Council

Meeting Date: 8/28/2018
Staff Report Number: 18-164-CC

Consent Calendar: Adopt Resolution No. 6456 authorizing the Bay Area Water Supply and Conservation Agency to negotiate with the City and County of San Francisco to amend the water supply agreement

Recommendation

Staff recommends that the City Council adopt Resolution No. 6456 authorizing the Bay Area Water Supply and Conservation Agency (BAWSCA) to negotiate with the City and County of San Francisco (San Francisco) to amend the water supply agreement.

Policy Issues

In 1952, the City of Menlo Park (City) formed Menlo Park Municipal Water (MPMW) as a self-supporting City enterprise. The role of MPMW was defined as the entity responsible for the purchase and sale of water and for controlling the construction, operation and maintenance of the water system (Municipal Code Section 2.48.010.) Since its creation, MPMW has purchased water from the City and County of San Francisco to serve properties located in its service area. The terms of the purchase are part of a Water Supply Agreement (WSA) between the City and County of San Francisco and its wholesale customers, including Menlo Park, which was most recently approved in 2009. The term of the WSA is 25 years; however, amendments have been made since 2009 and more are currently being proposed.

Background

The City and County of San Francisco's Regional Water System provides 100 percent of the water purchased by MPMW. Water is transported from the Hetch-Hetchy Valley in Yosemite National Park through a network of reservoirs, pipelines and pumping stations to the Bay Area and remains one of the purest urban water supplies in the United States. The Hetch-Hetchy system is managed and operated by the San Francisco Public Utilities Commission (SFPUC.) Entitlements for the Hetch-Hetchy system date back almost a century and were granted to the City and County of San Francisco through Federal legislation known as the Raker Act in 1913.

The City is a member of BAWSCA which was created by the state Legislature to represent the collective interests of the 27 agencies, commonly referred to as the "wholesale customers," that purchase water from the SFPUC regional water system. Before the formation of BAWSCA, the wholesale customers were represented by an organization called Bay Area Water Users Association (BAWUA.) In 1984, these agencies joined together to negotiate a "settlement agreement and master water sales contract" with the City and County of San Francisco for the delivery of water from the Hetch-Hetchy system. The 1984 contract settled a Federal lawsuit brought on behalf of the wholesale customers challenging the legality of water rates charged by San Francisco. Since then, BAWSCA and its predecessor BAWUA have overseen the San Francisco contract on behalf of its member agencies. The City has a seat on the BAWSCA board which is filled by a member of the City Council.

The 1984 contract with San Francisco expired June 30, 2009. On September 19, 2006, the City Council adopted a resolution authorizing BAWSCA to negotiate a master water contract with San Francisco. All of the other BAWSCA agencies also adopted similar resolutions. On May 19, 2009, the City Council approved the 2009 contract. In the spring of 2013, the City approved amendment No. 1 of the WSA, which prohibited changes to Hetch-Hetchy reservoir unless there is an amendment to the WSA. In 2014, the City delegated authority to BAWSCA to initiate, defend and settle arbitration related to the WSA.

Analysis

Proposed WSA amendments

At this time, some sections of the WSA require amendment to address substantive and important issues that have arisen during its implementation; however, these amendments do not diverge from the existing policies and spirit of the original document. Many of the contemplated amendments fall within the authority delegated to BAWSCA in the WSA. Through initial discussions, the amendments have been narrowed to eight discrete items. Since one potential amendment addresses the allocation of water during a drought and another the extension of the decision related to San Jose and Santa Clara, BAWSCA has requested the BAWSCA member agencies to obtain authorization for BAWSCA to negotiate on their behalf. Any final amendments must still be approved by the member agencies.

The following amendments are of interest to San Francisco

- Process for reviewing the wholesale capital fund
- Wholesale debt-coverage ratio for the rate-setting process
- Extension of the Water System Improvement Program completion date
- Description of the Regional Groundwater Storage and Recovery Project that is being built by San Francisco as part of the Water System Improvement Program

Additionally, the following four items are of interest to BAWSCA

- BAWSCA's oversight role over SFPUC's 10-year Capital Improvement Program
- Establishment of a procedure to divide available water between the SFPUC and its wholesale customers during droughts
- Extension of the deadline for a decision by San Francisco to make San Jose and Santa Clara permanent customers of the Regional Water System and extend increased water supply to the other permanent wholesale customers
- Resolution of disputed SFPUC Regional Water System asset classifications

Scope of authority to negotiate

When the 1984 master contract and settlement agreement (1984 agreement) was negotiated, there was no durable, representative organization that could delegate the responsibility to act as the agent for contract administration on behalf of the wholesale customers. BAWSCA's predecessor, BAWUA, was an unincorporated association governed entirely by city and water agency staff. For that reason, the 1984 agreement provided for initiation of arbitration as well as a variety of administrative decisions to be made by five "suburban representatives" -- agencies to be chosen by all BAWUA members or, absent a selection, the five largest agencies. Annually, through the term of the 1984 agreement, the suburban representatives were required to make such administrative decisions and, several times, to initiate arbitration.

With BAWSCA's formation in 2002 and the adoption of the new WSA in 2009, the wholesale customers now have an agency in place that can attend to the many technical but important matters related to the contract administration, which continue to require oversight and decision each year. The WSA specifically assigned a number of administrative tasks to BAWSCA, most of which were previously handled by the suburban representatives.

BAWSCA is requesting that each member agency consider delegating the authority to negotiate with San Francisco to amend the WSA. Any such amendments must be approved by each member agency and by San Francisco. This action was contemplated in Section 8.04(B) of the WSA, which provides "[a] majority of wholesale customers may, without amending this agreement, delegate additional administrative functions to BAWSCA. To be effective, such expanded delegation must be evidenced by resolutions adopted by the governing bodies of a majority of the wholesale customers." The following resolution (Attachment A) facilitates this action. BAWSCA has requested that the delegation of authority be in place by October 1, 2018. BAWSCA plans to complete the negotiations with San Francisco in November 2018. Adoption of the WSA amendments by the SFPUC is anticipated to occur in December 2018, followed by adoption by the member agencies in January 2019.

Impact on City Resources

This action has no impact on the City's 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 proposes an organizational structure change that will not result in any direct or indirect physical change in the environment.

Public Notice

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

Attachments

A. Resolution No. 6456

Report prepared by:
Azalea Mitch, City Engineer

Reviewed by:
Justin Murphy, Public Works Director

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RESOLUTION NO. 6456**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY
TO NEGOTIATE WITH THE CITY AND COUNTY OF SAN FRANCISCO TO AMEND
THE WATER SUPPLY AGREEMENT**

WHEREAS, in April 2003, the City and other water suppliers in Alameda, San Mateo and Santa Clara counties established the Bay Area Water Supply and Conservation Agency (BAWSCA), as authorized by Water Code Section 81300 et seq. pursuant to State legislation enacted in 2002 (AB 2058); and

WHEREAS, the City is represented on the BAWSCA Board of Directors; and

WHEREAS, the City's City Council has previously approved the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County (Agreement); and

WHEREAS, BAWSCA has proposed to serve as the representative of its members in discussions and negotiations with San Francisco leading toward the resolution of a number of discrete, but important amendments to address substantive issues that have arisen during implementation of the Agreement; and

WHEREAS, BAWSCA has the capabilities required to serve in this capacity by virtue of Agency staff and consultants in relevant disciplines including civil engineering, water supply planning, finance, economics, accounting, and law; and

WHEREAS, BAWSCA's CEO/General Manager has met with the City's representatives to update them on the matters at issue in this negotiation.

NOW, THEREFORE BE IT RESOLVED, that the City of Menlo Park, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefore,

1. City appoints BAWSCA as its authorized representative in discussions and negotiations with San Francisco to amend the Agreement to address issues arising from implementation of the Agreement.
2. BAWSCA, through its CEO/General Manager, shall confer with and keep the City informed on the status of these discussions and negotiations.
3. This appointment shall continue unless and until revoked by the City Council.
4. This resolution confers no authority on BAWSCA to enter into a contract with San Francisco or to make any commitments legally binding on the City.
5. The authority to enter into any contracts is expressly reserved to the City Council.

I, Judi A. Herren, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing City Council resolution was duly and regularly passed and adopted at a meeting by said Council on this twenty-eighth day of August, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twenty-eight day of August, 2018.

Judi A. Herren, City Clerk



STAFF REPORT

City Council

Meeting Date: 8/28/2018
Staff Report Number: 18-170-CC

Consent Calendar: Adopt Resolution No. 6458 abandoning 1,470 square feet of public right-of-way adjacent to 815 Bay Road

Recommendation

Staff recommends that the City Council adopt Resolution No. 6458 (Attachment A) abandoning 1,470 square feet of public right-of-way adjacent to 815 Bay Road.

Policy Issues

Summary vacations comprise a two-step process which requires a determination by the Planning Commission, and final action taken by the City Council. There is no public hearing requirement for a summary vacation.

Background

On March 9, 2015, the City received an application for vacation of public right-of-way adjacent to the property at 815 Bay Road. At the time of initial application in 2015, the US-101 interchange project at Willow Road was in preliminary phases. The City instructed the applicant to defer his request for vacation until such time that the impacts of the interchange project could be determined. When the interchange design was finalized and it was determined that the subject area would not be affected, the applicant resubmitted his request for right-of-way vacation September 20, 2017.

The applicant is seeking the vacation of a portion of a 60-foot wide “paper street” of Carlton Avenue. A paper street is a road or street that appears on maps but does not exist in reality. Carlton Avenue was dedicated to the City in April 1926 on the map entitled Newbridge Park recorded in book 14; pages 6 and 7, in the San Mateo County official records (see Attachment B). The dedication granted the City easement rights to use the property as a roadway, however, the underlying ownership of Carlton Avenue belongs to the lot owner. This paper street portion of Carlton Avenue has not been used as a public road since before the construction of the US-101 freeway in the 1930s. Pursuant to the California Subdivision Map Act, the applicant would be entitled to the western 30-foot bisection of former Carlton Avenue (or the area adjacent to 815 Bay Road.) Upon recordation of the vacation, the City would relinquish its easement rights to use the property as a roadway, effectively releasing the property to the owner for his private use. The City would retain the remaining 30-foot eastern span of the parcel (or the area adjacent to the intersection of Bay Road and Van Buren Road.) These limits of vacation are shown in Attachment C and are subject to the summary vacation process described below.

Applicability of summary vacation

Subsection (a) of Section 8334 of the California Streets and Highways Code allows a summary vacation of excess right-of-way not required for street purposes. A summary vacation may be approved when: 1) the street or highway has been impassable for vehicular travel for at least five consecutive years; and, 2) no

public money was expended for maintenance on the street or highway during such period. Because the proposed vacation is comprised of an unimproved or “paper” street, there is no roadway. It is therefore impossible to use for vehicular travel, and has been since the 1930s when the US-101 divided Carlton Avenue. Additionally, because there is no roadway present, there has been no maintenance of a street or highway during the five year period.

Analysis

The area to be vacated is comprised of unimproved landscaping and is not necessary for the functionality of existing public sidewalk and streets. Staff conducted a feasibility study to analyze impacts to potential future street improvements (including the addition of a bike lane and a relocated sidewalk.) Ultimately, the feasibility study determined no adverse effects would result from the vacation, as the vacation would still provide flexibility for public improvements in the future. It should be noted that there are no planned public improvements at the subject location at this time. Additionally, the vacation will alleviate the City from routine maintenance, as the area to be vacated is prone to dumping.

The existing 5,227 square foot lot at 815 Bay Road contains a 4-unit apartment building with uncovered parking (see Attachment D.) The applicant has expressed interest in redeveloping the site with larger units and covered parking for residents. However, the City has not received a formal development proposal at this time. The additional 1,470 square feet would provide an increased lot area and floor area ratio for purposes of potential future on-site development. It would also allow the owner to clean up and maintain the site, to improve its overall appearance.

The City received “no objection” letters from all relevant public utility agencies provided the City reserves a utility easement over the area to be vacated to account for future utilities. The applicant will be strictly prohibited from developing any permanent structures within the vacated area as a result of the utility easement.

Abandonment procedure

Summary vacations require that the Planning Commission review the project for conformance with the General Plan and forward its determination to City Council for final action. On August 13, 2018, the Planning Commission determined that the proposed vacation was consistent with the general plan. Should the City Council consider the abandonment favorably, a resolution ordering the vacation and abandonment of the public right of way will be recorded. Staff recommends that the City Council adopt a resolution to abandon the public right of way.

Impact on City Resources

There is no direct impact on City resources associated with the actions in this staff report. The fee for staff time to review and process the abandonment has been paid by the applicant.

Environmental Review

The summary vacation is Categorical Exempt under Class 15, Section 15305 (Minor Alterations in Land Use Limitations) of the current California Environmental Quality Act (CEQA) guidelines.

Public Notice

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

Attachments

- A. Resolution No. 6458
- B. Subdivision map
- C. Plat map and legal description
- D. Site photos

Report prepared by:
Theresa Avedian, Senior Civil Engineer

Report reviewed by:
Nikki Nagaya, Assistant Public Works Director

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RESOLUTION NO. 6458

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK FOR THE VACATION AND ABANDONMENT OF PUBLIC RIGHT OF WAY ADJACENT TO THE PROPERTY AT 815 BAY ROAD

WHEREAS, on August 13, 2018, the Planning Commission of the City of Menlo Park considered the proposed abandonment adjacent to the property at 815 Bay Road in the City of Menlo Park; and has reported to the City Council that said proposed abandonment conforms with the City's General Plan; and

WHEREAS, the City Council finds that the public convenience and necessity require that a sanitary sewer easement be reserved over the area to be vacated.

WHEREAS, to the City Council of the City of Menlo Park that the Public Right of Way should be abandoned for the reason that it is no longer required for street purposes, and should be returned to the owner for his or her private use; and that the vacation would allow greater flexibility for potential redevelopment.

NOW, THEREFORE BE IT RESOLVED, that the City of Menlo Park, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefore,

1. that said City Council does hereby abandon, to the full extent permitted by law, the Public Right of Way adjacent to the property at 815 Bay Road, described on the legal plats, Exhibit B, attached hereto and by the legal description of said sanitary sewer easement on file in the Engineering Division, and said Exhibits and legal descriptions are incorporated herein and made a part hereof; and
2. that said abandonment is consistent with the General Plan; and
3. that said abandonment is exempt under current California Environmental Quality Act Guidelines.

I, Judi A. Herren, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing City Council resolution was duly and regularly passed and adopted at a meeting by said City Council on this twenty-eighth day of August, 2018, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS THEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twenty-eighth day of August, 2018.

Judi A. Herren, City Clerk

NEWBRIDGE PARK

SAN MATEO COUNTY, CALIFORNIA

Surveyed and Subdivided by Geo. A. Kneese, Civil Engineer and Licensed Land Surveyor.

April - 1926



Scale: - 1 = 100

KNOW ALL MEN BY THESE PRESENTS: That we, J.S. REAR, HAMILTON THATCHER, GEORGE Y. HENDERSON and IDA H. SEVIER, being the sole owners and the only parties whose consent is necessary to pass a clear title to the land hereon delineated, hereby cause and consent to the making and filing of the within map.

J.S. Rear
George Y. Henderson
Hamilton Thatcher
Ida H. Sevier

State of California } s.s.
County of San Mateo }
I, J.S. REAR, being duly sworn, depose and say: That I am one of the owners and make this affidavit of and as my own free will and act as owner.

J.S. Rear
Notary Public in and for the County of San Mateo, State of California

I, J.J. Shields, County Auditor of the County of San Mateo, State of California, hereby certify that there are no liens for unpaid State, County, or other taxes upon the tract of land or any part thereof, as shown on the within map.

Dated June 8 1926.
J.J. Shields
County Auditor

The Board of Trustees of the Town of Atherton, to which the within map was submitted, there being no planning commission, at their regular meeting held on the 17th day of May 1926, duly instructed the clerk of said Board to endorse its of the within map.

Clarence M. Kneese
Clerk of said Board

We, Geo. A. Kneese, County Surveyor, and D.P. Flynn, County Assessor of the County of San Mateo, hereby certify that we have carefully examined each and every lot as delineated on the within map as to its value for residential or commercial purposes, and recommend approval of said map.

Dated May 27th 1926
Geo. A. Kneese
County Surveyor
D.P. Flynn
County Assessor

I, Geo. A. Kneese, Town Engineer of the Town of Atherton, hereby recommend approval of the within map.

Geo. A. Kneese
Town Engineer

State of California } s.s.
County of San Mateo }
On this 27th day of May, 1926, before me, Clarence M. Kneese, a Notary Public in and for the County of San Mateo, State of California, residing therein, duly commissioned and sworn, personally appeared J.S. Rear, known to me to be the person whose name is subscribed to and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Clarence M. Kneese
Notary Public in and for the County of San Mateo, California

Subscribed and sworn to before me, this 27th day of May, 1926.
Clarence M. Kneese
Notary Public in and for the County of San Mateo, State of California

Geo. A. Kneese, being duly sworn, deposes and says that he is the engineer under whose direction this map was made and that said map comprises two sheets, viz: Sheet No. 1, embracing all consents, approvals, certificates and certificates of acknowledgment and Sheet No. 2, embracing the delineation of lots, blocks, streets, etc. and showing monuments as located and existing on the ground.

Subscribed and sworn to before me this 27th day of May 1926.
Geo. A. Kneese
Notary Public in and for the County of San Mateo, State of California

I, Geo. A. Kneese, Civil Engineer, hereby certify that the within map was made from a full, true and correct survey made by me in April 1926 on the ground, of the land embraced on the within map.

Dated June 8th, 1926
Geo. A. Kneese
Civil Engineer

I, Elizabeth M. Kneese, County Clerk and ex-officio clerk of the Board of Supervisors of the County of San Mateo, State of California, hereby certify that the said Board, by resolution passed at their regular meeting held on the 17th day of May 1926, duly approved the within map, and all streets shown hereon, and not heretofore accepted, were accepted and same are thereby declared to be open thoroughfares dedicated to public use.

Dated May 17 1926.
Elizabeth M. Kneese
Ex-officio Clerk of said Board

State of California } s.s.
County of Humboldt }
On this 25th day of May, 1926, before me, L.E. Mahan, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared George Y. Henderson, known to me to be the person whose name is subscribed to the above instrument and he acknowledged to me that he executed the same.

L.E. Mahan
Notary Public in and for the County of Humboldt, State of California

STATE OF CALIFORNIA } s.s.
COUNTY OF SANTA BARBARA }
On this 28th day of May, 1926, before me, Hanna Gruber, a Notary Public in and for the County of Santa Barbara, State of California, residing therein, duly commissioned and sworn, personally appeared Hamilton Thatcher, known to me to be the person whose name is subscribed to the within instrument and he acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

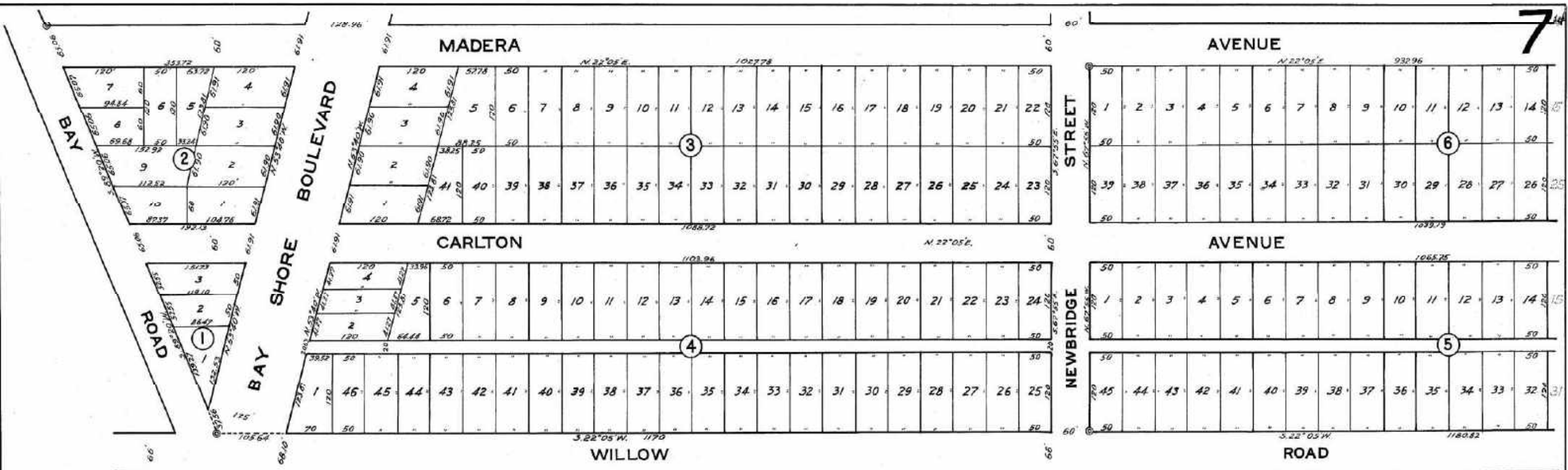
Hanna Gruber
Notary Public in and for the County of Santa Barbara, State of California

STATE OF CALIFORNIA } s.s.
CITY & COUNTY OF SAN FRANCISCO }
On this 25th day of May, 1926, before me, Edna Heaps, a Notary Public in and for the said City and County, residing therein, duly commissioned and sworn, personally appeared Ida H. Sevier, known to me to be the person whose name is subscribed to the within instrument and she acknowledged to me that she executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Edna Heaps
Notary Public in and for the City & County of San Francisco, State of California

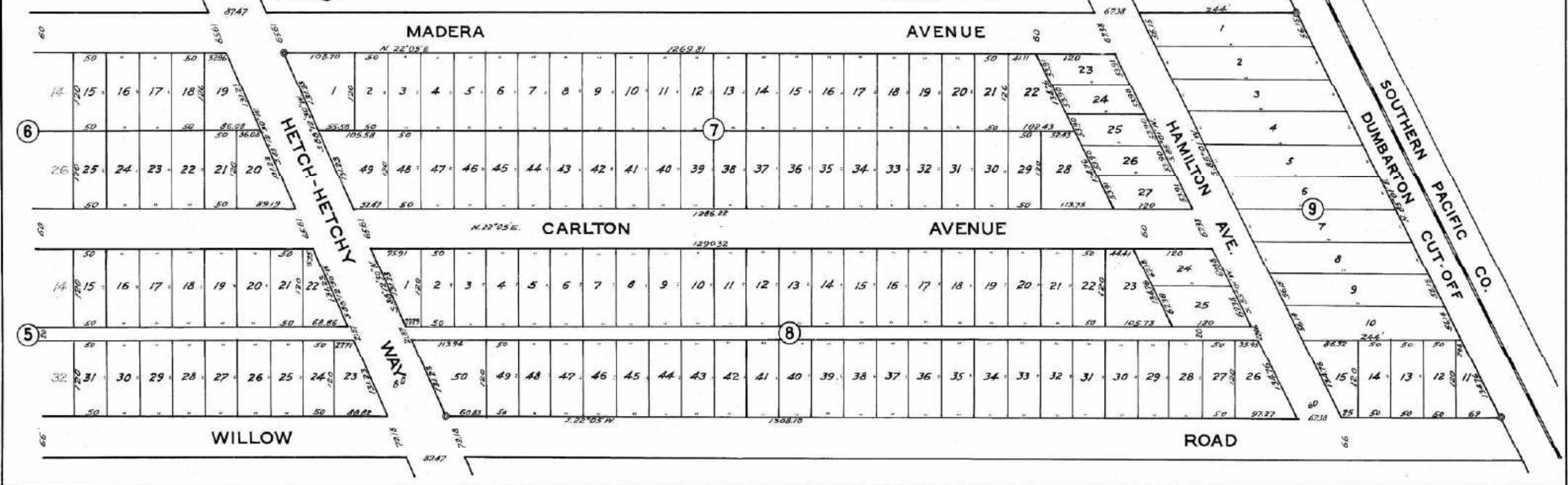
File No. 62105A
Filed for record at the request of E.P. Wilsey on the 10th day of June 1926 at San Mateo past 12 o'clock M. in Vol. 14 of Maps at pages 6 and 7, San Mateo County Records.

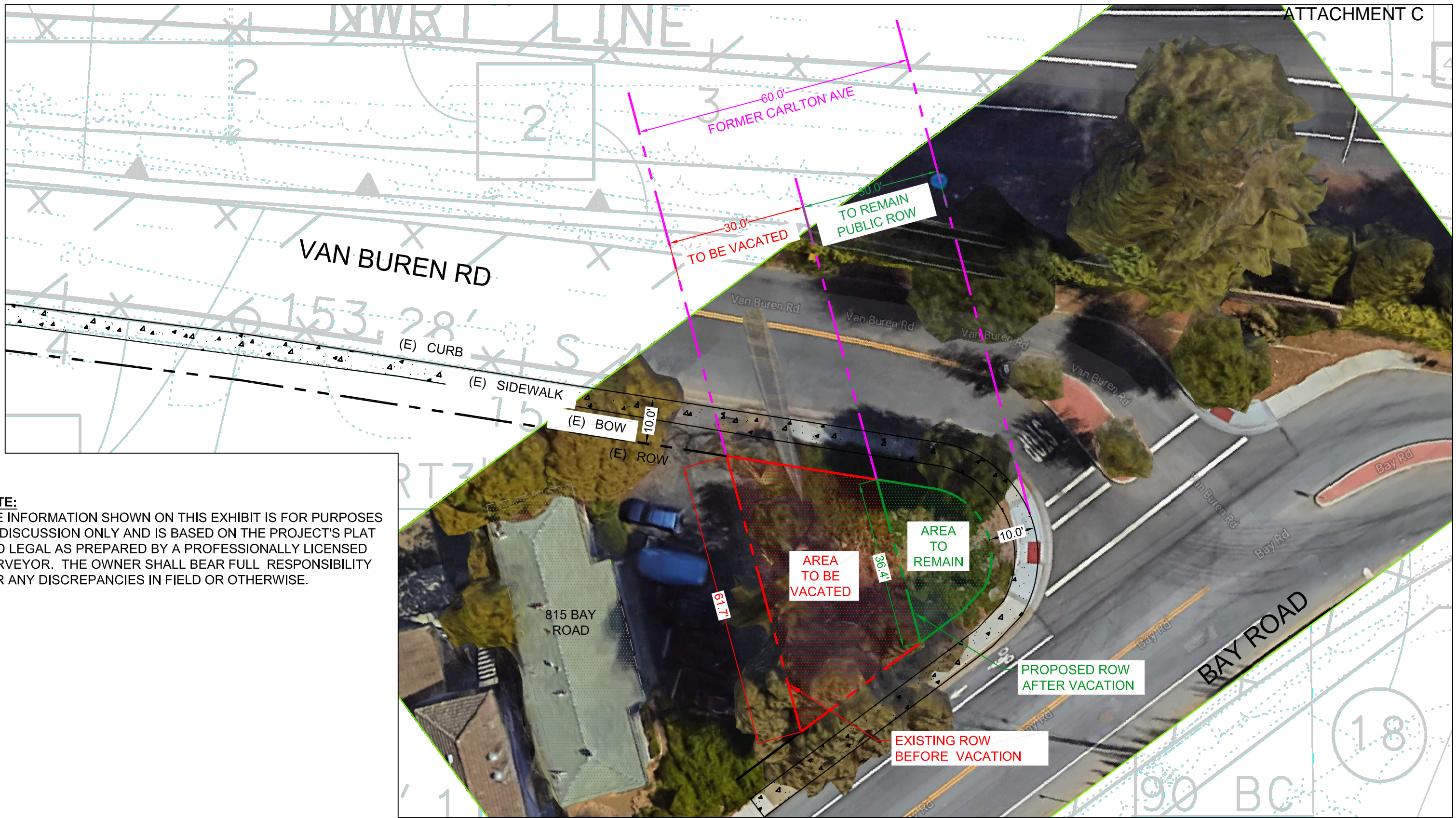
E.P. Wilsey
County Recorder



NEWBRIDGE PARK

SHEET 2 OF 2 SHEETS
SCALE: 1"=100'

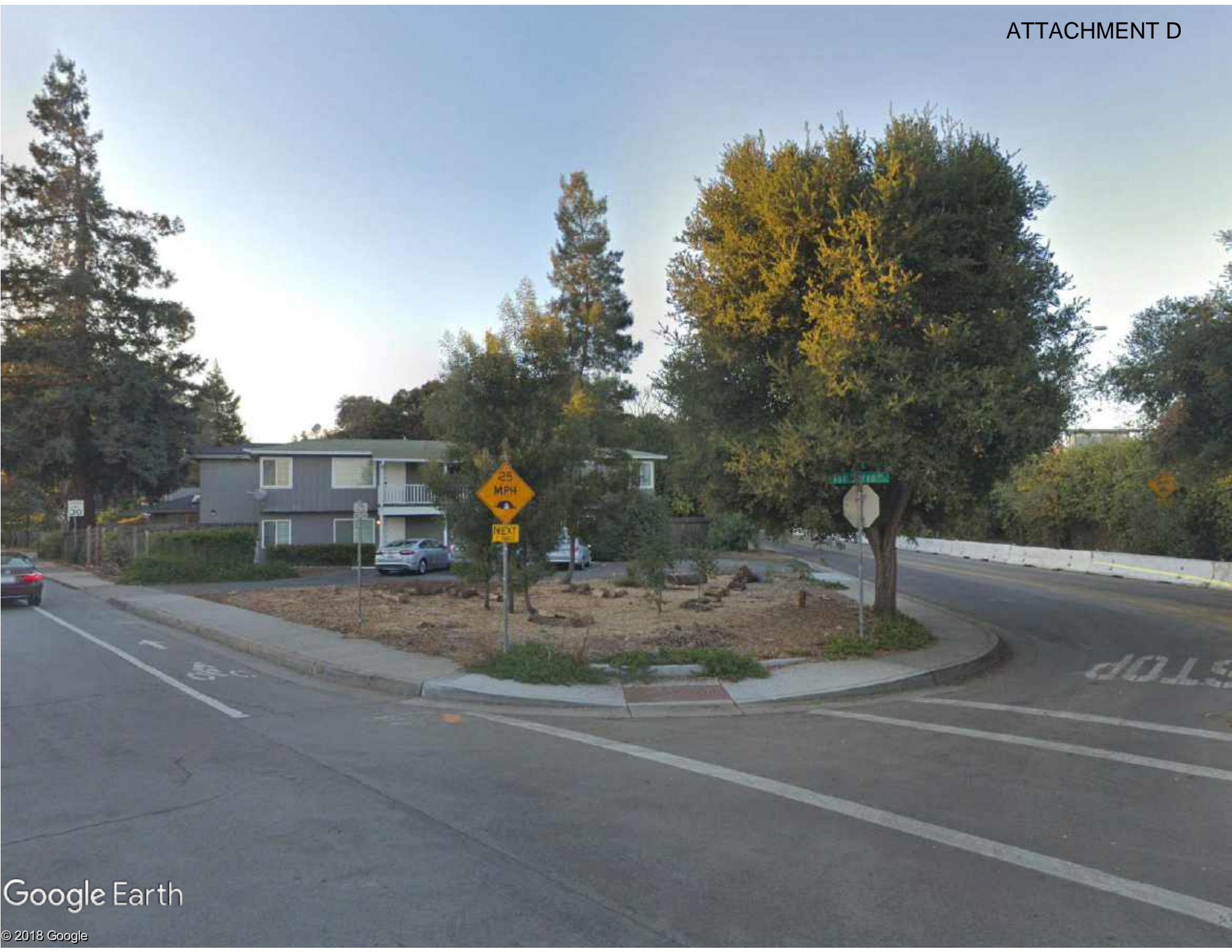


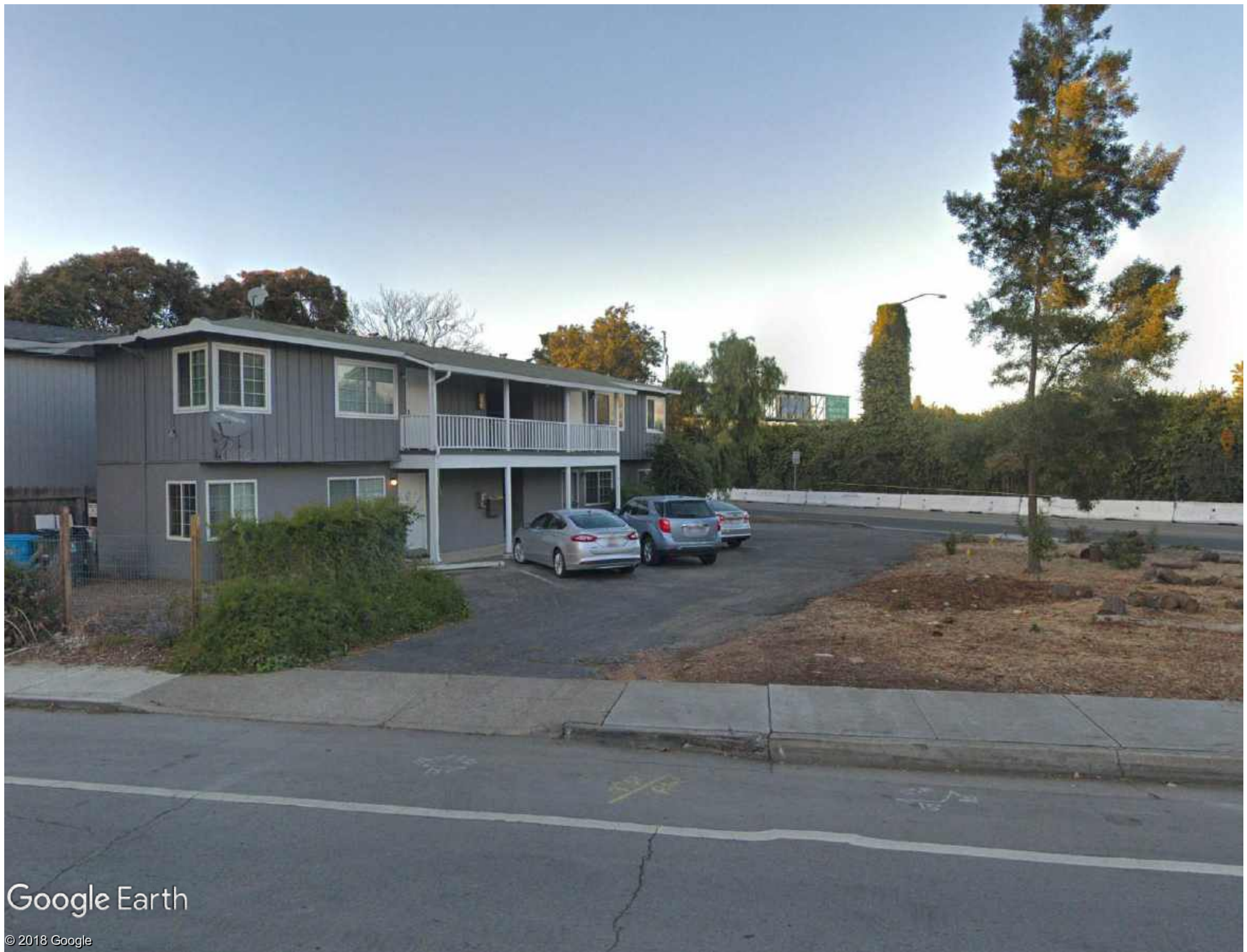


815 BAY ROAD - VACATION DIAGRAM
SCALE 1" = 20'



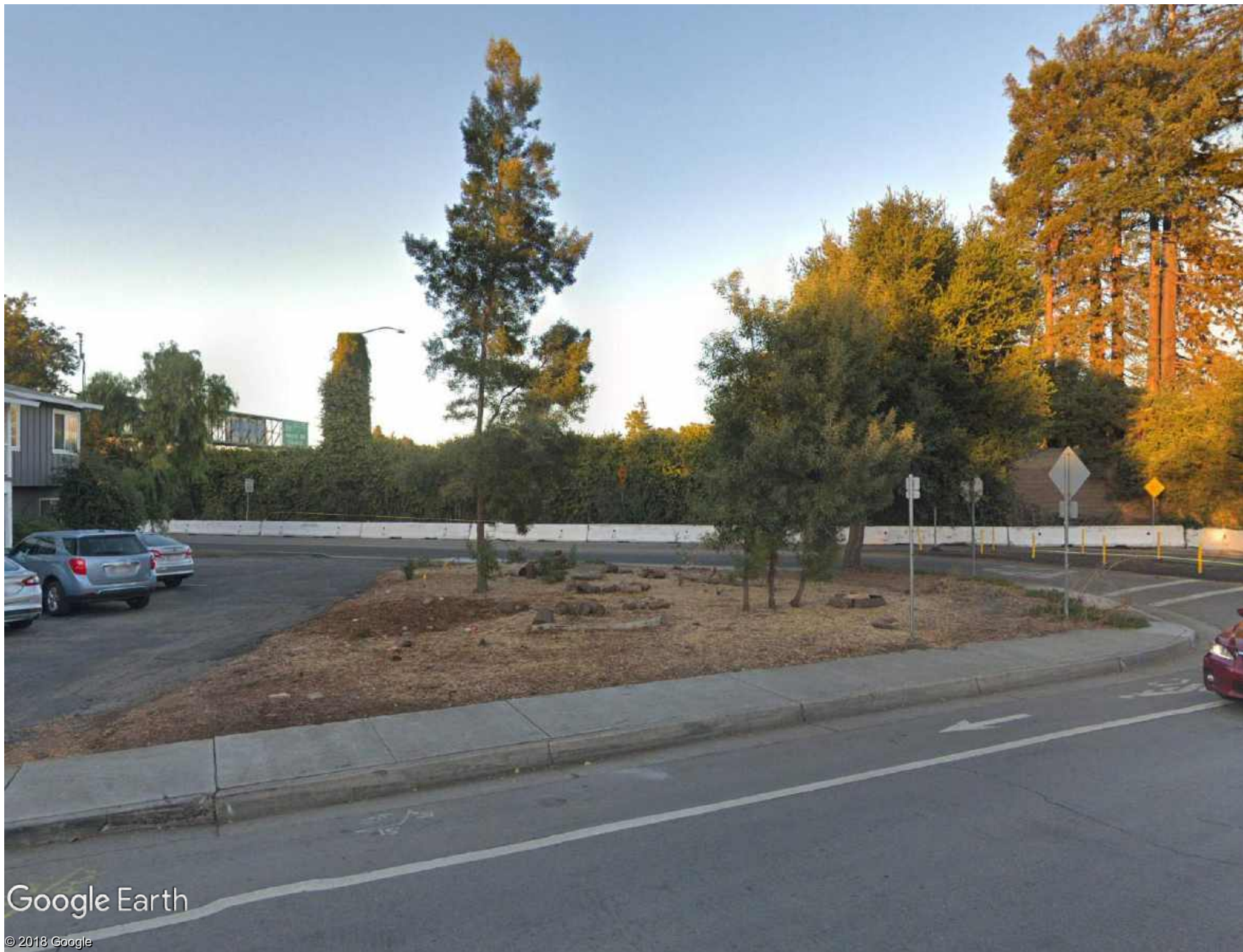
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STAFF REPORT

City Council

Meeting Date: 8/28/2018
Staff Report Number: 18-169-CC

Public Hearing: Consider an appeal of the Planning Commission approval of architectural control for a new mixed-use office and residential building at 840 Menlo Avenue, and consider modifications to the long-term plan for receiving operations at Draeger's Market at 1010 University Drive

Recommendation

Staff recommends that the City Council make the necessary findings and take actions to deny the appeal and uphold the Planning Commission's architectural control approval for a mixed-use project at 840 Menlo Avenue, located in the El Camino Real Downtown/Specific Plan (SP-ECR/D) zoning district, as outlined in Attachment A, and adopt a resolution providing for a 40-foot loading zone on Evelyn Street and approve modifications to the Draeger's market long-term plan for receiving operations. The components of the project and associated actions are the following:

1. Architectural control to construct a new, three-story mixed-use building on a vacant lot located at 840 Menlo Avenue in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The building would consist of parking and lobby entrances on the ground level, nonmedical office on the second level, and three dwelling units (with terraces) on the third level.
2. Adopt Resolution No. 6457 (Attachment B) to provide a 40-foot loading zone on the south side of Evelyn Street located 16 feet west of Menlo Avenue with hours of 7 a.m. to 8 p.m. on weekdays and 9 a.m. to 8 p.m. on weekends and to approve modifications to the Draeger's Market long-term receiving operations plan, including the hours and location of loading and delivery services in Parking Plaza 4.

Policy Issues

Each architectural control request is considered individually. The City Council should consider whether the required architectural control findings can be made for the proposal. The City Council will also need to consider the placement, design, and/or use of the Draeger's Market receiving operations as a result of development at 840 Menlo Avenue per the long-term plan for receiving operations at Draeger's Market.

Background

Project description

The applicant is proposing to construct a new mixed-use development on a vacant lot at the southwest corner of Menlo Avenue and Evelyn Street in the Downtown. The project consists of parking and lobby entrances on the ground level, 6,610 square feet of nonmedical office space on the second level, and three residential units totaling 4,861 square feet on the third level. The residential units would all be two-bedroom in size.

The proposed project would feature a contemporary architectural style with varied materials and clean massing and form. The proposal would meet the specific plan's base level standards including, but not limited to, building heights, floor area ratio (FAR), setbacks and building profile requirements. The applicant is also requesting approval of a tentative map for a minor subdivision to create three residential condominium units and one commercial condominium. The Planning Commission staff report for the March 12, 2018, meeting is included in its entirety here as Attachment C and provides more details on the proposed development.

The project also triggers the reevaluation of an existing loading zone on Evelyn Street. The subject parcel was previously used as a loading and employee parking area for the adjacent Draeger's Market located at 1010 University Drive, but this arrangement was terminated in 2001. In March 2002, the City Council reviewed and conditionally approved the use of loading zones and related operational requirements for Draeger's Market on Evelyn Street, subject to a condition of approval stating, "At such time as City approvals are actively pursued for the development of the property located at 840 Menlo Avenue, the City Council shall reconsider the placement, design, and/or use of the loading zones on Evelyn Street."

Planning Commission review

On March 12, 2018, the Planning Commission reviewed the architectural control request for the subject property. As noted earlier, the staff report for this meeting is included as Attachment C. The excerpt minutes are included as Attachment D. After considering public comments and the proposal, the Planning Commission approved the project 6-1 (with Commissioner Onken in opposition.) The Planning Commission did not provide a recommendation on the loading zone, because it was not directly part of the architectural control permit actions.

Analysis

Appeal of the Planning Commission's action

On March 27, 2018, the City received an appeal of the Planning Commission's approval of the architectural control permit. The appeal was submitted by Anthony Draeger, a resident of Menlo Park and owner of Draeger's Market. The appellants were active participants during the earlier phases of project review, and offered verbal testimony that was considered by the Planning Commission. The concerns outlined in the document are similar to what was presented and discussed at the Planning Commission meeting. From staff's perspective, comments from the appellant with regards to the architectural control permit were considered by the Planning Commission during the earlier project review meetings.

The appeal letter (Attachment E) outlines several points. These points are summarized below followed by staff's responses.

