



**SPECIAL AND REGULAR MEETING AGENDA**

**Date: 10/9/2018**  
**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 pursuant to Government Code Section §54957 regarding public employee appointment - Title: Interim City Manager.

Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding unrepresented management and Menlo Park Police Officers’ Association (POA).

Attendees: City Manager Alex McIntyre, Assistant City Attorney Cara Silver, 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. Presentations and Proclamations**

D1. Certificates of Recognition to the 2018 Bizen, Japan Student Exchange ambassadors

**E. Report from Closed Session**

E1. Report on action taken in Closed Session, if required, pursuant to Government Code §54957.1

**F. 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.

**G. Commission Report**

- G1. Sister Cities Committee Report

**H. Consent Calendar**

- H1. Accept the City Council meeting minutes for August 28 and September 11, 2018 ([Attachment](#))
- H2. Approve amendments to the unrepresented management bonus program ([Staff Report #18-186-CC](#))
- H3. Approve the 2018-19 investment policy for the City and the former Community Development Agency of Menlo Park ([Staff Report #18-188-CC](#))
- H4. Approve the response to the San Mateo County Civil Grand Jury report regarding restricting smoking in multiunit housing properties ([Staff Report #18-181-CC](#))
- H5. Approve scope of analysis regarding the financial feasibility of the City of Menlo Park's below market rate inclusionary housing requirement ([Staff Report #18-180-CC](#))
- H6. Introduce, read and waive further reading of Ordinance No. 1049 amending the City Manager's powers and duties to include design approval authority ([Staff Report #18-185-CC](#))
- H7. Authorize the City Manager to amend the contract amount for the 2018-19 Public Works maintenance services contracts up to the City Council budget amount and extend the contract term with Significant Cleaning Services ([Staff Report #18-184-CC](#))
- H8. Award contracts totaling \$873,767 to Towne Ford Sales, Sonsray Machine LLC., San Leandro, Turf Star Western, Western Truck Fabrication, Priority 1 Safety and Enterprise Fleet Management for vehicle and equipment replacement, outfitting settings and contingency ([Staff Report #18-189-CC](#))

**I. Regular Business**

- I1. Approve the library needs assessment for the Belle Haven neighborhood and direct staff to begin a space needs assessment for a new Belle Haven branch library ([Staff Report #18-187-CC](#))
- I2. Approve the terms of a supplemental agreement between the City of Menlo Park and the American Federation of County, State, and Municipal Employees Local 829 expiring June 30, 2021 ([Staff Report #18-183-CC](#))
- I3. Approve the terms of a supplemental agreement between the City of Menlo Park and the Service Employees International Union Local 521 expiring June 30, 2021 ([Staff Report #18-182-CC](#))
- I4. Provide direction on the appointment of an Interim City Manager and establish a City Council Subcommittee to oversee the selection process of a permanent City Manager ([Staff Report #18-190-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](http://menlopark.org/agenda) and can receive email notification of agenda and staff report postings by subscribing to the "Notify Me" service at [menlopark.org/notifyme](http://menlopark.org/notifyme). Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 10/04/2018)

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**SPECIAL AND REGULAR MEETING MINUTES - DRAFT**

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

**7:00 p.m. Regular Session**

**A. Call to Order**

Mayor Ohtaki called the regular session to order at 7:31 p.m.

**B. Roll Call**

**Present:** Cline, Keith, Ohtaki, Mueller  
**Absent:** Carlton  
**Staff:** City Manager Alex McIntyre, City Attorney Bill McClure, City Clerk Judi Herren

**C. Pledge of Allegiance**

Mayor Ohtaki led the Pledge of Allegiance.

**D. Public Comment**

- Daniel Valverde spoke in favor of affordable housing to be included in the proposed new library project.
- Jen Wolosin questioned why Safe Routed to School is delayed and provided suggestions for rollout.
- Courtney Pal spoke in support of affordable housing to be included in the proposed new library project.
- Adina Levin was discouraged to see the shuttle service cutbacks.

No report from closed session.

**E. Commission Report**

**E1. Housing Commission Quarterly Report**

Housing Commissioner Chair Meg McGraw-Sherer made the presentation.

**F. Consent Calendar**

Mayor Pro Tem Mueller pulled item F2.

- 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)

**ACTION:** Motion and second (Cline/Keith) to approve the consent calendar excluding item F2, passed unanimously.

- 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)

The City Council requested this item to be brought back for a study session.

## **G. Public Hearings**

Mayor Ohtaki announced item G1 will be pushed to a future agenda, October 23, 2018.

- 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)

Mayor Ohtaki opened the floor to public comment.

- Courtney Pal spoke against the proposed receiving operations plan for 1010 University Drive.
- Adina Levin spoke in support proposed receiving operations plan for 1010 University Drive.
- Anthony Draeger spoke in support of the proposed receiving operations plan for 1010 University Drive.
- Joseph Carcione, Jr. spoke against the proposed receiving operations plan for 1010 University Drive.
- Richard Poe spoke in support of postponing the item.

City Council received clarification on why the item was being moved; due to numerous documents received by appellant and applicant that required more review.

- 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)

Assistant Community Development Director - Planning Deanna Chow made the presentation.

Mayor Ohtaki opened the public hearing.

- Nesreen Kawar suggested reducing the electronic vehicle charging station requirements for affordable housing developments.
- Amanda Myers from Charge Point spoke in support of the ordinance.
- Francesca Wahl from Tesla believes the zoning ordinance is counterintuitive.
- Diane Baily spoke in support of the ordinance.
- Andrew Boone spoke in support of electronic vehicles and asked City Council to consider minimum requirements for bike parking in new developments.
- Janelle London spoke in support of the ordinance and suggested following Palo Alto's model.
- Adina Levin spoke against the Tesla provision in ordinance and suggested shared electronic vehicle service for low-income housing.
- Andrew Morcos spoke against ordinance.

Mayor Ohtaki closed the public hearing by acclamation.

The City Council received clarification on the exceptions made for affordable housing; electronic vehicle makes/models use flexibility, and timing of permit process. They also discussed the amp levels and ability to amend the ordinance to make it practical for years to come.

**ACTION:** Motion and second (Keith/Cline) to introduce Ordinance No. 1051 and bringing it to the Environmental Quality Commission for review, passed unanimously.

## **H. Regular Business**

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

Administrative Services Director Lenka Diaz made the presentation.

The City Council confirmed that the amendment does not increase headcount.

**ACTION:** Motion and second (Cline/Keith) to adopt Resolution No. 6459 amending the city salary schedule, passed 3-1-0 (Mueller dissenting).

## **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)

- Jen Wolosin requested that the library project not be delayed.
- Karen Grove spoke in support the library project with inclusion of affordable housing.
- Adina Levin spoke in support the library project with inclusion of affordable housing.
- Pamela Jones supports the decision to hold this item until 2019 also urged City Council to move forward with the Belle Haven Library space needs study.
- Lynne Bramlett spoke about restoring trust.
- Andrew Boone spoke in support of the library project with an emphasis on the Belle Haven branch.

- Rachel Horst supports the library project and the inclusion of affordable housing.
- Sokny Sy spoke in favor of affordable housing.

**J. City Manager's Report**

None.

**K. Councilmember Reports**

City Council Member Keith reported out a Bay Area Water Supply and Conservation Agency update.

**L. Adjournment**

Mayor Ohtaki adjourned the meeting at 10:32 p.m.





**SPECIAL AND REGULAR MEETING AGENDA - DRAFT**

**Date:** 9/11/2018  
**Time:** 6:00 p.m.  
**City Council Chambers**  
**701 Laurel St., Menlo Park, CA 94025**

**7:00 p.m. Regular Session**

**A. Call to Order**

Mayor Ohtaki called the meeting to order at 7:14 p.m.

**B. Roll Call**

**Present:** Carlton, Keith, Ohtaki  
**Absent:** Cline, Mueller  
**Staff:** City Manager Alex McIntyre, City Attorney Bill McClure, City Clerk Judi Herren

**C. Pledge of Allegiance**

Mayor Ohtaki led the Pledge of Allegiance.

**D. Report from Closed Session**

No report from closed session.

**E. Public Comment**

- Pamela Jones, representing the Menlo Park Historical Association, read an email from President, Jim Lewis, regarding Sister Cities International anniversary.
- Fran Dehn reminded the City Council of the Golden Acorn awards on September 20.
- Annika McClure invited the City Council to the fourteenth annual Silicon Valley Turkey Trot on November 22.
- Andrew Boone requested that alternatives for the proposed downtown parking structure space be considered.

**F. Commission Report**

None.

**G. Consent Calendar**

- G1. Accept the City Council meeting minutes for August 6 and August 13, 2018
- G2. Adopt Resolution No. 6457 memorializing Menlo Park Municipal water's use of City-owned land for the corporation yard backup well (Staff Report #18-173-CC)

City Councilmember Keith commented that John Kadvany's name was misspelled in the August 13

minutes.

**ACTION:** Motion and second (Keith/Carlton) to approve the consent calendar with edits to item G1, August 13 minutes, passed unanimously.

## H. Regular Business

- H1. Approve the installation of a traffic management plan for Baywood Avenue, Clover Lane, Blackburn Avenue, McKendry Drive and Marmona Drive for a six-month trial period; and appropriate \$115,500 from the Measure A fund for construction, contract administration and inspection and authorize the City Manager to award the construction contract (Staff Report #18-175-CC)

Associate Transportation Engineer Rene C. Baile made the presentation.

- Peter Whidden spoke in support of the traffic management plan.
- Leslie Gordon spoke against the traffic management plan.
- Susu Ribaudo spoke in support of the traffic management plan.
- Kristin Ocon spoke in support of the traffic management plan.
- Amar Murugan spoke in support of the traffic management plan but spoke against the proposed speed humps on Baywood.
- Jack Morris spoke in support of the traffic management plan but spoke against the proposed speed humps on Baywood.
- Jen Wolosin spoke in support of the traffic management plan.
- Lynne Bramlett suggested a community strategic planning subcommittee for future traffic management plan. Bramlett also commented that the traffic management plan should be considered a capital improvement project.
- Andrew Boone spoke in support of the traffic management plan.

City Council received confirmation that the Menlo Park Fire Protection District approved the proposed traffic management plan. City Council also commented that the installation of “no left turn” signs had mitigated the traffic but felt that the implementation of the speed humps was still necessary. Staff commented that the budgeted amount takes into account possible escalated construction cost.

**ACTION:** Motion and second (Keith/Carlton) to approve the installation of a traffic management plan for Baywood Avenue, Clover Lane, Blackburn Avenue, McKendry Drive and Marmona Drive for a six-month trial period; and appropriate \$115,500 from the Measure A fund for construction, contract administration and inspection and authorize the City Manager to award the construction contract, passed unanimously.

- H2. Adopt updated City Council work plan (Staff Report #18-179-CC)

Assistant City Manager Nick Pegueros made the presentation.

- Rayna Lehman asked City Council to prioritize the minimum wage work plan item.
- Andrew Boone requested the City Council to direct staff to move forward on the minimum wage ordinance now.

Staff reported that reprioritization of work plan items is needed due to staffing challenges. City Council confirmed that many of the work plan items are in the Public Works department, where the issue of capacity is high. Staff also received confirmation that funding for the projects is secure. City Council and staff discussed creative ways to recruit such as utilizing recruiters, posting on social media, and the consideration of job sharing.

**ACTION:** Motion and second (Keith/Carlton) to adopt the updated City Council work plan, passed unanimously.

- H3. Provide direction on the response to the San Mateo County Civil Grand Jury Report: "Soaring City Pension Costs – Time for Hard Choices" (Staff Report #18-177-CC)

Finance and Budget Manager Dan Jacobson made the presentation.

City Council and staff discussed various revisions to the response letter.

**ACTION:** Motion and second (Carlton/ Keith) to approve response to the San Mateo County Civil Grand Jury Report: "Soaring City Pension Costs – Time for Hard Choices" with the following amendments: delineate changes in finding 11 and recommendations 1 and 4, change language from "not yet implemented" to "will implement November 13, 2018", and adding a closing paragraph from the Finance and Audit Committee recommending that the Grand Jury suggest changing to CalPERS, passed unanimously.

- H4. Provide direction on updated travel policy (Staff Report #18-176-CC)

City Attorney Bill McClure made the presentation.

- George Fisher suggested adding a policy for the City Council's own conduct to include ethics. Fisher also displayed photos from a trip that City Councilmember Keith participated at in Shandong China. Fisher questioned what documents were signed during that trip. Fisher spoke against City officials signing documents abroad.
- Pamela Jones requested that the item be pushed to a meeting where the entire City Council could discuss.
- George Yang suggested the policy include international security.

McClure confirmed that during his tenure no City Councilmember has signed document abroad. City Council requested that before traveling, it should be made clear if a City official is acting in their official capacity or not.

**ACTION:** Motion and second (Carlton/Keith) to approve Resolution No. 6460 adopting the updated travel policy attached to staff report. Further direct the City Attorney to return to City Council with the following additional updates to the travel policy (or other applicable City Council policies): (1) include a list of examples of typical reimbursable conferences and meetings as contained in old policy; (2) add explicit language that city council members may not sign any official document on behalf of the City unless preapproved by City Council and that any foreign document submitted for signature must be translated into English; (3) travel paid by third parties requires a Fair Political Practices letter pre-authorizing travel where it is unclear whether an exception to the gift or income restrictions applies; (4) attach to the travel policy a template letter requesting third parties offering travel gifts to provide the schedule of public appearances, informing them that individual city council members do not have

authority to sign official City documents unless the full City Council pre-approves, requesting advance copies (and translations) of any documents city council member is requested to sign and other pertinent information; (5) for sister or friendship city travel, any city staff reimbursement requires pre-approval by City Council; (6) self-paid sister or friendship City Council travel does not require City Council approval, but City Council should be informed in advance of travel; and (7) city council members will comply with communications policy when traveling for City business.

## **I. Informational Items**

### **I1. Update on the Willow Road and highway 101 interchange construction, upcoming traffic changes and planned weekend roadway closure (Staff Report #18-174-CC)**

- Andrew Boone spoke in support of the project but wanted to confirm the City Council understood that the interchange would carry more vehicles and the actual cost is greater than the initial quote.
- Cecilia Taylor expressed concern for the Newbridge and Willow intersection and urged City Council to consider pedestrian safety.

City Council urged staff to ensure that the permanent striping for lane configuration be done accurately by CalTrain. Staff informed City Council that meetings were set up between the City, San Mateo County Transportation Authority, and CalTrains to discuss striping and landscape.

### **I2. Update on the Menlo Park shuttle program and schedule (Staff Report #18-178-CC)**

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

None.

## **L. Councilmember Reports**

City Councilmembers Carlton and Keith are attending the League of California Cities Annual Conference later this month and will report out when they return.

City Councilmember Keith had an impromptu meeting with Len Materman, executive director of the San Francisquito Creek Joint Powers Authority.

Mayor Ohtaki reported that the September 18 City Council meeting was cancelled.

## **M. Adjournment**

Mayor Ohtaki adjourned the meeting at 10:22 p.m.



**STAFF REPORT**

**City Council**

**Meeting Date: 10/9/2018**

**Staff Report Number: 18-186-CC**

**Consent Calendar: Approve amendments to the unrepresented management bonus program**

**Recommendation**

Approve amendments to Unrepresented Management Compensation Plan's bonus program, Section II.A.3.

**Policy Issues**

This recommendation aligns with the City's goals of balancing continued fiscal prudence in planning for potential impacts of employee retirement benefits, while also continuing to align the City as a competitive employer in the increasingly robust job market of the Silicon Valley.

**Background**

The current City staffing structure has 24 unrepresented management employees, excluding the city manager and city attorney. Unrepresented management employees serve at-will and are primarily responsible for ensuring delivery of City Council goals and policies at the department level. Given that an organized labor group does not represent these employees, the City does not negotiate compensation with these classifications either as individuals or as a group. Instead, the City's past practice has set forth a series of benefits determined by the City Council as providing a compensation package necessary to attract and retain employees, as documented in the Unrepresented Management Benefits Plan document (Benefits Plan). The city manager and city attorney are not covered by this benefit plan however; their contracts may reference this benefit plan, as agreed upon, in their respective agreements. The City Council approved the most recent amendment to the Benefits Plan September 26, 2017.

**Analysis**

On September 18, 2018, the City Council met in closed session to discuss the current challenges faced in recruitment and retention of unrepresented management employees. As of October 3, 2018, seven of the 24 unrepresented management positions, or 29 percent, are vacant and active recruitments are either underway or planned to fill the vacancies.

Over the past several months, the City has experienced challenges filling vacant unrepresented management positions. One of the most significant factors cited by potential candidates and recruiters is the City's retirement formula and the retiree health benefits provided to a new employee. The City's benefits in these two areas are some of the least generous in San Mateo County. When competing with

other agencies for tenured personnel ready to take on the next step in their career or interested in the many unique opportunities present in Menlo Park, those individuals often question the financial impact of changing jobs. The two most significant concerns expressed are the reduction in pension benefits and the loss of retiree medical should they join Menlo Park's staff. The condition where an employee may otherwise be interested in changing employers if wage and benefits were otherwise comparable is referred to as "golden handcuffs." Menlo Park is not unique in its experience; cities with similarly conservative pension and retiree health benefits for new employees are experiencing similar challenges filling high-level positions.

Another significant influencer regarding Menlo Park's competitiveness in the current labor market, as reported by the candidates and recruiters, is in the area of housing affordability. Menlo Park's policy to compensate at the median among comparable agencies does not adequately offset the impacts of housing affordability that challenge many employers in Silicon Valley. To address the concerns of wage, and consistent with past policy, the City Council authorized a new salary structure for unrepresented management March 13, 2018, to implement a salary structure consistent with methodologies used for represented employees. While the change did not result in direct salary adjustments for unrepresented management employees, the new ranges have attracted more candidates who realize the earning potential reflected by the new salary ranges. Unrepresented management salaries are adjusted annually based on performance and the budget. Notwithstanding the change mentioned above in the salary schedule, the challenge of the golden handcuffs and housing affordability continue to hinder recruitments.

While the compensation review for unrepresented management employees is ongoing, the City Council directed staff to return October 9, 2018, with an adjustment to the unrepresented management bonus program. The current language is restrictive regarding the amount and frequency of the bonus tool available to the City Manager for both recruitment and retention purposes. The proposed language as shown below provides for a more flexible program that, in aggregate, is capped at the City Council adopted budget.

For fiscal year 2018-19, the adopted budget includes \$240,000 for unrepresented management bonuses. The City Manager has recently completed his award of bonuses to staff, and the remaining budget is \$150,000. The revised language allows for additional bonuses before the end of the fiscal year, capped at \$20,000 per individual should the City Manager deem the bonus is necessary to recruit or retain an employee, so long as the City Manager does not exceed the City Council adopted budget for unrepresented management bonuses in fiscal year 2018-19 of \$240,000.

Revised language for Section II.A.3. of the Unrepresented Management Compensation Plan:

### 3. Bonus Program

~~Subject to annual budget appropriations, Each fiscal year,~~ the City Manager may award ~~one-time~~ bonuses to employees in an amount not to exceed in aggregate, \$10,000 per employee per fiscal year the amount approved in the City Council adopted budget for unrepresented management bonuses. The maximum bonus allowable to a single employee is \$20,000 per fiscal year.

### **Impact on City Resources**

The recommended amendment does not have a fiscal impact on the adopted budget for fiscal year 2018-19. Further, as bonuses are not pensionable earnings, any amount awarded to employees has no effect on the City's pension 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.

Report prepared by:

Lenka Diaz, Administrative Services Director

Nick Pegueros, Assistant City Manager

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## STAFF REPORT

### City Council

**Meeting Date:** 10/9/2018  
**Staff Report Number:** 18-188-CC

**Consent Calendar:** Approve the 2018-19 investment policy for the City and the former Community Development Agency of Menlo Park

### Recommendation

Staff recommends that the City Council accept the Finance and Audit Committee's recommendation to approve the 2018-19 investment policy for the City and the former Community Development Agency of Menlo Park.

### Policy Issues

The investment policy provides guidelines for investing City and former agency funds in accordance with State of California Government Code Section 53601 et seq.

### Background

The investment of funds by a California local agency, including the types of securities in which an agency may invest, is governed by the California Government Code. The law requires that the legislative body of each agency adopt an investment policy, which may add further limitations than those established by the State. In addition, an agency's investment policy must be reviewed annually, and any changes must be adopted at a public meeting. The City of Menlo Park has had such a policy in place since 1990. The investment policy was last reviewed and updated by the City Council September 26, 2017.

Annual adoption of the City's investment policy provides an opportunity to regularly review the policy to ensure its consistency with the overall objectives of safety, liquidity and yield, as well as its relevance to current law and economic trends. Early in each fiscal year, the City's investment adviser (Insight Investment) reviews the policy to ensure it is kept up to date and in compliance with applicable State statutes. Insight also makes recommendations for strategic changes to the investment policy to position the City's portfolio to maximize yield while maintaining safety and liquidity.

The annual review of the City's investment policy provides the opportunity to make modifications to reflect changes in the investment environment. The types of modifications will vary but are often focused on providing greater diversification to maintain a safe and liquid investment portfolio. Further, the annual review is also a good time to clarify certain terms, remove ambiguity in the policy language, and better reflect changes in current market trading technologies.

### Analysis

The Finance and Audit Committee met July 31 and reviewed the City's investment policy previously adopted September 26, 2017. The only recommended modification involves the inclusion of language

reflecting the update to the City Council election process, specifically with regards to the switch to district elections starting with the 2018 election. This changes only the background information provided in the policy and does not constitute a change in investment priorities or guidelines. As a result, the policy recommended by the Committee remains substantively unchanged from the policy adopted by the City Council September 26, 2017.

While outside of the scope of the investment policy, the Committee did discuss best practices in investment adviser selections. The Committee requested that staff investigate methods used by other jurisdictions, such as simultaneous employment of two competing investment advisors each assigned a portion of the portfolio, in order to ensure that the City receives the greatest permissible return on its investments. As that falls outside the scope of the investment policy, however, it resulted in no recommended changes to the previously adopted policy.

### **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. Finance and Audit Committee-recommended investment policy for the City and the former Community Development Agency of Menlo Park

Report prepared by:  
Dan Jacobson, Finance and Budget Manager

Approved by:  
Lenka Diaz, Administrative Services Director

# City of Menlo Park

## Investment Policy

The City of Menlo Park (the “City”), incorporated in 1927, is located between San Francisco and Oakland on the North, and San Jose on the South. The City is governed by a City Council (the “Council”) of five members elected at-large by district beginning with the election in 2018.

The Council has adopted this Investment Policy (the “Policy”) in order to establish the investment scope, objectives, delegation of authority, standards of prudence, reporting requirements, internal controls, eligible investments and transactions, diversification requirements, risk tolerance, and safekeeping and custodial procedures for the investment of the unexpended funds of the City. All such investments will be made in accordance with the Policy and with applicable sections of the California Government Code.

This Policy was endorsed and adopted by the City Council of the City of Menlo Park on the 2613<sup>th</sup> of September 2017. It replaces any previous investment policy or investment procedures of the City.

### SCOPE

The provisions of this Policy shall apply to all financial assets of the City and the Community Development Agency of Menlo Park as accounted for in the City’s Comprehensive Annual Financial Report, with the exception of bond proceeds, which shall be governed by the provisions of the related bond indentures or resolutions.

All cash shall be pooled for investment purposes. The investment income derived from the pooled investment account shall be allocated to the contributing funds based upon the proportion of the respective average balances relative to the total pooled balance in the investment portfolio. Investment income shall be distributed to the individual funds on a monthly basis.

### OBJECTIVES

The City’s funds shall be invested in accordance with all applicable municipal codes and resolutions, California statutes, and Federal regulations, and in a manner designed to accomplish the following objectives, which are listed in priority order:

1. Preservation of capital and protection of investment principal.
2. Maintenance of sufficient liquidity to meet anticipated cash flows.
3. Attainment of a market value rate of return.
4. Diversification to avoid incurring unreasonable market risks.

## **DELEGATION OF AUTHORITY**

The management responsibility for the City's investment program is delegated annually by the Council to the Chief Financial Officer (the "CFO") pursuant to California Government Code Section 53607. The City's Administrative Services Director of serves as the CFO. In the absence of the CFO, the Finance and Budget Manager is authorized to conduct investment transactions. The CFO may delegate the authority to conduct investment transactions and to manage the operation of the investment portfolio to other specifically authorized staff members. The CFO shall maintain a list of persons authorized to transact securities business for the City. No person may engage in an investment transaction except as expressly provided under the terms of this Policy.

The CFO shall develop written administrative procedures and internal controls, consistent with this Policy, for the operation of the City's investment program. Such procedures shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, or imprudent actions by employees of the City.

The City may engage the support services of outside investment advisors in regard to its investment program, so long as it can be clearly demonstrated that these services produce a net financial advantage or necessary financial protection of the City's financial resources.

## **PRUDENCE**

The standard of prudence to be used for managing the City's investments shall be California Government Code Section 53600.3, the prudent investor standard which states, "When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency."

The City's overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The City recognizes that no investment is totally without risk and that the investment activities of the City are a matter of public record. Accordingly, the City recognizes that occasional measured losses may occur in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that adequate diversification has been implemented and that the sale of a security is in the best long-term interest of the City.

The CFO and authorized investment personnel acting in accordance with written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that the deviations from expectations are reported in a timely fashion to the Council and appropriate action is taken to control adverse developments.

