



**SPECIAL AND REGULAR MEETING AGENDA**

**Date:** 12/10/2019  
**Time:** 5:30 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.

**5:30 p.m. Study Session**

- SS1. Update on the current Climate Action Plan and potential scope for developing a Climate Action Plan 2.0 ([Staff Report #19-266-CC](#))
- SS2. City Drone Program ([Presentation](#))

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

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

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

**E. Consent Calendar**

- E1. Accept the City Council meeting minutes for October 29, November 5, and November 12, 2019 ([Attachment](#))
- E2. Authorize the City Manager to enter into a funding agreement with the Peninsula Arts Guild for crossing improvements to El Camino Real and receive and file an update on anticipated construction traffic impacts for the Guild Theater ([Staff Report #19-264-CC](#))
- E3. Transmittal of the Annual Report on the status of the transportation impact, storm drainage, recreation in-lieu, below market rate housing in-lieu, and construction impact fees collected as of June 30, 2019 ([Staff Report #19-262-CC](#))

- E4. Approve the formation of a Youth Advisory Committee to advise staff and the Parks and Recreation Commission ([Staff Report #19-265-CC](#))
- E5. Waive second reading and adopt Ordinance No. 1061 amending Chapter 13.26 [Transportation Impact Fee program] of Title 13 [Streets, sidewalks and utilities] and adopt resolution No. 6533 to establish new Transportation Impact Fee rates ([Staff Report #19-267-CC](#))
- E6. Authorize the City Manager to enter into an agreement for water utility billing services ([Staff Report #19-263-CC](#))

#### **F. Regular Business**

- F1. Adopt Resolution No. 6534 approving the City Council Community Funding Subcommittee's recommendations regarding the 2019-20 community funding allocation ([Staff Report #19-268-CC](#))
- F2. Adopt Resolution No. 6535 endorsing the declaration of a climate emergency that demands accelerated actions on the climate crisis and requests regional collaboration to address climate change ([Staff Report #19-269-CC](#))
- F3. Receive the comprehensive annual financial report for the fiscal year ended June 30, 2019 ([Staff Report #19-261-CC](#))
- F4. Update and appoint or reappoint councilmembers to various City Council ad hoc subcommittees ([Staff Report #19-260-CC](#))
- F5. Local amendments to the 2019 California Building Standards Code, first reading ([Staff Report #19-250-CC](#))
- F6. First Reading and introduction of ordinance No. 1064 banning sale of flavored tobacco and e-cigarette devices ([Staff Report #19-270-CC](#))
- F7. Authorize a pool rental fee waiver of \$12,000 for Mr. Max Fennell to conduct a 12-week learn-to-swim program at the Belle Haven pool beginning in January 2020, and authorize staff to waive standard contract instructor revenue share requirements for the program ([Staff Report #19-271-CC](#))

#### **G. Informational Items**

- G1. City Council agenda topics: December 2019 to February 2020 ([Staff Report #19-259-CC](#))
- G2. Update on the Belle Haven Multi-generational Community Center and Library ([Staff Report #19-272-CC](#))

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

#### **I. City Councilmember Reports**

## **J. Adjournment**

At every regular meeting of the City Council, in addition to the public comment period where the public shall have the right to address the City Council on any matters of public interest not listed on the agenda, members of the public have the right to directly address the Council on any item listed on the agenda at a time designated by the chair, either before or during the City Council's consideration of the item.

At every special meeting of the City Council, members of the public have the right to directly address the City Council on any item listed on the agenda at a time designated by the chair, either before or during consideration of the item. For appeal hearings, appellant and applicant shall each have 10 minutes for presentations.

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

Any writing that is distributed to a majority of the City Council by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available 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.

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**STAFF REPORT**

**City Council**

**Meeting Date:** 12/10/2019

**Staff Report Number:** 19-266-CC

**Study Session:** Update on the current Climate Action Plan and potential scope for developing a Climate Action Plan 2.0

**Recommendation**

This is a study session and the City Council may provide general direction on the Climate Action Plan however no action is required.

**Policy Issues**

The City's Climate Action Plan (CAP) was approved by the City Council in 2009, and was designed to meet a 27 percent greenhouse gas (GHG) reduction target by 2020.

**Background**

The Climate Action Plan (CAP) was first approved by the City Council in 2009. It remains a guiding document for all community policies, programs, and projects to reduce greenhouse gas (GHG) emissions that contribute to climate change. From time to time, the CAP has been updated with strategies to reflect technology and regional/state legislative advancements. The most recent update to the CAP strategies occurred in 2018 (Attachment A).

The CAP includes an inventory of GHG emissions from fossil fuels consumed by vehicles and buildings, and produced by waste in the community. The City Council also adopted a GHG reduction target of 27 percent below 2005 levels by 2020. The most current data from 2017 shows an 18.6 percent reduction in GHG emissions.

Climate change refers to the alternation of the earth's atmospheric conditions due to human consumption and use of fossil fuels that create GHG emissions such as, carbon dioxide from gasoline in vehicles and natural gas in buildings, and methane produced from landfilled waste. GHG emissions from the production and transport of goods and services are also important to consider, such as the GHG footprint of plastics, meat and disposable food ware. However, they are challenging and difficult to analyze due to unavailable data.

These activities result in an overall warming of the planet that changes weather patterns resulting in displacement/extinction of species and people, affects agriculture, reduces the availability of freshwater water, increases floods and wildfires, and threatens coastal communities through sea level rise. These changes affect all life now and in the future on the planet to varying degrees. It also impacts economies and equity in culture and society.

The Environmental Quality Commission's (EQC) work plan includes providing advice to the City Council on adopting a new greenhouse gas reduction target beyond 2020 and identifying strategies to achieve the new

reduction target. The EQC has researched and prepared advice on updating the CAP beyond 2020 for the City Council (Attachment B). In response to working with the EQC, staff has developed a potential scope for creating a Climate Action Plan 2.0 that includes a structured process and defines limited stakeholder outreach so the project can be completed in one year. See Attachment C for details on the project scope. Broader community outreach would likely result in a longer delivery window of a recommendation on updating the CAP.

The purpose of this study session is to inform and receive feedback from the City Council on developing a CAP 2.0 in regards to a new GHG reduction target, potential strategies, and a process to develop the plan. Staff advises that the City Council consider this project in the annual work plan/goal setting process in January 2020 to ensure alignment with other sustainability and community priorities, and adequate resourcing is available.

## **Analysis**

### Menlo Park Implementation Progress to Date

Progress has been made on greenhouse gas (GHG) reduction strategies, such as (but not limited to) the adoption of a Community Zero Waste Plan, renewable energy installations on city facilities, installation of public electric vehicle charging stations, formation of Peninsula Clean Energy (PCE), and inclusion of green design standards in the General Plan. This year the City Council also adopted reach codes which require new buildings to be nearly all-electric to maximize use of clean and renewable electricity available in the community. In addition, formation of a Transportation Management Association is being evaluated as a method to reduce GHG emissions from commuters.

### Menlo Park Community Greenhouse Gas Inventory Results and Limitations

In 2005, the community generated 349,284 tons of GHG emissions<sup>1</sup> in three categories: transportation, solid waste and building energy use. The City Council has a GHG reduction goal of 27 percent below 2005 levels by 2020. This means Menlo Park's 2020 GHG emission target is 254,977 tons or a 94,307-ton reduction.

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

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

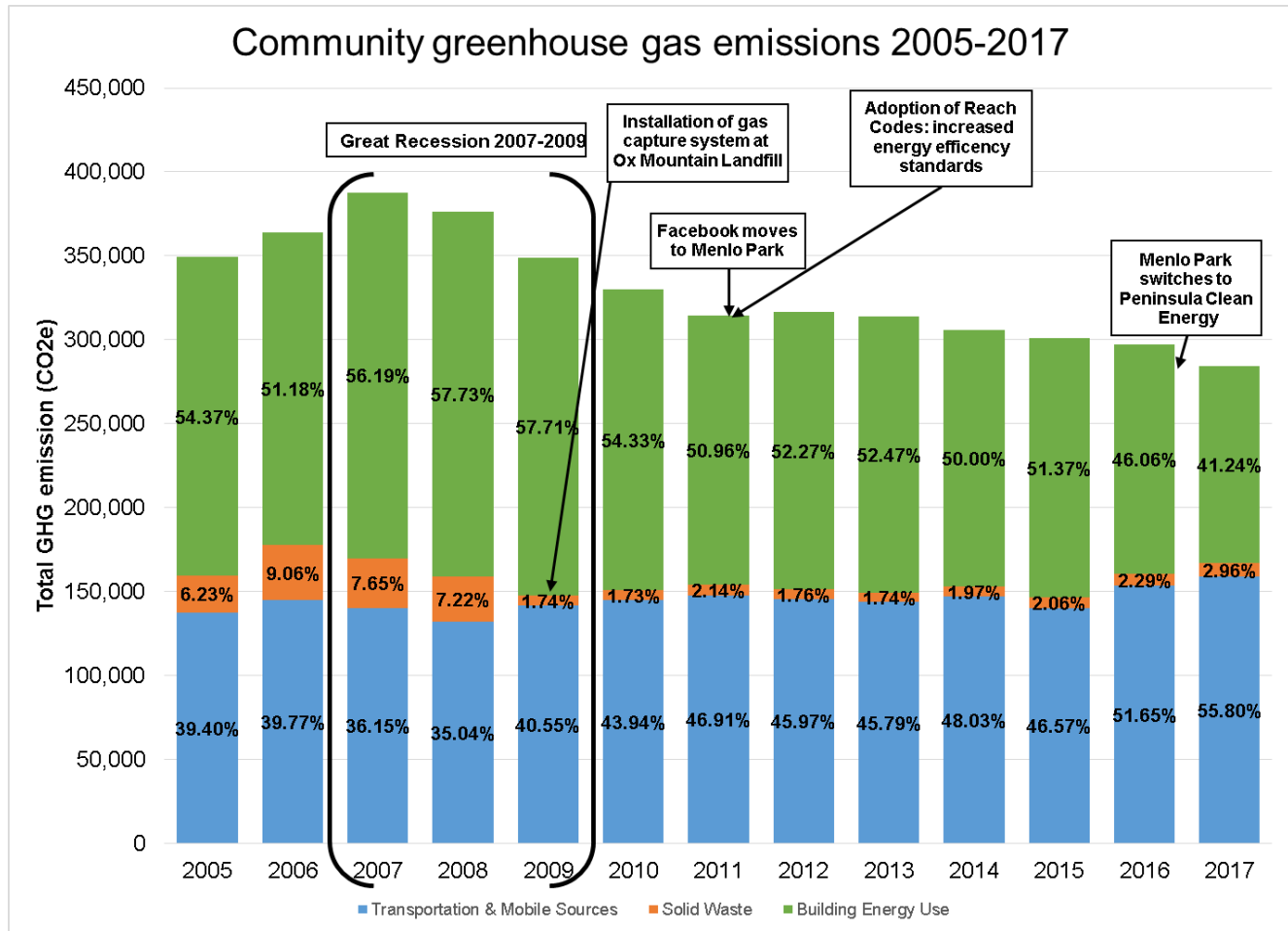
<sup>1</sup> The industry standard unit for GHG emissions is metric tons carbon dioxide equivalent (MT CO<sub>2</sub>e). These terms can be used interchangeably.

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

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

Figure 1 shows annual communitywide emissions with percentage contribution by category. As shown, the most significant source of 2017 emissions is transportation (55.8 percent) followed by building energy use (41.24 percent). Inventory data for 2018 and 2019 will not be available until 2020/2021. Attachment D provides a detailed analysis of the inventory broken down by category and 2035 projections for some categories.

Figure 1- Community greenhouse gas emission 2005-2017 by category



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

These noteworthy events show while local strategies can affect communitywide greenhouse gas emissions, they can also be influenced by external factors outside the City’s purview (e.g., economic event, state or regional efforts, etc.). Staff recommends using another methodology for measuring impacts of local strategies to determine success toward meeting a GHG reduction goal. This will allow for the most efficient use of city resources while providing better data to the community and City Council. The GHG inventory is helpful in determining where to focus policy or program efforts, but is not reflective of measuring progress as a result of local action. This is described in more detail below under “Debrief of Other Cities and counties Climate Action Plan 1.0.”



Based on the inventory and projections analysis in Attachment D, waste and transportation emissions are expected to increase due to development. Thus, the three big focus areas to consider for the next CAP are:

1. Reducing 80,000 tons of natural gas related GHG emissions in the existing building stock
2. Preventing 100,000 tons of waste related GHG emissions by achieving the zero waste goal by 2035
3. Preventing 200,000 tons of transportation related GHG emissions through shifts to low carbon fuel alternatives

#### Debrief of Other Cities and counties Climate Action Plan 1.0

Many cities are on track to meeting their 2020 goals. However, this progress is not necessarily a result of local action but from regional, state and federal standards/opportunities, such as fuel efficiency standards and state legislation that requires cleaner sources of energy by power providers.

Local government actions that are attributable to reduced greenhouse gas emissions were from waste by offering composting services instead of landfilling organic waste and creation of community choice aggregation (CCA) organizations that provide clean and renewable energy to communities.

These findings are accurate for Menlo Park where the largest reductions since 2005 have been in the waste and building energy category. Although for waste, this was through improved capture of methane at Ox Mountain Landfill rather than composting services. Menlo Park also subscribed all residents and businesses to clean electricity through the formation of Peninsula Clean Energy (a CCA).

The challenges and barriers that cities and counties have faced in implementing their CAP 1.0 include:

- Lack of staffing, funding and political will
- Lack of ability to track implementation efforts
- Difficulty in influencing transportation emission reductions
- Issues in maintaining and developing greenhouse gas inventories that are unable to clearly show gains or reductions related to local government actions. For example, less than 1/5 of total GHG emission reductions in Santa Barbara were attributed to local actions. External factors played a larger role, such as trends in the marketplace/technology, economy, consumer choices, state and regional action, and legislation

Going forward cities and counties have taken the lessons learned from their first CAP to adopt the following features in their CAP 2.0:

- Reducing the number of GHG reduction measures. For example, adopting 10 key measures/goals instead of 80.
- Less emphasis on identifying specific measures in order to build in flexibility that accommodates technological and legislative advances, such as de-carbonizing buildings and creating electric ready communities instead of stating specific measures, such as an anti-idling policy.
- Targeting deep GHG reductions through comprehensive and systemic changes by avoiding focus on low hanging fruit (such as converting streetlights to LED lights or public education) to focus more on challenging policies and programs that would yield greater GHG reductions (e.g., reach codes, zero waste policies, and/or electric vehicle charging station infrastructure).
- Design measures so implementation metrics can be quantified and monitored to showcase success.
- Specify and fund required staff resources to carry out the plan.
- Addition of consumption based inventory (full life cycle analysis of GHG impacts), equity and adaption elements. Leaders in incorporating equity in CAP include San Antonio, Detroit and Cleveland.

The Carbon Neutral Cities Alliance (CNCA) is a collaboration of leading global cities working to cut greenhouse gas emissions by 80 percent to 100 percent. In their report titled "Game Changers: Bold Actions by Cities to Accelerate Progress Toward Carbon Neutrality" (Attachment E), several game changers



for local governments are listed as:

1. Adopt a zero emissions standard for new buildings, which means all energy use for a building is efficient and comes from renewable energy sources. This can also be applied to additions and alterations to existing buildings.
2. Build electric vehicle charging infrastructure
3. Mandate the recovery of organic material
4. Electrify buildings heating and cooling systems
5. Designate car-free and low-emission vehicle zones
6. Empower local producers and buyers of renewable electricity
7. Set a city climate budget to drive de-carbonization

Each one of these actions has a subset of steps to achieve this goal. For example, in building electric vehicle (EV) charging infrastructure, step one includes conducting an analysis of future EV infrastructure needs of the community and design the infrastructure accordingly. It also includes addressing equity in the form of access to charging stations. This was an action item in the 2020 Menlo Park Climate Action Plan, but was not completed due to limited staff resources to focus on the reach codes and Heritage Tree Ordinance update.

#### Environmental Quality Commission Advice

The Environmental Quality Commission has been actively discussing the update of the Climate Action Plan over the last few months. In October, the EQC took formal action to advise the City Council to adopt a new reduction target of carbon neutral (zero emissions) by 2030. This would be defined as a 90 percent reduction of community GHG emissions (fossil fuel use in building energy use and transportation, and methane from waste) with the remaining 10 percent to be sequestered through carbon sinks (e.g., trees, vegetation, wetlands, etc.).

This goal is bolder and more progressive than the state goal of 40 percent by 2030 and 80 percent by 2050, but it would be difficult to achieve. Not only does it require significant staff resources and funding, it also requires advancements and alignment with external factors such as technology and state legislation advancements to be fully realized. Carbon neutrality can be achieved over time with careful attention to external factors and timing local policy and program opportunities accordingly.

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

However, the IPCC's more recent 2019 report states that certain effects of climate change are happening faster than predicted in the 2018 report. It is likely that the state's targets will prove to be too weak to keep global temperatures below 1.5°C. The EQC advises that due to this great risk and Menlo Park's demographics and location in the technology capital, there is a unique and timely opportunity for Menlo Park to lead the Bay Area and the state in developing model and innovative policies and programs that can be replicated to mitigate climate change impacts.

To meet this bold GHG reduction goal, the EQC also advises the following 10 strategies for including in the CAP 2.0:

1. 100 percent carbon-free electricity through Peninsula Clean Energy membership
2. Completely electrify existing buildings
3. Reduce vehicle miles traveled (VMT)
4. Electrify vehicles, reduce gasoline sales and increase EV infrastructure

5. Reduce carbon emissions from construction
6. Electrify all municipal buildings and fleet vehicles
7. Implement Community Zero Waste Plan and catalyze a circular economy
8. Avoid installing appliances/structures that will be abandoned due to climate change (e.g., gas water heaters).
9. Sequester residual carbon emissions through direct carbon sinks (urban canopy, increased landscaped areas, etc.)
10. Prepare the City for climate change through adaption measures.

#### Staff Resource Constraints and Successes

The current resources of the Sustainability Division can only support one to two new policy and programs per year. In addition, each new policy and program requires implementation support or adds to sustainability or other departments' baseline operations. This can further reduce the capacity to undertake new programs, policies or efforts.

The last CAP strategic update occurred in 2018 (Attachment C), and included the following strategies for 2018-2020 based on the advice provided by the Environmental Quality Commission (EQC) that was approved by the City Council:

1. Incorporating green design standards from the ConnectMenlo area to the El Camino Real/Downtown Specific Plan. This was later traded off for developing building electrification reach codes; and
2. Developing a community wide electric vehicle charging infrastructure (EVCI) master plan that would provide guidance on policies and programs to address infrastructure barriers to electric vehicle purchases. This was not completed due to limited staff resources that were dedicated to completing the Heritage Tree Ordinance update (City Council Priority No.4). The updated ordinance was adopted in November 2019. However, another six months of work is necessary to prepare for the implementation of the new rules and standards.

In addition, implementation of the zero waste plan (which is a climate action plan strategy) has also been delayed due completing higher priority City council work plan items, implementation of prior approved policies and programs, and maintaining baseline operations in the Sustainability Division. However, maintaining a high focus on one or two progressive policies such as an all-electric building reach code has placed the city as a leader in the state, creating a ripple effect in encouraging other cities to develop similar policies that accelerate GHG reductions beyond Menlo Park's borders.

#### Other Communities Approach to Funding and Staff Resourcing

Many cities are updating their climate action plan to 2030 and 2050, known as CAP 2.0. In addition, given the urgency of climate change, cities are considering and approving increasing staff capacity and funding to expedite climate action plan strategies.

For example, Mountain View approved in October to spend \$4.6 million on 10 new staff positions over the next three years to implement climate action plan 2.0 strategies plus an additional \$3 million dedicated to implementing/supporting programs. Two positions will be dedicated to zero waste plan implementation. In Sunnyvale, three new positions will be added totaling \$500,000 per year to implement strategies in their Climate Action Plan 2.0.

Some cities are using its general fund to support the dedicated staff, and others are considering or using dedicated taxes/fees, for example:

- Boulder, Colorado has had a tax dedicated to addressing climate change since 2006, which has paved the way for leadership in addressing climate change, such as requiring energy efficiency upgrades in all existing buildings. It generates \$1.8 million per year and is levied on city residents and businesses

based on the amount of electricity they consume. Annual average is \$21 for residential, \$94 for commercial, and \$9,600 large industrial customers. The tax has been extended through March 2023.

- The City of Watsonville adopted a Carbon Fund Ordinance in 2015 that establishes a carbon fee on all development projects except single family residential alternations, temporary buildings, and building area that is not conditioned. The goal is to encourage implementation of renewable energy in development projects and fund citywide greenhouse gas reduction projects.

Currently, Menlo Park dedicates two full time employees and \$100,000 per year to Climate Action Plan Strategies, and \$100,000 to implementation of zero waste strategies.

#### Potential Scope for Developing a CAP 2.0

Staff advises that the City Council consider this project in the annual work plan/goal setting process in January 2020 to ensure alignment with other sustainability and community priorities, and adequate resourcing is available.

If the project is included in the 2020 City Council work plan, Attachment C provides a high level overview of the potential process to adopting a CAP 2.0. It outlines the potential general frame work, roles and responsibilities, and method of community engagement, which could be targeted consultation with key stakeholders, such as relevant city commissions and local nonprofits. This means feedback may or may not be used in the final CAP 2.0. The rationale for limited community engagement is to provide a pathway for the project to be completed in one year.

#### **Impact on City Resources**

Updating the Climate Action Plan would not require additional resources at this time. However, updating the Climate Action Plan would be the only climate initiative in addition to implementing three Zero Waste Plan strategies for the Sustainability Division in 2020.

This would mean that other measures, such as electric vehicle infrastructure readiness opportunities for the community, electrification of existing buildings, energy storage, or GHG free transportation initiatives (e-scooter/bike share) could not be pursued with current resources until 2021. This would result in missed opportunities particularly in electric vehicle infrastructure readiness as there are funding and regional opportunities occurring in 2020. The City Council would need to allocate funding and staff resources to work on more than one climate initiative in 2020.

#### **Environmental Review**

An analysis of impacts under the California Environmental Quality Act will be performed prior to adoption a Climate Action Plan 2.0.

#### **Public Notice**

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

## Attachments

- A. Hyperlink – Climate Action Plan update 2018: [menlopark.org/ArchiveCenter/ViewFile/Item/8360](https://menlopark.org/ArchiveCenter/ViewFile/Item/8360)
- B. October Environmental Quality Commission Recommendation report
- C. Climate Action Plan Project on a Page and Scope
- D. Community Greenhouse Gas Analysis Memorandum
- E. Hyperlink – Game Changers: Bold Actions by Cities to Accelerate Progress Toward Carbon Neutrality by Carbon Neutral Cities Alliance:  
<http://carbonneutralcities.org/wp-content/uploads/2018/09/CNCA-Game-Changers-Report-2018.pdf>

Report prepared by:  
Rebecca L. Lucky, Sustainability Manager

**MEMORANDUM**

Date: 10/16/2019  
 To: Environmental Quality Commission  
 From: Climate Action Plan subcommittee  
 Re: Review and discuss subcommittee's climate action plan memorandum and consider a recommendation to City Council for developing a climate action plan 2.0

The Environmental Quality Commission (EQC) climate action plan (CAP) subcommittee continues its work on its portion of a new CAP for Menlo Park. We strive to work as quickly and as thoroughly as possible, acknowledging the urgency of the problem we seek to address.

In the latest phase of our work, we have reviewed CAPs from 11 other North American cities, some close to home and others further afield, but almost all at the cutting edge of climate change mitigation and adaptation. We have also considered best practices for climate action, proposed by relevant research organizations such as the Rocky Mountain Institute ([www.rmi.org](http://www.rmi.org)) and ICLEI ([www.iclei.org](http://www.iclei.org)).

Based on that research and an initial assessment of the specific climate-related risks faced by Menlo Park, we have begun to hone in on those targets and strategies that would be best suited for Menlo Park to adopt. The subcommittee is now prepared to propose both greenhouse gas emissions targets and underlying climate strategies for the EQC's consideration.

This memo includes:

- An overview of key findings
- Proposed greenhouse gas (GHG) reduction targets
- Ten high-level strategies to support GHG targets
- Potential obstacles
- Co-benefits of recommended strategies
- Proposed next steps

**Key findings**

- Many cities in California drafted their first climate action plans in 2007-2009 and have updated their plans roughly every 5 years since.
- Many cities in California are now on their second or third update.
- As warnings from scientists become more dire, especially recently, cities have made **significant changes** to their climate action plans, **deepening** their commitments to reduce greenhouse gas emissions.
- Most climate action plans now include specific plans for **adapting** to climate change, in addition to ongoing efforts to **mitigate** climate change through greenhouse gas reduction. Adaptation includes preparing cities for: sea level rise, drought, wildfires, extreme weather events, power outages and more.
- Most cities with climate action plans are now setting a date by which they will achieve "net zero" carbon emissions, which is the point at which greenhouse gas emissions (minus new carbon sinks) for the entire city equals zero. Many cities and states in the US define "carbon neutrality" to be 80 percent greenhouse gas reductions, relative to 1990 levels.

- Some “low hanging fruit” actions, like converting traffic lights to LEDs and promoting energy efficiency through rebates, have been exhausted and cities now face more challenging tasks.
- The next steps required for significant greenhouse gas reductions require more money, more direct action by residents and significantly more political will.
- While these next steps will be a “heavy lift” for cities, collaborating with key stakeholders (e.g., Peninsula Clean Energy) whose interests are aligned with ours offers Menlo Park the potential for significant cost savings and reduction in programmatic burden.
- In general, climate action plans have become much more public-facing documents: less dense, less technical, easier to read and more aspirational, as they require much more public buy-in to implement.

### Framing the climate action plan

- While a growing percentage of Americans (roughly 70 percent) report that they are concerned about climate change, most have not yet accepted that in order for us to meet our Paris Climate Accord commitments and keep global temperature rise below 2°C. We must **quickly transition away from burning fossil fuels**. The question is no longer **if** we will stop burning fossil fuels but **when and how**. It is time for the public to start grappling with that truth, so that they can prepare to act.
- The **good news** is that we have **all** of the technology we need to eliminate 90 percent of fossil fuel consumption, today. This is a fact that most Americans do not understand, in large part because entrenched interests have sought to confuse the public, so that they can maintain their subsidies and profits. It is time for leaders to confidently declare that we do not need to wait for a future solution to climate change. The technology solutions are here. They are affordable. All that remains is for us to **act**.
- The **sooner** we act, the more time we buy ourselves to adapt to the significant climate changes coming our way. Coming changes in climate will affect every aspect of our lives and no one will be immune. As an example, sea level rise is expected to flood significant portions of Menlo Park’s Belle Haven neighborhood as soon as the 2060s. While not all of us live in Belle Haven, all of us will be impacted by the suffering of our neighbors and the eventual flooding of the approach to the Dumbarton Bridge. As a city, we may have to choose between building expensive sea walls to protect homes and infrastructure, and watching whole neighborhoods be engulfed by water. Even if we choose to build sea walls or levees, we must accept that levees are not fool proof. They can be breached with catastrophic consequences, such as those witnessed during Hurricane Katrina in New Orleans.
- The more deeply and swiftly we make reductions to our carbon emissions, the more **time** we give for other cities around the country to realize what is possible and to follow our lead. As we have seen recently with the adoption of bold Reach Codes by cities following us, like San Jose, **leadership matters**. Our bold action can **catalyze** action by larger cities. Broader collective action in turn increases the chances that climate catastrophe will be averted, or at least reduced. Although none of this is guaranteed, taking bold action may in fact be our only real chance of averting the dire consequences of climate change and so we believe that it is a goal worth pursuing with all of our might.
- Every day we wait to enact change, we increase the costs that will most certainly be paid later, either by us or our children. While the next steps required to fight climate change will seem expensive and daunting to many citizens, on the order of \$30,000 per household to retrofit buildings and switch cars, those costs and efforts must be weighed

against the billions of dollars that will certainly be lost in the value of private property or spent on adaptation efforts in Menlo Park if we don't act.

- Menlo Park enjoys a relatively privileged position among US cities, being located in a hot-bed of technical innovation and in one of the **top 10 wealthiest counties** in the nation. Given those advantages, we must ask ourselves: If we can't muster the motivation to aggressively tackle climate change, who else can we expect to do so?

## **Greenhouse gas emissions targets**

### ***2013 – Greenhouse gas emissions estimates from the City's last climate action plan update***

- In 2013, Menlo Park estimated its greenhouse gas emissions to be **360,247 tons** of CO<sub>2</sub>e (carbon dioxide equivalents) per year, broken down as follows:
  - o **40 percent** from fossil fuels used in **transportation**, which includes a mix of passenger cars and trucks of various duty types: light-, medium- and heavy-duty
  - o **39 percent** from burning fossil fuels for heat and electricity in **commercial buildings** (includes "Direct Access" utility customers that buy from third party energy companies)
  - o **16 percent** from burning fossil fuels for heat and electricity in **residences**
  - o **4 percent** from off-gassing methane in Bedwell Park, the site of the city's former **landfill**
  - o **1 percent** from **solid waste** management
- That translates to **approximately 11 tons of CO<sub>2</sub> per resident per year**
- Excluded from the city's 2013 greenhouse gas inventory are:
  - o Embodied CO<sub>2</sub> emissions from **construction materials** in buildings, significant especially for concrete and steel
  - o Embodied CO<sub>2</sub> emissions from the **goods and services** purchased by businesses and residences, which includes the manufacture of the goods as well as the shipping of those goods to customers
  - o Emissions associated with **water and sewer treatment**
  - o Emissions associated with **air travel** by residents
  - o Emissions associated with the **agriculture and livestock** that becomes food for residents
  - o Emissions associated with upstream activities related to producing natural gas and gasoline (though these are naturally reduced whenever we reduce the use of the fuels)

### ***2019 – Greenhouse gas emissions today***

- The City's exact carbon emissions today are not known. City staff is preparing to complete a new greenhouse gas inventory and will provide a date by which that inventory will be available.
- A rough estimate of Menlo Park's greenhouse gas emissions (using categories similar to the 2013 estimate) suggest that the City's emissions may have decreased by as much as 100,000 tons, primarily due to the switch from PG&E to Peninsula Clean Energy for our electricity supply.