1. As currently designed, the project's driveway requires elimination of the existing loading zone on Evelyn Street.

The project driveway as proposed would conflict with the existing loading zone on Evelyn Street. As part of the Planning Commission's review, staff recommended the Evelyn Street loading zone be moved to Menlo Avenue. After additional staff review and feedback from the Complete Streets Commission, staff is recommending that the loading zone be modified but remain on Evelyn Street. The proposed loading zone modifications are discussed in more detail in the following loading zone section.

2. The findings (2, 3 and 5) of approval are not supported by substantial evidence in the record and cannot be made with the driveway location as proposed.

Staff has updated the architectural control permit findings in the recommended action (Attachment A) to more fully reflect the Planning Commission's discussion about the basis for the architectural control permit approval. The following five findings must be made for the architectural control approval: the general appearance of the structure is in keeping with the character of the neighborhood; the development will not be detrimental to the harmonious and orderly growth of the City; the development will not impair the desirability of investment or occupation in the neighborhood; the development provides adequate parking as required in all applicable City ordinances and has made adequate provisions for access to such parking; and the development is consistent with the El Camino Real /Downtown Specific Plan, as verified in detail in the standards and guidelines compliance work sheet.

- a. With the driveway as proposed, the project could be detrimental to the harmonious and orderly growth of the city and impair investment and occupation in the neighborhood.

The proposal would meet the specific plan's base level standards, which were established to achieve inherent public benefits, such as the redevelopment of underutilized properties, the creation of more vitality and activity, and the promotion of healthy living and sustainability. The project driveway would be located on the Evelyn Street frontage, adjacent to the lobby. The location of the garage entrance complies with the Transportation Division's best practices, as it would be located on the less busy of the two streets, and it would be a sufficient distance from the intersection to minimize turning conflicts. To accommodate the new garage entrance, the on-street parking spaces and the existing loading zone would also be modified. While the proposed project would require modifications to the loading zone, it would not eliminate all loading zones for Draeger's Market. Other viable alternatives for the Evelyn Street loading zone, which do not require relocation of the project driveway, are discussed in the following loading zone section.

- b. With the driveway as proposed, the project would conflict with the applicable El Camino Real/Downtown Specific Plan to "sustain Menlo Park's Village character."

The specific plan ensures that projects sustain Menlo Park's existing character by meeting the Specific Plan standards, guidelines and other objectives, as verified in detail in the Standards and Guidelines Compliance work sheet. The overall neighborhood, which includes one- and two-story commercial and residential buildings of various architectural styles, including contemporary and traditional style buildings. The zero setbacks would be consistent with the surrounding buildings and would reinforce the traditional downtown building forms. The project would activate a corner property with a mixed-use development that would otherwise be a vacant lot and the building entrances would be oriented toward the downtown area. The existing street trees would be retained which would maintain the established tree line on Menlo Avenue. The project would not prohibit operation of Draeger's Market because alternative solutions for loading are available that both accommodate the development of the project and allow the Draeger's Market to continue operations.

3. The condition of approval 4(f) cannot be satisfied without the consent of Draeger's.

Condition No. 17 of the long-term plan for receiving operations (Attachment B) indicates that at such time as City approvals are actively pursued for the development of the property located at 840 Menlo Avenue, the City Council shall reconsider the placement, design, and/or use of the loading zones on Evelyn Street.

Condition No. 18 does not refer directly to the relocation of the loading zones when 840 Menlo Avenue is developed, instead it gives the City Council the right to terminate or modify the loading zones if issues resulted from the loading operations separate from the development of the 840 Menlo Avenue. Before to the development of 840 Menlo Avenue, no issues were identified that would have caused the reconsideration of the loading zones per condition No. 18. The redevelopment of 840 Menlo Avenue now requires the reconsideration of the loading zone per condition of approval No. 17.

4. In order to meet the required findings of approval, the project driveway should be relocated to retain the loading zone on Evelyn Street.

The alternative driveway locations outlined in the appeal letter include moving the driveway closer to the intersection of Menlo Avenue and Evelyn Street or to Menlo Avenue. Initial staff review of the alternatives appear to meet the City's standards; however, additional review and revised plans would be required to confirm this and ensure that the driveway locations would not have larger project design impacts specifically with regards to the parking requirements and garage layout. Placement of the driveway on Menlo Avenue would also require the removal of one or more of the existing Menlo Avenue street trees.

On July 19, 2018, the appellant submitted two additional loading zone options. These are included as Attachment F and are discussed further in the following loading zone section. These two options would not require modification to the proposed project and feature loading zone options on either side of Evelyn Street.

On August 20, 2018 the applicant for 840 Menlo Avenue provided additional exhibits and reports to support the relocation of the loading zone to Menlo Avenue. These documents are included as Attachment J.

Per Section 16.86.040 of the zoning ordinance, the City Council may affirm, revise, or modify the decision of the Planning Commission. To reverse or modify the Planning Commission's decision shall require the affirmative vote of three-fifths of the City Council (or three City Councilmembers). If the City Council does not take any action on the appeal, the Planning Commission's action shall be deemed affirmed.

Draeger's Market loading zone

The City Council will also need to consider the placement, design, and/or use of the Draeger's Market receiving operations as a result of development at 840 Menlo Avenue per the long-term plan for receiving operations at Draeger's Market. On November 14, 2017, the loading zone changes were presented to the City Council as an information item. On January 10, 2018, the Complete Streets Commission reviewed the modifications to the loading zone. At the meeting, staff recommended relocation of the loading zone to Menlo Avenue and the Draeger's Market and 840 Menlo Avenue representatives presented on the proposed loading zone options. After the staff and applicant presentations, the Complete Streets Commission voted 8-0-1 for staff to work with Draeger's Market and 840 Menlo Avenue representatives to develop an alternative loading zone location without using Menlo Avenue. The staff report and minutes for the Complete Streets Commission meeting are included as Attachment G and H.

Transportation staff reviewed the proposed mixed-use development at 840 Menlo Avenue to determine the best alternatives for a loading zone for Draeger's Market operations. Because the market does not have a dedicated loading dock, deliveries occur within Parking Plaza 4 which is adjacent to the store and the existing loading zone on Evelyn Street, according to the Draeger's Market loading plan adopted by the City Council March 5, 2002. The market has a delivery door that opens onto Plaza 4 where deliveries are processed. Delivery trucks using the Evelyn Street zone access the delivery door via the sidewalk on

Evelyn Street and the Parking Plaza 4 parking aisle.

Staff reviewed possible loading zone options during review of the 840 Menlo Avenue project and considered several factors including: timing and number of deliveries, location of the delivery zone, minimizing crossing of public streets, minimizing conflicts with pedestrians, and preserving parking in Parking Plaza 4. As part of the Planning Commission's review, staff recommended the Evelyn Street loading zone be moved to Menlo Avenue. This option was chosen since an existing door that provides access into the Draeger's Market was located on Menlo Avenue. This would allow for deliveries to move directly from the trucks across the sidewalk into the store. It also provided enough curb area for larger delivery trucks. Draeger's Market has indicated that this door is not currently used, and the store layout would require modifications to accommodate deliveries at this location. This option was presented to the Complete Streets Commission January 10, 2018. The Commission expressed concerns with a loading zone on Menlo Avenue citing potential conflicts between the delivery trucks and bicyclists and higher volume of traffic on Menlo Avenue, and the tight turning radius for right-turning trucks onto University Drive. The Commission voted unanimously at their meeting to direct staff to work with the applicant and Draeger's Market to find an alternative loading zone from Menlo Avenue.

Since that time, staff has received additional information from Draeger's Market regarding their delivery operations and proposals for four possible loading zone options (see Attachment E and F.) All of the proposed options would provide a loading zone on Evelyn Street. Two of these options, Options A and B, require modification to the 840 Menlo Avenue project design by moving the project driveway either to Menlo Avenue or closer to the intersection of Menlo Avenue and Evelyn Street, respectively. Staff reviewed the proposed driveway locations and confirmed that they would meet the City's guidelines for placement of driveways near intersections, but noted that the driveway relocation would also require redesign of the project's parking garage layout which would need further review. As such, Options A and B, causing redesign of the project, are not recommended.

The remaining two options, Options C and D, would not require relocation of the project driveway. Option C would provide a loading zone on Evelyn Street between the project driveway and Menlo Avenue. Approximately 59 feet of curb space is provided between the project driveway and Menlo Avenue. In addition, there is currently 18 feet of red curb on Evelyn Street near the stop sign. Staff determined that this red curb could be shortened by 2 feet to maintain 16 feet of red curb and still provide visibility for pedestrians waiting to cross Evelyn Street. In addition, 3 feet of red curb should be added adjacent to the project driveway to provide better visibility for vehicles exiting the project site. This would allow for a 40-foot loading zone.

Option D would provide a loading zone on Evelyn Street located across the street from the project site, adjacent to 840 Menlo Avenue. There is currently 73 feet of curb space between the Parking Plaza 5 driveway and Menlo Avenue. Of this, 39 feet of red curb is provided reducing the available curb space to 34 feet. However, this loading zone location would require deliveries to cross Evelyn Street, likely to occur midblock instead of at the intersection, causing potential conflicts with drivers turning onto Evelyn Street from Menlo Avenue. For this reason, staff does not recommend Option D.

Draeger's Market has indicated that a 40-foot loading zone on Evelyn Street (Option C) would accommodate 90 percent of their deliveries, but occasionally, they will have deliveries by larger trucks that would occur outside the allowable delivery hours (9 p.m. to 10 a.m.) in Parking Plaza 4, as outlined in the long term plan for receiving operations. Staff recommends that Draeger's Market work with their delivery providers to schedule these deliveries to occur during the Parking Plaza 4 delivery hours. To provide for some flexibility, staff recommends that loading options for Parking Plaza 4 also be modified to allow for the

parking spaces to be blocked off for up to one delivery a week outside of the set delivery hours.

Staff has also coordinated with the Complete Streets Commission chair and vice-chair during the review of the loading zone options to ensure that the proposed loading recommendations are in line with their motion from their prior meeting.

Based on the delivery operations and proposed locations, staff recommends that City Council approve loading zone Option C with the following conditions:

- Adopt Resolution No. 6457 to provide a 40-foot loading zone on the south side of Evelyn Avenue located 16 feet west of Menlo Avenue with hours of 7 a.m. to 8 p.m. on weekdays and 9 a.m. to 8 p.m. on weekends.
- Approve the modifications to Draeger's Market loading policy, as follows. The adjacent Parking Plaza 4 currently allows loading until 10 a.m., Monday through Friday on the side closest to the Draeger's Market. The hours allowed for loading on the other side of the drive aisle would be extended from 7 a.m. to 9 a.m., Monday through Friday. In addition, Draeger's Market would be allowed to block off the parking aisle for up to one delivery a week that occurs outside these hours.

Resolution No. 6457 for the loading zone modifications is included as Attachment B. Attached to the resolution are redlined conditions of approval from the 2002 long-term plan for receiving operations. The conditions of approval have been modified to reflect staff's current recommendation for the loading zone. Several conditions related to the Evelyn Street right-of-way improvements (condition No. 9), relocation of the delicatessen kitchen and floral preparation services (condition No. 13) and the elimination of the Evelyn Street loading zone (condition numbers 16, 17 and 19) have also been removed. The condition related to the right-of-way improvements was removed because the proposed development at 840 Menlo Avenue includes these improvements as part of the project. The conditions related to the elimination of the Evelyn Street loading zone have been removed since the loading zone on Evelyn Street can coexist with the development of 840 Menlo Avenue per staff's recommendation on the loading zone. Additionally in response to condition No. 16 and 19, Draeger's submitted a revised loading plan in 2002 that modified the Evelyn Street loading zone by shortening its length to 72 feet. In 2004 Draeger's submitted additional documentation indicating that it had substantially reduced its receiving operations along Evelyn Street.

Impact on City Resources

The project sponsor is required to pay planning, building and public works permit fees, based on the city's master fee schedule, to fully cover the cost of staff time spent on the review of the project, for the period between the application submittal and the appeal of the Planning Commission action. The appellant, Anthony Draeger, on behalf of Draeger's Market paid a \$110 flat fee to file an appeal of the Planning Commission's decision. Staff time spent on the review of the appeal to the City Council is not otherwise recovered, per City Council policy.

Environmental Review

The proposal is within the scope of the project covered by the El Camino Real/Downtown Specific Plan Program Environmental Impact Report (EIR), which was certified June 5, 2012. The proposed project would not result in greater impacts than were identified for the program EIR. Relevant mitigation measures have been applied and would be adopted as part of the Mitigation Monitoring and Reporting Program (MMRP.)

Public Notice

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

Attachments

- A. Recommended actions
- B. Resolution No. 6457
- C. Planning Commission staff report – March 12, 2018
- D. Planning Commission excerpt minutes, March 12, 2018
- E. Appeal letter – March 27, 2017
- F. Loading zone exhibits – July 19, 2018
- G. Hyperlink: Complete Streets Commission staff report, January 10, 2018
- menlopark.org/DocumentCenter/View/16400/E2---Draeger-Loading-Zones?bidId
- H. Hyperlink: Complete Streets Commission minutes, January 10, 2018
- menlopark.org/AgendaCenter/ViewFile/Minutes/_01102018-3024
- I. Correspondence
- J. Menlo Avenue exhibit and store delivery alternatives

Disclaimer

Attached are reduced versions of maps and diagrams submitted by the applicants. The accuracy of the information in these drawings is the responsibility of the applicants, and verification of the accuracy by City Staff is not always possible. The original full-scale maps, drawings and exhibits are available for public viewing at the community development department.

Exhibits to Be Provided at Meeting

Color and materials board.

Report prepared by:

Kaitie Meador, Associate Planner

Kristiann Choy, Senior Transportation Engineer

Report reviewed by:

Nikki Nagaya, Assistant Public Works Director

Deanna Chow, Assistant Community Development Director

Mark Muenzer, Community Development Director

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Recommended Actions

LOCATION: 840 Menlo Avenue	PROJECT NUMBER: PLN2014-00002	APPLICANT: Hayes Group Architects	OWNER: Charles Troglia
PROPOSAL: Request for architectural control to construct a new, three-story mixed-use building on a vacant lot located at 840 Menlo Avenue in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The building would consist of parking and lobby entrances on the ground level, non-medical office on the second level, and three dwelling units (with terraces) on the third level.			
DECISION ENTITY: City Council	DATE: August 28, 2018	ACTION: TBD	
VOTE: TBD (Carlton, Cline, Keith, Mueller, Ohtaki)			
ACTION:			
<p>1. Make findings with regard to the California Environmental Quality Act (CEQA) that the proposal is within the scope of the project covered by the El Camino Real/Downtown Specific Plan Program EIR, which was certified on June 5, 2012. Specifically, make findings that:</p> <ul style="list-style-type: none"> a. A checklist has been prepared detailing that no new effects could occur and no new mitigation measures would be required. b. Relevant mitigation measures have been incorporated into the project through the Mitigation Monitoring and Reporting Program, which is approved as part of this finding. c. Upon completion of project improvements, the Specific Plan Maximum Allowable Development will be adjusted by 3 residential units and 6,610 square feet of non-residential uses, accounting for the project's net share of the Plan's overall projected development and associated impacts. <p>2. Deny the appeal and adopt the following findings, as per Section 16.68.020 of the Zoning Ordinance, pertaining to architectural control approval:</p> <ul style="list-style-type: none"> a. The general appearance of the structure is in keeping with the character of the neighborhood. <p><i>The project would meet the applicable Specific Plan standards and would be consistent with the allowed uses for the zoning district. The development would be 38 feet tall, which is the maximum allowed height and would adhere to the façade height limit of 30 feet. The project complies with the building profile, which requires a step back for the upper level. The development would have a zero setback at the front, sides, and rear property lines, as required in this zoning district. The setbacks would be consistent with the surrounding buildings and would reinforce the traditional downtown building forms. The development would be consistent with the overall neighborhood, which includes one- and two-story commercial and residential buildings of various architectural styles, including contemporary and traditional style buildings.</i></p> b. The development will not be detrimental to the harmonious and orderly growth of the City. <p><i>The proposal would meet the Specific Plan's Base level standards, which were established to achieve inherent public benefits, such as the redevelopment of underutilized properties, the creation of more vitality and activity, and the promotion of healthy living and sustainability. The development would also provide a positive pedestrian experience. The existing street trees would be retained which would maintain the established tree line on Menlo Avenue. Three new street trees would be located along Evelyn Street. New landscaping would be planted throughout the site and the private open space would exceed the minimum standards.</i></p> 			

840 Menlo Avenue – Attachment A: Recommended Actions

LOCATION: 840 Menlo Avenue	PROJECT NUMBER: PLN2014-00002	APPLICANT: Hayes Group Architects	OWNER: Charles Troglio
PROPOSAL: Request for architectural control to construct a new, three-story mixed-use building on a vacant lot located at 840 Menlo Avenue in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The building would consist of parking and lobby entrances on the ground level, non-medical office on the second level, and three dwelling units (with terraces) on the third level.			
DECISION ENTITY: City Council	DATE: August 28, 2018	ACTION: TBD	
VOTE: TBD (Carlton, Cline, Keith, Mueller, Ohtaki)			
ACTION:			
<p>c. The development will not impair the desirability of investment or occupation in the neighborhood.</p> <p><i>The development would not impair the desirability of investment or occupation in the neighborhood. The project would activate a corner property that would otherwise be a vacant lot and the building entrances would be oriented towards the downtown area. The proposed office and residential uses would be compatible with the surrounding residential, retail, and office uses. The location of the garage entrance complies with the Transportation Division's best practices, as it would be located on the less busy of the two streets, and it would be a sufficient distance from the intersection to minimize turning conflicts.</i></p> <p>d. The development provides adequate parking as required in all applicable City Ordinances and has made adequate provisions for access to such parking.</p> <p><i>Vehicular and bicycle parking requirements would be met. Thirteen parking spaces would be provided on the ground level, which exceeds the requirement for ten parking spaces. Two electric vehicle charging stations are proposed, which would exceed the current Specific Plan requirement for such facilities. Vehicular access for the site would be provided by the garage entrance on the Evelyn Street frontage. A lobby with a staircase and elevator at the northwest corner of the building would provide direct access from the garage to the office and residential uses. Pedestrian doors on the west and east sides of the garage would provide access from the garage to parking plaza #4 and Menlo Avenue.</i></p> <p>e. The development is consistent with the El Camino Real/Downtown Specific Plan, as verified in detail in the Standards and Guidelines Compliance Worksheet.</p> <p><i>The proposal would adhere to the extensive standards and guidelines established by the Specific Plan, as verified in detail in the Standards and Guidelines Compliance Worksheet. The proposal would produce a visually refined piece of contemporary architecture that relates in scale and materials to the surrounding buildings. The proposed design's form and massing as seen from the street would create a clean, contemporary expression of rectangular elements with strongly defined edges in varied materials. Materials, finishes and colors would add additional architectural interest to the building.</i></p> <p>3. Approve the architectural control subject to the following standard conditions:</p> <p>a. Development of the project shall be substantially in conformance with the plans prepared by Hayes Group Architects, consisting of 34 plan sheets, dated received on February 28, 2018, approved by the City Council on August 28, 2018, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.</p>			

840 Menlo Avenue – Attachment A: Recommended Actions

LOCATION: 840 Menlo Avenue	PROJECT NUMBER: PLN2014-00002	APPLICANT: Hayes Group Architects	OWNER: Charles Troglio
PROPOSAL: Request for architectural control to construct a new, three-story mixed-use building on a vacant lot located at 840 Menlo Avenue in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The building would consist of parking and lobby entrances on the ground level, non-medical office on the second level, and three dwelling units (with terraces) on the third level.			
DECISION ENTITY: City Council	DATE: August 28, 2018	ACTION: TBD	
VOTE: TBD (Carlton, Cline, Keith, Mueller, Ohtaki)			
ACTION:			
<ul style="list-style-type: none"> b. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project. c. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, California Water Company and utility companies' regulations that are directly applicable to the project. d. Prior to commencing any work within the right-of-way or public easements, the applicant shall obtain an encroachment permit from the appropriate reviewing jurisdiction. e. Prior to building permit issuance, Stormwater Pollution Prevention Program Best Management Practices (BMPs) for construction shall be implemented to protect water quality, in accordance with the approved Stormwater Pollution Prevention Plan (SWPPP). BMP plan sheets are available electronically for inserting into Project plans. The plan is subject to the review and approval of the Engineering Division. f. Prior to building permit issuance, the applicant shall submit a plan for: 1) construction safety fences around the periphery of the construction area, 2) dust control, 3) air pollution control, 4) erosion and sedimentation control, and 5) tree protection fencing. The plans shall be subject to review and approval by the Building, Engineering, and Planning Divisions prior to issuance of a building permit. The fences and erosion and sedimentation control measures shall be installed according to the approved plan prior to commencing construction. g. Prior to building permit issuance, the Applicant shall submit a draft "Stormwater Treatment Measures Operations and Maintenance (O&M) Agreement" with the City subject to review and approval by the Engineering Division. The property owner will be responsible for the operation and maintenance of stormwater treatment measures for the project. The agreement shall be recorded and documentation shall be provided to the City prior to final occupancy. h. Prior to building permit issuance, the applicant shall submit a Grading and Drainage Plan for review and approval by the Engineering Division. Post-construction runoff into the storm drain shall not exceed pre-construction runoff levels. A Hydrology Report will be required to the satisfaction of the Engineering Division. Slopes for the first 10 feet perpendicular to the structure must be 5% minimum for pervious surfaces and 2% minimum for impervious surfaces, including roadways and parking areas, as required by CBC §1804.3. Discharges from the garage ramp and underground parking areas are not allowed into the storm drain system. Discharge must be treated with an oil/water separator and must connect to the sanitary sewer system. This will require a permit from West Bay Sanitary District. i. Prior to building permit issuance, Applicant shall submit Covenants, Conditions and 			

840 Menlo Avenue – Attachment A: Recommended Actions

LOCATION: 840 Menlo Avenue	PROJECT NUMBER: PLN2014-00002	APPLICANT: Hayes Group Architects	OWNER: Charles Troglia
PROPOSAL: Request for architectural control to construct a new, three-story mixed-use building on a vacant lot located at 840 Menlo Avenue in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The building would consist of parking and lobby entrances on the ground level, non-medical office on the second level, and three dwelling units (with terraces) on the third level.			
DECISION ENTITY: City Council	DATE: August 28, 2018	ACTION: TBD	
VOTE: TBD (Carlton, Cline, Keith, Mueller, Ohtaki)			
<p>ACTION:</p> <p>Restrictions (CC&Rs) to the City for City Attorney and Engineering Division review and approval. The CC&Rs shall provide for the maintenance of all infrastructure and utilities within the Project site or constructed to serve the Project. This shall include, but not be limited to, the private open spaces, shared parking spaces, common walkways, common landscaping, and the stormwater drainage and sewer collection systems.</p> <ul style="list-style-type: none"> j. Prior to building permit issuance, the Applicant shall submit engineered Off-Site Improvement Plans (including specifications & engineers cost estimates), for approval by the Engineering Division, showing the infrastructure necessary to serve the Project. The Improvement Plans shall include, but are not limited to, all engineering calculations necessary to substantiate the design, proposed roadways, drainage improvements, utilities, traffic control devices, retaining walls, sanitary sewers, and storm drains, pump/lift stations, street lightings, common area landscaping and other project improvements. The Plan shall include removal and replacement of any damaged and significantly worn sections of frontage improvements. During the design phase of the construction drawings, all potential utility conflicts shall be potholed with actual depths recorded on the improvement plans submitted for City review and approval. All public improvements shall be designed and constructed to the satisfaction of the Engineering Division. The Off-Site Improvements Plan shall be approved prior to issuance of a building permit. k. Prior to building permit issuance, and as part of the off-site improvements plan, the applicant shall submit plans for street light design per City standards, at locations approved by the City. All street lights along the project frontages shall be painted Mesa Brown and upgraded with LED fixtures compliant with PG&E standards, and are subject to the review and approval of the Engineering Division. l. Prior to building permit issuance, the applicant shall provide documentation indicating the amount of irrigated landscaping. If the project proposes more than 500 square feet of irrigated landscaping, it is subject to the City's Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44). If this project is creating more than 5,000 square feet of irrigated landscaping, per the City's Water Efficient Landscape Ordinance (Municipal Code 12.44) the irrigation system is required to have a separate water service. Submittal of a detailed landscape plan would be required concurrently with the submittal of a complete building permit application. m. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes. 			

840 Menlo Avenue – Attachment A: Recommended Actions

LOCATION: 840 Menlo Avenue	PROJECT NUMBER: PLN2014-00002	APPLICANT: Hayes Group Architects	OWNER: Charles Troglio
PROPOSAL: Request for architectural control to construct a new, three-story mixed-use building on a vacant lot located at 840 Menlo Avenue in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The building would consist of parking and lobby entrances on the ground level, non-medical office on the second level, and three dwelling units (with terraces) on the third level.			
DECISION ENTITY: City Council	DATE: August 28, 2018	ACTION: TBD	
VOTE: TBD (Carlton, Cline, Keith, Mueller, Ohtaki)			
ACTION:			
<ul style="list-style-type: none"> n. If construction is not complete by the start of the wet season (October 1 through April 30), the applicant shall implement a winterization program to minimize the potential for erosion and sedimentation. As appropriate to the site and status of construction, winterization requirements shall include inspecting/maintaining/cleaning all soil erosion and sedimentation controls prior to, during, and immediately after each storm event; stabilizing disturbed soils through temporary or permanent seeding, mulching, matting, tarping or other physical means; rocking unpaved vehicle access to limit dispersion of much onto public right-of-way; and covering/tarping stored construction materials, fuels, and other chemicals. Plans to include proposed measures to prevent erosion and polluted runoff from all site conditions shall be submitted for review and approval of the Engineering Division prior to beginning construction. o. The Applicant shall retain a civil engineer to prepare "as-built" or "record" drawings of public improvements, and the drawings shall be submitted in AutoCAD and Adobe PDF formats to the Engineering Division prior to Final Occupancy. p. Street trees and heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance and the recommendations of the arborist report prepared by Michael L. Bench, dated December 14, 2017. Applicant shall submit a tree preservation plan, detailing the location of and methods for all tree protection measures as part of a complete building permit application and is subject to review and approval by the City prior to building permit issuance. q. Street trees shall be from the City-approved street tree species or to the satisfaction of City Arborist. Irrigation within public right of way shall comply with City Standard Details LS-1 through LS-19. r. Prior to building permit issuance, the applicant shall pay all Public Works fees. Refer to City of Menlo Park Master Fee Schedule. s. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a lighting plan, providing the location, architectural details and specifications for all exterior lighting subject to review and approval by the Planning Division. t. Simultaneous with the submittal of a complete building permit application, a design-level geotechnical investigation report shall be submitted to the Building Division for review and confirmation that the proposed development fully complies with the California Building Code. The report shall determine the project site's surface geotechnical conditions and address potential seismic hazards. The report shall identify building techniques appropriate to minimize seismic damage. u. A complete building permit application will be required for any remediation work that requires a building permit. No remediation work that requires approval of a building permit 			

840 Menlo Avenue – Attachment A: Recommended Actions

LOCATION: 840 Menlo Avenue	PROJECT NUMBER: PLN2014-00002	APPLICANT: Hayes Group Architects	OWNER: Charles Troglio
PROPOSAL: Request for architectural control to construct a new, three-story mixed-use building on a vacant lot located at 840 Menlo Avenue in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The building would consist of parking and lobby entrances on the ground level, non-medical office on the second level, and three dwelling units (with terraces) on the third level.			
DECISION ENTITY: City Council	DATE: August 28, 2018	ACTION: TBD	
VOTE: TBD (Carlton, Cline, Keith, Mueller, Ohtaki)			
<p>ACTION:</p> <p>shall be initiated until the applicant has received building permit approvals for that work. All building permit applications are subject to the review and approval of the Building Division.</p> <ul style="list-style-type: none"> v. Prior to building permit issuance, the applicant shall submit plans for construction related parking management, construction staging, material storage and Traffic Control Handling Plan (TCHP) to be reviewed and approved by the City. The applicant shall secure adequate parking for any and all construction trades. Construction parking in the public parking plazas will be subject to City review and approval. The plan shall include construction phasing and anticipated method of traffic handling for each phase. w. All public right-of-way improvements, including frontage improvements and the dedication of easements and public right-of-way, shall be completed to the satisfaction of the Engineering Division prior to building permit final inspection. <p>4. Approve the architectural control subject to the following project-specific conditions:</p> <ul style="list-style-type: none"> a. The applicant shall address all Mitigation Monitoring and Reporting Program (MMRP) requirements as specified in the MMRP (Attachment J). Failure to meet these requirements may result in delays to the building permit issuance, stop work orders during construction, and/or fines. b. Simultaneous with the submittal of a complete building permit application, the applicant shall submit an updated LEED Checklist, subject to review and approval of the Planning Division. The Checklist shall be prepared by a LEED Accredited Professional (LEED AP). The LEED AP should submit a cover letter stating their qualifications, and confirm that they have prepared the Checklist and that the information presented is accurate. Confirmation that the project conceptually achieves LEED Silver certification shall be required before issuance of the building permit. Prior to final inspection of the building permit or as early as the project can be certified by the United States Green Building Council, the project shall submit verification that the development has achieved final LEED Silver certification. c. Simultaneous with the submittal of a complete building permit application, the plans shall be updated to provide clarification that the commercial windows/storefronts shall be recessed from the primary building façade a minimum of 6 inches, subject to review and approval of the Planning Division. d. The parking garage gate shall remain open between the hours of 7:00 a.m. and 7:00 p.m., in order to limit the potential for vehicles blocking the sidewalk while waiting for the gate to open. The Transportation Manager may adjust these times if requested in the future, provided that the applicant demonstrates that pedestrian safety will not be compromised. e. Simultaneous with the submittal of a complete building permit application, the Applicant shall submit plans that include undergrounding of the overhead utilities along the project 			

840 Menlo Avenue – Attachment A: Recommended Actions

LOCATION: 840 Menlo Avenue	PROJECT NUMBER: PLN2014-00002	APPLICANT: Hayes Group Architects	OWNER: Charles Troglia
PROPOSAL: Request for architectural control to construct a new, three-story mixed-use building on a vacant lot located at 840 Menlo Avenue in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The building would consist of parking and lobby entrances on the ground level, non-medical office on the second level, and three dwelling units (with terraces) on the third level.			
DECISION ENTITY: City Council	DATE: August 28, 2018	ACTION: TBD	
VOTE: TBD (Carlton, Cline, Keith, Mueller, Ohtaki)			
ACTION:			
<p>frontage on Evelyn Street in accordance with the approved plan set. All lateral connections to overhead electric, fiber optic, and communication lines shall be placed in a joint trench. The undergrounding plans will be finalized prior to building permit issuance and are subject to PG&E, City of Menlo Park, and the Menlo Park Fire Protection District review and approval.</p> <p>f. Project approval is conditional on the City Council reconsidering the placement, design, and/or use of the Draeger’s Market loading zones currently located on Evelyn Street. The building permit shall not be issued prior to City Council action to modify this loading zone.</p> <p>g. Prior to issuance of each building permit, the applicant shall pay the applicable Building Construction Street Impact Fee in effect at the time of payment to the satisfaction of the Public Works Director. The current fee is calculated by multiplying the valuation of the construction by 0.0058.</p> <p>h. Any nonstandard improvements within public right-of-way shall be maintained in perpetuity by the owner. Owner shall execute an Agreement to maintain non-standard sidewalks and planting strips if any. Agreement shall be subject to review and approval of the Engineering Division and City Attorney and shall be recorded prior to final occupancy.</p> <p>i. Prior to final inspection, the Applicant shall submit a landscape audit report to the Public Works Department.</p> <p>j. Prior to issuance of building permit, the applicant shall submit the El Camino Real/Downtown Specific Plan Preparation Fee, which is established at \$1.13/square foot for all net new development. For the subject proposal, the fee is estimated at \$12,962.23 (\$1.13 x 11,471 net new square feet).</p> <p>k. Prior to issuance of building permit, the applicant shall submit all relevant transportation impact fees (TIF), subject to review and approval of the Transportation Division. Such fees include:</p> <ul style="list-style-type: none"> i. The TIF is estimated to be \$37,717.20. The fee was calculated as follows: (\$4.80/s.f. x 6,610 s.f. office) + (\$1,996.40/unit x 3 multi-family units). Please note this fee is updated annually on July 1st based on the Engineering News Record Bay Area Construction Cost Index. Fees are due before a building permit is issued. ii. The City has adopted a Supplemental Transportation Impact Fee for the infrastructure required as part of the Downtown Specific Plan. The fee is calculated at \$393.06 per PM peak hour vehicle trip, with a credit for the existing trips. The proposed project is estimated to generate 12 PM peak hour trips, so the supplemental TIF is estimated to be \$4,716.72. Payment is due before a building 			

840 Menlo Avenue – Attachment A: Recommended Actions

LOCATION: 840 Menlo Avenue	PROJECT NUMBER: PLN2014-00002	APPLICANT: Hayes Group Architects	OWNER: Charles Troglio
PROPOSAL: Request for architectural control to construct a new, three-story mixed-use building on a vacant lot located at 840 Menlo Avenue in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The building would consist of parking and lobby entrances on the ground level, non-medical office on the second level, and three dwelling units (with terraces) on the third level.			
DECISION ENTITY: City Council	DATE: August 28, 2018	ACTION: TBD	
VOTE: TBD (Carlton, Cline, Keith, Mueller, Ohtaki)			
ACTION: <p style="text-align: center;">permit is issued and the supplemental TIF will be updated annually on July 1st along with the TIF.</p>			

RESOLUTION NO. 6457

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING THE INSTALLATION OF A LOADING ZONE ALONG
EVELYN STREET NEAR MENLO AVENUE**

WHEREAS, the approval of the long term plan for market operations for Draeger's Supermarkets is subject to reconsideration at the time approvals are actively pursued for the development of the property located at 840 Menlo Avenue; and,

WHEREAS, Draeger's Market does not have a dedicated loading dock on their property; and,

WHEREAS, an on-street loading zone was evaluated to minimize conflicts with pedestrians and bicyclists and minimize deliveries from crossing public streets to access Draeger's Market; and,

WHEREAS, the Complete Streets Commission supported with a unanimous vote placement of a loading zone for Draeger's Market at any of the proposed options except on Menlo Avenue; and,

WHEREAS, the curb area located on the south side of Evelyn Street located west of Menlo Avenue was identified to install a 40-foot loading zone for Draeger's Supermarkets during the hours of 7:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 8:00 p.m. on weekends; and,

WHEREAS, the long term plan for market operations for Draeger's Market is amended as attached; and,

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

NOW, THEREFORE, BE IT RESOLVED, the City Council of Menlo Park does hereby authorize the installation of a 40-foot loading zone on Evelyn Street west of the Menlo Avenue intersection.

I, Judi A. Herren, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing City Council resolution was duly and regularly passed and adopted at a meeting by said City Council on this twenty-eighth day of August, 2018, by the following vote:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twenty-eighth day of August, 2018.

Judi A. Herren, City Clerk

**APPROVED ELEMENTS OF AND FINAL CONDITIONS FOR A LONG-TERM
PLAN FOR RECEIVING OPERATIONS AT DRAEGER'S SUPERMARKET**

1010 University Drive

March 5, 2002

Amended August 28, 2015

The City Council approves the Long-Term Plan for Market Operations, prepared by Draeger's Supermarkets to include the following elements:

- a. Continuation of the loading zone on Evelyn Street, with receiving hours restricted to between 57:00 a.m. to 108:00 p.m. on weekdays and 9:00 a.m. to 8:00 p.m. on weekends;
- b. Continuation of the loading zone in Public Parking Plaza #4 next to Draeger's Supermarket, with ~~modified~~ receiving hours from 9 p.m. to 10:00 a.m., Monday through Friday, beginning each Sunday at 9 p.m. and ending each Friday at midnight;
- c. ~~Expansion Continuation~~ of the expanded loading zone in Public Parking Plaza #4 across the drive aisle from Draeger's Supermarket by an additional 11 parking spaces, for a total of 22 spaces in the parking plaza, with the use of the expanded area only allowed modified receiving hours between midnight to 79:00 a.m., Monday through Friday;
- e-d. Expansion of the loading zones in Public Plaza #4 to allow up to one delivery a week that occurs outside the allowed hours.
- d-e. Continuation of work with vendors to improve delivery operations by:
 - o Requesting vendors to make deliveries before 10:00 a.m.;
 - o Requesting that vendors use smaller trucks if feasible; and
 - o Requesting vendors who use common carriers to switch to a carrier that will commit to making deliveries before 10:00 a.m.
- e-f. Continuation of efforts regarding internal operations to maximize the efficiency of the delivery operations including:
 - o Scheduling sufficient employee hours related to receiving functions;
 - o Requiring all employees involved in delivery operations to read and acknowledge the receiving rules; and
 - o Monitoring of receiving operations by a closed circuit camera to ensure enforcement of the receiving rules.

~~f. Relocation of the bakery kitchen to a new facility in South San Francisco within 18 months of approval of the long-term plan and relocation of the delicatessen kitchen and floral preparation services thereafter;~~

g-f. _____ Provision of a system housed inside of the market building for the storage of waste and recyclables, including removal of waste and recyclable by Draeger's-owned vehicles in a manner that does not use the door on Menlo Avenue;

h-g. _____ Use of the private parking lot for the storage of up to two Draeger's-owned delivery vans and one waste disposal truck on a continuous basis, ~~and storage of up to two panel trucks until the off-site food and floral preparation services are implemented;~~

i-h. _____ Pumping of the grease interceptor occasionally from the Menlo Avenue door; and

j-i. Establishment Continuation of an employee commute program that includes reimbursement payments to all interested employees for not less than 50 percent of their commute trip on public transportation and encourage new employees to make use of the program.

The implementation of the Long-Term Plan for Market Operations shall be subject to the following conditions.

1. Within 30 days of the approval of the long-term plan by the City Council (~~April-September 275~~, 201802), the project sponsor shall submit a plan for the loading zones that is consistent with the approved long-term plan and that ensures that all loading and unloading activities in Public Parking Plaza #4 and on Evelyn Street will be conducted in a manner that keeps the traffic aisles in the public parking plaza and Evelyn Street clear and passable at all times and that ensures clear and safe routes for pedestrians that are separate from the loading zones. -The plan shall clearly denote the ~~primary and expanded~~ loading zones in Public Parking Plaza #4 and the loading zone on Evelyn Street. The plan shall show ~~the number of parking spaces to be occupied by each zone and the hours each zone is to operate.~~- The plan shall include measures that prevent interference and other potential conflicts with vehicular and pedestrian traffic. Measures such as ~~warning signs~~, physical barriers and/or flagmen, shall be used during loading and unloading to ensure vehicular and pedestrian safety. The plan and its implementation shall be subject to the review and approval of the Transportation Division.

2. No loading or unloading of any type for Draeger's Supermarket shall occur on Evelyn Street, except within the designated 40 foot loading zone and between the hours of 57:00 a.m. to 408:00 p.m. on weekdays and 9:00 a.m. to 8:00 p.m. on weekends.
3. No loading or unloading of any type for Draeger's Supermarket shall occur in any public parking plaza, except within the designated loading zone and during the designated loading hours. All loading and unloading activities in the primary loading zone shall be conducted between 9:00 p.m. and 10:00 a.m., Monday through Friday, beginning each Sunday at 9:00 p.m. and ending each Friday at midnight. All loading and unloading activities in the expanded loading zone shall be conducted between midnight and 79:00 a.m., Mondays through Fridays.
4. No pallets, merchandise, garbage or any other materials or equipment shall be temporarily or permanently stored in the parking plaza or on public streets, except within the loading zones in the public parking plaza during actual loading and unloading operations within the designated loading hours. Loading operations shall not block or prevent pedestrian use of the sidewalk and shall comply with accessibility requirements for sidewalks.
5. The delivery doors on the ~~north side of the~~ building adjacent to Parking Plaza #4 shall remain fully closed at all times, except during loading and unloading operations. When loading and unloading is occurring, the doors are to be maintained in a fully open position. The applicant shall maintain a warning or safety device to alert the public when the delivery doors are to be opened. The warning device shall be subject to the review and approval of the Planning and Transportation Divisions.
6. The project sponsor shall submit on an annual basis (starting March 5, 2003) written documentation to the Planning Division of efforts made to contact vendors and:
 - o Request them to make deliveries prior to 10:00 a.m.;
 - o Request that vendors use smaller trucks if feasible; and
 - o Request that vendors that use common carriers switch to one that will commit to making deliveries before 10:00 a.m.
7. The project sponsor shall submit on an annual basis (starting March 5, 2003) written documentation to the Planning Division of efforts regarding internal operations to maximize the efficiency of the delivery operations including:
 - o Scheduling sufficient employee hours related to receiving functions;

- Requiring all employees involved in delivery operations to read and acknowledge the receiving rules; and
- Monitoring of receiving operations by a closed circuit camera to ensure enforcement of the receiving rules.

8. A Police Business phone number shall be maintained for the public to register complaints related to the loading and unloading operations. Signs shall be posted in the parking plaza advising the public of the complaint line and the phone number. The sign text and placement shall be subject to review and approval of the Transportation and Engineering Divisions.

~~9. If and when the loading zone in the public parking plaza is discontinued, the project sponsor shall restore the Evelyn Street curb cut, landscaping, and all street furniture to its pre-existing conditions. The restoration shall be to the satisfaction of the Planning, Engineering, and Transportation Divisions.~~

~~10.9.~~ 10.9. The service door on Menlo Avenue shall only be used for emergency access and occasional pumping of the grease interceptor as required by the San Mateo County Health Department. The pumping shall occur between 9 p.m. and 11 p.m.

~~11.10.~~ 11.10. The project sponsor shall make the parking spaces located in the Draeger's private parking lot located across Menlo Avenue available to the public for short-term parking from 9:00 p.m. to 10:00 a.m., Monday through Friday. In addition, the project sponsor shall designate and make available a number of spaces in the private lot to compensate for public spaces lost as a result of the establishment of the loading zone on Evelyn Street for short-term public parking. Signs shall be installed by the project sponsor in Parking Plaza #4 and in the Draeger's private lot indicating the availability of the parking. The private lot shall be made available for public parking until such time that full-time permanent parking is restored on Evelyn Street and in Public Parking Plaza #4. The design and placement of the signs shall be subject to the review and approval of the Planning and Transportation Divisions.

~~12.~~ Up to three company vehicles, including two delivery vans and one waste collection truck, may be parked in the private parking lot. ~~Up to an additional two delivery trucks may be parked in the private lot when not in use for a period of time not to exceed 42 months from the date of approval of the long-term plan by the City Council (September 5, 2005).~~

~~13. The relocation of the bakery kitchen shall be implemented within 18 months of the approval of the long-term plan by the City Council (September 5, 2003). The relocation of the delicatessen kitchen and floral preparation services shall be implemented within 24 months following the relocation of the bakery kitchen (September 5, 2005).~~

14.11. The project sponsor shall implement an employee commute program that reimburses all interested employees for not less than 50 percent of the cost of commuting by public transportation. The program shall be developed in writing and submitted to the Transportation Division for review and approval within 30 days of the City Council approval of the long-term plan (April 5, 2002). Thereafter, the project sponsor shall submit an annual report to the Transportation Division on the employee utilization of the program and efforts made to promote the program among employees.