## **ETHICS AND CONFLICTS OF INTEREST**

Elected officials and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program or could impair or create the appearance of an impairment of their ability to make impartial investment decisions. Employees and investment officials shall disclose to the City Manager any business interests they have in financial institutions that conduct business with the City and they shall subordinate their personal investment transactions to those of the City. In addition, the City Manager, the Assistant City Manager and the Administrative Services Director shall file a Statement of Economic Interests each year pursuant to California Government Code Section 87203 and regulations of the Fair Political Practices Commission.

## **AUTHORIZED SECURITIES AND TRANSACTIONS**

All investments and deposits of the City shall be made in accordance with California Government Code Sections 16429.1, 53600-53609 and 53630-53686, except that, pursuant to California Government Code Section 5903(e), proceeds of bonds and any moneys set aside or pledged to secure payment of the bonds may be invested in securities or obligations described in the ordinance, resolution, indenture, agreement, or other instrument providing for the issuance of the bonds.

Any revisions or extensions of these code sections will be assumed to be part of this Policy immediately upon being enacted. However, in the event that amendments to these sections conflict with this Policy or past City investment practices, the City may delay adherence to the new requirements when it is deemed in the best interest of the City to do so. In such instances, after consultation with the City's attorney, the CFO will present a recommended course of action to the Council for approval.

The City has further restricted the eligible types of securities and transactions as follows:

1. United States Treasury bills, notes, bonds, or strips with a final maturity not exceeding five years from the date of trade settlement.
2. Federal Agency debentures, federal agency mortgage-backed securities, and mortgage-backed securities with a final maturity not exceeding five years from the date of trade settlement.
3. Federal Instrumentality (government-sponsored enterprise) debentures, discount notes, callable securities, step-up securities, and mortgage-backed securities with a final maturity not exceeding five years from the date of trade settlement. Subordinated debt may not be purchased.

City of Menlo Park  
Investment Policy

~~PROPOSED~~ October 10 ~~September 27,~~  
2018~~7~~

4. Medium-Term Notes issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Medium-term notes shall have a final maturity not exceeding five years from the date of trade settlement and shall be rated at least "A" or the equivalent by a nationally recognized statistical ratings organization (NRSRO), at the time of purchase.
5. Negotiable Certificates of Deposit with a maturity not exceeding five years from the date of trade settlement, in state or nationally chartered banks or savings banks that are insured by the FDIC, subject to the limitations of California Government Code Section 53638. Certificates of Deposits may be purchased only from financial institutions that meet the credit criteria set forth in the section of this Investment Policy, "Selection of Banks and Savings Banks." Depending on their maturity, Negotiable Certificates of Deposit shall have a short-term rating of at least A-1+ or the equivalent by a NRSRO at the time of purchase.
6. Non-negotiable Certificates of Deposit and savings deposits with a maturity not exceeding five years from the date of trade settlement, in FDIC insured state or nationally chartered banks or savings banks that qualify as a depository of public funds in the State of California as defined in California Government Code Section 53630.5. Deposits exceeding the FDIC insured amount shall be secured pursuant to California Government Code Section 53652.
7. Municipal and State Obligations:
  - A. Municipal bonds with a final maturity not exceeding five years from the date of trade settlement. Such bonds include registered treasury notes or bonds of any of the 50 United States and bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the states. Such obligations must be rated at least "A", or the equivalent, by a NRSRO at the time of purchase.
  - B. In addition, bonds, notes, warrants, or other evidences of indebtedness of any local agency in California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency. Such obligations must be rated at least "A", or the equivalent, by a NRSRO at the time of purchase.
8. Prime Commercial Paper with a maturity not exceeding 270 days from the date of trade settlement with the highest ranking or of the highest letter and number rating as provided for by a NRSRO. The entity that issues the commercial paper shall meet all of the following conditions in either sub-paragraph A. or sub-paragraph B. below:
  - A. The entity shall (1) be organized and operating in the United States as a general corporation, (2) have total assets in excess of \$500 million, and (3)

have debt other than commercial paper, if any, that is rated at least "A" or the equivalent or higher by a NRSRO.

B. The entity shall (1) be organized within the United States as a special purpose corporation, trust, or limited liability company, (2) have program-wide credit enhancements, including, but not limited to, over collateralization, letters of credit or surety bond, and (3) have commercial paper that is rated at least "A-1" or the equivalent or higher by a NRSRO.

9. Eligible Banker's Acceptances with a maturity not exceeding 180 days from the date of trade settlement, issued by a national bank with combined capital and surplus of at least \$250 million, whose deposits are insured by the FDIC, and whose senior long-term debt is rated at least "A" or the equivalent by a NRSRO at the time of purchase.
10. Repurchase Agreements with a final termination date not exceeding 30 days collateralized by the U.S. Treasury obligations, Federal Agency securities, or Federal Instrumentality securities listed in items #1 through #3 above, with the maturity of the collateral not exceeding five years. For the purpose of this section, the term collateral shall mean purchased securities under the terms of the City's approved Master Repurchase Agreement. The purchased securities shall have a minimum market value including accrued interest of 102% of the dollar value of the funds borrowed. Collateral shall be held in the City's custodian bank, as safekeeping agent, and the market value of the collateral securities shall be marked-to-the-market daily.

Repurchase Agreements shall be entered into only with banks and with broker/dealers who are recognized as Primary Dealers with the Federal Reserve Bank of New York, or with firms that have a primary dealer within their holding company structure. Repurchase agreement counterparties shall execute a City approved Master Repurchase Agreement with the City. The CFO shall maintain a copy of the City's approved Master Repurchase Agreement along with a list of the banks and broker/dealers who have executed same.

11. State of California's Local Agency Investment Fund (LAIF), pursuant to California Government Code Section 16429.1.
12. Money Market Funds registered under the Investment Company Act of 1940 which (1) are "no-load" (meaning no commission or fee shall be charged on purchases or sales of shares); (2) have a constant daily net asset value per share of \$1.00; (3) invest only in the securities and obligations authorized in this Policy and (4) have a rating of at least "AAA" or the equivalent by at least two NRSROs.

Securities that have been downgraded to a level that is below the minimum ratings described herein may be sold or held at the City's discretion. The portfolio will be brought back into compliance with Investment Policy guidelines as soon as is practical.



It is the intent of the City that the foregoing list of authorized securities and transactions be strictly interpreted. Any deviation from this list must be preapproved by resolution of the City Council.

### **INVESTMENT DIVERSIFICATION**

The City shall diversify its investments to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions or maturities. Nevertheless, the asset allocation in the investment portfolio should be flexible depending upon the outlook for the economy, the securities markets, and the City's anticipated cash flow needs.

Securities shall not exceed the following maximum limits as a percentage of the total portfolio:

<b>Type of Security</b>	<b>Maximum Percentage of the Total Portfolio</b>
U.S. Treasury Obligations	100%
Federal Agency Securities†	100%†
Federal Instrumentality Securities†	100%†
Repurchase Agreements	100%
Local Government Investment Pools	100%
Aggregate amount of Certificates of Deposit, Negotiable and Non-Negotiable*	25%
Aggregate amount of Prime Commercial Paper*	25%
Aggregate amount of Money Market Funds*	20%
Aggregate amount of Municipal Bonds*	30%
Aggregate amount of Eligible Banker's Acceptances*	15%
Aggregate amount of Medium-Term Notes*	30%

† No more than 20% of the City's total portfolio shall be invested in mortgage-backed securities.

\*No more than 5% of the City's total portfolio shall be invested in any one issuer/financial institution and/or its affiliates.

### **PORTFOLIO MATURITIES AND LIQUIDITY**

To the extent possible, investments shall be matched with anticipated cash flow requirements and known future liabilities. The City will not invest in securities maturing more than five years from the date of trade settlement unless the Council has, by resolution, granted authority to make such an investment at least three months prior to the date of



investment. The sole maturity distribution range shall be from zero to five years from the date of trade settlement.

## **SELECTION OF BROKER/DEALERS**

The CFO shall maintain a list of broker/dealers approved for investment purposes, and it shall be the policy of the City to purchase securities only from those authorized firms. To be eligible, a firm must be licensed by the State of California as a broker/dealer as defined in Section 25004 of the California Corporations Code.

The City may engage the services of investment advisory firms to assist in the management of the portfolio and investment advisors may utilize their own list of approved Broker/Dealers. The list of approved firms shall be provided to the City on an annual basis or upon request.

In the event that an external investment advisory firm is not used in the process of recommending a particular transaction, each authorized broker/dealer shall be required to submit and annually update a City approved Broker/Dealer Information Request form which includes the firm's most recent financial statements. The CFO shall maintain a list of the broker/dealers that have been approved by the City, along with each firm's most recent broker/dealer Information Request form.

The City may purchase commercial paper from direct issuers even though they are not on the approved broker/dealer list as long as they meet the criteria outlined in Item 8 of the Authorized Securities and Transactions section of this Policy.

## **COMPETITIVE TRANSACTIONS**

Each investment transaction shall be competitively transacted with authorized broker/dealers. At least three broker/dealers shall be contacted for each transaction and their bid and offering prices shall be recorded.

If the City is offered a security for which there is no other readily available competitive offering, the CFO will then document quotations for comparable or alternative securities.

## **SELECTION OF BANKS AND SAVINGS BANKS**

The CFO shall maintain a list of authorized banks and savings banks that are approved to provide banking services for the City. To be eligible to provide banking services, a financial institution shall qualify as a depository of public funds in the State of California as defined in California Government Code Section 53630.5 and must be a member of the FDIC. The City shall utilize SNL Financial Bank Insight ratings to perform credit analyses on banks seeking authorization. The analysis shall include a composite rating and individual ratings of liquidity, asset quality, profitability and capital adequacy. Annually, the CFO shall review the most recent credit rating analysis reports performed for each approved bank. Banks that in the judgment of the CFO no longer offer adequate safety to the City shall be removed from the City's list of authorized banks. Banks failing to meet the criteria outlined above, or in the judgment of the CFO no longer offer adequate safety to the City, will be removed from the list. The CFO shall maintain a file of the most recent credit rating analysis reports performed for each approved bank. Credit analysis shall be performed on a semi-annual basis.

## **SAFEKEEPING AND CUSTODY**

The CFO shall select one or more financial institutions to provide safekeeping and custodial services for the City, in accordance with the provisions of Section 53608 of the California Government Code. Custodian banks will be selected on the basis of their ability to provide services for the City's account and the competitive pricing of their safekeeping related services. The CFO shall maintain a file of the credit rating analysis reports performed semi-annually for each approved financial institution. A Safekeeping Agreement approved by the City shall be executed with each custodian bank prior to utilizing that bank's safekeeping services.

The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis. All securities shall be perfected in the name of the City. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

All investment securities purchased by the City will be delivered by book entry and will be held in third-party safekeeping by a City approved custodian bank, or its Depository Trust Company (DTC) participant account.

## **PORTFOLIO PERFORMANCE**

The investment portfolio shall be designed to attain a market rate of return throughout budgetary and economic cycles, taking into account prevailing market conditions, risk constraints for eligible securities, and cash flow requirements. The performance of the City's investments shall be compared to the average yield on the U.S. Treasury security that most closely corresponds to the portfolio's actual weighted average effective maturity. When comparing the performance of the City's portfolio, its rate of return will be computed net of all fees and expenses.

## **PORTFOLIO REVIEW AND REPORTING**

Credit criteria and maximum percentages listed in this section refer to the credit of the issuing organization and/or maturity at the time the security is purchased. The City may, from time to time, be invested in a security whose rating is downgraded below the minimum ratings set forth in this Policy. In the event a rating drops below the minimum allowed rating category for that given investment type, the Administrative Services Director shall notify the City Manager

and/or Designee and recommend a plan of action. Appropriate documentation of such a review, along with the recommended action and final decision shall be retained for audit.

Quarterly, the CFO shall submit to the Council a report of the investment earnings and performance results of the City's investment portfolio. The report shall include the following information:

1. Investment type, issuer, date of maturity, par value and dollar amount invested in all securities, and investments and monies held by the City;
2. A description of the funds, investments and programs;
3. A market value as of the date of the report (or the most recent valuation as to assets not valued monthly) and the source of the valuation;
4. A statement of compliance with this Investment Policy or an explanation for non-compliance; and
5. A statement of the ability to meet expenditure requirements for six months, as well as an explanation of why money will not be available if that is the case.

## **POLICY REVIEW**

This Investment Policy shall be adopted by resolution of the City Council annually. It shall be reviewed at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity, yield and diversification and its relevance to current law and economic trends. Any amendments to the Policy shall be reviewed by the City's Finance/Audit Committee prior to being forwarded to the City Council for approval.

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## STAFF REPORT

**City Council**  
**Meeting Date:** 10/9/2018  
**Staff Report Number:** 18-181-CC

**Consent Calendar:** Approve the response to the San Mateo County Civil Grand Jury report regarding restricting smoking in multiunit housing properties

### Recommendation

Staff recommends that the City Council approve and sign the attached response to the San Mateo Civil grand jury report, "Smoke-Free Multiunit Housing: No Ifs, Ands or Butts" dated July 26, 2018 (Attachment A.)

### Policy Issues

State law requires the City of Menlo Park to respond to grand jury findings and recommendations within the City's jurisdiction.

### Background

On July 26, 2018, the San Mateo County Civil grand jury ("Civil grand jury") filed the report "Smoke-Free Multiunit Housing: No Ifs, Ands or Butts" ("report") with Honorable V. Raymond Swope, Judge of the Superior Court of the State of California. The report provides background, analysis, and recommendations on the laws passed to protect residents from secondhand smoke by restricting smoking in multiunit housing properties. A copy of the report is included as Attachment B.

### Analysis

The report contains 14 findings and eight recommendations. Menlo Park is obligated to respond to the report's recommendation No. 7, with the response approved by the City Council at a public meeting.

Recommendation No. 7 provides that by December 31, 2018, the City should hold public hearings to evaluate issues and hear residents' views on restricting smoking in multiunit housing in the City's jurisdiction. The response is attached as Attachment A.

### Impact on City Resources

Approving and submitting a response to the report has no direct impact on City resources. The public outreach described in the response to the report will also have no direct impact on City resources, as the meetings will be conducted in connection with already scheduled meetings.

## **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. Menlo Park response letter
- B. Civil grand jury report

Report prepared by:  
Cara E. Silver, Assistant City Attorney



October 10, 2018

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

**RE: Civil Grand Jury Report: “Smoke-Free Multiunit Housing: No Ifs, Ands or Butts”**

Dear Judge Swope,

We are in receipt of the San Mateo County Civil Grand Jury’s report “Smoke-Free Multiunit Housing: No Ifs, Ands or Butts” dated July 26, 2019 (“Report”). The City Council of the City of Menlo Park (“City”) voted at its public meeting on October 9, 2018, to authorize this response to the Report.

Response to findings:

**F1:** Since 1967, exposure to secondhand smoke has killed approximately 2.5 million nonsmokers of all ages in the United States.

**Response:** The City agrees.

**F10:** The towns/cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, and San Carlos do not have smoking ordinances that restrict smoking in their multiunit residences, except in some common areas. Atherton, Hillsborough, and Woodside have no multiunit housing.

**Response:** The City agrees.

Response to recommendations:

The Report requested a response to item R7:

**R7:** The towns/ cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley and San Carlos should, by December 31, 2018, hold public hearings to evaluate issues and hear residents’ views on restricting smoking in multiunit housing in their jurisdictions.

**Response:** The recommendation has not yet been implemented, but will be implemented by December 31, 2018, or shortly thereafter. The City plans to conduct public outreach and engagement to hear residents' views on restricting smoking in multiunit housing in the City at its Housing Commission Meeting currently scheduled for November 14, 2018. If there is significant community interest in pursuing local legislation, the City will endeavor to conduct a follow up public meeting in or around December 31, 2018. Given recent staff departures, other City Council priorities and few public complaints about this matter, the above schedule may change.

Thank you for the work of this Civil Grand Jury and for your efforts to reach out to our communities. Should you have any questions, please feel free to contact me.

Sincerely,

Peter I. Ohtaki  
Mayor

cc: William M. McClure, City Attorney





## SMOKE-FREE MULTIUNIT HOUSING: NO IFS, ANDS, OR BUTTS

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

### ISSUE

Do ordinances in jurisdictions banning smoking in multiunit housing properties protect San Mateo County residents from exposure to secondhand smoke?

### SUMMARY

In the United States alone, exposure to secondhand smoke has killed approximately 2.5 million nonsmokers of all ages over the last 50 years.<sup>1</sup> While California has enacted a statewide ban on smoking in enclosed workplaces,<sup>2,3</sup> the majority of secondhand smoke exposure occurs in the home. Marijuana smoke, another source of secondhand smoke, is also toxic and contains many of the same chemicals and carcinogens as tobacco smoke.<sup>4</sup> Residents of multiunit properties, where smoke in one unit can pass into adjacent ones, are at significant risk of exposure to secondhand smoke.<sup>5</sup> In San Mateo County (the County), there are currently almost 114,000 multiunit households,<sup>6</sup> and the number is expected to grow as jurisdictions work to address increasing housing demands.<sup>7</sup>

In 2007, the City of Belmont passed the nation's first ordinance prohibiting smoking in multiunit housing.<sup>8</sup> Since then, eight additional cities in San Mateo County, as well as the County itself (with respect to its unincorporated areas) have passed similar multiunit housing smoking ordinances.<sup>9</sup>

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<sup>1</sup> *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*. Rockville, MD. 2014. U.S. Public Health Service website, accessed June 7, 2018. <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

<sup>2</sup> “AB-13 Fact Sheet - California Workplace Smoking Restrictions. October 1997.” State of California. Department of Industrial Relations website, accessed June 7, 2018. [https://www.dir.ca.gov/dosh/dosh\\_publications/smoking.html](https://www.dir.ca.gov/dosh/dosh_publications/smoking.html)

<sup>3</sup> “AB-7 Smoking in the Workplace. (2015-2016)” California Legislative Information website, accessed June 7, 2018. [http://leginfo.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201520162AB7](http://leginfo.ca.gov/faces/billCompareClient.xhtml?bill_id=201520162AB7)

<sup>4</sup> “Marijuana and Tobacco Use, Marijuana: The Basics,” California Department of Public Health website, accessed June 7, 2018.

<sup>5</sup> King et al., “Secondhand Smoke Transfer in Multiunit Housing,” *Nicotine & Tobacco Research*. November 2010. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3436457/pdf/ntq162.pdf>

<sup>6</sup> Officials in San Mateo county jurisdictions: email messages to the Grand Jury. (See Appendix B.)

<sup>7</sup> “Key Housing Trends in San Mateo County: A report by 21 Elements 2014,” 21 Elements website, accessed June 7, 2018. <<http://www.21elements.com/Housing-Needs-and-Demographics/View-category.html>>

<sup>8</sup> Chen, Serena. American Lung Association in California and Bay Area Smokefree Housing Project. *Belmont Case Study: Belmont, CA Secondhand Smoke/Multi-Unit Housing Ordinance*. <https://www.myctb.org/wst/healthylawrence/livewell/TobaccoFreeLiving/American%20Lung%20Association%20Advocates%20Toolbox/Module-3/Belmont-Case-Study.pdf>

<sup>9</sup> Smoking Ordinances in: Belmont <[https://library.municode.com/ca/belmont/codes/code\\_of\\_ordinances?nodeId=CICO\\_CH20.5RESM](https://library.municode.com/ca/belmont/codes/code_of_ordinances?nodeId=CICO_CH20.5RESM)>, Brisbane <[https://library.municode.com/ca/brisbane/codes/code\\_of\\_ordinances?nodeId=TIT8HESA\\_CH8.46SMMUITRE](https://library.municode.com/ca/brisbane/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.46SMMUITRE)>, Burlingame <[http://qcode.us/codes/burlingame/view.php?topic=8-8\\_18](http://qcode.us/codes/burlingame/view.php?topic=8-8_18)>, Daly City <

Through interviews with local law and code enforcement officers, the San Mateo County Civil Grand Jury (the Grand Jury) learned that many of these jurisdictions have not adequately educated residents about their rights and obligations under multiunit housing smoking ordinances. At the time their ordinances were adopted, most of these jurisdictions conducted limited public outreach to residents, and even now, the jurisdictions' online resources detailing tenants' rights and reporting methods are difficult to access. Local officials also indicated that enforcement of their ordinances is constrained by the need to observe smoking violations in progress.<sup>10</sup>

The Tobacco Prevention Program and the Tobacco Education Coalition are the two local entities that educate residents regarding the health effects of smoking, including secondhand smoke. The Tobacco Prevention Program is a part of the County's Health System and is charged with educating the community about tobacco-related health and policy issues. The Tobacco Education Coalition is a community-based group supported by the Tobacco Prevention Program that engages in advocacy relating to reducing the public's use of and exposure to tobacco. Both organizations assist cities that are considering smoking restrictions for their multiunit housing properties. With the quadrupling of the funding allocation from the California Department of Public Health's Tobacco Control Program (from \$150,000 in FY 2016-2017 to \$748,000 in FY 2017-2018), these entities will have the opportunity to greatly expand their operations.<sup>11</sup>

The Grand Jury recommends, among other actions, that:

- Jurisdictions with multiunit housing smoking ordinances take steps to improve their tracking of smoking violation complaints as well as increase their residents' awareness of their rights and obligations, thereby increasing the effectiveness of enforcement efforts;
- The Tobacco Prevention Program and Tobacco Education Coalition increase their educational outreach and support for countywide efforts to protect residents from the dangers of secondhand smoke exposure;
- Cities within San Mateo County that have not yet adopted such ordinances hold public hearings to evaluate issues and hear residents' views on adopting smoking restrictions in multiunit housing in their jurisdictions.

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[https://library.municode.com/ca/daly\\_city/codes/code\\_of\\_ordinances?nodeId=TIT8HESA\\_CH8.36RESM](https://library.municode.com/ca/daly_city/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.36RESM)> , Foster City < <http://www.codepublishing.com/CA/FosterCity/?FosterCity08/FosterCity0805.html>> , Redwood City < [https://library.municode.com/ca/redwood\\_city/codes/code\\_of\\_ordinances?nodeId=CH15SMRE](https://library.municode.com/ca/redwood_city/codes/code_of_ordinances?nodeId=CH15SMRE)> , San Bruno < <https://qcode.us/codes/sanbruno/>> , City of San Mateo < [http://qcode.us/codes/sanmateo/view.php?topic=7-7\\_40&showAll=1&frames=on](http://qcode.us/codes/sanmateo/view.php?topic=7-7_40&showAll=1&frames=on)> , San Mateo County < [https://library.municode.com/ca/san\\_mateo\\_county/codes/code\\_of\\_ordinances?nodeId=TIT4SAHE\\_CH4.96SM](https://library.municode.com/ca/san_mateo_county/codes/code_of_ordinances?nodeId=TIT4SAHE_CH4.96SM)> , and South San Francisco < [http://qcode.us/codes/southsanfrancisco/view.php?topic=8-8\\_50&showAll=1&frames=off](http://qcode.us/codes/southsanfrancisco/view.php?topic=8-8_50&showAll=1&frames=off)> accessed June 7, 2018.

<sup>10</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>11</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

## GLOSSARY AND ABBREVIATIONS

**California Healthcare, Research and Prevention Tobacco Tax Act (Proposition 56 or Prop. 56):** A 2016 California state law increasing the excise taxes on tobacco products, including e-cigarettes, by \$2.

**California Tobacco Tax and Health Protection Act (Proposition 99 or Prop. 99):** A 1988 California state law which created a statewide, comprehensive tobacco control program funded through a twenty-five-cent tax on tobacco products.

**Electronic Smoking Devices (ESDs):** Devices containing a nicotine-based liquid that is vaporized and inhaled, used to simulate the experience of smoking tobacco. ESDs are also used as alternatives to smoking marijuana.

**Jurisdictions:** The jurisdictions that have adopted multiunit housing smoking ordinances: Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, San Mateo, South San Francisco, and the County of San Mateo (for its unincorporated areas only).

**Multiunit Households (MUH):** A classification of housing where multiple separate housing units for residential inhabitants are contained within one building. There are currently almost 114,000 MUHs in the county.

**Secondhand Smoke (SHS):** The combination of smoke generated by cigarettes (or other ignited plant material for the purpose of inhalation) as well as the smoke exhaled by the smoker.

**Thirdhand smoke (THS):** The toxic particulate residue from smoke that clings to walls, fabrics, carpets, and other furnishings, lingering on surfaces after active smoking has ceased.

**Tobacco Prevention Program (TPP):** The County of San Mateo Health System established the TPP in 1989 as part of the statewide network to educate the community on tobacco-related health and policy issues.

**Tobacco Education Coalition (TEC):** A community-based group, established per Proposition 99, for the purpose of improving public health by reducing the use of tobacco products in the county.