### **2030 —Greenhouse gas emissions target**

- The State of California has set the following targets:

- **40 percent** reduction in greenhouse gas emissions (relative to 1990) by **2030**
  - **80 percent** reduction in greenhouse gas emissions by **2050**
- California's targets roughly align with those set out by the Intergovernmental Panel on Climate Change (IPCC) in its 2018 report. The IPCC states that these reductions are what is **required** to have approximately 50 percent chance of keeping global temperatures below 1.5°C.
- The IPCC's more recent 2019 report states that certain effects of climate change are happening faster than predicted, even in its 2018 report, and so it is possible, or even likely, that California's targets will prove to be too weak to keep global temperatures below 1.5°C.
- If the City wishes to lead other cities in mitigating climate change, it should adopt a Climate Action Plan so bold that, if all cities adopted it, would solve climate change
- **Given the likely lag time between our own actions and the actions of cities that choose to follow us, the CAP subcommittee recommends that Menlo Park adopt a target of 90 percent CO<sub>2</sub>e reduction by 2030 from 2005 levels, with the remaining 10 percent of CO<sub>2</sub>e sequestered by direct carbon sinks**

### Recommended Strategies

1. 100% carbon-free electricity through Peninsula Clean Energy membership
2. Completely electrify existing buildings
3. Reduce vehicle miles traveled (VMT)
4. Electrify vehicles, reduce gasoline sales, and increase EV infrastructure
5. Reduce carbon emissions from construction
6. Electrify all municipal buildings and fleet vehicles
7. Implement Zero Waste Plan and catalyze a circular economy
8. Avoid installing appliances/structures that will be abandoned due to climate change (e.g. gas water heaters).
9. Sequester residual carbon emissions through direct carbon sinks (urban canopy, increased landscaped areas, etc.)
10. Prepare the city for climate change through adaption measures #11

### *Rationale for strategies*

- Affordable carbon-free electricity forms the foundation of all other efforts to reduce the City's carbon emissions, including vehicle electrification and electrification of home heating. Fortunately, the City has a strong partner in Peninsula Clean Energy, which has independently committed to achieving 100 percent carbon-free electricity for all customers in San Mateo County by 2021.
- Reducing VMT in the City will reduce carbon emissions and simultaneously **reduce traffic congestion**, which consistently ranks as one of residents' top complaints in Menlo Park
- By swiftly electrifying its own buildings and vehicle fleet, the City will set an example and create learning opportunities for City staff and policy makers, as they prepare to ask residents and business to follow suit. Any lessons learned can be incorporated into effective City policies.
- We should anticipate that burning natural gas in buildings will eventually be banned. That is inherent in our stated goal of eliminating the burning of fossil fuels, in order to achieve carbon neutrality.



- In Northern California, as PG&E customers convert their gas heating appliances to electric, natural gas will become increasingly cost prohibitive, as PG&E attempts to recover costs for maintaining its gas pipelines from fewer and fewer customers.
- Therefore, continuing to allow residents and businesses to install gas appliances is a set-up for failure, waste and economic hardship, in a future that few members of the public can imagine today.
- In order to follow the IPCC's "model pathway" for avoiding the worst impacts of climate collapse, we must immediately begin reducing emissions with strategies that are: **rapid, far reaching**, and **unprecedented**. In other words, we must radically shorten the transition time to 90 percent emissions reductions.
- We must come to understand that the times of slow and gentle transition have now ended.

### Potential obstacles

- **Cost.** Every effort should be made to ensure that any strategy implemented by the City is done in the most cost effective way possible. Members of the CAP subcommittee are working diligently to come up with creative solutions for funding the suggested strategies. It is clear that many of the strategies could be made significantly more affordable through collaboration with partners such as: Peninsula Clean Energy, San Mateo County, other cities, local employers, appliance manufacturers and local community colleges. As an example, one potential obstacle to converting large numbers of gas furnaces to heat pumps within a short period of time is a shortage of skilled labor. To address this issue, the CAP subcommittee is exploring the possibility of partnering with Peninsula Clean Energy and local community colleges to develop training programs for heat pump installers. It is further possible that the programmatic burden of any related rebate programs could be shouldered by Peninsula Clean Energy, which stands to benefit from expanded home electrification. Even more savings may be achieved by negotiating bulk discounts on purchases of desired appliances, such as heat pumps. Every cost reduction measure will be explored and maximized.
- **Resistance to change.** Change is difficult and often the obstacles are more psychological than physical. Even when someone is presented with compelling information to support change, they may hesitate at the idea. After all, the old way of doing things is familiar and known. Any new policies considered by the City that require change on the part of residents should be accompanied by effective education and media campaigns, which convey information but also address psychological resistance to change. The City's proximity to Stanford offers rich opportunities for relevant academics and thought leaders to instruct residents and business owners on the science and economics behind key climate change mitigation strategies. Those policies that are anticipated to be most difficult for residents to adopt should be carefully designed and supported by effective programs, such as rebates and incentives.
- **Pressure from entrenched interests.** The City should anticipate that entrenched interests such as fossil fuel companies and developers may apply significant pressure to halt proposed changes. There is a natural reaction to a situation that potentially threatens their profit margins. However, given that the property and safety of our residents is directly threatened by climate change, concerns for the profitability of entrenched interests must take a back seat. Climate change mitigation is worth pursuing with all of our might.
- **Opposition from a vocal minority.** While it is likely that vast majority of Menlo Park residents share the concern of about 70 percent of Americans, who say they feel concerned about climate change, City officials may still face opposition from a vocal, but

perhaps ill-informed, minority on the issue. Some of that opposition may be addressed through effective information campaigns and education programs, such as expert talks by respected academics. However, we should recognize that the issue of climate change has unfortunately moved from that of national bi-partisan concern in the 1990s to one that is now colored by both bitter partisan politics and the influence of powerful entrenched interests. Partisan messages have been crafted to stoke visceral fear and opposition to change in a way that makes some groups difficult to reach, even with the best information. While City officials should anticipate these visceral, emotional responses to some of the change proposed, and while every measure should be taken to minimize the chances of such opposition, some may simply be unavoidable. As some of the co-benefits of addressing climate change, such as improved air quality, become apparent, opposition is likely to recede.

- **Limited staff resources and time.** Adopting the proposed strategies will require additional headcount, both in a coordinating functions, but also dispersed throughout the City's existing departments. For example, strategies such as significantly reduce VMT and working with employers to install EV charging stations for employees may require new headcount in the City's transportation department. Wherever possible, collaboration with outside entities should be used to minimize the City's ongoing programmatic burden, recognizing that some additional headcount cannot be avoided.

### **Co-Benefits of proposed strategies**

Enacting the 11 proposed strategies will have significant positive co-benefits that include:

- **Traffic congestion will be reduced**, through efforts to reduce VMT
- **Outdoor air quality** throughout the City **will improve** significantly, due to elimination of gas vehicles in favor of electric
- **Residents' health could improve** through increased active transportation, such as walking and biking
- **Indoor air quality** will be significantly **improved** by eliminating the burning of fossil fuels in homes
- Risk of gas **pipeline explosions**, like that which occurred in San Bruno, will be completely **eliminated**
- Retrofitting heating equipment in existing buildings will **boost the local economy** and **create new jobs**, which can eventually be exported to other cities around the country as they electrify their building stock
- Collaborating with local employers to build EV charging infrastructure in their parking lots will encourage daytime charging, which in turn **lowers the State's carbon emissions** by shifting electrical load to daytime hours when renewable electricity is plentiful and cheap
- Reducing waste and catalyzing a circular economy will **extend the life of the City's landfill**, which **saves residents money**
- Resiliency measures, such as installing solar plus storage on homes and municipal buildings, will provide **peace of mind** to residents who fear the effects of power blackouts and other climate-related events
- Residents will receive **peace of mind**, knowing that the City has a plan to address climate change
- Public **costs** of gas pipeline maintenance will eventually be completely **eliminated**
- Efforts to improve pedestrian and biking infrastructure will **increase the City's village feel**, steering it away from the prospect of ever increasing sprawl and traffic congestion, and **returning it to its small-town roots**

- If the City is able to identify nearby opportunities for carbon sinks, such as reforestation projects on Peninsula Open Space Trust (POST)-owned land, residents could be afforded **opportunities to enjoy those reforested lands** with the knowledge that their City's commitment to climate change mitigation created those opportunities

### **Next steps**

- Request that the City Council place climate action on their 2020 work plan
- Complete a greenhouse gas inventory for Menlo Park
- Budget for additional staff resources in 2020
- Create an FAQ on the economics and carbon reduction potential of electrifying home space and water heating and post on the City's website
- Organize meetings between City leaders and key stakeholders, e.g., Peninsula Clean Energy, to assess degree of alignment and interest in collaborating on key strategies
- Meet with key staff and commissions in the City to brief them on the climate action plan and gather their input
- Estimate costs associated with each key strategy proposed above
- Present greenhouse gas reduction targets to City Council for approval
- Present draft of climate action plan to city staff by December 1
- Begin implementation of critical CAP strategies, as soon as high-level framework is approved by City Council
- Create a plan for answering residents' questions about Reach Codes and other climate change mitigation measures on social media
- Come up with a plan for proactively informing property owners in Belle Haven that their property is at risk
- Meet with POST to explore the possibility of investing in carbon sinks (e.g., new forest) on nearby land that they own



**CLIMATE ACTION PLAN 2.0**

City Manager Office– Sustainability  
 701 Laurel St., Menlo Park, CA 94025  
 Rebecca L. Lucky, Sustainability Manager  
 tel 650-330-6765 | email rlucky@menlopark.org

<b>Project Summary</b>		
<p>There is an urgency to address climate change at all levels of government as the latest United Nation’s Intergovernmental Panel on Climate Change (IPCC) reports there is only 10 years left to mitigate the severest climate change impacts. Menlo Park would directly experience many of these impacts that include increased power shut offs due to wildfires, sea level rise in the Belle Haven neighborhood, and water shortages as a result of extended droughts.</p> <p>Climate change refers to the alternation of the earth’s atmospheric conditions due to human consumption and use of fossil fuels which create greenhouse gas (GHG) emissions, such as carbon dioxide from the use of gasoline in vehicles and natural gas in buildings, and methane from waste that is landfilled.</p> <p>The City’s Climate Action Plan was first approved by the City Council in 2009, and includes strategies to reduce GHG emissions. It also includes a GHG reduction target of 27 percent by 2020. Menlo Park is on track to achieving this goal. However, deeper reductions are needed to mitigate the impacts described in the IPCC report.</p> <p>In order to address this urgency, a Climate Action Plan 2.0 will be developed and consider by the City Council in 2020. It will set forth a new GHG reduction goal and strategies to address climate change at a local level. The desired outcome is to succeed at reaching the new goal, and implement new strategies that will not only reduce Menlo Park’s GHG emissions but help catalyze technology advancements and other local, state, and/or federal policies and programs to aggregate GHG reductions and benefits beyond Menlo Park.</p>		
<b>Key Project Activities and Timeline</b>		
<p><u>Phase I- Project Planning, Preparation, and Research (January to April 2020)</u></p> <ul style="list-style-type: none"> <li>• Sign-off on project planning documents</li> <li>• Formalize executive interdepartmental team</li> <li>• Obtain initial input/ideas from relevant commissions</li> <li>• Engage with key community stakeholders regarding initial ideas, concerns, or areas of support</li> <li>• Research best practices in other communities</li> <li>• Hire consultant for analysis or environmental review support is needed</li> </ul> <p><u>Phase II-Program Analysis for CAP 2.0 (April to June 2020)</u></p> <ul style="list-style-type: none"> <li>• Perform program analysis for goal, strategies, stakeholder concerns, and funding/resources</li> <li>• Develop draft plan or outline</li> <li>• City Council study session for direction and guidance</li> </ul> <p><u>Phase III- Adopt CAP 2.0 (July to November 2020)</u></p> <ul style="list-style-type: none"> <li>• Finalize draft plan</li> <li>• Present to relevant commissions and key stakeholder for consultation</li> <li>• City Council adoption</li> </ul>		
<b>Related Existing Policies, Programs, Future Projects</b>		
<p>Zero Waste Plan, Transportation Master Plan, General Plan, and Willow Village.</p>		
<b>Key Relationships</b>		
Project Team	Internal Stakeholders	Community Engagement
<p>Executives from City Manager, Community Services, Community Development, Administrative Services, and Public Works</p> <p>Division managers from engineering, building, planning, and transportation</p>	<p>City Attorney</p>	<p>Complete Streets Commission, Environmental Quality Commission, Planning Commission, Chamber of Commerce, key developers, property managers, environmental non-profit groups, and energy providers</p>

**General Project Scope for Climate Action Plan 2.0**

Community Engagement: This will be a *consult* type of community engagement where information about the scope and draft Climate Action Plan 2.0 will be posted on the City's website, and any member of the public can provide feedback that *may* influence the final recommendation and decision.

Targeted *consult* engagement will be limited to key commissions, organized interest groups (such as the Chamber of Commerce, MenloSpark, MenloTogether, etc.), and other key stakeholders that have significant economic or quality of life influence in the community (such as Facebook, Tarlton properties, etc.).

Commissions will be required to provide advice on the final draft plan. In addition, the meetings would be notified and open to the public to allow for additional feedback and input.

Staff will keep records of the general feedback for the City Council to review. City Council will receive advice from relevant commissions regarding the plan. The City Council will be the final decision maker on the Climate Action Plan 2.0.

General Framework:

- Develop a Climate Action Plan 2.0 that includes a new goal of carbon neutrality, strategies, and resiliency
- Use the Environmental Quality Commission (EQC) and the Carbon Neutral Cities Alliance proposed strategies as the foundation for developing the draft Climate Action Plan 2.0:
  - EQC proposed:
    1. 100% carbon-free electricity through Peninsula Clean Energy membership
    2. Completely electrify existing buildings
    3. Reduce vehicle miles traveled (VMT)
    4. Electrify vehicles (EV), reduce gasoline sales, and increase EV infrastructure
    5. Reduce carbon emissions from construction
    6. Electrify all municipal buildings and fleet vehicles
    7. Implement City adopted Zero Waste Plan and catalyze a circular economy
    8. Avoid installing appliances/structures that will be abandoned due to climate change (e.g. gas water heaters)
    9. Sequester residual carbon emissions through direct carbon sinks (urban canopy, increased landscaped areas, etc.)
    10. Prepare the city for climate change through adaption measures
  - Carbon Neutral Cities Alliance:
    1. Adopt a zero emissions standard for new buildings, which means all energy use for a building is efficient and comes from renewable energy sources. This can also be applied to additions and alterations to existing buildings
    2. Build electric vehicle charging infrastructure
    3. Mandate the recovery of organic material
    4. Electrify buildings heating and cooling systems
    5. Designate car-free and low-emission vehicle zones
    6. Empower local producers and buyers of renewable electricity
    7. Set a city climate budget to drive de-carbonization
- Explore redefining how the greenhouse reduction goal is measured by using specific goals for each strategy to increase accuracy, efficiency, and minimize staff time and resources. Focus on defining carbon neutral in terms of sector/category specific targets/indicators instead of relying on a communitywide greenhouse gas inventory, such as number of electric vehicle charging stations per capita
- Analyze staff resources and funding needs to implement the plan
- Providing general examples or steps for each strategy that are measurable and will ultimately meet the desired outcome of each strategy
- Incorporate equity issues/goals in the climate action plan update, including outreach
- Consider prioritization of strategies with the following three-year short term focus areas:
  1. Electrify existing buildings

2. Communitywide electric vehicle infrastructure
3. Develop and implement zero waste policies and programs

#### Key Roles and Responsibilities of City Staff:

- Carry out community engagement activities as identified in the community engagement section above.
- Form an interdepartmental team of executive and management team members to support development of the plan
- Provide advice and research to the community and decision makers
- Track feedback and provide general results to the City Council
- Serve as information-givers, using technical expertise, and professional experience to describe options as well as their pros and cons, benefits, and implications
- Review best practices in other communities
- Perform analysis to ensure that program is structured and achievable
- Draft a Climate Action Plan 2.0 for City Council consideration and approval
- Implement the Climate Action Plan

#### Key Roles and Responsibilities of the City Council:

- Consider and review feedback from the community
- Provide, guide, and clarify policy, program, and scope direction
- Consider the recommendations put forward by staff
- Determine the level of community engagement needed
- Determine the final goal, strategies, and general prioritization of the Climate Action plan

#### Key Roles and Responsibilities of Stakeholders:

- Work in partnership with staff while advocating for their particular interest or concern
- Manage conflict by listening to differing values, concerns and experiences, and work through them to find and propose middle ground solutions
- Review the background materials in advance of meetings if provided
- Recommend strategies and offer ideas on criteria to prioritize strategies
- *If a commission, provide advice to the City Council on whether to approve or modify the draft Climate Action Plan 2.0 by end of 2020.*
- Assist with communitywide engagement

#### Givens (non-negotiable):

- The City Council is the final decision maker
- Staff recommendations may differ from commissions, members of the public, or key stakeholders based on evidence, unintended impacts, or to remain apolitical. However, staff will practice due diligence to reach agreement to the maximum extent possible with stakeholders
- The plan must be implementable



**MEMORANDUM**

**Date:** 11/21/2019  
**To:** City Council  
**From:** Sustainability Division  
**Re:** 2005-2017 Greenhouse Gas Inventory

Overview

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

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

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

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

Community greenhouse gas emissions inventory results

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

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

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

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

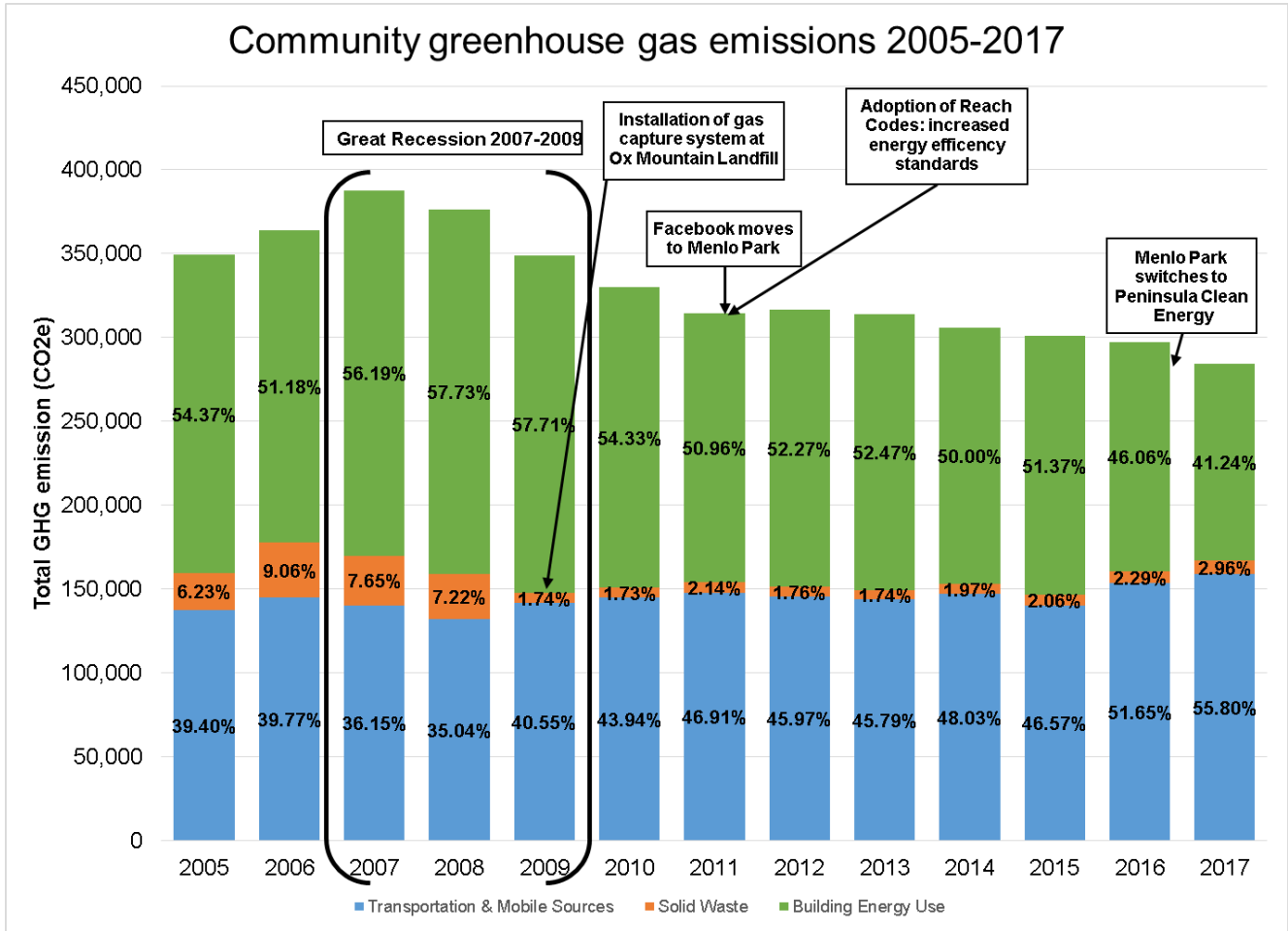
Governments for Sustainability, an organization that specializes in climate change and greenhouse gas inventories for cities and counties. To maintain consistency, staff has continued to use the ICLEI methodology, transitioning from Clean Air and Climate Protection (CACP) software to the ClearPath software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

Greenhouse gas emissions in Menlo Park were measured from:

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

Figure 1 shows annual communitywide emissions with percentage contribution by category. As shown in Figure 1, the most significant source of 2017 emissions is transportation (55.8 percent), followed by building energy use (41.24 percent). Inventory data for 2018 and 2019 will not be available until 2020/2021.

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



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





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

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

### Potential Focus Areas for Next Climate Action Plan

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

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

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

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

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

After 2013, waste related emissions began to rise and are at risk of continued increase due to an increased population (both residential and employee) producing more waste. Without the implementation of zero or waste reduction strategies, staff predicts an increase over 50 percent of GHG emissions from 2017 to 2035. **The full implementation of the City Council adopted Community Zero Waste Plan can prevent over 100,000 tons of waste related emissions when the City achieves its zero waste goal<sup>7</sup>.**

<sup>5</sup> Peninsula Clean Energy is a community choice aggregate which provides its customers with electricity from renewable sources: [menlopark.org/1083/Peninsula-Clean-Energy](http://menlopark.org/1083/Peninsula-Clean-Energy)

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

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

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

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

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

Attachment B- GHG Emissions summary by category

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

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

### Communitywide greenhouse gas emissions 2005-2017

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

### Changes in methodology and measurements

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

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

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

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

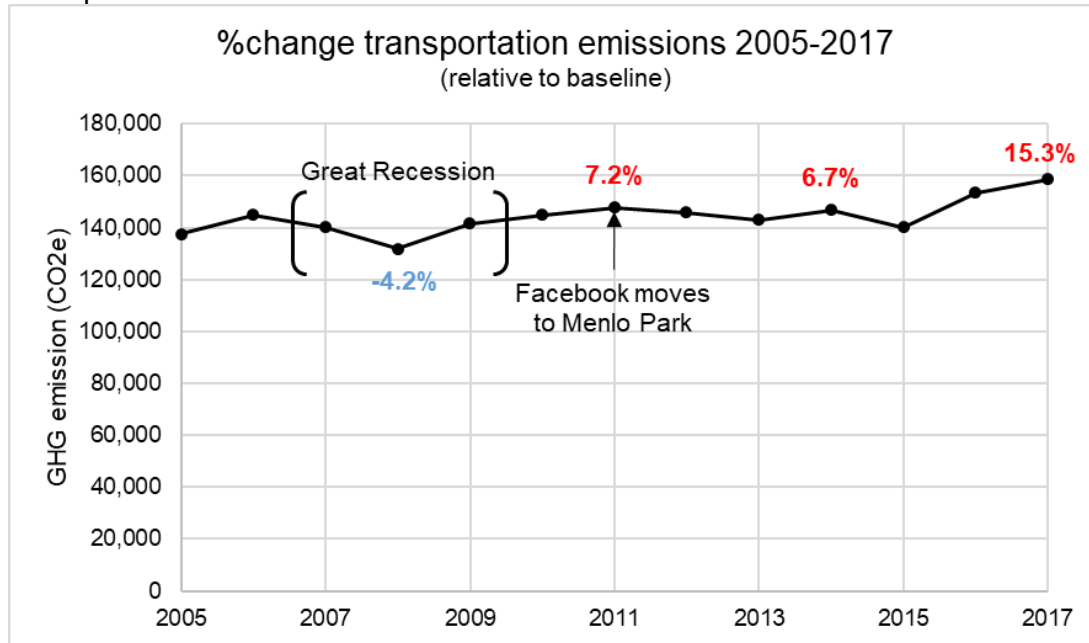
The 32,869 ton variation in greenhouse gas inventories can be attributed to staff's decision to remove methane emissions from the decommissioned Marsh Road Landfill (Bedwell Bayfront Park) from the communitywide inventory. In previous community inventories, this emissions source was included, but going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

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

## Attachment B- Greenhouse gas Emissions Summary by Category

### Transportation

Transportation related emissions 2005-2017



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

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

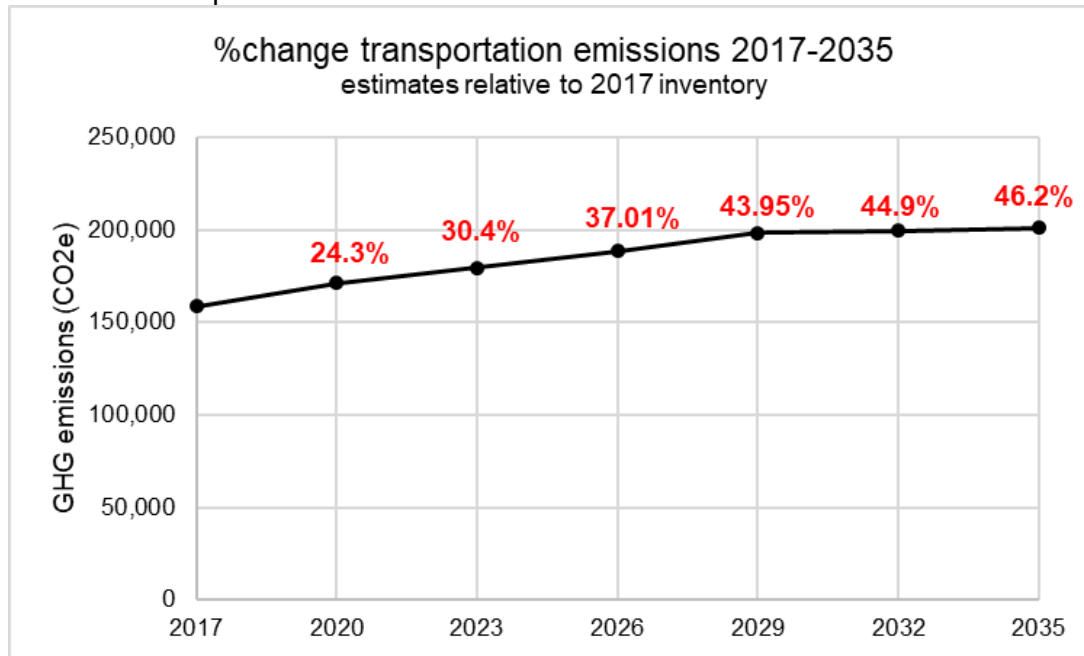
It should be noted, vehicle miles traveled or fuel usage have been used in past inventories to approximate total transportation related emissions independently to prevent double counting. However, this calculation method allows for the use of both since they calculate different GHG emissions.

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

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

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

Estimated transportation related emissions 2005-2017



It is important to note, that while the State has had established vehicle emissions reduction requirements since 2002<sup>9</sup> and in 2012 the California Air Resources Board (CARB) adopted mandates for emissions standards<sup>10</sup>, these program affect new vehicles only. As of 2019, the average age of cars on the road in California is estimated to be 11.2 years<sup>11</sup>. Average car age in the United States has increased since this metric started being tracked and is predicted to increase especially in regions, like the Bay Area, where the cost of living is higher than average.