15.12. The project sponsor shall obtain approval of a use permit prior to occupancy of the portion of the building vacated by the relocation of the bakery and delicatessen kitchens and floral preparation area (approximately 4,200 square feet) for any use of the area other than warehousing or storage.

~~16. The City Council shall reconsider whether to require the implementation of a shipment consolidation program two years from the approval of the long-term plan (March 5, 2004). The reconsideration shall be based on the effectiveness of the receiving operations during the preceding two years and the anticipated relocation of food preparation activities.~~

~~17. At such time as City approvals are actively pursued for the development of the property located at 840 Menlo Avenue, the City Council shall reconsider the placement, design, and/or use of the loading zones on Evelyn Street.~~

18.13. The City Council reserves the right to terminate the encroachment permit and loading zones in Public Parking Plaza #4 and on Evelyn Street, and/or to impose additional limitations or restrictions on such permits and loading zones, including but not limited to, limiting hours of delivery, elimination of all or part of loading zones, etc., if, in the opinion of the City Council, the operations and activities resulting from any of these approvals create traffic, circulation, parking, safety, noise and/or other problems or negative impacts in the vicinity of the Draeger's market property.

~~19. The project sponsor shall use its best efforts to develop a receiving program that eliminates the loading zone on Evelyn Street within 24 months of approval of the long-term plan (March 5, 2004).~~

20.14. The project sponsor shall implement an incentive program for employees that do not drive to work. Such program shall include an equivalent payment to such employees equal to not less than 50 percent of Caltrain or bus fare from the employee's residence to work. The program shall be developed in writing and submitted to the Transportation Division for review and approval within 30 days of the City Council approval of the long-term plan (April 5, 2002). Thereafter, the project sponsor shall submit an annual report to the Transportation Division on the employee utilization of the program and efforts made to promote the program among employees.



STAFF REPORT

Planning Commission

Meeting Date: 3/12/2018
Staff Report Number: 18-024-PC

Regular Business: Architectural Control/Hayes Group Architects/840 Menlo Avenue

Recommendation

Staff recommends that the Planning Commission approve a request for architectural control to construct a new, three-story mixed-use building on a vacant lot located at 840 Menlo Avenue in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The building would consist of parking and lobby entrances on the ground level, non-medical office on the second level, and three dwelling units (with terraces) on the third level. The recommended actions are included as Attachment A.

Policy Issues

The proposed project requires the Planning Commission to consider the merits of the project, including project consistency with the El Camino Real/Downtown Specific Plan. Each architectural control permit is considered individually. The Planning Commission should consider whether the required findings can be made for the proposal.

Background

Site location

The subject site is located at 840 Menlo Avenue, and is part the El Camino Real/Downtown Specific Plan (SP-ECR/D) zoning district. Within the Specific Plan, the parcel is part of the Downtown/Station Area Retail/Mixed Use land use designation and the Downtown (D) sub-district. While 840 Menlo Avenue is the current project address, a new address can be requested and approved administratively since this project has frontages on both Menlo Avenue and Evelyn Street. A location map is included as Attachment B.

The subject site is a corner lot with frontages on Evelyn Street and Menlo Avenue. The surrounding properties are likewise part of the SP-ECR/D district. Using Menlo Avenue in a north-south orientation, the parcels to the north and across Evelyn Street include office buildings and City parking plaza #5. The parcels across Menlo Avenue to the east contain multiple small commercial businesses. The parcel to the west of the site is City parking plaza #4 and the parcel to the south is a supermarket (Draeger's Market).

The site is currently a vacant lot, surrounded by an ivy-covered brick wall and two gates along Evelyn Street. The parcel was used for many years as a loading and employee parking area for Draeger's Market, through a lease arrangement. In 2001, the lease agreement expired and the parties were not able to negotiate a new lease agreement, and the property has been vacant since then.

Analysis

Project description

The applicant is proposing to construct a new mixed-use development consisting of parking and lobby entrances on the ground level, 6,610 square feet of non-medical office space on the second level, and three residential units totaling 4,861 square feet on the third level. The residential units would all be two-bedroom in size. A data table summarizing the parcel and project attributes is included as Attachment C. The project plans, applicant's project description letter, and construction phasing plan are included as Attachments D, E, and N respectively.

The proposal would meet the Specific Plan's Base level standards, which were established to achieve inherent public benefits, such as the redevelopment of underutilized properties, the creation of more vitality and activity, and the promotion of healthy living and sustainability. The maximum permitted base floor area ratio (FAR) for the D sub-district is 2.0 for all uses, inclusive of office, and the maximum FAR for non-medical office uses is half of the overall FAR. As a result, the subject parcel is limited to 13,874 square feet of total gross floor area and 6,937 square feet of non-medical office. The proposed project falls within these limits, with a total of 11,471 square feet (1.65 FAR) of gross floor area and a total of 6,610 square feet (0.95 FAR) of non-medical office space, including proportional allocations of the common areas, such as the lobby and stairs. The FAR has been calculated per the definition of Gross Floor Area, which includes all levels of a structure, with exemptions for covered parking and certain non-usable/non-occupiable areas.

The parcel size and the D sub-district's residential limit of 25 dwelling units per acre results in a maximum of three units, which is what is proposed. The development would be 38 feet tall, which is the maximum allowed height and would adhere to the façade height limit of 30 feet. A one-foot tall parapet wall is proposed for the rooftop mechanical equipment screening and is not included in the maximum height of the building. The development complies with the building profile, which requires a step back for the upper level. The elevator, stairwells, and parapet walls slightly encroach into the building profile, which is permitted. The development would have a zero setback at the front, sides, and rear property lines, as required in this area to reinforce the traditional downtown building forms. As specified by the Specific Plan, the development would be required to achieve LEED Silver certification (condition 4b).

The applicant is also requesting approval of a tentative map for a minor subdivision to create three residential condominium units and one commercial condominium. The minor subdivision will be reviewed and acted on at an administrative level after action is taken on the architectural control permit by the Planning Commission. The vesting tentative map sheets are included for reference as part of the plan set, but the Planning Commission is not acting on that request, and the map sheets may need to be updated to reflect any building, utility, or similar changes made in association with the architectural control action.

The project does not require a Below Market Rate (BMR) Housing proposal, as the number of dwelling units and commercial square footage falls below the thresholds established by the BMR Ordinance.

Based on Planning Commission comments on other recent Specific Plan projects, staff considered bringing this project as a study session item. However, based on the project's long administrative review process and compliance with all relevant Specific Plan requirements, this item is being presented for review and action. Staff would also note more generally that the Specific Plan outlines more detailed design and development standards and goals in an effort to provide clarity and certainty with the development review process. The Specific Plan requires that all bonus level projects receive a study session, but does not require this for base level projects.

Design and materials

The Specific Plan includes a detailed set of design standards and guidelines. Compliance with the standards and guidelines are evaluated in the Standards and Guidelines Project Compliance Worksheet (Attachment F). The following discussion highlights and expands on topics addressed in the Standards and Guidelines Project Compliance Worksheet.

Design concept and architectural character

The proposal consists of ground level parking with office space at the second level and three residential units at the third level. The exterior walls would be built to the zero setback limits for the first two levels. The third level residential units would be stepped in from the second level in compliance with the building profile requirement. Residential terraces would occur on all sides of the third level and would vary in depth from six feet to 10 feet. Recesses in the building façade would occur as required for building modulation. This would include a minor modulation adjacent to the stair tower on the Menlo Avenue frontage, a minor modulation mid-façade and a major modulation at the building entry on the Evelyn Street frontage, and a minor modulation on the parking plaza side adjacent to the interior lot line.

Parking for all uses would be located at ground level along with bike parking, trash services, and utility rooms. The garage entrance would be located on the Evelyn Street side, adjacent to the lobby. Underground parking would not be viable at this site due to the limited lot size, along with driveway width and ramping requirements. To mitigate the visual impact of the ground level parking, both material variation on the façade and height differences would be used to highlight the upper levels. The plate height of the ground level would be 10.5 feet, whereas the plate height of the second level would be 15 feet. The brick base would be 8.5 feet tall, and a metal channel would visually delineate the garage level from the second floor level. The second level would appear to be 20.5 feet tall, as the guardrail for the residential terraces would align with the second level window glazing system. Additionally, the second level's sunshade (window frames and fins) would project one foot out from the second floor and would give the second level the appearance of floating over the ground level.

To further diminish the garage's presence, the ground level would be embellished with use of Roman brick, including decorative brick latticework at key points of the façade. The choice of Roman brick would also blend with the adjacent supermarket's materials. The brick material would be carried into the interior of the garage entrance, so that the visibility of parking would be somewhat screened and material consistency would be maintained. The brick lattice would occur at shallow recesses along the brick wall at the first level. These recesses would also include planters and benches. Additionally, the extensive glazing used at the building corner for the lobby, including the glass façade at street level, would help diminish the impact of the first level garage. While the brick is articulated at key points with latticework, benches and plantings, the building corner at Menlo Avenue and Evelyn Street remains predominately solid brick. The Planning Commission can consider whether there are additional options to articulate the street façade including alternate material treatments or a water feature.

At the third level, the residential units would have similar material treatment as the second level but would be stepped back from the lower levels. The extensive glazing and the deep sunshades for the residential units would wrap around the building corners and extend across the Menlo Avenue and Evelyn Street façades. The third level would differ from the treatment of the lower levels by both this level looking more proportionally compressed in height from the middle façade zone and by emphasizing the horizontal use of lines at the upper floor's façade and roof edge. The building elevation facing the parking lot would have a more solid volume appearance, but complements the more repetitive metal and glass elements on rest of the second level.

Overall, the three zones of the facades would be well distinguished with the emphasis placed on the second level as an almost double-high façade zone. This location's sunshade comprised of vertical fins and recessed glazing would provide rhythm to the façade and frame the extensive glazing at the office level. Furthermore, vertically proportioned and vine covered brick wall planes would abut the supermarket's façade on both sides. This would create effective material transitions to the abutting building.

Materials and detailing

The proposed project would feature a contemporary architectural style with varied materials and clean massing and form. The design would feature copper tone Roman brick with a smooth finish on the first level walls and the stair tower. White and gray cement plaster would be used at recessed wall planes on the second and third levels. Additional architectural interest would be created by the board form concrete planters and benches, dark bronze metal at window frames, metal channel roofing on the third floor stairs, and sunshades. Glazing would be clear insulated glass per the materials board.

The material and color palette would provide texture change and color contrast between adjacent finishes. The copper-reddish bricks would warm an otherwise cool color palette, while the dark bronze metal window frames and sunshades would provide a sharp contrast with glazing and adjacent white stucco walls. Detailing would produce clean/sharp edges and clear transitions between materials. Windows recessed from stucco wall faces or metal window frames, frameless glass guard railings, and decorative brick patterns would be consistent with the contemporary design treatment. The building volume would be articulated by substantial glazing on the upper levels, frameless glazed deck railings, and metal sunshades that project outward at the second and third levels in an interesting pattern. The façade treatments would wrap the building corners to highlight the unified building form as viewed from an angle.

Parking and circulation

Vehicular

Vehicular access for the site would be provided by the garage entrance on the Evelyn Street frontage. The location of the garage entrance complies with transportation best practices, as it would be located on the less busy of the two streets, and it would be a sufficient distance from the intersection to minimize turning conflicts. To accommodate the new garage entrance, the on-street parking spaces would be shifted slightly away from the new entrance. The existing loading zone would also be modified, as discussed in a following section.

This property was previously part of the P (parking) district. When a P parcel is redeveloped, parking for the first 1.0 FAR is satisfied by replacing the parking previously provided on the parcel, which in this case is seven spaces. The parking for the remaining FAR is provided based on the Specific Plan parking requirements. For this development, the general office use is covered under the first 1.0 FAR, and the residential units require one space for every residential unit or a total of three parking spaces, for a total requirement of 10 spaces. Thirteen parking spaces would be provided on the ground level, which exceeds the requirement.

The garage is designed with a backup area to enable cars to turn around and exit in a forward-facing direction. Two electric vehicle charging stations are proposed, which would exceed the current Specific Plan requirement for such facilities. A gate would be located at the garage entrance and would be required to be open between the hours of 7:00 a.m. and 7:00 p.m. per condition 4d, in order to limit the potential for vehicles blocking the sidewalk while waiting for the gate to open. A lobby with a staircase and elevator at the northwest corner of the building would provide direct access from the garage to the office and residential uses. In addition, pedestrian doors on the west and east sides of the garage would provide access from the garage to parking plaza #4 and Menlo Avenue.

Bicycle

The project would provide required bicycle parking in both short-term and long-term configurations. Short-term bicycle parking would be provided via racks near the lobby entrance along Evelyn Street. Long-term bicycle parking would be located in the garage level, with access provided both by the garage entrance on Evelyn Street as well as pedestrian doors from Menlo Avenue and parking plaza #4. Similar to vehicular parking, covered bicycle parking is exempt from FAR calculations.

Pedestrian

Access to/from the office space and residential units on the second and third levels would be provided via the lobby on Evelyn Street and a staircase on Menlo Avenue. The existing sidewalks on Evelyn Street and Menlo Avenue would remain and would be repaired/replaced as needed to match the existing sidewalk. The sidewalk along Evelyn Street would be eight feet wide and the sidewalk along Menlo Avenue would be 10 feet wide. As part of the project, three new street trees would be provided along Evelyn Street. Benches would be incorporated into the building façade along Evelyn Street and Menlo Avenue and would further enhance the pedestrian experience.

Undergrounding of overhead utilities

Specific Plan Guideline E.3.7.07 states that all utilities in conjunction with new residential and commercial development should be placed underground. Currently, overhead lines run along the Evelyn Street frontage. As part of the project, the applicant is relocating the utilities (power, communication lines, and fiber optic) along Evelyn Street underground in order to comply with the undergrounding guideline. The undergrounding includes undergrounding the utility lines beginning at the power pole located near the northwest property corner, running across Evelyn Street, and ending at the power pole located at the northeast corner of the Menlo Avenue and Evelyn Street intersection. This would allow fire access from Evelyn Street, and would also permit the retention of the Menlo Avenue street trees. The undergrounding plans will be finalized prior to building permit issuance and are subject to PG&E, City of Menlo Park, and the Menlo Park Fire Protection District review and approval per condition 4e.

Draeger's Market loading zone

As noted earlier, the subject parcel was used for many years as a loading and employee parking area for the adjacent Draeger's Market, but this arrangement was terminated in 2001. As a result, in March 2002, the City Council reviewed and conditionally approved the use of loading zones and related operational requirements for Draeger's Market on Evelyn Street, subject to a condition of approval stating, "At such time as City approvals are actively pursued for the development of the property located at 840 Menlo Avenue, the City Council shall reconsider the placement, design, and/or use of the loading zones on Evelyn Street". The subject project thus requires the reevaluation of the existing loading zone on Evelyn Street, and staff has met with representatives of Draeger's Market in order to evaluate alternatives. Staff recommends relocating the loading zone from Evelyn Street to Menlo Avenue and extending the allowed hours for the loading zones within the parking plaza. The specific proposed modifications are:

- The adjacent parking plaza currently allows loading until 10:00 a.m., Monday through Friday on the side closest to the Draeger's Market. The hours allowed for loading on the other side of that drive aisle would be extended from 7:00 a.m. to 9:00 a.m., Monday through Friday.
- Convert two existing on-street spaces on Menlo Avenue to a loading zone with hours starting at 7:00 a.m. to 8:00 p.m. on weekdays and 9:00 a.m. to 8:00 p.m. on weekends. And eliminate the existing loading zone on Evelyn Street.

On November 14, 2017, the loading zone changes were presented to the City Council as an information item. On January 10, 2018, the Complete Streets Commission reviewed the modifications to the loading zone and voted 8-0-1 to encourage staff to work with Draeger's Market and 840 Menlo Avenue representatives to develop an alternative loading zone location without using Menlo Avenue. Draeger's Market and 840 Menlo Avenue representatives have expressed concerns and preferences about the proposed changes to the loading zone. After additional review and discussion, staff has determined that Menlo Avenue continues to be a viable option for the loading zone.

While the Planning Commission can provide feedback on the loading zone modifications, it is not directly part of the architectural control permit actions and would ultimately be reviewed by the City Council after the Planning Commission takes action on the architectural control permit. A condition of approval (4f) has been added to the project indicating that any approval would be conditional on the City Council relocating the Evelyn Street loading zone.

Open space, trees, and landscaping

Open space

The project would exceed the minimum private open space requirement for the residential units. The minimum private open space requirement is 80 square feet for every residential unit. Each residential unit would have a private terrace, the smallest of which would be 194 square feet. The terraces would be designed as extensions of the living spaces, in compliance with relevant guidelines. The D zoning sub-district does not require common open space for the entire development.

Trees

The applicant has submitted an arborist report (Attachment I) detailing the species, size, and conditions of the significant trees on or near the site. The report determines the present condition, discusses the impacts of the proposed improvements, and provides recommendations for tree removals.

The plans and arborist report currently indicate the removal of nine trees. None of these trees are heritage trees, and three are street trees on Menlo Avenue. According to the arborist report, the non-heritage on-site trees (Trees #1-6) are all London planes and are in good condition, but are located within the proposed building footprint. Since the D sub-district requires a zero-foot setback in order to reinforce the traditional downtown building form, the removal of these on-site trees is effectively required. While no replacement trees are required for the non-heritage tree removals, the applicant is proposing three new street trees along Evelyn Street. The arborist report recommends measures to ensure the continued health of the proposed trees after planting.

The three street trees (Trees #7-9) on Menlo Avenue were proposed for removal at an earlier stage of the project review process, but the City Arborist did not support the removal of these trees as they are overall in good condition and form a uniquely consistent landscaping aesthetic on this block. The applicant has since agreed to retain and protect these trees, and the project plans project plans correctly show their preservation, although the arborist report was not able to be updated in time for the Planning Commission meeting. Prior to building permit issuance, the arborist report would be comprehensively revised to show the retention of these trees and incorporate any associated preservation measures (condition 3q).

Landscaping

Landscaping would be limited due to the zero-foot setback requirement, but carefully selected plant choices would add to the design's appeal. Raised planters are proposed at the northwest corner of the property at the lobby entrance. The building recesses on Evelyn Street and Menlo Avenue would also feature plantings

to soften the garage elevation. The decorative plants in the planters would have strong architectural lines such as the snake plant or striking color such as the pink muhly. On the third level, a common terrace area would feature podocarpus shrubs in planters along the interior lot line. Additional plantings would include three new Sycamore street trees along Evelyn Street and Boston ivy at the tall brick walls near the supermarket. The specific plantings are subject to change and refinement at the building permit stage. Building lighting would be used to highlight the landscaping at planters and the brick latticework.

Trash and recycling

The development would have a shared trash and recycling area on the ground level, in the garage. The bins would be wheeled out to the street on the service day for collection. The plans have been reviewed and tentatively approved by the City's refuse collector, Recology.

Correspondence

Staff received one email regarding this project after the initial public notice. The comments in the email included concerns about the proposed building's design and lack of retail use. The applicant provided a memo describing their outreach efforts including a letter that was sent to the neighboring properties within 300 feet for the project site and four responses received directly by the applicant that were generally supportive of the project. The applicant also held an informational meeting on February 8, 2017; however, there was no attendance at this meeting. These documents are included as Attachment J. Staff has also received correspondence on the loading zone topic, although that is not attached to this report as it does not strictly relate to the architectural control request.

Conclusion

Staff believes that the proposal would produce a visually refined piece of contemporary architecture that relates in scale and materials to the surrounding buildings. The proposed design's form and massing as seen from the street would create a clean, contemporary expression of rectangular elements with strongly defined edges in varied materials. Materials, finishes and colors would add additional architectural interest to the building. The proposal would adhere to the extensive standards and guidelines established by the Specific Plan, as verified in detail in the Standards and Guidelines Compliance Worksheet.

The proposal would meet the Specific Plan's Base level standards, which were established to achieve inherent public benefits, such as the redevelopment of underutilized properties, the creation of more vitality and activity, and the promotion of healthy living and sustainability. Vehicular and bicycle parking requirements would be met, and the development would also provide a positive pedestrian experience. Three new street trees would be located along Evelyn Street. New landscaping would be planted throughout the site and the private open space would exceed the minimum standards. Therefore, staff recommends that the Planning Commission approve the proposed architectural control.

Impact on City Resources

The project sponsor is required to pay Planning, Building and Public Works permit fees, based on the City's Master Fee Schedule, to fully cover the cost of staff time spent on the review of the project. In addition, the proposed development would be subject to payment of Transportation Impact Fee (TIF), Specific Plan Transportation Infrastructure Proportionate Cost-Sharing Fee, and the El Camino Real/Downtown Specific Plan Preparation Fee. These required fees were established to account for projects' proportionate obligations.

Environmental Review

The Specific Plan process included detailed review of projected environmental impacts through a program Environmental Impact Report (EIR), as required by the California Environmental Quality Act (CEQA). In compliance with CEQA requirements, the Draft EIR was released in April 2011, with a public comment period that closed in June 2011. The Final EIR, incorporating responses to Draft EIR comments, as well as text changes to parts of the Draft EIR itself, was released in April 2012, and certified along with the final Plan approvals in June 2012.

The Specific Plan EIR identifies no impacts or less-than-significant impacts in the following categories: Aesthetic Resources; Geology and Soils; Hydrology and Water Quality; Land Use Planning and Policies; Population and Housing; and Public Services and Utilities. The EIR identifies potentially significant environmental effects that, with mitigation, would be less than significant in the following categories: Biological Resources; Cultural Resources; Hazards and Hazardous Materials. The EIR identifies potentially significant environmental effects that will remain significant and unavoidable in the following categories: Air Quality; Greenhouse Gases and Climate Change; Noise; and Transportation, Circulation and Parking. The Final EIR actions included adoption of a Statement of Overriding Considerations, which is a specific finding that the project includes substantial benefits that outweighs its significant, adverse environmental impact.

As specified in the Specific Plan EIR and the CEQA Guidelines, program EIRs provide the initial framework for review of discrete projects. In particular, projects of the scale of 840 Menlo Avenue are required to be analyzed with regard to whether they would have impacts not examined in the Program EIR. This conformance checklist, which analyzes the project in relation to each environmental category in appropriate detail, is included as Attachment K. As detailed in the conformance checklist, the proposed project would not result in greater impacts than were identified for the Program EIR. Relevant mitigation measures have been applied and would be adopted as part of the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment L. Full compliance with the MMRP would be ensured through condition 4a. No new impacts have been identified and no new mitigation measures are required for the proposed project. Mitigations include construction-related best practices regarding air quality and noise, payment of transportation-impact-related fees (condition 4k), and implementation of a Transportation Demand Management (TDM) program (Attachment M). The MMRP also includes three completed mitigation measures related to cultural resources, noise, and hazardous materials. A phase I environmental site assessment, acoustic report, and cultural resources evaluation were performed by qualified professionals and determined that the proposed project would have no additional impacts. These studies are available for review upon request.

Specific Plan Maximum Allowable Development

Per Section G.3, the Specific Plan establishes the maximum allowable net new development as follows:

- Residential uses: 680 units; and
- Non-residential uses, including retail, office and hotel: 474,000 square feet.

These totals are intended to reflect likely development throughout the Specific Plan area. As noted in the Plan, development in excess of these thresholds will require amending the Specific Plan and conducting additional environmental review.

If the project is approved and implemented, the Specific Plan Maximum Allowable Development would be revised to account for the net changes as follows:

	Dwelling Units	Commercial Square Footage
Existing	0	0
Proposed	3	6,610
Net Change	3	6,610
<i>% of Maximum Allowable Development</i>	<i>0.4%</i>	<i>1.4%</i>

Public Notice

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

Appeal Period

The Planning Commission action on architectural control will be effective after 15 days unless the action is appealed to the City Council, in which case the outcome of the application shall be determined by the City Council.

Attachments

- A. Recommended Action
- B. Location Map
- C. Data Table
- D. Project Plans
- E. Project Description Letter
- F. Specific Plan Standards and Guidelines Compliance Worksheet
- G. Arborist Report
- H. Correspondence
- I. EIR Conformance Checklist
- J. Mitigation Monitoring and Reporting Program (MMRP)
- K. Transportation Demand Management (TDM) program
- L. Construction Phasing Plan

Disclaimer

Attached are reduced versions of maps and diagrams submitted by the applicants. The accuracy of the information in these drawings is the responsibility of the applicants, and verification of the accuracy by City Staff is not always possible. The original full-scale maps, drawings and exhibits are available for public viewing at the Community Development Department.

Exhibits to Be Provided at Meeting

Color and materials board

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Planning Commission on March 12, 2018, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.

- b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
- c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
- d. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval by the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
- e. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for review and approval of the Engineering Division.
- f. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to the issuance of grading, demolition or building permits.
- g. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance.

4. Approve the project subject to the following project-specific conditions:

- a. Simultaneous with the submittal of a complete building permit application, the applicant may submit revised plans that remove the lightly colored vertical corner boards from the elevations, or specify that they are painted to match the siding, subject to review and approval by the Planning Division.***

G. Regular Business

- G1. Architectural Control/Charlie Troglia/840 Menlo Avenue:
Request for architectural control to construct a new, three-story mixed-use building on a vacant lot in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The building would consist of parking and lobby entrances on the ground floor, non-medical office on the second floor, and three dwelling units (with terraces) on the third floor. ([Staff Report #18-024-PC](#))

Staff Comment: Associate Planner Kaitie Meador said since the publication of the staff report an email from a neighbor expressing concerns with the scale and design of the building was received.

She said copies of it and a letter and email from the applicant regarding the loading zone were at the dais.

Commissioner Riggs noted he had done concept planning for this project six or seven years ago.

Applicant Presentation: Ken Hayes, Hayes Group Architects, project architect, said he was presenting on behalf of the Troglia family, noting Charlie Troglia and his sister Gloria were present. He provided a slide presentation noting the project site was about 6,900 square feet on the corner of Menlo Avenue and Evelyn Street. He said it was located in the Specific Plan downtown area and was allowed 2.0 FAR, a 30 foot wall height at the street, a 38 foot overall height, and zero setback. He said the surrounding properties including public parking lots #4 and #5, two-story office buildings, a multi-family complex, homes converted to office space, and Draeger's Market. Mr. Hayes said the project would have two ancillary pedestrian entrances, one going to public parking plaza #4 and one to Menlo Avenue. He said those would also serve as an exit for the upper stories and the garage level. He said accent spaces using a special pattern of masonry that would be either planters and/or seat walls would be placed around the perimeter of the building to activate the side walk and provide interest to the building. He said the window mullions were very deep for shading purposes and although placed in a seemingly random pattern, those windows would view the tops of the trees on Menlo Avenue. He said materials were brick base, dark bronze anodized window frames, clear high performance glass as transparent as possible, glass railings along the second floor office on second floor to create the terraces on the third floor, residential units set back about eight feet and wrapped in cement plaster with metal sun shading device that tied the façade together bringing some of the second floor to the third floor.

Commissioner Goodhue asked about the width of the sidewalk on the short side of the building and along Draeger's. She said currently from that parking lot walking into Draeger's there was a sidewalk, and asked if it was the same. Mr. Hayes said it would be the same width as the existing sidewalk. Commissioner Goodhue confirmed with Mr. Hayes that the sidewalk would be distinct separating it from the parking plaza.

Chair Combs said the staff report indicated this item was coming to the Commission as a regular business item for approval instead of a study session because of the long administrative process the project had had. He asked staff to provide some detail about that. Principal Planner Rogers said the Troglia's applied for a permit in 2014 with a different architect, with a proposal that programmatically was similar to the current one but which had had design-related issues complying with Specific Plan requirements. He said the applicants decided to go with another architect. He said the Specific Plan did not require study sessions except for public benefit bonus projects. He said as a matter of practice that if the project was not a public benefit bonus project under the Plan and one that staff saw was on the right track, staff would not plan to bring the project for a study session, since part of the Specific Plan objectives were to provide greater certainty and clarity.

Commissioner Onken said the Commission had received a letter questioning today the ownership of the loading zone. He asked about Draeger's current loading practices and how this project might affect that. Mr. Hayes said there were options on the table regarding that. He introduced John Hanna.

John Hanna, the applicants' attorney, said he sent a couple of letters, which he thought were in the Commission's packet, indicating that the agenda item tonight was the architectural control approval of this project, and had nothing to do with Draeger's loading zone and loading zone issues. He said

the City Council in 2002 said that if and when the 840 Menlo Avenue came up for development that the loading zone frontage on Evelyn Street would need to go. He said the minutes for that meeting indicated that Draeger's was given two years to come up with some alternate location for the loading zone, which did not occur. He said the applicants were seeking architectural control approval for their project and it seemed neither the time or place to go into Draeger's issues and problems with loading zone.

Commissioner Kahle asked if the project's first floor next to two City public parking plazas might have been retail space with parking offsite. Associate Planner Meador said the area was zoned as P or Parking, which meant the applicants had to replace existing parking on the lot to the project's base parking requirement. She said with that and the somewhat narrow and small lot, there had been no room to fit retail on the first level. She said under the Specific Plan the project was required to provide parking and there was no mechanism under the Plan to provide parking off-site, until such time as a parking structure is developed. Commissioner Kahle said the window mullions on the second floor overhang the property line, which he did not know was allowed. Associate Planner Meador said under the Plan there was a certain distance a project might cantilever over the property line into the right of way with requirements that they had to be at least eight feet above the sidewalk for clearance.

Commissioner Kahle said there appeared to be a gap between this new building and Draeger's Market. Mr. Hayes said an eight-inch space was code-mandated for building drift based on the type of construction. He said they would design an expansion joint from the sidewalk level so the gap would not be visible. He confirmed with Commissioner Kahle that would also be at the top to prevent debris from accumulating. Commissioner Kahle said an eight-foot acoustic wall was on top and confirmed with Mr. Hayes that was because of the roof mounted equipment on Draeger's building. Commissioner Kahle asked if Draeger's roof was used for anything other than mechanical. Mr. Hayes said that was all they had seen on the maps they had reviewed. Commissioner Kahle asked if the brick was intended to match that on the Draeger's building. Mr. Hayes said that a sample was on the materials board and was not intended to match. Commissioner Kahle said he appreciated Mr. Hayes' comment about the lobby facing downtown but he felt the other corner was very unwelcoming. Mr. Hayes said they had designed the recesses around the perimeter with perforation in areas relative to how the parking was configured in the interior. He said they needed the full depth of the lot to get wall thickness and vehicle spaces and required backup so there was no opportunity for plant material. He said they had originally shown plant material, a planter, along that frontage that was basically on the right of way, which they were told they could not do. Commissioner Kahle noted the nice brick lattice work on other parts of the building and asked if they had thought about doing the same treatment at the corner. Mr. Hayes said they found the lattice was most effective between solid ends. Commissioner Kahle said he was not quite sold on the mullions and the randomness of those. Mr. Hayes said the goal was a pattern that felt more organic. He said traditional construction materials such as window mullions tended to be straight and they wanted to avoid a grid-look appearance. He said the randomness created more of a non-orthogonal feel that did not seem like typical office space. He said they were located in order to line up office walls in a coherent manner inside the building. Commissioner Kahle asked what the smallest spacing was. Mr. Hayes said he thought the smallest space was a foot. Commissioner Kahle said the sloping metal roof over the staircase was a different piece of all the elements and the sloping part of it was bothering him. He asked if they had considered not sloping it or using skylights or windows to help with the stair tower. Mr. Hayes said they were trying to work within the façade plane of 45 degrees at 30 feet which led to the sloping form, and there was no reason for the stairs to be another six to eight feet on the outside edge. He said they also

thought the materiality of it would tie in with the material of the window frames to bring that back inside. He said it then turned and ran down the other side of the building where the units were accessed on the Draeger's side of the building. Commissioner Kahle said it was a nice design.

Chair Combs opened public comment. He noted he had nine speaker cards with six of the speakers having the last name Draeger. He said staff indicated some speakers would have donated time. He said he would need clarity on who was donating time to whom. He noted the speaking time for an individual was three minutes and with donated time from two speakers was a maximum of nine minutes per person.

Ms. Camas Steinmetz, Draeger's attorney, said there was a coordinated presentation with four speakers with each speaking slightly more than three minutes with donated time from other speakers. She said no speaker for this presentation would speak more than four to five minutes.

Replying to Chair Combs, Ms. Steinmetz said the order of speakers was Tony Draeger, Richard Draeger, Magnus Barber of Nelson/Nygaard Consulting, and Camas Steinmetz. She said speaking time was being donated by Francis Draeger, Mary Claire Draeger, Peter Draeger, and Victoria Draeger.

Mr. Hanna asked if the applicant would have the opportunity to respond depending on what was said by Draeger's as he did not think it would be about architectural control approval. Chair Combs said he would need to hear what the speakers had to say.

Public Comment:

- Tony Draeger, Menlo Park, said they were requesting the Commission's help for Draeger's to be allowed to continue receiving their groceries from Evelyn Street. He outlined the history of Draeger's noting in 1991 the two-story marketplace opened. He said grocery business was hard for independent, family-owned operations in a landscape mainly dominated with international chain stores. He listed other local grocery business independently owned that no longer operated. He described Draeger's niche market featuring locally sourced packaged foods, produce, local produced artisan bakery, and their own kitchens creating bakery and delicatessen products. He noted their philanthropy including contributions to local schools and non-profits. He noted the awards their grocery has won. He said Draeger's Menlo Park served 12,000 customers per week which averaged to 6,000 unique households with an average of two shopping visits per week, and the majority of the customers were from Menlo Park. He said those weekly visits often included visits to other merchants downtown. He said that Evelyn Street was not a busy street and safely accommodated truck activity. He said since that location was approved for their deliveries in 2001 there had been zero complaints. He said moving the loading zone into the public parking plaza would compromise their much needed customer parking and moving it to Menlo Avenue would require expensive capital improvement upgrades and ongoing costs for receiving. He said their traffic consultant would explain why their receiving did not need to be relocated to accommodate the new development.
- Richard Draeger, Woodside, said that relying on the public parking plaza without any loading zone would cripple their business. He said parking plaza #4 was among the heaviest utilized parking plazas in the central business district with capacity utilization beyond 100% from October through December. He said also it was beyond 100% at peak shopping hours such as lunch and dinner time, and peak days of Friday, Saturday, and Sunday. He said this was when

Draeger's derived its most revenue and profitability. He said to operate the store's loading zone in parking plaza #4 would require the elimination of nine to 10 parking spaces due to the 65-foot length of semi-delivery trucks. He said a nine parking space reduction for receiving represented more than 9% of the unrestricted parking and would translate into at least a 10% reduction in Draeger's sales and potentially sales of other businesses. He said mixing heavy truck delivery during daytime shopping hours with high volume customer auto and pedestrian traffic increased the probability of accidents and other unsafe conditions. He said Menlo Avenue receiving was not the preferred option as it was closer to the residential neighborhoods, and there were possible traffic conflicts that could occur there. He said the changes to their store to receive from Menlo Avenue would require an expenditure of approximately \$50,000. He said keeping retail viable in the central business district was tenuous enough already and since the 2008 financial crisis, it took over six years for the downtown to recover. He said with online shopping threats the retail district needed the City's support.

- Magnus Barber, Nelson/Nygaard Consulting, San Francisco, said his firm had worked on the General Plan Update, Specific Plan Update, and numerous development projects in Menlo Park for transportation and parking management. He showed a slide representing the size of delivery trucks and explained the concern with adding trucks of this size in the parking plaza. He said they looked at the City's guidelines for driveway design and the intent of the guidelines was to keep all user groups safe including bicyclists, pedestrians, drivers and loading personnel. He said the main issue was to keep good visibility for people entering and exiting the driveway and passing traffic. He said the Menlo Park guidelines suggested a 30 feet minimum from the corner plus a radius for the driveway entrance. He said nearby the Trader Joe's had approximately 22-foot between their driveway and the adjacent street. He said another block along at 628 Menlo Avenue that property had less than 35 feet between its driveway and the adjacent street, and that this was next to El Camino Real with higher volume of traffic and speed. He said he looked at the collision history at these locations for the past five years, and found that none of those were related to driveway ingress and egress. He said based on the guidelines and general street design principles that from a transportation perspective there were no reasons why the driveway for this project should not be located on Menlo Avenue. He said Draeger's preferred option for the proposed project was to locate the driveway on Menlo Avenue so it was 30 feet from the intersection plus five foot for the driveway radius. He said that would work fine with internal circulation in the garage and would provide the space for loading used today. He said a second option was to locate the driveway on Evelyn Street except slightly closer to Menlo Avenue to provide space for one semi on Evelyn Street allowing existing Draeger's operations to continue. He said national guidelines suggested a 30-foot clearance was preferable but also recognized an existing built up environment, and that you can work with what you have. He said this option presented a more centrally placed driveway that might be easier for the architect to incorporate into the design.
- Camas Steinmetz said she was a land use attorney, engaged by Draeger's to represent them as this project could have a crippling impact on their loading and delivery. She said they were not asking the Commission to take action on the loading zone but requesting the Commission consider changes to the project design that would minimize the impact on loading. She said all five findings needed to be made for the discretionary architectural control permit and they questioned whether the three highlighted findings could be made with the driveway location as proposed as it would require elimination of the loading zone on Evelyn Street or losing parking plaza space to loading. She said loss of customer parking would directly translate into lost

sales for nearby retailers including Draeger's, She said increased truck deliveries in the parking plaza would increase the potential for conflicts between the delivery trucks, customers, vehicles, and pedestrians. She said the project as proposed would also conflict with one of the Specific Plan's guiding principles to sustain Menlo Park's village character. She said the recommended condition of approval 4.f in their opinion could not be satisfied unless agreed to by Draeger's. She said as explained in the staff report, condition 17, for the original approval of the Evelyn Street loading zone, required the City Council to reconsider the placement, design and use of this loading zone when development at 840 Menlo Avenue was actively pursued. She said it did not as Mr. Hanna alluded require elimination of the loading zone. She said not mentioned in the staff report was condition 18 that limited the Council's discretion to modify the loading zone. She said as proposed by Mr. Barber there were two alternative driveway configurations that Draeger's could support, and both would require revisions to the proposed plans. She said they requested the Commission either deny the permit as proposed or continue the hearing and allow the applicant to return with revised plans that relocated their driveway to Menlo Avenue pursuant to Option A presented, their preferred alternative.

- Joyce Schmidt said she worked at 830 Menlo Avenue and had been there since 1991. She requested the Commission not approve the project as presented without further study. She said her concern was a 39-foot tall and 11,471 square feet building on a lot she thought was barely the size of a tennis court. She said its appearance, a space age building, would destroy the character of the neighborhood. She said the project would have parking for 13 cars but with loading zone issues nine or 10 parking spaces could be lost in the public parking plaza. She said there were times of year where her clients could not park and were late to their appointments. She said new offices brought new traffic. She questioned the housing being provided and the number of parking spaces. She said the project needed a parking and traffic study and those needed to happen at different times of the year particularly between October and January. She requested that the Commission not approve the project tonight or until further study had occurred.
- Richard Poe said Lydia Cooper and Gloria Walker were donating time to him. He said the issue was loading zones and the City's statutes did not vest jurisdiction in the Planning Commission over loading zones. He said staff had designed a process pursuant to law whereby this meeting would be followed with a hearing before the City Council about the loading zone. He showed a map of two loading zones in public parking plaza #4 that Draeger's was given free of charge by the City 17 years ago. He said Council spent one year from 2001 to 2002 on this topic and came up with a plan to have it come back to them in two years and that never happened. He said John Hanna's statement that the loading zone issue for Draeger's was to have been solved by them long ago was true. He showed slides showing the prevalence of trucks being unloaded in what would be the entire frontage of the applicants' proposed project. He said 910 trucks a month brought deliveries to Draeger's and only one third of those trucks were using the two loading zones in parking plaza #4. He said Draeger's use permit required them to provide 45-spaces of parking across Menlo Avenue. He said he had visited that lot during peak periods of the day and it was agreed at the Complete Streets Commission hearing when this was discussed in January that there was ample parking during peak periods in that lot. He said he and Mr. Troglia measured and found that lot was actually closer to the front door of Draeger's than the spaces where the City has provided loading zones in public parking plaza #4. He showed photos of those loading zones empty while trucks were lined up on Evelyn Street to unload. He showed a cover letter dated March 22, 2002 to Arlinda Heineck, City Planning, from Carol Dylan, an attorney for the Draeger's, regarding the Council's decision

made on March 5, 2002, stating “attached to this letter is the revised plan for the loading zone on Evelyn Street which reduces the loading area so that the curb cut is no longer included in the loading zone. Draeger’s will continue to work toward complete elimination of the loading zone on Evelyn, and expects to deliver a further revision to the plan in the near future.” He said the staff report from March 5, 2002 said “We recommend against any frontage of the Troglio property which they acknowledged would be developed off Menlo Avenue because it is unsafe on Menlo Avenue.” He showed a photo of Evelyn Street from 2015 which showed 90 minutes parking. He said they believed at the time this application was made, all through the process until May 2017 and so did staff in good faith that the Draeger’s loading zone on Evelyn Street had disappeared years ago as they promised it would. He said the Draeger’s never said anything about the fact those spaces had been converted to parking. He said since 2014 there had been four notices to Draeger’s, two they sent out noticing public meetings regarding their projects and two notices mailed by the City inviting Draeger’s to call, write letters, visit the staff, to discuss anything with their project and at no time since 2014 said anything until tonight’s meeting.

Chair Combs asked for other speakers who had provided slips to speak. Dave Walker and Alexandra Walker declined to speak. Chair Combs asked if anyone else wanted to speak or if anyone had provided a comment card that he had missed. There being none, he closed the public comment period.

Commission Comment: Commissioner Barnes said that with the architectural control before them the Commission might make recommendations for modifications. He asked staff what areas they considered germane to this project from its perspective. Principal Planner Rogers said he would respond initially as the question was directed to him but noted that Associate Planner Meador was the project planner with knowledge of all the project details. He said in general the recommendation from staff held and they did not have a different recommendation after hearing tonight’s presentations. He said Draeger’s has been a very important part of Menlo Park for many years, and staff had had a number of meetings with them to try to evaluate some alternatives, and if not getting to a perfect solution for the alternative loading at least getting to an acceptable solution. He said he certainly understood the applicants’ perspective as well. He said it was true the City had sent notices on three different occasions. He said the first was in February 2014 for the original proposal, which had the driveway on Evelyn Street a bit farther toward Menlo Avenue, but generally in the same location as now proposed. He said there was another notice in December 2016 when a revised application was submitted, as well as the notice for tonight’s meeting. He said he had had a number of conversations with Michael Draeger about the project but he did not recall the loading zone being brought up in those discussions. He said to that extent he felt for the applicant as they might have missed a chance to agree on something mutually beneficial at an earlier point. He said he believed the proposal before the Commission was approvable as presented. He said regarding the schemes shown this evening for alternate garage locations that those were worth discussing if those might address other issues the Commission might have with the proposed project, and it could consider continuing the project to a later date. He said from staff’s perspective the proposed project was something that could be approved by the Planning Commission. He said the City Council would then consider the loading zone issue. He said it was not explicit in the staff report but if the City Council said it would not change the loading zone from Evelyn Street in such a way that the project became infeasible, then the project as approved by the Planning Commission would have to be revised and resubmitted to comply with that. He said the Commission could focus upon what was in front of them with an acknowledgment that a reevaluation of the loading zone by the City Council was required.