## BACKGROUND

### Secondhand Smoke

Secondhand smoke (SHS), also known as “involuntary” or “passive” smoke, is a combination of smoke generated by cigarettes (or other ignited plant material for the purpose of inhalation) as well as the smoke exhaled by the smoker.<sup>12</sup> Cigarette smoke contains more than 7,000 chemicals, including

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<sup>12</sup> *The Health Consequences of Involuntary Exposure to Tobacco Smoke*. A Report of the Surgeon General. Atlanta, GA. 2006. U.S. Public Health Service, Surgeon General website, accessed June 7, 2018. <https://www.surgeongeneral.gov/library/reports/secondhandsmoke/fullreport.pdf>

formaldehyde, cyanide, carbon monoxide, ammonia, and highly addictive nicotine, as well as more than 50 carcinogens. Since 1967, exposure to SHS has killed approximately 2.5 million nonsmokers of all ages in the United States.<sup>13</sup>

In 2010, the U.S. Surgeon General confirmed that even occasional exposure to secondhand smoke is harmful, and that low levels of secondhand tobacco smoke lead to impairment of the lining of the blood vessels, which, in turn, can lead to heart attacks and stroke.<sup>14</sup>

According to the American Lung Association:

Secondhand smoke causes approximately 7,330 deaths from lung cancer and 33,950 deaths from heart disease each year... Secondhand smoke is especially harmful to young children. Secondhand smoke is responsible for between 150,000 and 300,000 lower respiratory tract infections in infants and children under 18 months of age, resulting in between 7,500 and 15,000 hospitalizations each year. It also causes 430 sudden infant death syndrome (SIDS) deaths in the U.S. annually.<sup>15</sup>

Marijuana smoke, another source of secondhand smoke, is also toxic. It contains twice as much tar and ammonia, eight times as much hydrogen cyanide, and many of the same chemicals and carcinogens as tobacco smoke. Studies have shown that exposure to secondhand marijuana smoke impairs blood vessel function temporarily. Moreover, recovery from impairment caused by marijuana takes longer than from tobacco smoke, and repeated exposure to secondhand marijuana smoke can lead to long-term blood vessel impairment.<sup>16</sup>

According to the American Nonsmoker's Rights Foundation:

Smoke is smoke. Both tobacco and marijuana smoke impair blood vessel function similarly. People should avoid both, and governments who are protecting people against secondhand smoke exposure should include marijuana in those rules.<sup>17</sup>

Approximately one in four nonsmoking Americans is subjected to secondhand smoke, including more than one in three who live in rental housing. Exposure to SHS occurs primarily at home, especially for children. An estimated 15 million children ages three to eleven are exposed to SHS.<sup>18</sup>

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<sup>13</sup> *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*. Rockville, MD. 2014. U.S. Public Health Service, Surgeon General website, accessed June 7, 2018.

<https://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf> .

<sup>14</sup> "Fact Sheet: How Tobacco Smoke Causes Disease," A Report of the Surgeon General. Centers for Disease Control and Prevention website, accessed June 7, 2018. < [https://www.cdc.gov/tobacco/data\\_statistics/sgr/2010/pdfs/key-findings.pdf](https://www.cdc.gov/tobacco/data_statistics/sgr/2010/pdfs/key-findings.pdf)>

<sup>15</sup> "Health Effects of Secondhand Smoke," American Lung Association website, accessed June 7, 2018.

<http://www.lung.org/stop-smoking/smoking-facts/health-effects-of-secondhand-smoke.html>

<sup>16</sup> "Marijuana and Tobacco Use, Marijuana: The Basics," California Department of Public Health website, accessed June 7, 2018.

<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/MJAndTobaccoUseFac%20Sheet-CDPH-CTCP-5-2017.pdf>

<sup>17</sup> Matthew Springer, cardiovascular researcher and Associate Professor of Medicine, University of California, San Francisco. "Secondhand Marijuana Smoke: Fact Sheet," American Nonsmokers' Rights Foundation website, accessed June 7, 2018. <https://no-smoke.org/secondhand-marijuana-smoke-fact-sheet/>

While all children and adults can be victims of secondhand smoke, nonsmokers in some communities are at an elevated risk of exposure.<sup>19</sup> For example, more than 45 percent of Black nonsmokers are exposed to SHS, in contrast with 23.9 percent of Hispanic Americans and 21.8 percent of non-Hispanic White nonsmokers. In addition, 43.2 percent of nonsmokers with incomes below the poverty level are exposed to SHS.

### **Secondhand Smoke Infiltration in Multiunit Housing (MUH)**

Since Americans spend almost two-thirds of their lives in their residences, nonsmokers living in multiunit properties are at elevated risk of exposure to secondhand smoke.<sup>20</sup> The Centers for Disease Control and Prevention (CDC) reports that secondhand smoke can enter living spaces from other units and/or common areas through ventilation systems, walls, electrical outlets, open windows, or hallways.<sup>21</sup>

The Center for Social Gerontology's 2006 report explains the problem further:

The health hazards of tobacco smoke are magnified in the close living quarters of those who live in multi-family dwellings... Tobacco smoke travels from its point of generation in a building to all other areas of the building. It has been shown to move through light fixtures, through ceiling crawl spaces, and into and out of doorways. Once exposed, building occupants are at risk for irritant, allergic, acute and chronic cardiopulmonary and carcinogenic adverse health effects.<sup>22</sup>

### **Smoke Residue (“Thirdhand smoke”)**

Thirdhand smoke (THS) is the toxic particulate residue from smoke that clings to walls, fabrics, carpets, and other furnishings, lingering on surfaces after active smoking has ceased.<sup>23</sup> Arsenic, lead, cyanide, and other carcinogens in thirdhand smoke can be absorbed through inhalation or skin contact, affecting both people and pets.<sup>24</sup>

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<sup>18</sup> “CDC Vital Signs. Secondhand Smoke: An Unequal Danger. February 2015,” Centers for Disease Control and Prevention website, accessed June 7, 2018. <https://www.cdc.gov/vitalsigns/pdf/2015-02-vitalsigns.pdf>

<sup>19</sup> “Secondhand Smoke (SHS) Facts.” Centers for Disease Control and Prevention website, accessed June 7, 2018. [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm)

<sup>20</sup> King et al., “Secondhand Smoke Transfer in Multiunit Housing.” *Nicotine & Tobacco Research*. November 2010. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3436457/pdf/ntq162.pdf>

<sup>21</sup> “Ventilation Does Not Effectively Protect Nonsmokers From Secondhand Smoke,” Centers for Disease Control and Prevention website, accessed June 7, 2018.

[https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/protection/ventilation/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/protection/ventilation/index.htm)

<sup>22</sup> Schoenmarklin, Susan, Esq. *Memorandum: Analysis of the Voluntary and Legal Options of Condominium Owners Confronted with Secondhand Smoke from another Condominium Unit*. Smoke-Free Environments Law Project. The Center for Social Gerontology, Inc. Anne Arbor, MI. May 2006. [http://www.tcsg.org/sfelp/memo\\_06.pdf](http://www.tcsg.org/sfelp/memo_06.pdf)

<sup>23</sup> “California Consortium for Thirdhand Smoke,” University of California San Francisco. Center for Tobacco Control Research and Education website, accessed June 7, 2018. <https://tobacco.ucsf.edu/california-consortium-thirdhand-smoke>

<sup>24</sup> “Be Smoke-free and Help Your Pets Live Longer, Healthier Lives,” U.S. Food and Drug Administration website, accessed June 7, 2018. <https://www.fda.gov/AnimalVeterinary/ResourcesforYou/AnimalHealthLiteracy/ucm520415.htm>

According to the UCSF Center for Tobacco Control Research and Education:

Infants and small children are likely to have more exposure to THS than adults because THS contaminates house dust and surfaces. Infants and children spend more time on the floor, have frequent hand to mouth behaviors, explore objects in the environment with their mouth, put non-food items in their mouths, engage in active play at home, and breathe in more dust-contaminated air than adults, in relation to their body size.<sup>25</sup>

### **Electronic Cigarette Aerosol (or Vapor)**

Electronic Smoking Devices (ESDs or e-cigarettes) emerged in the U.S. in 2007, as alternatives to smoking tobacco and marijuana. Use of e-cigarettes is commonly referred to as “vaping.” They quickly became popular, in part due to efforts of manufacturers to attract young buyers through tactics such as bubblegum and fruit flavorings.<sup>26</sup> While e-cigarettes and similar devices do not produce tobacco or marijuana smoke, the vapor they emit is also harmful. It contains particulates, propylene glycol or vegetable glycerin, nicotine (in the case of tobacco), metals and other toxins.<sup>27</sup>

### **San Mateo County Health System’s Responses to Secondhand Smoke**

#### Tobacco Prevention Program

In 1988, the California Tobacco Tax and Health Protection Act (Prop. 99) was passed by the voters, creating a statewide, comprehensive tobacco control program. Prop. 99 levied a twenty-five-cent tax on tobacco products and placed new restrictions on the sale of tobacco. With the revenue generated by this initiative, the County established the Tobacco Prevention Program (TPP) in 1989 as part of the statewide network to educate the community on tobacco-related health and policy issues.<sup>28</sup> The TPP’s 2014-2017 Program Goals and Interventions<sup>29</sup> included:

- Reducing exposure to secondhand smoke by implementing smoke-free multiunit housing policies
- Engaging youth in tobacco control and amending tobacco retail ordinances to broaden the definition of tobacco product
- Reducing the availability of tobacco by eliminating tobacco sales in pharmacies/health care settings

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<sup>25</sup> “Frequently Asked Questions,” University of California San Francisco. Center for Tobacco Control Research and Education. California Consortium for Thirdhand Smoke website, accessed June 7, 2018.

<https://tobacco.ucsf.edu/frequently-asked-questions-0#Who-has-high-exposure-risk-of-THS>

<sup>26</sup> Samantha Weigel. “County may ban flavored tobacco, including menthol.” *San Mateo Daily Journal*, January 20, 2018. [https://www.smdailyjournal.com/news/local/county-may-ban-flavored-tobacco-including-menthol/article\\_a54ccc9c-fd9f-11e7-8baa-ab201dac2a50.html](https://www.smdailyjournal.com/news/local/county-may-ban-flavored-tobacco-including-menthol/article_a54ccc9c-fd9f-11e7-8baa-ab201dac2a50.html)

<sup>27</sup> “Recreational Vaping 101: What is Vaping?” National Center on Addiction and Substance Abuse website, accessed June 7, 2018. <https://www.centeronaddiction.org/e-cigarettes/recreational-vaping/what-vaping>

<sup>28</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

<sup>29</sup> “San Mateo County Tobacco Prevention Program 2014-2017 Program Goals and Interventions,” County of San Mateo Health System website, accessed June 7, 2018. [https://www.smchealth.org/sites/main/files/file-attachments/2014\\_-\\_2017\\_priorities.pdf](https://www.smchealth.org/sites/main/files/file-attachments/2014_-_2017_priorities.pdf)



The TPP provides a number of resources for county residents, including a hotline for the public to report problems with exposure to SHS and guidance to address those issues on the Smoke-Free Housing web page.<sup>30</sup>

In 2016, voters passed the California Healthcare, Research and Prevention Tobacco Tax Act (Prop. 56), which increased the excise taxes on tobacco products, including e-cigarettes, by \$2. With this increased tax revenue, the TPP's annual funding allocation from the California Department of Public Health's Tobacco Control Program increased from \$150,000 in FY 2016-2017 to \$784,000 in FY 2017-2018.<sup>31</sup> As a result, the TPP is expanding its operations to include:

- Education initiatives for city officials, residents, property managers, and the public on the dangers of secondhand smoke and effective methods to implement MUH smoking ordinances
- Assistance for MUH communities with signage and monitoring compliance

### Tobacco Education Coalition

Proposition 99 also required that all counties form a community-based group to improve public health by reducing the use of tobacco products. As a result, the County created the Tobacco Education Coalition (TEC) in 1989. The Coalition includes representatives from nonsmoking advocacy groups such as Breathe California, the Youth Leadership Institute, and the American Cancer Society, as well as the San Mateo County Sheriff's Office and San Mateo County Office of Education.<sup>32</sup> The TPP also provides crucial support for the TEC's activities.<sup>33</sup>

With the goals of raising public awareness, implementing a countywide tobacco control plan, and engaging the public,<sup>34</sup> the TEC works with local governments to undertake the following initiatives:

- Implementing smoke-free multiunit housing policies
- Amending tobacco retail ordinances to broaden the definition of tobacco products
- Eliminating tobacco sales in pharmacies and health care settings
- Collaborating on a statewide healthy stores campaign<sup>35</sup>

As part of the TEC's efforts to promote smoke-free multiunit housing, Coalition members provide city staff with model smoking ordinances. Coalition members also advocate at city council meetings for MUH smoking restrictions.<sup>36, 37</sup>

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<sup>30</sup> County of San Mateo Health System website. Smoke-Free Housing. <https://www.smchealth.org/driftingsmoke>

<sup>31</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

<sup>32</sup> "Tobacco Education Coalition: Advocating change to support a tobacco-free San Mateo County," County of San Mateo Health System website, accessed June 7, 2018. <https://www.smchealth.org/tobaccoeducationcoalition>

<sup>33</sup> "Combined Scope of Work" document provided to the Grand Jury. County of San Mateo Health System, Tobacco Prevention Program. 04/20/18.

<sup>34</sup> "San Mateo County Tobacco Education Coalition By-Laws, Article One, Section Two: Goals." County of San Mateo Health System website, accessed June 7, 2018. [https://www.smchealth.org/sites/main/files/file-attachments/tec\\_bylaws\\_v2\\_2015.pdf](https://www.smchealth.org/sites/main/files/file-attachments/tec_bylaws_v2_2015.pdf)

<sup>35</sup> "San Mateo County Tobacco Education Coalition 2014-2017 Objectives," Tobacco Education Coalition: Advocating change to support a tobacco-free San Mateo County, County of San Mateo Health System website, accessed June 7, 2018. [https://www.smchealth.org/sites/main/files/file-attachments/tec\\_objectives\\_2014-2017\\_12-2016.pdf](https://www.smchealth.org/sites/main/files/file-attachments/tec_objectives_2014-2017_12-2016.pdf)

## Adoption of Smoking Ordinances for Multiunit Housing

Starting with Belmont in 2007,<sup>38</sup> local jurisdictions began to pass laws to protect residents from secondhand smoke. Since then Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, San Mateo, South San Francisco, and the County of San Mateo, for its unincorporated areas, have adopted ordinances that restrict smoking in multiunit housing properties.<sup>39</sup> The towns/cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, and San Carlos do not restrict smoking in their multiunit residences, except in some common areas.<sup>40</sup> Atherton, Hillsborough, and Woodside have no multiunit housing.<sup>41</sup> At present, there are almost 114,000 multiunit residences in the county, of which approximately 94,000 (or 82 percent) are covered by MUH smoking ordinances.<sup>42</sup> (See Appendix B.)

Even though 80 percent of California MUH residents surveyed have indicated that they prefer smoke-free housing<sup>43</sup> and only 6.6 percent of San Mateo County residents smoke,<sup>44</sup> multiunit housing smoking bans remain controversial. The debate centers around the conflict between individual property rights versus the rights of residents to live in a safe, healthy environment.<sup>45, 46</sup> However, no U.S. or California court has found that there is an affirmative right to smoke under either the U.S. Constitution or California Constitution.<sup>47</sup>

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<sup>36</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

<sup>37</sup> “Creating Smokefree Housing. A Model California Ordinance and Checklist,” ChangeLab Solutions website, accessed June 7, 2018. <http://changelabsolutions.org/publications/model-ord-smokefree-housing>

<sup>38</sup> Chen, Serena. American Lung Association in California and Bay Area Smokefree Housing Project. *Belmont Case Study: Belmont, CA Secondhand Smoke/Multi-Unit Housing Ordinance*. <https://www.myctb.org/wst/healthylawrence/livewell/TobaccoFreeLiving/American%20Lung%20Association%20Advocates%20Toolbox/Module-3/Belmont-Case-Study.pdf>

<sup>39</sup> Smoking Ordinances in San Mateo county jurisdictions. (See Footnote 8)

<sup>40</sup> Municipal codes for: Colma <https://www.colma.ca.gov/municipal-code/>, East Palo Alto [https://library.municode.com/ca/east\\_palo\\_alto/codes/code\\_of\\_ordinances](https://library.municode.com/ca/east_palo_alto/codes/code_of_ordinances), Half Moon Bay <http://www.codepublishing.com/CA/HalfMoonBay/>, Menlo Park <http://www.codepublishing.com/CA/MenloPark/>, Millbrae <http://www.codepublishing.com/CA/Millbrae/>, Pacifica [https://library.municode.com/ca/pacifica/codes/code\\_of\\_ordinances](https://library.municode.com/ca/pacifica/codes/code_of_ordinances), Portola Valley [https://library.municode.com/ca/portola\\_valley/codes/code\\_of\\_ordinances](https://library.municode.com/ca/portola_valley/codes/code_of_ordinances), and San Carlos <https://www.codepublishing.com/CA/SanCarlos/>.

<sup>41</sup> Officials in Atherton, Hillsborough, and Woodside: email responses to the Grand Jury.

<sup>42</sup> Officials from cities, towns, and San Mateo County: email responses to the Grand Jury.

<sup>43</sup> “Policy Statements. Policy Statement 12: Smoke-Free Housing Choice,” California Apartment Association website, accessed June 7, 2018. [https://caanet.org/app/uploads/2015/01/CAA\\_Policy\\_Statements\\_2013-with-TOC.pdf](https://caanet.org/app/uploads/2015/01/CAA_Policy_Statements_2013-with-TOC.pdf)

<sup>44</sup> “California Facts and Figures 2016, Over 25 Years of Tobacco Control in California, September 2016,” California Department of Public Health website, accessed June 7, 2018. <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>

<sup>45</sup> Minutes, City of Half Moon Bay City Council, February 6, 2018.

<sup>46</sup> Video, Redwood City City Council, October 2, 2017, Meetings, Agendas, and Minutes, Redwood City website, accessed June 7, 2018. < <http://www.redwoodcity.org/city-hall/city-council/city-council-meetings-agendas-and-minutes>>

<sup>47</sup> Samantha K. Graff, “There Is No Constitutional Right to Smoke: 2008, March 2008.” A Law Synopsis by the Tobacco Control Legal Consortium, Tobacco Control Legal Consortium website, accessed June 7, 2018. <<http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-constitution-2008.pdf>>



Legislative efforts to ban smoking in multiunit housing can take years. For example, in Redwood City it took five years until the city’s MUH smoking ordinance was passed in October 2017.<sup>48</sup> In other municipalities, such as Half Moon Bay, the city council is still considering MUH smoking restrictions as of May 2018.<sup>49</sup>

Multiunit housing smoking ordinances generally provide the following:

- Prohibit smoking (which includes the use of e-cigarettes) of tobacco, recreational marijuana, and other plant materials, in individual units of MUH and all in common areas
- Declare secondhand smoke a “nuisance”
- Require landlords to post no-smoking signage
- Require leases to incorporate smoking restrictions
- Prohibit landlords/property managers from “knowingly permitting” smoking and “knowingly or intentionally” permitting ashtrays
- Provide for fines between \$100 - \$250 for smoking violations

Ordinances vary on certain provisions, such as whether condominiums are included in their definitions of multiunit housing, acceptable distances from building entrances and windows where outdoor smoking is permitted, and whether smoking medical marijuana is exempted from MUH smoking restrictions. For example, the MUH smoking ordinances for the cities of Brisbane, Burlingame, Daly City, and the County of San Mateo for its unincorporated areas do not prohibit smoking medical marijuana in multiunit housing.<sup>50</sup>

## **DISCUSSION**

### **Implementation of ordinances and education**

Successful implementation of the provisions of a multiunit housing smoking ordinance, following its passage, requires residents to be knowledgeable about their rights under the law. Historically, cities have used press releases, mailings, and community meetings to inform the public of the new rules for a period of time immediately after the law has been passed. However, the Grand Jury found that most jurisdictions did not continue engaging the public after the initial awareness campaign, except when ordinances were amended.<sup>51</sup>

MUH smoking ordinances place substantial responsibility for implementation on landlords and property managers. For example, most jurisdictions require landlords to install no-smoking signage, modify leases, and set up any designated smoking areas that they choose to permit at the stated minimum distances from building entrances and windows.<sup>52</sup> However, most city governments have

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<sup>48</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

<sup>49</sup> Zachary Clark, “Half Moon Bay to adopt smoking restrictions,” *San Mateo Daily Journal*, May 17, 2018. [https://www.smdailyjournal.com/news/local/half-moon-bay-to-adopt-smoking-restrictions/article\\_948a18f0-598a-11e8-a4d4-270086bc37e4.html](https://www.smdailyjournal.com/news/local/half-moon-bay-to-adopt-smoking-restrictions/article_948a18f0-598a-11e8-a4d4-270086bc37e4.html)

<sup>50</sup> Smoking Ordinances in San Mateo County jurisdictions. (See Footnote 8)

<sup>51</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>52</sup> Smoking Ordinances in San Mateo County jurisdictions. (See Footnote 8)

neither assisted in this process nor followed up to ensure that these requirements are being met.<sup>53, 54</sup> As a result, many MUH properties lack the required signage and designated smoking areas.<sup>55</sup>

The jurisdictions' websites provide little information to educate residents, landlords, and property managers on their MUH smoking ordinances. It can be challenging to find information online about the ordinances or how to report a violation. The following examples are illustrative:

- The websites for Burlingame, Daly City, Redwood City,<sup>56</sup> the County of San Mateo, and South San Francisco do not contain any summaries of their MUH smoking ordinances. See Appendices C and D for examples of summaries from cities that do provide them.
- All but one of the MUH jurisdictions' websites provide links on their home pages for residents to report common nuisances such as potholes, graffiti, and abandoned shopping carts, but they do not provide any such links for reporting smoking violations.<sup>57</sup>
- Only the websites for Brisbane, San Bruno, and Foster City provide readily accessible information on how to report a violation of an MUH smoking ordinance.<sup>58</sup> See Appendix E for an example of a readily accessible notice.
- When entering search terms such as “smoke” and “smoking” in MUH cities' websites, no information regarding multiunit housing smoking ordinances appears in either Burlingame's or Daly City's websites.<sup>59</sup>
- San Bruno and the County of San Mateo (on the County Health System website) are the only MUH jurisdictions that provide information about the TPP or TEC or how to contact them regarding multiunit housing smoking issues.<sup>60</sup>

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<sup>53</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>54</sup> “Six-Month Apartment Smoking Prohibitions Review” report to Foster City City Council. June 1, 2015.

<https://fostercityca.civicclerk.com/web/UserControls/DocPreview.aspx?p=1&aoid=306>

<sup>55</sup> On-site observations in Belmont, Daly City, and Foster City.

<sup>56</sup> Redwood City's smoking ordinance is partially implemented: effective January 1, 2018 for all new units and January 1, 2019 for existing units in MUH properties.

<sup>57</sup> The websites for the jurisdictions of Belmont <https://www.belmont.gov>, Brisbane <http://brisbaneca.org>, Foster City <https://www.fostercity.org>, Redwood City <http://www.redwoodcity.org>, San Bruno <https://www.sanbruno.ca.gov>, the City of San Mateo <https://www.cityofsanmateo.org>, San Mateo County and South San Francisco <http://www.ssf.net> have a “How Do I ...” or “I Want To ...” link on their websites, as well as Daly City's “iHelp” link <http://www.dalycity.org>, that lead to information on how to report nuisances such as barking dogs, loud parties, abandoned mattresses, and shopping carts. However, these links do not provide information on how to report MUH smoking violations. Burlingame's website links to Code Compliance from its home page <https://www.burlingame.org>.

<sup>58</sup> Websites for Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, City of San Mateo, San Mateo County, and South San Francisco (See Footnote 56).

<sup>59</sup> City of Burlingame website, accessed June 7, 2018: <<https://www.burlingame.org>> City of Daly City website, accessed June 7, 2018. <<http://www.dalycity.org>>

<sup>60</sup> Websites for Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, City of San Mateo, San Mateo County, and South San Francisco. (See Footnote 56)

The foregoing examples are summarized in Figure No. 1, below.

**Figure No. 1: Website Content of Jurisdictions with MUH Smoking Ordinances**

Jurisdiction	Search for “Smoke/Smoking” yields smoking ordinance information?	Provides summary of smoking ordinance?	Provides information on how to make complaints about MUH smoking?	Provides links to report specific nuisances other than smoking?	Provides TPP/TEC info?
Belmont	Yes	Yes	No	Yes	No
Brisbane	Yes	Yes	Yes	Yes	Yes
Burlingame	No	No	No	No	No
Daly City	No	No	No	Yes	No
Foster City	Yes	Yes	Yes	Yes	No
Redwood City <sup>61</sup>	Yes	No	No	Yes	No
San Bruno	Yes	Yes	Yes	Yes	Yes
City of San Mateo	Yes	Yes	No	Yes	No
South San Francisco	Yes	No	No	Yes	No
County of San Mateo	Yes	No	Yes	Yes	Yes

In addition to inadequate website information, Brisbane, Burlingame, Foster City, Redwood City, and San Bruno, the County of San Mateo, and South San Francisco do not require that their mandatory no-smoking signage contain a phone number for reporting violations. The City of San Mateo’s ordinance does not require that no-smoking signage be posted.<sup>62</sup>

### **Enforcement and Compliance**

Those jurisdictions with MUH smoking ordinances typically assign the responsibility for enforcement of the ordinances to either their law enforcement or code enforcement personnel. Such enforcement officers generally do not issue citations for first offense violations of MUH smoking ordinances. In fact, it is difficult for them to issue citations at all because they must (1) observe the violation in progress, (2) see other compelling evidence that a violation had occurred, or (3) have the alleged violator admit to law or code enforcement that he or she had been smoking in violation of the MUH smoking ordinance.<sup>63</sup>

Officers interviewed by the Grand Jury stated that most of the alleged MUH smokers they spoke with in response to a complaint said they were unfamiliar with the smoking ordinance restrictions. Because of this, the officers primarily seek to educate and warn those residents about the requirements of MUH

<sup>61</sup> Redwood City’s smoking ordinance is partially implemented: effective January 1, 2018 for all new units and January 1, 2019 for existing units in MUH properties.