<sup>9</sup> California Assembly Bill 1493 Vehicular emissions: greenhouse gas emissions (also known as the Pavely legislation) establishing emissions standards for new passenger vehicles manufactured in 2009-2016

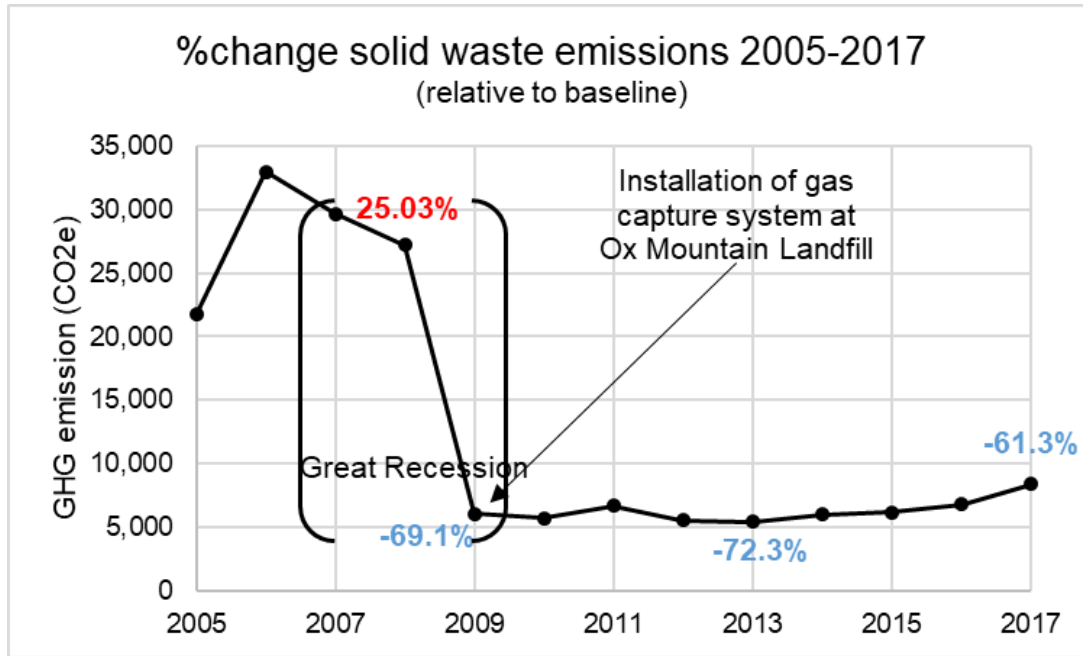
<sup>10</sup>Advanced Clean Car Programs a set of regulations to control emissions from passenger vehicles [arb.ca.gov/our-work/programs/advanced-clean-cars-program/about](http://arb.ca.gov/our-work/programs/advanced-clean-cars-program/about)

<sup>11</sup> Estimate published by Auto Alliance, and Alliance of Automobile Manufacturers using reports and data sets also sourced by U.S. Energy, Vehicles Technologies Office [autoalliance.org/in-your-state/CA/pdf/?export](http://autoalliance.org/in-your-state/CA/pdf/?export)



**Solid Waste**

Solid waste related emissions 2005-2017

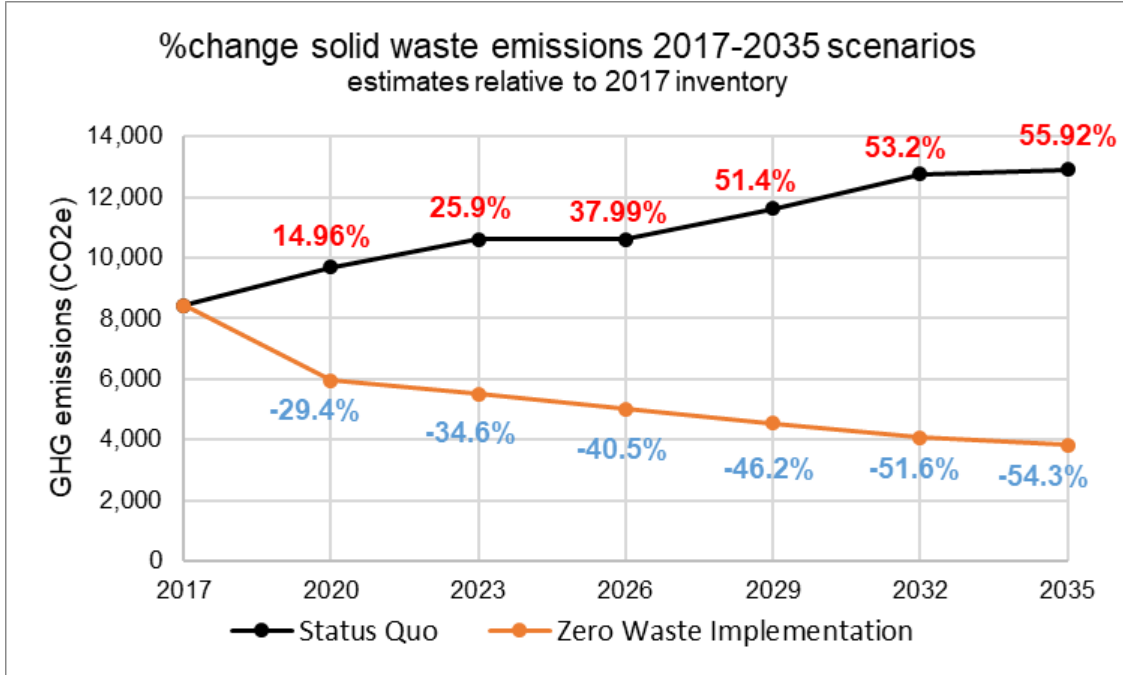


The solid waste category reflects emissions related to total community waste sent to landfill reported to California Department of Resources Recycling and Recovery (CalRecycle).

In 2017, City Council adopted the Community Zero Waste Plan. This plan could reduce waste related emissions by over 50 percent over 2017 levels. This is predicted to prevent approximately 6,000 tons GHG emissions annually. Figure 5 shows emissions forecasts for both status quo (no new measures undertaken) and fully implementation of the Community Zero Waste Plan (reduction of waste per capita from 5.0 to 3.1 pounds per person per day).

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

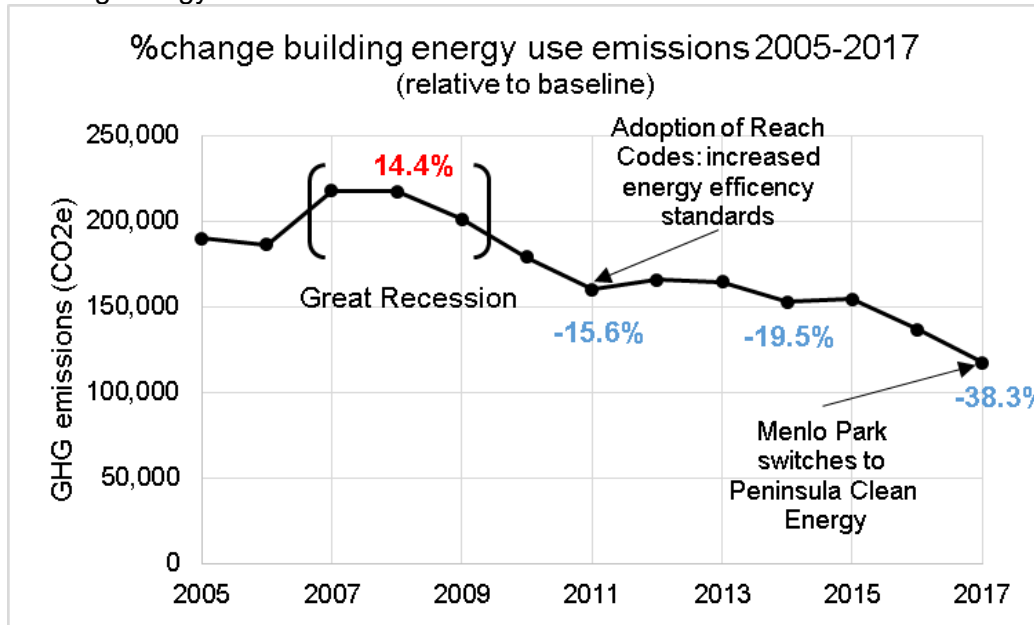
Estimated solid waste related emissions 2017-2035





**Building energy use**

Building energy use related emissions 2005-2017

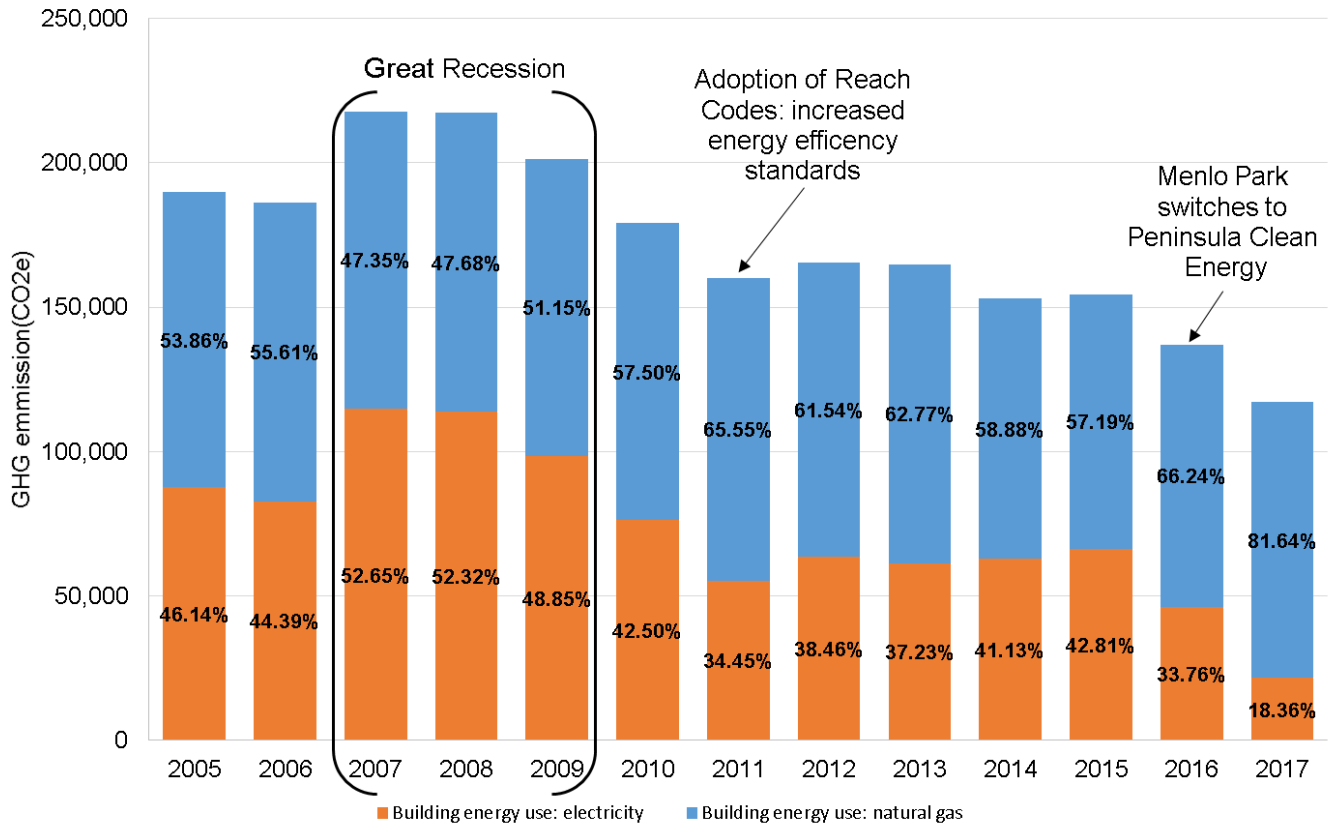


The building energy use category includes both electricity and natural gas consumption reported by Pacific Gas & Electric and Peninsula Clean Energy (2016 and 2017 inventories only). All electricity customers in the City of Menlo Park are automatically enrolled in Peninsula Clean Energy service. Automatic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

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

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

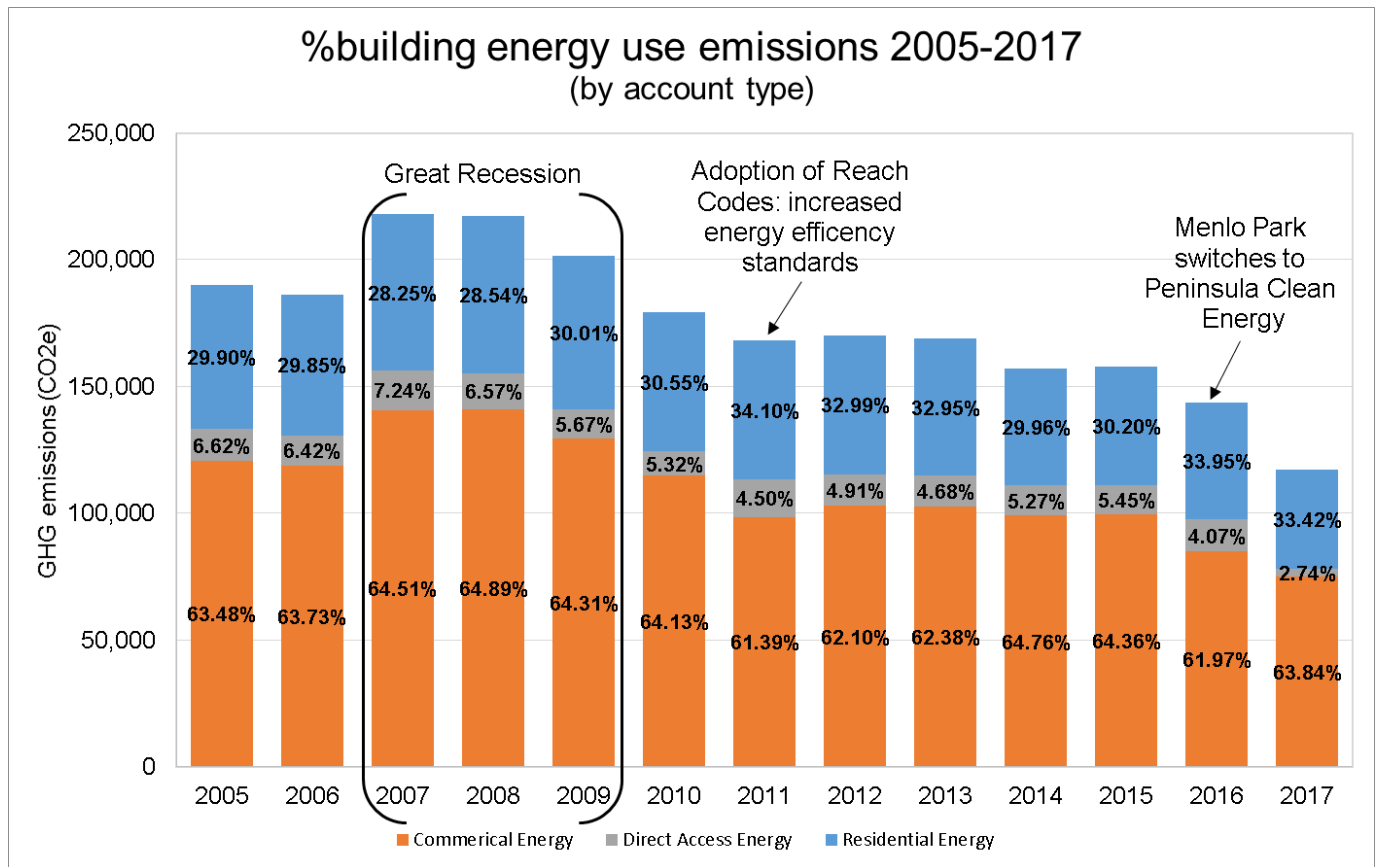
### Total building energy use emissions 2005-2017 (electricity versus natural gas)



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

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

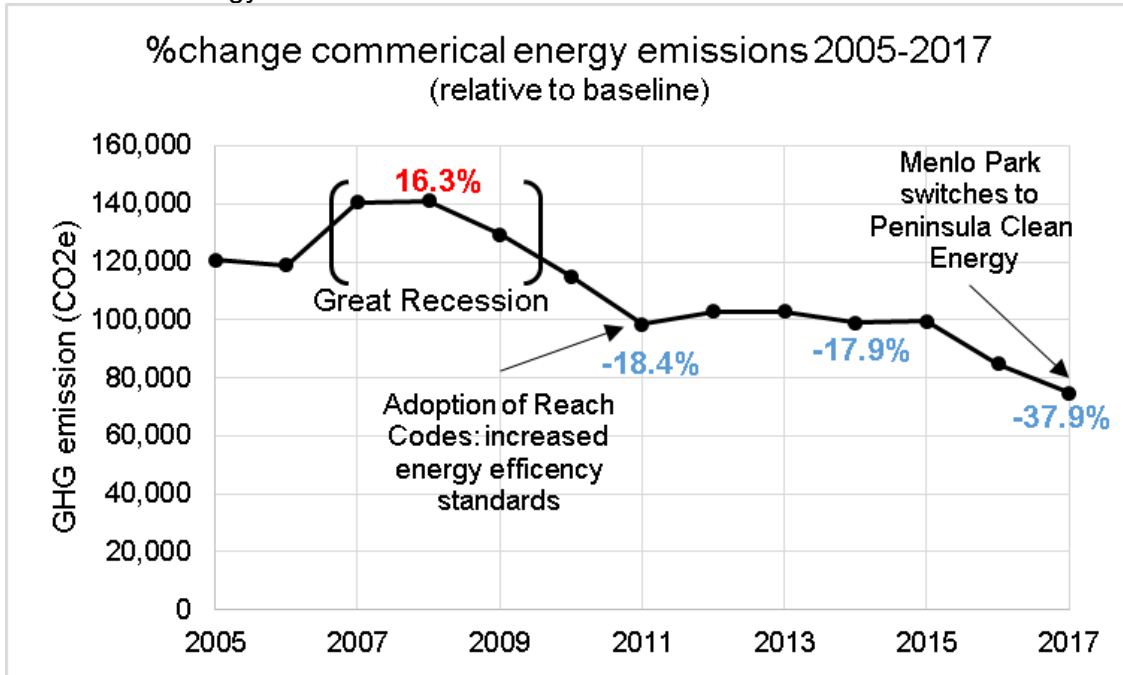
Total building energy use emissions by account type



Below is details of building energy use by account type.



Commercial energy related emissions 2005-2017



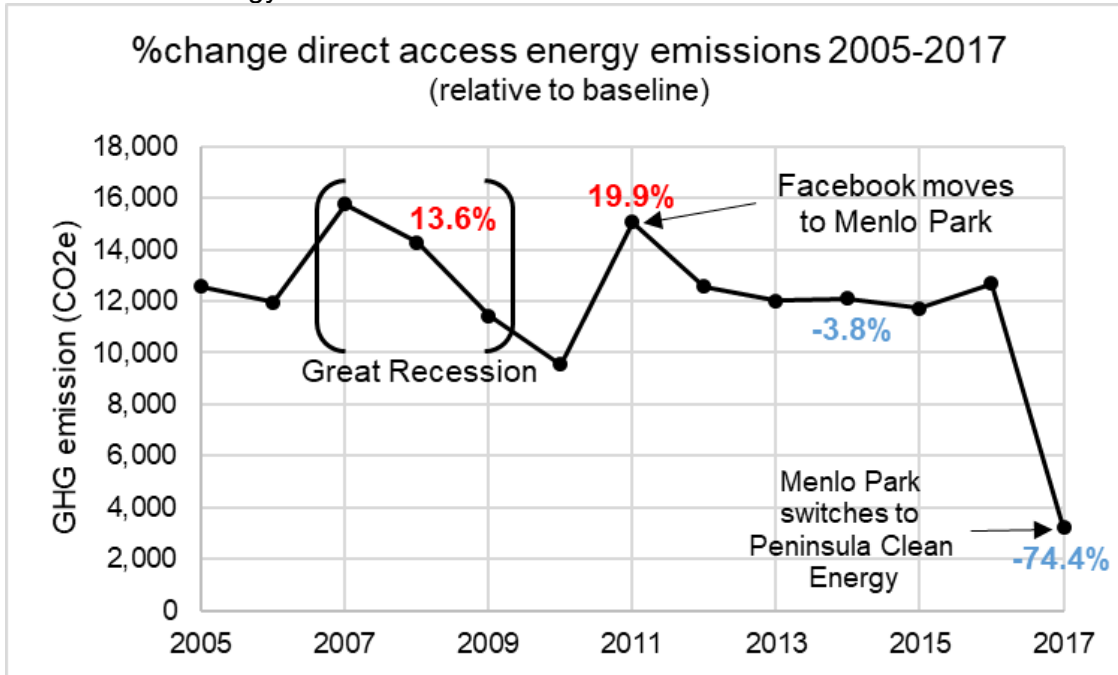
Commercial Energy		
Year	GHG emissions(tons)	%change (year to year)
2005	120,561	
2006	118,744	-1.51%
2007	140,561	18.37%
2008	141,020	0.33%
2009	129,509	-8.16%
2010	114,898	-11.28%
2011	98,363	-14.39%
2012	102,812	4.52%
2013	102,764	-0.05%
2014	99,038	-3.63%
2015	99,445	0.41%
2016	84,842	-14.68%
2017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

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

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

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

Direct access energy related emissions 2005-2017

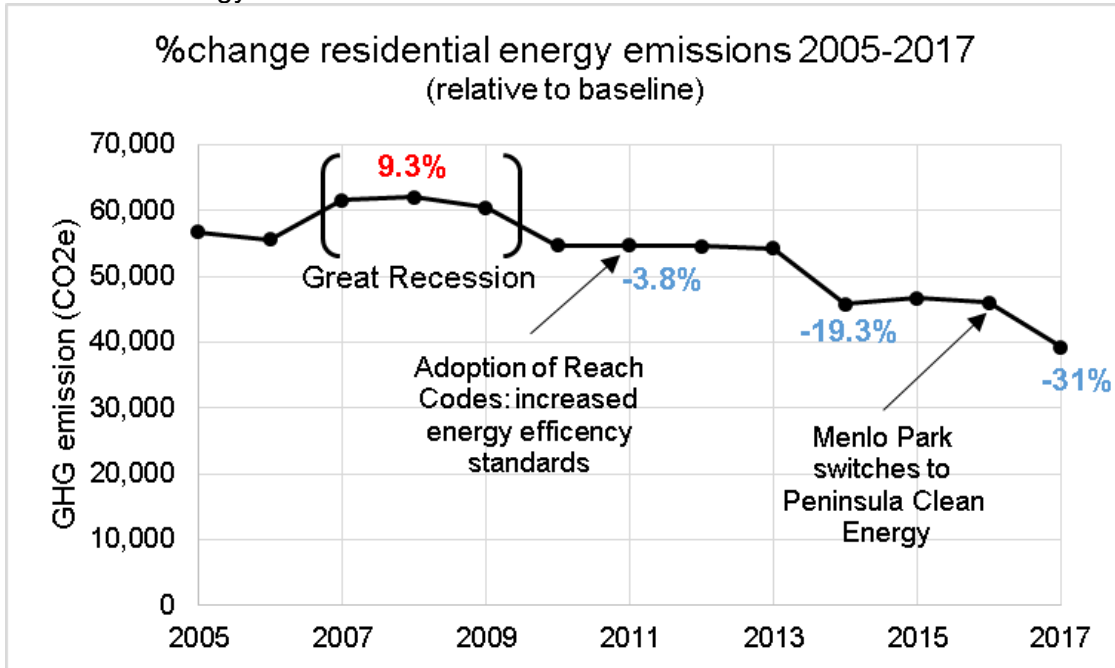


Direct Access Energy		
Year	GHG emissions(tons)	Percent change in emissions
2005	12,575	
2006	11,971	-4.80%
2007	15,769	31.73%
2008	14,283	-9.42%
2009	11,428	-19.99%
2010	9,537	-16.55%
2011	15,073	58.05%
2012	12,580	-16.54%
2013	12,020	-4.45%
2014	12,092	0.60%
2015	11,716	-3.11%
2016	12,696	8.36%
2017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

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

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

Residential energy related emissions 2005-2017



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

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

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

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

# UNMANNED AERIAL SYSTEMS (UAS)

Aaron Dixon, Brian Henry, and Chuck Andrews

ANNIE BAKER  
GYMNASIUM

# PURPOSE

- Provide information about UAS usage
- Solicit input and direction





# BACKGROUND

- What is a drone
  - Camera on a stick
  
- UAS Program and Policy
  - Modeled after Mountain View's program
  - Similar community concerns
  - Policy focused on protecting civil liberties
  - Policy in accordance with ACLU recommendations

## CITY WIDE PROGRAM

- Expressed interest
  - Public Works Department
  - Community Development Department
  - Police Department
- Potential benefit
  - City Manager’s Office
    - Public Engagement
  - Community Services Department
    - After school programs
- Pilots
  - Volunteers from various City Departments
  - FAA trained and certified

## PUBLIC WORKS DEPARTMENT

- Facilities Section
  - Solar panel inspection
  - Gutter downspout inspection
  - Confined space inspection
- Park Section
  - Bedwell Bayfront Park
  - Sharon Park
- City Arborist
  - Tree health inspection
  - Nest identification
- Engineering Division
  - Willow Place bridge abutment

# COMMUNITY DEVELOPMENT DEPARTMENT

- Building Division
  - Unsafe structure inspection
  - Large scale project inspection
  - Rooftop solar inspection
  - Cell tower inspection
  - Rooftop A/C inspection
- Planning Division
  - Construction progress inspection

## POLICE

- Document scenes
  - Traffic collision investigation
  - Crime scene reconstruction
- Improve search capability
  - Missing persons/Victims
  - Suspects
- Enhance situational awareness
  - Preplanned incidents
  - In progress crime



## POTENTIAL CONCERNS

- Passive Surveillance
- Privacy
- Weaponization



**THANK YOU**

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**SPECIAL AND REGULAR MEETING MINUTES – DRAFT**

**Date:** 10/29/2019  
**Time:** 6:30 p.m.  
**City Council Chambers**  
**701 Laurel St., Menlo Park, CA 94025**

Mayor Mueller participated by phone from the Association of Corporate Counsel:  
The Clarendon Hotel and Spa by GreenTree  
401 W Clarendon Avenue  
Phoenix, AZ 85013

**6:30 p.m. Study Session**

**A. Call To Order**

Mayor Pro Tem Taylor called the meeting to order at 6:33 p.m.

**B. Roll Call**

Present: Carlton, Combs, Nash, Mueller (arrived at 7:08 p.m.), Taylor  
Absent: None  
Staff: City Manager Starla Jerome-Robinson, City Attorney Bill McClure, City Clerk Judi A. Herren

**C. Pledge of Allegiance**

SS1. Direction on next steps for addressing unregulated and unmaintained newsracks  
([Staff Report #19-221-CC](#))

Management Analyst, Housing John Passmann made the presentation (Attachment).

- Tom Lilledahl spoke in support of the previously proposed ordinance.
- Dave Price, Daily Post, spoke on the concerns facing the City and the residents.
- Cherie Zaslowsky spoke in support of keeping newsracks in their current locations and in opposition of an ordinance.
- Fran Dehn spoke in support of a newsrack ordinance.

The City Council discussed the previously introduced ordinance and options presented by staff. Confirmation was received that any ordinance would include newsracks within the City and not solely in the downtown. City staff will work with publishers to modify the previously introduced ordinance to prevent relocating existing newsracks unless there is a substantial access or safety issue and bring the ordinance back to the City Council in early 2020

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

City Council reconvened at 7:44 p.m.

### **7:00 p.m. Regular Meeting**

Mayor Pro Tem Taylor reordered the agenda.

#### **E3. Bay Area Water Supply and Conservation Agency (BAWSCA) report to City Council from Kirsten Keith**

Former Mayor and Menlo Park BAWSCA representative made the presentation (Attachment).

- Wynn Grcich spoke on cancer causing additives in water.

#### **D. Public Comment**

- Laurie Pasqual spoke in opposition of Assembly Bill 967.
- Wynn Grcich spoke in opposition of Assembly Bill 967.
- Jim Lewis, Historical Association, spoke on the relationship between Menlo Park and Galway Ireland and presented a video (Attachment).
- Jen Wolosin, Menlo Together, announced two events 1) November 6 "Getting Downtowns Moving with Convenient and Sustainable Access " and 2) November 17 "The Color of Law - Menlo Park Edition."

#### **E1. Proclamation: Media Day**

Mayor Pro Tem Taylor read the proclamation and Midpen Media Center Executive Director Keri Stokstad and Board President Sue Purdy Pelosi accepted (Attachment).

- Wynn Grcich spoke in support of the Media Day proclamation.

#### **F. Commissioner Reports**

##### **F1. Housing Commission report**

Housing Commission Chair Nevada Merriman and Vice Chair Karen Grove made a presentation (Attachment).

The City Council discussed the workplan and how City Council can assist. Chair Merriman stated that help sorting through the workplan would be useful.

#### **E. Presentations and Proclamations**

##### **E2. Presentation: 2018-19 community development department and public works department organizational reviews prepared by Matrix Consulting**

Deputy City Manager Justin Murphy introduced the item.

Matrix Consulting Group Vice President Alan Pennington will make the presentation (Attachment).

- Lynne Bramlett commented that a study of the residents' experience is should be performed.

The City Council received clarification that the presented study included input from stakeholders representing commercial and residential projects and explanations on specific recommendations made in the report.

## G. Consent Calendar

- G1. Accept the City Council meeting minutes for September 24 and October 1, 2019 ([Attachment](#))

The City Council continued the October 1 minutes.

**ACTION:** Motion and second (Carlton/ Nash) to accept City Council meeting minutes for September 24, passed 4-0-1 (Taylor abstaining).

- G2. Approve the purchase of property located at 1283 Willow Road from MP1283 Willow LLC for \$3,633,000 and approve use agreement to permit MidPen Housing to use property for construction staging ([Staff Report #19-225-CC](#))

- Curtis Conroy had concerns that the appraisal was not included in the staff report.

The City Council received historical data from City Attorney Bill McClure. The City Council discussed the sale property and the interest to purchase expressed by the Menlo Park Fire Protection District.

By acclamation, the City Council postponed this item to the end of the agenda.

- G5. Approve the permanent neighborhood traffic management plan for North Lemon Avenue between Valparaiso Avenue and Santa Cruz Avenue ([Staff Report #19-222-CC](#))

**ACTION:** Motion and second (Nash/ Carlton) to approve the permanent neighborhood traffic management plan for North Lemon Avenue between Valparaiso Avenue and Santa Cruz Avenue, passed unanimously.

- G6. Receive and file West Bay Sanitary District's Bayfront recycled water facilities plan and delegate authority to the city manager to negotiate an agreement for recycled water purveyorship options ([Staff Report #19-217-CC](#))

The City Council received clarification on the boundaries set by West Bay Sanitary District.

**ACTION:** Motion and second (Carlton/ Taylor) to receive and file West Bay Sanitary District's Bayfront recycled water facilities plan and delegate authority to the city manager to negotiate an agreement for recycled water purveyorship options, passed unanimously.

## H. Regular Business

- H1. Introduction of Ordinance No. 1060 amending Chapter 13.24 [Heritage Trees] of Title 13 [Streets, sidewalks and utilities] and repealing Chapter 16.65 [Solar Access] of Title 16 [Zoning] ([Staff Report #19-223-CC](#))

Sustainability Manager Rebecca Lucky made the presentation ([Attachment](#)).

- Kathy Neuman read from an email ([Attachment](#)).
- Peter Edmonds spoke in opposition of the ordinance ([Attachment](#)).

- Catherine Martineau, Director of Canopy, made suggestions to the proposed ordinance.
- Scott Marshall spoke in support of the ordinance.

The City Council discussed the current ordinance and the recommended changes. The City Council also proposed changes to the ordinance.