Commissioner Barnes asked staff to confirm that the proposed location of the loading zone on Menlo Avenue was considered a viable option. Associate Planner Meador said after reviewing the options with the applicants, Draeger's and the Transportation Division, staff did not see any foreseeable negative impacts from locating the loading zone on Menlo Avenue and considered it a viable option.

Commissioner Barnes said he liked what had been done for this project architecturally with its cubist form and random placement of fins. He said it was lighter than other projects recently seen proposed for the downtown. He said the use of materials was well done in relation to what was north and south, with a lot of the glass on the building going towards the north and Draeger's to the south. He said they had done a good job of at-grade parking creating interest to what was effectively a podium parked building. He said he liked the materials and the lightness of the structure. He said it seemed less formulaic even within the very prescriptive downtown Specific Plan guidelines, and felt it worked well for Menlo Park.

Commissioner Onken said he would support Commissioner Barnes' sentiments. He said regarding the design and the architecture that Menlo Avenue, but not in a bad way, was very much the back side of the downtown. He said this project when built would be the best building along Menlo Avenue, noting there were a number of bad buildings on that street. He said Draeger's was a perfectly fine, large retail building but was not a front door to the City. He said he could sympathize with the idea of making this building try to face diagonally to downtown even though it would be facing some parking and a bit of street sacrificing its front door from Menlo Avenue. He said however if its front door was on the Menlo Avenue side that might be the beginning of improving the appearance of Menlo Avenue. He said the building was very nice. He said he wondered if the building could be mirrored, flipping it so the entrance was on the other side with the garage entry then moved. He said the application basically prohibited Draeger's loading from Evelyn Street because of its driveway placement.

Chair Combs said he thought with the development of this property that Evelyn Street should immediately end as a loading zone. He said irrespective of different options or where the driveway was for the City to allow a loading zone servicing one building in front of another building diminished the property owner's ability to get value from their building. He said they all agreed that Draeger's was a Menlo Park institution and no one discounted the value of their market to the City and specifically to its downtown. He suggested that if Draeger's wanted to encumber another property to such an extent for their business' needs, that they should buy the property.

Commissioner Goodhue said she agreed with Commissioner Barnes that this was a great design with a good sense of place and relation to the Draeger's building. She said to Commissioner Onken's point about shifting the building that it was interesting to consider. She said she tended to agree with what the architect said in his presentation and what Commissioner Onken said about Menlo Avenue as the back side. She said except for Draeger's that the buildings on Menlo Avenue tended to relate to the public parking plaza. She said she agreed that this building should speak to the core and it made perfect sense for that front door and garage entrance next to it as they referenced each other as the entrance. She said if its front was on Menlo Avenue she thought it would not work as well. She said she thought even though the rendering seemed to indicate two stark walls coming together at the corner that it would work with the various articulations above it and in the brick as well. She said she fully supported the project proposal.

Commissioner Strehl said she also supported the proposed project. She said she thought the architecture hit the mark and that it would integrate well with the brick on Draeger's building. She asked if there were two loading zones in the parking lot first thing in the morning. Associate Planner Meador said that currently there was a loading zone in the parking lot closest to the building and Draeger's also had the ability to use the parking on the other side. She said staff was looking at extending the hours of that with a revised loading zone. Commissioner Strehl asked if staff concurred with the Complete Streets Commission's consensus that a loading zone on Menlo Avenue would be a good option. Associate Planner Meador said that Commission recommended Menlo Avenue not be used for loading but staff still believed it was a viable option, and was continuing to recommend that. Commissioner Strehl noted the property would be subdivided and asked if that meant the condominiums would be for sale. Associate Planner Meador said the property owner could better answer that question.

Richard Poe said his position in this matter was as a real estate broker. He said the property was owned in a generation skipping family trust. He said the only reason for doing the subdivision was so that if in the future something unexpected happened and it was necessary to sell one of the condominium units that it would be an option to solve a financial issue. He said they did this now as the rules for subdivision might change in the future.

Commissioner Strehl asked what the anticipated number of employees would be in the office space. Mr. Poe said the standard traditionally was one employee per 300 square feet so with just under 6,000 square feet that could be about 20 employees.

Commissioner Strehl said she liked the orientation of the building as proposed and did not think it would work facing out on Menlo Avenue.

Commissioner Kahle said he thought the project would be a great addition to the downtown. He said he tended to agree with Commissioner Onken that it would be interesting to look at flipping the entrance so that it was more pedestrian friendly. He said another option would be to open up both corners and add more transparency. He said not having an option for retail on the ground floor was a missed opportunity and suggested for other projects moving forward it would be great if the parking plazas could provide the needed parking. He said a loading zone on Menlo Avenue was a viable option. He said he fully supported the project.

Commissioner Riggs said he liked the building as soon as he saw the rendering. He said he found the architect had done an excellent job in terms of materials and context, the lightness of the materials as mentioned by Commissioner Barnes, and even the differentiation between the uses was unusually clear for a modern building. He said he shared with Commissioner Kahle some concern with the long, blank brick walls but the only thing inside was parking or utility rooms. He said regarding the comments that the project would significantly impede the success of Draeger's Market and the design should be reconsidered, he thought Troglis' right to build on their property as they had hoped to do for at least a decade and a half took primary position. He said it would be a real asset to have the building added to the downtown. He said it was unfortunate that one of their best neighbors had at this point to make an investment and a shift in process assuming the parking #4 areas did not work out as loading zones. He moved to make the findings regarding CEQA, to adopt the findings for architectural control, including the standard conditions and the special conditions as recommended in the staff report. Commissioner Strehl said she would second the motion.

Chair Combs said the Complete Streets Commission did not like the option of Menlo Avenue for loading and asked if there was an option they supported. Associate Planner Meador said in that Commission's action they suggested meet and discuss alternative options beside Menlo Avenue with the applicant and Draeger's. She said Transportation staff did that and after additional research still decided that Menlo Avenue was a viable option, and would propose that at a future City Council meeting.

Commissioner Barnes said he understood the Draeger family's concern and the importance of good commercial loading access. He said without a reason to change the applicant's orientation of ingress/egress as it was perfectly approvable that if the City Council kicked it back they would have to readdress the issue from an access point.

ACTION: Motion and second (Riggs/Strehl) to approve the item as recommended in the staff report; passes 6-1 with Commissioner Onken voting in opposition.

1. Make findings with regard to the California Environmental Quality Act (CEQA) that the proposal is within the scope of the project covered by the El Camino Real/Downtown Specific Plan Program EIR, which was certified on June 5, 2012. Specifically, make findings that:
 - a. A checklist has been prepared detailing that no new effects could occur and no new mitigation measures would be required (Attachment I).
 - b. Relevant mitigation measures have been incorporated into the project through the Mitigation Monitoring and Reporting Program (Attachment J), which is approved as part of this finding.
 - c. Upon completion of project improvements, the Specific Plan Maximum Allowable Development will be adjusted by 3 residential units and 6,610 square feet of non-residential uses, accounting for the project's net share of the Plan's overall projected development and associated impacts.
2. Adopt the following findings, as per Section 16.68.020 of the Zoning Ordinance, pertaining to architectural control approval:
 - a. The general appearance of the structure is in keeping with the character of the neighborhood.
 - b. The development will not be detrimental to the harmonious and orderly growth of the City.
 - c. The development will not impair the desirability of investment or occupation in the neighborhood.
 - d. The development provides adequate parking as required in all applicable City Ordinances and has made adequate provisions for access to such parking.
 - e. The development is consistent with the El Camino Real/Downtown Specific Plan, as verified in detail in the Standards and Guidelines Compliance Worksheet (Attachment F).
3. Approve the architectural control subject to the following **standard** conditions:

- a. Development of the project shall be substantially in conformance with the plans prepared by Hayes Group Architects, consisting of 34 plan sheets, dated received on February 28, 2018, approved by the Planning Commission on March 12, 2018, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
- b. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
- c. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, California Water Company and utility companies' regulations that are directly applicable to the project.
- d. Prior to commencing any work within the right-of-way or public easements, the applicant shall obtain an encroachment permit from the appropriate reviewing jurisdiction.
- e. Prior to building permit issuance, Stormwater Pollution Prevention Program Best Management Practices (BMPs) for construction shall be implemented to protect water quality, in accordance with the approved Stormwater Pollution Prevention Plan (SWPPP). BMP plan sheets are available electronically for inserting into Project plans. The plan is subject to the review and approval of the Engineering Division.
- f. Prior to building permit issuance, the applicant shall submit a plan for: 1) construction safety fences around the periphery of the construction area, 2) dust control, 3) air pollution control, 4) erosion and sedimentation control, and 5) tree protection fencing. The plans shall be subject to review and approval by the Building, Engineering, and Planning Divisions prior to issuance of a building permit. The fences and erosion and sedimentation control measures shall be installed according to the approved plan prior to commencing construction.
- g. Prior to building permit issuance, the Applicant shall submit a draft "Stormwater Treatment Measures Operations and Maintenance (O&M) Agreement" with the City subject to review and approval by the Engineering Division. The property owner will be responsible for the operation and maintenance of stormwater treatment measures for the project. The agreement shall be recorded and documentation shall be provided to the City prior to final occupancy.
- h. Prior to building permit issuance, the applicant shall submit a Grading and Drainage Plan for review and approval by the Engineering Division. Post-construction runoff into the storm drain shall not exceed pre-construction runoff levels. A Hydrology Report will be required to the satisfaction of the Engineering Division. Slopes for the first 10 feet perpendicular to the structure must be 5% minimum for pervious surfaces and 2% minimum for impervious surfaces, including roadways and parking areas, as required by CBC §1804.3. Discharges from the garage ramp and underground parking areas are not allowed into the storm drain system. Discharge must be treated with an oil/water separator and must connect to the sanitary sewer system. This will require a permit from West Bay Sanitary District.
- i. Prior to building permit issuance, Applicant shall submit Covenants, Conditions and

Restrictions (CC&Rs) to the City for City Attorney and Engineering Division review and approval. The CC&Rs shall provide for the maintenance of all infrastructure and utilities within the Project site or constructed to serve the Project. This shall include, but not be limited to, the private open spaces, shared parking spaces, common walkways, common landscaping, and the stormwater drainage and sewer collection systems.

- j. Prior to building permit issuance, the Applicant shall submit engineered Off-Site Improvement Plans (including specifications & engineers cost estimates), for approval by the Engineering Division, showing the infrastructure necessary to serve the Project. The Improvement Plans shall include, but are not limited to, all engineering calculations necessary to substantiate the design, proposed roadways, drainage improvements, utilities, traffic control devices, retaining walls, sanitary sewers, and storm drains, pump/lift stations, street lightings, common area landscaping and other project improvements. The Plan shall include removal and replacement of any damaged and significantly worn sections of frontage improvements. During the design phase of the construction drawings, all potential utility conflicts shall be potholed with actual depths recorded on the improvement plans submitted for City review and approval. All public improvements shall be designed and constructed to the satisfaction of the Engineering Division. The Off-Site Improvements Plan shall be approved prior to issuance of a building permit.
- k. Prior to building permit issuance, and as part of the off-site improvements plan, the applicant shall submit plans for street light design per City standards, at locations approved by the City. All street lights along the project frontages shall be painted Mesa Brown and upgraded with LED fixtures compliant with PG&E standards, and are subject to the review and approval of the Engineering Division.
- l. Prior to building permit issuance, the applicant shall provide documentation indicating the amount of irrigated landscaping. If the project proposes more than 500 square feet of irrigated landscaping, it is subject to the City's Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44). If this project is creating more than 5,000 square feet of irrigated landscaping, per the City's Water Efficient Landscape Ordinance (Municipal Code 12.44) the irrigation system is required to have a separate water service. Submittal of a detailed landscape plan would be required concurrently with the submittal of a complete building permit application.
- m. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
- n. If construction is not complete by the start of the wet season (October 1 through April 30), the applicant shall implement a winterization program to minimize the potential for erosion and sedimentation. As appropriate to the site and status of construction, winterization requirements shall include inspecting/maintaining/cleaning all soil erosion and sedimentation controls prior to, during, and immediately after each storm event; stabilizing disturbed soils through temporary or permanent seeding, mulching, matting, tarping or other physical means; rocking unpaved vehicle access to limit dispersion of much onto public

right-of-way; and covering/tarping stored construction materials, fuels, and other chemicals. Plans to include proposed measures to prevent erosion and polluted runoff from all site conditions shall be submitted for review and approval of the Engineering Division prior to beginning construction.

- o. The Applicant shall retain a civil engineer to prepare "as-built" or "record" drawings of public improvements, and the drawings shall be submitted in AutoCAD and Adobe PDF formats to the Engineering Division prior to Final Occupancy.
- p. Street trees and heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance and the recommendations of the arborist report prepared by Michael L. Bench, dated December 14, 2017. Applicant shall submit a tree preservation plan, detailing the location of and methods for all tree protection measures as part of a complete building permit application and is subject to review and approval by the City prior to building permit issuance.
- q. Street trees shall be from the City-approved street tree species or to the satisfaction of City Arborist. Irrigation within public right of way shall comply with City Standard Details LS-1 through LS-19.
- r. Prior to building permit issuance, the applicant shall pay all Public Works fees. Refer to City of Menlo Park Master Fee Schedule.
- s. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a lighting plan, providing the location, architectural details and specifications for all exterior lighting subject to review and approval by the Planning Division.
- t. Simultaneous with the submittal of a complete building permit application, a design-level geotechnical investigation report shall be submitted to the Building Division for review and confirmation that the proposed development fully complies with the California Building Code. The report shall determine the project site's surface geotechnical conditions and address potential seismic hazards. The report shall identify building techniques appropriate to minimize seismic damage.
- u. A complete building permit application will be required for any remediation work that requires a building permit. No remediation work that requires approval of a building permit shall be initiated until the applicant has received building permit approvals for that work. All building permit applications are subject to the review and approval of the Building Division.
- v. Prior to building permit issuance, the applicant shall submit plans for construction related parking management, construction staging, material storage and Traffic Control Handling Plan (TCHP) to be reviewed and approved by the City. The applicant shall secure adequate parking for any and all construction trades. Construction parking in the public parking plazas will be subject to City review and approval. The plan shall include construction phasing and anticipated method of traffic handling for each phase.
- w. All public right-of-way improvements, including frontage improvements and the dedication of easements and public right-of-way, shall be completed to the satisfaction of the Engineering Division prior to building permit final inspection.

4. Approve the architectural control subject to the following ***project-specific*** conditions:
 - a. The applicant shall address all Mitigation Monitoring and Reporting Program (MMRP) requirements as specified in the MMRP (Attachment J). Failure to meet these requirements may result in delays to the building permit issuance, stop work orders during construction, and/or fines.
 - b. Simultaneous with the submittal of a complete building permit application, the applicant shall submit an updated LEED Checklist, subject to review and approval of the Planning Division. The Checklist shall be prepared by a LEED Accredited Professional (LEED AP). The LEED AP should submit a cover letter stating their qualifications, and confirm that they have prepared the Checklist and that the information presented is accurate. Confirmation that the project conceptually achieves LEED Silver certification shall be required before issuance of the building permit. Prior to final inspection of the building permit or as early as the project can be certified by the United States Green Building Council, the project shall submit verification that the development has achieved final LEED Silver certification.
 - c. Simultaneous with the submittal of a complete building permit application, the plans shall be updated to provide clarification that the commercial windows/storefronts shall be recessed from the primary building façade a minimum of 6 inches, subject to review and approval of the Planning Division.
 - d. The parking garage gate shall remain open between the hours of 7:00 a.m. and 7:00 p.m., in order to limit the potential for vehicles blocking the sidewalk while waiting for the gate to open. The Transportation Manager may adjust these times if requested in the future, provided that the applicant demonstrates that pedestrian safety will not be compromised.
 - e. Simultaneous with the submittal of a complete building permit application, the Applicant shall submit plans that include undergrounding of the overhead utilities along the project frontage on Evelyn Street in accordance with the approved plan set. All lateral connections to overhead electric, fiber optic, and communication lines shall be placed in a joint trench. The undergrounding plans will be finalized prior to building permit issuance and are subject to PG&E, City of Menlo Park, and the Menlo Park Fire Protection District review and approval.
 - f. Project approval is conditional on the City Council reconsidering the placement, design, and/or use of the Draeger's Market loading zones currently located on Evelyn Street. The building permit shall not be issued prior to City Council action to modify this loading zone.
 - g. Prior to issuance of each building permit, the applicant shall pay the applicable Building Construction Street Impact Fee in effect at the time of payment to the satisfaction of the Public Works Director. The current fee is calculated by multiplying the valuation of the construction by 0.0058.
 - h. Any nonstandard improvements within public right-of-way shall be maintained in perpetuity by the owner. Owner shall execute an Agreement to maintain non-standard sidewalks and planting strips if any. Agreement shall be subject to review and approval of the Engineering Division and City Attorney and shall be recorded prior to final occupancy.

- i. Prior to final inspection, the Applicant shall submit a landscape audit report to the Public Works Department.
- j. Prior to issuance of building permit, the applicant shall submit the El Camino Real/Downtown Specific Plan Preparation Fee, which is established at \$1.13/square foot for all net new development. For the subject proposal, the fee is estimated at \$12,962.23 (\$1.13 x 11,471 net new square feet).
- k. Prior to issuance of building permit, the applicant shall submit all relevant transportation impact fees (TIF), subject to review and approval of the Transportation Division. Such fees include:
 - i. The TIF is estimated to be \$37,717.20. The fee was calculated as follows: (\$4.80/s.f. x 6,610 s.f. office) + (\$1,996.40/unit x 3 multi-family units). Please note this fee is updated annually on July 1st based on the Engineering News Record Bay Area Construction Cost Index. Fees are due before a building permit is issued.
 - ii. The City has adopted a Supplemental Transportation Impact Fee for the infrastructure required as part of the Downtown Specific Plan. The fee is calculated at \$393.06 per PM peak hour vehicle trip, with a credit for the existing trips. The proposed project is estimated to generate 12 PM peak hour trips, so the supplemental TIF is estimated to be \$4,716.72. Payment is due before a building permit is issued and the supplemental TIF will be updated annually on July 1st along with the TIF.

Replying to Commissioner Riggs, Commissioner Onken said he thought the matter was unresolved, and there was an opportunity to continue the project and refine it in such a way to satisfy all the involved parties' concerns.

Commissioner Onken said he would need to recuse due to the next project's proximity to his residence.

H. Study Session

- H1. Study Session/Sagar Patel/1704 El Camino Real: Request for a study session for the public benefit bonus proposal associated with the architectural control and variance request to construct a new 70-room hotel consisting of three stories and an underground parking level in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The proposed development would be at the Public Benefit Bonus level, which would exceed the Base level floor area ratio (FAR) on the subject site. The public benefit bonus proposal includes the contribution of Transient Occupancy Tax (TOT) revenues to the City on an on-going basis. No actions will take place at this meeting, but the study session will provide an opportunity for the Planning Commission and the public to become more familiar with the proposal and to provide initial feedback on the applicability of the Public Benefit Bonus and on the proposed design ([Staff Report #18-025-PC](#))

Chair Combs said he had some comment cards for this study session. He noted the late hour and said he would open for public comment right after applicants' presentation and before Commissioner questions of the applicant.

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Of Counsel:
 JOAN A. BORGER

March 27, 2018

VIA Hand Delivery

Clay J. Curtin, Interim City Clerk
 City of Menlo Park
 cjcurtin@menlopark.org

Re: Appeal of Planning Commission Approval of Architectural Control Permit/ Hayes Group Architects/ 840 Menlo Avenue - PLN 2014-00002

Dear Mr. Curtin:

By submittal of this letter and the accompanying filing fee and pursuant to Sections 18.86.010 and 18.86.020 of the City of Menlo Park Municipal Code, Anthony M. Draeger, a resident of Menlo Park and owner of Draeger's Market, hereby appeals the Planning Commission's approval of the above referenced Architectural Control Permit PLN 2014-0002 (the "Project") on behalf of Draeger's Market ("Draeger's") on the grounds that: (1) the findings of approval for the Architectural Control Permit cannot be made; and (2) one of the conditions of approval imposed on the Project requiring modification of the existing Evelyn Street loading zone cannot be satisfied without the consent of Draeger's. To be clear, Draeger's is not opposed to the development of the Project site per se, however an adjustment to the location of the Project driveway approved by the Planning Commission is necessary in order to (1) make the findings required for approval; and (2) either (a) eliminate the need to modify the Evelyn Street loading zone altogether or (b) modify the Evelyn Street loading zone so that both the Project's driveway and the loading zone can be accommodated on Evelyn Street. We respectfully request that the Council consider both this appeal of the Project as designed and modification of the Evelyn Street loading zone per Condition 4(f) concurrently at the same meeting.

1. Background and History

As currently designed, the Project's driveway requires elimination of the existing loading zone on Evelyn Street. This would be crippling to Draeger's community-serving grocery business that has operated adjacent to the Project site for 63 years. While not dedicated or restricted to Draeger's use, this loading zone is relied upon by Draeger's for a good portion of its grocery deliveries and was approved by the City Council in the form of an encroachment permit issued to Draeger's in connection with the City Council's 2001 approval of Draeger's long term plan for receiving operations.

In exchange for approval of the Evelyn Street loading zone component of its long term receiving operations plan, Draeger's was required to designate and make available to the general public four parking spaces in its private parking lot for short-term parking to compensate for the four public parking spaces lost as a result of the establishment of the Evelyn Street loading zone. In addition, Draeger's was required to make the remaining fifty-nine (59) spaces in its private lot available to the general public for short term parking between the hours of 9:00pm and 10:00am. (Condition 11, Long Term Plan for Receiving Operations at Draeger's Supermarket dated March 5, 2002).

Pursuant to staff's recommendation in its report to the Planning Commission on the Project, the Evelyn Street loading zone would be replaced with a new loading zone on Menlo Avenue and several customer parking spaces in the parking plaza would be sacrificed to loading. While we appreciate staff's effort to accommodate Draeger's, this recommendation is not favored by Draeger's for several reasons including because, as explained below, it would increase potential safety hazards and result in the loss of critical customer parking, both of which could negatively impact Draeger's and other community-serving retail and services in the Downtown. Further, it would locate deliveries closer to existing residential neighbors who are sensitive to noise and would require expensive capital improvements to Draeger's receiving doors on Menlo Ave and result in ongoing increased operational costs and security risks.

As presented below, there are two alternative Project driveway locations that would both meet the City's standards and guidelines for driveways and retain a loading zone on Evelyn Street without compromising the Project's intended uses and square footages.

2. The Findings of Approval Are Not Supported by Substantial Evidence in the Record and Cannot Be Made with the Driveway Location as Proposed

The Architectural Control Permit required for the Project is a discretionary permit that cannot be approved unless all five of the following findings set forth in Menlo Park Municipal Code Section 16.68.020 are made:

- (1) the general appearance of the structures is in keeping with character of the neighborhood;
- (2) the development will not be detrimental to the harmonious and orderly growth of the city;
- (3) the development will not impair the desirability of investment or occupation in the neighborhood;
- (4) the development provides adequate parking as required in all applicable city ordinances and has made adequate provisions for access to such parking;
- (5) the development is consistent with any applicable specific plan.

We contend that findings 2, 3 and 5 cannot be made unless the Project's driveway is either relocated to Menlo Avenue or adjusted several feet down on Evelyn Street (See discussion in Section 4 below). As such, the Planning Commission's Architectural Control Permit approval of the driveway as proposed cannot be upheld unless one of these driveway adjustments are made.

- a. With the Driveway as Proposed, the Project could be detrimental to the harmonious and orderly growth of the city and impair investment and occupation in the neighborhood

Findings 2 and 3 cannot be made because the driveway location as proposed would require the elimination of the Evelyn Street loading zone which in turn, per staff's recommendation to relocate this loading activity to Menlo Avenue and the parking plaza, would increase the potential for safety hazards and require loss of customer parking that is already critically short. As explained by Magnus Barber of Nelson\Nygaard Consulting Associates at the Planning Commission hearing, increased truck deliveries in the parking plaza and introduction of deliveries on Menlo Avenue, a much busier street than Evelyn Street, could increase the potential for conflicts between delivery trucks, customer vehicles and pedestrians, thereby increasing the probability of accidents and other unsafe conditions. Loss of parking in the plaza which is the most heavily utilized of all plazas in the Downtown and at or over capacity during peak shopping hours and throughout the holiday season when Draeger's derives its most crucial revenue would increase circulating traffic looking for parking spots and only frustrate and drive away shoppers.

These increased safety hazards combined with the loss of critical customer parking would undoubtedly translate into hindered deliveries and lost sales for Draeger's, a local independent family owned grocer established in 1955. Customers simply choose more convenient competitors when frustrated by lack of parking and safety concerns. As shown in Exhibit 1, Draeger's serves more than 12,000 customers per week who rely on Draeger's for a variety of products distinct from the homogeneous blend available at the national chains, including award winning and locally sourced packaged foods, local organic produce, local seafood and beef, locally produced artisan bakery and delicatessen products.

Negatively impacting Draeger's, a key anchor of the Downtown, would cause lost sales for many other businesses and the overall Downtown. Draeger's customers often frequent other surrounding businesses and retailers who rely on Draeger's customer traffic for business and whose employees and customers depend on Draeger's for groceries and lunch. Therefore, the Project, with its driveway location as currently proposed, could be detrimental to the harmonious and orderly growth of the city and impair investment and occupation in the neighborhood.

b. With the Driveway as Proposed, the Project would conflict with the applicable El Camino Real/Downtown Specific Plan

Finding 5 cannot be made because the consequences of locating the Project driveway as proposed would conflict with provisions of the governing El Camino Real/Downtown Specific Plan ("Specific Plan"). One of the Specific Plan's five guiding principles is to "sustain Menlo Park's village character". As stated on page C4 of the Specific Plan:

The Specific Plan recognizes and builds upon the unique qualities of downtown Menlo Park and El Camino Real, in particular its small town character of lower-scale buildings and diverse and local neighborhood-serving businesses. The Specific Plan accommodates future development in ways that complement the area's existing character, using design controls and guidelines to regulate building form and scale." (emphasis added)

This principle requires that new development complement and sustain the area's existing small-town character and local neighborhood serving businesses. As explained above, loss of customer parking and increased safety hazards from the relocated loading zones could critically harm the area's existing small-town character and local neighborhood serving businesses, including Draeger's, one of the oldest and most critical anchor retailers in the downtown, not to mention one of the last family owned local independent grocers in the area.

As evidenced by the disappearance of JJ&F in Palo Alto, Andronico's, Beltramo's, Menlo Square Market, and Brentwood Market (Exhibit 2), the grocery business is especially difficult for independent operations who represent only 11% of the market (declined from 14% in 2009). Draeger's is only still here because they have been able to carve out a niche that serves the Menlo Park community, remaining a vital part of Menlo Park's village character. As described above, the Project's driveway location would threaten Draeger's ability to receive deliveries to serve this niche and therefore is inconsistent with the Specific Plan guiding principle to sustain Menlo Park's village character.

Moreover, the Project site's land use designation of Downtown/Station Area Retail/Mixed Use within the Downtown (D) sub-district emphasizes the need to enhance downtown vibrancy by building upon existing community serving retail and personal services by emphasizing these same uses at the ground floor level.

As stated on page E87 of the Specific Plan:

The D District is characterized by a mix of retail and service uses, with retail clustered directly on Santa Cruz Avenue... The District is located in the Downtown/Station Area Retail - Mixed Use and Downtown/Station Area "Main Street" Overlay land use designations which emphasize community-serving

retail and personal services at the ground-floor level and residential/office uses above.

As stated on page E4 of the Specific Plan:

The Downtown/Station Area Retail/Mixed Use designation focuses on uses that enhance downtown vibrancy by building upon existing community-serving retail and personal services in the downtown area. While emphasizing retail for ground-floor uses, the designation allows for a mix of uses, including office and residential uses, enhancing downtown vibrancy through an increased customer base for restaurants and retail businesses.

Rather than build upon and enhance the existing community services and retail offered by Draeger's at the neighboring site for almost 65 years, the Project's driveway seems to have been purposefully located to thwart it. It doesn't have to be a zero-sum game. As discussed below, there are at least two potential alternative driveway locations that could accommodate both the Project's proposed office and residential uses and square footage and a loading zone on Evelyn Street to accommodate Draeger's deliveries. The applicant has not explained why these alternative locations were not considered and/or could not be accommodated within the Project.

3. Condition of Approval 4(f) Cannot be Satisfied Without the Consent of Draeger's

The Planning Commissions' approval is subject to the following required condition of approval:

Project approval is conditional on the City Council reconsidering the placement, design, and/or use of the Draeger's Market loading zones currently located on Evelyn Street. The building permit shall not be issued prior to City Council action to modify this loading zone. (emphasis added)

As staff explained at the Planning Commission hearing, if the City Council does not approve modification of the Evelyn Street loading zone, the Project would have to be redesigned and resubmitted. Draeger's acknowledges that one of the conditions of the original 2002 approval of its Long-Term Plan for Receiving Operations (Condition 17) requires the City Council to reconsider the placement, design and use of the Evelyn Street loading zone when development of 840 Menlo is "actively pursued".

However, the Council's ability to unilaterally modify the loading zone, as required by Project Condition 4(f) is limited by a second condition of the 2002 approval of the Long-Term Plan for Receiving Operations (Condition 18) which states as follows:

18. The City Council reserves the right to terminate the encroachment permit and loading zones in Public Parking Plaza #4 and on Evelyn Street, and/or to

impose additional limitations or restrictions on such permits and loading zones, including but not limited to, limiting hours of delivery, elimination of all or part of loading zones, etc., if, in the opinion of the City Council, the operations and activities resulting from any of these approvals create traffic, circulation, parking, safety, noise and/or other problems or negative impacts in the vicinity of the Draeger's market property (emphasis added).

Therefore, only if the Council finds that the operations resulting from the Evelyn Street loading zone creates traffic, circulation, parking, safety, noise and/or other problems” can the Council unilaterally modify the loading zone as the recommended condition 4f for the Project requires. To our knowledge, there has been not a single complaint or accident related to Draeger’s use of the Evelyn loading zone whatsoever since it was approved.

Therefore, the finding required for the Council to modify Draeger’s use of the loading zone cannot be made and Condition 4f requiring modification of the Evelyn Street loading zone cannot be satisfied unless agreed to by Draeger’s. As explained in the staff report to the Planning Commission, the Project with the driveway location as designed requires complete elimination of the Evelyn Street loading zone. For the reasons set forth above, Draeger’s cannot agree to this. As such, Condition 4f of the Project cannot be satisfied.

As discussed below, Draeger’s preference is for the driveway to be located to Menlo Avenue so that the existing Evelyn Street loading zone location can remain. However, if, after further study and consideration, this cannot be supported by staff, Draeger’s would agree to an adjustment of the Evelyn Street loading zone location in order to accommodate both the Project driveway and the loading zone on Evelyn Street.

4. In Order to Meet the Required Findings of Approval, the Project Driveway Should be Relocated to Retain the Loading Zone on Evelyn Street

The Project’s driveway appears to have been purposely located to conflict with the existing Evelyn Street loading zone critical to the operation of Draeger’s community-serving business. Instead, it could have been designed to be compatible with Draeger’s loading and receiving operations. As presented by Magnus Barber of Nelson\Nygaard Consulting Associates at the Planning Commission hearing, and as shown in Exhibit 3 and Exhibit 4 attached hereto, there are at least two alternative driveway configurations that meet the City’s driveway standards and guidelines while safely accommodating a loading zone on Evelyn Street. Both alternative locations are located at least 30 feet from the nearest intersection and include a 5-foot curb radius. As stated by Principal Planner Thomas Rogers in the Planning Commission hearing, based on its preliminary review, the City’s Transportation Division indicated that neither of these alternatives would be in conflict with the City standards and guidelines and could be worth exploring. The applicant did not address the feasibility of either alternative at the Planning Commission hearing or explain why these alternative driveway locations were not considered.

Option A depicted in Exhibit 3 relocates the driveway to Menlo Avenue and preserves the Evelyn Street loading zone in its exact location. Option A is Draeger's preferred alternative because it would allow the loading zone to remain in its current location without any modification or reduction in length. At the hearing, both Commissioner Onken and Commissioner Kuhle indicated that they could support flipping the building so that the driveway was on Menlo Avenue and the loading zone on Evelyn Street was left intact. As shown in the photos included in Exhibit 5, and contrary to some remarks from the Planning Commission members at the hearing, relocation of the Project driveway to Menlo Avenue would also be compatible with the surrounding pattern of development, as the majority of existing commercial businesses fronting Menlo Avenue have their garage and/or front door entrances facing Menlo Avenue.

Option B depicted in Exhibit 4 relocates the driveway approximately 32 feet from Menlo Avenue while shortening the existing Evelyn Street loading which is approximately 100 feet in length to approximately 62 feet. If City staff decides that it cannot support Option A – even though we believe it meets all city standards and guidelines – Draeger's would support Option B despite that it reduces the length of the loading zone by almost 40%.

In conclusion, we respectfully request that you grant our appeal and either deny the Project as proposed or invite the applicant to submit revised plans that relocate the driveway entrance pursuant to Option A, our preference, or Option B if that is the option preferred by City staff. As discussed above, adjustment of the driveway location pursuant to one of these alternatives is necessary in order to (1) make the findings required for approval; and (2) either (a) eliminate the need to modify the Evelyn Street loading zone altogether (Option A) or (b) modify the Evelyn Street loading zone so that both the Project driveway and the loading zone can be accommodated on Evelyn Street (Option B).

Very truly yours,



Camas J. Steinmetz

Cc: William L. McClure, City Attorney

Kaitie Meador, Project Planner

Exhibit 1

Draeger's Market Weekly Customers (2017)

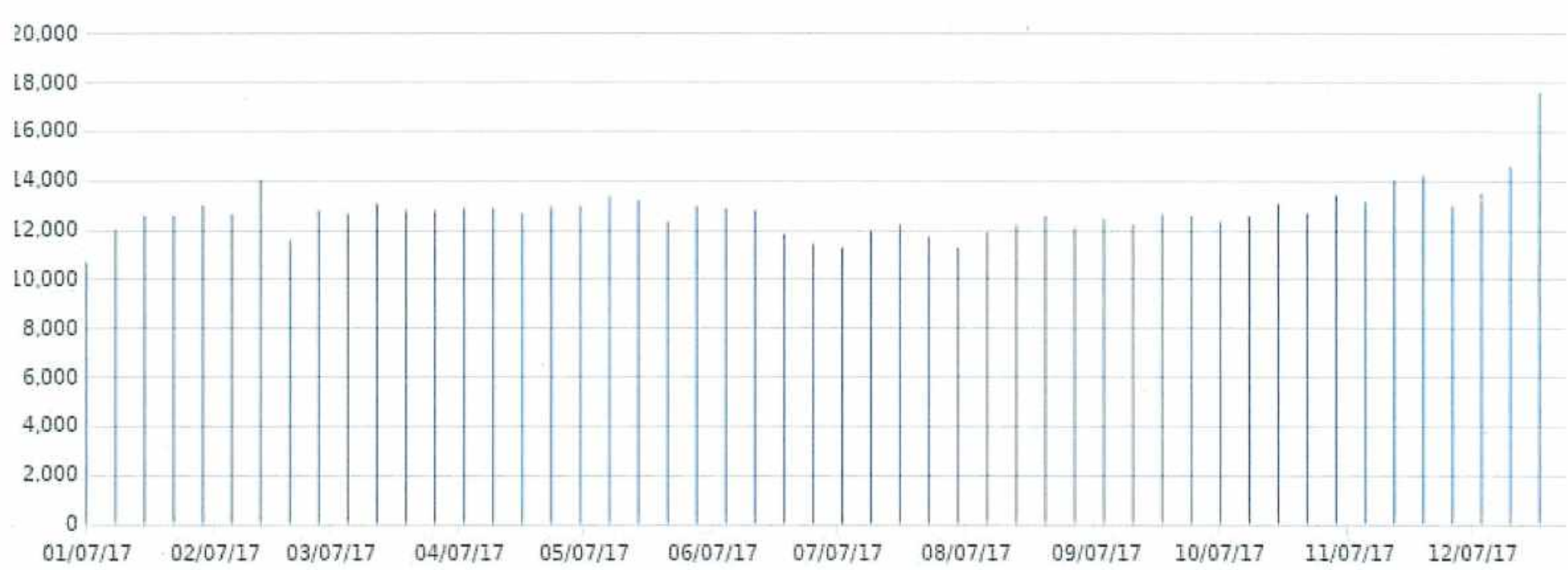


Exhibit 2- Local Markets Gone



Exhibit 3

Alternate Driveway Locations, per Guidelines

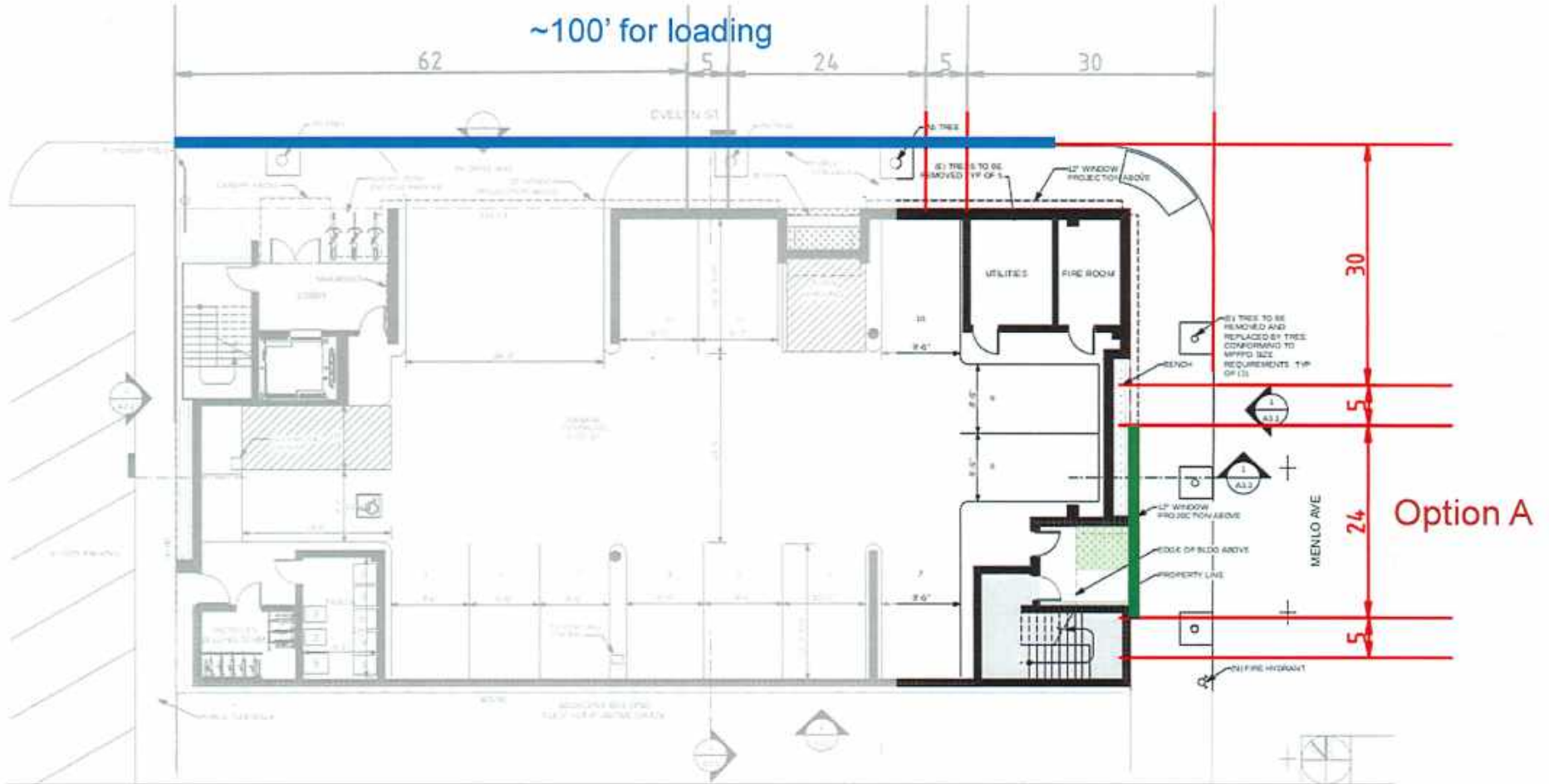


Exhibit 4

Alternate Driveway Locations, per Guidelines

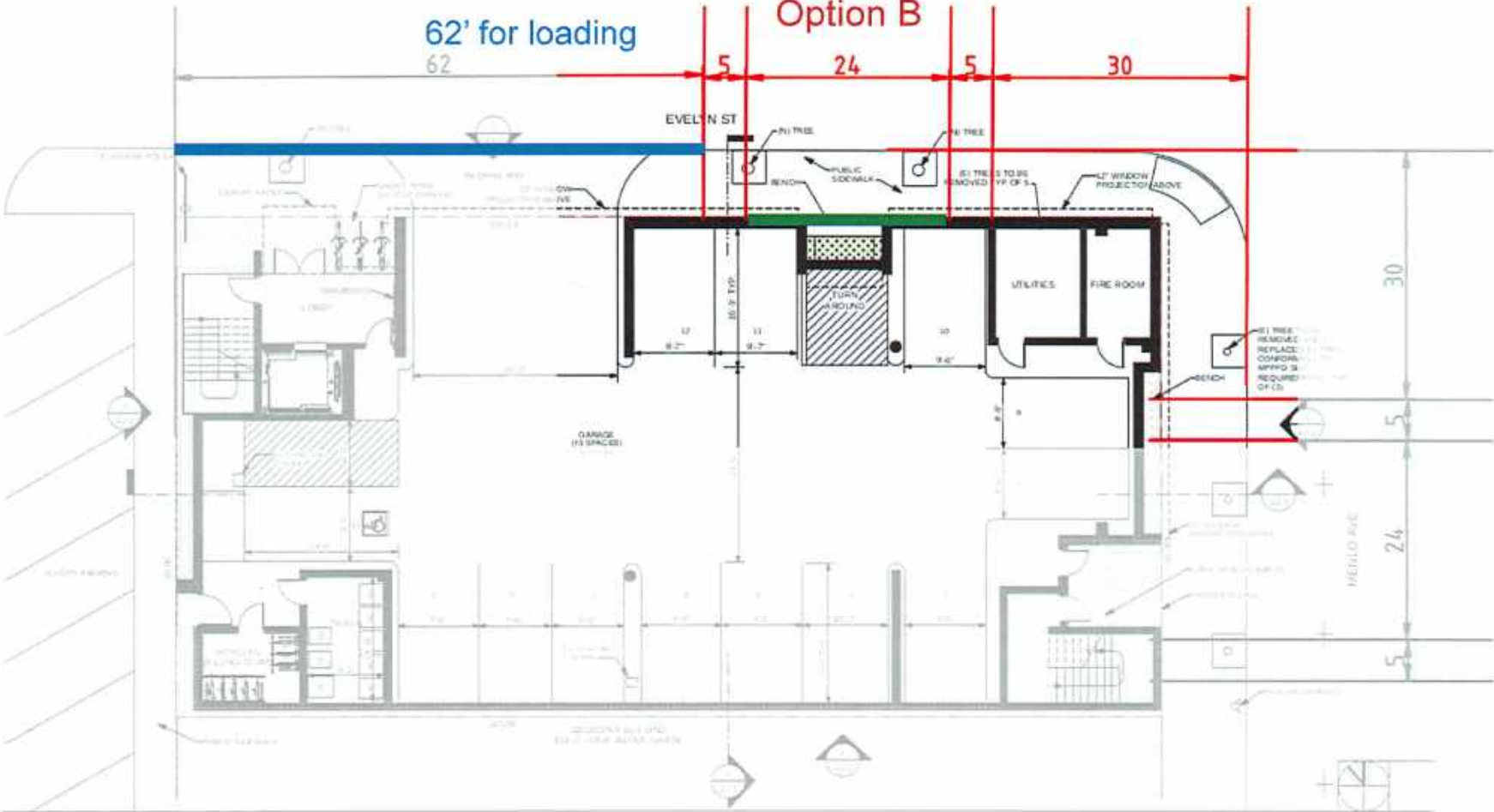


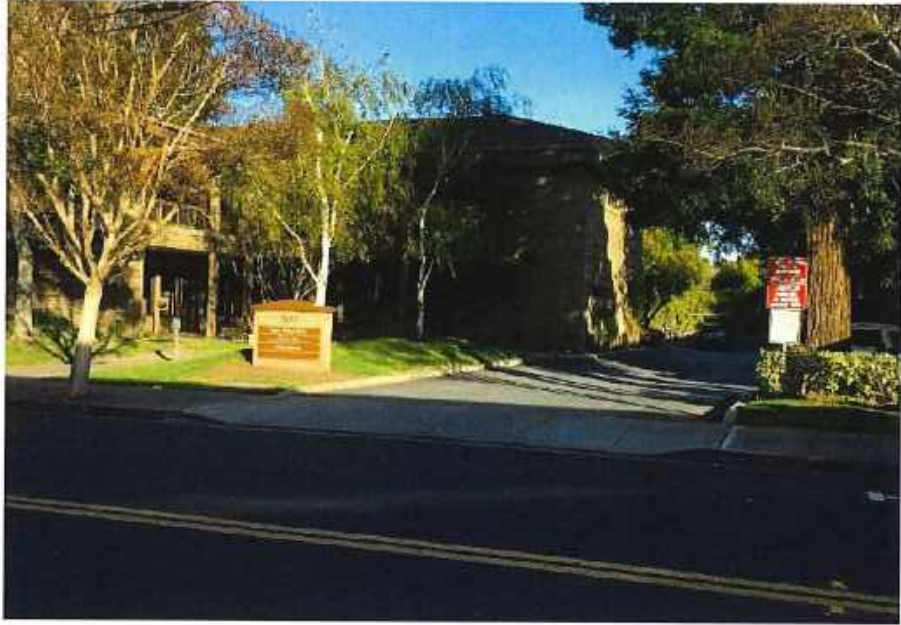
Exhibit 5 – Menlo Ave. Building and Garage Entrances