<sup>62</sup> Smoking Ordinances in San Mateo County jurisdictions. (See Footnote 8)

<sup>63</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

smoking ordinances and potential enforcement.<sup>64</sup> In several jurisdictions, when the alleged smoking offender was not at home, officers would leave a letter, brochure, or door hanger, if their city has one, explaining the smoking ordinance requirements.<sup>65</sup> Complaints data reviewed by the Grand Jury indicates that very few individuals who were contacted by officers regarding alleged smoking ordinance violations were the subjects of subsequent complaints, suggesting that the officers' education approach was effective.<sup>66</sup>

According to enforcement officers interviewed by the Grand Jury, even if residents are aware of their rights, they may be reluctant to make complaints because of fear of retaliation from smoking neighbors or landlords.<sup>67</sup> While Belmont, Brisbane, Daly City, Redwood City, San Bruno, and the County of San Mateo's ordinances expressly prohibit retaliation, the MUH smoking ordinances for Burlingame, Foster City, the City of San Mateo, and South San Francisco do not.<sup>68</sup> The materials published by MUH jurisdictions also do not inform residents that they may complain anonymously about smoking violations. Vulnerable residents, such as undocumented immigrants, may fear that a complaint could result in disclosure, eviction, or deportation.<sup>69</sup>

Local officials interviewed by the Grand Jury opined that enforcement of MUH smoking ordinances might be helped by the use of new smartphone applications (apps) that enable users to take a photo of nuisance code infractions in their jurisdictions, then submit it instantly to enforcement officers. Once received, officers can review the information and follow up with onsite visits. Such photographic evidence of a smoking violation in progress could be deemed the equivalent of an officer viewing the violation, thus allowing the officer to issue a citation to the smoker.<sup>70</sup>

At present, Burlingame, Foster City, Redwood City, San Bruno, the City of San Mateo, South San Francisco, and the County of San Mateo provide such apps (Access Burlingame, Foster City Access, myRWC, San Bruno Responds, mySanMateo,<sup>71</sup> Engage SSF,<sup>72</sup> and Report It! San Mateo County,<sup>73</sup> respectively). Officials in the City of San Mateo have used their app only to receive reports on illegal dumping and graffiti, but expressed enthusiasm about its potential to use photos as evidence of other violations including smoking.<sup>74</sup>

In the course of its investigation, the Grand Jury learned that certain multiunit properties generate a greater number of smoking complaints than others.<sup>75, 76</sup> Few jurisdictions with MUH smoking

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<sup>64</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Smoking Ordinances in San Mateo County jurisdictions. (See Footnote 8)

<sup>69</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>70</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>71</sup> Officials in the City of San Mateo: interview by the Grand Jury.

<sup>72</sup> Official in South San Francisco: interview by the Grand Jury.

<sup>73</sup> Search results for phone applications for all MUH smoking ordinance jurisdictions in San Mateo County.

<sup>74</sup> Officials in City of San Mateo: interview by the Grand Jury.

<sup>75</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>76</sup> Data on complaints of smoking in MUH submitted to the Grand Jury by officials from local code and law enforcement agencies.

ordinances review the data they have in order to identify particular properties where multiple smoking ordinance violations are being reported. In addition, enforcement officers rarely follow up with landlords/property managers at MUH properties where smoking complaints have been received to inform them of the reported violations. Even in jurisdictions where smoking complaints data may be available, the information is not routinely shared with the TPP or TEC.<sup>77</sup> Improvements in complaints data collection, analysis, and sharing could help increase compliance with the ordinances, evaluate trends in smoking complaints, and ultimately protect MUH residents as these laws intended.

In addition to reporting a violation of multiunit housing smoking ordinances to enforcement officers, residents who are exposed to secondhand smoke have several other options:

- Talking to the smoker
- Addressing the issue with the landlord
- Contacting the TPP's smoking hotline (650) 573-3777<sup>78</sup>
- Taking independent legal action based on a "nuisance" claim<sup>79</sup>

### **TPP and TEC Roles**

With an increase in funding allocated by the California Department of Public Health's Tobacco Control Program from \$150,000 in FY 2016-2017 to \$784,000 in FY 2017-2018, the Tobacco Prevention Program and Tobacco Education Coalition (through increased TPP funding) will have the resources to significantly increase their activities in support of smoke-free multiunit housing.

In addition to the areas of expansion already identified by the TPP (See Background) the TPP could also use these funds to improve the content of its web pages. At present, the TPP web pages provide guidance for tenants and landlords seeking to eliminate exposure to secondhand smoke. However, they do not:

- Summarize a resident's rights and obligations under the relevant MUH ordinance
- Provide links to MUH jurisdictions' smoking ordinances
- Advise multiunit housing residents how to complain about violations of their specific jurisdiction's MUH smoking ordinance

With its additional funding, the TPP could provide the above-referenced information and links for residents in jurisdictions with MUH smoking ordinances. In addition, the TPP could devote more resources to obtaining complaints data from jurisdictions that have MUH smoking ordinances in order to consolidate that information across the county, develop trend information, and assist jurisdictions in analyzing it. To date the TPP has reported only limited success in obtaining such data from jurisdictions.<sup>80</sup>

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<sup>77</sup> Officials from local code and law enforcement agencies: interviews by the Grand Jury.

<sup>78</sup> "Smoke-Free Housing" County of San Mateo Health System website, accessed June 7, 2018. <https://www.smchealth.org/driftingsmoke> .

<sup>79</sup> "Legal Options for Tenants Suffering from Drifting Tobacco Smoke" Tobacco Free CA website, accessed June 7, 2018. < [http://tobaccofreeca.com/wp-content/uploads/2017/11/G-Legal-Options\\_Smokefree-Support-for-Residenets\\_Making-Smokefree-Laws-Work\\_Disability-Factsheet.pdf](http://tobaccofreeca.com/wp-content/uploads/2017/11/G-Legal-Options_Smokefree-Support-for-Residenets_Making-Smokefree-Laws-Work_Disability-Factsheet.pdf)>

<sup>80</sup> Official of the San Mateo County Health System: interview by the Grand Jury.

## CONCLUSION

Undoubtedly, progress has been made through these ordinances to protect MUH residents by giving them clear, legal rights to seek protection from the dangers of secondhand smoke exposure. At present, the County and eight of its twenty cities have passed MUH smoking ordinances covering 82 percent of the county's multiunit households.

However, it is difficult to determine the impact that MUH smoking ordinances have made because the TPP, which could consolidate complaints data across the jurisdictions and look for trend information, has reported only limited success in obtaining such data from jurisdictions. Further, not all jurisdictions with MUH smoking ordinances interviewed by the Grand Jury systematically compile complaints data. As a result, decisions on how best to increase compliance with and enforce the ordinances can be difficult to make.

The Tobacco Prevention Program and Tobacco Education Coalition can support compliance by providing signage with a phone number to report violations and reaching out to residents to explain their rights and obligations under the ordinances, as well as assisting jurisdictions with efforts to analyze complaints data.

## FINDINGS

**F1:** Since 1967, exposure to secondhand smoke has killed approximately 2.5 million nonsmokers of all ages in the United States.

**F2:** Enforcement officers report that their primary focus when responding to MUH smoking violation complaints is to educate alleged smokers regarding the requirements of the smoking ordinances, and that most alleged smokers report being unfamiliar with the requirements of the ordinance.

**F3:** The Belmont, Brisbane, Daly City, Redwood City, San Bruno, and the County of San Mateo MUH smoking ordinances expressly prohibit retaliation against individuals who report a violation; however, the MUH smoking ordinances for Burlingame, Foster City, the City of San Mateo, and South San Francisco do not.

**F4:** Searches for “smoking” or “smoke” using the website search tool for Burlingame and Daly City<sup>81</sup> do not yield any information regarding their MUH smoking ordinances, whereas the search tools for each of the other jurisdictions with MUH smoking ordinances do. (See Website Content Table below, column F4.)

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<sup>81</sup> City of Burlingame website, accessed June 7, 2018. <<http://burlingame.org>> City of Daly City website, accessed June 7, 2018. <<http://www.dalycity.org>>

**F5:** The websites for Burlingame, Daly City, Redwood City,<sup>82</sup> the County of San Mateo, and South San Francisco do not contain summaries of their MUH smoking ordinances. The websites for each of the other jurisdictions with MUH smoking ordinances do. (See Website Content Table below, column F5.)

**F6:** The websites for Belmont, Burlingame, Daly City, Redwood City,<sup>83</sup> the City of San Mateo, and South San Francisco do not provide specific information on how to make complaints regarding MUH smoking violations. The websites for each of the other jurisdictions with MUH smoking ordinances do. (See Website Content Table below, column F6.)

**F7:** The websites for the cities of Belmont, Brisbane, Foster City, Redwood City,<sup>84</sup> San Bruno, San Mateo, and South San Francisco, as well as the County's Health System website (for unincorporated San Mateo County) have links on their home pages that lead to information on how to report specific types of nuisances such as barking dogs, loud parties, abandoned mattresses, and shopping carts. However, these links do not provide information on how to report MUH smoking violations. Burlingame's website links to Code Compliance from its home page.<sup>85</sup> (See Website Content Table below, column F7.)

**F8:** The websites for Brisbane, San Bruno, and the County of San Mateo (on the County Health System website) provide information about the TPP or TEC or how to contact them regarding an MUH smoking issue. The websites for the other MUH jurisdictions do not. (See Website Content Table below, column F8.)

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<sup>82</sup> Redwood City's smoking ordinance is partially implemented: effective January 1, 2018 for all new units and January 1, 2019 for existing units in MUH properties.

<sup>83</sup> Redwood City's smoking ordinance is partially implemented: effective January 1, 2018 for all new units and January 1, 2019 for existing units in MUH properties.

<sup>84</sup> Ibid.

<sup>85</sup> < <https://www.belmont.gov> > < <http://brisbaneca.org> > < <https://www.burlingame.org> > < <https://www.fostercity.org> > < <http://www.redwoodcity.org> > < <https://www.sanbruno.ca.gov> > < <https://www.cityofsanmateo.org> > < <http://www.ssf.net> > < <http://www.dalycity.org> >

## Website Content of Jurisdictions with MUH Smoking Ordinances

Jurisdiction	F4. Search for “Smoke/Smoking” yields smoking ordinance information?	F5. Provides summary of smoking ordinance?	F6. Provides information on how to make complaints about MUH smoking?	F7. Provides links to report specific nuisances <u>other than</u> smoking?	F8. Provides TPP/TEC info?
Belmont	Yes	Yes	No	Yes	No
Brisbane	Yes	Yes	Yes	Yes	Yes
Burlingame	No	No	No	No	No
Daly City	No	No	No	Yes	No
Foster City	Yes	Yes	Yes	Yes	No
Redwood City <sup>86</sup>	Yes	No	No	Yes	No
San Bruno	Yes	Yes	Yes	Yes	Yes
City of San Mateo	Yes	Yes	No	Yes	No
South San Francisco	Yes	No	No	Yes	No
County of San Mateo	Yes	No	Yes	Yes	Yes

**F9:** In all MUH jurisdictions, the issuance of citations for violations of MUH smoking ordinances is limited by the need to (1) observe the violation in progress, (2) see other compelling evidence that a violation had occurred, or (3) have the alleged violator admit to law or code enforcement that he or she had been smoking in violation of the MUH smoking ordinance.

**F10:** The towns/cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, and San Carlos do not have smoking ordinances that restrict smoking in their multiunit residences, except in some common areas. Atherton, Hillsborough, and Woodside have no multiunit housing.

**F11:** The MUH smoking ordinances for the cities of Brisbane, Burlingame, Daly City, and the County of San Mateo for its unincorporated areas do not prohibit smoking medical marijuana in multiunit housing.

**F12.** The TPP web pages do not include the following information: (a) a summary of residents’ rights and obligations under the MUH smoking ordinances in their jurisdictions, (b) links to each jurisdiction’s MUH smoking ordinance, and (c) information on how residents of multiunit housing can report violations of MUH smoking ordinances in their specific jurisdictions.

**F13:** TPP reported limited success in obtaining MUH smoking complaints data from jurisdictions, making it difficult to assess the efficacy of MUH ordinances and develop trend information.

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<sup>86</sup> Redwood City’s smoking ordinance is partially implemented: effective January 1, 2018 for all new units and January 1, 2019 for existing units in MUH properties.



**F14:** The funding allocation from the California Department of Public Health’s Tobacco Control Program for TPP increased from \$150,000 in FY 2016-2017 to \$784,000 in FY-2017-2018.

## **RECOMMENDATIONS**

**R1:** Each jurisdiction with an MUH smoking ordinance (Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, City of San Mateo, South San Francisco and the County of San Mateo for its unincorporated areas) should improve their educational outreach to residents regarding such ordinances, including at a minimum each of the following, by no later than March 31, 2019:

- Publishing summaries of residents’ rights and obligations under their MUH smoking ordinances, including on their websites
- Publishing information on how to report violations of MUH smoking ordinances, including on their websites
- Informing residents that they can report violations of MUH smoking ordinances anonymously
- Informing residents, including on their websites, that it is unlawful for any landlord or other person to take any retaliatory action against them for having reported a violation of an MUH smoking ordinance
- Ensuring that information about reporting MUH smoking ordinance violations is just as readily accessible on their websites as information about other forms of nuisance
- Ensuring that, upon typing the word “smoking,” or the like in the search features of their websites, users are directed to all information about the jurisdiction’s MUH smoking ordinance and related complaints process

**R2:** The cities of Burlingame, Foster City, San Mateo, and South San Francisco should amend their MUH smoking ordinances, by no later than December 31, 2018, to prohibit retaliation against individuals who report violations of the MUH smoking ordinances.

**R3:** The cities of Brisbane, Burlingame, Daly City, and the County of San Mateo for its unincorporated areas should amend their MUH smoking ordinances, by no later than December 31, 2018, to prohibit smoking medical marijuana in multiunit housing.

**R4:** Each jurisdiction with an MUH smoking ordinance (Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, City of San Mateo, South San Francisco, and the County of San Mateo for its unincorporated areas) should, by June 30, 2019, evaluate ways to improve its collection and retrieval of complaints of MUH smoking violations so that:

- Information regarding each complaint of an MUH smoking ordinance violation, and the response to it (complaints data) is recorded in a searchable electronic database
- The jurisdiction can evaluate trends in the complaints data and the efficacy of the MUH smoking ordinance

**R5:** Each jurisdiction with an MUH smoking ordinance should, by December 31, 2018, make their complaints data (with names of alleged violators deleted) available to the TPP and TEC on at least an annual basis.

**R6:** Each jurisdiction with an MUH smoking ordinance should, by December 31, 2018, conduct a review of current methods used by the public to report MUH smoking violations and possible improvements (including online reporting on their websites and use of mobile phone apps) to ensure ease of reporting.

**R7:** The towns/cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, and San Carlos should, by December 31, 2018, hold public hearings to evaluate issues and hear residents' views on restricting smoking in multiunit housing in their jurisdictions.

**R8:** TPP and TEC should update their web pages by March 31, 2019, to include the following:

- Links to MUH jurisdictions' smoking ordinances and their summaries/FAQs
- Information on how to report violations of MUH smoking ordinances in each applicable jurisdiction

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the City Councils and Board of Supervisors, as applicable, of the following:

- Each of the City of Belmont, the City of Brisbane, the City of Burlingame, the City of Daly City, the City of Foster City, the City of Redwood City, the City of San Bruno, City of San Mateo, the City of South San Francisco, and San Mateo County Board of Supervisors to respond to: R4, R5, and R6.
- Each of the City of Burlingame, City of Foster City, City of San Mateo, and City South San Francisco to respond to R2.
- Each of the City of Brisbane, City of Burlingame, City of Daly City, and the County of San Mateo to respond to R3.
- Each of the Town of Colma, City of East Palo Alto, City of Half Moon Bay, City of Menlo Park, City of Millbrae, City of Pacifica, Town of Portola Valley, and City of San Carlos to respond to R7.
- The San Mateo County Board of Supervisors to respond to R8.

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

## **METHODOLOGY**

The Grand Jury reviewed health studies, scientific papers, government fact sheets and reports, national, state, county, and city statistics, smoking ordinances of cities in San Mateo County, data on smoking violations collected by city code and law enforcement officials, by-laws and other documents pertaining to the County's Tobacco Prevention Program and Tobacco Education Coalition, state laws covering smoking, and materials from the following organizations: California Apartment Association, Executive Council of Homeowners, Breathe California, Tobacco Free CA, ChangeLab Solutions, American Lung Association, and Americans for Nonsmokers' Rights.

The Grand Jury interviewed officials in the following cities:

Belmont  
Brisbane  
Daly City  
Foster City  
San Mateo  
South San Francisco

In addition, the Grand Jury interviewed representatives of San Mateo County Health System, as well as the nonprofit California Apartment Association.

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**APPENDIX A**

**MULTIUNIT HOUSING SMOKING ORDINANCES IN SAN MATEO COUNTY**

Jurisdiction	Contact #	Penalty	Recreational Marijuana	Medical Marijuana	E-cigs Vaping	Condos Included	Retaliation Prohibited	Notice in Lease	Ordinance Link
<b>Belmont</b>	Business hours 650.637.2968 After hours 650.595.7400	Warning Fine \$100+	Prohibited	Prohibited	Prohibited	Yes	Yes	Yes	<a href="https://library.municode.com/ca/belmont/codes/code_of_ordinances?nodeId=CICO_CH20.5RESM">https://library.municode.com/ca/belmont/codes/code_of_ordinances?nodeId=CICO_CH20.5RESM</a>
<b>Brisbane</b>	415.508.2172	Warning Fine \$100+	Prohibited	Exempted	Prohibited	Yes	Yes	Yes	<a href="https://library.municode.com/ca/brisbane/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.46SMMUITRE">https://library.municode.com/ca/brisbane/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.46SMMUITRE</a>
<b>Burlingame</b>	650.558.7208	Refers to other parts of muni code	Prohibited	Exempted	Not specified	Yes	No	No	<a href="http://qcode.us/codes/burlingame/view.php?topic=8-8_18&amp;showAll=1&amp;frames=on">http://qcode.us/codes/burlingame/view.php?topic=8-8_18&amp;showAll=1&amp;frames=on</a>
<b>Daly City</b>	650.991.8119	Warning Fine \$100+	Prohibited	Exempted	Prohibited	No	Yes	Yes	<a href="https://library.municode.com/ca/daly_city/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.36RESM">https://library.municode.com/ca/daly_city/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.36RESM</a>
<b>Foster City</b>	650.286.3300	Fine up to \$250 1st violation	Prohibited	Prohibited	Prohibited	Yes	No	Yes	<a href="http://www.codepublishing.com/CA/FosterCity/?FosterCity08/FosterCity0805.html">http://www.codepublishing.com/CA/FosterCity/?FosterCity08/FosterCity0805.html</a>
<b>Redwood City*</b>	Business hours 650.780.7350 After hours 650.780.7118	Fine between \$250 - \$1,000	Prohibited	Prohibited	Prohibited	Yes	Yes	Yes	<a href="https://library.municode.com/ca/redwood_city/codes/code_of_ordinances?nodeId=CH15SMRE">https://library.municode.com/ca/redwood_city/codes/code_of_ordinances?nodeId=CH15SMRE</a>
<b>San Bruno</b>	County Hotline 650.573.3777 or 650.616.7074	Warning Fine \$100+	Prohibited	Prohibited	Prohibited	Yes	Yes	Yes	<a href="https://qcode.us/codes/sanbruno/view.php?topic=6-6_56&amp;showAll=1&amp;frames=off">https://qcode.us/codes/sanbruno/view.php?topic=6-6_56&amp;showAll=1&amp;frames=off</a>
<b>San Mateo</b>	650.522.7700	Warning Fine \$100+	Prohibited	Prohibited	Prohibited	Yes	No	No	<a href="http://qcode.us/codes/sanmateo/view.php?topic=7-7_40&amp;showAll=1&amp;frames=on">http://qcode.us/codes/sanmateo/view.php?topic=7-7_40&amp;showAll=1&amp;frames=on</a>
<b>South San Francisco</b>	650.829.6645	Follow Public Nuisance Law Penalties	Prohibited	Prohibited	Prohibited	Yes	No	No	<a href="http://qcode.us/codes/southsanfrancisco/view.php?topic=8-8_50&amp;showAll=1&amp;frames=off">http://qcode.us/codes/southsanfrancisco/view.php?topic=8-8_50&amp;showAll=1&amp;frames=off</a>
<b>Unincorporated San Mateo County</b>	650.573.3777	Fine up to \$100 1st violation	Prohibited	Exempted	Prohibited	Yes	Yes	Yes	<a href="https://library.municode.com/ca/san_mateo_county/code_of_ordinances?nodeId=TIT4SAHE_CH4.96SM">https://library.municode.com/ca/san_mateo_county/code_of_ordinances?nodeId=TIT4SAHE_CH4.96SM</a>
<b>Notes</b>		Fines increase with subsequent infractions	Marijuana smoke considered same as any smoke						
*Restrictions effective 1/1/2018 for all new units and 1/1/2019 for all existing units in multiunit housing in Redwood City.									



**APPENDIX B**

<b>Number of Multiunit Housing Residences in San Mateo County</b>	
<b>Jurisdiction</b>	<b>Total MUH</b>
San Mateo	22,511
Daly City	16,626
Redwood City	15,026
Foster City	8,662
South San Francisco	8,506
San Bruno	7,424
Burlingame	6,693
Menlo Park	4,837
Belmont	4,559
Pacifica	3,945
San Carlos	3,440
East Palo Alto	3,395
Millbrae	3,036
Unincorporated County	2,555
Half Moon Bay	1,516
Brisbane	766
Portola Valley	263
Colma	212
Atherton	0
Woodside	0
Hillsborough	0
<b><u>TOTAL MUH</u></b>	<b><u>113,972</u></b>

(Includes apartments, condominiums, townhomes,  
duplexes, triplexes and fourplexes)

## APPENDIX C



### **Foster City Smoking Ordinance**

#### **Frequently Asked Questions – Multi-Family Residential Properties (Apartments, Condominiums, Townhomes)**

- Q. Are all residential properties in Foster City impacted by this ordinance?**
- A. No. The ordinance applies to multi-family units (apartments, condominiums and townhomes) that share common walls, ventilation, floors, or ceilings.
- Q. Where is smoking prohibited?**
- A. For apartments, condominiums and townhomes, smoking is prohibited within 30 feet of all entrances and doorways, in common areas and inside residential units and on all balconies and patios. This ordinance goes into effect immediately for common areas and all new leases. Units with existing leases are exempt until the lease agreement expires or twelve months after the ordinance's effective date. (The ordinance effective date was 11/5/2014.) Smoking is also prohibited on all sidewalks in or adjacent to common interest developments and apartments.
- Q. Where is smoking permitted?**
- A. Smoking is permitted in designated smoking areas. Outdoor designated areas must be located more than 30 feet from an entrance/doorway and be marked by conspicuous signage. Interior smoking is allowed only if the area is fully enclosed, separately ventilated, and not the only space available for a particular activity or service.
- Q. Are electronic cigarettes included in the ordinance?**
- A. Yes. The city defines "smoke or smoking" as inhaling or exhaling upon, burning or carrying any lighted cigarette, cigar, pipe, hookah, weed, plant or other combustible substance used for the personal habit commonly known as smoking or an activated electronic cigarette or similar device used for the personal habit commonly known as vaping.
- Q. When does the ordinance go into effect?**
- A. The ordinance went into effect on November 6, 2014, for apartment buildings and December 17, 2014, for condominiums and townhomes. Until January 1, 2015, first time violators will be subjected to a warning only.
- Q. What are the fines and penalties?**
- A. Any person who violates the ordinance may be cited for an infraction, punishable by:
- A fine not exceeding two hundred fifty dollars (\$250) for a first violation
  - A fine not exceeding five hundred dollars (\$500) for a second violation within one year
  - A fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year

**Q. How will the ordinance be enforced?**

A. Violations of the notification requirements or designation of smoking areas should be addressed to the Foster City Community Development Department at 650- 286-3225 or [planning@fostercity.org](mailto:planning@fostercity.org). To report a violation in progress (“on-view violation”) of the ordinance, call the Police Department at 650-286-3300.

**Q. What are the responsibilities of apartment managers or homeowners associations under the ordinance?**

A. Each owner, operator, manager or other person having control of places within which smoking is regulated shall be in compliance upon conspicuously posting “No Smoking” signs with letters not less than one inch high or the international “No Smoking” symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. At least one sign shall be placed at the entrance to every applicable facility. The City has provided signage guidance at its website (see link at the end of this document). Property owners and operators are also required to notify residents of the new law using a noticing method deemed appropriate by the property owners or operators.

**Q. Can I establish non-smoking policies that are stronger than what is required under the ordinance?**

A. Yes. The ordinance does not prevent property owners from establishing more stringent non-smoking requirements.

**Q. If I rent out a single family home, is smoking allowed in that residence?**

A. Yes. The ordinance applies only to residential units that share walls, ceilings or floors.

**Q. What happens if a resident is complaining about drifting smoke from another unit?**

A. The best course of action is to contact the smoker to remind them that smoking is not permitted in or around residential units that share common walls, ceilings or floors and to inform them of the location of designated smoking areas on the property. If the resident continues to smoking in the unit, violations in progress (“on-view violations”) of the ordinance can be reported to the Police Department at 650-286-3300.