**ACTION:** Motion and second (Combs/ Carlton) to introduce Ordinance No. 1060 amending Chapter 13.24 [Heritage Trees] of Title 13 [Streets, sidewalks and utilities] and repealing Chapter 16.65 [Solar Access] of Title 16 [Zoning] with the following edits:

- Update or remove Public Works Director or designee throughout the ordinance
- Section 13.24.050 (criteria) to change “tree rating” to “tree risk rating” and change “tree health” to “tree health rating”
- Add to Section 11.24.050 (b), “Before a heritage tree is removed, notice of removal shall be posted on the property,” for all removals
- Delete Section 3 of ordinance (solar access)
- Clarification of the language in Section 13.24.050 (5) regarding the development related criterion to distinguish between removals based on a tree’s interference with a proposed development project and removals due to a tree’s interference with an existing building.
  - Addition of an annual reporting requirement regarding the effectiveness of the heritage tree ordinance, Section 12.24.110(2).

,passed unanimously.

G3. Receive and file the investment portfolio review as of September 30, 2019  
(Staff Report #19-220-CC)

- Lynne Bramlett suggested these reports go to Finance and Audit Committee before City Council.

**ACTION:** Motion and second (Carlton/ Nash) to receive and file the investment portfolio review as of September 30, 2019, passed unanimously.

G4. Receive and file the quarterly financial review of general fund operations as of September 30, 2019  
(Staff Report #19-219-CC)

- Lynne Bramlett commented on details of the report including hotel occupancy tax.

The City Council received clarification that developer fees are included in a separate annual report and the timing of the report release was completed before first quarter money for transient occupancy tax was recorded. The City Council also discussed the Finance and Audit Committee receiving the report dependent on their quarterly meeting schedule.

**ACTION:** Motion and second (Combs/ Taylor) to receive and the quarterly financial review of general fund operations as of September 30, 2019, passed unanimously.

## I. Informational Items

I1. City Council agenda topics: November 2019 to January 2020 ([Staff Report #19-216-CC](#))

No action or discussion.

Item I2. was continued to November 5.

I2. Downtown street café program update ([Staff Report #19-224-CC](#))

The City Council adjourned to closed session at 11:33 p.m. to discuss item G2., Approve the purchase of property located at 1283 Willow Road from MP1283 Willow LLC for \$3,633,000 and approve use agreement to permit MidPen Housing to use property for construction staging (Staff Report #19-225-CC).

Mayor Pro Tem Taylor called the regular meeting back to order at 11:45 p.m.

G2. Approve the purchase of property located at 1283 Willow Road from MP1283 Willow LLC for \$3,633,000 and approve use agreement to permit MidPen Housing to use property for construction staging (Staff Report #19-225-CC)

City Attorney Bill McClure reported no action taken during closed session.

**ACTION:** Motion and second (Combs/ Taylor) to approve the purchase of property located at 1283 Willow Road from MP1283 Willow LLC for \$3,633,000 and approve use agreement to permit MidPen Housing to use property for construction staging, passed unanimously.

**J. City Manager's Report**

City Manager Starla Jerome-Robinson reported on a San Mateo County coalition meeting.

**K. City Councilmember Reports**

City Councilmember Carlton reported on the League of California Cities Annual Expo, October 16-18, 2019.

Mayor Mueller announced he is no longer recused from the Stanford general use permit topic.

City Councilmember Nash reported on the Stanford general use permit meeting in San Jose November 5 at 1:30 p.m.

**L. Adjournment**

Mayor Pro Tem Taylor adjourned the meeting at 11:49 p.m.

Judi A. Herren, City Clerk



**SPECIAL AND REGULAR MEETING MINUTES – DRAFT**

**Date:** 11/5/2019  
**Time:** 5:00 p.m.  
**City Council Chambers**  
**701 Laurel St., Menlo Park, CA 94025**

**A. Call To Order**

Mayor Mueller called the meeting to order at 5:08 p.m.

**B. Roll Call**

Present: Carlton, Combs, Nash, Mueller (excused at 10:05 p.m.), Taylor

Absent: None

Staff: City Manager Starla Jerome-Robinson, City Attorney William McClure, City Clerk Judi A. Herren

**C. Pledge of Allegiance**

Mayor Mueller lead the Pledge of Allegiance.

**5:00 p.m. Study Session**

SS1. Overview of recent State housing legislation and 2022 housing element update

([Staff Report #19-239-CC](#))

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

- Taja Henderson spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Aniya Majors spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Erik Burmeister, superintendent of Menlo Park City School District, spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Francesca Lomotan spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Tricia Barr spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices (Attachment).
- Nancy Prouty read a letter from her husband, a psychologist, in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Lillian Perazich, with donated time from Maria Balue, spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices (Attachment).
- Helen Fehoko -Kayla Lacey -Alahea Mahe spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.

- Vinita Verma spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Gloria Brown spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices.
- Adina Levin commented on the proposed complaint based enforcement.
- Fran Dehn spoke in support of an ordinance banning the sale of flavored tobacco and e-cigarette devices and requested the city attorney to review the current smoking ban ordinance.

The City Council received clarification on new housing bills, including SB 330, accessory dwelling units (ADU), short-term rentals and residential density requirements. City Council received clarification on collecting historical analysis, housing density restrictions and rezoning restrictions.

By acclamation, the City Council requested the ordinance be returned for consideration.

SS2. Discussion of proposed ordinance banning sale of flavored tobacco and e-cigarette devices  
([Staff Report #19-238-CC](#))

Interim Community Development Director Deanna Chow, Assistant City Attorney Cara Silver, and Goldfarb & Lipman representative Barbara Kautz made the presentation (Attachment).

- Crystal Leach, superintendent of the Sequoia High school District, requested that district be invited to participate in housing development discussions.
- Verle Aebi commented on how the new laws impact the job/housing imbalance (Attachment).
- Pamela Jones spoke on the job/housing imbalance and the opportunities available to Menlo Park for housing.
- Adina Levin commented that new laws allowing for more housing.
- Rachel Host spoke in support of more housing and not just meeting the new law expectations.
- Chris Stock spoke on the costs of renting in the area and in support of higher density and more low-income housing.
- Jen Wolosin spoke in support of more housing and commented on the affordability crisis.
- Curt Conroy spoke in support of more housing.
- Karen Camacho, on Behalf Housing Leadership Counsel for San Mateo County, spoke in support of beginning the rezoning process.
- Lauren Bigelow spoke on the need for more housing.
- Nevada Meriman spoke in support of more housing

The City Council discussed banning sales in vending machines and smoke shops, encouraging neighboring jurisdictions to adopt a similar ordinance, and enforcement.

By acclamation, the City Council requested the ordinance be returned for consideration

**D. Public Comment**

- Bo Crane with donated time from Jim Lewis spoke on an upcoming event of the Menlo Park Historical Association November 9 (Attachment).

**E. Consent Calendar**

City Councilmember Nash pulled item E4.

Mayor Pro Tem Taylor pulled item E2.

- E1. Accept the City Council meeting minutes for October 15, 2019 (Attachment)
- E2. Adopt Resolution No. 6524 authorizing the submittal of a grant application for the Senate Bill 2 planning grant program; authorize the city manager to execute required application documents; and amend the fiscal year 2019-20 budget to include grant revenues and corresponding expenditures (Staff Report #19-232-CC)

The City Council discussed policy that could assist current residents.

**ACTION:** Motion and second (Taylor/ Carlton) to adopt Resolution No. 6524 authorizing the submittal of a grant application for the Senate Bill 2 planning grant program; authorize the city manager to execute required application documents; and amend the fiscal year 2019-20 budget to include grant revenues and corresponding expenditures, passed unanimously.

- E3. Approve response to San Mateo County grand jury’s report regarding “Electric Vehicle Adoption in the Cities and County of San Mateo” (Staff Report #19-231-CC)

- E4. Adopt Resolution No. 6525 proposing to abandon public right of way along the 600 block of Woodland Avenue (Staff Report #19-233-CC)

- Chris Kummerer, applicant for the project, spoke in support of the abandonment.

The City Council discussed the benefits of abandoning the public right of way, impacts to future improvements, and the City’s liability.

**ACTION:** Motion and second (Combs/ Taylor) to adopt Resolution No. 6525 proposing to abandon public right of way along the 600 block of Woodland Avenue, failed 2-3 (Carlton, Mueller and Nash dissenting).

- E5. Adopt Resolution No. 6526 to authorize a loan to MidPen Housing Corporation up to \$635,502 for the renovation of affordable housing properties at 1105 and 1141 Willow Road and authorize the city manager to execute any and all related agreements and loan documents (Staff Report #19-234-CC)

**ACTION:** Motion and second (Carlton/ Nash) to approve the consent calendar except items E2. and E4., passed unanimously.

**F. Regular Business**

- F1. Direct City staff to work with Menlo Park Public Art nonprofit to develop a pilot public art project proposal to present to the Parks and Recreation Commission for their consideration and recommendation to City Council (Staff Report #19-226-CC)



Assistant Community Services Director Adriane Lee Bird introduced the item.

The City Council discussed staffing alternatives and directed staff to negotiate terms of an agreement and return with cost and staffing details in the next report.

**ACTION:** Motion and second (Mueller/ Carlton) to direct City staff to work with Menlo Park Public Art nonprofit to develop a pilot public art project proposal to present to the Parks and Recreation Commission for their consideration and recommendation to City Council, passed 4-1 (Nash dissenting).

F2. Accept the transportation impact fee nexus study and review draft resolution and ordinance to update the transportation impact fee program ([Staff Report #19-235-CC](#))

Acting Transportation Manager Kristiann Choy and W-Trans Representative Mark Spencer made the presentation (Attachment).

The City Council clarified that the maximum buildout in ConnectMenlo was included in the nexus study. There was also discussion on the rates and how adjusting those could encourage or discourage specific types of development. City Council directed staff to work with Mayor Pro Tem Taylor and City Councilmember Nash on the fee rates.

**ACTION:** Motion and second (Mueller/ Carlton) to accept the transportation impact fee nexus study and review draft resolution and ordinance to update the transportation impact fee program, passed unanimously.

The City Council took a recess at 9:23 p.m.

The City Council reconvened at 9:30 p.m.

Mayor Mueller reordered the agenda.

## **G. Informational Items**

G2. Update on annexation application for West Menlo Triangle and potential creation of an annexation policy/procedure ([Staff Report #19-230-CC](#))

Deputy City Manager Justin Murphy introduced the item.

- Greg Faris with donated time from Nate Gardner commented on the dangers in and around the West Menlo Triangle (Attachment).
- Steve Bellamy spoke in support of the annexation.
- Dr. Leah Rogers spoke in support of the annexation.
- Laurel Leone spoke in support of the annexation.
- Jen Wolosin, Parents for Safe Routes representative, spoke in support of the annexation.

The City Council discussed the process of this item and received clarification on the next steps. The City Council requested that staff focus on this annexation specifically opposed to a framework for annexations. Staff was directed to return the timing of this project during the City Council goal setting.

## **I. City Councilmember Reports**

I1. Direct staff to negotiate an agreement with local entrepreneur and professional triathlete, Mr. Max

Fennell, to provide a 12-week swim instruction program at Belle Haven pool  
([Staff Report #19-241-CC](#))

Mayor Pro Tem Taylor introduced the item.

Max Fennell made a presentation.

The City Council discussed the cost of the proposed program and directed staff to work on a business plan with Mr. Fennell perhaps utilizing the annual community grant process.

#### **F. Regular Business**

F3. Direct staff to bring Youth Advisory Committee proposal to the Parks and Recreation Commission for its consideration and recommendation ([Staff Report #19-227-CC](#))

The City Council discussed applicant requirements and member amounts. The City Council directed staff to return this to City Council December 10 and bring to the Park and Recreation Commission if time allows.

**ACTION:** Motion and second (Mueller/ Carlton) to direct staff to bring Youth Advisory Committee proposal to the Parks and Recreation Commission for its consideration and recommendation, passed unanimously.

F4. Provide direction on the 2019 holiday lighting efforts ([Staff Report #19-236-CC](#))

Interim Public Works Director Nikki Nagaya introduced the item.

- Fran Dehn spoke in support of lightening the trees on Ravenswood and El Camino.

The City Council discussed options (locations and cost) for holiday lighting. The City Council provided direction to provide holiday lighting for trees at Fremont Park, the corner of El Camino Real and Ravenswood Avenue, and the Onetta Harris Community Center within the existing authorized budget. The Council directed staff to not proceed this year with a tree at City Hall, the clock tower at the Menlo Park Caltrain station and a snowflake skyline over downtown on Santa Cruz Avenue.

**ACTION:** Motion and second (Carlton/ Mueller) to authorize the City Manager to enter into an agreement on the 2019 holiday lighting efforts to light trees at Fremont Park, the corner of El Camino Real and Ravenswood Avenue, and the Onetta Harris Community Center within the existing authorized budget, passed unanimously.

F5. Discuss triennial state building code update process and provide direction on local code amendments ([Staff Report #19-229-CC](#))

Assistant Community Development Director Chuck Andrews and Fire Marshall Jon Johnson made the presentation (Attachment).

The City Council received clarification on adoption requirements and state and staff recommendations. City Council directed staff to return to City Council with a redlined version of the ordinance.

By acclamation, the City Council extended the meeting past 11 p.m.

**ACTION:** Motion and second (Nash/ Taylor) to add an urgency ordinance implementing AB 1482 tenant protections discussion to this meeting, passed unanimously.

The City Council directed staff to prepare urgency ordinance implementing AB 1482 tenant protections to a special meeting November 12 at 5:30 p.m.

**G. Informational Items**

G1. City Council agenda topics: November 2019 to January 2020 ([Staff Report #19-218-CC](#))

G3. Update on small business roundtable and economic development consultant services ([Staff Report #19-237-CC](#))

- Fran Dehn expressed concerns on the Buxton proposal.

G4. Downtown street café program update ([Staff Report #19-224-CC](#))

Mayor Mueller continue items G3. and G4. To November 12.

**H. City Manager's Report**

None.

**I. City Councilmember Reports**

City Councilmember Carlton reported on the Sister Cities northern California event.

Mayor Pro Tem Taylor announced the Black Student Union at Menlo Atherton is hosting the film Harriet November 8 at 5:30 p.m. in the Redwood City theatre. Taylor also reported on the Stanford general use permit meeting.

**J. Adjournment**

Mayor Mueller adjourned the meeting at 11:22 p.m.

Judi A. Herren, City Clerk



**SPECIAL MEETING MINUTES – DRAFT**

**Date:** 11/12/2019  
**Time:** 5:30 p.m.  
**City Council Chambers**  
**701 Laurel St., Menlo Park, CA 94025**

**A. Call To Order**

Mayor Mueller called the meeting to order at 5:30 p.m.

**B. Roll Call**

Present: Carlton, Combs, Nash, Mueller, Taylor

Absent: None

Staff: City Manager Starla Jerome-Robinson, City Attorney William McClure, City Clerk Judi A. Herren

**C. Pledge of Allegiance**

Mayor Mueller lead the Pledge of Allegiance.

**D. Consent Calendar**

Mayor Pro Tem Taylor pulled item D2.

City Councilmember Nash pulled item D3.

Mayor Mueller continued D2. and D3. after Regular Business.

- D1. Authorize the city manager to enter into a professional services agreement with E-Ikon, LLC for information technology consultation services for six months, with an annual option to renew up to two years, not to exceed the budgeted amount each fiscal year ([Staff Report #19-246-CC](#))
- D2. Direct staff to prepare an education series on the development and environmental review processes ([Staff Report #19-249-CC](#))
- D3. Adopt City Council Procedure #CC-19-010 – “City Council powers and responsibilities” ([Staff Report #19-245-CC](#))
- D4. Adopt Resolution No. 6529 authorizing the city manager to sign a contract amendment with the State of California Department of Education to reimburse the City up to \$1,052,860 for child care services at the Belle Haven Child Development center for fiscal year 2019-20 ([Staff Report #19-248-CC](#))

**ACTION:** Motion and second (Nash/ Taylor) to approve the consent calendar except items D2. and D3., passed unanimously.

**E. Regular Business**

- E1. Adopt urgency Ordinance No. 1063 implementing tenant eviction protections and limiting large rental rate increases effective immediately to avoid circumvention of AB 1482 ([Staff Report #19-251-CC](#))

([Supplemental Staff Report #19-258-CC](#))

City Manager Starla Jerome-Robinson was recused and exited the chambers.

Deputy Community Development Director Rhonda Coffman and Assistant City Attorney Cara Silver made the presentation (Attachment).

- Anil Babbar spoke in opposition of the ordinance.
- Carol Malnick spoke in support of the ordinance.
- Susan Lacoste spoke in support of the ordinance.
- Stacy Townsend spoke in support of the ordinance.
- Rachel Horst spoke in support of the ordinance
- Ryan Carrigan spoke in opposition of the ordinance.
- Larry Dahl spoke in support of the ordinance.
- Andrew Naylor spoke in support of the ordinance.
- Karen Camacho spoke in support of the ordinance.
- Pamela Jones spoke in support of the ordinance.
- Nancy Shorum spoke in support of the ordinance.
- John Pimentel spoke in support of the ordinance.
- Ophelia Levai, Valeria Omeenez, Christina Vesera, Kimberly Minez and spoke in support of the ordinance.

The City Council received clarification on those impacted by the ordinance and discussed who and how residents are protected.

**ACTION:** Motion and second (Nash/ Taylor) to adopt urgency Ordinance No. 1063 implementing tenant eviction protections and limiting large rental rate increases effective immediately to avoid circumvention of AB 1482, passed unanimously.

City Manager Starla Jerome-Robinson reentered the chambers.

E2. Award a contract to LDV Specialty Vehicles in the amount of \$478,776.50 for the purchase of one mobile command vehicle ([Staff Report #19-228-CC](#))

Chief Dave Bernini and Sergeant Aaron Dixon made the presentation.

- Pam Jones spoke in support of the Police Department having the equipment they require.

The City Council discussed the usage and option to borrow mobile command units from neighboring jurisdictions. City Council received clarification on budgeting for police frontline equipment.

**ACTION:** Motion and second (Carlton/ Combs) to award a contract to LDV Specialty Vehicles in the amount of \$478,776.50 for the purchase of one mobile command vehicle, passed 4-1 (Nash dissenting).

**D. Consent Calendar**

- D2. Direct staff to prepare an education series on the development and environmental review processes  
(Staff Report #19-249-CC)

The City Council discussed the language presented in the staff report and considered hiring an outside third-party to assist.

**ACTION:** Motion and second (Taylor/ Nash) to have workshops on environmental impact reports with the intent of educating the public on the policy, process, and procedures and for this to be citywide and also study sessions on environmental impact reports to ensure linking all development impacts to be conducted by a third party and staff, passed unanimously.

- D3. Adopt City Council Procedure #CC-19-010 – “City Council powers and responsibilities”  
(Staff Report #19-245-CC)

The City Council received clarification on commissions and committees and the role of the City Councilmember. City Council requested that subcommittee purposes and duration be clarified and that subcommittees report out periodically. City Council also discussed the city manager code of ethics language and noted that ICMA has updated their code of ethics.

City Council took a recess at 7:42 p.m.

City Council reconvened at 7:48 p.m.

**ACTION:** Motion and second (Taylor/ Nash) to adopt City Council Procedure #CC-19-010 – “City Council powers and responsibilities” including updated of the city manager code of ethics to reflect current ICMA code of ethics, passed unanimously.

**F. Informational Items**

- F1. Update on small business roundtable and economic development consultant services  
(Staff Report #19-237-CC)
- F2. Downtown street café program update (Staff Report #19-224-CC)

**G. City Manager's Report**

None.

**H. City Councilmember Reports**

City Councilmember Carlton clarified the difference between a “sister city” and “friendship city”. Mayor Mueller announce the location of the Jerry Rice toy drive, 807 Santa Cruz Avenue.

**I. Adjournment**

Mayor Mueller adjourned the meeting at 7:54 p.m.

Judi A. Herren, City Clerk



## STAFF REPORT

### City Council

Meeting Date:

12/10/2019

Staff Report Number:

19-264-CC

### Consent Calendar:

**Authorize the City Manager to enter into a funding agreement with the Peninsula Arts Guild for crossing improvements to El Camino Real and receive and file an update on anticipated construction traffic impacts for the Guild Theater**

## Recommendation

Staff recommends the City Council:

1. Authorize the City Manager to enter into a funding agreement with the Peninsula Arts Guild for crossing improvements at El Camino Real at Ravenswood/Menlo Avenues and Roble Avenue utilizing funds in the Capital Improvement Program for El Camino Real crossing improvements
2. Receive and file an update on anticipated construction traffic impacts for the Guild Theater project located at 949 El Camino Real

## Policy Issues

City Council authorization of a funding agreement is required as the agreement amount exceeds the City Manager's expenditure authority.

No City Council action is required related to construction traffic impacts. The update is provided for information only.

## Background

### Guild Theater redevelopment

On May 22 and June 5, 2018, the City Council approved the Peninsula Arts Guild's plans for the Guild Theater located at 949 El Camino Real. The project will reconstruct and expand the Guild Theater into a live performance facility. The project is close to obtaining its building permit upon final confirmation that the applicant has satisfied all conditions of approval of the land use entitlements. In addition, the project is located on El Camino Real (state route 82) which is under the California Department of Transportation (Caltrans) jurisdiction. The Peninsula Arts Guild has also secured required permits from Caltrans to construct the project.

### El Camino Real crossing improvements

On May 3, 2016, the City Council accepted the El Camino Real Corridor Study (Attachment A) that analyzed three alternatives to improve safety and traffic along and across El Camino Real. In addition to accepting the Study, the City Council adopted a preferred alternative for El Camino Real to include buffered bicycle lanes with additional study of the northbound traffic bottleneck at Ravenswood Avenue. The City Council further directed staff to advance design and environmental clearance of crossing (east-west connectivity) improvements on El Camino Real at Cambridge Avenue, Middle Avenue, Roble Avenue, Ravenswood-Menlo Avenues and Encinal Avenue (Attachment B). These intersections currently have

crosswalks on only one side crossing El Camino Real. The proposed improvements would add a crosswalk, associated curb ramps and pedestrian signals to each intersection. Staff is also exploring a right-turn arrow (an “overlap” phase) for northbound El Camino Real traffic at Ravenswood Avenue, which could help reduce traffic delays caused by adding the new crosswalks. Funding within the City’s Capital Improvement Program has been budgeted for these improvements in May 2016.

Subsequent to this action, staff worked with the consulting firm that completed the El Camino Real Corridor Study to produce draft plans for the proposed improvements. Staff has integrated the draft plans at Cambridge and Middle Avenues with the adjacent development project, Middle Plaza at 200-500 El Camino Real. Modifications to other intersections have been on hold, due to staff vacancies and other ongoing priorities. In its 2019 Work Plan and the 2019-20 Capital Improvement Program, City Council identified the El Camino Real crossing improvements as a Tier 3 project. As such, staff has continued to look for opportunities to advance the project while prioritizing other, more urgent projects.

## **Analysis**

### Guild Theater construction update

As noted above, building permits for the construction of the Guild Theater are expected to be issued by the City in late November or early December 2019. Site preparation and demolition work is expected to begin in December. Site demolition is expected to last approximately six weeks, through mid-January 2020. The remainder of site construction is expected to last 18 additional months, through mid-2021.

To accomplish site construction, the project team will need to close a southbound through lane on El Camino Real between Santa Cruz and Live Oak intermittently, which is expected to impact traffic on and across El Camino Real. This lane closure will also eliminate access to parking on El Camino Real between Santa Cruz Avenue and Live Oak Avenue during work hours for most of the construction period. Based on staff’s current project understanding, the intermittent lane closures would occur on approximately 180 non-consecutive days over the entire 18 month project duration. Lane closure hours, as approved by Caltrans, are 9:30 a.m. to 3 p.m. Staff expects a significant traffic impact and has worked with the construction team to pursue reasonable alternatives prior to pursuing the lane closures summarized above. However, since the only site access is from El Camino Real and the building occupies the entire site, no other alternatives were found possible.

The southbound through lane closure on El Camino Real also requires one left-turn lane on Ravenswood Avenue will also be closed. The project will provide a traffic flagger at the Caltrain tracks to reduce risk to drivers that may otherwise be more likely to get stuck on the rail tracks due to traffic delays and backups expected with the construction work. Hours for this work are also 9:30 a.m. to 3 p.m., consistent with the Caltrans approvals for El Camino Real.

Providing up-to-date information on the construction work is critical to moderating delays to traffic on El Camino Real. Staff has required weekly notifications from the project team about construction activities for the following week and will circulate the information through the City’s weekly construction electronic newsletter, which is released each Friday afternoon with information about the following week’s planned work. A link to the City’s website to subscribe to the construction news update is provided in Attachment B.

### Funding agreement

During construction of the Guild Theater and required off-site improvements in the area, modifications to the El Camino Real intersections at Ravenswood Avenue/Menlo Avenue and Live Oak Avenue are anticipated.

Since construction will be ongoing in the area for the Guild Theater, partnering with Peninsula Arts Guild to construct the crosswalk improvements would reduce mobilization and traffic control costs of the project. In addition, since work would occur concurrent with the Guild Theater construction, the construction impact to



the public would be consolidated.

Therefore, staff is requesting the City Council authorize the City Manager to negotiate and enter into an agreement with the Peninsula Arts Guild to pursue an alternative delivery method for the crossing improvements at Roble Avenue and Ravenswood-Menlo Avenues.

### Next Steps

If authorization of the funding agreement is approved by the City Council, the City Attorney and staff would finalize the terms of the agreement prior to execution by the City Manager. Once executed, staff would work with Peninsula Arts Guild to prepare draft design plans, secure Caltrans encroachment permits and pursue construction concurrent with the Guild Theater construction over the next 24 months.

### **Impact on City Resources**

Funds are available in the City's Fiscal Year (FY) 2019-20 Capital Improvement Program (CIP) for design/environmental clearance of the improvements as part of the El Camino Real Crossings Improvement project. Staff suggests utilizing the approximately \$310,000 currently available to complete the design, environmental clearance and construction of modifications to El Camino Real/Ravenswood-Menlo Avenues and El Camino Real/Roble Avenue through the proposed funding agreement with Peninsula Arts Guild. These funds are currently budgeted in the Transportation Impact Fee fund.

The first step will be to review draft design plans and develop an updated cost estimate due to cost escalation since 2016, to verify the budgeted amount to complete construction. An additional appropriation would be requested for construction during development of the FY 2020-21 CIP if needed. The Transportation Impact Fee or Measure A programs would be expected to be used for these improvements.

### **Environmental Review**

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

### **Public Notice**

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

### **Attachments**

- A. Hyperlink – El Camino Real Corridor Study:  
[menlopark.org/DocumentCenter/View/7805/ECR-Corridor-Study-Report-August-3-2015](http://menlopark.org/DocumentCenter/View/7805/ECR-Corridor-Study-Report-August-3-2015)
- B. Map of the project location and improvements proposed
- C. Hyperlink – Construction news update subscription information:  
[menlopark.org/223/Construction-News-Updates](http://menlopark.org/223/Construction-News-Updates)

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

Report reviewed by:  
Justin Murphy, Deputy City Manager

# El Camino Real Crossing Improvements

Menlo-Atherton High School





**STAFF REPORT**

**City Council**  
**Meeting Date:** 12/10/2019  
**Staff Report Number:** 19-262-CC

**Consent Calendar:** **Transmittal of the Annual Report on the status of the transportation impact, storm drainage, recreation in-lieu, below market rate housing in-lieu, and construction impact fees collected as of June 30, 2019**

**Recommendation**

Staff recommends the City Council review the annual report on the status of the transportation impact, storm drainage, recreation in-lieu, below market rate housing and construction impact fees. Staff also recommends that City Council adopt the following:

1. Transportation impact fees, storm drainage fees, recreation in lieu fees, below market rate housing in-lieu, and construction impact fees are collected to mitigate direct and indirect impacts from development.
2. These fees are expended in a timely manner to fund continued improvements to public facilities related to the increased demand on the facilities resulting from development.
3. There is a reasonable relationship between these impact fees and their purpose.
4. These impact fees continue to be required to fund applicable improvements, and as such, these fees will continue to be collected and deposited into the appropriate funds for utilization solely for their intended purpose.

**Policy Issues**

This report does not represent any change to existing City policy and affirms the City's intention to continue to charge these impact fees to fund projects and programs that mitigate the direct and indirect impact of development in the City of Menlo Park.

**Background**

Cities and counties often charge fees on new development to fund public improvements to mitigate the impact of development activity. These fees are commonly known as development impact fees. In 1989, the state Legislature passed Assembly Bill 1600 (AB1600), which added Sections 66000 et seq. to the California Government Code, commonly known as the Mitigation Fee Act.

As required by law, these fees are segregated from the General Fund and accounted for in special revenue funds. Government Code Section 66001 requires that the City make available to the public information regarding development impact fees for each fund within 180 days after the end of each fiscal year:

- A brief description of the fee and the fund into which the fee was deposited
- The amount of the fee
- The associated fund's beginning and ending balances for the fiscal year
- The total amount of fees collected and interest earned
- Identification of each public improvement on which impact fees were expended and the amount of

- expenditure on each improvement, including the total percentage of the cost of the public improvement that was funded with impact fees;
- Identification of the approximate date by which construction of a public improvement will commence if the local agency determined that sufficient funds have been collected to complete financing on an incomplete public improvement and the public improvement remains incomplete
  - A description of each interfund transfer or loan made from an account or fund
  - Further, Government Code Section 66000 et. seq. also requires that findings describing the continuing need for impact fees be made every five years specifying the intended use of any unexpended impact fees, regardless of whether the fees are committed or uncommitted. Failure to make such findings subjects the City to going through a refunding procedure. This report meets the requirements to comply with the Mitigation Fee Act.

**Analysis**

Transportation Impact Fees

With new development in San Mateo County and the City of Menlo Park, increased pressure has been put on the transportation system. In 2009, the City prepared a transportation impact fee nexus study, to define the relationship between development and increased transportation needs. This fee structure was put in place effective Dec. 6, 2009, with the passing of an ordinance that added Section 13.26 to the municipal code. The current fee rates are listed below and is included in the City’s 2019 Master Fee Schedule:

Transportation Impact Fee		
Land Use	Unit	2019 Fee Amount*
Office	Sq.Ft.	\$ 5.01
Research and Development	Sq.Ft.	3.60
Manufacturing	Sq.Ft.	2.46
Warehousing	Sq.Ft.	1.08
Restaurant	Sq.Ft.	5.01
Retail	Sq.Ft.	5.01
Single-family	Units	3,393.74
Multifamily	Units	2,083.08
Hotel	Per Room	1,982.23
Medical Office	Sq.Ft.	11.62
Childcare	Sq.Ft.	5.01
Secondary Dwelling Unit	Units	772.43
* As of June, 2019, ENR Construction Cost Index % change for San Francisco = 2.8		
If land use is not one of the above, use this formula: \$3,359.56 * Total PM Peak Hour Trips		

On November 19, 2019, an ordinance was introduced to update Section 13.26 of the Municipal Code which defines the transportation impact fee. A second reading of the ordinance and adoption of the updated fees is scheduled for the December 10 City Council meeting. New TIF rates will become effective February 2020.