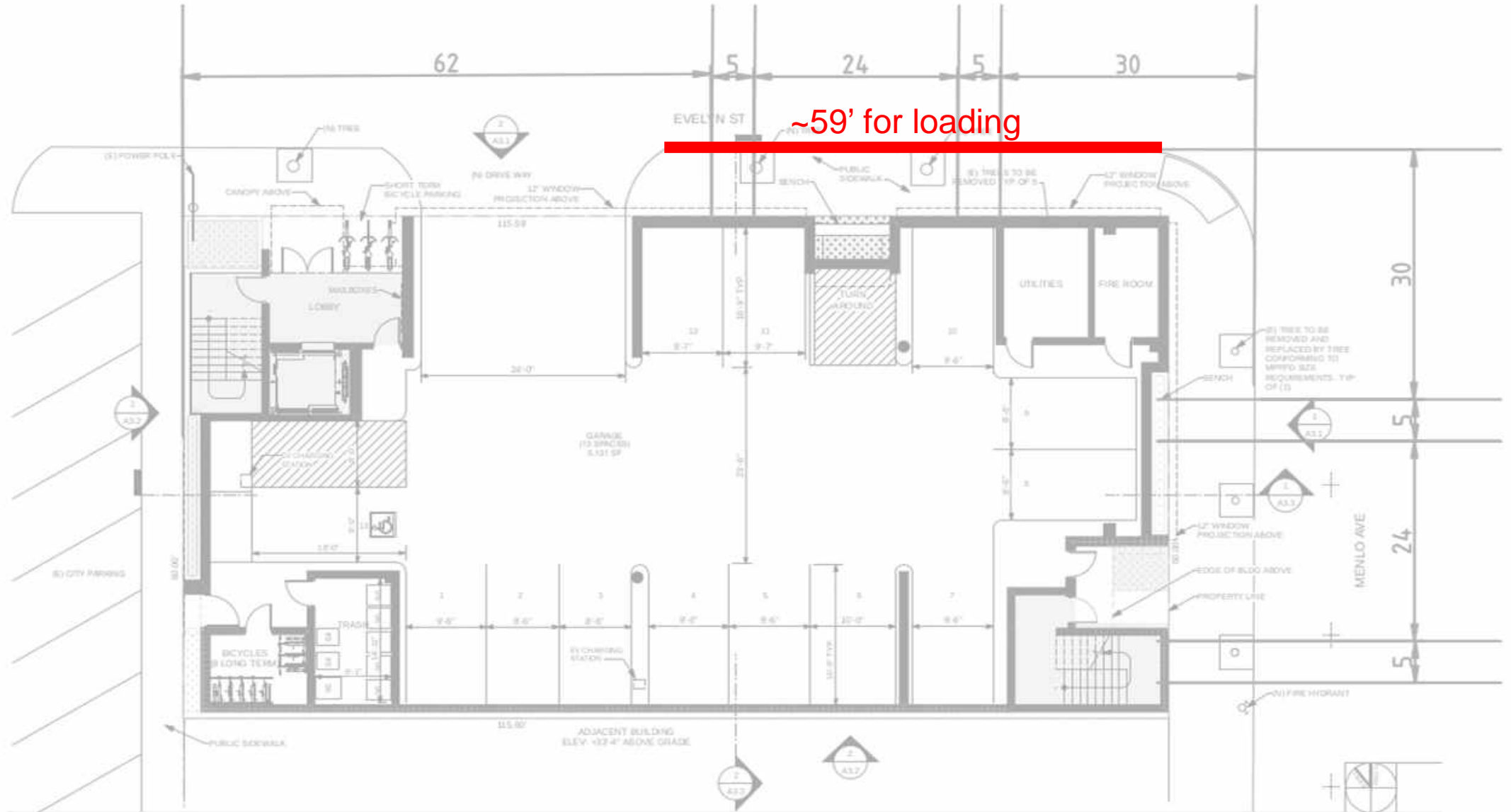




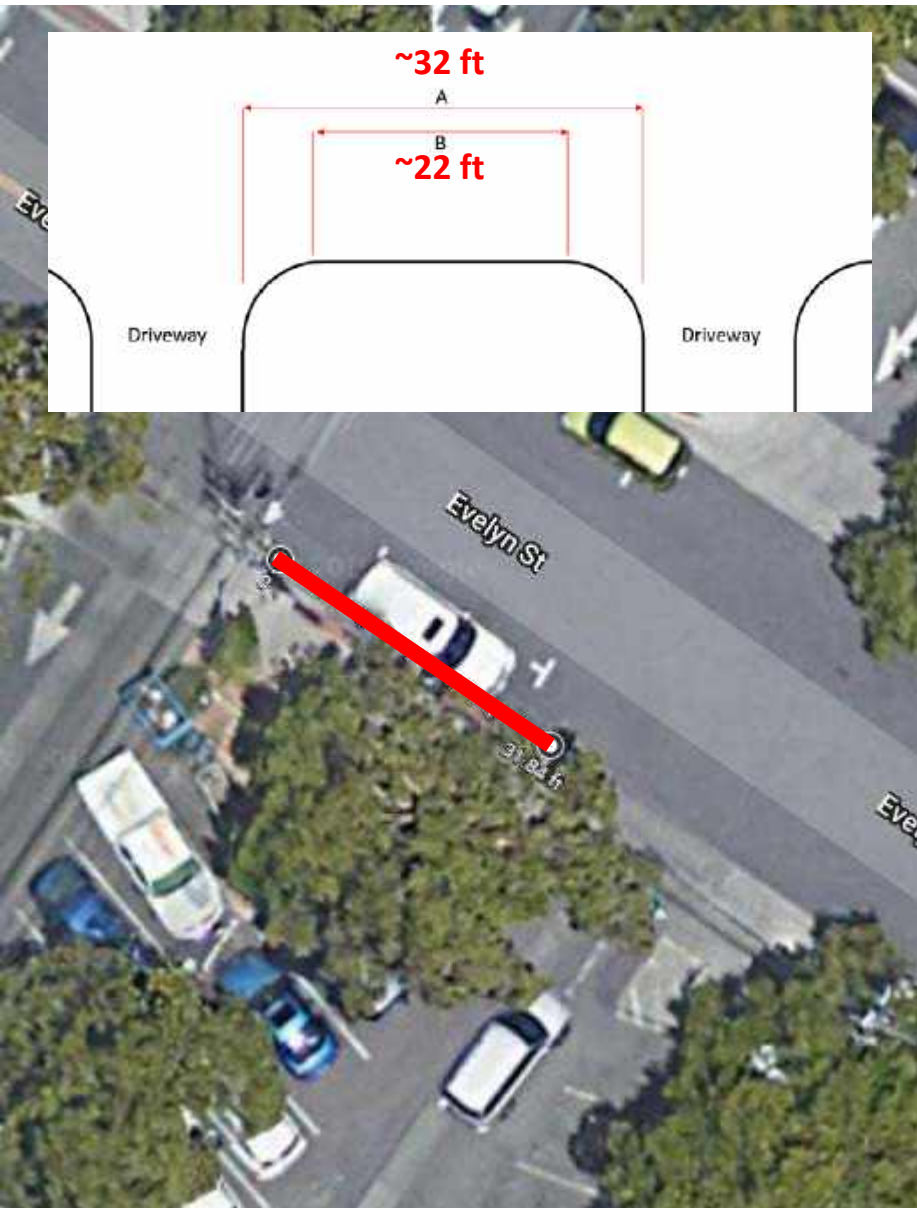




Option C: Loading Between Development Driveway and Crosswalk



Option D: Short & Long Loading Spaces on Opposite Sides of Evelyn



From: [Muenzer, Mark E](#)
To: [Meador, Kaitie M](#)
Cc: [Chow, Deanna M](#); [Rogers, Thomas H](#); [Perata, Kyle T](#)
Subject: FW: Development at 840 Menlo Avenue
Date: Tuesday, August 07, 2018 9:53:48 AM
Attachments: [CMP_Email_Logo_100dpi_05d92d5b-e8e3-498f-93a6-d0da509bd602111111111.png](#)



Mark E. Muenzer
 Community Development Director
 City Hall - 1st Floor
 701 Laurel St.
 tel 650-330-6709
menlopark.org

From: Joyce Schmid [mailto:joycegschmid@aol.com]
Sent: Monday, August 6, 2018 10:02 PM
To: _CCIN
Subject: Development at 840 Menlo Avenue

To the Honorable City Council:

To the Menlo Park City Council:

I am asking you to turn down the proposed new building at 840 Menlo Avenue.

In the words of the *Daily Post*, 8-3-2018: “The El Camino Real Downtown Specific Plan which was approved by the Council in 2012 for the purpose of limiting growth in that area for 20 years has nearly exhausted its supply of commercial space for new developments”. This, on top of the fact that the proposed Facebook projects have used up the allotment for the whole city.

Was the development at 840 Menlo Avenue included in the original plan for downtown Menlo Park? Or is it being considered without consideration of the greater vision for the city? Does its 11,471 square feet include office space that prevent other construction with greater desirability for the City as a whole?

Have studies been done on the parking, traffic, and environmental impact of this building?

Parking: The plans provide some parking spaces, but do not provide evidence that these spaces will completely park the workers and clients of the offices in the building, not to mention the condo residents who may or may not be working from, or in, the home during the day. There are already times of year, especially Christmas and Thanksgiving where parking is almost impossible to find in the area. I have a parking permit in Plaza 5, and there have been times when I, and more importantly, my clients, have had a terrible time parking. When I

could not park in Plaza 5, I asked the parking enforcement person what I should do. She said, “Park in another lot and I won’t ticket you.” But the other lots were also full.

Traffic: Traffic in the area is already heavy. There have been days when it has taken me over twenty minutes to cross El Camino to the East at Menlo Avenue. The proposed building is likely to make this even worse.

Environment: Environmentally, this building is an eyesore—its space-age design is completely out of character with the surrounding area. It is a three-story building, 39 feet tall, with 11,471 square feet of space. It would be jammed into a spot that is barely the size of a tennis court.

I am hoping that before you approve this project, you request unbiased studies of its parking, traffic, and environmental impact. I am further hoping that you will evaluate this proposal in the light of the optimal growth of Menlo Park as a whole, and in the context of the El Camino Real Downtown Specific Plan recently put in place by the City Council. This plan, as the *Post* has pointed out, has already nearly exhausted its allowed commercial space for new developments.

Respectfully,

Joyce Schmid, Ph.D., MFT
830 Menlo Avenue, Suite 200, Menlo Park, 94025

From: [Meador, Kaitie M](#)
To: [Meador, Kaitie M](#)
Subject: FW: Draegers and development in adjacent lot
Date: Monday, August 20, 2018 6:31:39 PM
Attachments: [CMP_Email_Logo_100dpi_05d92d5b-e8e3-498f-93a6-d0da509bd6021111111111.png](#)



Kaitie M. Meador
Associate Planner
City Hall - 1st Floor
701 Laurel St.
tel 650-330-6731
menlopark.org

From: Lori Hobson [<mailto:lorimhobson@yahoo.com>]
Sent: Tuesday, March 13, 2018 10:50 AM
To: _CCIN <councilmail@menlopark.org>; info@draegers.com
Subject: Draegers and development in adjacent lot

Dear City Council:

I am a resident of the Willows neighborhood and have been for 17 years.

I am concerned about the development of the lot adjacent to Draegers Market on University. Since the development will require Draegers to remove parking to support deliveries, I suspect the market owners are correct in their worry that it will affect their business.

While I appreciate the adjacent lot owner's right to develop its property, I really wish the city would consider the impact of losing a market like Draegers because of compromising its business. It is not clear to me why the City would want to harm Draegers ability to serve the community. When retail is struggling and we are losing businesses that differentiate Menlo, I am actually shocked that the City has done so little to ameliorate the situation.

Trader Joe's and Safeway do not provide the selection or service that many residents of our community desire. Quantity does not equal quality, as they say. The quality and selection at Draegers is superior to any of the other choices. Also, I have noticed lately that the demographic is changing with many young families now making this choice, not just folks like me. The selection is much more targeted to our population.

I read the article in the local paper and comments of our city officials just

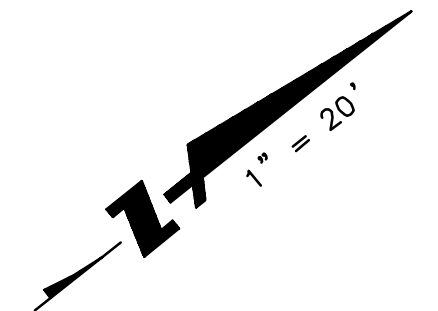
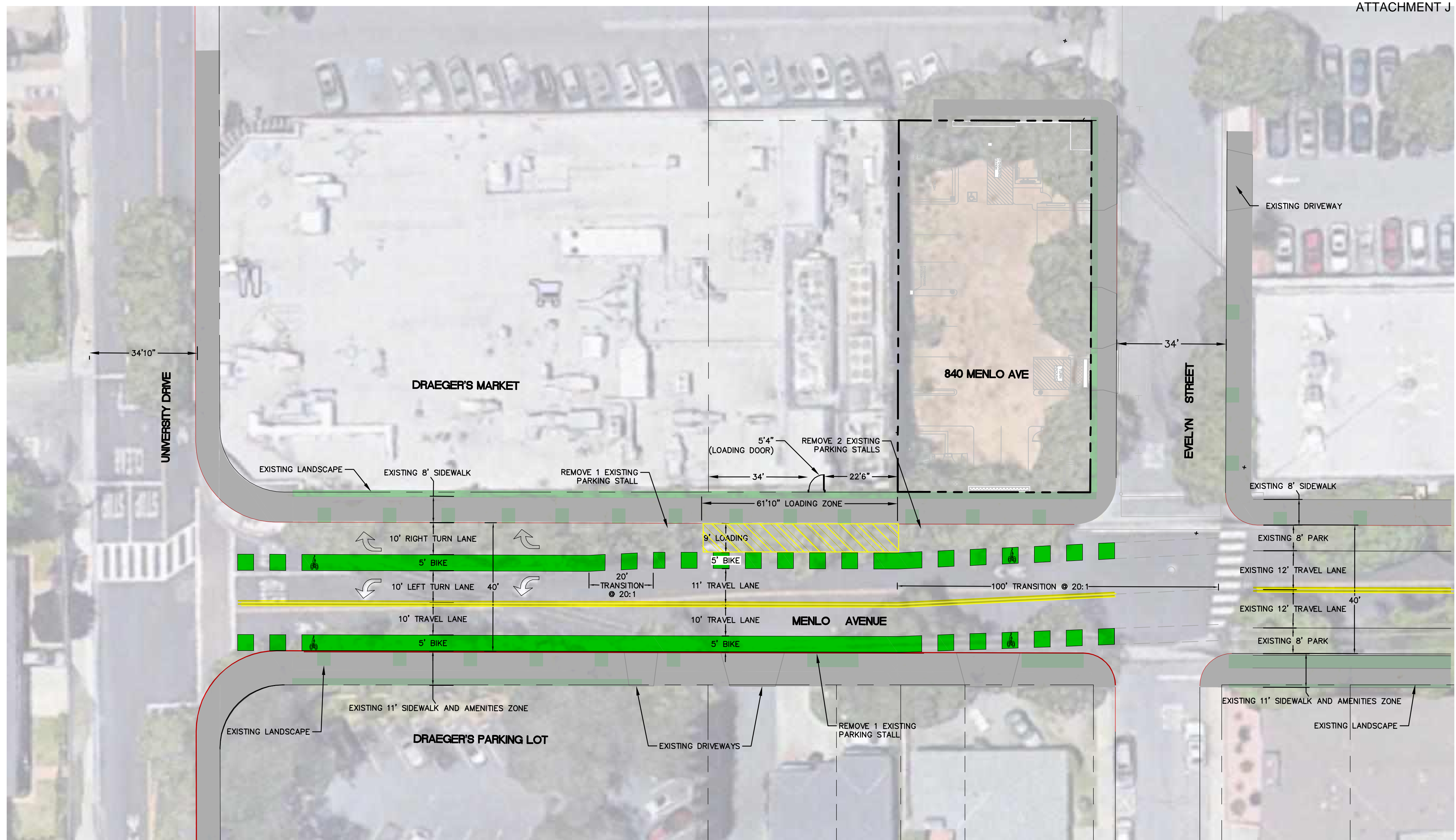
seem so callous. I want the owners of the adjacent lot to be able to develop it if you feel the use is appropriate. I just want for the design to support our existing businesses, particularly this specific one!

Perhaps I need to make you all a meal with some ingredients from "our" market so that you can taste the difference from the frozen processed food and the mass market produce at others. Don't even get me started on the difference in floral...

Regards,

Lori Hobson

[**The Jewel Box** -- Pristine oceanfront vacation rental on the Big Island of Hawai'i](#)// We would love to share it with our friends!



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**STRIPING EXHIBIT
840 MENLO AVE**

DATE 06.15.2017
SCALE 1"=20'
JOB NO. 20166016

EX 1

Green & Associates, LLC

Consulting Services for Hanna & Van Atta
Store Delivery Alternatives for
Draegers' Market, Menlo Park

August 13, 2018

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1. Project Scope

1. Assess the impact from Draegers' vehicle deliveries to their Menlo Park store on the proposed development at 840 Menlo Avenue.
2. Review truck vehicle traffic data provided by Hanna & Van Atta relative to the number of deliveries and impact on the immediate area of the proposed development at 840 Menlo Avenue.
3. Provide viable alternative scenarios for Draegers' to consider for supplying their store in Menlo Park to minimize the impact on the development of the 840 Menlo Avenue project.

2. Background for Dennis Green

Retailing Qualifications and Background

- 37 years in the retailing industry. Experience in logistics, operations, inventory planning and management.
- Executive with Target/Dayton Hudson for 20 years, a \$30 billion retailer. Last position was Senior Vice President of Logistics at Mervyn's.
- Co-winner of the Smithsonian award for technology excellence in 1993.
- Principal and owner of Green & Associates, a premier Supply Chain consulting firm, 2001-2015.

Consulting Experience

- Worked with a significant number of retailers relative to store deliveries processes and procedures. Of particular relevance are Trader Joe's, 99 Cents Only Stores, and Cost-Plus World Market.
- Implementation of Supply Chain Systems: Merchandise Replenishment, Inventory and Warehouse Management.
- International consulting in the Americas and Europe.
- Project Management for the design, construction, material handling equipment installation, and startup operation of distribution centers.
- Network analysis for clients to support growth and more efficient logistics networks.
- Successful client engagements with Manufacturers and Retailers; furniture, apparel, grocery and home furnishings.
- Implementation of Best Practices in transportation and distribution center operations, resulting in significant expense savings.
- Assessment of acquisitions for private equity partnerships.
- Supply chain strategy to support growth and operational efficiency.
- Pro-bono support and assistance to inner city businesses to grow and create jobs.

3. Clients

American Apparel	Los Angeles, CA
Ariat International	Union City, CA
BCBG	Vernon, CA
Brook Furniture Rental	Chicago, IL
Bulova Watch	New York, NY
Cabela's	Sidney, NE
CAbi	Rancho Dominguez, CA
Citizen Watch	Torrance, CA
Cost Plus World Market	Oakland, CA
Delta Childrens Products	New York, NY
DOTS	Solon, OH
Gordon Brothers Investments	New York, NY
Goop	New York, NY
The Grayson Company	New York, NY
Gymboree	Burlingame, CA
Hudson Jeans	Commerce, CA
Levi Strauss & Co.	San Francisco, CA
Lifefactory	Sausalito, CA
Lululemon	Vancouver, Canada
Macadamia Beauty, LLC	Chatsworth, CA
Manhattan Beachwear	Cypress, CA
Nordstrom/ Nordstrom Rack	Seattle, WA
Polaris	Minneapolis, MN
Ring	Santa Monica, CA
Ripley Department Stores - Chile	Santiago, Chile
San Francisco Equity Partners	San Francisco, CA
Schneider Saddlery	Chagrin Falls, OH
Simplehuman	Compton, CA
Sodimac - Chile	Santiago, Chile
Technicolor Home Entertainment Services	Camarillo, CA
TOMS Shoes	Los Angeles, CA
Trader Joe's	Monrovia, CA
Transamerican Auto Parts	Compton, CA
TwinMed	Santa Fe Springs, CA
Uniqlo	New York, NY
Van's Shoes	City of Industry, CA
Wet Seal	Foothill Ranch, CA

4. Project Methodology

1. Reviewed the truck delivery data and photographs provided by Hanna & Van Atta.
2. Visited the Menlo Park Draegers' location to observe deliveries.
3. Observed deliveries at the Trader Joe's store in Menlo Park which is in proximity to the Menlo Park Draegers' store.
4. Visited the Los Altos and San Mateo Draegers' locations to observe deliveries, truck vehicle traffic, and layout.
5. Visited the Draegers' distribution center location in South San Francisco, I had no access to the interior.

5. Observations and Expert Opinions

1. Vendors are delivering directly to the Draegers' Menlo Park store and the number of vehicles per month is in excess of 900, per data provided by Hanna & Atta.
2. There is a wide variance in vehicle size, from vans and panel trucks to 62-foot semi-trailers, making deliveries to the Draegers' Menlo Park store.
3. In my experience, the current delivery process is inefficient logistically.
4. There are no properly designated unloading zones for large vehicles.
5. In my opinion, vehicles unloading in the Parking Plaza lot or on Evelyn Street cause congestion and are a safety hazard.
6. The Draegers' locations in San Mateo and Los Altos have secured and fenced, off-street unloading docks at the back of the stores. With sufficient space as to not impact other vehicles, traffic, or pedestrians.
7. The South San Francisco distribution center location is approximately 30 – 40 minutes transit time from the Draegers' Menlo Park store. Vehicles from this facility make several deliveries to the Draegers' Menlo Park store.

8. During the visit to the Menlo Park store, the Draegers' parking lot on the southwest corner of Menlo Avenue and University was under-utilized. This location could be used by the panel trucks and automobiles to make deliveries to Draegers.
9. It would appear Draegers' recognized the inefficiency of deliveries to the Menlo Park store and built off-street loading docks for the San Mateo, Los Altos, and Blackhawk stores. Only the Menlo Park Draegers' causes the type of congestion and safety problems observed at the Menlo Park location.
10. The larger vehicles delivering to the Draegers' Menlo Park store are consolidated deliveries, meaning only a small portion of the vehicle load is for Draegers. There are options to not using 62-foot vehicles making deliveries to Draegers, such as using smaller delivery vehicles or consolidation at their warehouse in South San Francisco.
 - o Even with a smaller breadth of inventory, Trader Joe's consolidates most of their deliveries from their Stockton distribution center. There are approximately 5 daily deliveries to the Trader Joe's Menlo Park store

6. Recommendations/Alternatives

1. Consolidate deliveries for the Draegers' Menlo Park store at the distribution center in South San Francisco or at one of the other Peninsula stores; San Mateo or Los Altos.
 - o Vendors could use the South San Francisco distribution center to "drop off" deliveries for the Menlo Park Draegers' store. This would significantly reduce vehicle deliveries to the Menlo Park Draegers' store
 - o Vendors could also deliver to either the San Mateo or Los Altos stores and consolidate deliveries for the Menlo Park Draegers'. Both locations have space and off-street unloading docks

2. Set up a truck unloading zone on Menlo Avenue.
 - This will eliminate truck/vehicle unloading on Evelyn Street
 - Draegers' could utilize the existing door on Menlo Avenue for unloading.
3. A safely designed and managed loading zone on Menlo Avenue would enable the efficient unloading of deliveries to the Menlo Park Draegers' store.

7. Summary

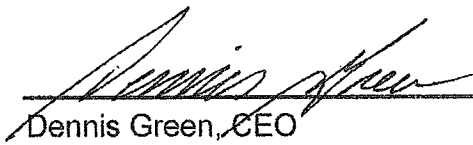
It is my opinion the current Menlo Park location congestion situation is logistically inefficient, a safety hazard, impacts traffic flow on Evelyn, and would adversely impact the future development of 840 Menlo Avenue.

There are alternatives to reduce congestion from the number of vehicles supplying the Menlo Park Draegers' store:

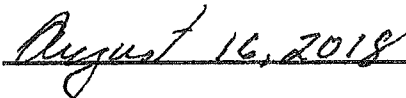
- Consolidate deliveries at the South San Francisco distribution center or either the San Mateo or Los Altos stores
- Set up a truck unloading zone on Menlo Avenue

8. Signature

This report is respectfully submitted To Hanna & Van Atta by:



Dennis Green, CEO
Green & Associates



Date

Event Chart Totals - Draeger's Loading Operations

(August 17, 2017 to September 16, 2017)

Trucks Total - Cumulative

7-day Trucks Total	209
14-day Trucks Total	429
21-day Trucks Total	614
28-day Trucks Total	815
31-day Trucks Total	905

Trucks Total - By week

Week 1 (7 days)	209
Week 2 (14 days)	220
Week 3 (21 days)	185
Week 4 (28 days)	201
Final 3 Days (31 days)	90

Category	Numbers >>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	Master Categories List
Date	Totals	0	19	7	3	12	4	26	8	17	11	3	7	0	12			7	1	0	6	4	2	2	0	Type of Truck
17.08.2017																										1. Van
18.08.2017		23	14	5	8	11	7	28	10	16	13	3	13	0	9			4	0	1	7	8	3	2	0	2. Small truck
19.08.2017		6	10	1	2	8	2	10	6	7	8	3	0	0	5			6	3	1	2	0	3	1	0	3. Large truck
20.08.2017		0	4	0	0	1	3	0	1	2	1	1	0	0	2			3	0	1	1	0	1	0	0	4. Semi trailer truck
21.08.2017		0	15	5	3	9	4	13	12	8	10	5	6	1	11			3	1	1	1	6	6	3	0	5. Refrigeration
22.08.2017		6	23	6	2	5	5	26	6	17	11	1	7	0	11			4	2	0	2	5	1	1	0	6. Draeger's
23.08.2017		10	23	1	4	8	7	22	9	16	9	7	7	2	9			3	3	0	5	9	8	1	0	7. Non-Draeger's
																										8. Unknown
																										Initial Truck Location
	7 Days	69	108	25	29	52	32	125	62	82	63	20	49	3	59	0	0	29	14	4	23	30	23	10	0	9. Parking Plaza Loading Zone
Category	Numbers >>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	10. 840 Menlo Av Frontage
24.08.2017		17	25	4	3	17	5	25	14	19	13	5	7	1	9			6	6	0	4	6	7	2	0	11. Other Evelyn St (same side as 840 Menlo Av)
25.08.2017		10	18	6	4	11	7	27	9	13	15	4	11	2	10			7	4	0	3	7	4	4	0	12. Other Evelyn St (side opposite 840 Menlo Av)
26.08.2017		3	9	4	1	6	5	9	4	9	6	0	3	0	5			2	2	1	4	2	0	1	0	Miscellaneous Events & Conditions
27.08.2017		0	4	0	0	2	3	1	0	2	1	1	0	0	2			1	0	1	1	0	1	0	0	13. Parking backwards on Evelyn St
28.08.2017		10	17	6	4	10	4	22	11	12	15	4	6	0	14			4	2	1	5	3	3	4	0	14. Use of 840 Menlo Av or Evelyn St when Parking Plaza Loading Zone is available
29.08.2017		11	23	4	3	14	6	27	8	16	17	3	5	3	12			3	6	0	4	4	3	3	2	15. Time of use of Parking Plaza Loading Zone (Times when markers go in & out)
30.08.2017		19	19	0	3	9	4	28	1	11	12	3	7	2	6			4	4	0	3	6	3	3	0	16. Availability of Plaza Loading Zone (number of cars parked in Loading Zone)
	14 Days	122	221	38	38	120	66	264	98	163	142	43	80	11	118	0	0	89	38	7	43	53	48	27	3	- 10:30am
Category	Numbers >>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	- 11:30am
31.08.2017		7	23	0	4	8	3	34	5	16	14	3	9	1	15			6	2	0	8	5	3	8	0	- 12:30pm
01.09.2017		12	14	6	4	11	6	23	6	13	15	4	4	3	16			0	1	0	6	4	4	2	0	- 13:30 (1:30 pm)
02.09.2017		3	6	2	1	6	3	9	3	5	4	2	4	0	7			1	1	0	2	2	2	2	0	17. Shopping carts obstructing flat sidewalk in Parking Plaza next to 840 Menlo Av east Draeger's
03.09.2017		2	3	2	0	1	3	4	0	5	1	1	0	1	1			5	2	1	1	0	1	0	0	18. Vehicles parked partially on and obstructing flat sidewalk in Parking Plaza next to 840 Menlo Av east Draeger's
04.09.2017		3	7	3	1	7	3	9	2	10	2	2	1	2	4			4	1	0	1	1	1	0	0	19. Unattended goods or equipment on any sidewalk
05.09.2017		7	15	7	4	17	5	19	9	17	7	3	6	0	9			6	3	0	1	0	0	2	0	20. Unloading onto & blocking any sidewalk
06.09.2017		9	20	4	5	10	2	28	10	9	17	6	6	2	17			6	0	2	7	0	0	4	0	21. Transporting goods by hand across Evelyn St
	21 Days	165	311	61	67	188	91	388	134	238	202	64	110	30	168	0	0	131	48	10	72	81	61	45	2	22. Transporting goods by hand along Evelyn St
Category	Numbers >>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	23. Parking of trucks on either or both sides of Evelyn St which creates congestion, narrows street width, and/or blocks visibility
07.09.2017		0	20	0	0	7	4	35	7	17	13	4	11	1	17			8	1	0	5	11	4	3	0	24. Evidence of Draeger's loading management/coordination of (i) truck arrivals or (ii) loading and unloading (other than immediately at loading door)
08.09.2017		11	17	7	6	11	7	26	7	20	10	5	5	0	6			5	1	0	2	2	3	2	0	Trucks Total - By week
09.09.2017		3	11	5	2	8	4	13	2	9	5	3	2	2	5			7	6	2	3	2	0	0	0	Week 1 (7 days) 209
10.09.2017		0	9	0	0	2	3	1	0	2	1	0	1	0	2			6	2	2	2	1	0	0	0	Week 2 (14 days) 220
11.09.2017		9	15	3	8	7	4	15	12	14	10	3	5	0	14			3	1	0	3	4	3	3	0	Week 3 (21 days) 185
12.09.2017		6	16	7	1	8	6	18	6	11	11	2	7	3	11			4	1	1	2	6	3	3	0	Week 4 (28 days) 201
13.09.2017		7	15	5	3	9	2	23	6	9	14	1	6	2	9			2	0	0	3	6	1	1	0	Final 3 Days (31 days) 90
																										Trucks Total - Cumulative
	28 Days	200	410	114	74	231	121	519	173	320	268	82	147	35	289	0	0	114	60	16	92	113	79	57	2	7-day Trucks Total 209
Category	Numbers >>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	14-day Trucks Total 420
14.09.2017		7	21	8	3	12	6	24	8	17	8	3	9	1	12			2	1	1	3	4	3	2	0	21-day Trucks Total 614
15.09.2017		0	9	12	6	11	7	19	9	17	13	2	3	1	10			2	3	0	4	2	1	3	0	28-day Trucks Total 815
16.09.2017		1	12	3	2	9	6	9	4	9	5	1	3	1	7			5	6	0	1	1	1	1	0	31-day Trucks Total 905
	31 Days	226	454	135	90	264	138	571	194	363	292	88	162	31	278	0	0	123	70	16	100	128	83	63	2	



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STAFF REPORT

City Council

Meeting Date:

8/28/2018

Staff Report Number:

18-168-CC

Public Hearing:

Introduce Ordinance No. 1049 amending Title 12, building and construction, Ordinance No. 1050 amending Title 16, zoning and Ordinance No. 1051 adding Chapter 12.24 to the Municipal Code related to the permit process for electric vehicle charging stations

Recommendation

Staff recommends that the City Council introduce an ordinance amending Title 12 (Buildings and Construction) and Title 16 (Zoning) of the Menlo Park Municipal Code to update the requirements for electric vehicle (EV) charging spaces for projects involving tenant improvements or new construction and to make the regulations applicable citywide, and introduce an ordinance adding Chapter 12.24 to the Municipal Code to document the EV permitting process.

Policy Issues

The adoption of more stringent requirements for EV charging spaces would be considered a local amendment to the 2016 California green building standards code and would require the City Council to adopt an ordinance. The addition of Chapter 12.24 would be consistent with assembly bill (AB) 1236, which requires cities and counties to adopt an ordinance to establish a permitting process for EV charging stations.

Background

Work plan for revisions to the electric vehicle charging space requirements

During the City Council adoption of the CalGreen requirements for EV chargers in the Bayfront Area in March 2017, several members expressed interest in expanding the regulations citywide and further increasing the requirements. Subsequently, the City Council appointed a two-member subcommittee (City Councilmembers Carlton and Cline) to work with staff and provide guidance on the potential revisions to the EV ordinance. The City Council supported a three-tiered work plan for the revisions that involved feedback from small group discussions with stakeholders, a community meeting for broader outreach, and input from the Planning Commission on the proposed revisions prior to the City Council consideration of the item.

In the Fall 2017, staff conducted small group discussion with several large property owners and businesses in the City who could be most affected by the change in the requirements. These meetings were followed by a larger community meeting in October, which was attended by a mix of property owners, residents, real estate representatives and sustainability advocates. Based on feedback for greater clarity in implementation, consideration for costs and feasibility, potential changing technology, and input from the City Council Subcommittee, staff prepared a modified ordinance to present to the Planning Commission.

On January 22, 2018, the Planning Commission considered changes to the EV charging space requirements. The meeting's staff report is included as Attachment A. Meeting minutes are included via hyperlink as Attachment B. As part of the Commission's deliberation, public comments were considered. The Commission unanimously agreed (Commissioner Combs absent) to continue the item with direction to staff on the following five items:

- Consider additional multifamily residential requirements beyond installation at structural columns;
- Consider how EV charging space requirements are calculated for remodels and additions of commercial space and for remodels and additions of multifamily buildings;
- Consider phasing the requirements from 10 percent to 15 percent of the total parking spaces;
- Consider co-locating of EV charging spaces on one property where multiple buildings may exist; and
- Review EV charging requirement for secondary dwelling units.

Following the Planning Commission's input, staff met with the City Council Subcommittee to discuss revisions. On June 4, 2018, the Planning Commission considered an updated ordinance and unanimously recommended (Commissioners Goodhue and Strehl absent) that the City Council adopt the ordinance with the following modifications:

- Provide an exception for a development to not provide an electrical panel for EV infrastructure where the provision would result in a significant added cost for electrical service, but space shall be provided in the electrical room, subject to the approval of the building official, and
- Revise language regarding universal EV chargers to clarify that the charger should recognize current "standard" universal charging systems rather than "all," which may include a one-of-kind system.

The June 4 staff report and minutes are provided via hyperlinks as Attachments C and D, respectively.

This staff report discusses the proposed changes to the Building Standards Code and Zoning Ordinance and includes draft ordinances (Attachments E and F) for the City Council's review and action. It also includes discussion of a companion ordinance related to streamlining the permitting process for EV charging stations. The proposed ordinance is included as Attachment G for the City Council's review and action.

Analysis

Access to EV charging infrastructure is an important part of making EV a success. Access to charging gives drivers more confidence to utilize EV and extends the functional daily range. Staff is proposing modifications to the EV charging space ordinance to increase the requirements and to make the regulations applicable citywide to address existing and future demand. The proposed regulations would be more stringent than current CalGreen requirements and therefore, requires a local amendment to the building standards code. For uniform applicability and to reduce redundancy between the building standards code and zoning ordinance, the proposed EV development standards would only be part of the building standards code as shown in Attachment E. Clarifications related to implementation of the EV requirements would be part of the zoning ordinance and reference the building standards code for the specific numeric requirements.

Proposed revisions to EV charging space requirements

Non-residential requirements

Staff is continuing to propose modifications based on the existing EV space requirements for the O (office), LS (life sciences), and R-MU (residential mixed use) zoning districts. The proposed updates to Chapter 12.18 (California green building standards code amendments) (Attachment E) are shown in underline and strikeout format, and continue to:

1. Increase the requirement for EV charging spaces capable of supporting electric vehicle supply equipment (EVSE);
2. Increase the number of spaces with EVSE for all new developments 10,000 square feet or greater;
3. Require conduit and wiring for new construction 10,000 square feet and greater; and
4. Simplify the regulations to one requirement for all new construction while maintaining a tiered approach for additions/alterations depending on the proposed scope of work.

Attachment F includes the proposed changes to the zoning ordinance, which are primarily for consistency and clarifications related to the amendments in Chapter 12.18. For reference, the definitions for EV charger, EV charging space, EV charging station, and EVSE are included as Attachment H and are codified in the California building standards code.

The proposed EV ordinance is intended to be practical and serve a need in the community, and not overburden or discourage improvements to existing buildings. The infrastructure cost associated with the installation of the EVSE in the EV spaces for existing buildings can vary depending on several factors, including the type of equipment, the distance of the EV space(s) from the electrical supply equipment and the capacity of the electrical supply equipment. Concerns regarding the potential cost impacts on smaller projects and potential technology changes in the future, which could make what works today obsolete in the future, influenced the proposed modifications.

The proposed changes help to clarify and ease implementation, primarily for non-residential commercial additions and alterations. Based upon feedback during the process, staff has added three components that are highlighted below:

- Phasing: The revised ordinance includes a phased implementation of the required number of EV charging spaces associated with additions and alterations over the next three years. The requirements would remain until the code is amended, which could occur during the next building standards code cycle. Updates to the building code typically follow a three-year cycle, with the next cycle occurring in 2019, becoming effective in 2020.
- Parking calculation: The proposed ordinance includes language that specifies that the EV parking space and EVSE requirements are based on the parking requirements for the square footage of the affected area of a building or portion of a building. EVSE can be located in an EV space that was installed with conduit.

Furthermore, the ordinance establishes a cap on the maximum number of required EV spaces on a site to not overburden applicants/property owners and to balance parking between EV and non-EV spaces. The maximum number would be equivalent to the number of spaces required for new construction of the same size building, as described in Section 16.72.010(4)(A). If a project site has multiple buildings, the maximum number of EV charging spaces and EVSE would be based upon the square footage of all the buildings on the site.

As part of the proposed revisions, any voluntary installation of EVSE above the cap would require the installation of a new parking space, unless approved through an administrative permit by the community development director. The EVSE must be able to recognize current standard universal charging systems. Therefore, a proprietary charger (e.g., a charger that only works with a particular vehicle such as Tesla) could not be installed to meet the EV requirements. If an applicant is voluntarily installing a proprietary charger, the proposed ordinance allows installation where the number of parking spaces exceeds the required number of parking spaces for the site or when new parking spaces are added, if permitted by the zoning ordinance, or if approved through an administrative permit by the community development director.

- Location: The EV charging space(s) and the EVSE installation must be located on the property where the work is being performed. The proposed ordinance does not permit combining and co-locating EV charging spaces for multiple properties onto one site, unless those properties are tied together through a discretionary development permit and parking is shared amongst the sites. The applicant/property owner has the flexibility, however, to choose the location of the EV parking space on the subject property, so long as it meets all other applicable codes.

Planning Commission recommendation

At its meeting June 4, the Planning Commission recommended approval of the proposed ordinance with a modification to provide an exception for providing an electrical panel related to EV infrastructure where it would result in a significant cost. The recommended edit would be in conflict with the building standards code, which requires a service panel or subpanel to have sufficient capacity to accommodate a minimum 40 ampere dedicated branch circuit for the future installation of the EVSE. However, staff is proposing to add language, consistent with language elsewhere in the building standards code that would allow for an applicant to provide for an exemption from the EV requirements, if a hardship is demonstrated such as additional infrastructure as a result of local regulations.