**Q. Where can I go for more information on this ordinance and resources for implementing a non-smoking multi-unit residential community?**

A. General questions about the ordinance may be addressed to Management Analyst Andra Lorenz at 650-286-3215 or [alorenz@fostercity.org](mailto:alorenz@fostercity.org). Questions about the ordinance’s signage and notification requirements or designation of smoking areas may be addressed to the Foster City Community Development Department at 650-286-3225 or [planning@fostercity.org](mailto:planning@fostercity.org). To report a violation in progress (“on-view violation”) of the ordinance, call the Police Department at 650- 286-3300. California Apartment Association (Tri-County) also has resources available to members and can be contacted at (408) 342-3500.

More information is also available at Foster City’s Smoking Ordinance Resource Page:

[www.fostercity.org/departmentsanddivisions/citymanager/smokingordinanceupdate.cfm](http://www.fostercity.org/departmentsanddivisions/citymanager/smokingordinanceupdate.cfm)

\*The California Apartment Association served as a resource in development of this document.



## Did You Know the City Has a Smoking Ordinance?

### WHAT IS COVERED BY THE ORDINANCE?

The City has adopted a new ordinance to regulate exposure to secondhand smoke throughout the City, including in most public places and in multi-unit residences such as apartments, condominiums, and townhomes. Smoking is broadly defined to include any lighted tobacco or nicotine product, weed or plant, including hookah and marijuana, whether delivered by cigarette, pipe, cigar, or any electronic device (vaping).



### WHERE IS SMOKING PROHIBITED?

After a 14-month grace period that expires on **February 22, 2018**, smoking is prohibited:

- In multi-unit residences (including attached patios and balconies), defined as including more than one dwelling unit;



### Where is Smoking Prohibited cont'd

- In multi-unit residence common areas, such as halls, stairwells, paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, swimming pools, and parking areas.



In most public places in the City, as of **December 22, 2016**, smoking is prohibited:

- In most places of employment, including indoor and outdoor areas, such as businesses, construction sites, employee lounges and break rooms, conference and banquet rooms, bingo and gaming facilities, health facilities, warehouses, retail and wholesale tobacco shops, and child care facilities;

Where is Smoking Prohibited cont'd

- In most public places, such as plazas, parking lots, malls, stadiums, parks, playgrounds, farmer's markets, and fairs;



- In service areas, such as ATMs, bank teller windows, ticket lines, bus stops, and cab stands;
- In 90% of all hotel and motel guest rooms.



WHERE IS SMOKING ALLOWED?

- Effective February 22, 2018, smoking is allowed only in designated outdoor smoking areas that are at least 20' from operable doors or windows.



As of **December 22, 2016**, smoking is allowed:

- In single family homes, rooms for rent in single family homes, and detached in-law units;
- In designated outdoor smoking areas that are at least 20' from operable doors or windows;
- On streets, sidewalks, and other outdoor areas that are at least 20' from operable doors and windows or locations where smoking is prohibited, or if the person is actively moving to another destination.

If you have any questions or if you have a smoking complaint please contact the following:

**Step 1:**

Tobacco Prevention Program San Mateo County Health System 310 Harbor Boulevard

Belmont, CA 94002

Tel: (650) 573-3777

Fax: (650) 802-6440

Email: [tobaccoprevention@smcgov.org](mailto:tobaccoprevention@smcgov.org)



If your inquiry is not resolved:

**Step 2:**

Call Code Enforcement at (650) 616- 7074. Please leave your contact information so City staff can return your call and assist in resolving the issue.

If the issue isn't resolved, the City may cite for an infraction (\$100 fine), impose an administrative fine (starting at \$100), or civil fines (starting at \$250).

Visit this website for helpful information and resources:

<http://www.smchealth.org/driftingsmoke>

# City of Brisbane Apartments, Condos, & Town Homes Residences Are Going Smoke Free!

**Smoking will be prohibited in:**

**Individual Units**

**Balconies,  
Patios and Decks**

**Common Area**



**Brisbane Municipal Code Chapter 8.46  
Enforceable June 1, 2017**

**Contact Code Enforcement Officer Moneda to  
report violations: (415) 508-2172  
mmoneda@ci.brisbane.ca.us**





August 28, 2018

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

Dear Judge Swope,

Thank you for the opportunity to respond to the Grand Jury report entitled "Smoke-Free Multiunit Housing: No Ifs, Ands, Or Butts." The City of Belmont's required responses, which were approved by the City Council on this date, are listed below:

**Grand Jury Findings:**

F1. Since 1967, exposure to secondhand smoke has killed approximately 2.5 million nonsmokers of all ages in the United States.

F2. Enforcement officers report that their primary focus when responding to MUH smoking violation complaints is to educate alleged smokers regarding the requirements of the smoking ordinances, and that most alleged smokers report being unfamiliar with the requirements of the ordinance.

F3. The Belmont, Brisbane, Daly City, Redwood City, San Bruno, and the County of San Mateo MUH smoking ordinances expressly prohibit retaliation against individuals who report a violation; however, the MUH smoking ordinances for Burlingame, Foster City, the City of San Mateo, and South San Francisco do not.

F4. Searches for "smoking" or "smoke" using the website search tool for Burlingame and Daly City do not yield any information regarding their MUH smoking ordinances, whereas the search tools for each of the other jurisdictions with MUH smoking ordinances do.

F5. The websites for Burlingame, Daly City, Redwood City, the County of San Mateo, and South San Francisco do not contain summaries of their MUH smoking ordinances. The websites for each of the other jurisdictions with MUH smoking ordinances do.

F6. The websites for Belmont, Burlingame, Daly City, Redwood City, the City of San Mateo, and South San Francisco do not provide specific information on how to make complaints regarding MUH smoking violations. The websites for each of the other jurisdictions with MUH smoking ordinances do.

F7. The websites for the cities of Belmont, Brisbane, Foster City, Redwood City, San Bruno, San Mateo, and South San Francisco, as well as the County's Health System website (for unincorporated San Mateo County) have links on their home pages that lead to information on how to report specific types of nuisances such as barking dogs, loud parties, abandoned mattresses, and shopping carts. However, these links do not provide information on how to report MUH smoking violations. Burlingame's website links to Code Compliance from its home page.

F8. The websites for Brisbane, San Bruno, and the County of San Mateo (on the County Health System website) provide information about the TPP or TEC or how to contact them regarding an MUH smoking issue. The websites for the other MUH jurisdictions do not.

F9. In all MUH jurisdictions, the issuance of citations for violations of MUH smoking ordinances is limited by the need to (1) observe the violation in progress, (2) see other compelling evidence that a violation has occurred, or (3) have the alleged violator admit to law or code enforcement that he or she had been smoking in violation of the MUH smoking ordinance.

F10. The towns/cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, and San Carlos do not have smoking ordinances that restrict smoking in their multiunit housing.

F11. The MUH smoking ordinances for the cities of Brisbane, Burlingame, Daly City, and the County of San Mateo for its unincorporated areas do not prohibit smoking medical marijuana in multiunit housing.

F12. The TPP web pages do not include the following information: (a) a summary of residents' rights and obligations under the MUH smoking ordinances in their jurisdictions, (b) links to each jurisdiction's MUH smoking ordinances, and (c) information on how residents of multiunit housing can report violations of MUH smoking ordinances in their specific jurisdictions.

F13. TPP reported limited success in obtaining MUH smoking complaints data from jurisdictions, making it difficult to assess the efficacy of MUH ordinances and develop trend information.

F14. The funding allocation from the California Department of Public Health's Tobacco Control Program for TPP increased from \$150,000 in FY 2016-2017 to \$784,000 in FY 2017-2018.

#### **City of Belmont Response to Findings 1-14:**

**The City of Belmont generally agrees with the Grand Jury findings, although in some cases lacks the data to confirm or refute assertions.**

Grand Jury Recommendations requiring City of Belmont response:

R4. Each jurisdiction with an MUH smoking ordinance (Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, City of San Mateo, South San Francisco, and the County of San Mateo for its unincorporated areas) should by June 30, 2019, evaluate ways to improve its collection and retrieval of complaints of MUH smoking violations so that:



- Information regarding each complaint of an MUH smoking ordinance violation, and the response to it (complaints data) is recorded in a searchable electronic database.
- The jurisdiction can evaluate trends in the complaints data and the efficacy of the MUH smoking ordinance.

R5. Each jurisdiction with an MUH smoking ordinances should, by December 31, 2018, make their complaints data (with names of alleged violators deleted) available to the TPP and TEC on at least an annual basis.


R6. Each jurisdiction with an MUH smoking ordinance should, by December 31, 2018, conduct a review of current methods used by the public to report MUH smoking violations and possible improvements (including online reporting on the websites and use of mobile phone apps) to ensure ease of reporting.

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**City of Belmont Response to Recommendations R4, R5 and R6:**

**The City of Belmont is at the forefront of this issue and already has the applicable Civil Grand Jury recommendations implemented including upgrading reporting instructions on our website and data gathering capabilities on our Records Management System.**

Sincerely,



Daniel J. DeSmidt

Chief of Police

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# CITY OF HALF MOON BAY

501 Main Street  
Half Moon Bay, CA 94019

August 28, 2018

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

**Re: Grand Jury Report: "Smoke-Free Multiunit Housing: No Ifs, Ands Or Butts"**

Dear Ms. Kresevich,

We are in receipt of the Grand Jury's report "Smoke-Free Multiunit Housing: No Ifs, Ands Or Butts" dated July 26, 2018. The Grand Jury requested a response to item R7:

**R7:** The towns/cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, and San Carlos should, by December 31, 2018, hold public hearings to evaluate issues and hear residents' views on restricting smoking in multiunit housing in their jurisdictions.

**Response:**

At the direction of the City Council, the City of Half Moon Bay conducted a Smoking Survey that was mailed to residents to develop data on what sort of regulations are supported by the public. The surveys were made available on the City's website, in both English and Spanish. Further, paper copies were provided at the Library, Ted Adcock Community Center and City Hall. The City sought input on the Smoking Survey between March 26, 2018 and May 1, 2018.

The City Council was presented with the results of the Smoking Survey at the May 15, 2018 City Council Meeting, which included 167 responses to the General Survey and 177 responses to the Multifamily Survey. In addition, The City of Half Moon Bay conducted a public hearing to evaluate issues and hear residents' views on a proposed ordinance restricting smoking in multiunit housing on August 21, 2018. At that meeting, the Council approved the introduction of an ordinance restricting smoking in certain places, including in common areas and individual units in multifamily housing. The Council will consider the ordinance on second reading at a subsequent meeting.

Thank you for the work of this Grand Jury and for your efforts to reach out to our communities. Should you have any questions, please feel free to contact me.

Sincerely,

David Boesch  
Interim City Manager

C: Half Moon Bay City Council  
Catherine Engberg, City Attorney

CITY OF SAN CARLOS  
CITY COUNCIL



600 ELM STREET  
SAN CARLOS, CA 94070  
(650) 802-4219  
CITYOFSANCARLOS.ORG

September 11, 2018

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

**RE: San Mateo County Grand Jury Report "Smoke-Free Multiunit Housing: No Ifs, Ands, Or Butts" Response**

Dear Judge Swope:

In reply to your request for responses to the above referenced report, the City of San Carlos hereby submits this letter, which was approved by the City Council at the September 10, 2018 Council meeting.

**Findings.**

The City of San Carlos reviewed all eight of the Findings in the Grand Jury report. Since the Findings are based on research conducted by the Grand Jury of San Mateo County of San Mateo County agencies, we did not independently confirm the Findings. However, to respond to your request that we agree with the Findings, we hereby agree with each Finding.

**Recommendations.**

The City of San Carlos was asked to respond to one action, which is Recommendation 7 – to hold a public hearing by December 31, 2018 to evaluate issues and hear residents' views on restricting smoking in multiunit housing in our jurisdiction. The recommendation has not yet been implemented, but will be implemented at a City Council meeting before the end of the year. Currently, the item is scheduled for the Council meeting on October 22, 2018.

The City of San Carlos appreciates the opportunity to comment on the Grand Jury report.

Best Regards,

Bob Grassilli, Mayor

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## STAFF REPORT

### City Council

Meeting Date:

10/9/2018

Staff Report Number:

18-180-CC

Consent Calendar:

**Approve scope of analysis regarding the financial feasibility of the City of Menlo Park's below market rate inclusionary housing requirement**

### Recommendation

Staff recommends that the City Council approve the scope of the analysis regarding the financial feasibility of the City of Menlo Park's Below Market Rate (BMR) Housing Program requirement that rental housing projects with 20 or more housing units provide 15 percent of the units as affordable to low-income households.

### Policy Issues

As identified in Section 11.1.1 of the City's BMR Housing Program guidelines, an applicant with a project of 20 or more rental housing units must provide 15 percent of the units as below market rate rental units at the low-income level. Recent updates to the BMR Housing Program guidelines created flexibility and allow the approval of below market rate units at other income levels, provided that the approving body can make the finding that the proposed alternative is roughly equivalent to the provision of all of the affordable units at the low-income level. For example, an applicant could propose a mix of low and very-low income units. Given that a very-low income unit has a greater cost to the applicant than a low-income unit, it would be reasonable to anticipate that such a unit mix would result in less than 15 percent affordable units and also be roughly equivalent to 15 percent low-income units. However, if an applicant proposed all moderate-income units, given that moderate income units have a lower cost to the applicant than a low-income unit, it would be reasonable to anticipate that more than 15 percent of the total units would be moderate income units to be roughly equivalent.

Modifying the BMR Housing Program requirement to allow a project to provide 15 percent moderate-income units rather than 15 percent low-income units (or an equivalent) was suggested during public comment on the recent update to the residential mixed-use (R-MU) bonus level community amenity requirement. This would be a policy shift from the City's current BMR Housing Program requirement and would be a change that would impact development citywide, not just in the Bayfront Area where the R-MU zoning district is located.

If such a change were approved, it is not unreasonable to anticipate that a majority of applicants would choose to provide 15 percent moderate income units, as that would be the lowest cost option. This would also reduce the number of units made available for low and very-low income households. Finally, if this modification were applied only to projects below a certain size (for example, projects with 100 units or fewer), the result could be a geographic disparity in the distribution of below market rate units, with a majority of the low and very-low income units being located in the Bayfront Area where there are larger parcels available for redevelopment projects with larger projects.

## Background

The City adopted Municipal Code Chapter 16.96 establishing the BMR Housing Program over 30 years ago in 1987 to increase the supply of housing for people who live and/or work in Menlo Park and have very-low, low, or moderate incomes as defined by the Department of Housing and Urban Development. The BMR Housing Program identifies different requirements depending upon the size of the project as summarized in Table 1. The smallest projects from zero to four units are exempt. Small projects with five to nine units need only provide one affordable unit. Projects with 10 to 19 units must provide 10 percent of the units as affordable. Large projects with 20 or more units must provide 15 percent of the units as affordable pursuant to the BMR Housing Program. For all of these projects, regardless of the size, the BMR Housing Program Guidelines require that rental units be provided at the low-income level.

Number of units	Inclusionary requirements
0-4	Exempt
5-9	1 unit
10-19	10 percent
20 or more	15 percent

In exchange for the provision of these affordable units, the BMR Housing Program (which is different from State density bonus law) permits an additional market rate unit for each below market rate unit constructed. Additionally, the project is permitted to increase the floor area ratio associated with the residential development in an amount that corresponds to the increase in allowable density. Incentives, which are exceptions from development regulations, may also be requested. These benefits of the BMR Housing Program are intended to ease the burden on the developer and make the provision of affordable units economically feasible.

When the BMR Housing Program was originally established, it applied to rental housing projects. However, in 2009, the California Court of Appeal ruled in the Palmer/Sixth Street Properties LP v. City of Los Angeles case that the Costa-Hawkins Rental Housing Act prevented local governments from imposing inclusionary requirements on rental housing projects that did not receive government assistance. In 2011, the Menlo Park City Council by resolution formally suspended its inclusionary rental housing requirement to comply with the Palmer decision. In 2018, in light of Assembly Bill 1505 that overruled the Palmer decision, the City of Menlo Park can again apply inclusionary requirements to rental housing.

### Residential mixed-use district

In the residential mixed-use (R-MU) zoning district, there is a base level and a bonus level of development. Regardless of whether the project is developing at the base or bonus level, the project must comply with the City's BMR Housing Program and provide the required percentage of affordable units.

Bonus level development provides an applicant the benefit of additional height, density and floor area ratio in exchange for providing community amenities equal to 50 percent of the value of the bonus level of development. The City Council adopted by resolution a list of community amenities to be provided which includes, among other items, additional affordable housing beyond compliance with the City's BMR Housing Program. The value of the community amenity required is determined by the following appraisal process (which has not yet been finalized) that takes into consideration the size of the project and any site-specific constraints:



1. The appraiser determines a per square foot value of a base level project. The appraiser multiplies the per square foot value by the maximum allowable gross floor area that could be developed on the site to determine the base value.
2. The appraiser determines a per square foot value of a bonus level project. The appraiser multiplies the per square foot value by the gross floor area proposed by the project to determine the bonus value.
3. The appraiser subtracts the base value from the bonus value and multiplies that amount by 50 percent to identify the affordable housing amenity value.

The basic costs for doing business in Menlo Park, including, but not limited to, providing the affordable housing required by the City's BMR Housing Program, would be accounted for through the appraisal process in the first step -- determining the base value. In fact, the renewed requirement for affordable units at the base level would, theoretically, reduce the community amenity value at the end of the appraisal process. Regardless, for any project, whether large or small, the community amenity value is 50 percent of the value of the bonus level of development utilized. The appraisal process is designed so that projects provide community benefits in proportion to the benefit received. A smaller project would generate a smaller community amenity requirement through this appraisal process.

### **Analysis**

During the recent R-MU zoning ordinance update process in August 2018, a comment was presented that the BMR Housing Program requirement had a disparate impact on projects with 100 units or less. The commenter requested that the City allow projects of 100 units or less to provide all moderate-income units, which would be a change from the BMR Housing Program, which requires all low-income rental units (or an equivalent alternative). In response to this request, the City Council has asked for additional financial analysis regarding the impact of the affordable housing requirement on rental housing projects. It is staff's understanding that this analysis was not intended to be project specific, but to look generally at the financial feasibility of the City's BMR Housing Program requirements on rental housing projects.

Staff has worked with BAE Urban Economics, Inc. (BAE) to identify a scope of work to analyze the financial feasibility of the BMR Housing Program requirement for 15 percent low-income rental units. BAE's proposed scope of work is included as Attachment A. The proposed analysis will look at projects of varying sizes, including a 20 unit, 50 unit, 100 unit and 200-unit project, to determine the financial feasibility of complying with the City's BMR Housing Program requirement for low-income rental units. Staff has asked the consultant to consider how to factor in land cost as those vary from applicant to applicant (some may have purchased property recently at inflated prices and others may have purchased the property 20 or 30 years ago at a significantly lower price) and to account for differences in density. Staff has also asked the consultant to be careful in identifying construction costs as there are differences in costs for different types of developments.

An optional task included in the scope of work is for BAE to conduct a brief survey of housing program managers in five other cities in the market area to analyze the impact of each program on affordable and market-rate construction activity. Preliminarily, staff with the help of 21 Elements has gathered the information in Table 2 regarding the rental inclusionary requirements of other local cities. A number of cities are in the process of reintroducing inclusionary rental housing (e.g., Colma, Daly City.) Others cities recently adopted a rental housing impact fee based upon a nexus study and are continuing to utilize the fee (e.g., Palo Alto) rather than adopt inclusionary rental requirements.

Table 2: Inclusionary housing in other cities			
Jurisdiction	Project Size	Inclusionary percentage	Affordability level
Belmont	25 or more	15 percent	low-income
Pacifica	10 or more	20 percent	very-low (30 percent), low (35 percent) and moderate (35 percent)
Redwood City	20 or more	Varies based on affordability level	10 percent moderate, 5 percent low-income or 5 percent very-low
San Mateo	5 or more	Varies based on affordability level	10 percent very-low or 15 percent low-income
South San Francisco	4 or more	2018-2019 - 10 percent 2019 on - 10 percent low-income and 5 percent very-low income	low-income
Mountain View	5 or more	10 percent	low-income

It should be noted that using a single financial analysis at a specific point in time to create policy for all projects throughout the City is complicated. Developers have varying costs and those costs fluctuate over time. It is nearly impossible to develop a broad citywide policy that will prevent every developer from arguing that their specific situation deviates from the analysis that supported the policy in an effort to request an exception or a modification. If the City, as a policy matter, allows for exceptions, this could open the City up to reviewing every developer’s proforma and underlying assumptions to determine if providing affordable units is financially feasible and making individual determinations for each developer. Such an exercise would be costly and time consuming for the City at a time where the need for affordable housing at all income levels is uncontested, the State is passing laws to speed up the approval process for housing and city staff’s time is already consumed with other tasks. Retaining the BMR Housing Program requirement would create continuity and stability and it would be up to the development community to determine what projects are financially feasible given the City’s basic requirements.

Once BAE completes the analysis identified in the scope of work, the Housing Commission and Planning Commission will review the results in public meetings and make any policy recommendations they deem appropriate to the City Council based upon the available information. The City Council will then have the opportunity at a public meeting to review and discuss all available information, including public comment on the issue of the economic feasibility of the low-income rental housing requirement in the BMR Housing Program and at that time may direct staff to pursue any changes they deem appropriate.

**Impact on City Resources**

Changes to the required affordability of rental housing in the BMR Housing Program guidelines would not impact City resources, but would likely result in an increase in the production of moderate-income units in projects throughout the city. If the change were applied to only projects of 100 units or less it could also result in a decrease in the production of low or very low-income units citywide and a concentration of those units in the Bayfront Area as that is the area with parcels large enough to accommodate projects with more than 100 units.



### **Environmental Review**

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

### **Public Notice**

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

### **Attachments**

A. BAE scope of work

Report prepared by:

Leigh F. Prince, Assistant City Attorney

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September 21, 2018

Ms. Leigh F. Prince  
 Jorgenson, Siegel, McClure & Flegel, LLP  
 1100 Alma Street, Suite 210  
 Menlo Park, CA 94025

Dear Leigh:

BAE Urban Economics, Inc. (BAE) is pleased to submit this proposed scope and budget for preparing an analysis of the impact of the City of Menlo Park (City) inclusionary ordinance on rental residential apartments. This project will be managed by Stephanie Hagar, BAE Vice President.

## Background and Project Understanding

With the passage of AB1505, California cities can now apply their inclusionary housing requirements to rental residential projects. The City has a Below Market Rate Housing Ordinance and Below Market Rate Housing Guidelines (collectively, the “BMR Program”) that require a developer with a project of 20 or more residential units to dedicate 15 percent of the units to the BMR Program. The BMR Program currently requires that BMR rental units be affordable to households that qualify as Low Income under HUD definitions (although an equivalent alternative may be approved by the City Council). The City’s BMR Program requirements are similar to other cities in the region. Menlo Park is among the highest-cost housing markets in the region, which would generally indicate that housing prices and rents are high enough to support these types of requirements.

The City has received questions regarding the economic feasibility of the City’s BMR Program. Specifically, concerns were raised relative to the requirement for BMR rental units to be affordable to Low Income households.

BAE understands that the City desires to analyze the financial feasibility of 15 percent Low Income rental units in compliance with the City’s BMR Program. The goal of this analysis would be to validate whether the current BMR requirement for rental projects is reasonable from a project economics perspective.

### San Francisco

2600 10<sup>th</sup> St., Suite 300  
 Berkeley, CA 94710  
 510.547.9380

### Sacramento

803 2<sup>nd</sup> St., Suite A  
 Davis, CA 95616  
 530.750.2195

### Los Angeles

448 South Hill St., Suite 701  
 Los Angeles, CA 90013  
 213.471.2666

### Washington DC

1400 I St. NW, Suite 350  
 Washington, DC 20005  
 202.588.8945

### New York City

49 West 27<sup>th</sup> St., Suite 10W  
 New York, NY 10001  
 212.683.4486

## **Scope of Work**

To answer these questions, BAE proposes to undertake the following scope of work:

### ***Task 1: Start-up Meeting and Project Tour***

BAE will convene a meeting with City staff to review the scope of work, project schedule, review and discuss the analysis methodology, and identify relevant recently completed rental residential projects in or near Menlo Park. The discussions at this meeting will include identifying the appropriate project size categories, selecting a set of prototypical rental residential projects at different densities and sizes for the analysis in Task 2 as well as information regarding recent relevant land sales. Based upon this meeting, BAE will refine and/or revise the scope of work and project schedule. After the meeting, BAE will tour identified rental residential projects that might be considered as proto-typical projects for the analysis.

### ***Task 2: Prepare an Analysis for Projects of Various Sizes***

A set of pro forma analyses will be prepared for prototypical projects with: (i) 20 units; (ii) 50 units, (iii) 100 units, and (iv) 200 units (note these size categories can be discussed and refined at the Task 1 start-up meeting). For each size category, BAE will assume two different parking treatments that reflect varying densities. BAE will first prepare a set of development program specifications to submit to the City for its review and approval. Once the City confirms the development programs, BAE will complete the pro forma analysis indicating whether development feasibility is achievable under the City's current BMR program requirements for rental housing.