For fiscal year 2018-19, the City received total revenue of \$2,605,758 primarily from transportation impact fees and interest income. For the same period, the City expended a total of \$302,893 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year totaled \$2,302,865 and the ending balance as of June 30, 2019, is \$7,130,623. Of this amount, all funds are available for use to meet current or planned projects eligible for this funding source. In the next five fiscal years, it is planned that the City will require \$16,650,000 from transportation impact fees to finance needed infrastructure projects. As such, there exists a continued need for this fee. Detail of current year and historical financials as well as current year project expenditures are available in Attachment A.

### Storm drainage fees

The storm drainage fee, which commenced before 1989, is levied to mitigate City storm drainage impacts either directly or indirectly resulting from development projects. Storm drainage connection fees are charged for property development as shown in the City's 2019 Master Fee Schedule:

- Single-family – per lot \$450.00
- Multifamily – per unit \$150.00
- Industrial and Commercial – per square foot of impervious area \$ 0.24

For fiscal year 2018-19, the City received total revenue of \$6,208, primarily from storm drainage fees and interest income. For the same period, the City expended \$0 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year for the year totaled \$6,208 and the ending balance as of June 30, 2019 is \$174,688. Of this amount, all funds are available for use to meet current or planned projects eligible for this funding source. For mid-year amendments to the fiscal year 2019–20 budget, the City plans to include a \$55,000 budget request for Santa Cruz Avenue Storm Drainage Improvements, a \$45,000 annual Atherton Channel cleaning for fiscal years 2019–20 and 2020–21 and may include a \$23,000 request for Santa Cruz Avenue and Middle Avenue Street Rehabilitation. The City is also seeking to identify additional stormwater and infrastructure projects where this funding source can be applied in future fiscal years. At this time, there still exists a continued need for this fee. Detail of current year and historical financials as well as current year project expenditures are available in Attachment B.

### Recreation in-lieu fees

The recreation in-lieu fee, which commenced before 1989, is collected from developers to improve and expand recreation facilities in-lieu of providing new on-site facilities. The fee is charged on new residential development as shown in the City's 2019 Master Fee Schedule:

- Single-family (RE and R-1): 0.013 (Multiplied by number of units and by market value of acreage to be subdivided)
- Multifamily development (R-2, R-3, RLU and PD): 0.008 (Multiplied by number of units and by market value of acreage to be subdivided)

For fiscal year 2018-19, the City received total revenue of \$287,034, primarily from recreation in-lieu fees and interest income. For the same period, the City expended a total of \$479,121 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year for the year totaled (\$192,087) and the ending balance as of June 30, 2019 is \$3,553,462. Of this amount, all funds are available for use to meet current or planned projects eligible for this funding source. In the next five fiscal years, it is planned that the City will require \$5,750,000 from recreation in-lieu fees to finance needed infrastructure projects. The Parks and Recreation Master Plan process concluded subsequent to the end of the fiscal year and

identified potential additional demands for these funds. As such, there exists a continued need for this fee. Detail of current year and historical financials as well as current year project expenditures are available in Attachment C.

#### Below Market Rate Housing in-lieu fee

The Below Market Rate (BMR) Housing program was established in 1987 to increase the housing supply for people who live and/or work in Menlo Park and have very low, low, or moderate incomes as defined by income limits set by San Mateo County. The primary objective of the fee is to create actual housing units rather than generate a capital fund. However residential developers are permitted to pay an in-lieu fee if a project does not provide the following:

- All owner-occupied residential developments of five or more units are required to provide a BMR unit.
- Residential developments of 10 to 19 units are required to provide 10 percent of the housing at below market rates.
- Development projects of 20 units or more are required to provide 15 percent of the housing at below market rates.

For new commercial developments equal to or greater than 10,000 square feet that generate employment opportunities, the in-lieu fee is established as follows:

- \$16.90 per square foot of net new gross floor area for most commercial uses
- \$9.17 per square foot of net new gross floor area for defined uses that generate fewer employees

For fiscal year 2018-19, the City received total revenue of \$872,348, primarily from below market rate housing in-lieu fees and interest income. For the same period, the City expended a total of \$316,267 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year totaled \$556,081 and the ending balance as of June 30, 2018 is \$25,225,766. Of this amount, \$16,244,770 is available for use to meet current or planned projects eligible for this funding source. The remaining fund balance reflects assets held as notes receivable (BMR loan programs) and real estate held for resale. A staff report was provided to City Council (staff report 17-138-CC) on one funding opportunity, \$6,700,000, for 1317-1385 Willow Road. A second staff report was provided to City Council (staff report 19-234-CC) on another funding opportunity, \$635,502 for 1105 and 1141 Willow Road. In addition, staff anticipates the release of a new NOFA for the allocation of BMR funds, estimated at approximately \$9,000,000, in the 2020 calendar year to leverage additional development of affordable housing within the plan area. It is estimated at this time that the abovementioned activities will exhaust and potentially exceed the current available fund balance. Detail of current year and historical financials as well as current year project expenditures are available in Attachment D.

#### Construction Impact Fees

The construction impact fee that took effect in November 2005 was adopted to recover the cost of repairing damage to streets caused by construction-related vehicle traffic. On August 5, 2008, Council adopted a resolution extending this fee beyond the three-year sunset provision initially established. The fee is charged on the value of the construction project as shown in the 2019 Master Fee Schedule:

- The fee amounts to 0.58 percent of a construction project's value
- Residential alteration and repairs, as well as all projects under \$10,000, are exempt from the fee

For fiscal year 2018-19, the City received total revenue of \$3,706,846, primarily from building construction road impact fees and interest income. For the same period, the City expended a total of \$1,365,123 on projects eligible for funding under this revenue source. Accordingly, net revenue for the year totaled \$2,341,723 and the ending balance as of June 30, 2019 is \$7,686,350. Of this amount, all funds are available for use to meet current or planned projects eligible for this funding source. In the next five fiscal

years, it is planned that the City will require \$9,200,000 from building construction road impact fees to finance needed infrastructure projects. As such, there exists a continued need for this fee. Detail of current year and historical financials as well as current year project expenditures are available in Attachment E.

### **Impact on City Resources**

There is no impact on City resources resulting from this annual report, and this report meets the compliance requirements of the Mitigation Fee Act. Impact Fees collected in 2018-19 represented \$6,628,025.

### **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 to comply with the Mitigation Fee Act is achieved by posting the annual report on November 25, 2019, 15 days before the meeting at which the City Council is anticipated to make required findings as outlined in the recommendation.

### **Attachments**

- A. Transportation impact fee financial report
- B. Storm drainage fee financial report
- C. Recreation in-lieu fee financial report
- D. Below Market Rate Housing in-lieu fee financial report
- E. Construction impact fee financial report

Report prepared by:  
Brandon Cortez, Management Analyst II

Report Reviewed by:  
Dan Jacobson, Finance and Budget Manager

Report approved by:  
Lenka Diaz, Administrative Services Director

**City of Menlo Park  
Transportation Impact Fee Financial Report**

Transportation Impact Fees	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Beginning balance</b>	<b>\$3,962,481</b>	<b>\$4,783,010</b>	<b>\$3,680,652</b>	<b>\$3,671,623</b>	<b>\$4,827,758</b>
Developer Fees	1,063,265	484,865	1,565,803	1,525,690	2,410,325
Interest earnings and other	68,016	671,669	27,687	36,360	195,433
Expenditures	(310,752)	(2,258,892)	(385,171)	(405,915)	(302,893)
Non-traffic impact fee transfer	0	0	(1,217,348)	0	0
<b>Ending Balance</b>	<b>\$4,783,010</b>	<b>\$3,680,652</b>	<b>\$3,671,623</b>	<b>\$4,827,758</b>	<b>\$7,130,623</b>

2018-19 Transportation Impact Fee Project Expenditures:	Total Expended
Middle Avenue Caltrain Crossing Study	\$166,744
Transit Improvements	38,007
Transportation Projects Minor	29,688
Other projects	68,454
<b>Total</b>	<b>\$302,893</b>

Transportation Impact Fee Future Projects	2019-20	2020-24	Total
Middle Avenue Caltrain Crossing Study Design and Construction	5,000,000	9,900,000	\$14,900,000
Traffic Signal Modifications	350,000	1,400,000	\$1,750,000
		<b>Total</b>	<b>\$16,650,000</b>



**City of Menlo Park  
Storm Drainage Impact Fee Financial Report**

<b>Storm Drainage Impact Fees</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
<b>Beginning balance</b>	<b>\$116,821</b>	<b>\$170,220</b>	<b>\$172,555</b>	<b>\$176,446</b>	<b>\$168,480</b>
Developer fees	52,160	783	2,250	7,270	2,250
Interest income/(expense)	1,239	1,552	1,641	2,166	3,958
Expenditures	0	0	0	(17,402)	0
<b>Ending Balance</b>	<b>\$170,220</b>	<b>\$172,555</b>	<b>\$176,446</b>	<b>\$168,480</b>	<b>\$174,688</b>

<b>Storm Drainage Impact Fee Fund Expenditures</b>	<b>2018-19</b>
	\$0

<b>Storm Drainage Impact Fee Future Projects</b>	<b>2019-20</b>	<b>2020-24</b>	<b>Total</b>
Santa Cruz Avenue Storm Drainage Improvement	\$55,000	\$ -	\$55,000
Atherton Channel cleaning	45,000	45,000	90,000
Santa Cruz Avenue and Middle Avenue Street Rehabilitation		23,000	23,000
		<b>Total</b>	<b>\$168,000</b>

**City of Menlo Park  
Recreation In-Lieu Impact Fee Financial Report**

<b>Recreation In-Lieu Impact Fees</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
<b>Beginning balance</b>	<b>\$1,382,656</b>	<b>\$1,428,915</b>	<b>\$1,296,910</b>	<b>\$1,167,732</b>	<b>\$3,745,549</b>
Developer Fees	52,000	103,400	64,000	2,619,200	205,800
Interest Income/(Expense)	14,029	12,962	6,433	36,958	81,234
Expenditures	(19,770)	(248,367)	(199,611)	(78,341)	(479,121)
<b>Ending balance</b>	<b>\$1,428,915</b>	<b>\$1,296,910</b>	<b>\$1,167,732</b>	<b>\$3,745,549</b>	<b>\$3,553,462</b>

<b>Recreation In-Lieu Fee Expenditures</b>	<b>2018-19</b>
Jack Lyle Park Restroom	461,441
Bedwell Bayfront Park Master Plan	1,628
Other Projects	16,052
<b>Total</b>	<b>\$479,121</b>

<b>Recreation In-Lieu Fee Future Projects</b>	<b>2019-20</b>	<b>2020-24</b>	<b>Total</b>
Belle Haven Pool Master Plan Implementation	\$0	\$3,750,000	\$3,750,000
Parks and Recreation Master Plan Implementation	-	2,000,000	2,000,000
		<b>Total</b>	<b>\$5,750,000</b>

**City of Menlo Park**  
**Below Market Rate Housing Financial Report**

Below Market Rate Housing Special Fund	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Beginning balance</b>	<b>\$11,751,144</b>	<b>\$14,135,309</b>	<b>\$16,884,108</b>	<b>\$18,652,660</b>	<b>\$24,669,685</b>
Fiscal Year Activity					
Charges for Services	2,388,210	3,788,681	1,824,526	6,109,892	354,517
Use of Money and Property	178,194	149,505	125,374	125,117	517,831
Expenditures	(182,238)	(97,368)	(181,348)	(217,983)	(316,267)
Proceeds from the Sale of Assets	0	0	0	0	0
Prior period adjustment	0	(1,092,019)	0	0	0
<b>Ending balance</b>	<b>\$14,135,309</b>	<b>\$16,884,108</b>	<b>\$18,652,660</b>	<b>\$24,669,685</b>	<b>\$25,225,766</b>

Adjustment for notes and interest receivable	(\$6,170,550)	(\$9,106,832)	(\$8,823,986)	(\$8,861,591)	(\$8,980,996)
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<b>Adjusted available balance</b>	<b>\$7,964,759</b>	<b>\$7,777,276</b>	<b>\$9,828,674</b>	<b>\$15,808,095</b>	<b>\$16,244,770</b>
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Below Market Rate Housing Special Fund Expenditures	2018-19
<b>Project Expenditures:</b>	
Other expenditures	\$316,267
<b>Total Expenditures:</b>	<b>\$316,267</b>

Below Market Rate Housing Special Fund Future Projects	2019-20	2020-24	Total
1317-1385 Willow Road	\$6,700,000	\$0	\$6,700,000
1105 and 1141 Willor Road	635,502	-	635,502
2020 NOFA	-	9,000,000	9,000,000
		<b>Total</b>	<b>\$16,335,502</b>

**City of Menlo Park  
Construction Impact Fee Financial Report**

Construction Impact Fee Fund	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Beginning balance</b>	<b>\$3,624,730</b>	<b>\$5,048,723</b>	<b>\$4,103,887</b>	<b>\$6,915,393</b>	<b>\$5,344,627</b>
Developer Fees	1,584,408	1,821,534	3,095,422	2,976,022	3,655,133
Street Department Fees	0	0	0	0	0
Interest Income/(Expense)	39,390	40,396	62,254	51,713	51,713
Expenditures	(199,805)	(2,792,626)	(346,171)	(4,598,500)	(1,365,123)
Transfers		(14,140)			
<b>Ending balance</b>	<b>\$5,048,723</b>	<b>\$4,103,887</b>	<b>\$6,915,393</b>	<b>\$5,344,627</b>	<b>\$7,686,350</b>

Construction Impact Fee Fund Expenditures	2018-19
<b>Project Expenditures:</b>	
Street Resurfacing Project	\$1,215,128
Santa Cruz & Middle resurfacing	49,424
<b>Operating Expenditures:</b>	
Street Maintenance	100,570
<b>Total Expenditures:</b>	<b>\$1,365,123</b>

Construction Impact Fee Future Projects	2019-20	2020-24	Total
Street Resurfacing	\$600,000	\$2,000,000	2,600,000
Santa Cruz & Middle Resurfacing	2,300,000	-	2,300,000
Willow Road (Middlefield to US-101) Street Resurfacing	\$150,000	\$1,000,000	1,150,000
Middlefield Road (Woodland to Ravenswood) Street Reconstruction	-	3,150,000	3,150,000
		<b>Total</b>	<b>\$9,200,000</b>



## STAFF REPORT

**City Council Meeting Date:** 12/10/2019  
**Staff Report Number:** 19-265-CC

**Consent Calendar:** Approve the formation of a Youth Advisory Committee to advise staff and the Parks and Recreation Commission

### Recommendation

Staff recommends that the City Council approve the formation of a Youth Advisory Committee to advise staff and the Parks and Recreation Commission.

### Policy Issues

The City Council established commissions, committees, and taskforces to provide advice on a variety of policy considerations.

### Background

On November 5, the City Council directed staff to seek input from the Parks and Recreation Commission (Commission) on the formation of a Youth Advisory Committee (YAC). The Commission met on November 20.

### Analysis

On November 20, the Commission received the YAC proposal (Attachment A) and provided feedback to the City Council on the following three topics:

1. Authority to make policy recommendations to the City Council.  
The Commission felt that the YAC purpose should be limited to advising City staff and Parks and Recreation Commission on activities, events, programs, services and current youth issues and trends. This purpose is best served where teens are free to voice their concerns in a safe and comfortable environment which is less restrictive and fosters open communication. The YAC should be organized in a manner that is conducive for how teens communicate today and promotes collaboration particularly on events they may help organize and promote for their peers.
2. Residency/school requirements.  
The Commission was supportive of a residency requirement although encouraged inclusivity and greater participation by teens. It emphasized the importance of diversity on the Committee, recommending the makeup of the YAC be representative of the various high schools that serve Menlo Park. Commissioners felt it was important to have a larger group in order to help execute on event planning, especially given the busy schedules of teenagers.

3. Number of members.

The Commission was asked whether the committee membership be limited to 7 members as with other City advisory bodies. The Commission felt it was more important to have a larger group in order to help execute on event planning, especially given the busy schedules of teenagers.

The Commission provided additional feedback on the YAC which included applauding the City's efforts in helping to engage this hard to reach demographic and to ensure that the community's youth are being served. The Commission also recommended that students received volunteer service credits for participating in the YAC. Lastly, it was recommended that committee members serve as ambassadors for City programs and promote events throughout the year through social media and other preferred methods of communication.

The Commission voted unanimously to support the creation of the YAC as an advisory body to staff and the Parks and Recreation Commission, comprised of up to 18 youth residing in the City of Menlo Park.

### **Impact on City Resources**

Staff support would include approximately 2-3 hours per meeting with additional time for preparation and follow-up tasks. The maximum cost of in-house staff time would be approximately \$14,000 annually with an additional \$3,000 for materials and supplies. Cost of staffing the YAC will be factored into overtime budgets as is frequently done with staff support to City Council advisory bodies.

### **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. Menlo Park Youth Advisory Committee Final Proposal

Report prepared by:

Adriane Lee Bird, Assistant Community Services Director

Report reviewed by:

Derek Schweigart, Community Services Director

**City of Menlo Park Youth Advisory Committee (YAC)**  
*to commence Fall 2020*

**Role**

The Menlo Park YAC exists as a citizens' group to advise and respond in all matters related to the needs of youth in Menlo Park or those referred to it by the Parks and Recreation Commission or City staff and, as appropriate, make recommendations on those matters.

**Purpose**

The YAC's purpose is to engage the future leaders of Menlo Park by encouraging youth to take an active leadership role in the community. It aims to foster a greater involvement of youth in municipal government and civic affairs. The YAC will advise the Parks and Recreation Commission and City staff on activities, events and programs to meet the needs of youth and teens in the community. The following is a summary of YAC charge:

- Act as an advocate for youth and teens
- Act as a liaison for teen issues to governmental and private organizations
- Empower youth to have a voice in their local government, get involved and make a difference in their community
- Foster a greater involvement of youth in municipal government and city affairs
- Advise and inform City staff and the Parks and Recreation Commission on the various issues relating to the teens, outlining the needs of the population
- Advise the Parks and Recreation Commission and City staff on activities, events, programs and with current youth trends to meet the needs of youth in Menlo Park
- Assist in planning, promoting and implementing programs and services for youth
- Plan and participate in community services activities which benefit the Menlo Park community
- Promoting leadership skills through service learning experiences and volunteerism
- Identify problems of teen services and recommend appropriate solutions

**Eligibility**

- Must be a City of Menlo Park resident
- Be entering grades ninth through 12 for the upcoming academic year and committee term
- Be willing to commit time and energy (about 6 hours per month for meetings and events)
- Must commit to a one-year term (September to May)

**Application and membership**

- Applicants must submit a YAC application form and supplemental questionnaire
- Applications are accepted April through August for the committee year that starts in September
- The Committee will run with no fewer than 10 and a maximum of 18 members
- A term is one-year, from September through May. Committee members may stay on for up to four terms, however a new application must be submitted each year

## **Selection**

The selection of the committee members shall be made according to the following guidelines:

- Selection shall be made in a fair and impartial manner
- Reasonable effort shall be made to assure that nominees are representative of the Menlo Park teen population by ensuring that the diverse interests of teens are represented on the committee
- Reasonable effort shall be made to ensure that a diverse YAC is representative of the various high schools that serve Menlo Park
- Applications must be submitted to the City of Menlo Park Community Services Department
- City staff will be responsible for reviewing applications, scheduling interviews and making the final selection for all candidates

## **Meetings**

Meetings will be held twice a month. Regular meetings are on the first Wednesday of the month from 6:30 p.m. – 8 p.m. at Arrillaga Family Recreation Center. Additionally there will be various committee and event meetings dependent on assignment. Required attendance at various evening or weekend Youth Advisory Committee-hosted events throughout the year. Committee members must attend at least 75 percent of the meetings to remain in good standing.

## **Activities**

The YAC will learn first-hand about the various aspects of Menlo Park's local government. It will develop, promote and host a number of youth specific events throughout the year, as well as have a presence at a number of the citywide annual events. The YAC will have the opportunity to provide an advisory role to the Parks and Recreation Commission and City staff on youth-related projects. Lastly, as a group, the YAC will identify its yearlong focus, which will culminate in a special project, event or initiative. Serve as an ambassador for the Community Services Department and promote youth-related events to peers and via social media.

## **Officers**

The Youth Advisory Committee shall elect from its membership a Chairperson, Vice-Chairperson, and Secretary.

### **Chairperson**

The Chairperson shall preside at all meetings of the Youth Advisory Committee and shall appoint standing or special committees as may be necessary to carry out the Youth Committee's business, and shall supervise the efficient and responsible operation of the Youth Advisory Committee.

### **Vice Chairperson**

The Vice-Chairperson shall preside at Youth Advisory Committee meetings in the absence of the Chairperson, shall assume specific leadership responsibilities as determined by the Chairperson, and shall assist the Chairperson in fulfilling his/her responsibilities as needed.

### **Secretary**

The Secretary shall be responsible for all communications for the Youth Advisory Committee meetings, and shall solicit and keep records of the minutes of the Committee.



**Sub-Committees**

- Sub-committees shall be formed, as the Youth Advisory Committee deems needed
- Youth Advisory Committee members shall be expected to participate in at least one sub-committee at any given time
- Sub-committee work will be eligible for community service credits

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## STAFF REPORT

### City Council

**Meeting Date:** 12/10/2019

**Staff Report Number:** 19-267-CC

### Consent Calendar:

**Waive second reading and adopt Ordinance No. 1061 amending Chapter 13.26 [Transportation Impact Fee program] of Title 13 [Streets, sidewalks and utilities] and adopt resolution No. 6533 to establish new Transportation Impact Fee rates**

### Recommendation

Staff recommends that the City Council waive the second reading and adopt Ordinance No. 1061 (Attachment A) to amend Chapter 13.26 of the Municipal Code, which defines the Transportation Impact Fee program, and adopt resolution No. 6533 (Attachment B) to establish the new Transportation Impact Fee rates.

### Policy Issues

Development of a Transportation Master Plan (TMP) and update of the Transportation Impact Fee (TIF) program was included as one of the top six priority projects in the City Council's adopted 2018 work plan and was included again as one of the top five priorities in the 2019 work plan. Updating the TIF was also a program (Program CIRC-6.C) identified in the 2016 Circulation Element of the General Plan to "Require new and expanded development to pay a transportation impact fee, and update the fee periodically to ensure that development is paying its fair share of circulation system improvement costs for all modes of transportation." Further, updating the Transportation Impact Fee program was identified as a mitigation measure (Mitigation Measures TRANS-1b and TRANS-6a), in the certified Environmental Impact Report for the General Plan update.

The TIF program is defined in Section 13.26 of the Municipal Code. The fees are updated by the City Council's adoption of a resolution identifying the new fees. Since the last fee program update in 2009, staff identified the need for minor revisions to the ordinance language to be consistent with the 2016 Circulation Element. City Council adoption of the updated ordinance language is required through introduction (first reading) and adoption (a second reading) of the ordinance.

### Background

On November 5, 2019, City Council accepted the nexus study and reviewed the draft resolution and ordinance and appointed two City Council members, Cecilia Taylor and Betsy Nash to work with staff to provide alternative rates for discussion November 19, 2019.

Staff met with the City Council subcommittee on two separate occasions to gather their feedback and develop alternative rates. Discussions with the subcommittee indicated a desire to incentivize retail and restaurant uses by lowering their fees while finding ways to minimize the potential revenue loss. In addition, the subcommittee recommended waiving the TIF for childcare uses and for affordable housing units that are above the City's minimum requirements.

Staff had originally recommended reduced rates for the retail and restaurant uses at the same amount as office rates and rates for single family and multifamily development to be 50 percent of the maximum allowable. Since most of the land use rates were already recommended to be at the maximum allowable rates, the rates for single family and multifamily uses were the only rates that could be increased, which lead to the option to increase the single family rate to the maximum allowable and the multifamily rate to 60 percent of the maximum allowable. These fees would be applied to net new housing units. Remodels and additions to an existing single family home would not be subject to the TIF; subdividing a single-family lot to add a new unit on a parcel that already has one home would be subject to fees for one additional unit. The subcommittee also recommended that the rates for the retail and restaurant uses be re-evaluated in one year following adoption (anticipated to be February 2021).

On November 19, 2019, the alternative rates were presented to the City Council and the City Council indicated support for the subcommittee's recommendations. The City Council also unanimously passed a motion by Nash and seconded by Carlton to introduce Ordinance No. 1061 to modify the Transportation Impact Fee program. The staff report from the November 19 meeting is included as Attachment C.

### **Analysis**

No changes to the ordinance have been made based on the City Council discussion November 19, 2019. If the City Council adopts the ordinance, it will go into effect 30 days later January 9, 2020.

The resolution includes the subcommittee recommendations on the rates as directed by the City Council November 19. If approved by the City Council, the new rates would go into effect in 60 days after approval February 8, 2020. All development projects would be subject to the new rates once they are in effect unless otherwise exempted by state law. Projects that have received land use entitlements, but have not yet received a building permit by February 8, 2020 have the option of paying the current TIF fee.

### **Impact on City Resources**

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

### **Environmental Review**

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment. Individual improvements identified in the study will be required to undergo the applicable environmental review process prior to implementation.

## Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Notification for the November 19, 2019 public hearing on the new fees as required by Government Code sections § 66018 and § 6062a was provided November 1 and November 8.

## Attachments

- A. Ordinance No. 1061
- B. Resolution No. 6533
- C. Hyperlink – TIF Public Hearing SR, November 19, 2019 (19-256-CC):  
[menlopark.org/DocumentCenter/View/23421/11-2019119-CC-TIF-PH](http://menlopark.org/DocumentCenter/View/23421/11-2019119-CC-TIF-PH)

Report prepared by:  
Kristiann Choy, Acting Transportation Manager

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

**ORDINANCE NO. 1061****ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK AMENDING CHAPTER 13.26 [TRANSPORTATION IMPACT FEE] OF TITLE 13 [STREETS, SIDEWALKS AND UTILITIES] OF THE MENLO PARK MUNICIPAL CODE**

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

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

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

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

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

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

## Chapter 13.26

## TRANSPORTATION IMPACT FEE

13.26.010	Authority
13.26.020	Application
13.26.030	Intent and purpose
13.26.040	Definitions
13.26.050	Fee requirement
13.26.060	Fee payment
13.26.070	Authority for additional mitigation
13.26.080	Fee credit
13.26.090	Appeal

- 13.26.100 Refund of fee
- 13.26.110 Accumulation and use of funds
- 13.26.120 Adjustment of fee

**13.26.010 Authority**

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

**13.26.020 Application**

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

**13.26.030 Intent and purpose**

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

- A. Adequate transportation improvements are needed to protect the health, safety, and general welfare of the citizens to facilitate transportation and to promote economic well being within the City;
- B. The City of Menlo Park provides transportation improvements and services for residents, businesses, and employees within the City;
- C. Individual transportation improvements are part of an integrated system serving and providing benefits to the entire City;
- D. Improvements to the existing transportation systems in the City are needed to mitigate the cumulative impacts of developments;
- E. All types of development require and use the transportation system;
- F. ~~It is the stated goal of the General Plan Circulation Element Policy CIRC-3.4 states that the city should strive to maintain~~ Level of Service D ~~or better shall be maintained~~ at all City-controlled signalized intersections during peak hours, except at the intersection of Ravenswood Avenue and Middlefield Road and at intersections along Willow Road from Middlefield Road to US 101, ~~as defined in~~

~~the City of Menlo Park General Plan~~ and the City should work with Caltrans to ensure that average stopped delay on local approaches to State-controlled signalized intersections does not exceed LOS E;

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

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

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

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

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

### **13.26.040 Definitions**

The following definitions apply to this chapter:

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

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

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



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

**13.26.050 Fee requirement**

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

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

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

B. Types of Development Subject to the Fee. The fee shall be applicable to new development in all land use categories identified in the City's zoning ordinance, any construction adding additional floor area to a lot with an existing building, new single-family and multi-family dwelling units, and changes of use from one land use category to a different land use category.

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

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

**13.26.060 Fee payment**

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

### **13.26.070 Authority for additional mitigation**

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

### **13.26.80 Fee credit**

- A. The Public Works Director or designee ~~Transportation Manager~~ may adjust the fee imposed pursuant to this chapter in consideration for certain facilities or improvements constructed or paid for by the developer. A developer is entitled to credit for the reasonable cost of the improvements, as determined by the Public Works Director or designee ~~Transportation Manager~~, if the improvement is identified in the Transportation Impact Fee Study.
- B. For new construction, a developer shall receive credit toward the fee based on the gross floor area of existing buildings and/or the number of residential units which are being demolished and the predominant historical use as determined by the Public Works Director or designee ~~Transportation Manager~~.
- C. For a change of use, a developer shall receive credit toward the fee based on the gross floor area of existing buildings and/or number of residential units for which there is a change of use based on the predominant historical use as determined by the Public Works Director or designee ~~Transportation Manager~~.

### **13.26.090 Appeal**

- A. The developer of a project subject to this chapter may appeal the imposition and/or calculation of the fee at any time after the final determination of the fee by the Public Works Director or designee ~~Transportation Manager~~ and before payment of the fee without protest to the City Council.
- B. The appellant shall state in detail the factual basis for the appeal and shall bear the burden of proof in presenting substantial evidence to support the appeal.
- C. The City Council shall uphold the fee and deny the appeal if it finds that there is a reasonable relationship between the development project's impact on transportation facilities and the amount of the fee. The City Council shall consider the land use category determination, and the substance and nature of the evidence, including the fee calculation method, supporting technical documentation, and the appellant's technical data. Based on the evidence, the City Council may also modify the fee.