Comparison of existing and proposed non-residential EV requirements

Table 1 below provides a summary between the existing non-residential EV requirements in the O, LS, and R-MU districts and the proposed ordinance for comparison purposes. The proposed ordinance would be applied citywide and would replace all other existing EV charging space and EVSE requirements in the other zoning districts.

Table 1: Summary of existing and proposed non-residential EV charging spaces requirements

Number of required EV charging stations	Existing requirements (O, LS, and R-MU)		Proposed requirements (Citywide)	
	New Construction	Addition/alterations	New Construction	Additions/alterations
Less than 10,000 sf	CalGreen requirements	Voluntary	CalGreen requirements	Voluntary
10,000 sf - 25,000 sf	5 percent of total number of parking stalls		15 percent of total number of required parking stalls (affected area)	Phased 1 percent to 5 percent, minimum of 1 space
25,000 - 100,000 sf	5 percent of total number of parking stalls		15 percent of total number of required parking stalls (affected area)	Phased 2 percent to 10 percent, minimum of 1 space
Greater than 100,000 sf	5 percent of total number of parking stalls		15 percent of total number of required parking stalls (affected area)	Phased 2 percent to 10 percent, minimum of 1 space
Number of spaces with installed EVSE				
10,000 sf - 25,000 sf	2 spaces			1 space
25,000 - 100,000 sf	2 spaces plus 1 percent of the total parking stalls in the pre-wire locations	2 spaces plus 1 percent of the total parking stalls in the pre-wire locations	10 percent of the total number of required parking stalls (affected area), minimum of 1	1 space plus 1 percent of total number of required parking stalls (affected area)
Greater than 100,000 sf	6 spaces plus 1 percent of the total parking stalls in the pre-wire locations			
Requires conduit				
	Yes	Yes	Yes	Yes
Requires wiring				
	Yes	Yes	Yes	No

Residential EV requirements

Similar to the non-residential development requirements, the proposed regulations for residential developments would increase the EV space requirements and simplify the requirement to one standard throughout the City. Since most EV charging occurs overnight at homes, many of the comments during the outreach process encouraged staff to take another look at increasing the residential requirements. Staff worked with the City Council Subcommittee on an update to the regulations. The proposed revisions primarily affect new construction, in recognition of potential cost implications and potentially serving as a disincentive for conducting improvements to existing residential buildings. The proposed modifications affecting residential new construction are discussed below:

- **Applicability:** The threshold for EV requirements was lowered from five residential units to three units. Single-family and duplexes (including attached secondary dwelling units) must already comply with building code requirements per CalGreen. Staff, City Council Subcommittee, and Planning Commission expressed a general interest to not increase the EV requirements for secondary dwelling units.
- **Increased requirements:** The proposed modifications affect both the number of EV charging spaces as well as the number with installed EVSE. The proposal includes an increase from 10 percent of the total number of required parking stalls (January 2018 proposal) to one EV space (conduit and wiring) for each unit. In addition, the proposed ordinances include an increase in the number of spaces with EVSE installed from 3 percent of the total number of required parking (minimum of one) to 15 percent of the EV charging spaces. The requirement for a minimum of a 40 amp, 240 receptacle for EV charging to be installed at each structural column of residential carports remains unchanged.

Comparison of existing and proposed residential EV requirements

Table 2 below provides a summary between the existing residential EV requirements in the R-MU district and the proposed ordinance for comparison purposes only. The proposed regulations would be applied citywide and would replace all other existing EV charging space and EVSE requirements in the other residential zoning districts.

Table 2: Summary of existing and proposed residential EV charging spaces requirements				
Number of required EV charging stations	Existing (R-MU)		Proposed	
	New Construction	Addition/alterations	New Construction 3 or more units	Additions/alterations
5 percent of total number of parking stalls	10,000 sf - 25,000 sf			
	25,000 - 100,000 sf		1 per unit	
	Greater than 100,000 sf			
Number of spaces with installed EVSE	New Construction	Addition/alterations	New Construction 3 or more units	Additions/alterations
2 spaces	10,000 sf - 25,000 sf	Voluntary		Voluntary
2 spaces plus 1 percent of total parking stalls	25,000 - 100,000 sf	Voluntary	15 percent of EV charging spaces	
6 spaces plus 1 percent of the total parking stalls	Greater than 100,000 sf	Voluntary		
Requires conduit	Existing (R-MU)		Proposed	
	New Construction	Addition/alterations	New Construction 3 or more units	Additions/alterations
Yes	10,000 sf - 25,000 sf			
	25,000 - 100,000 sf		Yes	
	Greater than 100,000 sf			
Requires wires	Existing (R-MU)		Proposed	
	New Construction	Addition/alterations	New Construction 3 or more units	Additions/alterations
Yes	10,000 sf - 25,000 sf			
	25,000 - 100,000 sf		Yes	
	Greater than 100,000 sf			

Implementation clarifications

Attachment F includes several modifications to Title 16, zoning, to clarify how to implement EV charging space requirements. These changes pertain to clarifications in how EV parking is included in off-street parking requirements, how EV charging spaces are calculated when the existing parking is nonconforming, and the conversion of parking spaces into EV disabled access parking.

EV permitting process

Presented in Attachment G is an ordinance for the City Council review and action that codifies the permit process for EVSCs. On October 8, 2015, Governor Jerry Brown approved AB 1236, which requires cities and counties to adopt an ordinance to expedite the permitting process for electric vehicle charging stations. An EVSC is defined as any level of electric vehicle supply equipment station that delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle. AB 1236 also requires that local jurisdictions create and adopt checklists and sample plans that facilitate the process for application submittal, plan review and inspections. The State has supported the increase use of electric vehicles by adopting Senate Bill (SB) 454 which is known as the Electric Vehicle Charging Station Open Access Act (SB 454) in May 2013. The Electric Vehicle Charging Station Open Access Act guarantees plug-in owners the "same access" to publicly accessible charging stations as conventional car owners have to gas stations.

AB 1092 required that the California building standards code be amended to require the installation of "infrastructure" for electric vehicle charging in multifamily dwellings and non-residential places like businesses and shopping centers. Additionally, it requires that the California Building Standards Commission and the Department of Housing and Community Development to develop the standards and incorporate them into the CalGreen code. Those requirements are included in the 2016 CalGreen code adopted by the City Council December 6, 2016 and amendments that exceed the CalGreen standards in the O, LS and R-MU zoning districts adopted March 14, 2017.

Neither SB 454 nor AB 1092 address how the permits for the installation of electric vehicle charging stations are processed by local jurisdictions. AB 1236 was written to address this issue. Through AB 1236, the State hopes to standardize the permitting process across the State and promote the installation of EVCS.

The process of review and inspection of EVCS and the costs of the associated permit varies greatly across jurisdictions. While the City of Menlo Park has a policy of expedited permitting for residential and commercial EVCS, other jurisdictions across the State may require several weeks of review and multiple submittals before a project is approved and a permit is issued. In addition to expedited permit review and issuance, the City of Menlo Park only requires one inspection for small residential EVCS unless corrections to the installation are required for code compliance. Larger multifamily residential and commercial installations typically require multiple inspections for each installation location.

The proposed ordinance will standardize plan submittal, expedited review and one inspection unless deficiencies are noted in the field during inspection. AB 1236 requires creation of checklists and required permit documentation, which will make clear the requirements for both document submittal and inspection.

While AB 1236 requires adoption of an ordinance, the result will only be to memorialize the City's current practices and procedures already in place for EVCS.

Next steps

The City Council is the final decision-making body on the proposed EV-related ordinances. If the City Council introduces the ordinances at its meeting August 28, a second reading is tentatively scheduled for September 11, 2018. The proposed ordinance would become effective 30 days after adoption, unless otherwise specified. As part of Title 12, the implementation of the EVSE requirements would be consistent with the application of other building standards code amendments. The requirements would be applicable to any development, meeting the specified criteria, unless a complete building permit application has been received prior to the effective date. The building permit does not need to be issued prior to the effective date.

Following the implementation of the citywide EV charger ordinance, staff will be working on identifying policies and programs to encourage EV purchasing and the creation of a Communitywide EV Infrastructure Master Plan, both of which were approved in the Climate Action Plan amendments the City Council made in May.

Correspondence

Since the June 4, 2018, Planning Commission meeting, staff has received one comment letter (Attachment I) from Francesca Wahl, Sr, Policy Associate, Business Development for Tesla. The letter comments on several components of the proposed ordinance, including clarifying the reference to charging for all EV, establishing a provision for power management, and continuing to increase the EV ready parking spaces for new construction to 20 percent. The proposed ordinance requires that the EV charger must be able to be compatible with current major vehicle manufacturer's charging ports without use of an adaptor. A level 3 or direct current fast charging system, such as a Tesla charger, would only be permitted, as proposed in the draft ordinance, if a site has extra parking spaces on a one-to-one basis or approved through an administrative permit process, which is reviewed by the community development director. The letter proposes that level 3 chargers should be exempt from the requirement. The intent of the proposed ordinance is to utilize the charging stations to its fullest potential by being inclusive of all vehicles, and providing an option to allow alternatives. The building permit process would be similar to other EV permits as outlined in the proposed EV streamlining permit process in Chapter 12.24. At this time, the proposed ordinance requires 15 percent of the total number of parking spaces to be EV ready with conduit and wiring instead of the suggested 20 percent in the letter. Through public outreach, Planning Commission input, and guidance by the City Council Subcommittee, the proposed requirement is a step in increasing the City's EV regulations while balancing the need to understand the impact on development. The letter also suggests including language for power management, which would enable the installation of more equipment without requiring more electrical capacity. In these situations, less than the required amps would be allocated to a vehicle to increase the number of EVCS. At this time, staff is not proposing an exception to the building standards code.

Impact on City Resources

The ordinances to modify Title 12 and Title 16 are not anticipated to have any impact on City resources. Staff time spent on researching and drafting the ordinance would be absorbed by the General Fund.

Environmental Review

The adoption of the proposed local amendment is not a project that has the potential for causing a significant effect on the environment and therefore is not subject to review under the California

Environmental Quality Act (CEQA).

Public Notice

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

Attachments

- A. Hyperlink: January 22, 2018 Planning Commission staff report - menlopark.org/DocumentCenter/View/16487
- B. Hyperlink: January 22, 2018 Planning Commission minutes - menlopark.org/AgendaCenter/ViewFile/Minutes
- C. Hyperlink: June 4, 2018, Planning Commission staff report - menlopark.org/DocumentCenter/View/17737/F3---EV-chargers
- D. June 4, 2018, Planning Commission minutes excerpts
- E. Draft Ordinance No. 1049 amending Title 12 (Buildings and Construction) to amend the 2016 California green building standards code, Part 11 of the 2016 California building standards code
- F. Draft Ordinance No. 1050 amending various Chapters in Title 16 (Zoning) to update Electric vehicle charging station requirements
- G. Draft Ordinance No. 1051 to add Title 12.24 pertaining to the permitting process for electric vehicle charging stations
- H. Definitions for EV charger, EV charging space, EV charging station and EVSE
- I. Correspondence

Report prepared by:

Ron La France, Assistant Community Development Director/Building Official
Deanna Chow, Assistant Community Development Director - Planning
Ori Paz, Assistant Planner

Report reviewed by:

Mark Muenzer, Community Development Director
Leigh Prince, Assistant City Attorney



REGULAR MEETING MINUTES - EXCERPTS

Date: 6/4/2018
Time: 7:00 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

A. Call To Order

Vice Chair Andrew Barnes called the meeting to order at 7:00 p.m.

B. Roll Call

Present: Andrew Barnes (Vice Chair), Drew Combs, Camille Kennedy, John Onken, Henry Riggs,

Absent: Susan Goodhue (Chair), Katherine Strehl

Staff: Deanna Chow, Principal Planner, Clay Curtin, Interim Housing and Community Development Manager, Ron La France, Assistant Community Development Director/Building Official, Michele Morris, Assistant Planner, Ori Paz, Assistant Planner, Thomas Rogers, Principal Planner, Cara Silver, Assistant City Attorney

F. Public Hearing

F3. Municipal Code Amendments:

Electric Vehicle Charging Space and Supply Equipment Requirements/City of Menlo Park: Review and provide a recommendation to the City Council on draft Building Code amendments for the creation of citywide electric vehicle charging space and supply equipment requirements and minor modifications to the Zoning Ordinance for consistency with the new requirements. The City Council will be the final decision-making body on the proposed changes. ([Staff Report #18-057-PC](#))

Staff Comment: Principal Planner Deanna Chow introduced Ron La France, Assistant Community Development Director/Building Official, and Ori Paz, Assistant Planner. She said distributed at the dais was an additional comment that staff had received from Diane Bailey earlier in the day.

Principal Planner Chow said in January staff had presented the Commission an updated version of the electric vehicle charging (EVC) requirements built from the OLS and RMU zoning district standards in response to City Council's interest in making those requirements citywide and increasing the regulations. She said staff received comment from the public and Planning Commission at the January 22 meeting. She said highlights of public comment included clarification on implementation such as where could EV spaces be located, and if for some reason EV chargers could not be installed, whether there was an exemption process. She noted the building code has a hardship exemption. She said also consistency in terminology between that used in the building code and in ConnectMenlo was desired. She said comments on additional provisions were made including a phased approach to implementation particularly in the additions and alterations for commercial buildings, and potentially increased requirements for new single-

family residential and additions and alterations for multi-family residential as those were purely voluntary. She said Planning Commission comments included general support for the ordinance and requested more staff review on five items. She said that included how the EV space requirements were calculated for remodels and additions, a phased approach implementation, flexibility in the location for the Electric Vehicle Supply (EVS) installation, potential modification for increases in residential requirements for new construction, additions and alterations and to minimize impacts on secondary dwelling units. She said following input from the EV Charger City Council Subcommittee of Carlton and Cline, staff was presenting an updated ordinance for the Commission's consideration and recommendation to City Council.

Principal Planner Chow said for commercial additions and alterations that conduit only would continue to be required with a phased approach for EV spaces over the next three years. She said the maximum number would not change but would start at a lower threshold. She said for buildings between 10,000 and 25,000 square feet EV spaces would start at 1% of the total required parking for the affected area and increase to 5% over three years. She said for buildings greater than 25,000 square feet EV spaces would start at 2% of the total required parking to a maximum of 10% in year three. She said the percentages and amount of EV installations for new construction did not change from what was presented to the Planning Commission in January. She said for residential alterations and additions that staff was not recommending any changes to what was proposed previously as purely voluntary with the recognition there could be cost implications. She said for new residential construction they were suggesting lowering the applicability threshold from five units to three units. She said new single-family and duplex residential would remain under CalGreen requirements. She said for EVC spaces it went from 10% of the required parking spaces to require conduit wiring and space in the panels for each unit's space to be EVC ready. She said regarding installation the increase was from 3% of the total number of parking spaces with a minimum of one to 15% of the total number of parking spaces having conduit wiring.

Principal Planner Chow said they would continue to require that chargers be universal so all electric vehicles could use them. She said a question about proprietary chargers was being clarified that the installation of proprietary chargers could be appropriate if there was access parking above the required parking amount. She said that one extra parking space could be used for a proprietary charger or an applicant could request permission through an administrative permit to be reviewed and approved by the Community Development Director. She said they also clarified that the calculation for EV space requirements was based on the affected area and not the total building area. She said EV installation could be anywhere on the site but must meet all development code. She said when the OLS and RMU districts' green sustainable building regulations were adopted there was a provision that for smaller additions the cumulative effects of those additions over five years would trigger a threshold cumulatively. She said they were clarifying that this cumulative addition did not apply to EV chargers.

Questions of Staff: Commissioner Combs asked what was prompting greater stringency than California standards for EVCs. Principal Planner Chow suggested it might be considered more progressive rather than more stringent. She said some zoning designation districts had their own specific EVC requirements such as the R4S district, the Specific Plan area, C2B zoning district, and with the adoption of ConnectMenlo the OLS and RMU districts. She said that created a set of green sustainable building regulations, one of which was EVC. She said after that adoption staff brought forward the changes to the building code in early 2017 to the City Council. She said the Council then expressed interest in having EVC regulations citywide and potentially to increase the

requirements. She said input was received from different commercial and residential stakeholders as to what the appropriate requirements were. She said they heard that this was cost effective with new construction but might create disincentive to do tenant improvements if the regulations were onerous.

Commissioner Onken asked for staff confirmation that all the EVC stations were a percentage of the total number of required parking spaces for a site and not in addition to. He said unlike ADA spaces they were not restricted to EVC vehicles so that a non-electric vehicle would not get fined for using an EVC space. Principal Planner Chow said EVC requirements were inclusive of the overall parking requirements and not additive. She said there was a difference between public parking lots and publicly used parking lots on private property. She said for instance someone using the grocery store parking lot could park a non-electric car in the EVC space but not in public parking lots owned by the City as there they would get fined.

Vice Chair Barnes opened the public hearing.

Public Comment:

- Gary Wimmer, Ford Land Company, said his firm needed further explanation on how the accumulation formula was calculated for their projects on Sand Hill Road so they could get a sense of when that triggered the EV stations. He said they had already planned on a progressive EV installation program prior to the discussion on changes to the City's ordinance. He said they wanted to make sure that what they were planning was consistent with what the City would adopt and also receive credit for EV stations they installed prior to an ordinance adoption. He said they needed to have further explanation of the maximum of the formula. He said for instance if their project of older buildings was to trigger some maximum at some point in its life of 100 EVC parking stations they would need to make sure they had enough electrical power to serve those. He said generally they were in favor of the ordinance but would go on record to request time with staff to address the two questions he still had and how his firm would be affected.

Vice Chair Barnes closed the public hearing.

Commission Comment: Commissioner Riggs referred to Mr. Wimmer's question for clarification that their voluntary EVC station installation would qualify toward any future requirement triggered by construction. Principal Planner Chow said the property owner's existing EVC spaces, whether required through CalGreen or done voluntarily, would count toward meeting the maximum requirement, or cap, for the site. She said EVC spaces were a subset of the overall parking and installing too many EVC spaces was not desirable. She said Mr. Wimmer was asking about the maximum cap. She said his firm's project site had multiple buildings and the cap of required EV chargers on the site would be calculated on the total square footage of the site.

Commissioner Riggs suggested revising language regarding universal chargers to allow for change in the technology from which EVs might emerge that could not use such chargers. He commented on a potential scenario where a four-unit residential site would be required to have four EVC spaces but electrical service was not adequate to the site as that would incur cost and time to remedy. He said if PGE was the electrical provider and the serving transformer was at capacity, a project needing more electricity would require a review by PGE and a deferred payment plan to

upgrade the transformer, all of which might take a year to accomplish. He asked if they could clarify in the proposal that panel space could be added but the building panel itself was not for more electrical capacity than what PGE could deliver, which would prevent an issue for the developer and City.

Mr. La France said regarding PG&E and transformers that Station 1300 was such a large development as would be 500 El Camino Real that new transformers were being installed so developments that size have that folded into it. He said for instance a four-unit infill development on Middle Avenue where the PG&E transformer might be undersized for the building and the EVC stations. He said a section of CalGreen and the building code said specifically to EVC that when there was an unreasonable hardship the Building Official had the authority to modify the requirements. He said where there was not enough power coming in from a transformer that EV charging could still be accomplished through technology but taking the load coming in and distributing it across how every many EVCs there were.

Commissioner Riggs said that was helpful for residential but for commercial users that might not provide the needed charging for a user to get a full charge, and he would like some alternative for commercial. He said it made sense to put in the wiring when doing the grading and underground utilities and assuring that there was panel space in the electrical room but the panels themselves were not necessarily needed until the City started to see a demand at that level. Mr. La France said clarified Commissioner Riggs meant space in the wall for the panel not space in the panel.

Commissioner Kennedy asked if EV owners generally assumed that they got a full charge when they plugged into a charger. She said at a peak time there might be more draw and an owner could not assume getting the same charge as from their own personal charger. She said it should be simple to let people know that if they are charging during peak hours that they should assume there was other demand.

Mr. La France said in many areas infrastructure has not been upgraded so a problem with transformers and distribution lines existed. He said they were always working within the bounds of what PG&E could supply. He said if you have a 100 amp panel it could be loaded to 125 amps, which assumed that users would never have everything on all at once drawing a full load. He said EV activists have told staff that people with EVs drive wherever they need to during the day and charge at night.

Commissioner Onken said as part of building code they were demanding infrastructure but not a service. He said as Commissioner Riggs pointed out the demand of certain infrastructure might inadvertently trigger changes in service that could become hardships. He said he supported the draft ordinance generally and found the increases appropriate. He said it was not onerous with the safeguards that people with multiple properties doing a number of projects were not unreasonably burdened beyond the aggregate regarding parking count.

Commissioner Riggs said talking to EVC companies' sales people their goal was to have you buy. He said regarding load averaging on an electrical system that if you have 15 amp outlets the electrical service did not have to be 1500 amps. He said EVC sales people touting load averaging were misleading as that load averaging had been occurring since the construction of a building. He said he appreciated the potential for asking for an exemption but that might cause a property owner anxiety. He said he thought the exception could be written into the ordinance with approval

of the Building Official.

Vice Chair Barnes confirmed with Mr. La France he could work with Mr. Wimmer on the more site specific question. He asked Principal Planner Chow if there was stakeholder consensus, noting the one speaker, on the e proposed revised ordinance. Principal Planner Chow said they had shared this proposed ordinance with the property owners who had spoken at the January meeting or attended workshops but they did not have official concurrence from those who were not present this evening.

Vice Chair Barnes said speakers previously had requested consideration for owners of multiple parcels to have EVCs located over those and not just at the parcel hitting a trigger for EVCs. He asked how that was treated. Principal Planner Chow said for one site with multiple buildings that EVCs could be clustered in a location on that site. She said if you had the same property owner but multiple properties that were tied together through a development permit they could be shared on one site as long as the parking for all properties was shared. She said if each site was independent each had to meet the requirement.

Commissioner Combs asked the reason for phasing for alteration and modifications and why not full implementation. He said three years seemed a small time horizon for construction. He said if the community recognized inherent value in having this infrastructure then he thought the inherent value of having whatever requirement considered as suitable should occur immediately. Principal Planner Chow said at the January meeting there were multiple comments by commercial property owners, who were receptive to the idea but had concerns about the cost implications, and the incremental approach was in response to those concerns.

Commissioner Riggs moved to recommend to City Council adoption of the amendment to Title 12 and Title 16 with the modification that the infrastructure requirement for EVCs include an exception to provide the space in the electrical wall / closet but not to provide the physical electrical panel if there was a request for relief from a system upgrade caused by the addition of the EVCs. Mr. La France confirmed with Commissioner Riggers that by "system upgrade" he was being specific to PG&E and transformer capacity. He said he understood Commissioner Riggs' intent and could work with the language.

Vice Chair Barnes said that the motion to recommend approval included a modification to provide an exception to not provide an electrical panel for EV infrastructure where provision would result in significant added cost for electrical service. Commissioner Riggs said that space would need to be provided in the electrical room for panel board space. Vice Chair Barnes said the last part was subject to the approval of the Building Official.

Commissioner Riggs said earlier he had requested possible flexibility to leave some room for innovation for chargers. Principal Planner Chow asked if he was suggesting that some percentage of the overall percentage did not have to be universal chargers. Commissioner Riggs said in the charts shown earlier it was shown that universal charger had to apply to all EVCs. Commissioner Combs suggested something such as meets current industry standards. Principal Planner Chow asked to clarify if Commissioner Riggs wanted flexibility to allow for a non-universal charger. Commissioner Riggs said he was seeking to allow for changes in the industry so the language used did not make it a burden on the applicant to be current. He said what was universal today might not be universal in the future. Principal Planner Chow suggested in such cases they might

have to look at an existing nonconforming situation where it was universal when installed but with technology anything new would have to comply with new standard of chargers. Commissioner Onken suggested not calling the charger universal but to require that it was usable by all EVs at the time of installation based on current industry standards. Commissioner Riggs suggested saying the EVC shall recognize all current standard universal charging systems.

Vice Chair Barnes said the motion to recommend to Council to approve had two suggested changes: EVC shall recognize all current standard universal charging systems and to provide an exception to not provide an electrical panel for EVC infrastructure where the provision would result in significant added costs for electrical service but provide space in the electric closet subject to the approval of the Building Official. Commissioner Onken seconded the motion.

Principal Planner Chow asked if the exception would be applicable to all development. Commissioner Riggs noted that residential was voluntary but that the exception should apply to all development.

ACTION: Motion and second (Riggs/Onken) to recommend that the City Council approve ordinance amendments to Title 12 (Buildings and Construction) and Title 16 (Zoning) of the Menlo Park Municipal Code to update the requirements for electric vehicle (EV) charging spaces in projects involving tenant improvements or new construction and to make the regulations applicable citywide with the following recommended modifications; passes 5-0-2 with Commissioners Goodhue and Strehl absent.

1. Provide an exception for any development to not provide an electrical panel for EV infrastructure where provision would result in significant added cost for electrical service with the requirement that space shall be provided in the electrical room for panel board space, subject to the approval of the Building Official.
2. Revise language regarding universal EVCs with *EVC shall recognize all current standard universal charging systems.*

I. Adjournment

Vice Chair Barnes adjourned the meeting at 10:52 pm.

Staff Liaison: Thomas Rogers, Principal Planner

Recording Secretary: Brenda Bennett

Approved by the Planning Commission on July 16, 2018

ORDINANCE NO. 1049

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING CHAPTER 12.18 [CALIFORNIA GREEN BUILDING STANDARDS CODE AMENDMENTS] OF TITLE 12 [BUILDINGS AND CONSTRUCTION] OF THE MENLO PARK MUNICIPAL CODE TO UPDATE THE ELECTRICAL VEHICLE CHARGING REQUIREMENT

WHEREAS, the City of Menlo Park ("City") wishes to adopt a building code in accordance with law and to use the most updated regulations in the processing of development in the City; and

WHEREAS, the City wishes to update the requirement for electric vehicle charging spaces in projects involving tenant improvements or new construction and to make the regulations applicable citywide; and

WHEREAS, because of the City's unique local climatic, geologic and topographic conditions, the City desires to make amendments and additions to the 2016 California Green Building Standards Code in the City's Municipal Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENLO PARK DOES ORDAIN AS FOLLOWS:

SECTION 1: FINDINGS AND DETERMINATIONS. The following local geologic conditions that require compliance with energy efficiency standards for building construction and justify modifications to California Building Standards Code:

- A. Geological: The City is located in Seismic Risk Zones D, E, and F, which are the most severe earthquake zones in the United States. The area includes various soils and areas with significant movement potential. Buildings and other structures in Zones D, E and F can experience major seismic damage. Lack of adequate building designs and detailing as well as the lack of flexible materials and/or building systems have been contributing factors to damage that reduces the life-safety of building occupants and increases the cost of the rehabilitation of structures.
- B. Climatic: The City is located in a climatic zone with precipitation ranging from 13 to 20 inches per year with an average of approximately 15 inches per year. Ninety-five percent of precipitation falls during the months of November through April, leaving a dry period of approximately six months each year. Relative humidity remains moderate most of the time. Temperatures in the summer average around 80 degrees Fahrenheit and in the winter in the mid 50 degrees Fahrenheit. Prevailing winds in the area come from the west with velocities generally in the 12 miles per hour range, gusting from 25 to 35 miles per hour.

- C. Topographic: Areas of highly combustible dry grasses, weeds, brush and trees adjacent to structures are common throughout the City. Above ground electrical power transmission lines are suspended through trees and above large areas of dry vegetation. The arrangement of man-made features around many buildings greatly limit any approach to all but one side of a building.

SECTION 2: AMENDMENT OF CODE. Chapter 12.18 [California Green Building Standards Code Amendments] of Title 12 [Buildings and Construction] of the City's Municipal Code is hereby amended in its entirety to read as follows:

CALIFORNIA GREEN BUILDING STANDARDS CODE AMENDMENTS

Sections:

12.18.010	Section 4.408.1 of Chapter 4 amended
12.18.020	Section 5.408.1 of Chapter 5 amended
12.18.030	Section 4.106.4.1 of Chapter 4 amended
12.18.040	Section 4.106.4.2 of Chapter 4 amended
12.18.050	Section 4.106.4.2.3 of Chapter 4 deleted
12.18.060	Section 4.106.4.2.4 of Chapter 4 deleted
12.18.070	Section 4.106.4.2.6 of Chapter 4 added
12.18.080	Section 5.106.5.3 of Chapter 5 amended
12.18.090	Section 5.106.5.3.1 of Chapter 5 amended
12.18.100	Section 5.106.5.3.2 of Chapter 5 amended
12.18.110	Table 5.106.5.3.3 of Chapter 5 amended

12.18.010 Section 4.408.1 of Chapter 4 amended

Section 4.408.1 of Chapter 4 is amended to read as follows:

4.408.1 Construction waste management. Recycle and/or salvage for reuse a minimum of 65 percent of both inert and non-inert nonhazardous demolition waste and 65 percent of both inert and non-inert nonhazardous construction waste in accordance with Section 4.408.2, 4.408.3 or 4.408.4 and meet the requirements of Chapter 12.48 Recycling and Salvaging of Construction and Demolition Debris City of Menlo Park Municipal Code.

Exceptions:

1. Excavated soil and land clearing debris.
2. Alternate waste reduction methods developed by working with local agencies if diversion or recycle facilities capable of compliance with this item do not exist or are not located reasonably close to the job site.
3. The enforcing agency may make exceptions to the requirements of this section when isolated jobsites are located in areas beyond the haul boundaries of the diversion facility.

12.18.020 Section 5.408.1 of Chapter 5 amended

Section 5.408.1 of Chapter 5 is amended to read as follows:

5.408.1 Construction waste management. Recycle and/or salvage for reuse a minimum of 65 percent of both inert and non-inert nonhazardous demolition waste and 65 percent of both inert and non-inert nonhazardous construction waste in accordance with Section 5.408.2, 5.408.3 or 5.408.4 and meet the requirements of Chapter 12.48 Recycling and Salvaging of Construction and Demolition Debris City of Menlo Park Municipal Code.

Exceptions:

1. Excavated soil and land clearing debris.
2. Alternate waste reduction methods developed by working with local agencies if diversion or recycle facilities capable of compliance with this item do not exist or are not located reasonably close to the job site.
3. The enforcing agency may make exceptions to the requirements of this section when isolated jobsites are located in areas beyond the haul boundaries of the diversion facility.

12.18.030 Section 4.106.4.1 of Chapter 4 amended

Section 4.106.4.1 of Chapter 4 is amended to read as follows:

4.106.4.1 New Single-family dwellings. For each dwelling unit install a listed raceway to accommodate a dedicated 208/240-volt branch circuit. The raceway shall not be less than trade size 1 (nominal 1-inch inside diameter). The raceway shall originate at the main service or subpanel and shall terminate into a listed cabinet, box or other enclosure in close proximity to the proposed location of an EV charger. Raceways are required to be continuous at enclosed, inaccessible or concealed areas and spaces. The service panel and/or subpanel shall provide capacity to install a 40-ampere minimum dedicated branch circuit and space(s) reserved to permit installation of a branch circuit overcurrent protective devices.

12.18.040 Section 4.106.4.2 of Chapter 4 amended

Section 4.106.4.2 of Chapter 4 is amended to read as follows:

4.106.4.2 New multifamily dwellings. Where more than two (2) multifamily dwelling units including town-houses are constructed on a building site, the following are to be installed at the time of construction:

1. For each dwelling unit, installation of a listed raceway and wiring to accommodate a 208/240-volt dedicated branch circuit. The raceway and wiring shall be installed in

accordance with the California Electric Code. Construction plans and specifications shall include, but are not limited to the following:

- The type and location of the vehicle supply equipment (EVSE).
 - The raceway shall not be less than trade size 1”
 - The raceway and wiring shall originate at a service panel or a subpanel serving the area and shall terminate in close proximity to the proposed location of the charging equipment and into a listed suitable cabinet, box, enclosure or equivalent.
 - The service panel or subpanel shall have sufficient capacity to accommodate a minimum 40-ampere dedicated branch circuit for the future installation of the EVSE.
 - Electrical calculations shall substantiate the design of the electrical system to include the rating of equipment and any on-site distribution transformers and have sufficient capacity to charge required EV at its full rated amperage.
2. Install EVSE in 15 percent of the total number of required electric vehicle charging spaces (EV spaces) associated with the building inclusive of landscape reserve parking, for all types of parking facilities, but in no case less than one; and
 3. Install a branch circuit, wiring and receptacle sized to carry not less than a 40 amp, 240 volt load for electric vehicle charging at each structural column of residential carports if constructed.

Calculations for the required number of EV spaces shall be rounded up to the nearest whole number.

12.18.050 Section 4.106.4.2.3 of Chapter 4 deleted

Section 4.106.4.2.3 of Chapter 4 is deleted:

12.18.060 Section 4.106.4.2.4 of Chapter 4 deleted

Section 4.106.4.2.4 of Chapter 4 is deleted:

12.18.070 Section 4.106.4.2.6 of Chapter 4 added

Section 4.106.4.2.6 of Chapter 4 is added to read as follows:

4.106.4.2.6 Modifications. Where there are practical difficulties involved in carrying out the provisions of sections 4.106.4.1 and 4.106.4.2, the Building Official shall have the authority to grant modifications to the requirements on a case-by-case basis where it has been determined EV charging and infrastructure is not feasible based upon one or more of the following conditions:

1. Where there is insufficient electrical supply.

2. Where there is evidence suitable to the local enforcing agency substantiating that additional local utility infrastructure design requirements, directly related to the implementation of sections 4.106.4.1 and 4.106.4.2 may adversely impact the construction cost of the project.

12.18.080 Section 5.106.5.3 of Chapter 5 amended

Section 5.106.5.3 of Chapter 5 is amended to read as follows:

5.106.5.3 Electric Vehicle (EV) charging. Section 5.106.5.3 shall apply to newly constructed buildings or additions and/or alterations to existing buildings as established in Table 5.106.5.3.3. Construction shall comply with Section 5.106.5.3.1 or Section 5.106.5.3.2 to facilitate future installation of electric vehicle supply equipment (EVSE). When EVSE is/are installed, it shall be in accordance with the California Building Code, the California Electrical Code and as follows:

12.18.090 Section 5.106.5.3.1 of Chapter 5 amended

Section 5.106.5.3.1 of Chapter 5 is amended to read as follows:

5.106.5.3.1 Single charging space requirements. When only a single charging space is required per Table 5.106.3.3, the following are required to be installed at the time of construction:

- A raceway; and
- Wiring.

The raceway and wiring shall be installed in accordance with the California Electric Code. Construction plans and specifications shall include, but are not limited to the following:

Newly constructed buildings

1. The type and location of the EVSE.
2. Listed raceway and wiring capable of accommodating a 208/240-volt dedicated branch circuit.
3. The raceway shall not be less than trade size 1"
4. The raceway and wiring shall originate at a service panel or a subpanel serving the area and shall terminate in close proximity to the proposed location of the charging equipment and into a listed suitable cabinet, box, enclosure or equivalent.
5. The service panel or subpanel and wiring shall have sufficient capacity to accommodate a minimum 40-ampere dedicated branch circuit for the future installation of the EVSE.

6. Electrical calculations shall substantiate the design of the electrical system to include the rating of equipment and any on-site distribution transformers and have sufficient capacity to charge required EV at its full rated amperage.

Additions and/or alterations

1. The type and location of the EVSE.
2. A listed raceway capable of accommodating a 208/240-volt dedicated branch circuit.
3. The raceway shall not be less than trade size 1”
4. The raceway shall originate at a service panel or a subpanel serving the area and shall terminate in close proximity to the proposed location of the charging equipment and into a listed suitable cabinet, box, enclosure or equivalent.
5. The service panel or subpanel shall have sufficient capacity to accommodate a minimum 40-ampere dedicated branch circuit for the future installation of the EVSE.
6. Electrical calculations shall substantiate the design of the electrical system to include the rating of equipment and any on-site distribution transformers and have sufficient capacity to charge required EV at its full rated amperage.

12.18.100 Section 5.106.5.3.2 of Chapter 5 amended

Section 5.106.5.3.2 of Chapter 5 is amended to read as follows:

5.106.5.3.2 Multiple charging space requirements. When multiple charging spaces are required to be installed per Table 5.106.5.3.3, raceways(s) and wiring, is/are required to be installed at the time of construction and shall be installed in accordance with the California Electric Code. Construction plans and specifications shall include, but are not limited to, the following:

Newly constructed buildings

1. The type and location of the EVSE.
2. Listed raceway and wiring capable of accommodating a 208/240-volt dedicated branch circuit.
3. The raceway(s) and wiring shall originate at a service panel or a subpanel(s) serving the area and shall terminate in close proximity to the proposed location of the charging equipment and into a listed suitable cabinet(s), box(es), enclosure(s) or equivalent.
4. Plan design shall be based upon 40-ampere minimum branch circuits.
5. Electrical calculations shall substantiate the design of the electrical system to include the rating of equipment and any on-site distribution transformers and have sufficient capacity to simultaneously charge all required EV's at its full rated amperage.
6. The service panel or subpanel(s) shall have sufficient capacity to accommodate the required number of dedicated branch circuit(s) for future installation of the EVSE.

Additions and/or alterations

1. The type and location of the EVSE.
2. Listed raceway capable of accommodating a 208/240-volt dedicated branch circuit.
3. The raceway(s) shall originate at a service panel or a subpanel(s) serving the area and shall terminate in close proximity to the proposed location of the charging equipment and into a listed suitable cabinet(s), box(es), enclosure(s) or equivalent.
4. Plan design shall be based upon 40-ampere minimum branch circuits.
5. Electrical calculations shall substantiate the design of the electrical system to include the rating of equipment and any on-site distribution transformers and have sufficient capacity to simultaneously charge all required EV's at its full rated amperage.
6. The service panel or subpanel(s) shall have sufficient capacity to accommodate the required number of dedicated branch circuit(s) for future installation of the EVSE.

12.18.110 Table 5.106.5.3.3 of Chapter 5 amended

Table 5.106.5.3.3 of Chapter 5 is amended to read as follows:

Table 5.106.5.3.3¹

New Construction			Addition and/or Alteration	
Square Footage of Building	Total Number of Parking Stalls	Number of Required EV Charging Spaces ²	Square Footage of Affected Area	Number of Required EV Charging Spaces ²
1 sq. ft. – 9,999 sq. ft.	0-9	0	1 sq. ft. – 9,999 sq. ft.	0
	10-25	1		
	26-50	2		
	51-75	4	10,000 sq. ft. – 25,000 sq. ft. ³	Minimum of 5% of total required number of parking stalls and install EVSE in a minimum of 1 charging space.
Greater than 9,999 sq. ft.	N/A	Minimum of 15% of total required number of parking stalls ² and install EVSE in 10% of the total required number of parking stalls, with a minimum of 1, in charging space(s).	Greater than 25,000 sq. ft. ⁴	Minimum of 10% of total required number of parking stalls and install EVSE in 1 plus 1% of the total required number of parking stalls in charging space(s).

1. The EV space requirement is based on the required parking associated with the building where the work is being performed, inclusive of landscape reserve parking.
2. Calculations for spaces shall be rounded up to the nearest whole number.
3. For additions/alterations 10,000 sq. ft. – 25,000 sq. ft. in the first year after the effective date of the ordinance, the requirement would be one percent. In the second year after the effective date of the ordinance, the requirement would be three percent. In the third year after the effective date of the ordinance and thereafter, the requirement would be five percent.
4. For larger additions/alterations (25,001 sq. ft. and greater), in the first year after the effective date of the ordinance, the requirement would be two percent. The second year after the effective date of the ordinance, the requirement would be five percent. In the third year after the effective date of the ordinance and thereafter, the requirement would be 10 percent.

SECTION 3: EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061(b)(3) that this ordinance is exempt

from the requirements of the California Environmental Quality Act (“CEQA”) in that it is not a project that has the potential for causing a significant effect on the environment.

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

SECTION 5: EFFECTIVE DATE. This Ordinance shall become effective on the later of _____ or thirty (30) days from adoption.

SECTION 6: POSTING. Within fifteen (15) days of its adoption, the Ordinance shall be posted in three (3) public places within the City of Menlo Park, and the Ordinance, or a summary of the Ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the ____ day of _____, 2018.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ____ day of _____, 2018, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

APPROVED:

Peter I. Ohtaki
Mayor

ATTEST:

Judi Herren, City Clerk

DRAFT – August 28, 2018

ORDINANCE NO. ____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING VARIOUS CHAPTERS IN TITLE 16 [ZONING] OF THE MENLO
PARK MUNICIPAL CODE TO UPDATE ELECTRIC VEHICLE CHARGING
REQUIREMENTS**

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

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

- A. On December 6, 2016, the Menlo Park City Council adopted three new zoning districts (O, LS and R-MU) as part of the General Plan (Land Use and Circulation Elements) and M-2 Area Zoning Update to help foster a live/work/play environment for the new Bayfront (M-2 Area) area. Each of the districts includes development regulations, design standards, transportation demand management, and green and sustainable building requirements.
- B. On March 14, 2017, the Menlo Park City Council adopted an ordinance amending the 2016 California Green Building Standards Code (also known as CALGreen) to increase the number of electric vehicle (EV) charging stations in the O, LS, and R-MU districts, consistent with the Council's previous adoption of the new green and sustainable building regulations.
- C. Pursuant to the City Council's interest in expanding the EV charging station regulations citywide and further increasing the requirements, which would support the General Plan Land Use for Sustainable Services Goal (Goal LU-7), a City Council subcommittee was formed to provide guidance to staff. In addition, staff conducted two outreach meetings with stakeholders and a community meeting in the Fall of 2017 to receive feedback on the proposed revisions to the EV charging station ordinance.
- D. The Planning Commission held a duly noticed public hearing on January 22, 2018 and June 4, 2018 to review and consider the proposed amendments in this ordinance, whereat all interested persons had the opportunity to appear and comment.
- E. The amendments to Chapter 16.23 (R-4-S), Chapter 16.40 (C-2-B), Chapter 16.43 (O), Chapter 16.44 (LS), and Chapter 16.45 (R-MU) of Title 16 of the Menlo Park Municipal Code would delete the previously adopted EV charging station requirements and update the sections to refer to Title 12 of the Menlo Park Municipal Code where the EV charging station requirements would be referenced for all zoning districts in the City, which would further promote Land Use Policy LU-7.1 (Sustainability), which promotes sustainable site planning, development, landscaping and operation practices that conserve resources and minimize waste.

- F. The amendments to Chapter 16.58 (SP-ECR/D El Camino Real/Downtown Specific Plan), Chapter 16.72 (Off Street Parking) and Chapter 16.80 (Nonconforming Uses and Buildings) of Title 16 of the Menlo Park Municipal Code would create clarity in implementation of the EV charging requirements.
- G. The City Council held a duly noticed public hearing on August 28, 2018 to review and consider the proposed amendments, whereat all interested persons had the opportunity to appear and comment.
- H. After due consideration of the proposed amendments to Title 16, public comments, the Planning Commission recommendation, and the staff report, the City Council finds that the proposed amendments to Title 16 are consistent with the ConnectMenlo General Plan and are appropriate.