### ***Task 3: Prepare Draft and Final Report***

BAE will prepare a draft report that incorporates the goals, methodology, assumptions, and findings from the analyses undertaken in Tasks 2 and 3. After receipt of consolidated comments from the City, BAE will prepare a final report within ten business days. The report will be provided in both Microsoft Word and Adobe Acrobat PDF formats.

### ***Task 4: Attend Planning Commission and City Council Meetings***

At City direction, BAE will prepare a PowerPoint presentation and present its study and findings to the Housing Commission, Planning Commission, and City Council. The budget for this study assumes three separate meetings and one PowerPoint presentation. A draft PowerPoint presentation will be reviewed by the City and after consolidated comments are received, BAE will prepare a final presentation.

***Optional Task: Review BMR Programs at other Public Agencies in the Area***

To supplement the analysis and findings obtained in Task 2, BAE will conduct a brief survey of housing program managers in five other cities in the market area to analyze the impact of each program on affordable and market-rate construction activity. To the extent possible, BAE will compile quantitative metrics for each program, such as the number of market-rate projects that have been constructed, the number of affordable units produced, and the amount of any in-lieu fees collected. BAE will target cities that have re-instituted inclusionary requirements for rental residential projects that require units for Very Low and Low Income households.

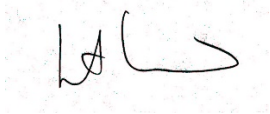
**Budget**

BAE proposes to undertake this work on a not to exceed basis in the amount of **\$29,910**, or **\$31,665** with the optional task, inclusive of all labor and expenses. The cost breaks down by task as follows:

	Shiver, Principal	Hagar, Vice President	Guerrero, Associate	Ohmit, Analyst	Total
<i>Hourly Rate</i>	\$300	\$210	\$140	\$95	
Task 1: Start-up and Tour	4	4	-	-	\$2,040
Task 2: Analysis	12	16	40	20	\$14,460
Task 3: Draft and Final Report	6	7	16	-	\$5,510
Task 4: Meetings and PowerPoint Presentation	15	15	-	-	<u>\$7,650</u>
Subtotal Labor	37	42	56	20	\$29,660
Expenses (Data & Travel)					\$250
<b>Total Project (without Optional Task)</b>					<b>\$29,910</b>
Optional Task: Survey of Housing Managers	1	2	4	5	\$1,755
<b>Total with Optional Task</b>					<b>\$31,665</b>

BAE will commence work upon the City’s authorization to proceed. BAE anticipates that the draft study can be completed within 45 days of the Task 1 Start-up meeting. Thank you for considering BAE for this important assignment. We look forward to your comments and questions.

Sincerely



David Shiver  
Principal

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## STAFF REPORT

**City Council**  
**Meeting Date:** 10/9/2018  
**Staff Report Number:** 18-185-CC

**Consent Calendar:** Introduce, read and waive further reading of Ordinance No. 1049 amending the City Manager's powers and duties to include design approval authority

### Recommendation

Staff recommends that the City Council introduce, read and waive further reading of Ordinance No. 1049 amending the City Manager's powers and duties to include design approval authority for public improvement projects.

### Policy Issues

The decision of the City Council to delegate design approval authority for public improvement projects to the City Manager or his or her designee is a policy decision.

### Background

When projects are authorized to be advertised or bids are awarded by the City Council, language is typically included in the City Council action to approve plans and specifications. There are situations where the City Council does not approve plans and specifications, such as small projects, or there are change orders during construction. These situations would benefit from the ability of the City to respond quickly, without having to bring the matter before the City Council at a noticed public hearing.

### Analysis

Government Code Section 830.6 provides public agencies with a design immunity defense for any public works projects designed and constructed by the public agency, provided that the design was approved in advance of the construction by the agency's legislative body or by an employee authorized by the legislative body to give such design approval. If the City Council desires to authorize the city manager or his or her designee to exercise design approval authority, staff recommends that to ensure the City retains the design immunity protection afforded by state law, the City Council codify the delegation to the City Manager or his or her designee in the City's Municipal Code.

It is important to note that proposed Ordinance No. 1049 does not in any way impact or change the City Council's discretionary authority to approve projects and appropriate project funding pursuant to other applicable City policies and procedures. Ordinance No. 1049 also does not circumvent other established project design review and approval processes.

## **Impact on City Resources**

Ordinance No. 1049 is not anticipated to have an 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. Ordinance No. 1049 amending the City Manager's powers and duties to include design approval authority

Report prepared by:  
Leigh F. Prince, Assistant City Attorney



**ORDINANCE NUMBER 1049****ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
AMENDING THE CITY MANAGER'S POWERS AND DUTIES TO INCLUDE  
DESIGN APPROVAL AUTHORITY**

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

**SECTION 1. FINDINGS AND DETERMINATIONS.**

- A. Government Code Section 830.6 provides that neither a public entity nor a public employee is liable for an injury caused by the plan or design of a construction of, or an improvement to, public property where such plan or design has been approved in advance of the construction or improvement by the legislative body of a public entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved.
- B. Public interest and convenience and the retention of the design immunity protection under Government Code Section 830.6 require the City Council of the City of Menlo Park to delegate by ordinance to the City Manager or to his or her designee the authority to approve plans and designs for City public improvement projects.
- C. Such delegation of design approval authority does not change the City Council's discretion and authority to approve projects and appropriate project funding pursuant to other applicable City policies, procedures and codes, or circumvent other established project design review and approval processes.

**SECTION 2. AMENDMENT OF CODE.** Section 2.08.080 [Power-Duties] of Chapter 2.08 [City Manager] of Title 2 [Administration and Personnel] of the Menlo Park Municipal Code is hereby amended,

**2.08.080 Powers—Duties.**

The city manager shall be the administrative head of the city government under the direction and control of the City Council, except as otherwise provided in this chapter. He or she shall be responsible for the efficient administration of all the affairs of the city which are under his or her control. In addition to his or her general powers as administrative head, and not as a limitation thereon, it shall be his or her duty and he or she shall have the power:

- (1) Enforcement of Laws. To see that all laws and ordinances of the city are duly enforced, and that all franchises, permits and privileges granted by the city are faithfully observed;
- (2) To Direct, etc., Officers and Employees. To control, order and give directions to all heads of departments, subordinate officers, and employees of the city, except the city attorney; and to transfer employees from one department to another, and to consolidate or combine offices, positions, departments or units under his or her direction;
- (3) Appointment and Removal of Officers and Employees. To appoint and remove any officers and employees of the city except the city attorney, subject to the rules relating to personnel management;
- (4) Control of Departments and Officers and Employees. To exercise control over all departments of the city government and over all appointive officers and employees thereof, except the city attorney;
- (5) Attendance at Council Meetings. To attend all meetings of the City Council unless excused

- therefrom by the council, except when his or her removal is under consideration by the council;
- (6) Recommendation of Ordinances. To recommend to the City Council for adoption such measures and ordinance, as he or she deems necessary or expedient;
  - (7) Fiscal Advice. To keep the City Council at all times fully advised as to the financial conditions and needs of the city;
  - (8) Preparation of Budget. To prepare and submit to the City Council the annual budget;
  - (9) Purchases and Expenditures. To purchase all supplies for all of the departments or divisions of the city. No expenditure shall be submitted or recommended to the City Council, except on report or approval of the city manager;
  - (10) Investigation of City Affairs. To make investigations into the affairs of the city, and any department or division thereof, and any contract, or the proper performance of any obligations running to the city;
  - (11) Investigation of Complaints. To investigate all complaints in relation to matters concerning the administration of the city government and in regard to the service maintained by public utilities in the city, and to see that all franchises, permits and privileges granted by the city are faithfully performed and observed;
  - (12) Supervision of Public Buildings. To exercise general supervision over all public buildings, public parks and other public property which are under the control and jurisdiction of the City Council and not specifically delegated to a particular board or officer;
  - (13) Approval of Plans and Designs. To exercise directly or through his or her designee discretionary approval of plans, designs and any design amendments or addenda for public improvement projects. The city manager or his or her designee shall sign the plans and designs.
  - (14) Devotion of Entire Time to Duties. To devote his or her entire time to the duties of his or her office and the interests of the city;
  - (15) Leadership in Civic Movements. To provide leadership for civic movements designed to benefit the residents of the city when so authorized by the City Council;
  - (16) Additional Duties. To perform such other duties and exercise such other powers as may be delegated to him or her from time to time by ordinance or resolution of the City Council.

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

**SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.** The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly.

**SECTION 5. EFFECTIVE DATE AND PUBLISHING.** This ordinance shall take effect 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 this ninth day of October, 2018.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on this ninth day of October, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

\_\_\_\_\_  
Peter I. Ohtaki, Mayor

ATTEST:

\_\_\_\_\_  
Judi A. Herren, City Clerk

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## STAFF REPORT

### City Council

Meeting Date:

10/9/2018

Staff Report Number:

18-184-CC

### Consent Calendar:

**Authorize the City Manager to amend the contract amount for the 2018-19 Public Works maintenance services contracts up to the City Council budget amount and extend the contract term with Significant Cleaning Services**

### Recommendation

Staff recommends the City Council authorize the city manager to amend the contracts for public works maintenance services with the listed contractors (Attachment A) up to budgeted amount in fiscal year 2018-19 and extend the contract term with Significant Cleaning Services.

### Policy Issues

Without a modification to the contracting authority, the City cannot amend contracts or spend the budgeted amount to utilize existing contracts for unseen conditions and maintenance repairs that are not part of the base contract.

### Background

In order to provide services to residents and to maintain City facilities, staff utilizes contractors to supplement staff. For each one of these contracts, staff has gone through a procurement and bidding process. Contracts for these services have a base cost including an annual inflation factor, however, costs for emergency work or extra work are not part of the base cost. Each year, as a part of the annual budget process, staff budgets the cost for these contracts including increases based on the inflation factor contained in the contract and contingency to pay for emergency work and/or work which are not part of the base cost. As an annual routine, staff formalizes the authorization of the city manager to amend contracts up to and above the base work that includes the contingency budget approved by the City Council as part of the annual budget approval.

The multiyear janitorial services contract with Significant Cleaning Services expired June 30, 2018, and was initially extended to September 30, 2018 with the hope of having a new multiyear contract in place. Staff released request for proposal (RFP) in July 2018 and received three proposals for these services. Staff is thoroughly reviewing proposals and interviewing contractors for these services to ensure contractor will comply with the environmental purchasing policy and zero waste requirements. Therefore, staff is recommending to extend the current contract term with Significant Cleaning Services until December 2018 to ensure there is no interruption for this service while negotiations continue.

### Analysis

The public works department relies on a number of contracts with different vendors in order to provide City

services and service City facilities. These contracts are described in Attachment A. The approved budget amount for these services is approximately \$2.9 million and it is funded by various funds. This amount does not include contracts that fall below the current city manager's signing authority. Staff is requesting the City Council to authorize the city manager to amend the contracts up to the City Council amended budget for fiscal year 2018-19. Services range from street tree maintenance to custodial service to street light maintenance. An example of work that is not part of the base work is when a large City tree needs to be removed and City staff is busy with other routine work or if there are extended vacancies. In such events, staff will utilize the tree maintenance contractor to remove the tree. Another example is when the janitorial service contractor does extra work to clean up after a major event at the Arrillaga Family Recreation Center.

Except for the Significant Cleaning Services contract term, the listed contracts are in good standing with the City and are scheduled to remain in effect through the remainder of this fiscal year. The recommendation will allow staff to utilize their services as needed if the budget is available without modifying the existing contract terms.

Once contracts are amended, staff will be able to increase existing purchase orders and have the contractors perform as needed, again within the approved budget.

### **Impact on City Resources**

There is no additional impact on City resources associated with this action because funds were approved as part of the FY 2018-19 adopted City budget. The contract amount and funding sources vary for each service, however staff will only utilize amounts available in the approved budget for the year.

### **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. Public works maintenance service contracts

Report prepared by:  
Eren Romero, Business Manager

Reviewed by:  
Justin Murphy, Public Works Director

Public works maintenance service contracts		
Service	Contractor	Budget amount
Annual tree maintenance service (street, park and emergency)	West Coast Arborist, Inc.	\$ 495,500
Bedwell Bayfront Park Leachate collection system monitoring and maintenance and emergency services	APTIM Environmental & Infrastructure, Inc.	\$ 210,000
Citywide striping and signage	Chrisp Company	\$ 125,000
Citywide striping and signage	Quality Striping	
General services at Bedwell Bayfront Park restroom	Universal Building Services & Supply Co.	\$ 65,000
Herbicide free parks	Ecological Concerns	\$ 145,000
HVAC - preventative maintenance	Mechanical Technologies Corp.	\$ 135,000
Janitorial services at various City facilities	Significant Cleaning Services	\$ 332,000
Multi-year sidewalk saw cutting trip hazard removal	Trip Stop Sidewalk Repair, Inc.	\$ 100,000
Multi-year sidewalk replacement project	Golden Bay Construction, Inc.	\$ 450,000
On-call water emergency services	Express Plumbing	\$ 270,000
On-call water emergency services	Farallon Company	
On-call water emergency services	Casey Construction	
Storm drain cleaning services	ABC Service	\$ 70,000
Street sweeping services	Contract Sweeping Services	\$ 206,000
Tree lighting (Downtown and Belle Haven)	Holiday Lighting Specialists DBA The Christmas Light Pros	\$ 85,000
Traffic signal and street light maintenance services	Cal-West Lighting and Signal Maintenance	\$ 220,000

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## STAFF REPORT

**City Council**  
**Meeting Date:** 10/9/2018  
**Staff Report Number:** 18-189-CC

**Consent Calendar:** Award contracts totaling \$873,767 to Towne Ford Sales, Sonsray Machine LLC., San Leandro, Turf Star Western, Western Truck Fabrication, Priority 1 Safety and Enterprise Fleet Management for vehicle and equipment replacement, outfitting settings and contingency

### Recommendation

Staff recommends that the City Council award contracts to the following vendors and allow a contingency of \$5,000 to be used for any unforeseen costs associated with vehicle and equipment purchases:

- A. Towne Ford Sales in the amount of \$357,079 for the purchase of two patrol utility vehicles, one K-9 utility vehicle, one commander utility vehicle and one community service officer truck for the police department and four trucks for the public works department
- B. Sonsray Machine LLC, San Leandro in the amount of \$127,530 for the purchase of one backhoe tractor
- C. Turf Star, Inc. in the amount of \$72,030 for the purchase of one multideck mower
- D. Western Truck Fabrication in the amount of \$107,013 for outfitting utility bodies on four trucks for the public works department
- E. Priority 1 Safety in the amount of \$73,040 for the outfitting of safety equipment on five police vehicles and four public works trucks
- F. Enterprise Fleet Management in the amount of \$132,075 for 48 month lease of four police detective vehicles

### Policy Issues

The cost of each of the expenditures exceeds the city manager's authority so requires City Council approval.

### Background

Annually, staff recommends replacement of vehicles and equipment based on mileage, age, downtime for repairs and an assessment of all vehicles and equipment.

Another key consideration are the City's sustainability goals. The City Council adopted a Climate Action Plan that includes a community greenhouse gas reduction goal of 27 percent by 2020. The Climate Action Plan also provides a list of strategies to explore in order to achieve this goal. Some of these strategies have been adopted, such as an environmental purchasing policy for city purchases.

The environmental purchasing policy was adopted in July 2014, and includes the following specific measures for purchasing a cleaner city vehicle fleet:

- Establishes a goal for 50 percent or more of Menlo Park's vehicle fleet to be Eco-friendly vehicles.
- Purchasing fleet vehicles that provide the best fuel efficiency and rely less on fossil fuels.

The policy also states that some environmentally preferable products or services may cost slightly more when compared to non-environmentally preferable products and services, and states that the city is authorized to pay the higher cost in order to comply with this policy.

## **Analysis**

On May 22, staff solicited proposals for the various vehicles through a request for proposal (RFP) process. The RFP was advertised on the City's website, and nine vendors were notified via email. Proposals were due and opened June 6. One proposal was received for the vehicle purchases.

The vehicles are all Ford models, the City's standard. For the police interceptors, we continue to transition from Crown Victoria's to Utility/Explorers. After this replacement cycle, only four Crown Victoria's will remain in the fleet. Ford has released a Hybrid Police Utility for the 2020 model year, and we have the opportunity to be one of the first organizations to roll them out in police service. There is, however, an additional cost of approximately \$11,500 per vehicle compared to the gasoline powered police utility, which equates to a premium of approximately 31 percent. Given the City's Climate Action Plan, staff believes that this opportunity to purchase the hybrid model to continue greening the City fleet is warranted, especially given the fact that the public works F-350's and police F-150 trucks will be gasoline powered due to the nature of work performed by these vehicles and the lack of availability of a hybrid model.

On May 23, staff solicited quotes from three regional dealerships for the replacement of a backhoe tractor. All three dealerships returned completed bids. The lowest quote came from Sonsray Machine LLC San Leandro. The current backhoe tractor is over 18 years old, and is often out of service due to repairs. This is a multi-use piece of equipment which is utilized on a daily basis by the water, streets and parks sections of the maintenance division. The City currently owns one case loader/tractor. Standardizing minimizes down time and the need for additional parts, suppliers and training.

On July 9, staff solicited quotes from Turf Star Western for the replacement of a multi-deck mower. Turf Star is the Northern California regional dealership for Toro mowers. The current multi-deck Toro mower is over 15 years old and is also often out of service due to repairs.

On March 9, staff solicited quotes from Enterprise Fleet Management for a 48 month program to replace through lease, four older police detective sedans. The current vehicles have an average mileage of 80,000 and age of almost 13 years. These new sedans will be a hybrid model, and will result in significant savings with regard to fuel economy and emission reductions over the older models. Enterprise Fleet Management is part of a cooperative agreement through the Interlocal Purchasing System (TIPS) and awarded a master agreement to Enterprise Fleet Management as a result of a competitive bid process.

Priority 1 Safety and Western Truck Fabrication are the only local police safety equipment and truck outfitters.

City staff recommends that the City Council approve the purchase of all nine vehicles, one backhoe tractor, one multi deck mower and vehicle outfitting for all nine vehicles. If the City Council decides that it does not want to pay the premium for the Hybrid Police Utility vehicle, then City Council can provide direction to staff to pursue the traditional gasoline powered version.

**Impact on City Resources**

The resulting costs of the vehicle and equipment purchase as follows:

Table 1: Resulting costs of vehicle and equipment purchase				
Vendor	Description	Type	Quantity	Cost
Towne Ford Sales	Police black and white utility interceptor	Ford Utility Hybrid	2	\$100,740
Towne Ford Sales	Police commander utility interceptor	Ford Utility Hybrid	1	\$48,946
Towne Ford Sales	Police K-9 utility interceptor	Ford Utility Hybrid	1	\$48,566
Towne Ford Sales	Police community service officer department truck	Ford F-150	1	\$26,300
Towne Ford Sales	Public works department truck	Ford F-350	4	\$132,527
Sonsray Machine LLC	Public works department backhoe	Case 570SN	1	\$127,530
Enterprise Fleet Management	Police detective sedan lease	Ford Fusion Hybrid	4	\$132,075
Turf Star, Inc.	Public works department, mower	Toro 4000-D	1	\$72,030
Priority 1 Safety	Safety equipment and work light installation	Vehicle outfitting	9	\$73,040
Western Truck Fabrication	Manufacture and install utility bodies for public works trucks	Vehicle outfitting	4	\$107,013
Contingency			1	\$5,000
<b>Total</b>				<b>\$873,767</b>

The vehicle replacement program budget for fiscal year 2018-19 has adequate funds to cover these purchases. Staff will sell the replaced vehicles at a public auction and sales proceeds will be deposited into the vehicle replacement fund.

The fiscal year 2018-19 budget allocated sufficient funds from the general fund for the vehicle leasing agreement with Enterprise Fleet management for the first year. Funding for future years will be requested during the budget process for each subsequent year.

**Environmental Review**

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

**Public Notice**

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

Staff Report #: 18-189-CC

Report prepared by:  
Donald Weber, Interim Public Works Superintendent

Report reviewed by:  
Brian Henry, Interim Assistant Public Works Director



## STAFF REPORT

**City Council**  
**Meeting Date:** 10/9/2018  
**Staff Report Number:** 18-187-CC

**Regular Business:** **Approve the library needs assessment for the Belle Haven neighborhood and direct staff to begin a space needs assessment for a new Belle Haven branch library**

### Recommendation

Staff recommends that City Council consider and approve the following items related to the Library System Improvements project:

1. Finalize and approve the library needs assessment for the Belle Haven neighborhood
2. Direct staff to begin a space needs assessment for a new Belle Haven branch library building
3. Authorize the city manager to execute a contract with Noll and Tam Architects not to exceed \$75,000 for the space needs assessment for a new Belle Haven branch library

### Policy Issues

The Belle Haven branch library improvements are part of the City Council's work plan approved February 6, 2018.

### Background

At their August 22, 2017 meeting, the City Council established a subcommittee of City Councilmembers Keith and Cline to explore improvements to the City's library system which includes the main library on the Civic Center Campus and the Belle Haven branch library located on the grounds of the Belle Haven School at 413 Ivy Drive. Based on the subcommittee's work and feedback from a number of community members, the subcommittee recommended that the City Council direct staff to take the steps necessary to advance the system improvements project at their October 17, 2017 meeting. The City Council included improvements to the main library and the Belle Haven branch library in the 2018 adopted work plan.

Progress to date for the branch library improvements includes:

- A Belle Haven Neighborhood Library Advisory Committee (BHNLAC) was formed to assist in the library needs assessment in the Belle Haven neighborhood.
- The City Council approved \$140,000 for immediate physical improvements to the branch library, which were completed in January 2018.
- A project page was added to the City's website to consolidate information on the system improvements and provide a channel for community input (Attachment A.)
- The City Council approved the creation of a library system improvements fund, seeded the fund with \$1 million, and increased the city manager's contract authority for matters related to the library systems improvement project. The City Council also authorized a new position to manage the library project (which remains vacant.)
- The City hosted a public South Bay libraries tour of the new Los Gatos library and Palo Alto's new

Mitchell Park library.

- The City hosted a public presentation and a tour of the new Hayward library.

## Analysis

The Belle Haven branch library opened in 1999 as a joint-use public and school library located on the grounds of the Belle Haven School at 413 Ivy Drive. The library is operated by the City and the Ravenswood School District under a memorandum of understanding. The library was designed to serve the students of the Belle Haven School during the day and neighborhood residents in the evenings. The branch library replaced a small, public reading room that operated out of the Onetta Harris Community Center. In recent years the branch library was closed to the public during school hours to ensure campus and student security. In 2018 the City Council acted to extend the branch's operating hours to match the open hours of the main library (exclusive of school operating hours.) The branch is now open to the public for 13 additional hours per week, including three weeknights and on the weekend.

The City Council approved service and physical enhancements to the Belle Haven branch library at their October 17, 2017 meeting. Physical upgrades to the library (new carpeting and shelving, new furniture and interior paint, replacement of soiled ceiling tiles and ventilation covers, new window coverings, updated exterior signage, and additional new books and DVDs for the collection) have been completed. The City Council also approved 13 additional open hours per week for the branch library, and an additional 0.50 full time equivalent in staff. The Belle Haven branch library closed for upgrades over the school's winter break and reopened with its new hours in place January 9. As a result of these changes, 81 programs for youth and adults have been held at the branch so far this year, more than were held throughout the entire last fiscal year. Program attendance to date has also increased, already more than doubling attendance from all of last year.

Below is an updated tentative project timeline for the Library System Improvements project for the branch library. A more detailed timeline is included as Attachment C.

- Needs assessment completed
- Space needs study: November 2018 – July 2019
- Schematic designs/ siting decisions/ shared uses: August 2019 – June 2020
- Funding
- Environmental impact report: June 2020 – June 2021
- City Council project approval: July 2021
- Final building design/bid documents: January 2022
- Construction: April 2022– April 2024

### Neighborhood library needs assessment

The first step on the path toward a new branch library is to determine the neighborhood's needs. Gensler, the consultants conducting the neighborhood library needs assessment for Belle Haven, began their work in November 2017. As part of their process, Gensler engaged in a discovery process of research and interviews from November 2017 through April 2018. Gensler held design labs and a branch open house April 5 – 7, interviewed staff and community stakeholders, and continued to gather community input through April 28. Research was also done to develop case studies of libraries that are responding to the shifting needs of their communities, and which to identify aspects of their responses might be interesting or applicable to library services in Belle Haven. Through Gensler's research and outreach process, 384 inputs were collected. These included 71 local intercepts and interviews, 44 external surveys and 289 artifacts, worksheets and responses gathered throughout the process.

Gensler identified five key themes that represent the challenges and the opportunities that the Belle Haven branch library faces today:

- The desire for the library to serve as community space first, library second
- Improved and updated library programs and services
- Improved neighborhood services
- Neighborhood belonging and change – a desire by some to feel a greater connection to neighbors and to the City as a whole
- The need to rebrand the branch library as a public place that serves neighborhood residents of all ages

On July 13, 2018, Gensler issued their final neighborhood library needs assessment report (Attachment A.) The report contains a detailed analysis of the needs that emerged during the study, as well as an arrangement of those needs into a priority list of challenges that could be met in the near, mid or long term.

The report's overall findings note that the branch is limited by its perception as a school or children's library, due primarily to its co-location with the Belle Haven School. That co-location provides some advantages – the library is seen as a safe place for students to be after school is out, and its collections and layout are well suited to serving school-aged children – but also presents challenges if the library is to serve all members of the neighborhood.