**13.26.100 Refund of fee**

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

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

**13.26.110 Accumulation and use of funds**

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

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

**13.26.120 Adjustment of fee**

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

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

SECTION 4. The City Council hereby finds that this ordinance is exempt from the provisions of the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) of the CEQA Guidelines, because there is no possibility of

significant environmental effects occurring as a result of the adoption of this ordinance.

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

INTRODUCED on the nineteenth day of November, 2019.

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

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**RESOLUTION NO. 6533****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
ADOPTING UPDATED TRANSPORTATION IMPACT FEE RATES**

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

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

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

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

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

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

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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Judi A. Herren, City Clerk

**Transportation Impact Fee Rates (12-10-19)\***

Office	\$17.60	per sq. ft.
Research and Development	\$7.50	per sq. ft.
Manufacturing	\$10.26	per sq. ft.
Warehousing	\$2.91	per sq. ft.
Restaurant	\$10.26	per sq. ft.
Retail	\$10.26	per sq. ft.
Medical Office	\$52.97	per sq. ft.
Childcare	\$0.00	per sq. ft.
Hotel	\$9,184.99	per room
Single-Family	\$15,155.24	per unit
Multi-Family	\$5,108.02	per unit
Secondary Dwelling Unit	\$0.00	per unit

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



**SPECIAL AND REGULAR MEETING AGENDA**

**Date:** 12/10/2019  
**Time:** 5:30 p.m.  
**City Council Chambers**  
**701 Laurel St., Menlo Park, CA 94025**

**STAFF REPORT RELEASE NOTICE**

The Staff Report No.19-263 for authorize the City Manager to enter into an agreement for water utility billing services will be available by 5 p.m. on December 5, 2019.

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 the City Clerk's Office at 650-330-6620. (Posted 11/27/2019.)

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**STAFF REPORT**

**City Council**

**Meeting Date:** 12/10/2019

**Staff Report Number:** 19-268-CC

**Regular Business:**

**Adopt Resolution No. 6534 approving the City Council Community Funding Subcommittee's recommendations regarding the 2019-20 community funding allocation**

**Recommendation**

The City Council Community Funding Subcommittee recommends that the City Council adopt Resolution No. 6534 (Attachment A) approving the proposed 2019-20 Community Funding allocation in the amount of \$276,550.

**Policy Issues**

The Subcommittee's recommendation is consistent with the City Council's current Community Funding Program Policy, and well within the allowance for allocation of up to 1.7 percent of projected 2019-20 property tax revenue (approximately \$469,000).

City Council subcommittee member Carlton indicated she had no affiliations with any of the applicant organizations. City Council subcommittee member Taylor stated she is affiliated with one applicant organization, Rotary Club of Menlo Park Foundation, and recused herself from all discussion regarding this applicant.

**Background**

The City of Menlo Park adopted a formal policy guiding allocation of general fund dollars to community organizations in 1996 (see "Community Funding Program", Attachment B) to leverage City funds in response to the human service needs of Menlo Park residents.

The policy guidelines stipulate that eligible programs must address a verified community need and have a significant Menlo Park client base. Priority service areas include emergency assistance for those who are homeless or low-income; assistance to the disabled; help for seniors to be independent; senior day care support; youth services including recreational and summer academic support; crisis and family counseling; and substance abuse prevention. Applicants must maintain accounting records with an independent audit at least once every two years.

Each fiscal year, according to the policy, no more than 1.7 percent of projected general fund property tax revenue may be allocated to the Community Funding Program. This ceiling would amount to approximately \$469,000 for the 2019-20 fiscal year adopted budget.

The general fund budget for fiscal year 2019-20 includes \$275,000 for eligible community programs selected for funding, the same amount awarded last year.

## Analysis

City Councilmembers Carlton and Taylor were appointed as the Community Funding Subcommittee for fiscal year 2019-20. The Subcommittee is charged with evaluating funding requests and making recommendations to the full City Council as to the allocation of the funds budgeted for the community funding program.

This year, the City provided notice of the grant program to agencies that received funding in prior years as well as additional organizations referred by City Council members and staff. Thirty agencies responded with requests totaling \$427,000. Four organizations submitted applications that did not apply last year. Applicant agencies provide services such as counseling, crisis intervention, employment assistance, shelter, hospice services, community health, risk reduction education, and youth and senior services.

The Subcommittee reviewed the weighted criteria established to assess the applications against factors aligned with the Community Funding Policy such as: verified program results; impact on the Menlo Park community; percentage of total budget spent on administrative overhead; receipt of City funding in previous years; community need for the program; unduplicated service or, if duplicated, evidence of collaboration; and alignment with City Council goals for the program.

While assessment criteria are included with the application packet each year to encourage complete submissions, it was noted that not all criteria are requested to be confirmed in the application packet. This promoted a discussion of the policy's eligibility guidelines, which the Subcommittee determined would benefit from a review and possible update prior to the release of the 2020-21 funding application packets.

All agencies that applied for funding this year were allocated at least \$500 except one: Relay for Life of Menlo Park. The subcommittee did not recommend this organization receive funding due to the total request appearing to be for administrative overhead.

The largest grants, for \$35,000, were to Star Vista for youth counseling services at Menlo Atherton High School and \$25,000 to Peninsula Conflict Resolution Center for a youth restorative justice and leadership program in partnership with the Belle Haven School and library. In total, the Subcommittee is recommending \$276,550 in funding awards for this year, given the outstanding needs in the community and the City's fiscal standing.

The table on the following page outlines funding allocations approved by the City Council in fiscal year 2018-19, requests for fiscal year 2019-20, and the Subcommittee recommendation.

Table 1: Funding requests for fiscal year 2019-20			
Agency	FY 2018-19 allocation	FY 2019-20 request	Subcommittee recommendation for FY 2019-20
Acknowledge Alliance	\$20,000	\$25,000	<b>\$18,000</b>
All Students Matter	N/A	\$10,000	<b>\$2,000</b>
Avenidas	N/A	\$10,000	<b>\$3,000</b>
Boys & Girls Clubs of the Peninsula	\$15,000	\$30,000	<b>\$15,000</b>
Center for Independence of Indiv with Disabilities	\$10,000	\$15,000	<b>\$10,000</b>
Community Equity Collaborative	N/A	\$6,000	<b>\$3,000</b>
Community Overcoming Relationship Abuse	\$7,500	\$7,500	<b>\$7,500</b>
Family Connections	\$10,000	\$15,000	<b>\$10,000</b>
Human Investment Project	\$17,500	\$17,500	<b>\$15,000</b>
JobTrain	\$10,000	\$15,000	<b>\$10,000</b>
Legal Aid Society of San Mateo County	\$6,000	\$7,000	<b>\$7,000</b>
LifeMoves	\$17,500	\$20,000	<b>\$20,000</b>
My New Red Shoes	\$500	\$500	<b>\$500</b>
Nuestra Casa de East Palo Alto	\$5,000	\$6,000	<b>\$6,000</b>
Ombudsman Services of San Mateo County, Inc.	\$2,000	\$3,000	<b>\$2,000</b>
Pacific Art League	N/A	\$5,000	<b>\$550</b>
Pathways Home Health & Hospice	\$7,500	\$10,000	<b>\$7,500</b>
Peninsula Conflict Resolution Center	\$25,000	\$40,000	<b>\$20,000</b>
Peninsula Volunteers, Inc.	\$20,000	\$40,000	<b>\$20,000</b>
Project WeHOPE	\$6,000	N/A	--
Ravenswood Education Foundation	\$10,000	\$10,000	<b>\$10,000</b>
Rebuilding Together Peninsula	\$10,000	\$10,000	<b>\$8,000</b>
Relay for Life of Menlo Park	N/A	\$5,000	<b>\$0</b>
Riekes Center for Human Enhancement	\$8,000	\$10,000	<b>\$8,000</b>
Rotary Club of Menlo Park Foundation	N/A	\$6,000	<b>\$1,500</b>
Samaritan House	\$10,000	\$27,500	<b>\$17,500</b>
San Mateo County Jobs for Youth	\$1,500	\$3,000	<b>\$1,500</b>
Service League of San Mateo County	\$3,000	\$3,000	<b>\$3,000</b>
StarVista	\$35,000	\$40,000	<b>\$30,000</b>
Vista Center for the Blind and Visually Impaired	\$10,000	\$15,000	<b>\$10,000</b>
Youth Community Service	\$8,000	\$15,000	<b>\$10,000</b>
<b>Total</b>	<b>\$275,000</b>	<b>\$427,000</b>	<b>\$276,550</b>

Additional information about each organization's application is available in the Administrative Services Department.

### **Impact on City Resources**

The fiscal year 2019-20 adopted budget includes \$275,000 in appropriations to fund the subcommittee's recommended grants. If approved, the additional \$1,550 would be appropriated from the undesignated General Fund balance.

### **Environmental Review**

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

### **Public Notice**

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

### **Attachments**

- A. Resolution No. 6534, approving the City Council Community Funding Subcommittee's recommendations regarding the 2019-20 community funding allocation
- B. City Council Policy #CC-01-1996 Community Funding Program

Report prepared by:

Lenka Diaz, Administrative Services Director

Adriane Lee Bird, Assistant Community Services Director

**RESOLUTION NO. 6534**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
APPROVING THE CITY COUNCIL COMMUNITY FUNDING  
SUBCOMMITTEE RECOMMENDATIONS REGARDING  
ALLOCATION OF FISCAL YEAR 2019-20 COMMUNITY FUNDING**

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

BE IT AND IT IS HEREBY RESOLVED by the City Council of the City of Menlo Park that the City Council does hereby approve the City Council Community Funding Subcommittee recommendations regarding the allocation of fiscal year 2019-20 community funding in the amount of \$276,550, as more particularly set forth in the staff report presented to the City Council on December 10, 2019.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

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

---

Judi A. Herren, City Clerk

**COMMUNITY FUNDING PROGRAM**

City Council Policy #CC-01-1996

Effective 06/04/1996

**Purpose**

To provide guidelines for the award of monetary support to local nonprofit agencies whose programs respond to the human service needs of Menlo Park residents. This funding is not intended for use as the sole support of any agency. All recipients of financial assistance grants enter into a contractual agreement with the City detailing the specific objectives to be accomplished as a result of the grant.

**Policy**

## 1. Goals and Philosophy

The City of Menlo Park recognizes that:

- 1.1 The availability of basic human service programs is a key determining factor in the overall quality of life of Menlo Park residents;
- 1.2 The most cost-effective and efficient manner to insure that these services are available to local residents is through the development of agreements with existing nonprofit agencies;
- 1.3 Contractual agreements with nonprofit agencies allow the City to influence the human service programs offered to Menlo Park residents; and
- 1.4 Financial assistance grants demonstrate the City's support of the activities of specific nonprofits and make it possible for these agencies to leverage additional funds that will benefit local residents.

## 2. Eligibility

- 2.1 All applicants must be formally incorporated nonprofit entities and must be tax exempt (under Section 501(c)(3) of the IRS Code, and Section 2370(d) of the California Revenue and Taxation Code).
- 2.2 All applicants must be agencies based in Menlo Park or agencies that provide services throughout the County of San Mateo who can demonstrate a significant Menlo Park client base.
- 2.3 All applications must provide a service that is not a duplication of an existing public sector program, OR if the service is duplicated, the applicant must show why it is not an unnecessary duplication of service.
- 2.4 All applicants shall maintain accounting records that are in accordance with generally accepted accounting practices. The agency must have an independent audit performed at least once every two years.
- 2.5 The agency must have bylaws that define the organization's purposes and functions, its organization and the duties, authority and responsibilities of its governing body and officers.
- 2.6 Governance of the agency should be vested in a responsible and active board that meets at least quarterly and establishes and enforces policies. The board should be large enough and so structured to be representative of the community it serves. It should have a specific written plan for rotation or other arrangements to provide for new members.

- 2.7 The agency must provide for adequate administration of the program to insure delivery of the services. The agency must provide that it has a written job description for each staff position and an organizational chart approved by the board. One individual should be designated as the full time director of the agency.
- 2.8 No less than 85 percent of City funds granted must be used for direct services as opposed to administrative costs.
- 2.9 City grants can represent no more that 20 percent of an applicant's total operating budget.
- 2.10 All recipients agree to actively participate in City efforts to coordinate and to improve human services within the City.
- 2.11 The program described must respond to a verified community need as defined by the City Council:

Disabled. Emphasizes support of programs that will allow the disabled to actively participate in their community and maintain independence from institutional support.

Emergency Assistance and Low Income Support. Emphasizes support of programs that can meet emergency needs for people in crisis such as victims of homelessness, rape, and domestic violence and the basic needs such as food, etc., for low-income residents.

Seniors. Emphasizes support of programs which serve predominantly low income, frail and minority seniors; and those programs which make it possible for seniors to continue to be independent and active community participants.

Youth. Emphasizes support of delinquency prevention services including recreation; crisis and family counseling; substance abuse prevention; child care and acculturation of ethnic minorities.

### 3. Procedure

Any agency requesting financial assistance must complete the required application and submit it to the Administrative Services Department. The City Council Community Funding Subcommittee is responsible for reviewing all proposals and submitting recommendations for funding to the City Council.

### 4. Funding

Grants are funded by the General Fund. Each fiscal year, no more than 1.7 percent of general fund property tax will be allocated to the Community Funding Program.

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## STAFF REPORT

**City Council**  
**Meeting Date:** 12/10/2019  
**Staff Report Number:** 19-269-CC

**Regular Business:** **Adopt Resolution No. 6535 endorsing the declaration of a climate emergency that demands accelerated actions on the climate crisis and requests regional collaboration to address climate change**

### Recommendation

Staff recommends that the City Council adopt Resolution No. 6535 endorsing the declaration of a climate emergency that demands accelerated actions on the climate crisis and requests regional collaboration to address climate change.

### Policy Issues

This action is consistent with the City's Climate Action Plan (CAP) that was approved by City Council in 2009 and is updated regularly. The City Council adopted a greenhouse gas (GHG) reduction target of 27 percent by 2020 from 2005 levels, and as reinforced in the general plan, the City aims to be a leader in efforts to address climate change.

### Background

To celebrate Earth Day 2019, April 22, the City Council adopted Resolution No. 6493 reaffirming the City's commitment to tackle climate change at a local level.

### Analysis

There is an urgency to address climate change as the latest United Nation's Intergovernmental Panel on Climate Change (IPCC) reports there is only 10 years left to mitigate the severest climate change impacts. Menlo Park would directly experience many of these impacts that include power shut-offs due to increased wildfires, sea level rise in the Belle Haven neighborhood, and water shortages as a result of extended droughts. Many cities are signing a Climate Emergency Resolution as an act of solidarity and leadership to address climate change in the next 10 years. There are also many other benefits to addressing climate change, such as cleaner air, healthier modes of travel, and reduced costs to operate buildings and vehicles.

The resolution:

1. Declares a climate emergency that threatens the economic and social well-being, health and safety, and security of the City of Menlo Park.
2. Commits the City to educating residents about the climate emergency and working to catalyze accelerated climate action at the local, state, national, and global levels to provide maximum protection for Menlo Park residents as well as all the people and species of the world.
3. Includes health, socio-economic and racial equity considerations in policymaking and climate

solutions at all levels and across all sectors as the consequences of climate change have significant impacts on all Menlo Park residents, but especially the young, the elderly, low income or communities of color, and other vulnerable populations.

4. Joins the nationwide call for regional accelerated climate collaborative action focused on transforming the region, enacting policies that dramatically reduce heat-trapping emissions, and rapidly catalyzing climate action at all levels of government to restore a safe climate.
5. Commits to the completion of the City's Climate Action Plan 2.0 that will include measurable climate-related goals and actions to attain carbon neutrality in advance of the State of California's 2045 goal.

The county of San Mateo, City and county of San Francisco, county of Santa Clara, other Bay area cities, including Berkeley, Alameda, Richmond, Santa Cruz, Hayward, and Oakland, and over 1,000 national, international and local jurisdictions have adopted similar declarations that are committed to reducing GHG emissions and planning for climate change.

The attached resolution aligns with the current strategies and goals in the CAP, and provides similar goals for the city to aspire toward in implementing the plan. It does not require any financial or time commitment from the City. The strategies outlined in the attached resolution would need City Council approval before implementation. This is the same process for how strategies in the CAP are approved that involve behavior, policy or infrastructure changes.

### **Impact on City Resources**

The attached resolution does not require any City resources to implement.

### **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 the signing of this resolution 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. Climate Emergency Resolution 6535

Report prepared by:

Nick Pegueros, Assistant City Manager

Rebecca L. Lucky, Sustainability Manager

**RESOLUTION NO. 6535****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
ENDORING THE DECLARATION OF A CLIMATE EMERGENCY THAT  
DEMANDS ACCELERATED ACTIONS ON THE CLIMATE CRISIS AND  
REQUESTS REGIONAL COLLABORATION TO ADDRESS CLIMATE CHANGE**

WHEREAS, in April 2016 world leaders from 175 countries recognized the threat of climate change and the urgent need to combat it by signing the Paris Agreement, agreeing to keep warming "well below 2°C above pre-industrial levels" and to "pursue efforts to limit the temperature increase to 1.5°C"; and

WHEREAS, rising global temperatures will cause sea levels in San Mateo County, which includes Menlo Park, to rise (up to six feet or more by 2100 under certain scenarios), contribute to increasingly extreme weather including intense rainfall, storms and heat events, and heighten risk of large wildfires; and

WHEREAS, climate change impacts will be most acutely felt by children, the elderly, those with preexisting physical and mental health conditions, low income or communities of color, and residents with unstable economic or housing situations; and

WHEREAS, the United States of America has disproportionately contributed to the climate and ecological crises and has repeatedly obstructed global efforts to transition toward a sustainable economy, and thus bears an extraordinary responsibility to rapidly solve these crises; and

WHEREAS, the City of Menlo Park has taken actions to address climate change and reduce greenhouse gas (GHG) emissions, including: adoption of a Climate Action Plan; automatic enrollment in Peninsula Clean Energy electricity service; adoption of the Community Zero Waste Plan; Reach Codes that require building electrification; and

WHEREAS, the current pace of climate actions may still fall short of reducing the projected harm to people and places and accelerated actions need to be taken to reduce our GHG emissions and implement solutions to prepare and protect our communities; and

WHEREAS, by declaring a climate emergency, the City of Menlo Park will join the County of San Mateo, City and County of San Francisco, County of Santa Clara, other Bay area cities, including Berkeley, Alameda, Richmond, Santa Cruz, Hayward, and Oakland, and over 1,000 national, international and local jurisdictions with similar declarations that are committed to reducing GHG emissions and planning for climate change; and

WHEREAS, the City of Menlo Park can act as a leader by both converting to an ecologically, socially and economically regenerative economy, and join the County of San Mateo in its call to other local jurisdictions and agencies to also approve a Climate Emergency Declaration to create a unified voice around climate change and to strengthen the call for state and federal actions and funds to address the economic, social, public health, and national security threats posed by the climate crisis.

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

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

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

AYES:

NOES:

ABSENT:

ABSTAIN:

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

---

Judi A. Herren, City Clerk



**SPECIAL AND REGULAR MEETING AGENDA**

**Date:** 12/10/2019  
**Time:** 5:30 p.m.  
**City Council Chambers**  
**701 Laurel St., Menlo Park, CA 94025**

**STAFF REPORT RELEASE NOTICE**

The Staff Report No. 19-261 for receive the comprehensive annual financial report for the fiscal year ended June 30, 2019 will be available by 5 p.m. on December 5, 2019.

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 the City Clerk's Office at 650-330-6620. (Posted 11/27/2019.)

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**STAFF REPORT****City Council****Meeting Date:** 12/10/2019**Staff Report Number:** 19-260-CC

**Regular Business:** Update and appoint or reappoint councilmembers to various City Council ad hoc subcommittees

**Recommendation**

Staff recommends that the City Council update City Council subcommittees and appoint or reappoint members to each subcommittee as follows:

1. Establish a City Council ad hoc subcommittee on Facebook/Willow Village development agreement negotiations and appoint councilmembers Nash and Taylor
2. Establish a City Council ad hoc subcommittee on the Belle Haven multigenerational Community Center and Library and appoint two councilmembers
3. Reappoint the following City Council ad hoc subcommittees, if desired:
  1. City Council procedures update (Carlton & Mueller)
  2. Stanford University 2108 general use permit (Nash & Taylor)
  3. Willow/101 interchange improvements (Carlton & Taylor)
4. Disband the following subcommittees:
  1. Belle Haven branch library (Combs & Taylor)
  2. City Manager recruitment (Mueller & Taylor)
  3. District 1 planning and zoning (Mueller & Taylor)
  4. District 2 – 5 planning and zoning (Combs & Nash)

**Policy Issues**

City Council procedure #CC-19-010, adopted November 12, establishes City Council subcommittees "...to help the City Council do its job" by advising the City Council on more complex policy considerations. In their advisory capacity, subcommittees cannot speak on behalf of the City Council and cannot set policy, direct operations or establish priorities.

**Background**

With the adoption of City Council procedure #CC-19-010, the City Council clarified the definition and requirements of City Council subcommittees. The City Council currently has two standing subcommittees as established November 12: Community grant funding and Rail. Meetings of standing subcommittees are open to the public and subject to the Brown Act. Ad hoc subcommittees were not included in the policy given their limited duration and frequent additions and deletions. At that time, the City Council requested that all subcommittees have a documented purpose and estimated duration.

**Analysis**

Table 1 summarizes the recommended City Council subcommittees for the balance of 2019 and through 2020. If the City Council approves the recommendation to appoint a subcommittee on the Belle Haven multigenerational Community Center and Library, the City Council will need to name members and confirm that the subcommittee should be an ad hoc subcommittee with an automatic sunset date of September 30, 2020.

Table 1: City Council subcommittees			
Subcommittee	Member	Member	Purpose
Belle Haven multigenerational Community Center and Library	_____	_____	Ad hoc subcommittee to receive staff analysis and preliminary recommendations on actions required of the City Council for construction of the new facility. The subcommittee will have the option to conduct business at regularly scheduled and noticed public meetings to maximize opportunities for public input given the expected compressed timeline. This ad hoc subcommittee is expected to automatically disband September 30, 2020.
City Council procedures update	Carlton	Mueller	Ad hoc subcommittee to recommend updates to existing City Council procedures. The ad hoc subcommittees will automatically disband March 31, 2020.
Community grant funding	Carlton	Taylor	Standing subcommittee to evaluate annual requests for human service needs grant funds. The Community Grant Funding subcommittee meets to review and make recommendations to the City Council on how best to allocate the funding. This standing subcommittee will continue until disbanded by the City Council.
Facebook/Willow Village development agreement negotiations	Nash	Taylor	Ad hoc subcommittee to advise the City's negotiators on elements of a negotiated development agreement between the City and Facebook, Inc. for the Willow Village project. Negotiations are not expected to commence until after the release of the Draft Environmental Impact Report, which is currently anticipated in Fall 2020. The ad hoc subcommittee will disband upon City Council action on a development agreement.
Rail	Combs	Mueller	Standing subcommittee to review and provide feedback on staff recommendations regarding rail policy in Menlo Park. The subcommittee conducts business in meetings open to the public to maximize public input and transparency. This standing subcommittee will continue until disbanded by the City Council.
Stanford University 2018 general use permit (GUP)	Nash	Taylor	Ad hoc subcommittee to participate in multiagency coordination of the Stanford University 2018 GUP application to Santa Clara County. This ad hoc subcommittee is expected to automatically disband June 30, 2020, unless Stanford refiles a GUP application to Santa Clara County.
Willow Road/Highway 101 interchange improvements	Carlton	Taylor	Ad hoc subcommittee to liaison with Caltrans on landscape improvements at the new Willow Road/Highway 101 interchange and review the status of temporary turn restrictions from the Willows neighborhood on to Willow Road during the evening commute hours. This subcommittee will disband upon issuance of landscape improvement contracts.



In addition to the 2020 City Council subcommittees above, staff recommends disbanding the following subcommittees.

Table 2: Disbanded City Council subcommittees			
Subcommittee	Member	Member	Purpose
Belle Haven Branch Library	Combs	Taylor	This ad hoc subcommittee has not met since creation and is not necessary given the proposed gift by Facebook Inc. for a new multigenerational community center and library in the Belle Haven neighborhood.
City Manager recruitment	Mueller	Taylor	This ad hoc subcommittee completed its task with the recommendation to the full City Council and subsequent City Council action to appoint Starla Jerome-Robinson.
District 1 planning and zoning	Mueller	Taylor	This ad hoc subcommittee completed its task delivery of recommendations to the full City Council October 15.
Districts 2-5 planning and zoning	Combs	Nash	This ad hoc subcommittee completed its task delivery of recommendations to the full City Council October 15.

**Impact on City Resources**

There is no 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 is a minor change that will not result in any direct or indirect physical change in the environment.

**Public Notice**

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

**Attachments**

None.

Report prepared by:  
 Judi A. Herren, City Clerk

Approved by:  
 Nick Pegueros, Assistant City Manager

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**SPECIAL AND REGULAR MEETING AGENDA**

**Date:** 12/10/2019  
**Time:** 5:30 p.m.  
**City Council Chambers**  
**701 Laurel St., Menlo Park, CA 94025**

**STAFF REPORT RELEASE NOTICE**

The Staff Report No. 19-250 for Local amendments to the 2019 California Building Standards Code, first reading will be available by 5 p.m. on December 5, 2019.

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 the City Clerk's Office at 650-330-6620. (Posted 11/27/2019.)

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## STAFF REPORT

### City Council

Meeting Date: 12/10/2019

Staff Report Number: 19-270-CC

### Regular Business:

**First Reading and introduction of ordinance No. 1064 banning sale of flavored tobacco and e-cigarette devices**

### Recommendation

Staff recommends the City Council waive first reading and introduce for adoption ordinance No. 1064 banning sale of flavored tobacco products and e-cigarette devices (Attachment A.)

### Policy Issues

The state Legislature introduced but did not pass legislation banning flavored tobacco products and e-cigarettes this session. In the absence of a statewide ban, individual cities can determine the appropriate level of regulation for their community.

### Background

#### Health impacts of smoking

Tobacco use remains the leading cause of preventable death in the United States. It causes and contributes to many forms of cancer, as well as heart and respiratory diseases among other health disorders. The financial cost of tobacco uses in San Mateo County alone amounted to over \$575 million in direct health care expense over the five year period from 2006-2010.

Flavored tobacco products are commonly sold by California tobacco retailers and promote youth initiation of tobacco use. The flavored products help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco products.

In December 2018, the surgeon general declared the use of e-cigarettes among youth an “epidemic.” According to data from the Centers for Disease Control and Prevention and the Food and Drug Administration’s national youth tobacco survey, the percentage of high school-age children reporting past 30-day use of e-cigarettes rose by more than 75 percent between 2017 and 2018. Use among middle school-age children also increased nearly 50 percent.

#### Menlo Park’s current smoking regulations

City and state laws currently regulate the sale and use of tobacco products in Menlo Park in several ways. California prohibits the sale of tobacco products to anyone under the age of 21, requires that retailers check photo IDs of purchasers, requires that online retailers obtain and verify photo IDs and requires that tobacco products be stored behind the counter or in lockboxes. In addition to these state rules, Menlo Park requires

brick and mortar retailers to obtain retail sales permits from the County<sup>1</sup> and prohibits smoking in most public places, businesses, restaurants, places of employment and multiunit residential building common areas.<sup>2</sup> Most recently, Menlo Park also banned cannabis smoking in designated locations and prohibited commercial cannabis operations in the City.<sup>3</sup>

### Flavored tobacco bans

Data shows that youth use flavored tobacco products at a higher rate than other populations. In order to minimize the number of children who start to smoke and become addicted to tobacco, the U.S. Food and Drug Administration implemented a ban on flavored cigarettes in 2009, but it did not include a ban on menthol flavored cigarettes or other flavored tobacco products (such as JUUL pods.) As a result, many local jurisdictions have begun to take the lead in banning flavored tobacco products, including menthol cigarettes.

In June 2018, the City and County of San Francisco became the first local agency to prohibit the sale of e-cigarettes that have not undergone premarket review by federal regulators. The ordinance recently survived a referendum largely funded by JUUL, the largest e-cigarette manufacturer.

On June 19, 2018, the San Mateo Board of Supervisors passed an ordinance prohibiting the sale of flavored tobacco products and prohibiting pharmacies from selling any tobacco product. On November 19, 2019, the Board of Supervisors expanded that ban to e-cigarettes and other vaping devices. (Attachment B.) On November 19, 2019, the Santa Clara County Board of Supervisors adopted a flavored tobacco and e-cigarette ban ordinance. (Attachment C.)

### Pending legislation and recent developments

Last session, the Senate introduced two bills that would ban the sale of flavored tobacco and related e-cigarette products statewide. This legislation however did not pass.

In addition, following the recent reporting of vaping deaths, the leading manufacturer of e-cigarettes, JUUL, announced it would be voluntarily suspended sale of their non-tobacco, non-menthol-based flavors (Mango, Creme, Fruit and Cucumber) in the United States, pending Food and Drug Administration review. JUUL is still, however, selling menthol (mint) flavor.

The federal government announced it was taking action to ban vaping devices, but recently has changed course.

### **Analysis**

On November 5, 2019, the City Council conducted a study session on flavored tobacco and e-cigarette regulation. The City Council indicated it would be supportive of a local ban modeled after San Mateo County. In addition, the City Council requested the city attorney to return with further modifications including:

- Prohibiting vaping in areas where smoking is currently prohibited.
- Expanding ban to menthol and mint-flavored tobacco products
- Prohibiting pharmacies from selling tobacco products and e-cigarettes.

In accordance with the feedback received at the study session, the attached ordinance (Attachment A) uses

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<sup>1</sup> See Menlo Park Municipal Code Chapter 5.26. The County Health Department administers this provision of the Code.

<sup>2</sup> See Menlo Park Municipal Code Chapter 7.30.

<sup>3</sup> See Menlo Park Municipal Code Chapter 7.31.

the adopted San Mateo County ordinance as a model and incorporates the modifications requested by City Council. In addition, the ordinance uses the Santa Clara County definition of e-cigarette, rather than the San Mateo County's definition. The Santa Clara County's ordinance clearly prohibits the sale of just the e-cigarette device, whereas the San Mateo County ordinance appears to only ban e-cigarette devices if they are sold in conjunction with a flavored tobacco product. Also, the proposed ordinance requires tobacco retailers to conspicuously post a notice that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties. Finally, the ordinance authorizes both local and County officials to enforce. Staff is exploring more robust enforcement options, such as contracting with another agency for routine compliance monitoring.