SECTION 2. The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061(b)(3) that this ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) in that it is not a project that has the potential for causing a significant effect on the environment.

SECTION 3. Section 16.04.298, Electric Vehicle Charging Space, Electric Vehicle Charging Station, and Electric Vehicle Supply Equipment, is hereby added to Chapter 16.04, Definitions, of Title 16, Zoning to read as follows:

16.04.298 Electric Vehicle Charging Space, Electric Vehicle Charging Station, and Electric Vehicle Supply Equipment. “Electric Vehicle Charging Space”, “Electric Vehicle Charging Station” and “Electric Vehicle Supply Equipment” are as defined in the California Building Standards Code.

SECTION 4. Section 16.72.010, Requirements generally, of Chapter 16.72, Off-Street Parking, of Title 16, Zoning, is hereby amended as follows to implement the EV charging requirement (with the added text appearing in underline and deleted text in strikeout):

16.72.010 Requirements generally.

~~Unless otherwise provided for a specific zoning district, off-street parking requirements in all districts and for all uses shall be as stated in this chapter; except in the single family residential districts, subject to approval of the planning commission, a portion of required parking area may be developed with appropriate landscaping. All required parking spaces and access thereto shall conform to city parking standards, as adopted by the city council. Assessment district, or other cooperative method approved by the city council, may be used in lieu of the stated requirements. Reductions in parking requirements for commercial and industrial land uses may be allowed through an administrative permit as outlined in Chapter 16.82 of this title.~~

Unless otherwise provided for a specific zoning district, off-street parking requirements in all districts and for all uses shall be as stated in this chapter.

- (1) Except in the single family residential districts, subject to approval of the planning commission, a portion of required parking area may be designated landscape reserve parking and developed with appropriate landscaping.
- (2) All required parking spaces and access thereto shall conform to city parking standards, as adopted by the city council.

- (3) Assessment district, or other cooperative method approved by the city council, may be used in lieu of the stated requirements.
- (4) Reductions in parking requirements for commercial and industrial land uses may be allowed through an administrative permit as outlined in Chapter 16.82 of this title.
- (5) Requirements for electric vehicle charging spaces (EV spaces) are applicable to development in all zoning districts, including the SP-ECR/D district, subject to meeting certain criteria, and are specified in Chapter 12.18 (Buildings and Construction) of the City of Menlo Park Municipal Code.
 - (A) The maximum number of required EV spaces and electric vehicle supply equipment (EVSE) shall not exceed the requirement for EV spaces for new construction of an equivalent development on a parcel or project site. Any voluntary installation of EVSE above the maximum required number of EV spaces would require the installation of a new parking space, unless approved through an administrative permit as outlined in Chapter 16.82 of this title. All required EVSE shall be compatible with current major vehicle manufacture's charging ports without the use of an adapter. A proprietary EV charger may be installed on a one-to-one ratio where the number of striped parking spaces exceeds the required number of parking spaces, unless approved through an administrative permit as outlined in Chapter 16.82 of this title.
 - (B) The EV spaces requirement is based on the required parking associated with the affected area of work.
 - (C) Where an existing legal, nonconforming parking condition exists, the EV spaces requirement, including the maximum required, shall be based on a percentage of the existing number of parking spaces equivalent to the percentage of the affected work area to the total building square footage on the parcel or subject site.
 - (D) EV spaces and EV charging stations can be used to meet the off-street parking requirement. The EV spaces requirements and the primary off-street parking requirements are not additive.
 - a. A proportional amount of EV spaces may be set aside in landscape reserve parking, where approved by the Planning Commission.
 - (E) For development projects within the SP-ECR/D district where the EV spaces requirement cannot be met on-site for the first 100 percent floor area ratio in the Downtown Shared/Unbundled Parking Area, an applicant shall pay an in-lieu fee to meet this requirement as established by the City of Menlo Park.

SECTION 5. Section 16.80.020, Nonconforming uses, of Chapter 16.80, Nonconforming Uses and Buildings, of Title 16, Zoning, of the Menlo Park Municipal Code is hereby amended to read as follows (with the added text appearing in underline):

16.80.020 Nonconforming uses.

Nonconforming uses may continue subject to the following provisions:

- (1) A conditional use permit shall be obtained for all commercial uses located in a residential zoning district.
- (2) No nonconforming use may be enlarged or expanded, except as otherwise provided in this chapter.
- (3) If any nonconforming use is discontinued for a period of ninety (90) days, any subsequent use of the land or structure housing such use shall conform to the regulations specified for the zoning district in which such land or structure is located.
- (4) A nonconforming use may be changed to another use of the same or more restrictive classification upon the securing of a conditional use permit therefor; however, a nonconforming use may not be changed to a less restrictive use.
- (5) Any use occupying a structure which is nonconforming because it does not satisfy the parking requirements for the zoning district in which it is located may be changed to a similar or more restrictive use, subject to the obtaining of a use permit therefor. A blanket use permit may be granted specifying one (1) or more potential future uses based on the actual parking available. Properties where required spaces have been eliminated due to compliance with the Americans with Disabilities Act or the electrical vehicle charging space requirement per Chapter 16.72.010 of the City of Menlo Park Municipal Code are not considered nonconforming in regard to parking for purposes of this section. (Ord. 936 § 8 (part), 2005: Prior code § 30.602).

SECTION 6. Section 16.23.050, Development regulations, of Chapter 16.23, R-4-S, High Density Residential, Special, of Title 16, Zoning, of the Menlo Park Municipal Code is hereby amended to read as follows (with the added text appearing in underline and deleted text in strikeout):

16.23.050 Development regulations.

Development regulations are as follows in the R-4-S district:

		Regulation¹	Notes
Minimum Lot Area		20,000 sf	
Minimum Lot Width		100 ft.	See Section 16.04.430 for definition.
Minimum Lot Depth		100 ft.	See Section 16.04.420 for definition.
Density	Minimum	20 du/ac	Densities may be increased with application of the State Density Bonus Law or Affordable Housing Overlay, if applicable
	Maximum	30 du/ac	
Minimum Yards	Front	10 ft.	See Section 16.04.720 for definition.

		Regulation¹	Notes
	Interior Side	10 ft., except may be reduced to 5 ft. abutting a private access easement	See Section 16.04.740 for definition.
	Corner Side	10 ft.	
	Rear	10 ft.	See Section 16.04.730 for definition.
Maximum Floor Area Ratio		Increase on an even gradient from 60% for 20 du/ac to 90% for 30 du/ac	See Sections 16.04.315 and 16.04.325 for definitions.
Maximum Building Coverage		40%	See Section 16.04.120 for definition.
Minimum Open Space (Landscaping)		25%	See Section 16.04.500 for definition.
Height	Maximum Building Height	40 ft.	See Section 16.04.330 for definition of height of structure.
Building Profile		Starting at a height of 25 feet, a 45-degree building profile shall be set at the minimum setback line contiguous with a public right-of-way or single-family zoned property.	
Parking	Vehicular	2 spaces for units w/2 or more bedrooms; 1.5 spaces for 1 bedroom unit; 1 space per studio. Spaces cannot be located in required front yard setbacks or in tandem.	
	Electric Vehicle	A minimum of 3 percent of the required number of parking spaces shall provide dedicated electric vehicle/plug-in hybrid electric charging stations and a minimum of 2 percent of the required number of parking spaces shall be pre-wired for such equipment. <u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u>	
	Bicycle	Long term—1 space per unit where a private garage (per unit) is not provided Short term (visitor)—1 space per every 10 units	

¹A development regulation, except for floor area ratio and density, may be modified subject to a use permit established in Chapter [16.82](#).

SECTION 7. Section 16.40.030, Development regulations, of Chapter 16.40, C-2-B, Neighborhood Mixed Use District, Restrictive, of Title 16, Zoning, of the Menlo Park Municipal Code is hereby amended to read as follows (with the added text appearing in underline and deleted text in strikeout):

16.40.030 Development regulations.

Development regulations in the C-2-B district are as follows:

- (1) Minimum district size: twenty-five thousand (25,000) square feet;
- (2) Minimum lot area: none, except that the cumulative lot area of all property within the C-2-B district shall be no less than twenty-five thousand (25,000) square feet;
- (3) Minimum lot dimensions: none;
- (4) Required minimum yards: front, ten (10) feet; side, none; corner side, ten (10) feet, rear, none; except when abutting a residential district where a twenty (20) foot yard shall be provided;
- (5) Land covered by all structures shall not exceed sixty percent (60%) of building site;
- (6) Not less than ten percent (10%) of building site shall be occupied by appropriate landscaping;
- (7) Height of structures shall not exceed thirty (30) feet. For a mixed residential and commercial development, the maximum building height shall not exceed forty (40) feet;
- (8) In the case of conditional uses, additional regulations may be required by the planning commission;
- (9) The floor area ratio for nonresidential uses shall not exceed forty percent (40%), except that fifty percent (50%) may be allowed with use permit approval and a minimum lot size of twenty thousand (20,000) square feet;
- (10) The maximum dwelling units per acre (du/ac) is thirty (30) du/ac;
- (11) The floor area ratio for multiple dwelling units shall increase on an even gradient up to ninety percent (90%) for thirty (30) du/ac. The maximum floor area ratio may be allowed when the maximum number of dwelling units is proposed, even if less than thirty (30) du/ac;
- (12) In a mixed residential and commercial development, the combined maximum floor area ratio shall not exceed one hundred percent (100%). The maximum nonresidential and residential floor area ratios for each component shall not exceed the maximum allowed per subsections (9) and (11) of this section;
- (13) Development in the C-2-B district shall meet the following parking requirements:

(a) Parking shall not be located in any required yard adjacent to a street.

Land Use	Minimum Spaces (Per Unit or 1,000 Sq. Ft.)	Maximum Spaces (Per Unit or 1,000 Sq. Ft.)	Minimum Bicycle Parking¹
Residential units	1 per unit	1.5 per unit	1.5 long-term ² per unit; 10% additional short-term ² for guests
Office	2	3	1 per 5,000 sq.ft. of gross floor area Minimum 2 spaces for office and research development:
Research and development	1.5	2.5	
Retail	2.5	3.3	

Land Use	Minimum Spaces (Per Unit or 1,000 Sq. Ft.)	Maximum Spaces (Per Unit or 1,000 Sq. Ft.)	Minimum Bicycle Parking¹
Financial services	2	3.3	80% for long-term ² and 20% for short-term ² For all other commercial uses: 20% for long-term ² and 80% for short-term ²
Eating and drinking establishment	2.5	3.3	
Personal services	2	3.3	
Private recreation	2	3.3	
Child care center	2	3.3	
Other	At transportation manager discretion	At transportation manager discretion	At transportation manager discretion

¹ See the latest edition of best practice design standards in Association of Pedestrian and Bicycle Professionals Bicycle Parking Guidelines.

² Long-term parking is for use over several hours or overnight, typically used by employees and residents. Short-term parking is considered visitor parking for use from several minutes to up to a couple of hours.

(b) The Electric Vehicle Charging Spaces Requirements in Chapter 16.72.010 apply. ~~Electrical vehicle parking spaces shall be pre-wired for five percent (5%) of the total number of required parking stalls. A minimum of two (2) electrical vehicle spaces plus one percent (1%) of the total required parking stalls in the pre-wire locations shall be installed.~~

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SECTION 8. Table 16.43.140(1)(B), Nonresidential Green Building Requirements, of Section 16.43.140, Green and sustainable building, of Chapter 16.43, O, Office, of Title 16, Zoning, of the Menlo Park Municipal Code is hereby amended to read as follows (with the added text appearing in underline and deleted text in ~~strikeout~~):

TABLE 16.43.140(1)(B): NONRESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ^{5,63,4}	25,001 sq. ft. and above of conditioned area, volume or size ^{5,63,4}
Green Building	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Gold BD+C ¹	CALGreen mandatory	Designed to meet LEED Silver ID+C ¹ or update core and shell of entire building to current California Energy Code ⁴ -Code ² and meet Section 16.43.140(2)(B)	Designed to meet LEED Gold ID+C ¹ or update core and shell of entire building to current California Energy Code ⁴ -Code ² and meet Section 16.43.140(2)(B)
Electric Vehicle (EV) Chargers Charging Spaces	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ² ■ Minimum of 5% of total required	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ² ■ Minimum of 5% of total required number of parking stalls	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ² ■ Minimum of 5% of total required number of parking stalls	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> N/A (voluntary)	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ² ■ Minimum of 5% of total required number of parking stalls AND	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ² ■ Minimum of 5% of total required number of parking stalls AND

TABLE 16.43.140(1)(B): NONRESIDENTIAL GREEN BUILDING REQUIREMENTS

	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
Green Building Requirement	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ^{5,6,3,4}	25,001 sq. ft. and above of conditioned area, volume or size ^{5,6,3,4}
	number of parking stalls AND Install EV Chargers ³ ■ Minimum of 2 in the pre-wire locations	AND Install EV Chargers ³ ■ Minimum total of 2 plus 1% of the total parking stalls in the pre-wire locations	AND Install EV Chargers ³ ■ Minimum total of 6 plus 1% of the total parking stalls in the pre-wire locations		Install EV Chargers ³ ■ Minimum of 2 chargers in the pre-wire locations	Install EV Chargers ³ ■ Minimum total of 2 plus 1% of the total parking stalls in the pre-wire locations)
Energy Reporting	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city

¹ "Designed to meet LEED standards" is defined as follows: (a) applicant must submit appropriate LEED checklist and verifying cover letter from a project LEED AP with the project application and (b) applicant must complete all applicable LEED certification documents prior to approval of the final inspection for the building permit to be reviewed either for LEED certification or for verification by a third party approved by the city for which the applicant will pay for review and/or certification.

² ~~"Pre-wire" is defined as conduit and wire installed from electrical panel board to junction box at parking stall, with sufficient electrical service to power chargers at all pre-wire locations.~~

³ ~~"Charger" is defined as follows: one (1) electric vehicle (EV) charger or charger head reaching each designated EV parking stall and delivering a minimum of forty (40) amps and two hundred forty (240) volts such that it can be used by all electric vehicles.~~

⁴ ~~Building owners may choose to have additions and/or alterations follow the LEED ID+C path, or alternatively, building owners may upgrade the entire existing building's core and shell to the current California Energy Code standards and follow the city's requirements listed in Section 16.43.140(2)(B). If the building owner chooses to upgrade the entire building's core and shell to current California Energy Code standards and follow the city's requirements listed in Section 16.43.140(2)(B), additions and alterations of that building will be exempt from the LEED ID+C requirement for three (3) code update cycles beginning with the upgrade cycle and ending with the two (2) cycles following the upgrade cycle. If this option is selected by the applicant, the building must upgrade to the Energy~~

Code in effect at the time of the first building permit application for interior alteration and/or additions. Building permits for the core and shell upgrade must be initiated and satisfactory progress must be made on the core and shell upgrade project before occupancy for the additions and/or alterations shall be granted by the city's building department. If the building fails to complete these core and shell upgrades within one (1) year of permit initiation, or receive a written letter from the community development director or his/her designee extending the deadline, the building owner shall be subject to typical permit violation penalties, including but not limited to stop work orders on any construction on the subject property, fines, and legal action.

⁵⁻³If over a period of five (5) years (or sixty (60) months) the subject property makes smaller additions and/or alterations that cumulatively equal or exceed the trigger square footage listed above (i.e., ten thousand (10,000) square feet or twenty-five thousand one (25,001) square feet), the subject property shall be required to comply with the green and sustainable building requirements of this table.

⁶⁻⁴For this calculation, laboratory space as defined in the building code is included in the addition and/or alteration square foot total, but exempt from the ID+C requirement.

SECTION 9. Table 16.44.130(1)(B), Nonresidential Green Building, of Section 16.44.130, Green and sustainable building, of Chapter 16.44, LS, Life Sciences, of Title 16, Zoning, of the Menlo Park Municipal Code is hereby amended to read as follows (with the added text appearing in underline and deleted text in strikeout):

TABLE 16.44.130(1)(B): NONRESIDENTIAL GREEN BUILDING REQUIREMENTS

	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
Green Building Requirement	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ^{5,6,3,4}	25,001 sq. ft. and above of conditioned area, volume or size ^{5,6,3,4}
Green Building	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Gold BD+C ¹	CALGreen mandatory	Designed to meet LEED Silver ID+C ¹ or update core and shell of entire building to current California Energy Code⁴-Code² and meet Section <u>16.44.130(2)(B)</u>	Designed to meet LEED Gold ID+C ¹ or update core and shell of entire building to current California Energy Code⁴-Code² and meet Section <u>16.44.130(2)(B)</u>

TABLE 16.44.130(1)(B): NONRESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ^{5,6,3,4}	25,001 sq. ft. and above of conditioned area, volume or size ^{5,6,3,4}
	documentation of compliance as required by the city	documentation of compliance as required by the city	documentation of compliance as required by the city	documentation of compliance as required by the city	documentation of compliance as required by the city	documentation of compliance as required by the city

¹ "Designed to meet LEED standards" is defined as follows: (a) applicant must submit appropriate LEED checklist and verifying cover letter from a project LEED AP with the project application and (b) applicant must complete all applicable LEED certification documents prior to approval of the final inspection for the building permit to be reviewed either for LEED certification, or for verification by a third party approved by the city for which the applicant will pay for review and/or certification.

² ~~"Pre-wire" is defined as conduit and wire installed from electrical panel board to junction box at parking stall, with sufficient electrical service to power chargers at all pre-wire locations.~~

³ ~~"Charger" is defined as follows: one (1) electric vehicle (EV) charger or charger head reaching each designated EV parking stall and delivering a minimum of forty (40) amps and two hundred forty (240) volts such that it can be used by all electric vehicles.~~

⁴ ² Building owners may choose to have additions and/or alterations follow the LEED ID+C path, or alternatively, building owners may upgrade the entire existing building's core and shell to the current California Energy Code standards and follow the city's requirements listed in Section [16.44.130\(2\)\(B\)](#). If the building owner chooses to upgrade the entire building's core and shell to current California Energy Code standards and follow the city's requirements listed in Section [16.44.130\(2\)\(B\)](#), additions and alterations of that building will be exempt from the LEED ID+C requirement for three (3) code update cycles beginning with the upgrade cycle and ending with the two (2) cycles following the upgrade cycle. If this option is selected by the applicant, the building must upgrade to the Energy Code in effect at the time of the first building permit application for interior alteration and/or additions. Building permits for the core and shell upgrade must be initiated and satisfactory progress must be made on the core and shell upgrade project before occupancy for the additions and/or alterations shall be granted by the city's building department. If the building fails to complete these core and shell upgrades within one (1) year of permit initiation, or receive a written letter from the community development director or his/her designee extending the deadline, the building owner shall be subject to typical permit violation penalties, including but not limited to stop work orders on any construction on the subject property, fines, and legal action.

⁵ ³ If over a period of five (5) years (or sixty (60) months) the subject property makes smaller additions and/or alterations that cumulatively equal or exceed the trigger square footage listed above (i.e., ten thousand (10,000) square feet or twenty-five thousand one (25,001) square feet), the subject property shall be required to comply with the green and sustainable building requirements of this table.

^{6.4} For this calculation, laboratory space as defined in the building code is included in the addition and/or alteration square foot total, but exempt from the ID+C requirement.

SECTION 10. Table 16.45.130(1)(B), Residential Green Building Requirements, of Section 15.45.130, Green and sustainable building, of Chapter 16.45, R-MU, Residential Mixed Use, of Title 16, Zoning, of the Menlo Park Municipal Code is hereby amended to read as follows (with the added text appearing in underline and deleted text in ~~strikeout~~):

TABLE 16.45.130(1)(B): RESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size⁵size³	25,001 sq. ft. and above of conditioned area, volume or size⁵size³
Green Building	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Gold BD+C ¹	CALGreen mandatory	Designed to meet LEED Silver ID+C ¹ or update core and shell of entire building to current California Energy Code⁴-Code² and meet Section 16.45.130(2)(B)	Designed to meet LEED Gold ID+C ¹ or update core and shell of entire building to current California Energy Code⁴-Code² and meet Section 16.45.130(2)(B)
Electric Vehicle (EV) Chargers Charging Spaces⁶	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ²	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ²	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ²	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> N/A (voluntary)	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> N/A (voluntary)	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> N/A (voluntary)

TABLE 16.45.130(1)(B): RESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ⁵ size ³	25,001 sq. ft. and above of conditioned area, volume or size ⁵ size ³
	<ul style="list-style-type: none"> Minimum of 5% of total required number of parking stalls AND Install EV Chargers³ Minimum of 2 in the pre-wire locations 	<ul style="list-style-type: none"> Minimum of 5% of total required number of parking stalls AND Install EV Chargers³ Minimum total of 2 plus 1% of the total parking stalls in the pre-wire locations 	<ul style="list-style-type: none"> Minimum of 5% of total required number of parking stalls AND Install EV Chargers³ Minimum total of 6 plus 1% of the total parking stalls in the pre-wire locations 			
Energy Reporting	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city

¹ "Designed to meet LEED standards" is defined as follows: (a) applicant must submit appropriate LEED checklist and verifying cover letter from a project LEED AP with the project application and (b) applicant must complete all applicable LEED certification documents prior to approval of the final inspection for the building permit to be reviewed either for LEED certification, or for verification by a third party approved by the city for which the applicant will pay for review and/or certification.

~~² "Pro-wire" is defined as conduit and wire installed from electrical panel board to junction box at parking stall, with sufficient electrical service to power chargers at all pre-wire locations.~~

~~³ "Charger" is defined as follows: one (1) electric vehicle (EV) charger or charger head reaching each designated EV parking stall and delivering a minimum of forty (40) amps and two hundred forty (240) volts such that it can be used by all electric vehicles.~~

~~⁴₂ Building owners may choose to have additions and/or alterations follow the LEED ID+C path, or alternatively, building owners may upgrade the entire existing building's core and shell to the current California Energy Code standards and follow the city's requirements listed in Section 16.45.130(2)(B). If the building owner chooses to upgrade the entire building's core and shell to current California Energy Code standards and follow the city's requirements listed in Section 16.45.130(2)(B), additions and alterations of that building will be exempt from the LEED ID+C requirement for three (3) code update cycles beginning with the upgrade cycle and ending with the two (2) cycles following the upgrade cycle. If this option is selected by the applicant, the building must upgrade to the Energy Code in effect at the time of the first building permit application for interior alteration and/or additions. Building permits for the core and shell upgrade must be initiated and satisfactory progress must be made on the core and shell upgrade project before occupancy for the additions and/or alterations shall be granted by the city's building department. If the building fails to complete these core and shell upgrades within one (1) year of permit initiation, or receive a written letter from the community development director or his/her designee extending the deadline, the building owner shall be subject to typical permit violation penalties, including but not limited to stop work orders on any construction on the subject property, fines, and legal action.~~

~~⁵₃ If over a period of five (5) years (or sixty (60) months) the subject property makes smaller additions and/or alterations that cumulatively equal or exceed the trigger square footage listed above (i.e., ten thousand (10,000) square feet or twenty-five thousand one (25,001) square feet), the subject property shall be required to comply with the green and sustainable building requirements of this table.~~

~~⁶ At minimum, a forty (40) amp, two hundred forty (240) volt receptacle shall be installed at each structural column of residential carports for electrical vehicle charging. This requirement is in addition to pre-wire and installation of EV charger regulations.~~

TABLE 16.45.130(1)(C): NONRESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ⁵³	25,001 sq. ft. and above of conditioned area, volume or size ⁵³
Green Building	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Silver BD+C ¹	Designed to meet LEED Gold BD+C ¹	CALGreen mandatory	Designed to meet LEED Silver ID+C ¹ or update	Designed to meet LEED Gold ID+C ¹ or update core

TABLE 16.45.130(1)(C): NONRESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ⁵³	25,001 sq. ft. and above of conditioned area, volume or size ⁵³
					core and shell of entire building to current California Energy Code ⁴² and meet Section 16.45.130(2)(B)	and shell of entire building to current California Energy Code ⁴² and meet Section 16.45.130(2)(B)
Electric Vehicle (EV) Chargers Charging Stations Spaces	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ² • Minimum of 5% of total required number of parking stalls AND Install EV Chargers ³ • Minimum of 2 in the pre-wire locations	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ² • Minimum of 5% of total required number of parking stalls AND Install EV Chargers ³ • Minimum total of 2 plus 1% of the total parking	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ² • Minimum of 5% of total required number of parking stalls AND Install EV Chargers ³ • Minimum total of 6 plus 1% of the total parking	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> N/A (voluntary)	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ² • Minimum of 5% of total required number of parking stalls AND Install EV Chargers ³ • Minimum of 2 chargers in the pre-wire locations	<u>The Electric Vehicle Charging Spaces Requirements in Section 16.72.010 apply.</u> Pre-Wire ² • Minimum of 5% of total required number of parking stalls AND Install EV Chargers ³ • Minimum total of 2 plus 1% of the total parking stalls in the pre-wire locations

TABLE 16.45.130(1)(C): NONRESIDENTIAL GREEN BUILDING REQUIREMENTS

Green Building Requirement	NEW CONSTRUCTION			ADDITIONS AND/OR ALTERATIONS		
	10,000 sq. ft.— 25,000 sq. ft.	25,001 sq. ft.— 100,000 sq. ft.	100,001 sq. ft. and above	1 sq. ft.—9,999 sq. ft. of conditioned area, volume or size	10,000 sq. ft.— 25,000 sq. ft. of conditioned area, volume or size ⁵³	25,001 sq. ft. and above of conditioned area, volume or size ⁵³
		stalls in the pre-wire locations	stalls in the pre-wire locations			
Energy Reporting	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city	Enroll in EPA Energy Star Building Portfolio Manager and submit documentation of compliance as required by the city

¹ "Designed to meet LEED standards" is defined as follows: (a) applicant must submit appropriate LEED checklist and verifying cover letter from a project LEED AP with the project application and (b) applicant must complete all applicable LEED certification documents prior to approval of the final inspection for the building permit to be reviewed either for LEED certification, or for verification by a third party approved by the city for which the applicant will pay for review and/or certification.

~~² "Pre-wire" is defined as conduit and wire installed from electrical panel board to junction box at parking stall, with sufficient electrical service to power chargers at all pre-wire locations.~~

~~³ "Charger" is defined as follows: one (1) electric vehicle (EV) charger or charger head reaching each designated EV parking stall and delivering a minimum of forty (40) amps and two hundred forty (240) volts such that it can be used by all electric vehicles.~~

4-2 Building owners may choose to have additions and/or alterations follow the LEED ID+C path, or alternatively, building owners may upgrade the entire existing building's core and shell to the current California Energy Code standards and follow the city's requirements listed in Section 16.45.130(2)(B). If the building owner chooses to upgrade the entire building's core and shell to current California Energy Code standards and follow the city's requirements listed in Section 16.45.130(2)(B), additions and alterations of that building will be exempt from the LEED ID+C requirement for three (3) code update cycles beginning with the upgrade cycle and ending with the two (2) cycles following the upgrade cycle. If this option is selected by the applicant, the building must upgrade to the Energy Code in effect at the time of the first building permit application for interior alteration and/or additions. Building permits for the core and shell upgrade must be initiated and satisfactory progress must be made on the core and shell upgrade project before occupancy for the additions and/or alterations shall be granted by the city's building department. If the building fails to complete these core and shell upgrades within one (1) year of permit initiation, or receive a written letter from the community development director or his/her designee extending the deadline, the building owner shall be subject to typical permit violation penalties, including but not limited to stop work orders on any construction on the subject property, fines, and legal action.

5-3 If over a period of five (5) years (or sixty (60) months) the subject property makes smaller additions and/or alterations that cumulatively equal or exceed the trigger square footage listed above (i.e., ten thousand (10,000) square feet or twenty-five thousand one (25,001) square feet), the subject property shall be required to comply with the green and sustainable building requirements of this table.

SECTION 8. Section 16.58.020, El Camino Real/Downtown specific plan, of Chapter 16.58, SP-ECR/D El Camino Real/Downtown Specific Plan, of Title 16, Zoning, of the Menlo Park Municipal Code is hereby amended to read as follows (with the added text appearing in underline):

16.58.020 El Camino Real/Downtown specific plan.

With the exception of electric vehicle charging requirements listed in Chapter 16.72 (Off-Street Parking), Uses, development regulations, guidelines, definitions, off-street parking requirements, and other parameters for public and private development are established through the El Camino Real/Downtown specific plan. All modifications to this chapter or to the El Camino Real/Downtown specific plan require review and recommendation by the planning commission and review and approval by the city council through public hearings in accordance with Chapter 16.88 and applicable law.

SECTION 9: This Ordinance shall become effective on the later of _____ or thirty (30) days from adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the ___ day of _____, 2018.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of the City Council of the City of Menlo Park on the ___ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Peter I. Ohtaki
Mayor, City of Menlo Park

ATTEST:

Judi Herren
City Clerk

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ORDINANCE NO. 1051**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ADOPTING MUNICIPAL CODE CHAPTER 12.24, PERMIT PROCESS
FOR ELECTRIC VEHICLE CHARGING STATIONS**

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

SECTION 1: FINDINGS AND DETERMINATIONS.

- A. In 2015, the State Legislature adopted Assembly Bill 1236 (enacted as California Government Code Section 65850.7) which requires local agencies to adopt an ordinance creating an expedited and streamlined permitting process for electric vehicle charging.
- B. The State of California and the City of Menlo Park have consistently promoted and encouraged the use of fuel-efficient electric vehicles.
- C. The City of Menlo Park wishes to adopt an expedited, streamlined permitting process for electric vehicle charging stations that complies with AB 1236 to achieve timely and cost-effective installations of electric vehicle charging stations and to help reduce the City's reliance on environmentally damaging fossil fuels.

SECTION 2: ADDITION OF CODE. Chapter 12.24 [Permit Process for Electric Vehicle Charging Stations] is hereby added to Title 12 [Buildings and Construction] of the City's Municipal Code to read as follows:

**“Chapter 12.24
PERMIT PROCESS FOR ELECTRIC VEHICLE CHARGING STATIONS**

Sections:

- 12.24.010 Purpose**
- 12.24.020 Definitions**
- 12.24.030 Applicability**
- 12.24.040 Electric vehicle charging station requirements**
- 12.24.050 Submittal requirements**
- 12.24.060 Plan review, permit, and inspection requirements**

12.24.010 Purpose

The purpose of this chapter is to adopt an expedited, streamlined permitting process for electric vehicle charging stations that complies with AB 1236 (Chapter 598, Statutes 2015, Cal. Gov't Code § 65850.7) to achieve timely and cost-effective installations of electric vehicle charging stations. This chapter encourages the use of electric vehicle charging stations by removing unreasonable barriers, minimizing costs to property owners and the City of Menlo Park, and expanding the ability of property owners

to install electric vehicle charging stations. This chapter allows the City of Menlo Park to achieve these goals while protecting the public health and safety.

12.24.020 Definitions

- (a) “Electric vehicle charging station(s)” or “charging station(s)” means any level of electric vehicle supply equipment station that is designed and built in compliance with California Code of Regulations, Title 24 Part 3 California Electrical Code Article 625, as it reads on the effective date of this chapter or as it may be amended, and delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle.
- (b) “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

12.24.030 Applicability

This chapter applies to the permitting of all electric vehicle charging stations in the City of Menlo Park. Electric vehicle charging stations legally established or permitted prior to the effective date of this chapter are not subject to the requirements of this chapter, unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small rooftop energy system in such a way as to require new permitting. Routine operation and maintenance shall not require a permit.

12.24.040 Electric vehicle charging stations requirements

All electric vehicle charging stations shall meet applicable health and safety standards and requirements imposed by the state and the city.

Electric vehicle charging stations shall meet all applicable safety and performance standards established by the California Electrical Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and accredited testing laboratories such as Underwriters Laboratories and where applicable, rules of the Public Utilities Commission regarding safety and reliability.

12.24.050 Submittal requirements

All documents required for the submission of an electric vehicle charging stations application shall be made available on the city’s website.

Electronic submittal of the required permit application and documents by facsimile shall be made available to all electric vehicle charging station permit applicants. An applicant’s electronic signature shall be accepted on all forms, applications, and other documents in lieu of a wet signature.

The city's building division shall adopt a checklist of all requirements with which the electric vehicle charging stations shall comply to be eligible for expedited review. The electric vehicle permit process, standard(s) and checklist(s) may substantially conform to recommendations for permitting, including the checklist and standards contained in the "Plug-In Electric Vehicle Infrastructure Permitting Checklist" of the "Zero-Emission Vehicles in California: Community Readiness Guidebook" published by the Office of Planning and Research.

All fees prescribed for the permitting of electric vehicle charging stations must comply with Government Code Section 65850.55, Government Code Section 66015, Government Code Section 66016, and State Health and Safety Code Section 17951 as set forth in the fee schedule adopted by resolution of the City Council of the City of Menlo Park.

The determination of value or valuation under any of the provisions of this code shall be made by the Building Official. The value to be used shall be the total value of all construction work for which the permit is issued as well as any other equipment.

12.24.060 Plan review, permit, and inspection requirements

The building official shall implement an administrative review process to expedite approval of electric vehicle charging stations. No permit or approval shall be issued which does not conform to all applicable provisions of this Title and Title 16, including Design Review. The determination of conformance shall be made by the Community Development Director or designee. Where the application meets the requirements of the approved checklist and standards and there are no specific, adverse impacts upon public health or safety, the building and safety division shall complete the building permit approval process, which is non-discretionary. Review of the application for electric vehicle charging stations shall be limited to the building official's review of whether the application meets local, state, and federal health and safety requirements.

The Community Development Director or designee may require an applicant to apply for an "electric vehicle charging station use permit" if the Community Development Director or designee, based on the initial application submittal, that the electric vehicle charging stations could have a specific, adverse impact upon the public health and safety. The Community Development Director or designee's decision may be appealed to the City of Menlo Park Planning Commission.

If an electric vehicle charging station use permit is required, the Community Development Director or designee may only deny an application for the electric vehicle charging station use permit if the official makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact. The Community Development Director or designee decision may be appealed to the City of Menlo Park Planning Commission.

If the use permit is issued for an electric vehicle charging station, the permit may include conditions designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.

A feasible method to satisfactorily mitigate or avoid the specific, adverse impact includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by the city on another similarly situated application in a prior successful application for a permit.

If an application is deemed incomplete, a written correction notice detailing all deficiencies in the application and any additional information or documentation required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.”

SECTION 3: EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061(b)(3) that this ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) in that it is not a project that has the potential for causing a significant effect on the environment.

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

SECTION 5: EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the ___ day of ____, 2018.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ___ day of ____, 2018, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

APPROVED:

Peter I. Ohtaki
Mayor

ATTEST:

Judi Herren, City Clerk

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DIRECT-VENT APPLIANCE. A fuel-burning appliance with a sealed combustion system that draws all air for combustion from the outside atmosphere and discharges all flue gases to the outside atmosphere.

DISPOSAL. The management of solid waste through land-filling or transformation at permitted solid waste facilities.

DIVERSION. Activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this code.

ELECTRIC VEHICLE (EV). An automotive-type vehicle for on-road use, such as passenger automobiles, buses, trucks, vans, neighborhood electric vehicles, electric motorcycles, and the like, primarily powered by an electric motor that draws current from a rechargeable storage battery, fuel cell, photovoltaic array, or other source of electric current. Plug-in hybrid electric vehicles (PHEV) are considered electric vehicles. For purposes of the *California Electrical Code*, off-road, self-propelled electric vehicles, such as industrial trucks, hoists, lifts, transports, golf carts, airline ground support equipment, tractors, boats, and the like, are not included.

ELECTRIC VEHICLE (EV) CHARGER. Off-board charging equipment used to charge an electric vehicle.

ELECTRIC VEHICLE CHARGING SPACE (EV SPACE). A space intended for future installation of EV charging equipment and charging of electric vehicles.

ELECTRIC VEHICLE CHARGING STATION (EVCS). One or more electric vehicle charging spaces served by electric vehicle charger(s) or other charging equipment allowing charging of electric vehicles. Electric vehicle charging stations are not considered parking spaces.

ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE). The conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle.

EMBODIED ENERGY. The energy used for raw material extraction, transportation, manufacturing, assembly, installation and disposal during the life of a product, including the potential energy stored within the product.

ENERGY BUDGET. The sum of the annual TDV energy consumption for energy use components included in the performance compliance approach for the Standard Design Building, as established in the Alternative Calculation Method Reference Manual approved by the Energy Commission and calculated by Compliance Software certified by the Energy Commission.

ENERGY COMMISSION. The California State Energy Resources Conservation and Development Commission.

ENERGY DESIGN RATING. The sum of the annual TDV energy consumption for energy use components included in the performance compliance approach for the Standard Design Building (Energy Budget) and the annual time dependent valuation (TDV) energy consumption for lighting and

components not regulated by Title 24, Part 6 (such as domestic appliances and consumer electronics) and accounting for the annual TDV energy offset by an on-site renewable energy system. The Design Rating is calculated by Compliance Software certified by the Energy Commission.

ENERGY EQUIVALENT (NOISE) LEVEL (L_{eq}). The level of a steady noise which would have the same energy as the fluctuating noise level integrated over the time period of interest.

ENFORCING AGENCY. The designated department or agency as specified by statute or regulation.

EUTROPHICATION. The excessive growth of aquatic plants, especially algae, producing bacteria which consume nearly all of the oxygen required to sustain fauna and other flora.

EVAPOTRANSPIRATION ADJUSTMENT FACTOR (ETAF). [DSA-SS] An adjustment factor when applied to reference evapotranspiration that adjusts for plant factors and irrigation efficiency, which are two major influences on the amount of water that needs to be applied to the landscape.

EXFILTRATION. The uncontrolled outward air leakage from inside a building, including leakage through cracks and interstices, around windows and doors, and through any other exterior partition or duct penetration.

EXPRESSWAY. An arterial highway for through traffic which may have partial control of access, but which may or may not be divided or have grade separations at intersections.

FLOOR AREA RATIO. Gross square footage of all structures on a site divided by gross square footage of the site.

FOOTPRINT AREA. [DSA-SS] The total area of the furthest exterior wall of the structure projected to natural grade, not including exterior areas such as stairs, covered walkways, patios and decks.

FREEWAY. A divided arterial highway with full control of access and with grade separations at intersections.

FRENCH DRAIN. A trench, hole or other depressed area loosely filled with rock, gravel, fragments of brick or similar pervious material used to collect or channel drainage or runoff water.

GEOTHERMAL. Renewable energy generated by deep-earth water or steam.

GLOBAL WARMING POTENTIAL (GWP). The radiative forcing impact of one mass-based unit of a given greenhouse gas relative to an equivalent unit of carbon dioxide over a given period of time. Carbon dioxide is the reference compound with a GWP of one.

GLOBAL WARMING POTENTIAL VALUE (GWP VALUE). The 100-year GWP value published by the Intergovernmental Panel on Climate Change (IPCC) in either its Second Assessment Report (SAR) (IPCC, 1995); or its Fourth Assessment A-3 Report (AR4) (IPCC, 2007). The SAR GWP values are found in column "SAR (100-yr)" of Table 2.14.; the AR4 GWP values are found in column "100 yr" of Table 2.14.

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July 9, 2018

Deanna Chow
Planning Division
701 Laurel Street
Menlo Park, CA 94025

**RE: Menlo Park Draft Ordinance Amendments Related to Municipal Code
Requirements for EV Charging Spaces**

Dear Ms. Chow:

I am writing on behalf of Tesla to provide our feedback on the proposed ordinance amendments for non-residential and residential electric vehicle (EV) charging spaces requirements for the City of Menlo Park.

Tesla's mission is to accelerate the world's transition to sustainable energy, and we are proud to be helping the State of California achieve our shared goals. As both a California-based manufacturer of EVs and a provider of charging infrastructure for our customers, Tesla brings a unique perspective to the discussion on EV readiness measures for new buildings and construction on existing buildings.

We commend Menlo Park for its leadership in accelerating transportation electrification and proposing innovative EV-readiness requirements for additions and major alterations to existing buildings. The new vehicle market share for EVs in Menlo Park was almost 18% in 2017, representing roughly 100% growth compared to 2016.¹ Menlo Park has one of the highest shares of EV sales of any city in California, which underscores the importance of EV charging infrastructure in driving local EV adoption.

Below, we provide several recommendations on technical aspects of the proposed ordinance amendments that should be clarified prior to adoption by the City Council. First, we recommend clarifying the term "a charger that can be used by all EVs" as used in the zoning code section (Title 16), as such a charger does not exist at certain power levels. Second, we recommend ensuring that electric vehicle supply equipment (EVSE) installation

¹ ICCT Briefing, California's continued electric vehicle market development. May 2018. Available at: <https://www.theicct.org/publications/california-electric-vehicle-2018>.

requirements do not come at the expense of continuing to increase the percentage of parking spaces in new construction that are EV ready,² which is widely seen as the most cost-effective approach to EV future proofing. Finally, we recommend including a reference to power management in the building code (Title 12) that enables its application in these settings.

a. Reference to charging for all EVs should be clarified

In the report that outlines the proposed building and zoning code changes, staff briefly discusses the use of proprietary charging versus charging that “works for all EVs”. Specifically, it states that “the existing EV ordinance requires a charger that can be used by all EVs... staff recommends that only chargers that serve all EVs are allowed, unless the parking exceeds the required number of parking spaces for the site.”³ It also states that a proprietary EV charger may be installed if approved by an administrative permit by the Community Development Director.

While the current draft ordinance appears to apply only to new construction and additions/alterations of a certain square footage, this “work for all EVs” charger requirement could have unintended consequences in other applications where EV charging is the primary function of the development or site. The term “a charger that can be used by all EVs” is confusing because such a charger does not currently exist for all levels of EV charging.

For Level 2 charging, the current connector standard that can work for most EVs, but only with an adaptor for Tesla vehicles, is SAE J1772. For DC fast charging, however, there is no connector standard that works for all EVs. There are three main fast charging technologies in California today: Tesla Supercharger, CCS, and CHAdeMO. Therefore, no matter what technology is used for DC fast charging, it would serve a certain subset of EVs and there is no fast charger that works for all EVs. If Menlo Park desires to create “work for all EVs” requirements, it should specify in the code that these requirements can only apply to certain power levels, specifically Level 2 charging that occurs at 240 volts, less than 100 amps and with alternating current.

² EV-ready: Refers to a parking space that includes the following components: listed raceway (conduit), sufficient electrical panel service capacity, overcurrent protection devices, wire, and suitable termination points such as a junction box with a service loop or directly landed within an EVSE (i.e. Full Circuit).

³ Staff Report #: 18-057-PC; p.4. Available at: <https://www.menlopark.org/DocumentCenter/View/17737/F3---EV-chargers>.

To avoid unintended consequences in the ability to install charging infrastructure at existing sites, which is critically needed given the growth of EVs in Menlo Park and the region, we recommend specific changes to the Title 16 zoning code as reflected in Attachment A. The term “EVSE” appears to be used inconsistently throughout the staff report, therefore, clarification should be added that EVSE refers to the installation of the actual charging station, not just the make-ready components such as conduit and wiring. We also seek clarification of how the proposed building code changes may impact deeded parking in multifamily buildings or assigned parking at workplaces in nonresidential lots where the property owner should be able to choose the type of EV charger they install. Finally, we are concerned with the unintended consequences this code may have on a site in which EV charging is the primary function of the development or site, such is often the case for a Tesla Supercharger site, which is designed to serve Tesla customers and therefore consists only of proprietary EV chargers at a much higher ratio of chargers to parking spots than is proposed in the code.