#### Belle Haven Neighborhood Library Advisory Committee response

The BHNLAC was formed by City Council action January 16, 2018. The Committee was charged with assisting Gensler throughout the process of their assessment, and has met eight times since February 2018. The Committee has assisted Gensler with their outreach efforts, educated themselves on library best practices, and has taken facilitated tours that focused on the architecture and function of modern libraries. They held a study session with Gensler May 15 and reviewed a draft version of the report. Committee members drafted a short statement in response to the final report in order to meet the deadline for a City Council meeting scheduled for August 21. When that meeting was canceled, BHNLAC had the opportunity to meet as a group to formally develop and finalize a more thorough response.

The Committee offered specific feedback on several areas considered by the needs assessment:

- They expressed concern that Gensler did not connect with several stakeholder groups in the neighborhood, and asked that more outreach be conducted to those groups during the space needs study.
- The Committee asked that the City commit to provide for the short term needs identified in the report while the library system improvements process moves forward.
- The Committee believes that the report should more strongly call out the need for a new branch library separate from the Ravenswood School.
- The Committee recommends that a new branch be located near where neighborhood residents already gather – at the Onetta Harris Community Center.

Despite their concerns, the Committee is fully supportive of moving forward to a space needs study, and recommends to the City Council that they accept the needs assessment and the feedback letter that they have produced (Attachment B.)

#### Recommended next steps

Staff recommends that the City Council consider and approve the following items related to the Library System Improvements project:

1. Accept the library needs assessment for the Belle Haven neighborhood. The Gensler report is complete,



- Attachment A, and BHNLAC recommends that the City Council accept the report.
2. Direct staff to conduct a space needs study responsive to the findings in the Gensler report. With City Council acceptance of the neighborhood library needs assessment report, the next step is to conduct a space needs assessment for the branch library. Once the space needs assessment is complete, the next step is to identify sites sufficient to accommodate the space needs.
  3. Authorize the City Manager to execute a contract with Noll and Tam Architects in an amount not to exceed \$75,000 for the Belle Haven branch space needs assessment. Staff recommends that the City Council authorize staff to waive the bidding requirement for the space needs study to expedite the study review. Noll & Tam performed the space needs assessment for the main library, is familiar with the library and the City, and has capacity to begin work on the study soon.

### **Impact on City Resources**

The library is requesting 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.

### **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:  
Nick Szegda, Assistant Library Services Director

### **Attachments**

- A. Belle Haven neighborhood library needs assessment – hyperlink: [menlopark.org/mylibrary](http://menlopark.org/mylibrary)
- B. Letter of response to the needs assessment from the Belle Haven Neighborhood Library Advisory Committee
- C. Estimated branch project timeline



Dear City Council Members,

The Belle Haven Neighborhood Library Advisory Committee has met, reviewed, and discussed the findings from the Gensler report recently presented to us.

The Gensler report does a good job of re-emphasizing what we already know and have known for a long time--that we need a new, adequate, 21st century library and not a school library moonlighting as a branch library. Please refer to page 29 for details on the community needs identified in this report.

Also, for context, please refer to our interim joint statement included in the staff report for the Aug 21, 2018 City Council meeting: "The Committee feels that the community needs expressed in the report require a new 21st century library in the Belle Haven neighborhood. We look forward to the next part of the process, including the space needs assessment and the library's siting. More specific feedback will be presented in the future."

Below is specific feedback and a few areas our committee would like to highlight as council reviews this report:

1. As acknowledged by Gensler, the needs assessment didn't take in adequate community inputs from some local organizations, service providers, educators, and Belle Haven schools on the gaps in the community and their vision of what a branch library could offer this community. Our recommendation is that when the project moves into the Space Needs Study phase, these stakeholders must be included in the community input phase.
2. The library currently serves as a school library and no matter which way you look at it, the services, programs, and resources offered at the current branch library are woefully inadequate. To fill the gaps identified by the community, and to do justice to the needs identified through the Gensler report (page 29), the library will need a new, 21st century, expanded space. The report surprisingly skirts around this logical recommendation and seems to suggest that enhanced programs could fit in existing space or moderate changes to physical space (see page 31). These suggestions are not based on any type of space analysis so do keep that in mind when you review the report.
3. The BH community needs these resources now, and not 10 years from now. How will the city prioritize short term and long-term expansion of the BH branch library? In other words, what can the city commit to for meeting the shortfalls in the short-term and realizing our dream of a new branch library/community space in the long term? With a new high school opening next year on Jefferson, the demand for teen space will be even higher. During the recent branch library "field trips" all three new libraries cited surprisingly high teen use. The TIDE academy plans to be 9th-12th grades phased in over 4 years. It would be amazing if our community could be ready to meet those needs when that happens.
4. The report makes unsubstantiated claims in a few places e.g., on page 57, a "threat" listed is that "removal of co-location with school could impact ease of use as an after-school safe space." We did not find supporting evidence for those claims. For example, which school programs would be affected if the library moved to a new location? Which programs were being provided by local organizations or the library, and in the event of the library shifting, be impacted negatively in their ease of use? And are we losing more patrons than we gain in its current location?
5. As noted on pg. 12, the relocation of the library was a result of outgrowing its previous location in Onetta Harris Community Center. Its growth seems to have stagnated in the current location for many non-school age users. We believe we should look at moving the books and programs to where the residents are (pg. 20). Looking at the key themes identified in the report on page 18, we would suggest that a branch library connected to the community center could best achieve those goals.

The Gensler report is a detailed analysis of the needs from the community's perspective even with the above noted concerns. It is a guide moving forward...and that's exactly what we need to do: move forward!

We look forward to the next phase of the Belle Haven branch library expansion: a Space Needs Study and clarity on what we can do in the short-term to meet neighborhood needs as we work towards our vision. Two topics that the BHNLC is discussing currently for the next phase of work are: (i) expanding the members of the BHNLC to include key stakeholders and community members with specific skill sets (fundraising, marketing, PR etc.), and (ii) creating sub-committees to work on different work streams (fundraising, outreach, strategy, short-term improvements etc.). We will present our proposal to the City Council in the coming months.

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Thank you for taking the time to review the report and our additional comments. If we didn't make the point clearly enough through the comments, the BHNLC is fully supportive of moving this project into the Space Needs/Siting work as soon as possible. The housing increase is already underway - let's get the services ready to meet them.

In summary, here is a list of recommendations from the BHNLC to the Menlo Park City Council:

1. Accept the Gensler Report as a document assessing the needs of the BH neighborhood for a new, 21st century library, with a motion to emphasize that key stakeholders' inputs be taken during the siting phase
  2. Accept this letter as a summary of feedback from the members of the BHNLC
  3. Approve the next phase of this project--Space Needs Study
- 

Sincerely,  
Members of the Belle Haven Neighborhood Library Advisory Committee

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**MEMORANDUM**

**Date:** 9/24/2018  
**To:** Alex D. McIntyre, City Manager; Susan Holmer, Director of Library Services  
**From:** Nick Szegda, Assistant Director of Library Services  
**Re:** Timelines for Library System Improvements project

**Branch library timeline (and estimates)**

Branch needs assessment begins	Nov-2017
TODAY	
Assessment results reported to City Council	Oct-2018
Space needs study begins	Nov-2018
Capital funding campaign planning begins	Nov-2018
Site selection based on space needs results Begins (may be folded into space needs study)	July-2019
City Council site location/use approval	Jan-2020
Building program/site conditions review begins	Feb-2020
Schematic design begins	Feb-2020
Environmental review begins	Jun-2020
Release of draft EIR	Mar-2021
Planning Commission review and Recommendation of final EIR and project	Jun-2021
City Council approval of project	Jul-2021
Final building design/bid documents	Jan-2022
Construction start	Apr-2022

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## STAFF REPORT

**City Council**  
**Meeting Date:** 10/9/2018  
**Staff Report Number:** 18-183-CC

**Regular Business:** Approve the terms of a supplemental agreement between the City of Menlo Park and the American Federation of County, State, and Municipal Employees Local 829 expiring June 30, 2021

### Recommendation

Approve the terms of a collective bargaining agreement between the City of Menlo Park and American Federation of State, County and Municipal Employees Local 829 (AFSCME) and authorize the City Manager to execute a Memorandum of Understanding (MOU) with a term expiring June 30, 2021.

### Policy Issues

This recommendation aligns with the City's goals of balancing continued fiscal prudence in planning for the impacts of employee compensation on the 10-year fiscal forecast, while also continuing to align the City as a competitive employer in the robust Silicon Valley job market.

### Background

On September 26, 2017, the City Council approved a tentative agreement reached with the AFSCME, which represents 37 non-sworn employees throughout the City who are primarily responsible for supervision of line staff in their service to the community. The terms of that agreement provided for a variety of economic adjustments and provided for a labor agreement expiring June 30, 2020. The terms of the agreement have been incorporated in the City's 10-year fiscal forecast as presented in the City Council's fiscal year 2018-19 adopted budget.

In response to concerns expressed by the bargaining unit as part of the 2017 negotiations, Appendix C to the current MOU includes a provision where both parties agree to meet and confer regarding the implementation of an employee-paid short-term disability insurance policy to address potential gaps between the exhaustion of an employee's paid time off balances and long term disability insurance.

The attached supplemental agreement is the result of the meet and confer process provided in Appendix C as well as other issues raised by management upon further review of the City's disability insurance program. The supplemental agreement was ratified by AFSCME Local 829 August 13, 2018.

### Analysis

The supplemental agreement to the Memorandum of Understanding (MOU) is attached, and is the

document that is the subject of City Council ratification October 9, 2018. The following tables provide a summary of the key provisions and/or changes.

Table 1: Key provisions and/or changes		
Item	Key provisions and/or changes description	Estimated cost/savings
Term MOU Article 24	Assuming City Council ratification October 9, 2018, the supplemental agreement provides for a one-year term extension on the current MOU with a new expiration date of June 30, 2021. Given that negotiation of a successor agreement is not required for an additional fiscal year, the City is estimated to save approximately \$30,000 which reflects legal costs and internal staff time required to support negotiations.	(30,000.00)
Pay rates MOU Section 7.1	Assuming City Council ratification October 9, 2018, the supplemental agreement includes an across the board adjustment to all pay rates in this unit, as follows: <ul style="list-style-type: none"> <li>• 1.0 percent effective the pay period of CSDIP implementation*</li> <li>• CPI salary adjustment effective the pay period following July 1, 2020, minimum of 2 percent maximum of 4%**</li> </ul> * The fiscal impact of this adjustment is anticipated to be 0.50 percent of salary, as shown to the right, for fiscal year 2018-19, assuming January 1, 2019 implementation. California State Disability Insurance Program (CSDIP) is an employee funded benefit administered by the State of California. Participation, once elected by a majority of the bargaining unit, is mandatory for all bargaining unit members. ** The Consumer Price Index (CPI) adjustment in July 2020 is estimated at 3.5 percent.	\$29,800* \$213,800**
Benefit programs MOU Section 13.1	Assuming City Council ratification on October 9th, the supplemental agreement provides an increase to the City's cafeteria plan, effective January 1, 2021. The increase is tied to changes in the Consumer Price Index (CPI) with minimum of 2 percent and maximum of 4 percent, and applies to all levels of coverage, effective January 1, 2021.	23,400.00
Disability insurance MOU Section 13.6	Assuming City Council ratification on October 9th, the supplemental agreement modifies the disability insurance provided to employees in this bargaining unit as follows: Effective January 1, 2019 or as soon as possible after ratification, the City shall deduct California State Disability Insurance Program (CSDIP) premiums deducted from employee pay. Within seven months of CSDIP implementation, the City shall modify the long-term disability program to provide a benefit after 180 days of an eligible illness or injury. Currently the benefit takes effect after 45 days. The cost savings is a conservative estimate.	(4,300.00)

The supplemental agreement fulfills needs expressed by the bargaining unit for changes to the City's disability insurance benefits. Additionally, the contract extension provides the City with greater certainty in its expenditure needs through June 30, 2021.

### **Impact on City Resources**

The supplemental agreement results in an estimated cost of \$29,800 in 2018-19, reflecting the salary increase upon CSDIP implementation. In future years, the 10-year forecast will be fine-tuned with the terms of the contract extension through June 30, 2021.

### **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 report 15 days prior to the City Council meeting of October 9, 2018.

### **Attachments**

- A. Supplemental Agreement between the City of Menlo Park and American Federation of State, County and Municipal Employees, Local 829

Report prepared by:

Sandy Pimentel, Management Analyst II

Lenka Diaz, Administrative Services Director

Nick Pegueros, Assistant City Manager

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**SUPPLEMENTAL AGREEMENT  
BETWEEN  
THE CITY OF MENLO PARK  
AND  
AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES**

This Supplemental Agreement (“Agreement”) executed August \_\_\_, 2018 is by and between the City of Menlo Park (“City”) and the American Federation Of State County And Municipal Employees (“AFSCME”) for the purpose of modifying the current (2017-2020) Memorandum of Understanding between the parties (“MOU”). This document is intended to supersede any inconsistent provisions of the MOU and any side letters thereto. All other terms and conditions in the MOU and any side letters shall remain in full force and effect except as modified by this Supplemental Agreement.

**The City and AFSCME agree to amend the 2017-2020 MOU as follows:**

1. **Duration.** ARTICLE 24: TERM OF AGREEMENT is amended as follows:

This Agreement shall remain in full force and effect up to and including June 30, ~~2021~~ **2020**, and thereafter shall continue in effect year by year unless one of the parties notifies the other in writing no earlier than ninety (90) days prior to the expiration or subsequent contract anniversary and no later than sixty (60) days prior to the expiration or subsequent contract anniversary, of its request to modify, amend, or terminate the Agreement. If the parties enter into subsequent meeting and conferring regarding a successor agreement, the terms and conditions of this Agreement shall remain in effect until a successor Agreement is reached, or until meeting and conferring is concluded.

The terms of this Agreement shall be effective upon the adoption of this Agreement by the City Council except as otherwise provided by specific sections of this Agreement.

2. **Wages.** ARTICLE 7: PAY RATES AND PRACTICES is amended to add the following to Section 7.1 Overall Wage Adjustment:

**7.1.4 Effective the same pay period as the implementation of the State Disability Insurance deduction under Section 13.6.4, the pay rates for employees in this representation unit shall be increased by one percent (1.0%). The City shall develop a salary schedule to incorporate this raise.**

**7.1.5 Effective the beginning of the first full pay period following July 1, 2020, the pay rates for employees in this representation unit shall be increased by an amount equal to the twelve-month increase in the consumer price index (CPI-U San Francisco-Oakland-San Jose) measured from February 2019 to February 2020. However, the increase shall be no less than two percent**

**(2.0%) and no more than four percent (4%) (i.e., CPI 2-4%). The City shall develop a salary schedule to incorporate this raise.**

**3. Medical Premiums.** ARTICLE 13: BENEFIT PROGRAMS is amended as follows:

**Add new Section 13.1.5 and renumber following subsections.**

13.1.5 For the plan year beginning January 1, 2021, the City shall make a nonelective employer contribution to the flexible benefits plan on behalf of each active employee in an amount which, together with the minimum PEMHCA contribution in 13.1.1 equals the contributions in Section 13.1.4 increased by an amount equal to the twelve-month increase in the consumer price index (CPI-U San Francisco-Oakland-San Jose) measured from February 2019 to February 2020. However, the increase in the City's contribution shall be no less than two percent (2.0%) and no more than four percent (4%) (i.e., CPI 2-4%).

**4. Disability Insurance.**

ARTICLE 12: LEAVE PROVISIONS is amended as follows:

**Delete Existing Section 12.2 and renumber following subsections**

ARTICLE 13: BENEFIT PROGRAMS is amended as follows:

**Add the following to Section 13:**

**13.6 Disability Insurance**

13.6.1 During the first year of disability and so long as no retirement determination has been made by the City, the employee will continue to receive City paid health insurance, AD&D, dental, vision and life insurance benefits providing that the employee continues to pay the employee share of the benefit cost, where applicable.

13.6.2 The City procedures which allow for follow-up of an employee who has been out on an extended disability shall apply to employees under this section.

13.6.3 Leave Accrual shall only continue for periods during which the employee is in City-paid status (i.e., utilizing accrued leave time to delay or supplement disability benefits).

#### 13.6.4 State Disability Insurance

Effective January 1, 2019 or as soon thereafter as possible, the City shall enroll all bargaining unit members in the California State Disability Insurance Program. The City will deduct premiums for this benefit from employees' payroll.

#### 13.6.5 Long Term Disability

Until a new long-term disability plan coinciding with the California State Disability Insurance Program (CSDIP) is implemented, should any illness or injury extend beyond forty-five (45) calendar days, the employee may apply for long term disability benefits as described in the summary plan description. The City shall pay the full cost for long term disability insurance.

Within seven months of the CSDIP implementation, the City will change its long-term disability insurance plan to coincide with the CSDIP as follows: should any illness or injury extend beyond one-hundred and eighty (180) calendar days, the employee may apply for long term disability benefits as described in the summary plan description. The City shall pay the full cost for long term disability insurance.

### **5. Compensatory Time Off Payout.** ARTICLE 8: HOURS AND OVERTIME is amended as follows:

#### 8.2 Overtime

8.2.4 **Compensatory Time.** An employee may accumulate a maximum of one hundred sixty (160) hours of compensatory time. Compensatory time may be used when the services of an employee are not needed for the efficient functioning of his/her department, and must be approved in advance by the Department Head. Once an employee has reached the limits of compensatory time in this section he/she shall receive cash at the overtime

Supplemental Agreement  
Menlo Park and AFSCME

rate for all overtime worked.

**With the last full pay period each December, beginning December 2019, and**  
~~Upon~~ **upon** termination, all unused compensatory time shall be paid out at the  
employee's existing rate of pay.


[Delete subsection a.]

**IN WITNESS WHEREOF, the parties hereto acting by, and through their duly authorized  
representatives, have executed this Supplemental Agreement this 14 day of August 2018.**

**FOR THE CITY OF MENLO PARK:**

**FOR AFSCME:**

\_\_\_\_\_  
**Lenka Diaz**  
**Administrative Services Director**

  
\_\_\_\_\_  
**John Tucker**  
**Business Agent**



## STAFF REPORT

**City Council**

**Meeting Date:** 10/9/2018

**Staff Report Number:** 18-182-CC

**Regular Business:** Approve the terms of a supplemental agreement between the City of Menlo Park and the Service Employees International Union Local 521 expiring June 30, 2021

### Recommendation

Approve the terms of a collective bargaining agreement between the City of Menlo Park and Service Employees International Union Local 521 (SEIU) and authorize the City Manager to execute a Memorandum of Understanding (MOU) with a term expiring June 30, 2021.

### Policy Issues

This recommendation aligns with the City's goals of balancing continued fiscal prudence in planning for the impacts of employee compensation on the 10-year fiscal forecast, while also continuing to align the City as a competitive employer in the robust Silicon Valley job market.

### Background

On September 26, 2017, the City Council approved a tentative agreement reached with the Service Employees International Union Local 521 (SEIU), which represents 162 non-sworn employees throughout the City who are primarily responsible for frontline service to the community. The terms of that agreement provided for a variety of economic adjustments and provided for a labor agreement expiring June 30, 2020. The terms of the agreement have been incorporated in the City's 10-year fiscal forecast as presented in the City Council's fiscal year 2018-19 adopted budget.

In response to concerns expressed by the bargaining unit as part of the 2017 negotiations, Appendix C to the current MOU includes a provision where both parties agree to meet and confer regarding the implementation of an employee-paid short-term disability insurance policy to address potential gaps between the exhaustion of an employee's paid time off balances and long term disability insurance.

The attached supplemental agreement is the result of the meet and confer process provided in Appendix C as well as other issues raised by management upon further review of the City's disability insurance program. The supplemental agreement was ratified by SEIU Local 521 September 5, 2018.

### Analysis

The supplemental agreement to the MOU is attached, and is the document that is the subject of City

Council ratification October 9, 2018. The following tables provide a summary of the key provisions and/or changes.

Table 1: Key provisions and/or changes		
Item	Key provisions and/or changes description	Estimated cost/savings
Term MOU Article 25	Assuming City Council ratification October 9, 2018, the supplemental agreement provides for a one-year term extension on the current MOU with a new expiration date of June 30, 2021. Given that negotiation of a successor agreement is not required for an additional fiscal year, the City is estimated to save approximately \$30,000 which reflects legal costs and internal staff time required to support negotiations.	(\$30,000)
Pay rates MOU Section 7.1	Assuming City Council ratification October 9, 2018, the supplemental agreement includes an across the board adjustment to all pay rates in this unit, as follows: 1.0 percent effective the pay period of CSDIP implementation* CPI salary adjustment effective the pay period following July 1, 2020, minimum of 2 percent maximum of 4%** * The fiscal impact of this adjustment is anticipated to be 0.50 percent of salary, as shown to the right, for fiscal year 2018-19, assuming January 1, 2019 implementation. California State Disability Insurance Program (CSDIP) is an employee funded benefit administered by the State of California. Participation, once elected by a majority of the bargaining unit, is mandatory for all bargaining unit members. ** The Consumer Price Index (CPI) adjustment in July 2020 is estimated at 3.5 percent.	\$95,000* \$685,200**
Benefit programs MOU Section 13.1	Assuming City Council ratification on October 9th, the supplemental agreement provides an increase to the City's cafeteria plan, effective January 1, 2021. The increase is tied to changes in the Consumer Price Index (CPI) with minimum of 2 percent and maximum of 4 percent, and applies to all levels of coverage, effective January 1, 2021.	\$113,200
Disability insurance MOU Section 13.6	Assuming City Council ratification on October 9th, the supplemental agreement modifies the disability insurance provided to employees in this bargaining unit as follows: • Effective January 1, 2019 or as soon as possible after ratification, the City shall deduct California State Disability Insurance Program (CSDIP) premiums deducted from employee pay. • Within seven months of CSDIP implementation, the City shall modify the long-term disability program to provide a benefit after 180 days of an eligible illness or injury. Currently the benefit takes effect after 45 days. The cost savings is a conservative estimate.	(\$18,700)

The supplemental agreement fulfills needs expressed by the bargaining unit for changes to the City's disability insurance benefits. Additionally, the contract extension provides the City with greater certainty in its expenditure needs through June 30, 2021.

### **Impact on City Resources**

The supplemental agreement results in an estimated cost of \$95,500 in 2018-19, reflecting the salary increase upon CSDIP implementation. In future years, the 10-year forecast will be fine-tuned with the terms of the contract extension through June 30, 2021.

### **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 report 15 days prior to the City Council meeting of October 9, 2018.

### **Attachments**

- A. Supplemental agreement between the City of Menlo Park and Service Employees International Union, Local 529

Report prepared by:

Sandy Pimentel, Management Analyst II

Lenka Diaz, Administrative Services Director

Nick Pegueros, Assistant City Manager

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**SUPPLEMENTAL AGREEMENT  
BETWEEN  
THE CITY OF MENLO PARK  
AND  
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521**

This Supplemental Agreement (“Agreement”) executed September \_\_\_, 2018 is by and between the City of Menlo Park (“City”) and Service Employees International Union, Local 521 (“SEIU”) for the purpose of modifying the current (2017-2020) Memorandum of Understanding between the parties (“MOU”). This document is intended to supersede any inconsistent provisions of the MOU and any side letters thereto. All other terms and conditions in the MOU and any side letters shall remain in full force and effect except as modified by this Supplemental Agreement.

**The City and SEIU agree to amend the 2017-2020 MOU as follows:**

1. **Duration.** ARTICLE 25: TERM OF AGREEMENT is amended as follows:

This Agreement shall remain in full force and effect up to and including June 30, **2021** **2020**, and thereafter shall continue in effect year by year unless one of the parties notifies the other in writing no earlier than January 30 of any year, and no later than March 30 of any year, of its request to modify, amend, or terminate the Agreement. If the parties enter into subsequent meeting and conferring regarding a successor agreement, the terms and conditions of this Agreement shall remain in effect until a successor Agreement is reached, or until meeting and conferring is concluded.

The terms of this Agreement shall be effective upon the adoption of this Agreement by the City Council except as otherwise provided by specific sections of this Agreement.

2. **Wages.** ARTICLE 7: PAY RATES AND PRACTICES is amended to add the following to Section 7.1 Overall Wage Adjustment:

**7.1.5 Effective the same pay period as the implementation of the State Disability Insurance deduction under Section 13.6.4, the pay rates for employees in this representation unit shall be increased by one percent (1.0%). The City shall develop a salary schedule to incorporate this raise.**

**7.1.6 Effective the beginning of the first full pay period following July 1, 2020, the pay rates for employees in this representation unit shall be increased by an amount equal to the twelve-month increase in the consumer price index (CPI-U San Francisco-Oakland-San Jose) measured from February 2019 to February 2020. However, the increase shall be no less than two percent (2.0%) and no more than four percent (4%) (i.e., CPI 2-4%). The City shall develop a salary schedule to incorporate this raise.**

**3. Medical Premiums.** ARTICLE 13: BENEFIT PROGRAMS is amended as follows:

**Add new Section 13.1.6 and renumber following subsections.**

13 .1.6 For the plan year beginning January 1, 2021, the City shall make a nonelective employer contribution to the flexible benefits plan on behalf of each active employee in an amount which, together with the minimum PEMHCA contribution in 13.1.2 equals the contributions in Section 13.1.5 increased by an amount equal to the twelve-month increase in the consumer price index (CPI-U San Francisco-Oakland-San Jose) measured from February 2019 to February 2020. However, the increase in the City's contribution shall be no less than two percent (2.0%) and no more than four percent (4%) (i.e., CPI 2-4%).