### **Impact on City Resources**

In preliminary discussions with the County, the tobacco prevention program associated with the County's health department, expressed a willingness to assist in outreach and education on implementing a proposed flavored tobacco and e-cigarette ban. There would be local resources needed to enforce the ordinance.

### **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. Any subsequent use of the property would be subject to environmental review.

### **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. 1064
- B. San Mateo e-cigarette ban ordinance
- C. Santa Clara County flavored tobacco and e-cigarette ban
- D. Hyperlink – November 5, 2019 City Council staff report 19-238 flavored tobacco and e-cigarette ban: [menlopark.org/DocumentCenter/View/23337/SS2-20191105-Re-flavored-tobacco-and-e-cigarette-ban-CC](http://menlopark.org/DocumentCenter/View/23337/SS2-20191105-Re-flavored-tobacco-and-e-cigarette-ban-CC)

### **Report prepared by:**

Cara Silver, Assistant City Attorney

## ORDINANCE NO. 1064

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK  
AMENDING CHAPTER 5.26 [TOBACCO RETAIL LICENSES] OF TITLE 5  
[BUSINESS LICENSES AND REGULATIONS] AND CHAPTER 7.30 [SMOKING  
REGULATED OR PROHIBITED] OF TITLE 7 [HEALTH AND SANITATION] OF  
THE MENLO PARK MUNICIPAL CODE**

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

**SECTION 1. FINDINGS AND DETERMINATIONS.**

A. Research has found health risks associated with using electronic smoking devices. One study found that both e-cigarettes and traditional cigarettes are independently associated with increased risk of heart attack.<sup>1</sup>

B. The American Lung Association has stated that there is risk for irreversible lung damage and disease as a result of vaping.<sup>2</sup>

C. The 2018 Monitoring the Future Survey found that over 60% of 10<sup>th</sup> grade students said it was easy to get vaping devices and e-liquids.<sup>3</sup>

D. The 2018 National Youth Tobacco Survey discovered that almost 15% of middle and high school e-cigarette users (younger than 18) reported that they got the devices from a vape shop in the past month, 8.4% from a gas station or convenience store, and 6.5% from the Internet.<sup>4</sup>

E. In June 2009, the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) was signed into law to give the U.S. Food & Drug Administration (FDA) authority to regulate the manufacture, distribution, and marketing of tobacco products. The Tobacco Control Act was enacted in order to protect the public and create a healthier future for all Americans. Tobacco companies are required to provide the FDA with detailed information about their products' ingredients. Additionally, among other authorities, the Tobacco Control Act allows the FDA to implement standards for tobacco products to protect public health. For example, the FDA can regulate nicotine and ingredient levels in tobacco products.<sup>5</sup>

F. The California Student Tobacco Survey found that in San Mateo County, the current e-cigarette use prevalence among high school students was 20.8% - much higher than the state prevalence of 10.9%. Additional findings showed 86.4% of teens currently using tobacco reported using a flavored product: use of flavored products was widespread

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<sup>1</sup> 5 Jun 2019 <https://doi.org/10.1161/JAHA.119.012317> Journal of the American Heart Association. 2019; Volume 8, No. 12.

<sup>2</sup> Moritz, T. (2019, March 18). Vaping: It's All Smoke and Mirrors. Retrieved from <https://www.lung.org/about-us/blog/2019/03/vaping-smoke-and-mirrors.html>

<sup>3</sup> University of Michigan, 2018 Monitoring the Future Study, Trends in Availability – Tables 15-17. See <http://monitoringthefuture.org/data/18data/18drtbl15.pdf> and <http://monitoringthefuture.org/data/18data/18drtbl16.pdf>

<sup>4</sup> FDA, "Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance," March 13, 2019, <https://www.fda.gov/media/121384/download>

<sup>5</sup> FDA. (2018, January 17). Family Smoking Prevention and Tobacco Control Act – An Overview. Retrieved from <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/family-smoking-prevention-and-tobacco-control-act-overview>



across all tobacco products and all demographic categories. And more than 2 in 5 teens – 42.4% -- reported purchasing their own e-cigarettes, with more than 30% of this group saying they buy them directly from a local store. Among those who purchased e-cigarettes in a local store, 54.5% purchased them at a vape shop<sup>6</sup>

G. Flavored tobacco products have fueled youth tobacco use. Flavors improve the taste and mask the harshness of tobacco products, making it easier for kids to try the product and ultimately become addicted. There is conclusive evidence that flavors – of which there are over 15,000 available -- play a key role in youth initiation and continued use of tobacco products. In fact, over 80 percent of kids who have used tobacco started with a flavored product.<sup>7,8</sup>

H. U.S. Surgeon General Vivek H. Murthy, M.D., M.B.A. stated that “Most e-cigarettes contain nicotine, which can cause addiction and can harm the developing adolescent brain. Compared with older adults, the brain of youth and young adults is more vulnerable to the negative consequences of nicotine exposure. The effects include addiction, priming for use of other addictive substances, reduced impulse control, deficits in attention and cognition, and mood disorders.”<sup>9</sup>

I. In 2016, it was estimated that 20.5 million (4 in 5) middle and high school students in the U.S. were exposed to advertisements for e-cigarettes from at least one source. This was a significant increase compared to 2014 and 2015 data. Furthermore, almost 17.7 million (7 in 10) youths were exposed to advertisements for e-cigarettes in retail stores in 2016, while about 2 in 5 had exposure on the Internet or on television, and almost 1 in 4 had exposure through magazines and newspapers. E-cigarette advertising has an association with e-cigarette use among youths. The advertising themes and strategies used are similar to traditional cigarette advertising tactics that have been found to appeal to youths.<sup>10</sup>

J. Newly released data from the 2019 National Youth Tobacco Survey (NYTS) shows that e-cigarette use among high school students more than doubled from 2017 to 2019, to 27.5 percent of students, or more than 1 in 4 high schoolers.<sup>11</sup>

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<sup>6</sup> Results of the Statewide 2017-18 California Student Tobacco Survey, Zhu S-H, Zhuang YL, Braden K, Cole A, Gamst A, Wolfson T, Lee J, Ruiz CG, Cummins SE (2019). <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/2017-18CaliforniaStudentTobaccoSurveyBiennialReport.pdf>

<sup>7</sup> Ambrose, BK, et al., “Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014,” Journal of the American Medical Association, published online October 26, 2015.

<sup>8</sup> Written Testimony of Matthew L. Myers President Campaign for Tobacco-Free Kids Before the House of Representatives Committee on Energy and Commerce Subcommittee on Health Hearing on “Legislation to Reverse the Youth Tobacco Epidemic” October 16, 2019. <https://docs.house.gov/meetings/IF/IF14/20191016/110091/HHRG-116-IF14-Wstate-MyersM-20191016.pdf>

<sup>9</sup> US Department of Health and Human Services. E-cigarette use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016. [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_non-508.pdfpdf icon](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdfpdf icon)

<sup>10</sup> Marynak K, Gentzke A, Wang TW, Neff L, King BA. Exposure to Electronic Cigarette Advertising Among Middle and High School Students – United States, 2014-2016. MMWR Morb Mortal Wkly Rep 2018;67:294-299. DOI: <http://dx.doi.org/10.15585/mmwr.mm6710a3>

<sup>11</sup> FDA, “Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, NonTobacco-Flavored E-Cigarette Products,” September 11, 2019, <https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non>. Current use defined as any use in the past month.

K. Altogether, 5 million middle and high school students used e-cigarettes in 2019 – an increase of nearly 3 million users in two years.<sup>12</sup>

L. Another national study showed that e-cigarette use among 8th, 10th and 12th graders has more than doubled in the past two years<sup>13</sup>

M. Electronic smoking device (or “e-cigarette, vape, vape pen, e-hookah, etc.”) usage by youth has been rising. Usage by high school students increased 78% between 2017-2018 with 1 in 5 high school students currently using and 1 in 20 middle school students currently using the products.<sup>14</sup> The devices were available in the U.S. marketplace in the mid-2000s<sup>15</sup> and in 2014, the products were the most commonly used tobacco product among middle and high school students.<sup>16</sup>

**SECTION 2. REPEAL OF SECTION.** Section 5.26.010 [Requirement for a permit] of Title 5 [Business Licenses and Regulations] of the Menlo Park Municipal Code is hereby repealed as follows. Underlined text indicates an addition and ~~strikethrough~~ text indicates a deletion.

~~5.26.010 Requirement for a permit.~~

~~It shall be unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products without first obtaining and maintaining a valid tobacco retailer’s permit from the Environmental Health Division of the San Mateo County Department of Health (“Environmental Health Division”) for each location where such sales are conducted. Permits are valid for one year and shall be renewed annually.~~

**SECTION 3. AMENDMENT OF CODE.** Chapter 5.26 [Tobacco Retail Licenses] of Title 5 [Business Licenses and Regulations] of the Menlo Park Municipal Code is hereby amended as follows. Underlined text indicates an addition and ~~strikethrough~~ text indicates a deletion.

**5.26.010 Definitions.**

For the purposes of this chapter, the following definitions shall govern unless the context clearly requires otherwise:

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<sup>12</sup> Edney, A., et al., “Vaping Furor Intensifies as Trump Vows Tough U.S. Scrutiny”, Bloomberg, September 11, 2019, <https://www.bloomberg.com/news/articles/2019-09-11/trump-to-hold-meeting-on-vaping-after-reports-of-u-s-illness>.

<sup>13</sup> Miech, R, et al., “Trends in Adolescent Vaping, 2017-2019,” New England Journal of Medicine, published online September 18, 2019.

<sup>14</sup> Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. *Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students – United States, 2011-2018.* MMWR Morb Mortal Wkly Rep 2018;67:1276-1277. DOI: <http://dx.doi.org/10.15585/mmwr.mm6745a5>

<sup>15</sup> US Department of Health and Human Services. E-cigarette use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016. [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_non-508.pdfpdf icon](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdfpdf icon)

<sup>16</sup> Arrazola RA, Singh T, Corey CG, et al. Tobacco use among middle and high school students—United States, 2011–2014. MMWR Morb Mortal Wkly Rep 2015;64:381–5. [PubMedexternal icon](#)

(a) "Characterizing flavor" means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.

(b) "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

(c) "Distinguishable" means perceivable by either the sense of smell or taste.

(d) "Electronic cigarette" means any of the following products:

(1) Any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

(2) Any component, part, or accessory of such a device or delivery system that is used during its operation.

(3) Any flavored or unflavored liquid or substance containing nicotine, whether Sold separately or Sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.

(4) Any product for use in an electronic nicotine device or delivery system whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.

(5) Electronic Cigarette Products shall not include any battery, battery charger, carrying case, or other accessory not used in the operation of the device if Sold separately. Electronic Cigarette Products shall not include any product that has been approved by the United States Food and Drug Administration for Sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and Sold solely for such approved use. See 21 U.S.C. § 387(a). As used in this subsection, nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.

(e) "Flavored tobacco product" means any tobacco product that contains a constituent that imparts a characterizing flavor.

(f) "Person" means any individual, partnership, cooperative association, private corporation, or any other legal entity.

(g) "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

(h) "Sell", "Sale" or "to Sell" means any transaction where, for any consideration, ownership is transferred from one Person or entity to another including, but not limited to any transfer of title or possession for consideration, exchange or barter, in any manner or by any means.

(i) "Tobacco Product" means:

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff;

2. Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.

3. Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

(j) "Tobacco retailer" or "retailer" means any store, stand, booth, concession or other enterprise that engages in the retail sale or exchange of tobacco products or electronic cigarettes.

#### **5.26.011 Requirements and prohibitions.**

(a) Permit required. It shall be unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products without first obtaining and maintaining a valid tobacco retailer's permit from the Environmental Health Division of the San Mateo County Department of Health ("Environmental Health Division") for each location where such sales are conducted. Permits are valid for one year and the retailer shall renew annually. (Ord. 967 § 2 (part), 2010).

(b) Lawful business operation. It shall be a violation of this Chapter for any retailer to violate any local, state, or federal law applicable to tobacco products or the retailing of such tobacco products.

(c) Notice of minimum age for purchase of tobacco products. Retailers shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties. Such notice shall be subject to the approval of the Environmental Health Division.

(d) Prohibition on sale of flavored tobacco products.

(1) The sale or offer for sale, by any person or tobacco retailer of any flavored tobacco product is prohibited and no person or tobacco retailer shall sell, or offer for sale, any flavored tobacco product.

(2) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the

public that the tobacco product has or produces a characterizing flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

(e) Prohibition on sale of electronic cigarettes. No tobacco retailer or other person shall sell any electronic cigarette to a person.

(f) Prohibition on sale of tobacco products at pharmacy. No pharmacy or pharmacy employee or agent shall sell or offer for sale any tobacco product. No new tobacco retailer permit may be issued to a pharmacy under this Chapter. No existing tobacco retailer permit issued under this Chapter 4.98 may be renewed by a pharmacy.

(g) Prohibition on sale of tobacco products to individuals under 21. No retailer shall sell any tobacco product to any individual who is under 21 years of age.

(h) Vending machines prohibited. No tobacco product shall be sold to the public from a vending machine or appliance; or any other coin, token, credit card or debit card operated mechanical device designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

5.26.020 Application, issuance and renewal procedure.

(a) Application for a tobacco retailer's permit shall be submitted in the name of the entity or person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the Environmental Health Division and contain the following information:

- (1) The name, address, and telephone number of the applicant;
- (2) The business name, address, and telephone number of each location where tobacco is retailed; and
- (3) Such other information as the director of the Environmental Health Division ("director") or his or her designee determines is necessary for implementation of this chapter.

(b) Applicants for renewal must follow the application procedures set forth in subsection (a) of this section. Renewal of a tobacco retailer's permit shall be denied if the application is for a person or location for which a suspension is in effect. (Ord. 967 § 2 (part), 2010).

5.26.030 Display of permit.

Upon receipt of an application for a tobacco retailer's permit, the director or his or her designee shall issue a permit which must be prominently displayed at each location where tobacco retail sales are conducted. (Ord. 967 § 2 (part), 2010).

5.26.040 Fees for permit.

The fee for a tobacco retailer's permit shall reflect the County of San Mateo's costs of processing the permit and regulating compliance with this chapter and shall be contained in Section 5.64.070 of the San Mateo County Ordinance Code. (Ord. 967 § 2 (part), 2010).

5.26.050 Permit is nontransferable.

Tobacco retailer's permits are nontransferable as between entities, retailers, individuals, locations or otherwise. (Ord. 967 § 2 (part), 2010).

5.26.060 Enforcement of applicable law.

If an agent or employee of the tobacco retailer violates any provisions of this chapter or any federal or state tobacco-related law, the tobacco retailer shall immediately report the violation to the Environmental Health Division. (Ord. 967 § 2 (part), 2010).

5.26.070 Suspension of permit.

(a) Grounds for Suspension. A tobacco retailer's permit may be suspended, as set forth below in subsection (b) of this section, by the director or his or her designee upon a finding, after notice and opportunity to be heard, that either of the following occurred:

(1) After the permit was issued it was determined that the application for the permit is incomplete or inaccurate.

(2) The permittee or his or her agent has violated any provision of this chapter or any federal or state tobacco-related law.

(b) Time Period of Suspension of Permit.

(1) The first time that the director or his or her designee makes the finding that a violation of either subsection (a)(1) or (2) of this section has occurred, the permit to sell tobacco products shall be suspended for up to thirty days.

(2) The second time that the director or his or her designee makes the finding set forth in subsection (a)(1) or (2) of this section within twenty-four months of the first determination, the permit to sell tobacco products shall be suspended for no less than thirty days and up to ninety days.

(3) The third and each subsequent time that the director or his or her designee makes the finding set forth in subsection (a)(1) or (2) of this section within twenty-four months of a prior determination, the permit to sell tobacco products shall be suspended for no less than ninety days and up to one year.

(c) Effective Date of Suspension.

(1) If the director or his or her designee makes oral findings and issues an order of suspension at the hearing, the suspension will be effective ten days from the date of the hearing, unless a timely appeal is filed in accordance with subsection (d) of this section.

(2) If the director or his or her designee makes written findings and issues an order of suspension by certified mail after the hearing, the suspension will be effective fifteen days from the date appearing on the notice of that finding and order of suspension, unless a timely appeal is filed in accordance with subsection (d) of this section.

(d) Appeal of Suspension.

(1) The decision of the director or his or her designee is appealable to the San Mateo County Licensing Board.

(2) An appeal must be in writing, be addressed to the director and be hand-delivered to the offices of the Environmental Health Division.

(3) An appeal must be received by the Environmental Health Division before the effective date of suspension provided by subsections (c)(1) or (2) of this section in order to be considered.

(4) The filing of a timely appeal will stay a suspension pending a decision on the appeal by the San Mateo County Licensing Board.

(5) The decision of the San Mateo County Licensing Board shall be a final administrative order, with no further administrative right of appeal. (Ord. 967 § 2 (part), 2010).

5.26.080 Administrative fine.

(a) Grounds for Fine. A fine may be imposed upon findings made by the director or his or her designee, the City Manager or designee or a code enforcement officer, that any retailer, individual, or entity who is an owner of a retail establishment:

(1) Does not have a valid tobacco retailer's permit; and

(2) Offers for sale any tobacco, flavored tobacco, electronic cigarette, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco or products prepared from tobacco.

(b) Amount of Fine. Upon findings made under subsection (a) of this section, the retailer, individual, or entity who is an owner of a retail establishment shall be subject to an administrative fine as follows:

(1) A fine not exceeding one hundred dollars for a first violation.

(2) A fine not exceeding two hundred dollars for a second violation.

(3) A fine not exceeding five hundred dollars for the third and subsequent violations.

(4) Each day that tobacco products, flavored tobacco or electronic cigarettes are offered for sale without a permit shall constitute a separate violation. A finding of "offering for sale" will be made if these tobacco products are actually sold and/or displayed in the retail establishment.

(c) Fine Procedures. Notice of the fine shall be served on the retailer, individual, or entity who is owner of the establishment by certified mail. The notice shall contain an advisement of the right to request a hearing before the director or his or her designee contesting the imposition of the fine. Said hearing must be requested within ten days of the date appearing on the notice of

the fine. The decision of the director shall be a final administrative order, with no administrative right of appeal.

(d) Failure to Pay Fine. If said fine is not paid within thirty days from the date appearing on the notice of the fine or of the notice of determination of the director or her or his designee after the hearing, the fine shall be referred to a collection agency within or external to the County of San Mateo. In addition, any outstanding fines must be paid prior to the issuance of any permit by the San Mateo County Environmental Health Division of the Department of Health. (Ord. 967 § 2 (part), 2010).

#### 5.26.090 Authorization of enforcement by San Mateo County personnel.

The County of San Mateo, its officers, employees and agents are hereby authorized to enforce this chapter on behalf of the city, within the jurisdiction areas of the city. Such enforcement authority includes, but is not limited to, the collection of fees and fines, expending such revenue in the enforcement of the tobacco retailer requirements, holding hearings, suspending permits and issuing administrative fines.

SECTION 4. AMENDMENT OF CODE. Chapter 7.30 [Smoking Regulated or Prohibited] of Title 7 [Health and Sanitation] of the Menlo Park Municipal Code is hereby amended as follows. Underlined text indicates an addition and ~~strikethrough~~ text indicates a deletion.

#### 7.30.010 Definitions

...

(18) "Secondhand smoke" means the tobacco smoke created by burning or carrying of any lighted pipe, cigar, or cigarette of any kind, and the smoke exhaled by an individual who engages in smoking. Secondhand aerosol emitted from electronic cigarettes as defined in Section 5.26.010(d) shall be considered secondhand smoke for purposes of this chapter.

...

(20) "Smoking" or "smoke" means possessing a lighted tobacco product, or any other lighted weed or plant (including, but not limited to, a lighted pipe, lighted hookah pipe, lighted cigar, or lighted cigarette of any kind), or the lighting of a tobacco product, or any other weed or plant (including, but not limited to, a pipe, a hookah pipe, cigar, or cigarette of any kind) or use or operation of an electronic cigarette as defined in Section 5.26.010(d).

(21) "Tobacco product" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, electronic cigarettes as defined in Section 5.26.010(d), pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

SECTION 5. 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 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") under Sections 15378 and 15061(b)(3) of the of the CEQA Guidelines. The ordinance is a clean up ordinance and has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 7. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the tenth day of December, 2019.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Judi Herren, City Clerk

**ORDINANCE NO. .****BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA**

\* \* \* \* \*

**AN ORDINANCE ADDING A NEW CHAPTER 4.95 TO TITLE 4 OF THE SAN MATEO COUNTY ORDINANCE CODE TO PROHIBIT THE SALE OR DISTRIBUTION OF ELECTRONIC CIGARETTES**

The Board of Supervisors of the County of San Mateo, State of California, **ORDAINS** as follows:

**SECTION 1. Findings.**

The Board of Supervisors finds and determines that:

- (a) Electronic smoking device (or “e-cigarette, vape, vape pen, e-hookah, etc.”) usage by youth has been rising. Usage by high school students increased 78% between 2017-2018 with 1 in 5 high school students currently using and 1 in 20 middle school students currently using the products.<sup>1</sup> The devices were available in the U.S. marketplace in the mid-2000s<sup>2</sup> and, by 2014, the products were the most commonly used tobacco product among middle and high school students.<sup>3</sup>
- (b) According to the Centers for Disease Control and Prevention (“CDC”), the number of middle and high school students who reported being current users of tobacco products increased 36%—from 3.6 million to 4.9 million students—between 2017 and 2018. This dramatic increase, which has erased past progress in reducing youth tobacco use, is directly attributable to a nationwide surge in e-cigarette use by adolescents. There were 1.5 million more youth e-cigarette users in 2018 than 2017, and those who were using e-cigarettes were using them more often. Frequent use of e-cigarettes increased from 20 percent in 2017 to 28 percent in 2018 among current high school e-cigarette users.
- (c) In 2016, it was estimated that 20.5 million (4 in 5) middle and high school students in the U.S. were exposed to advertisements for e-cigarettes from

<sup>1</sup> Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students – United States, 2011-2018. MMWR Morb Mortal Wkly Rep 2018;67:1276-1277. DOI: <http://dx.doi.org/10.15585/mmwr.mm6745a5>

<sup>2</sup> US Department of Health and Human Services. E-cigarette use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016.

[https://ecigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_non-508.pdf](https://ecigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdf)pdf icon

<sup>3</sup> Arrazola RA, Singh T, Corey CG, et al. Tobacco use among middle and high school students—United States, 2011–2014. MMWR Morb Mortal Wkly Rep 2015;64:381–5. PubMedexternal icon

at least one source. This was a significant increase compared to 2014 and 2015 data. Furthermore, almost 17.7 million (7 in 10) youths were exposed to advertisements for e-cigarettes in retail stores in 2016, while about 2 in 5 had exposure on the Internet or on television, and almost 1 in 4 had exposure through magazines and newspapers. E-cigarette advertising has an association with e-cigarette use among youths. The advertising themes and strategies used are similar to traditional cigarette advertising tactics that have been found to appeal to youths.<sup>4</sup>

- (d) The 2018 Monitoring the Future Survey found that over 60% of 10<sup>th</sup> grade students said it was easy to get vaping devices and e-liquids.<sup>5</sup> The 2018 National Youth Tobacco Survey discovered that almost 15% of middle and high school e-cigarette users (younger than 18) reported that they got the devices from a vape shop in the past month, 8.4% from a gas station or convenience store, and 6.5% from the Internet.<sup>6</sup>
- (e) U.S. Surgeon General Vivek H. Murthy, M.D., M.B.A. stated that “Most e-cigarettes contain nicotine, which can cause addiction and can harm the developing adolescent brain. Compared with older adults, the brain of youth and young adults is more vulnerable to the negative consequences of nicotine exposure. The effects include addiction, priming for use of other addictive substances, reduced impulse control, deficits in attention and cognition, and mood disorders.”<sup>7</sup>
- (f) A 2018 National Academy of Sciences, Engineering, and Medicine report found moderate evidence that e-cigarette use increases the frequency and intensity of smoking cigarettes in the future.<sup>8</sup> According to a report by the Surgeon General, any use of e-cigarettes among young people is not safe, even if the young people do not move on to future cigarette smoking.<sup>9</sup>
- (g) According to the American Heart Association, research has found health risks associated with using electronic smoking devices. One study found that both e-cigarettes and traditional cigarettes are independently

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<sup>4</sup> Marynak K, Gentzke A, Wang TW, Neff L, King BA. Exposure to Electronic Cigarette Advertising Among Middle and High School Students – United States, 2014–2016. *MMWR Morb Mortal Wkly Rep* 2018;67:294–299. DOI: <http://dx.doi.org/10.15585/mmwr.mm6710a3>

<sup>5</sup> University of Michigan, 2018 Monitoring the Future Study, Trends in Availability – Tables 15–17. See <http://monitoringthefuture.org/data/18data/18drtbl15.pdf> and <http://monitoringthefuture.org/data/18data/18drtbl16.pdf>.

<sup>6</sup> FDA, “Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance,” March 13, 2019, <https://www.fda.gov/media/121384/download>

<sup>7</sup> US Department of Health and Human Services. E-cigarette use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016. [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdf)pdf icon

<sup>8</sup> Moritz, T. (2019, March 18). Vaping: It’s All Smoke and Mirrors. Retrieved from <https://www.lung.org/about-us/blog/2019/03/vaping-smoke-and-mirrors.html>

<sup>9</sup> US Department of Health and Human Services. E-cigarette use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016. [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdf)pdf icon

associated with increased risk of heart attack.<sup>10</sup> The American Lung Association has reported that there is risk for irreversible lung damage and disease as a result of vaping.<sup>11</sup>

- (h) The County of San Mateo (the “County”) issues permits to tobacco retailers. (Chapter 4.98). In 2018, in order to reduce flavored tobacco product availability, the County adopted Ordinance No. 04799, prohibiting the sale of flavored tobacco products and pharmacy sales of all tobacco products.
- (i) In spite of these efforts, San Mateo County youth still have access to tobacco products and are using the products. According to the 2018 California Student Tobacco Survey, for Region 20 (San Francisco, San Mateo counties), the current e-cigarette use prevalence among high school students in 2017-2018 was 20.8%. This prevalence is much higher than the state-wide prevalence of 10.9%.<sup>12</sup>
- (j) In June 2009, the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) was signed into law to give the U.S. Food & Drug Administration (FDA) authority to regulate the manufacture, distribution, and marketing of tobacco products. The Tobacco Control Act was enacted in order to protect the public and create a healthier future for all Americans.<sup>13</sup>
- (k) A central requirement of the Tobacco Control Act is premarket review of all new tobacco products. Specifically, every “new tobacco product”—defined to include any tobacco product not on the market in the United States as of February 15, 2007—must be authorized by the FDA for sale in the United States before it may enter the marketplace. A new tobacco product may not be marketed until the FDA has found that the product is: (1) appropriate for the protection of the public health upon review of a premarket tobacco application; (2) substantially equivalent to a grandfathered product; or (3) exempt from substantial equivalence requirements.
- (l) In determining whether the marketing of a tobacco product is appropriate for the protection of the public health, the FDA must consider the risks and benefits of the product to the population as a whole, including users and nonusers of the product, and taking into account the increased or decreased likelihood that existing users of tobacco products will stop using tobacco products and the increased or decreased likelihood that those who do not use tobacco products will start using them. Where there is a lack of

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<sup>10</sup> 5 Jun 2019 <https://doi.org/10.1161/JAHA.119.012317> Journal of the American Heart Association. 2019;8:e012317

<sup>11</sup> Moritz, T. (2019, March 18). Vaping: It’s All Smoke and Mirrors. Retrieved from <https://www.lung.org/about-us/blog/2019/03/vaping-smoke-and-mirrors.html>

<sup>12</sup> Zhu S-H, Zhuang YL, Braden K, Cole A, Gamst A, Wolfson T, Lee J, Ruiz CG, Cummins SE (2019). Results of the Statewide 2017-18 California Student Tobacco Survey. San Diego, California: Center for Research and Intervention in Tobacco Control (CRITC), University of California, San Diego.

<sup>13</sup> FDA. (2018, January 17). Family Smoking Prevention and Tobacco Control Act – An Overview. Retrieved from <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/family-smoking-prevention-and-tobacco-control-act-overview>

showing that permitting the sale of a tobacco product would be appropriate for the protection of the public health, the Tobacco Control Act requires that the FDA deny an application for premarket review.

- (m) Virtually all electronic cigarettes that are sold today entered the market after 2007, but have not been reviewed by the FDA to determine if they are appropriate for the public health. In 2017, the FDA issued Guidance that purports to give electronic cigarette manufacturers until August 8, 2022 to submit their application for premarket review. The Guidance further purports to allow unapproved products to stay on the market indefinitely, until such time as the FDA complies with its statutory duty to conduct a premarket review to determine whether a new tobacco product poses a risk to public health. In 2019, the FDA issued draft guidance in which it considered moving the premarket application deadline up by one year for certain flavored e-cigarette products.<sup>14</sup> In July of 2019, a U.S. District Court issued an order requiring manufacturers to submit a premarket review application by May 12, 2020 for deemed tobacco products, which includes e-cigarettes, that were on the market as of August 8, 2016. However, that order has been appealed and a stay requested. Thus, the deadlines for applications for premarket review, and timelines for any premarket review orders, are in flux and uncertain.
- (n) By the time e-cigarette manufacturers will be required to submit their premarket review applications, e-cigarettes will have been on the market for approximately fifteen years without any FDA analysis of their safety and alleged benefit. If current trends continue, six million more youth in the United States will begin using e-cigarettes between now and then. Until such time as the FDA fulfills its statutory duty to conduct premarket reviews of new tobacco products, a generation of young people will become addicted to tobacco, resulting in an entirely preventable increase in the burdens and tragedies associated with tobacco use. The County of San Mateo is not content to continue to wait before addressing, for its residents, what appears from the evidence to be a major public health crisis that is going unattended by federal or state regulation.