Finally, the requirement for the use of an administrative review process for the permit may also be counter to the intent of California Government Code Section 65850.7 (enacted by Assembly Bill 1236 in 2015), which requires that local jurisdictions implement a streamlined permitting process for EV charging stations. We encourage staff to consider the application of AB 1236 in this context and when developing a streamlined permitting ordinance to comply with state requirements.

b. Power management reference should be included

Dynamic power management for EVSE or EV charging equipment continues to become more readily available. Power management enables the installation of more charging equipment without requiring more electrical capacity. This is important because limited power is one of the principal barriers in providing charging for multifamily and commercial garages. The technology is made possible by understanding that vehicles are not always charging at the same moment in time and do not always require maximum draw during the course of a charging cycle to achieve a full charge. When any vehicle finishes charging, power allocated to that vehicle is released and the system re-allocates power accordingly to other EVSEs.

Several cities have recognized the opportunity for utilizing power management in the future as EV penetration continues to increase and have included specific language in their local

reach codes that addresses this issue. For instance, the City of Oakland provides the following language:

- This requirement does not preclude building owners from allocating the required capacity to increase the number of EVCS and provide less than 40-Amp per vehicle.⁴

We recommend that Menlo Park include similar language in its building code recognizing the opportunity to provide some level of EV charging to a greater amount of parking spaces than what is required under the mandatory provisions when utilizing power management.

c. Continue to increase EV ready parking space requirements

Requiring some level of EV charger installation may be beneficial and should be done simultaneously while continuing to increase the percentage of EV readiness requirements for new construction. Although we do not have specific feedback on the current percentage requirement proposed for Menlo Park, in general we support increasing the requirement for EV-ready parking spaces for new construction to 20%. The 20% capacity requirement provides a balance between up-front spending and long-term avoidance of retrofit costs. Under this scenario, buildings would be outfitted to support additional EV drivers beyond the 20% figure, with minimal additional cost. Specifically, a 20% minimum allows for an *entire parking garage of EVs* to charge at once, within a reasonable timeframe, using basic load management software (~3 hours to fill the national daily commute of 30 miles and up to 10 hours for a 100 to 200-mile charge, depending on the number of cars). Any lower capacity than 20% will result in sub-optimal charging times and may prevent future EV-owning residents and building owners/landlords from undertaking the additional retrofits required to add additional charging capacity.

Tesla thanks the City of Menlo Park for the opportunity to provide feedback on the proposed EV readiness changes in the municipal codes. We look forward to continuing to engage in the development of these ordinance amendments as well as the implementation of streamlined permitting for EV charging stations and providing technical input on the EV Charging Master Plan as that process gets underway.

Sincerely,

Francesca Wahl

Sr. Policy Associate, Business Development and Policy

⁴ Oakland EV Readiness Ordinance; Available at: <http://www2.oaklandnet.com/oakca1/groups/pwa/documents/policy/oak065287.pdf>.

ATTACHMENT A – PROPOSED CHANGES TO ZONING CODE SECTION 16.72.010

Additions in red, strike through represents removed text

Add the following modification on D3, p.113 of the Staff Report:

5(A) The maximum number of required EV spaces and electric vehicle supply equipment (EVSE) shall not exceed the requirement for EV spaces and EVSE for new construction of an equivalent development-on a parcel or project site, **unless electric vehicle charging is the primary function of the development or project site**. Any voluntary installation of EVSE above the maximum required would require the installation of a new parking space, unless approved through an administrative permit as outlined in Chapter 16.82 of this title **or unless electric vehicle charging is the primary function of the development or project site**. All required ~~EVSE~~ **Level 1 or Level 2 EV chargers** must be able to serve all-electric vehicles. **[insert footnote]** A non-universal **Level 1 or Level 2** EV charger may be installed on a one-to-one ratio where the number of striped parking spaces exceeds the required number of parking spaces, unless approved through an administrative permit as outlined in Chapter 16.82 of this title.

(B) The EV spaces requirement is based on the required parking associated with the affected area of work.

(C) Where an existing legal, nonconforming parking condition exists, the EV spaces requirement, including the cap, shall be based on a percentage of the existing number of parking spaces equivalent to the percentage of the affected work area to the total building square footage on the parcel or subject site.

Footnote: Level 3 or direct current fast charging is excluded because there is no charging connector for these that can serve all electric vehicles.

The above changes should be replicated on page D22 under section 5(A) and section 16.72.010 which starts on page A26 should be changed accordingly. Tables referenced in the zoning code should also be adjusted accordingly.

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STAFF REPORT

City Council

Meeting Date: 8/28/2018
Staff Report Number: 18-173-CC

Regular Business: Adopt Resolution No. 6459 to amend the city salary schedule

Recommendation

Staff recommends that the City Council adopt a resolution to amend the City's salary schedule effective August 28, 2018.

Policy Issues

The recommendation does not represent any change to existing city policy. In accordance with the city personnel rules and regulations, the City Council is required to adopt changes to the City's salary schedule.

Background

On August 6, 2018, the City Council approved amendments to the salary schedule to provide greater flexibility in the job titles available to fill vacant unrepresented management positions. Subsequent to the City Council's approval, staff met with the city's executive recruiter managing search for replacement of the Housing and Economic Development Manager. In those discussions, an additional title was identified that was not included in the August 6 recommendation: Deputy Community Development Director-Housing.

Analysis

As transmitted to the City Council August 6, the recent Housing and Economic Development Manager recruitment has been unsuccessful. Feedback from the City's executive recruiter indicates that the combined role of Housing and Economic Development Manager may have discouraged housing specialists from applying for the position. The salary schedule was amended to include the following alternatives to Housing & Economic Development Manager:

- Assistant Community Development Director - Housing
- Housing Manager
- Economic Development Manager

The recommendation is to add an additional classification to the options: Deputy Community Development Director – Housing. As stated in the August 6 City Council meeting, while several classifications may exist, only one full time equivalent personnel will be hired.

Amendments to the salary schedule do not result in an increase to the number of full time equivalent (FTE) personnel.

Impact on City Resources

This recommendation does not impact the number of City Council authorized full time equivalent personnel therefore no significant impact on the 2018-19 budget is anticipated. Future impacts, if any, will be included in the 2019-20 budget.

Environmental Review

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

Public Notice

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

Attachments

- A. Salary schedule approved by City Council August 6, 2018, with proposed changes
- B. Resolution No. 6459 to amend City salary schedule

Report prepared by:

Lenka Diaz, Administrative Services Director

Proposed City of Menlo Park
Salary Schedule - Effective ~~8/6/2018~~ 8/28/2018

Classification Title	Annual Salaries based on 2080 hours per year				
	Minimum (Step A)	Step B	Step C	Step D	Maximum (Step E)
Accountant I	\$ 79,960	\$ 83,959	\$ 88,157	\$ 92,565	\$ 97,193
Accountant II	\$ 87,579	\$ 91,719	\$ 96,046	\$ 100,665	\$ 105,463
Accounting Assistant I	\$ 56,703	\$ 59,391	\$ 62,133	\$ 65,036	\$ 68,045
Accounting Assistant II	\$ 62,133	\$ 65,036	\$ 68,045	\$ 71,225	\$ 74,567
Administrative Assistant	\$ 62,319	\$ 65,231	\$ 68,249	\$ 71,439	\$ 74,791
Administrative Services Director	\$ 156,616		Open Range		\$ 221,889
Assistant Administrative Services Director	\$ 123,491		Open Range		\$ 177,511
Assistant City Manager	\$ 165,395		Open Range		\$ 244,078
Assistant Community Development Director	\$ 123,491		Open Range		\$ 177,511
Assistant Community Services Director	\$ 126,336		Open Range		\$ 177,511
Assistant Engineer	\$ 96,440	\$ 101,036	\$ 105,867	\$ 110,921	\$ 116,205
Assistant Library Services Director	\$ 126,336		Open Range		\$ 177,511
Assistant Planner	\$ 87,379	\$ 91,488	\$ 95,873	\$ 100,442	\$ 105,240
Assistant Public Works Director	\$ 137,220		Open Range		\$ 177,511
Asst. Public Works Director - Engineering	\$ 137,220		Open Range		\$ 177,511
Asst. Public Works Director - Maintenance	\$ 137,220		Open Range		\$ 177,511
Asst. Public Works Director - Transportation	\$ 137,220		Open Range		\$ 177,511
Assistant to the City Manager	\$ 118,864		Open Range		\$ 155,322
Associate Civil Engineer	\$ 108,214	\$ 113,394	\$ 118,799	\$ 124,539	\$ 130,572
Associate Engineer	\$ 102,262	\$ 107,157	\$ 112,266	\$ 117,690	\$ 123,390
Associate Planner	\$ 95,873	\$ 100,442	\$ 105,240	\$ 110,276	\$ 115,554
Associate Transportation Engineer	\$ 113,394	\$ 118,799	\$ 124,539	\$ 130,572	\$ 136,898
Building Custodian	\$ 56,646	\$ 59,332	\$ 62,071	\$ 64,970	\$ 67,977
Building Inspector	\$ 92,891	\$ 97,358	\$ 101,999	\$ 106,875	\$ 111,978
Business Manager	\$ 95,870	\$ 100,481	\$ 105,270	\$ 110,304	\$ 115,570
Child Care Teacher I	\$ 50,686	\$ 52,985	\$ 55,384	\$ 57,908	\$ 60,647
Child Care Teacher II	\$ 56,646	\$ 59,332	\$ 62,071	\$ 64,970	\$ 67,977
Child Care Teacher's Aide	\$ 38,029	\$ 39,749	\$ 41,548	\$ 43,408	\$ 45,325
City Attorney	n/a		Set by contract		\$ 120,000
City Clerk	\$ 118,864		Open Range		\$ 155,322
City Manager	n/a		Set by contract		\$ 232,890
Code Enforcement Officer	\$ 79,908	\$ 83,685	\$ 87,633	\$ 91,848	\$ 96,225
Communications and Records Manager	\$ 111,028	\$ 116,416	\$ 122,008	\$ 127,891	\$ 134,041
Communications Dispatcher	\$ 81,027	\$ 84,857	\$ 88,860	\$ 93,133	\$ 97,572
Communications Training Dispatcher	\$ 84,857	\$ 88,860	\$ 93,133	\$ 97,572	\$ 102,237
Community Development Director	\$ 156,406		Open Range		\$ 221,889
Community Development Technician	\$ 67,959	\$ 71,105	\$ 74,428	\$ 77,920	\$ 81,582
Community Service Officer	\$ 66,447	\$ 69,571	\$ 72,793	\$ 76,248	\$ 79,908
Community Services Director	\$ 158,545		Open Range		\$ 221,889
Construction Inspector	\$ 87,633	\$ 91,848	\$ 96,225	\$ 100,826	\$ 105,640
Contracts Specialist	\$ 70,168	\$ 73,467	\$ 76,869	\$ 80,518	\$ 84,383
Custodial Services Supervisor	\$ 65,180	\$ 68,197	\$ 71,384	\$ 74,733	\$ 78,245
Deputy City Clerk	\$ 72,785	\$ 76,248	\$ 79,908	\$ 83,685	\$ 87,633
Deputy City Manager	\$ 160,654		Open Range		\$ 221,889
Deputy Comm. Dev. Director - Housing	\$ 123,467		Open Range		\$ 166,417
Economic Development Manager	\$ 118,864		Open Range		\$ 155,322
Engineering Services Manager/City Engineer	\$ 137,220		Open Range		\$ 177,511
Engineering Technician I	\$ 73,049	\$ 76,432	\$ 80,060	\$ 83,903	\$ 87,869
Engineering Technician II	\$ 81,892	\$ 85,745	\$ 89,777	\$ 94,081	\$ 98,564
Enterprise Applications Support Specialist I	\$ 86,436	\$ 90,758	\$ 95,296	\$ 100,060	\$ 105,063
Enterprise Applications Support Specialist II	\$ 95,870	\$ 100,481	\$ 105,270	\$ 110,304	\$ 115,570
Equipment Mechanic	\$ 72,785	\$ 76,248	\$ 79,908	\$ 83,685	\$ 87,633
Executive Assistant	\$ 71,154	\$ 74,493	\$ 77,993	\$ 81,662	\$ 85,502
Executive Assistant to the City Mgr	\$ 75,802	\$ 79,593	\$ 83,572	\$ 87,751	\$ 92,137
Facilities Maintenance Technician I	\$ 60,647	\$ 63,440	\$ 66,447	\$ 69,571	\$ 72,793
Facilities Maintenance Technician II	\$ 66,447	\$ 69,571	\$ 72,793	\$ 76,248	\$ 79,908
Finance and Budget Manager	\$ 123,467		Open Range		\$ 166,417
GIS Coordinator I	\$ 83,887	\$ 88,082	\$ 92,486	\$ 97,111	\$ 101,966
GIS Coordinator II	\$ 95,870	\$ 100,481	\$ 105,270	\$ 110,304	\$ 115,570
Gymnastics Instructor	\$ 40,579	\$ 42,415	\$ 44,331	\$ 46,309	\$ 48,439
Housing & Economic Development Manager	\$ 118,864		Open Range		\$ 155,322
Housing Manager	\$ 118,864		Open Range		\$ 155,322
Human Resources Director	\$ 156,616		Open Range		\$ 221,889
Human Resources Manager	\$ 123,467		Open Range		\$ 166,417
Human Resources Technician	\$ 65,841	\$ 68,956	\$ 72,035	\$ 75,550	\$ 79,103
Information Technology Manager	\$ 123,467		Open Range		\$ 166,417
Information Technology Specialist I	\$ 70,920	\$ 74,466	\$ 78,190	\$ 82,100	\$ 86,206
Information Technology Specialist II	\$ 78,799	\$ 82,501	\$ 86,382	\$ 90,444	\$ 94,781
Information Technology Supervisor	\$ 97,159	\$ 102,017	\$ 107,386	\$ 113,038	\$ 118,987
Internal Services Manager	\$ 123,467		Open Range		\$ 166,417
Junior Engineer	\$ 77,798	\$ 81,688	\$ 85,772	\$ 90,061	\$ 94,564

Proposed City of Menlo Park
Salary Schedule - Effective ~~8/6/2018~~ 8/28/2018

Classification Title	Annual Salaries based on 2080 hours per year				
	Minimum (Step A)	Step B	Step C	Step D	Maximum (Step E)
Librarian I	\$ 67,977	\$ 71,154	\$ 74,493	\$ 77,993	\$ 81,662
Librarian II	\$ 76,248	\$ 79,908	\$ 83,685	\$ 87,633	\$ 91,848
Library Assistant I	\$ 52,985	\$ 55,384	\$ 57,908	\$ 60,647	\$ 63,440
Library Assistant II	\$ 57,908	\$ 60,647	\$ 63,355	\$ 66,447	\$ 69,571
Library Assistant III	\$ 63,355	\$ 66,447	\$ 69,571	\$ 72,793	\$ 76,171
Library Clerk	\$ 37,143	\$ 38,822	\$ 40,579	\$ 42,415	\$ 44,331
Library Page	\$ 27,248	\$ 28,479	\$ 29,769	\$ 31,116	\$ 32,525
Library Services Director	\$ 152,535	Open Range			\$ 221,889
Library Services Manager	\$ 123,467	Open Range			\$ 166,417
Literacy Program Manager	\$ 78,245	\$ 81,925	\$ 85,777	\$ 89,890	\$ 94,173
Maintenance Worker I	\$ 57,908	\$ 60,647	\$ 63,355	\$ 66,447	\$ 69,571
Maintenance Worker II	\$ 63,355	\$ 66,447	\$ 69,571	\$ 72,793	\$ 76,248
Management Analyst I	\$ 83,887	\$ 88,082	\$ 92,486	\$ 97,111	\$ 101,966
Management Analyst II	\$ 95,870	\$ 100,481	\$ 105,270	\$ 110,304	\$ 115,570
Office Assistant	\$ 52,038	\$ 54,411	\$ 56,873	\$ 59,568	\$ 62,319
Parking Enforcement Officer	\$ 57,908	\$ 60,647	\$ 63,355	\$ 66,447	\$ 69,571
Permit Manager	\$ 109,052	\$ 114,270	\$ 119,740	\$ 125,447	\$ 131,508
Permit Technician	\$ 67,959	\$ 71,104	\$ 74,428	\$ 77,920	\$ 81,580
Plan Check Engineer	\$ 109,244	\$ 114,474	\$ 119,930	\$ 125,725	\$ 131,814
Planning Technician	\$ 77,920	\$ 81,580	\$ 85,419	\$ 89,436	\$ 93,724
Police Chief	\$ 168,993	Open Range			\$ 244,078
Police Commander	\$ 152,093	Open Range			\$ 221,889
Police Corporal (2080 hours)	\$ 99,412	\$ 104,383	\$ 109,602	\$ 115,082	\$ 120,836
Police Corporal (2184 hours)	\$ 104,383	\$ 109,602	\$ 115,082	\$ 120,836	\$ 126,878
Police Officer (2080 hours)	\$ 92,369	\$ 96,987	\$ 101,836	\$ 106,928	\$ 112,275
Police Officer (2184 hours)	\$ 96,988	\$ 101,836	\$ 106,928	\$ 112,274	\$ 117,889
Police Records Specialist	\$ 63,355	\$ 66,447	\$ 69,571	\$ 72,793	\$ 76,248
Police Recruit	n/a	Hourly Rate			\$ 74,819
Police Sergeant (2080 hours)	\$ 118,175	\$ 124,083	\$ 130,287	\$ 136,802	\$ 143,642
Police Sergeant (2184 hours)	\$ 124,083	\$ 130,287	\$ 136,802	\$ 143,642	\$ 150,824
Principal Planner	\$ 115,765	\$ 123,012	\$ 128,900	\$ 135,044	\$ 139,601
Program Aide/Driver	\$ 36,382	\$ 38,029	\$ 39,749	\$ 41,548	\$ 43,408
Program Assistant	\$ 51,831	\$ 54,194	\$ 56,646	\$ 59,332	\$ 62,071
Project Manager	\$ 102,262	\$ 107,157	\$ 112,266	\$ 117,690	\$ 123,390
Property and Court Specialist	\$ 66,447	\$ 69,571	\$ 72,793	\$ 76,248	\$ 79,908
Public Works Director	\$ 160,654	Open Range			\$ 221,889
Public Works Superintendent	\$ 121,318	Open Range			\$ 166,417
Public Works Supervisor - City Arborist	\$ 96,414	\$ 101,037	\$ 105,851	\$ 110,908	\$ 116,214
Public Works Supervisor - Facilities	\$ 97,100	\$ 101,755	\$ 106,604	\$ 111,697	\$ 117,041
Public Works Supervisor - Fleet	\$ 98,645	\$ 103,374	\$ 108,299	\$ 113,473	\$ 118,902
Public Works Supervisor - Park	\$ 91,783	\$ 96,182	\$ 100,766	\$ 105,580	\$ 110,631
Public Works Supervisor - Streets	\$ 91,783	\$ 96,182	\$ 100,766	\$ 105,580	\$ 110,631
Recreation Aide	\$ 34,808	\$ 36,382	\$ 38,029	\$ 39,749	\$ 41,548
Recreation Coordinator	\$ 68,197	\$ 71,384	\$ 74,733	\$ 78,245	\$ 81,925
Recreation Leader	\$ 27,248	\$ 28,479	\$ 29,769	\$ 31,116	\$ 32,525
Recreation Supervisor	\$ 83,955	\$ 87,916	\$ 92,144	\$ 96,534	\$ 101,150
Red Light Photo Enforcement Specialist	\$ 74,493	\$ 77,993	\$ 81,662	\$ 85,502	\$ 89,602
Revenue and Claims Manager	\$ 95,870	\$ 100,481	\$ 105,270	\$ 110,304	\$ 115,570
Senior Accountant	\$ 100,716	\$ 105,478	\$ 110,454	\$ 115,766	\$ 121,282
Senior Accounting Assistant	\$ 68,346	\$ 71,539	\$ 74,849	\$ 78,348	\$ 82,024
Senior Building Inspector	\$ 104,257	\$ 109,244	\$ 114,474	\$ 119,930	\$ 125,725
Senior Civil Engineer	\$ 119,182	\$ 124,939	\$ 130,993	\$ 137,340	\$ 144,031
Senior Communications Dispatcher	\$ 88,860	\$ 93,133	\$ 97,572	\$ 102,237	\$ 107,118
Senior Engineering Technician	\$ 87,869	\$ 92,015	\$ 96,440	\$ 101,036	\$ 105,867
Senior Equipment Mechanic	\$ 80,082	\$ 83,989	\$ 87,939	\$ 92,012	\$ 96,378
Senior Facilities Maintenance Technician	\$ 72,785	\$ 76,248	\$ 79,908	\$ 83,685	\$ 87,633
Senior Information Technology Specialist	\$ 85,774	\$ 90,063	\$ 94,566	\$ 99,294	\$ 104,259
Senior Librarian	\$ 87,916	\$ 92,144	\$ 96,534	\$ 101,150	\$ 105,980
Senior Library Assistant	\$ 69,691	\$ 73,091	\$ 76,528	\$ 80,073	\$ 83,788
Senior Maintenance Worker	\$ 72,785	\$ 76,248	\$ 79,908	\$ 83,685	\$ 87,633
Senior Management Analyst	\$ 107,854	\$ 112,977	\$ 118,343	\$ 124,024	\$ 130,016
Senior Office Assistant	\$ 56,873	\$ 59,568	\$ 62,319	\$ 65,231	\$ 68,249
Senior Planner	\$ 105,240	\$ 110,276	\$ 115,554	\$ 121,062	\$ 126,910
Senior Police Records Specialist	\$ 66,447	\$ 69,571	\$ 72,793	\$ 76,248	\$ 79,908
Senior Program Assistant	\$ 62,946	\$ 65,887	\$ 68,980	\$ 72,220	\$ 75,618
Senior Project Manager	\$ 112,488	\$ 117,873	\$ 123,493	\$ 129,458	\$ 135,730
Senior Recreation Leader	\$ 32,525	\$ 33,996	\$ 35,535	\$ 37,143	\$ 38,822
Senior Sustainability Specialist	\$ 78,939	\$ 82,715	\$ 86,674	\$ 90,806	\$ 95,192
Senior Transportation Engineer	\$ 119,182	\$ 124,939	\$ 130,993	\$ 137,340	\$ 144,031
Senior Water System Operator	\$ 74,683	\$ 78,140	\$ 81,792	\$ 85,630	\$ 89,652
Sustainability Manager	\$ 118,864	Open Range			\$ 155,322

Proposed City of Menlo Park
 Salary Schedule - Effective ~~8/6/2018~~ 8/28/2018

Classification Title	Annual Salaries based on 2080 hours per year				
	Minimum (Step A)	Step B	Step C	Step D	Maximum (Step E)
Sustainability Specialist	\$ 67,977	\$ 71,154	\$ 74,493	\$ 77,993	\$ 81,662
Transportation Demand Management Coord.	\$ 89,602	\$ 93,870	\$ 98,355	\$ 103,061	\$ 107,994
Transportation Director	\$ 160,654	Open Range			\$ 221,889
Library Services Manager	\$ 123,467	Open Range			\$ 166,417
Water Quality Specialist	\$ 77,993	\$ 81,662	\$ 85,502	\$ 89,602	\$ 93,870
Water System Operator I	\$ 62,056	\$ 64,837	\$ 67,713	\$ 71,058	\$ 74,365
Water System Operator II	\$ 67,894	\$ 71,037	\$ 74,356	\$ 77,845	\$ 81,502
Water System Supervisor	\$ 92,946	\$ 97,375	\$ 102,028	\$ 106,909	\$ 112,026

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RESOLUTION NO. 6459

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING THE SALARY SCHEDULE**

WHEREAS, pursuant to the Personnel System Rules, the City Manager prepared a Compensation Plan; and

NOW, THEREFORE BE IT RESOLVED, that the City of Menlo Park, acting by and through its City Council, having considered and been fully advised in the matter and good cause appearing therefore do hereby establish the following compensation provisions in accordance with the City's Personnel System rules.

BE IT FURTHER RESOLVED that any previous enacted compensation provisions contained in Resolutions No. 6454 and subsequent amendments, shall be superseded by this Resolution.

BE IT FURTHER RESOLVED that the changes contained herein shall be effective as noted on each amended salary schedule.

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 twenty-eighth day of August, 2018, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twenty-eighth day of August, 2018.

Judi A. Herren, City Clerk

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STAFF REPORT

City Council Meeting Date: 8/28/2018
Staff Report Number: 18-165-CC

Informational Item: Review of the City’s investment portfolio as of June 30, 2018

Recommendation

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

Policy Issues

The City and the Successor Agency funds are invested in full compliance with the city’s investment policy and state law, which emphasize safety, liquidity and yield.

Background

The City’s investment policy requires a quarterly investment report to the City Council, which includes all financial investments of the city and provides information on the investment type, value and yield for all securities.

Analysis

Investment portfolio as of June 30, 2018

The City’s investment portfolio as of June 30, 2018, totaled \$135,775,576. As shown below in Table 1, the City’s investments by type are measured by the amortized cost as well as the fair value as of June 30, 2018. The Local Agency Investment Fund (LAIF) is considered a safe investment as it provides the liquidity of a money market fund. The majority of the remaining securities are prudent and secure short-term investments (1-3 years), bearing a higher interest rate than LAIF and provide investment diversification.

Table 1: Recap of investments held as of June 30, 2018			
Security	Amortized basis	Fair value basis	Percentage of portfolio
Local agency investment fund	\$64,954,896	\$64,954,896	48.0 percent
Securities portfolio			
Corporate bonds	\$19,989,839	\$19,788,961	14.6 percent
Government agencies	\$37,366,584	\$37,092,088	27.4 percent
Government bonds	\$11,464,804	\$11,347,748	8.4 percent
Short term bills and notes	\$1,999,453	\$1,999,380	1.5 percent
Total	\$135,775,576	\$135,183,073	100.0 percent

As shown in Table 1, the fair value of the City's securities was \$592,503 less than the amortized cost as of June 30, 2018. The difference between amortized cost and fair value is referred to as an unrealized loss or gain, and is due to market values fluctuating from one period to another. It is important to note that any unrealized loss or gain does not represent an actual cash transaction to the city, as the city generally holds securities to maturity to avoid market risk.

Local agency investment fund

As previously shown in Table 1, 48 percent of the portfolio resides in the city's account at the local agency investment fund (LAIF), a liquid fund managed by the California state treasurer, yielding 1.85 percent for the month ended June 30, 2018. LAIF yields have been at historic lows for the past several years but the last two years have shown a small but steady trend upward. While LAIF is a good investment option for funds needed for liquidity, the City's investment of excess funds in other types of securities is made in an effort to enhance yields.

Securities portfolio

As of June 30, 2018, the City held a number of securities in corporate bonds, government agency notes, government bonds and short term bills and notes. Insight Investment serves as the City's financial adviser on security investments and makes recommended trades of securities, purchase and sale that align market conditions to the City Council's adopted investment policy to the greatest extent possible. Information from Insight Investment for the quarter ended June 30, 2018, is provided in Attachment A. As shown in the quarterly consolidated portfolio report for the quarter ended June 30, 2018, the weighted average yield was 1.66 percent. As shown on the quarterly statement, the return for the period ended June 30, 2018, on an amortized cost basis, was 0.39 percent.

Impact on City Resources

Due to the liquidity of LAIF accounts, the City has more than sufficient funds available to meet its expenditure requirements for the next six months.

Environmental Review

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

Public Notice

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

Attachments

A. Summary reports provided by Insight Investment for the quarter ended June 30, 2018

Report prepared by:
Brandon Cortez, Management Analyst

Report approved by:
Lenka Diaz, Administrative Services Director

City of Menlo Park

Quarterly Consolidated Portfolio Report

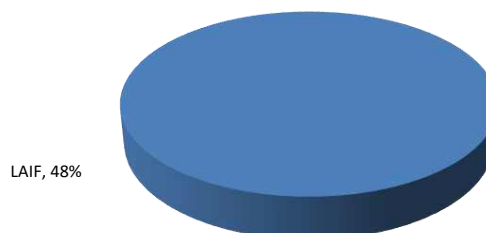
June 30, 2018

City Managed Assets

LAIF	\$	64,954,896	48%	1.85%
Total Internally Managed	\$	64,954,896	48%	

Weighted Average Yield **1.85%**

				Days
Effective Average Duration - Internal				1
Weighted Average Maturity - Internal				1

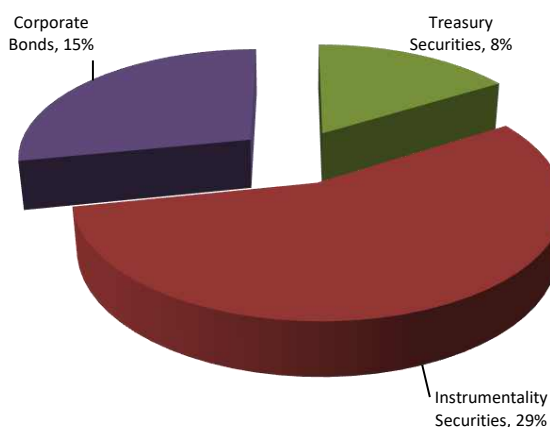


Advisor Managed Assets

Treasury Securities	\$	11,347,748	8%	1.38%
Instrumentality Securities	\$	39,091,468	29%	1.37%
Corporate Bonds	\$	19,788,961	15%	1.74%
Total Externally Managed	\$	70,228,177	52%	

Weighted Average Yield **1.48%**

				Years
Effective Average Duration - External				1.25
Weighted Average Maturity - External				1.28

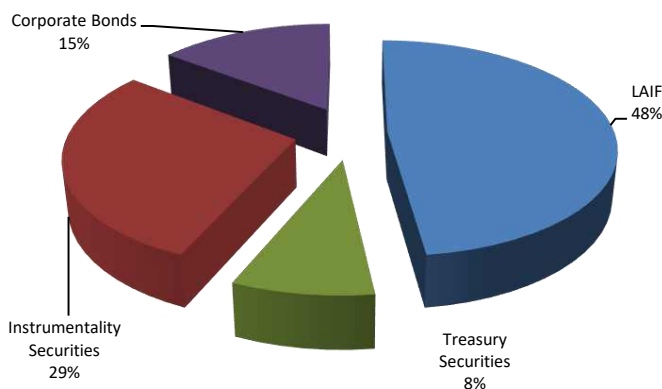


Total Portfolio Assets

LAIF	\$	64,954,896	48%	1.85%
Treasury Securities	\$	11,347,748	8%	1.38%
Instrumentality Securities	\$	39,091,468	29%	1.37%
Corporate Bonds	\$	19,788,961	15%	1.74%
Total Portfolio Assets	\$	135,183,073		

Weighted Average Yield **1.66%**

				Years
Effective Average Duration - Total				0.65
Weighted Average Maturity - Total				0.67



Portfolio Change

Beginning Balance	\$	125,268,225
Ending Balance	\$	135,183,073

* Note: All data for external assets was provided by the client and is believed to be accurate.

Insight Investment does not manage the external assets and this report is provided for the client's use.

Market values are presented.

ACTIVITY AND PERFORMANCE SUMMARY

For the period April 1, 2018 - June 30, 2018

<u>Amortized Cost Basis Activity Summary</u>		
Opening balance		61,127,336.22
Income received	181,070.07	
Total receipts		181,070.07
Expenses paid	(291.67)	
Total disbursements		(291.67)
Interportfolio transfers	9,507,918.30	
Total Interportfolio transfers		9,507,918.30
Realized gain (loss)		0.00
Total amortization expense		(22,489.83)
Total OID/MKT accretion income		27,138.83
Return of capital		0.00
Closing balance		70,820,681.92
Ending fair value		70,228,176.74
Unrealized gain (loss)		(592,505.18)

<u>Detail of Amortized Cost Basis Return</u>				
	Interest earned	Accretion (amortization)	Realized gain (loss)	Total income
Corporate Bonds	86,276.27	(2,004.25)	0.00	84,272.02
Government Agencies	112,345.96	2,234.07	0.00	114,580.03
Government Bonds	40,105.86	4,402.23	0.00	44,508.09
Short Term Bills and Notes	652.78	16.95	0.00	669.73
Total	239,380.87	4,649.00	0.00	244,029.87

<u>Comparative Rates of Return (%)</u>			
	* Twelve month trailing	* Six month trailing	* Three month trailing
Fed Funds	1.38	0.79	0.43
Overnight Repo	1.38	0.80	0.45
Merrill Lynch 3m US Treas Bill	1.38	0.83	0.45
Merrill Lynch 6m US Treas Bill	1.51	0.90	0.49
ML 1 Year US Treasury Note	1.74	1.03	0.56
ML 2 Year US Treasury Note	1.95	1.14	0.61
ML 5 Year US Treasury Note	2.29	1.31	0.68

* rates reflected are cumulative

<u>Summary of Amortized Cost Basis Return for the Period</u>	
	Total portfolio
Interest earned	239,380.87
Accretion (amortization)	4,649.00
Realized gain (loss) on sales	0.00
Total income on portfolio	244,029.87
Average daily amortized cost	61,924,019.26
Period return (%)	0.39
YTD return (%)	0.75
Weighted average final maturity in days	467

ACTIVITY AND PERFORMANCE SUMMARY

For the period April 1, 2018 - June 30, 2018

<u>Fair Value Basis Activity Summary</u>		
Opening balance		60,546,340.08
Income received	181,070.07	
Total receipts		181,070.07
Expenses paid	(291.67)	
Total disbursements		(291.67)
Interportfolio transfers	9,507,918.30	
Total Interportfolio transfers		9,507,918.30
Unrealized gain (loss) on security movements		0.00
Return of capital		0.00
Change in fair value for the period		(6,860.04)
Ending fair value		70,228,176.74

<u>Detail of Fair Value Basis Return</u>			
	Interest earned	Change in fair value	Total income
Corporate Bonds	86,276.27	(3,630.64)	82,645.63
Government Agencies	112,345.96	2,770.42	115,116.38
Government Bonds	40,105.86	(5,943.82)	34,162.04
Short Term Bills and Notes	652.78	(56.00)	596.78
Total	239,380.87	(6,860.04)	232,520.83

<u>Comparative Rates of Return (%)</u>			
	* Twelve month trailing	* Six month trailing	* Three month trailing
Fed Funds	1.38	0.79	0.43
Overnight Repo	1.38	0.80	0.45
ICE ML 3m US Treas Bill	1.36	0.81	0.45
ICE ML 6m US Treas Bill	1.39	0.80	0.48
ICE ML 1 Year US Treasury Note	0.92	0.65	0.40
ICE ML US Treasury 1-3	0.08	0.09	0.22
ICE ML US Treasury 1-5	(0.35)	(0.25)	0.13

* rates reflected are cumulative

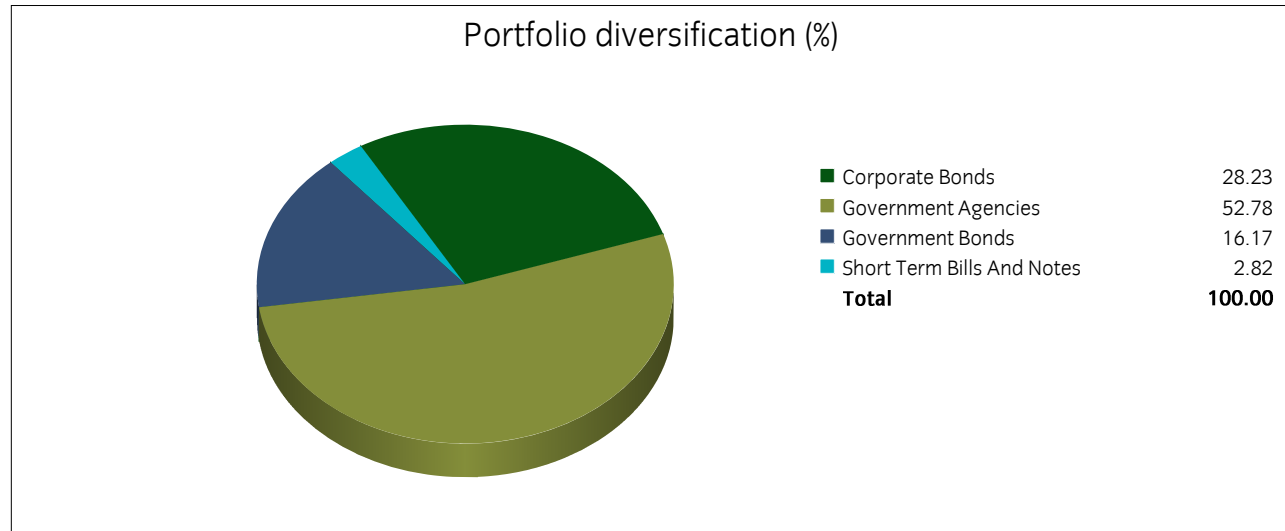
<u>Summary of Fair Value Basis Return for the Period</u>	
	Total portfolio
Interest earned	239,380.87
Change in fair value	(6,860.04)
Total income on portfolio	232,520.83
Average daily total value *	61,550,331.39
Period return (%)	0.37
YTD return (%)	0.39
Weighted average final maturity in days	467

* Total value equals market value and accrued interest

RECAP OF SECURITIES HELD

As of June 30, 2018

	Historical cost	Amortized cost	Fair value	Unrealized gain (loss)	Weighted average final maturity (days)	Percent of portfolio	Weighted average effective duration (years)
Corporate Bonds	20,008,850.80	19,989,839.65	19,788,960.84	(200,878.81)	516	28.23	1.37
Government Agencies	37,411,434.29	37,366,584.74	37,092,087.90	(274,496.84)	441	52.78	1.18
Government Bonds	11,460,019.54	11,464,804.58	11,347,748.00	(117,056.58)	486	16.17	1.30
Short Term Bills And Notes	1,999,436.00	1,999,452.95	1,999,380.00	(72.95)	361	2.82	0.97
Total	70,879,740.63	70,820,681.92	70,228,176.74	(592,505.18)	467	100.00	1.25





STAFF REPORT

City Council

Meeting Date:

8/28/2018

Staff Report Number:

18-172-CC

Informational Item:

Disclosure of Brown Act violation - rescheduling next steps for Library System Improvement Project

Recommendation

Staff recommends that the City Council reschedule next steps for Library System Improvement Project and incorporate information regarding the inadvertent Brown Act violation into the agenda materials for the rescheduled meeting.

Policy Issues

The Belle Have branch library improvements and the main library improvements are part of the City Council's work plan approved February 6, 2018.

Background

This matter was originally scheduled for City Council direction August 21, 2018. Shortly before that meeting it came to the city manager and city attorney's attention that there may have been an inadvertent serial discussion between City Councilmembers on this action. Following a brief investigation, the city manager and city attorney concluded that the August 21 meeting should be canceled to allow the city attorney to complete his investigation and, if warranted, a public disclosure of any private conversations to cure any such potential serial meeting violation.

In response to requests from City Councilmembers, the city attorney performed a preliminary investigation of the alleged Brown Act violations by interviewing Mayor Ohtaki and City Councilmembers Keith and Mueller to determine what contacts, conversations and communications took place directly between any of them regarding the library improvement project. Based upon those interviews, it appears that there was a violation of the Brown Act through serial communications by City Councilmember Keith with two Mayor Ohtaki and City Councilmember Cline. Since City Councilmembers Keith and Cline serve on the City Council subcommittee for the library system improvements, they have had communications/discussions regarding the library system improvements. At the Downtown block party last Thursday, City Councilmember Keith ran into Mayor Ohtaki. During their brief conversation on other topics not at issue, City Councilmember Keith made a comment to Mayor Ohtaki that she hoped he would support moving forward with the library system improvement projects. Mayor Ohtaki responded in a non-committal manner, stating that he was not sure how he would vote Tuesday. The investigation did not uncover any agreements or understanding between a majority of the City Council to vote in a certain manner, nor any information to indicate that Mayor Ohtaki was aware that City Councilmember Keith had communications directly with any other member of the City Council or any potential Brown Act violation nor was there sharing of any substantive information between Mayor Ohtaki and City Councilmember Keith. The above communications were brought to the city attorney's attention after City Councilmember Mueller had contacted Mayor Ohtaki for the purpose of discussing the library system improvement project and Mayor Ohtaki indicated that he

could not discuss the matter with City Councilmember Mueller because he had already discussed the matter with City Councilmember Keith. Mayor Ohtaki then contacted the city attorney to bring this matter to his attention.

Analysis

It is a violation of the Brown Act for a majority of members of a legislative body to “use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”¹ The Brown Act provides that the district attorney or any interested person may bring legal action against a city to invalidate certain actions on the ground that they violate the Brown Act. As a prerequisite of bringing such an action, the district attorney or the interested person is required to make a demand on the legislative body to cure or correct the action challenged as a result of the Brown Act violation. To minimize Brown Act litigation, courts have ruled that the district attorney or other interested party cannot bring an invalidation action if the Brown Act violation only involves deliberations without any formal action.²

A violation of the Brown Act may also give rise to a criminal complaint. To constitute a criminal violation, two elements must be present: some action must have been taken (deliberations without formal action are not actionable) and that action is taken with the intent of a member “to deprive the public of information to which the member knows or has reason to know the public is entitled” by the Brown Act.”³

Based on the investigation above, while it appears there was an unintentional serial meeting before the originally scheduled August 21 City Council hearing, there was no action taken nor any collective decision, commitment or promise by a majority of the City Council to make a positive or negative decision regarding the library improvements and therefore nothing to be cured and no criminal violation. The city attorney concluded that the Brown Act violation must be disclosed to allow the public to be aware of it. The city attorney conferred with assistant district attorney Albert Serrato, who handles these types of matters for the district attorney’s office. He also concurs that neither an invalidation or criminal action would be warranted under these facts. The district attorney’s concern when a Brown Act violation has occurred is that there is public disclosure of the violation for transparency purposes. To ensure complete transparency, the city attorney determined that this report should be issued and available to the public before the rescheduled meeting regarding the library improvements.

In conferring with the city manager regarding the upcoming City Council calendar, the city attorney and the city manager recommend that this matter be re-agendized for the beginning of the year. This schedule is based on the current staff vacancies (including both of the assistant public works director positions and the library director), the limited number of remaining meetings this calendar year and the benefit of having the new City Council weigh in on this policy decision once seated. Unless directed otherwise by the City Council, the matter will rescheduled for early 2019.

Impact on City Resources

The library is requesting funds for the main library building schematic design and funds for the Belle Haven branch library space needs study. These funds would draw from funds previously approved and allocated to the library system improvements fund.

¹ Government Code Section 54952.2 (b)(1).

² *Boyle v. City of Redondo Beach* (1999) 70 Cal. App. 4th 1109.

³ Government Code Section 54959.

Environmental Review

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

Public Notice

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

Report prepared by:
William L. McClure, City Attorney