**4. Disability Insurance.**

ARTICLE 12: LEAVE PROVISIONS is amended as follows:

**Delete Existing Section 12.2 and renumber following subsections**

ARTICLE 13: BENEFIT PROGRAMS is amended as follows:

**Add the following to Section 13:**

13.6 Disability Insurance

13.6.1 During the first year of disability and so long as no retirement determination has been made by the City, the employee will continue to receive City paid health insurance, AD&D, dental, vision and life insurance benefits providing that the employee continues to pay the employee share of the benefit cost, where applicable.

13.6.2 The City procedures which allow for follow-up of an employee who has been out on an extended disability shall apply to employees under this section.

13.6.3 Leave Accrual shall only continue for periods during which the employee is in City-paid status (i.e., utilizing accrued leave time to delay or supplement disability benefits).



13.6.4 *State Disability Insurance*

Effective January 1, 2019 or as soon thereafter as possible, the City shall enroll all bargaining unit members in the California State Disability Insurance Program. The City will deduct premiums for this benefit from employees' payroll.

13.6.5 *Long Term Disability*

Until a new long-term disability plan coinciding with the California State Disability Insurance Program (CSDIP) is implemented, should any illness or injury extend beyond forty-five (45) calendar days, the employee may apply for long term disability benefits as described in the summary plan description. The City shall pay the full cost for long term disability insurance.


Within seven months of the CSDIP implementation, the City will change its long-term disability insurance plan to coincide with the CSDIP as follows: should any illness or injury extend beyond one-hundred and eighty (180) calendar days, the employee may apply for long term disability benefits as described in the summary plan description. The City shall pay the full cost for long term disability insurance.

**IN WITNESS WHEREOF, the parties hereto acting by, and through their duly authorized representatives, have executed this Supplemental Agreement this \_\_\_\_ day of September, 2018.**

**FOR THE CITY OF MENLO PARK:**

**FOR SEIU:**

\_\_\_\_\_  
**Lenka Diaz**  
**Administrative Services Director**

  
\_\_\_\_\_  
**Malcolm Thornton**  
**Business Agent**

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## STAFF REPORT

### City Council

**Meeting Date:** 10/9/2018  
**Staff Report Number:** 18-190-CC

**Regular Business:** Provide direction on the appointment of an Interim City Manager and establish a City Council Subcommittee to oversee the selection process of a permanent City Manager

### Recommendation

Staff recommends that the City Council provide direction on the appointment of an interim city manager and establish a City Council subcommittee to oversee the selection process of a new permanent city manager.

### Policy Issues

The City Council has sole responsibility of appointing two of the City's 287.25 full time equivalent personnel, the city manager and city attorney. The city manager serves as the City's chief executive officer.

### Background

On September 24, 2018, City Manager Alex McIntyre announced his resignation from the City to accept the position of city manager in the City of Ventura. Mr. McIntyre has served as Menlo Park's city manager for over six and a half years.

### Analysis

Mr. McIntyre's separation from Menlo Park is imminent, and the City Council must begin the selection process for his successor, both on an interim and regular basis.

#### Interim city manager appointment

The City Council may choose to select an internal or external candidate to serve as interim city manager for a period of time. Specific considerations of either choice are outlined as follows:

- A. Internal candidate. Appointment of an internal candidate to serve as the interim city manager is likely to be the most expeditious process given the City Council's familiarity with internal staff. Internal candidates possess a good understanding of the significant issues facing the community, have existing relationships with key staff members and stakeholders, and have already demonstrated a commitment to the City of Menlo Park and its success. If an internal candidate is named that individual's ability to focus on the work currently under his/her management will decrease significantly and could have the unintended consequence of destabilizing the management team. Designating an internal candidate will

necessitate shifting responsibilities to other staff. Of the 24 management level positions, seven or 29 percent of the positions are currently vacant, and workload has already shifted considerably to accommodate the vacancies. If an internal candidate is selected to serve as interim city manager, the City Council can take action on that individual's appointment as soon as possible pending a properly noticed special or regular meeting.

- B. External candidate. Appointment of an external candidate to serve as the interim city manager has the potential to be the least disruptive to existing workloads but is likely to take a bit more time to identify a qualified candidate, perform the appropriate background check, and negotiate terms of an employment agreement. If the external candidate is a CalPERS retired annuitant, s/he will be subject to the rules set forth by CalPERS for retired annuitants such as limits on compensation and the number of hours worked per fiscal year. Given the timing required to solicit interest, conduct interviews with the City Council in closed session, conduct a comprehensive background check, and negotiate an agreement, it is anticipated that the soonest an external candidate could be named interim city manager is on the City Council's November 13 agenda unless a special meeting is called prior.

If the City Council cannot name an interim city manager before Mr. McIntyre's last day, a member of the City's internal executive team can serve as acting city manager until the City Council makes its selection of an interim. For longer-term acting assignments, the City's practice for unrepresented management employees is to provide the individual serving in the acting capacity a salary premium of between 5 and 15 percent for the duration of the assignment, depending on the complexity of the acting assignment.

#### Permanent city manager appointment

In addition to providing direction on the City Council's desired process for the selection of an interim city manager, the City Council may also elect to provide direction on the process for the permanent city manager. Staff recommends appointing a City Council subcommittee to oversee the selection process including the following:

1. A professional recruiting firm. Staff recommends that the City Council contract with a professional recruiting firm for the permanent city manager search. This approach allows internal human resources staff to remain focused on the recruitment of 47.75 full-time equivalent personnel vacancies existing as of October 2. In addition to enabling internal staff the ability to stay focused on recruiting the significant number of vacant positions, a recruiter has access to a network of professionals who may be interested in coming to Menlo Park. The subcommittee can review the proposals, interview firms, and make a recommendation to the City Council for the award of a contract.
2. Develop a proposed selection process in coordination with the recruiter. Once selected, the recruiter can work with the subcommittee to establish a process that generates a pool of well-qualified candidates. This process includes developing the ideal candidate profile, drafting the recruitment announcement, and developing a recruitment timeline and selection process. The subcommittee may then recommend, for full City Council approval, all of the above. Generally, city manager recruitments require six to nine months from the selection of the recruiter to the new city manager's first day. The recruitment timeline for this search will be delayed due to the holidays and depends heavily on the City Council's ability to meet and agree on the items listed above.

At the Mayor's direction, staff has already solicited proposals from professional recruiting firms that specialize in local government recruitments. The proposals should be available for a subcommittee recommendation to the City Council for action as early as October 23. Based on recent experience with a

professional recruiting firm, staff estimates that a recruiter will cost at least \$28,500 and could be higher depending on the desired recruitment process.

### **Impact on City Resources**

The anticipated cost of an interim city manager and a professional recruiter are unlikely to require a budget amendment as sufficient funds are available resulting from salary savings for the higher than anticipated vacancy factor.

### **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:

Lenka Diaz, Administrative Services Director



## STAFF REPORT

### City Council

**Meeting Date:** 10/9/2018  
**Staff Report Number:** 18-188-CC

**Consent Calendar:** Approve the 2018-19 investment policy for the City and the former Community Development Agency of Menlo Park

### Recommendation

Staff recommends that the City Council accept the Finance and Audit Committee's recommendation to approve the 2018-19 investment policy for the City and the former Community Development Agency of Menlo Park.

### Policy Issues

The investment policy provides guidelines for investing City and former agency funds in accordance with State of California Government Code Section 53601 et seq.

### Background

The investment of funds by a California local agency, including the types of securities in which an agency may invest, is governed by the California Government Code. The law requires that the legislative body of each agency adopt an investment policy, which may add further limitations than those established by the State. In addition, an agency's investment policy must be reviewed annually, and any changes must be adopted at a public meeting. The City of Menlo Park has had such a policy in place since 1990. The investment policy was last reviewed and updated by the City Council September 26, 2017.

Annual adoption of the City's investment policy provides an opportunity to regularly review the policy to ensure its consistency with the overall objectives of safety, liquidity and yield, as well as its relevance to current law and economic trends. Early in each fiscal year, the City's investment adviser (Insight Investment) reviews the policy to ensure it is kept up to date and in compliance with applicable State statutes. Insight also makes recommendations for strategic changes to the investment policy to position the City's portfolio to maximize yield while maintaining safety and liquidity.

The annual review of the City's investment policy provides the opportunity to make modifications to reflect changes in the investment environment. The types of modifications will vary but are often focused on providing greater diversification to maintain a safe and liquid investment portfolio. Further, the annual review is also a good time to clarify certain terms, remove ambiguity in the policy language, and better reflect changes in current market trading technologies.

### Analysis

The Finance and Audit Committee met July 31 and reviewed the City's investment policy previously adopted September 26, 2017. The only recommended modification involves the inclusion of language



reflecting the update to the City Council election process, specifically with regards to the switch to district elections starting with the 2018 election. This changes only the background information provided in the policy and does not constitute a change in investment priorities or guidelines. As a result, the policy recommended by the Committee remains substantively unchanged from the policy adopted by the City Council September 26, 2017.

While outside of the scope of the investment policy, the Committee did discuss best practices in investment adviser selections. The Committee requested that staff investigate methods used by other jurisdictions, such as simultaneous employment of two competing investment advisors each assigned a portion of the portfolio, in order to ensure that the City receives the greatest permissible return on its investments. As that falls outside the scope of the investment policy, however, it resulted in no recommended changes to the previously adopted policy.

### **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. Finance and Audit Committee-recommended investment policy for the City and the former Community Development Agency of Menlo Park

Report prepared by:  
Dan Jacobson, Finance and Budget Manager

Approved by:  
Lenka Diaz, Administrative Services Director

## City of Menlo Park

### Investment Policy

The City of Menlo Park (the “City”), incorporated in 1927, is located between San Francisco and Oakland on the North, and San Jose on the South. The City is governed by a City Council (the “Council”) of five members elected at-large by district beginning with the election in 2018.

The Council has adopted this Investment Policy (the “Policy”) in order to establish the investment scope, objectives, delegation of authority, standards of prudence, reporting requirements, internal controls, eligible investments and transactions, diversification requirements, risk tolerance, and safekeeping and custodial procedures for the investment of the unexpended funds of the City. All such investments will be made in accordance with the Policy and with applicable sections of the California Government Code.

This Policy was endorsed and adopted by the City Council of the City of Menlo Park on the 2613<sup>th</sup> of September 2017. It replaces any previous investment policy or investment procedures of the City.

#### SCOPE

The provisions of this Policy shall apply to all financial assets of the City and the Community Development Agency of Menlo Park as accounted for in the City’s Comprehensive Annual Financial Report, with the exception of bond proceeds, which shall be governed by the provisions of the related bond indentures or resolutions.

All cash shall be pooled for investment purposes. The investment income derived from the pooled investment account shall be allocated to the contributing funds based upon the proportion of the respective average balances relative to the total pooled balance in the investment portfolio. Investment income shall be distributed to the individual funds on a monthly basis.

#### OBJECTIVES

The City’s funds shall be invested in accordance with all applicable municipal codes and resolutions, California statutes, and Federal regulations, and in a manner designed to accomplish the following objectives, which are listed in priority order:

1. Preservation of capital and protection of investment principal.
2. Maintenance of sufficient liquidity to meet anticipated cash flows.
3. Attainment of a market value rate of return.
4. Diversification to avoid incurring unreasonable market risks.

## **DELEGATION OF AUTHORITY**

The management responsibility for the City's investment program is delegated annually by the Council to the Chief Financial Officer (the "CFO") pursuant to California Government Code Section 53607. The City's Administrative Services Director of serves as the CFO. In the absence of the CFO, the Finance and Budget Manager is authorized to conduct investment transactions. The CFO may delegate the authority to conduct investment transactions and to manage the operation of the investment portfolio to other specifically authorized staff members. The CFO shall maintain a list of persons authorized to transact securities business for the City. No person may engage in an investment transaction except as expressly provided under the terms of this Policy.

The CFO shall develop written administrative procedures and internal controls, consistent with this Policy, for the operation of the City's investment program. Such procedures shall be designed to prevent losses of public funds arising from fraud, employee error, misrepresentation by third parties, or imprudent actions by employees of the City.

The City may engage the support services of outside investment advisors in regard to its investment program, so long as it can be clearly demonstrated that these services produce a net financial advantage or necessary financial protection of the City's financial resources.

## **PRUDENCE**

The standard of prudence to be used for managing the City's investments shall be California Government Code Section 53600.3, the prudent investor standard which states, "When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency."

The City's overall investment program shall be designed and managed with a degree of professionalism that is worthy of the public trust. The City recognizes that no investment is totally without risk and that the investment activities of the City are a matter of public record. Accordingly, the City recognizes that occasional measured losses may occur in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that adequate diversification has been implemented and that the sale of a security is in the best long-term interest of the City.

The CFO and authorized investment personnel acting in accordance with written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that the deviations from expectations are reported in a timely fashion to the Council and appropriate action is taken to control adverse developments.

## **ETHICS AND CONFLICTS OF INTEREST**

Elected officials and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program or could impair or create the appearance of an impairment of their ability to make impartial investment decisions. Employees and investment officials shall disclose to the City Manager any business interests they have in financial institutions that conduct business with the City and they shall subordinate their personal investment transactions to those of the City. In addition, the City Manager, the Assistant City Manager and the Administrative Services Director shall file a Statement of Economic Interests each year pursuant to California Government Code Section 87203 and regulations of the Fair Political Practices Commission.

## **AUTHORIZED SECURITIES AND TRANSACTIONS**

All investments and deposits of the City shall be made in accordance with California Government Code Sections 16429.1, 53600-53609 and 53630-53686, except that, pursuant to California Government Code Section 5903(e), proceeds of bonds and any moneys set aside or pledged to secure payment of the bonds may be invested in securities or obligations described in the ordinance, resolution, indenture, agreement, or other instrument providing for the issuance of the bonds.

Any revisions or extensions of these code sections will be assumed to be part of this Policy immediately upon being enacted. However, in the event that amendments to these sections conflict with this Policy or past City investment practices, the City may delay adherence to the new requirements when it is deemed in the best interest of the City to do so. In such instances, after consultation with the City's attorney, the CFO will present a recommended course of action to the Council for approval.

The City has further restricted the eligible types of securities and transactions as follows:

1. United States Treasury bills, notes, bonds, or strips with a final maturity not exceeding five years from the date of trade settlement.
2. Federal Agency debentures, federal agency mortgage-backed securities, and mortgage-backed securities with a final maturity not exceeding five years from the date of trade settlement.
3. Federal Instrumentality (government-sponsored enterprise) debentures, discount notes, callable securities, step-up securities, and mortgage-backed securities with a final maturity not exceeding five years from the date of trade settlement. Subordinated debt may not be purchased.

4. Medium-Term Notes issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Medium-term notes shall have a final maturity not exceeding five years from the date of trade settlement and shall be rated at least "A" or the equivalent by a nationally recognized statistical ratings organization (NRSRO), at the time of purchase.
5. Negotiable Certificates of Deposit with a maturity not exceeding five years from the date of trade settlement, in state or nationally chartered banks or savings banks that are insured by the FDIC, subject to the limitations of California Government Code Section 53638. Certificates of Deposits may be purchased only from financial institutions that meet the credit criteria set forth in the section of this Investment Policy, "Selection of Banks and Savings Banks." Depending on their maturity, Negotiable Certificates of Deposit shall have a short-term rating of at least A-1+ or the equivalent by a NRSRO at the time of purchase.
6. Non-negotiable Certificates of Deposit and savings deposits with a maturity not exceeding five years from the date of trade settlement, in FDIC insured state or nationally chartered banks or savings banks that qualify as a depository of public funds in the State of California as defined in California Government Code Section 53630.5. Deposits exceeding the FDIC insured amount shall be secured pursuant to California Government Code Section 53652.
7. Municipal and State Obligations:
  - A. Municipal bonds with a final maturity not exceeding five years from the date of trade settlement. Such bonds include registered treasury notes or bonds of any of the 50 United States and bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the states. Such obligations must be rated at least "A", or the equivalent, by a NRSRO at the time of purchase.
  - B. In addition, bonds, notes, warrants, or other evidences of indebtedness of any local agency in California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency. Such obligations must be rated at least "A", or the equivalent, by a NRSRO at the time of purchase.
8. Prime Commercial Paper with a maturity not exceeding 270 days from the date of trade settlement with the highest ranking or of the highest letter and number rating as provided for by a NRSRO. The entity that issues the commercial paper shall meet all of the following conditions in either sub-paragraph A. or sub-paragraph B. below:
  - A. The entity shall (1) be organized and operating in the United States as a general corporation, (2) have total assets in excess of \$500 million, and (3)

have debt other than commercial paper, if any, that is rated at least "A" or the equivalent or higher by a NRSRO.

B. The entity shall (1) be organized within the United States as a special purpose corporation, trust, or limited liability company, (2) have program-wide credit enhancements, including, but not limited to, over collateralization, letters of credit or surety bond, and (3) have commercial paper that is rated at least "A-1" or the equivalent or higher by a NRSRO.

9. Eligible Banker's Acceptances with a maturity not exceeding 180 days from the date of trade settlement, issued by a national bank with combined capital and surplus of at least \$250 million, whose deposits are insured by the FDIC, and whose senior long-term debt is rated at least "A" or the equivalent by a NRSRO at the time of purchase.
10. Repurchase Agreements with a final termination date not exceeding 30 days collateralized by the U.S. Treasury obligations, Federal Agency securities, or Federal Instrumentality securities listed in items #1 through #3 above, with the maturity of the collateral not exceeding five years. For the purpose of this section, the term collateral shall mean purchased securities under the terms of the City's approved Master Repurchase Agreement. The purchased securities shall have a minimum market value including accrued interest of 102% of the dollar value of the funds borrowed. Collateral shall be held in the City's custodian bank, as safekeeping agent, and the market value of the collateral securities shall be marked-to-the-market daily.

Repurchase Agreements shall be entered into only with banks and with broker/dealers who are recognized as Primary Dealers with the Federal Reserve Bank of New York, or with firms that have a primary dealer within their holding company structure. Repurchase agreement counterparties shall execute a City approved Master Repurchase Agreement with the City. The CFO shall maintain a copy of the City's approved Master Repurchase Agreement along with a list of the banks and broker/dealers who have executed same.

11. State of California's Local Agency Investment Fund (LAIF), pursuant to California Government Code Section 16429.1.
12. Money Market Funds registered under the Investment Company Act of 1940 which (1) are "no-load" (meaning no commission or fee shall be charged on purchases or sales of shares); (2) have a constant daily net asset value per share of \$1.00; (3) invest only in the securities and obligations authorized in this Policy and (4) have a rating of at least "AAA" or the equivalent by at least two NRSROs.

Securities that have been downgraded to a level that is below the minimum ratings described herein may be sold or held at the City's discretion. The portfolio will be brought back into compliance with Investment Policy guidelines as soon as is practical.

It is the intent of the City that the foregoing list of authorized securities and transactions be strictly interpreted. Any deviation from this list must be preapproved by resolution of the City Council.

## INVESTMENT DIVERSIFICATION

The City shall diversify its investments to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions or maturities. Nevertheless, the asset allocation in the investment portfolio should be flexible depending upon the outlook for the economy, the securities markets, and the City's anticipated cash flow needs.

Securities shall not exceed the following maximum limits as a percentage of the total portfolio:

Type of Security	Maximum Percentage of the Total Portfolio
U.S. Treasury Obligations	100%
Federal Agency Securities†	100%†
Federal Instrumentality Securities†	100%†
Repurchase Agreements	100%
Local Government Investment Pools	100%
Aggregate amount of Certificates of Deposit, Negotiable and Non-Negotiable*	25%
Aggregate amount of Prime Commercial Paper*	25%
Aggregate amount of Money Market Funds*	20%
Aggregate amount of Municipal Bonds*	30%
Aggregate amount of Eligible Banker's Acceptances*	15%
Aggregate amount of Medium-Term Notes*	30%

† No more than 20% of the City's total portfolio shall be invested in mortgage-backed securities.

\*No more than 5% of the City's total portfolio shall be invested in any one issuer/financial institution and/or its affiliates.

## PORTFOLIO MATURITIES AND LIQUIDITY

To the extent possible, investments shall be matched with anticipated cash flow requirements and known future liabilities. The City will not invest in securities maturing more than five years from the date of trade settlement unless the Council has, by resolution, granted authority to make such an investment at least three months prior to the date of



investment. The sole maturity distribution range shall be from zero to five years from the date of trade settlement.

## **SELECTION OF BROKER/DEALERS**

The CFO shall maintain a list of broker/dealers approved for investment purposes, and it shall be the policy of the City to purchase securities only from those authorized firms. To be eligible, a firm must be licensed by the State of California as a broker/dealer as defined in Section 25004 of the California Corporations Code.

The City may engage the services of investment advisory firms to assist in the management of the portfolio and investment advisors may utilize their own list of approved Broker/Dealers. The list of approved firms shall be provided to the City on an annual basis or upon request.

In the event that an external investment advisory firm is not used in the process of recommending a particular transaction, each authorized broker/dealer shall be required to submit and annually update a City approved Broker/Dealer Information Request form which includes the firm's most recent financial statements. The CFO shall maintain a list of the broker/dealers that have been approved by the City, along with each firm's most recent broker/dealer Information Request form.

The City may purchase commercial paper from direct issuers even though they are not on the approved broker/dealer list as long as they meet the criteria outlined in Item 8 of the Authorized Securities and Transactions section of this Policy.

## **COMPETITIVE TRANSACTIONS**

Each investment transaction shall be competitively transacted with authorized broker/dealers. At least three broker/dealers shall be contacted for each transaction and their bid and offering prices shall be recorded.

If the City is offered a security for which there is no other readily available competitive offering, the CFO will then document quotations for comparable or alternative securities.

## **SELECTION OF BANKS AND SAVINGS BANKS**

The CFO shall maintain a list of authorized banks and savings banks that are approved to provide banking services for the City. To be eligible to provide banking services, a financial institution shall qualify as a depository of public funds in the State of California as defined in California Government Code Section 53630.5 and must be a member of the FDIC. The City shall utilize SNL Financial Bank Insight ratings to perform credit analyses on banks seeking authorization. The analysis shall include a composite rating and individual ratings of liquidity, asset quality, profitability and capital adequacy. Annually, the CFO shall review the most recent credit rating analysis reports performed for each approved bank. Banks that in the judgment of the CFO no longer offer adequate safety to the City shall be removed from the City's list of authorized banks. Banks failing to meet the criteria outlined above, or in the judgment of the CFO no longer offer adequate safety to the City, will be removed from the list. The CFO shall maintain a file of the most recent credit rating analysis reports performed for each approved bank. Credit analysis shall be performed on a semi-annual basis.



## **SAFEKEEPING AND CUSTODY**

The CFO shall select one or more financial institutions to provide safekeeping and custodial services for the City, in accordance with the provisions of Section 53608 of the California Government Code. Custodian banks will be selected on the basis of their ability to provide services for the City's account and the competitive pricing of their safekeeping related services. The CFO shall maintain a file of the credit rating analysis reports performed semi-annually for each approved financial institution. A Safekeeping Agreement approved by the City shall be executed with each custodian bank prior to utilizing that bank's safekeeping services.

The purchase and sale of securities and repurchase agreement transactions shall be settled on a delivery versus payment basis. All securities shall be perfected in the name of the City. Sufficient evidence to title shall be consistent with modern investment, banking and commercial practices.

All investment securities purchased by the City will be delivered by book entry and will be held in third-party safekeeping by a City approved custodian bank, or its Depository Trust Company (DTC) participant account.

## **PORTFOLIO PERFORMANCE**

The investment portfolio shall be designed to attain a market rate of return throughout budgetary and economic cycles, taking into account prevailing market conditions, risk constraints for eligible securities, and cash flow requirements. The performance of the City's investments shall be compared to the average yield on the U.S. Treasury security that most closely corresponds to the portfolio's actual weighted average effective maturity. When comparing the performance of the City's portfolio, its rate of return will be computed net of all fees and expenses.

## **PORTFOLIO REVIEW AND REPORTING**

Credit criteria and maximum percentages listed in this section refer to the credit of the issuing organization and/or maturity at the time the security is purchased. The City may, from time to time, be invested in a security whose rating is downgraded below the minimum ratings set forth in this Policy. In the event a rating drops below the minimum allowed rating category for that given investment type, the Administrative Services Director shall notify the City Manager

and/or Designee and recommend a plan of action. Appropriate documentation of such a review, along with the recommended action and final decision shall be retained for audit.

Quarterly, the CFO shall submit to the Council a report of the investment earnings and performance results of the City's investment portfolio. The report shall include the following information:

1. Investment type, issuer, date of maturity, par value and dollar amount invested in all securities, and investments and monies held by the City;
2. A description of the funds, investments and programs;
3. A market value as of the date of the report (or the most recent valuation as to assets not valued monthly) and the source of the valuation;
4. A statement of compliance with this Investment Policy or an explanation for non-compliance; and
5. A statement of the ability to meet expenditure requirements for six months, as well as an explanation of why money will not be available if that is the case.

## **POLICY REVIEW**

This Investment Policy shall be adopted by resolution of the City Council annually. It shall be reviewed at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity, yield and diversification and its relevance to current law and economic trends. Any amendments to the Policy shall be reviewed by the City's Finance/Audit Committee prior to being forwarded to the City Council for approval.