## **SECTION 2. New Chapter 4.95 Added.**

A new Chapter 4.95 is added to the San Mateo County Ordinance Code, to be numbered and entitled and to read as follows:

### **Chapter 4.95. Sale or Distribution of Electronic Cigarettes.**

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<sup>14</sup> FDA. (2019, June). Premarket Tobacco Product Applications for Electronic Nicotine Delivery Systems – Guidance for Industry. Retrieved from <https://www.fda.gov/media/127853/download>

#### **4.95.010. Application of Chapter.**

The provisions of this Chapter shall apply within the unincorporated area of San Mateo County, except that this ordinance shall not apply to the duty –free retail stores at San Francisco International Airport.

#### **4.95. 020. Definitions.**

For the purposes of this Chapter, the following definitions shall govern unless the context clearly requires otherwise:

- (a) “Distribute” or “Distribution” means the transfer .by any Person other than a common carrier, at any point from the place of manufacture or thereafter to a Person who sells the electronic cigarette or other electronic smoking device.
- (b) “Electronic Cigarette” has the meaning set forth in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time.
- (c) “Person” means any individual, partnership, cooperative association, private corporation, or any other legal entity.
- (d) “Tobacco Retailer” means any store, stand, booth, concession or other enterprise that engages in the retail sale or exchange of tobacco products (as defined in subsection (h) of section 4.96.030 of this Code), electronic cigarettes, or electronic smoking devices.
- (e) “Sell”, “Sale” or “to Sell” mean any transaction where, for any consideration, ownership is transferred from one Person or entity to another including, but not limited to any transfer of title or possession for consideration, exchange or barter, in any manner or by any means.

#### **4.95.030. Sale or Distribution of Electronic Cigarettes Prohibited.**

No Person, Tobacco Retailer or other legal entity shall sell or distribute any Electronic Cigarette to a Person in unincorporated San Mateo County.

#### **4.95.040 Enforcement.**

- (a) The Health System Chief, or his or her designee, may enforce this Chapter by suspension of a tobacco retailer’s permit and/or imposition of administrative fines following the procedures and amounts set forth in Sections 4.98.150 and 4.98.160 of Chapter 4.98 of this Ordinance Code.

(b) Violations of this Chapter may be criminally prosecuted as infraction(s) or misdemeanor(s) at the discretion of the prosecuting attorney as the interests of justice require.

(c) This section shall not be interpreted to limit the applicable civil or administrative remedies available under law.

(d) The Health System Chief may adopt administrative rules, regulations, or guidelines for the implementation and enforcement of this Chapter.

**4.95.050 – Public Nuisance.**

Any violation of this ordinance is hereby declared a public nuisance.

**SECTION 3. No Conflict With State or Federal Law.**

Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by state or federal law.

**SECTION 4. Severability.**

If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

**SECTION 5. Effective and Operative Dates.**

This ordinance shall become effective 30 days after enactment, and shall become operative and enforceable six months after the effective date.

\* \* \* \* \*

**ORDINANCE NO. NS-517.93**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA REPEALING CHAPTER XXIII OF DIVISION A18, AND ADDING CHAPTER XXII, PERMITS FOR RETAILERS OF TOBACCO PRODUCTS, OF DIVISION B11 OF THE COUNTY OF SANTA CLARA ORDINANCE CODE RELATING TO PROHIBITIONS AND LIMITATIONS ON THE SALE AND DISTRIBUTION OF ELECTRONIC CIGARETTE PRODUCTS AND OTHER TOBACCO PRODUCTS**

Summary

This Ordinance repeals Chapter XXIII of Division A18 of the Ordinance Code, and adds Chapter XXII of Division B11 of the Ordinance Code prohibiting the sale and distribution of all electronic cigarette products, eliminating the exemption allowing certain retailers to sell flavored tobacco products, and modifying other provisions of the prior ordinance relating to permits for retailers of tobacco products.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA FINDS AS FOLLOWS:**

- A. Electronic cigarettes, also known as e-cigarettes, e-vaporizers, or electronic nicotine delivery systems, are battery-operated devices that people use to inhale an aerosol that typically contains nicotine. In addition to nicotine, the aerosol from e-cigarettes may include up to 31 other components, including formaldehyde, acetaldehyde, glycidol, acrolein, acetol, and diacetyl. Several of these compounds are likely carcinogens, and acrolein is a powerful irritant.<sup>1</sup> These products can resemble traditional tobacco cigarettes (cig-a-likes), cigars, or pipes, or even everyday items like pens or USB memory sticks.<sup>2</sup> The pervasive use of these and other related Electronic Cigarette Products has given rise to a massive and multi-faceted public health crisis.

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<sup>1</sup> Centers for Disease Control and Prevention. Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General (2016). [https://www.cdc.gov/tobacco/data\\_statistics/sgr/e-cigarettes/index.htm](https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/index.htm).

<sup>2</sup> National Institute on Drug Abuse. Electronic Cigarettes (E-cigarettes) (2019). <https://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes>; Breland A, Soule E, Lopez A, Ramôa C, El-Hellani A, Eissenberg T. Electronic cigarettes: what are they and what do they do? *Ann N Y Acad Sci.* 2017;1394(1):5-30. doi:10.1111/nyas.12977.



- B. The Surgeon General has declared the use of e-cigarettes among youth an “epidemic.” There is an extensive and rapidly growing body of evidence supporting that characterization. For instance:
- i. E-cigarette companies use marketing strategies to target youth. In 2014, 18 million (7 out of 10) middle and high school students were exposed to e-cigarette ads.<sup>3</sup>
  - ii. E-cigarettes are marketed in a variety of flavors that appeal to youth, including gummy bear, birthday cake, cotton candy, and fruit punch.
  - iii. While youth use of combustible cigarettes has decreased dramatically, e-cigarette use—or “vaping”—among middle and high school students increased by 78 percent between 2017 and 2018, with over 4 million kids currently using e-cigarettes in 2018.<sup>4</sup>
  - iv. The proportion of current e-cigarette users in high school who reported use on 20 days or more in the past 30-day period increased from 20 percent in 2017 to 27.7 percent in 2018.<sup>5</sup>
  - v. In 2019, the national prevalence of e-cigarette use during the previous 30 days was more than 1 in 4 students in the 12th grade, more than 1 in 5 in the 10th grade, and more than 1 in 11 in the 8th grade.<sup>6</sup>
  - vi. Use of e-cigarettes among undergraduate college students increased from 4.9 percent to 10.1 percent between 2017 and 2018.<sup>7</sup>

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<sup>3</sup> Centers for Disease Control and Prevention. E-cigarette Ads and Youth (2017). <https://www.cdc.gov/vitalsigns/ecigarette-ads/index.html>.

<sup>4</sup> Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011–2018. *MMWR Morb Mortal Wkly Rep.* 2018;67(45):1276-1277. doi:10.15585/mmwr.mm6745a5.

<sup>5</sup> Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011–2018. *MMWR Morb Mortal Wkly Rep.* 2018;67(45):1276-1277. doi:10.15585/mmwr.mm6745a5.

<sup>6</sup> Miech R, Johnston L, O’Malley PM, Bachman JG, Patrick ME. Trends in Adolescent Vaping, 2017–2019. *N Engl J Med.* September 2019;NEJMc1910739. doi:10.1056/NEJMc1910739.

<sup>7</sup> *Compare American College Health Association-National College Health Assessment II: Undergraduate Student Reference Group Executive Summary Spring 2018.* Silver Spring, MD: American College Health Association with American College Health Association-National College Health Assessment II: Reference Group Undergraduate Executive Summary Spring 2017. Hanover, MD: American College Health Association.

- vii. There was a 46.2 percent increase in current e-cigarette use between 2017 and 2018 among young adults.<sup>8</sup>
  - viii. Adolescents obtain e-cigarettes from a variety of sources. The most common sources are: purchasing from a store or online (31.1 percent); buying from another person (16.3 percent); and giving someone money to purchase for them (15.0 percent).<sup>9</sup>
- C. Nearly 1 in 3 Santa Clara County teens—31.6 percent—report that they have used an e-cigarette at least once. Most teens obtained their e-cigarettes from “social sources,” while around 45 percent reported purchasing their own e-cigarettes (with over a quarter of this group saying they buy them directly from a local store).<sup>10</sup>
- i. In 2019, the number of violations for sales to minors at tobacco retailers in the unincorporated county increased to 12 violations (out of 44 undercover enforcement checks), up from only 1 violation (out of 34 undercover enforcement checks) in 2018. This included one violation at an adult-only tobacco store in the unincorporated county.<sup>11</sup>
- D. E-cigarettes have severe adverse health effects for both youth and adults.
- i. According to the Surgeon General, “[m]ost e-cigarettes contain nicotine—the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during adolescence can harm the developing brain—which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other

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<sup>8</sup> Dai H, Leventhal AM. Prevalence of e-Cigarette Use Among Adults in the United States, 2014-2018. *JAMA*. September 2019. doi:10.1001/jama.2019.15331.

<sup>9</sup> Pepper JK, Coats EM, Nonnemaker JM, Loomis BR. How Do Adolescents Get Their E-Cigarettes and Other Electronic Vaping Devices? *Am J Health Promot*. 2019;33(3):420-429. doi:10.1177/0890117118790366.

<sup>10</sup> Zhu S-H, Lee J, Zhuang YL, Branden K, Cole A, Wolfson T, Gamst A (2019). Tobacco use among high school students in Santa Clara County: Findings from the 2017-18 California Student Tobacco Survey. San Diego, California: Center for Research and Intervention in Tobacco Control (CRITC), University of California, San Diego.

<sup>11</sup> Santa Clara County Public Health Department, 2019 Tobacco Law Enforcement Survey.

harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.”<sup>12</sup>

- ii. E-cigarette use can also play a role in adolescent social maladjustment, including poor learning and academic performance, increased aggressive and impulsive behavior, poor sleep quality, attention deficits, impaired memory, cognition, and increased depression and suicidal ideation.<sup>13</sup>
- iii. Daily e-cigarette use is associated with increased risk of irreversible cardiovascular and lung disease through the inhalation of harmful chemicals.<sup>14</sup>
- iv. Secondhand emissions from e-cigarettes are also dangerous because they contain “nicotine; ultrafine particles; flavorings such as diacetyl, a chemical linked to serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals, such as nickel, tin, and lead.”<sup>15</sup>
- v. E-cigarette use is dangerous for pregnant women and is a fetal risk factor. It is associated with an increased risk of smallness-for-gestational-age.<sup>16</sup>

E. In addition to these negative long-term health effects, e-cigarette use is now associated with a wave of dangerous, life-threatening illnesses.

- i. As of October 15, 2019, 1,479 cases of acute lung injury associated with the use of e-cigarette or vaping products in 49 states, the District of Columbia, and 1 U.S. territory have been reported to the Centers for

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<sup>12</sup> Surgeon General’s Advisory on E-cigarette Use Among Youth (2008). <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

<sup>13</sup> Tobore TO. On the potential harmful effects of E-Cigarettes (EC) on the developing brain: The relationship between vaping-induced oxidative stress and adolescent/young adults social maladjustment. *J Adolesc.* 2019; 76:202-209. doi:10.1016/j.adolescence.2019.09.004.

<sup>14</sup> American Lung Association. The Impact of E-Cigarettes on the Lung (2011). <https://www.lung.org/stop-smoking/smoking-facts/impact-of-e-cigarettes-on-lung.html>; Bein K, Leikauf GD. Acrolein - a pulmonary hazard. *Mol Nutr Food Res* 55(9):1342-60. doi: 10.1002/mnfr.201100279.

<sup>15</sup> American Lung Association. The Impact of E-Cigarettes on the Lung (2011). <https://www.lung.org/stop-smoking/smoking-facts/impact-of-e-cigarettes-on-lung.html>.

<sup>16</sup> Cardenas V, Cen R, Clemens M, et al. Use of Electronic Nicotine Delivery Systems (ENDS) by pregnant women I: Risk of small-for-gestational-age birth. *Tob Induc Dis.* 2019;17(May). doi:10.18332/tid/106089

Disease Control and Prevention (CDC). Thirty-three deaths have been confirmed in 24 states.<sup>17</sup>

- ii. Since the CDC's August 30, 2019 Official Health Advisory,<sup>18</sup> there have been two reported cases of lung injury associated with e-cigarettes in Santa Clara County. One of these cases was in an adolescent, and both individuals required hospitalization.

F. Other risks and injuries are attributable to the proliferation of e-cigarettes:

- i. E-cigarettes present a poison risk for children. From 2013 to 2017, an estimated 4,745 e-liquid poisoning cases among children under age five were treated in U.S. hospital emergency departments.<sup>19</sup>
- ii. E-cigarettes present a risk of burns and other injuries, usually from malfunctioning batteries. From 2015 to 2017, there were an estimated 2,035 e-cigarette explosion and burn injuries reported in U.S. hospital emergency rooms.<sup>20</sup>

G. While the e-cigarette industry claims that its products help people quit smoking combustible cigarettes, the evidence shows that e-cigarette use is actually associated with *increased* risk of cigarette initiation, particularly among low-risk youths.<sup>21</sup>

- i. Use of e-cigarettes was most common among smokers, and dual users had the highest prevalence of respiratory symptoms. On a population level, this

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<sup>17</sup> Centers for Disease Control and Prevention. Outbreak of Lung Injury Associated with E-cigarette Use, or Vaping. October (2019). [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html).

<sup>18</sup> Centers for Disease Control and Prevention Official Health Advisory. Severe Pulmonary Disease Associated with Using E-Cigarette Products (Aug. 30, 2019). <https://emergency.cdc.gov/han/han00421.asp>.

<sup>19</sup> Chang JT, Wang B, Chang CM, Ambrose BK. National estimates of poisoning events related to liquid nicotine in young children treated in US hospital emergency departments, 2013–2017. *Inj Epidemiol.* 2019;6(1):10. doi:10.1186/s40621-019-0188-9.

<sup>20</sup> Rossheim ME, Livingston MD, Soule EK, Zeraye HA, Thombs DL. Electronic cigarette explosion and burn injuries, US Emergency Departments 2015-2017. *Tob Control.* 2019;28(4):472-474. doi:10.1136/tobaccocontrol-2018-054518.

<sup>21</sup> Berry KM, Fetterman JL, Benjamin EJ, et al. Association of Electronic Cigarette Use With Subsequent Initiation of Tobacco Cigarettes in US Youths. *JAMA Netw Open.* Published online February 01, 2019;2(2):e187794. doi:10.1001/jamanetworkopen.2018.7794.

indicates that the present use of e-cigarettes does not adequately serve as a smoking cessation tool.<sup>22</sup>

ii. E-cigarettes are not commonly used as a quit tool among college students, but rather as a secondary source of nicotine, most commonly in current smokers.<sup>23</sup>

iii. Of adults and young adults over 18 who use e-cigarettes, around 63 percent typically use non-tobacco flavored e-cigarettes, while over a third typically use tobacco-flavored or unflavored e-cigarettes.<sup>24</sup>

H. Open e-cigarette systems are customizable by consumers and often allow for potential “unorthodox” use of the product. These modifications include altering mechanical components and replacing liquid cartridges with dangerous off-market or illegal substances.<sup>25</sup> Customization is one of the most popular social media topics for e-cigarettes.<sup>26</sup>

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ORDAINS AS FOLLOWS:**

**SECTION 1.** Chapter XXIII of Division A18 of the Ordinance Code of the County of Santa Clara is hereby repealed in its entirety.

**SECTION 2.** Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara is hereby added, as follows:

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<sup>22</sup> Hedman L, Backman H, Stridsman C, et al. Association of Electronic Cigarette Use With Smoking Habits, Demographic Factors, and Respiratory Symptoms. *JAMA Netw Open*. 2018;1(3):e180789. doi:10.1001/jamanetworkopen.2018.0789.

<sup>23</sup> Martinasek MP, Bowersock A, Wheldon CW. Patterns, Perception and Behavior of Electronic Nicotine Delivery Systems Use and Multiple Product Use Among Young Adults. *Respir Care*. 2018;63(7):913-919. doi:10.4187/respcare.06001.

<sup>24</sup> Landry RL, Groom AL, Vu T-HT, et al. The role of flavors in vaping initiation and satisfaction among U.S. adults. *Addict Behav*. 2019;99:106077. doi:10.1016/j.addbeh.2019.106077.

<sup>25</sup> Guy MC, Helt J, Palafox S, et al. Orthodox and Unorthodox Uses of Electronic Cigarettes: A Surveillance of YouTube Video Content. *Nicotine Tob Res*. 2019;21(10):1378-1384. doi:10.1093/ntr/nty132.

<sup>26</sup> Lee A, Hart J, Sears C, Walker K, Siu A, Smith C. A picture is worth a thousand words: Electronic cigarette content on Instagram and Pinterest. *Tob Prev Cessat*. 2017;3(July). doi:10.18332/tpc/74709.

**CHAPTER XXII.  
PERMITS FOR RETAILERS OF TOBACCO PRODUCTS**

**Sec. B11-576. Intent.**

This Chapter is adopted to:

- (1) Ensure compliance with the business standards and practices of the County;
- (2) Encourage responsible retailing of Tobacco Products;
- (3) Discourage violations of laws related to Tobacco Products, especially those that prohibit or discourage the Sale or Distribution of Tobacco Products to individuals under 21;
- (4) Respond to a new wave of addiction to Electronic Cigarette Products;
- (5) Reduce vulnerability to unexplained illnesses associated with Electronic Cigarette Products; and
- (6) Protect the public health and welfare.

This Chapter does not expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or alter the penalties provided by such laws.

**Sec. B11-577. Definitions.**

For the purposes of this Chapter, the following definitions shall apply:

- (a) *Arm's Length Transaction* means a Sale in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, neither of which is under any compulsion to participate in the transaction. A Sale between relatives, related companies or partners, or a Sale for which a significant purpose is avoiding the effect of the violations of this Chapter is not an Arm's Length Transaction.
- (b) *Department* means the County's Department of Environmental Health and any agency or Person designated by the Director of the Department of Environmental Health to enforce or administer the provisions of this Chapter.

- (c) *Distribute* or *Distribution* means the transfer, by any Person other than a common carrier, of a Tobacco Product to another Person for Sale or personal consumption.
- (d) *Electronic Cigarette Products* means any of the following products:
- (1) Any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
  - (2) Any component, part, or accessory of such a device or delivery system that is used during its operation.
  - (3) Any flavored or unflavored liquid or substance containing nicotine, whether Sold separately or Sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.
  - (4) Any product for use in an electronic nicotine device or delivery system whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.
  - (5) Electronic Cigarette Products shall not include any battery, battery charger, carrying case, or other accessory not used in the operation of the device if Sold separately. Electronic Cigarette Products shall not include any product that has been approved by the United States Food and Drug Administration for Sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and Sold solely for such approved use. *See* 21 U.S.C. § 387(a). As used in this subsection, nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.
- (e) *Ownership* means possession of a ten percent or greater interest in the stock, assets, or income of a business, other than a security interest for the repayment of debt. Notwithstanding any other definition in this Code, an *Owner* means a Person who possesses Ownership.
- (f) *Permit* means a valid permit issued by the Department to a Person to act as a Retailer.
- (g) *Retailer* means any Person who Sells or Distributes Tobacco Products for any form of consideration. *Retailing* shall mean the doing of any of these actions. This definition is without regard to the quantity of Tobacco Products Sold or Distributed.

- (h) *School* means a public or private elementary, middle, junior high, or high school.
- (i) *Tobacco Product* means (unless specifically noted elsewhere) any product subject to Subchapter IX (21 U.S.C. § 387 et seq. (“Subchapter IX”)) of the Federal Food, Drug, and Cosmetic Act. (See 21 U.S.C. § 387a(b) (products subject to Subchapter IX); 21 C.F.R. §§ 1100.1-1100.3 (tobacco products subject to Subchapter IX).) Products subject to Subchapter IX include, but are not limited to, cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, cigars, pipe tobacco, waterpipe tobacco, and Electronic Cigarette Products. Products that are not subject to Subchapter IX include accessories of Tobacco Products, such as, but not limited to, ashtrays, spittoons, and conventional matches and lighters that solely provide an external heat source to initiate but not maintain combustion of a Tobacco Product.

**Sec. B11-578. Requirements and prohibitions.**

- (a) *Permit required.* It shall be unlawful for any Person to act as a Retailer in an unincorporated area of the County without first obtaining and maintaining a Permit pursuant to this Chapter for each location at which Retailing occurs.
- (b) *Lawful business operation.* It shall be a violation of this Chapter for any Retailer to violate any local, state, or federal law applicable to Tobacco Products or the Retailing of such Tobacco Products.
- (c) *Display of Permit.* Each Permit shall be prominently displayed in a publicly visible place at the location identified in the Permit.
- (d) *Notice of minimum age for purchase of Tobacco Products.* Retailers shall post conspicuously, at each point of purchase, a notice stating that selling Tobacco Products to anyone under 21 years of age is illegal and subject to penalties. Such notice shall be subject to the approval of the Public Health Department.
- (e) *Positive identification required.* No Retailer shall Sell or Distribute a Tobacco Product to another individual who appears to be under 30 years of age without first examining the individual’s identification to confirm that the individual is at least the minimum age required under state law to purchase and possess the Tobacco Product.
- (f) *Minimum age for individuals selling Tobacco Products.* No individual who is younger than the minimum age established by State law for the purchase or possession of Tobacco Products shall engage in Retailing.



- (g) *False and misleading advertising prohibited.* A Retailer without a Permit:
- (1) Shall keep all Tobacco Products out of public view.
  - (2) Shall not display any advertisement relating to Tobacco Products that promotes the Sale or Distribution of such products from the Retailer's location or that could lead a reasonable consumer to believe that Tobacco Products can be obtained at that location.
- (h) *Limitation on storefront advertising.* No more than 15 percent of the square footage of the windows and clear doors of a physical storefront used for Retailing Tobacco Products shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement of this subsection (h) shall not apply to an establishment where there are no windows or clear doors, or where existing windows are located only at a height that precludes a view of the interior of the premises by an individual standing outside the premises.
- (i) *Flavored Tobacco Products.*
- (1) Except as permitted in paragraph (3) of this subsection (i), no Retailer shall Sell a Tobacco Product containing, as a constituent or additive, an artificial or natural flavor or aroma (other than tobacco) or an herb or spice, including but not limited to strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, mint, menthol, or coffee, that is a characterizing flavor or aroma of the Tobacco Product, smoke, or vapor produced by the Tobacco Product.
  - (2) A Tobacco Product shall be subject to a rebuttable presumption that the product is prohibited by paragraph (1) of this subsection if:
    - (i) The product's manufacturer or any other Person associated with the manufacture or Sale of Tobacco Products makes or disseminates public statements or claims to the effect that the product has or produces a characterizing flavor or aroma, other than tobacco; or
    - (ii) The product's label, labeling, or packaging includes a statement or claim—including any text and/or images used to communicate

information—that the product has or produces a characterizing flavor or aroma, other than tobacco.

- (3) Except as provided in Paragraph (4) of this subsection (i), Paragraph (1) of this subsection (i) shall not apply to any Retailer that meets all the following criteria:
  - (i) Primarily sells Tobacco Products;
  - (ii) Generates more than 60 percent of its gross revenues annually from the sale of Tobacco Products;
  - (iii) Does not permit any individual under 21 years of age to be present or enter the premises at any time, unless accompanied by the individual's parent or legal guardian, as defined in Section 6903 of the Family Code;
  - (iv) Does not Sell alcoholic beverages or food for consumption on the premises; and
  - (v) Posts a sign outside the retail location that clearly, sufficiently, and conspicuously informs the public that individuals under 21 years of age are prohibited from entering the premises.
- (4) No Retailer that is issued a new Permit after December 19, 2019 shall Sell or Distribute flavored Tobacco Products under paragraph (3) of this subsection (i) after Permit issuance. No Retailer that receives a Permit renewal after December 19, 2019 shall Sell or Distribute flavored Tobacco Products under paragraph (3) of this subsection (i) after Permit renewal. Regardless of the date of Permit issuance or renewal, no Retailer shall Sell or Distribute flavored Tobacco Products after June 30, 2020.
- (j) *Vending machines prohibited.* No Tobacco Product shall be Sold or Distributed to the public from a vending machine or appliance, or any other coin or token operated mechanical device designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.
- (k) *Prohibition on Sale or Distribution of Tobacco Products to individuals under 21.* No Retailer shall Sell or Distribute any Tobacco Product to any individual who is under 21 years of age.

- (l) *Prohibition on Sale or Distribution of Electronic Cigarette Products.* No Retailer that is issued a new Permit after December 19, 2019 shall Sell or Distribute Electronic Cigarette Products after Permit issuance. No Retailer that receives a Permit renewal after December 19, 2019 shall Sell or Distribute Electronic Cigarette Products after Permit renewal. Regardless of the date of Permit issuance or renewal, no Retailer shall Sell or Distribute Electronic Cigarette Products after June 30, 2020.

**Sec. B11-579. Eligibility requirements for a Permit.**

- (a) No Permit may be issued to authorize Retailing at or from other than a fixed location. For example, Retailing by Persons on foot or from vehicles is prohibited.
- (b) No Permit may be issued to authorize Retailing at a temporary or recurring temporary event. For example, Retailing at flea markets and farmers' markets is prohibited.
- (c) No Permit may be issued to authorize Retailing at any location where the profession of pharmacy is practiced by a pharmacist licensed by the State in accordance with the Business and Professions Code and where prescription drugs are offered for Sale.
- (d) No Permit may be issued to authorize Retailing at any location within 1,000 feet of a School, as measured by a straight line between any point along the property line of any parcel on which a School is located and any point along the perimeter of the Permit applicant's proposed business location; provided, however, that the prohibition contained in this subsection (d) shall not apply to the following:
  - (1) Any Retailer of Tobacco Products (as such term was defined in the predecessor Ordinance on January 22, 2011) operating lawfully on January 21, 2011;
  - (2) Any Retailer of electronic smoking devices (as such term was defined in the predecessor Ordinance on August 23, 2014) operating lawfully on August 22, 2014; however, any such Retailer is subject to the prohibition on the Sale and Distribution of Electronic Cigarette Products established in B11-578(l); and
  - (3) Any lawfully operating Retailer of Tobacco Products that would otherwise become ineligible to receive or renew a Permit due to the creation or relocation of a School.

- (e) No Permit may be issued to authorize Retailing at a location which is within 500 feet of a location occupied by another Retailer, as measured by a straight line between any point along the perimeter of an existing Retailer's business location and any point along the perimeter of the Permit applicant's proposed business location; provided, however, that the prohibition contained in this subsection (e) shall not apply to:
  - (1) Any Retailer of Tobacco Products (as such term was defined in the predecessor Ordinance on January 22, 2011) operating lawfully on January 21, 2011; and
  - (2) Any Retailer of electronic smoking devices (as such term was defined in the predecessor Ordinance on August 23, 2014) operating lawfully on August 22, 2014; however, any such Retailer is subject to the prohibition on the Sale and Distribution of Electronic Cigarette Products established in B11-578(l).
- (f) Any exemption granted to a Retailer pursuant to subsections (d) and (e) shall cease to apply upon the earlier of the following to occur:
  - (1) The Retailer fails to timely renew the Permit pursuant to Section B11-582(b) of this Chapter.
  - (2) A new Person obtains Ownership in the business.

**Sec. B11-580. Application procedure.**

- (a) It is the responsibility of each Retailer to be informed of all laws applicable to Retailing, including those laws affecting the issuance of a Permit. No Retailer may rely on the issuance of a Permit as a determination by the County that the Retailer has complied with all laws applicable to Retailing. A Permit issued contrary to this Chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Retailer shall be revoked pursuant to Section B11-581 of this Chapter.
- (b) All Permit applications shall be submitted on a form supplied by the Department.
- (c) A permitted Retailer shall inform the Department in writing of any change in the information submitted on an application for a Permit within 14 calendar days of a change.

- (d) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (Government Code Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions.

**Sec. B11-581. Permit issuance, denial, and revocation.**

- (a) Upon the receipt of a complete application for a Permit, the application fee, and the annual Permit fee, the Department shall issue a Permit unless substantial evidence demonstrates that one or more of the following bases for denial exists:
  - (1) The information presented in the application is inaccurate or false.
  - (2) The application seeks authorization for Retailing at a location for which this Chapter prohibits issuance of a Permit.
  - (3) The application seeks authorization for Retailing by a Person to whom this Chapter prohibits issuance of a Permit.
  - (4) The application seeks authorization for Retailing that is prohibited pursuant to this Chapter (e.g., mobile vending, Electronic Cigarette Products) or that is unlawful pursuant to any other law.
- (b) A Permit shall be revoked if the Department finds that one or more of the bases for denial of a Permit under this section existed at the time application was made or at any time before the Permit issued. Such a revocation shall be without prejudice to the filing of a new Permit application.

**Sec. B11-582. Permit term, renewal, and expiration.**

- (a) *Term of Permit.* The term of a Permit is one year. A Permit is invalid upon expiration.
- (b) *Renewal of Permit.* The Department shall renew a Permit upon timely payment of the annual Permit fee provided that the Retailer is in compliance with this Chapter, as amended. The Department may, in its discretion, agree to renew any expired Permit within the three-month period following expiration if the Retailer pays the annual Permit fee and applicable late charges. For every calendar month, or fraction thereof, that a Retailer fails to renew an expired Permit, a late charge equal to 20 percent of the annual Permit fee shall be assessed. A Permit renewed within three calendar months of expiration shall be treated as if timely renewed.

- (c) *Issuance of Permit after revocation or expiration of Permit.* To apply for a new Permit more than three calendar months after expiration of a Permit or following revocation of a Permit that was wrongly issued, a Retailer must submit a complete application for a Permit, along with the application fee and annual Permit fee. The Department shall issue a Permit pursuant to the requirements of Section B11-581 of this Chapter.

**Sec. B11-583. Permits nontransferable.**

- (a) A Permit may not be transferred from one Person to another or from one location to another. Whenever a new Person obtains Ownership in a business for which a Permit has been issued, a new Permit shall be required, but any exemption granted pursuant to Section B11-579 of this Chapter shall cease to apply.
- (b) Notwithstanding any other provision of this Chapter, prior violations of this Chapter at a location shall continue to be counted against a location and Permit ineligibility and suspension periods shall continue to apply to a location unless:
- (1) One hundred percent of the interest in the stock, assets, or income of the business, other than a security interest for the repayment of debt, has been transferred to one or more new owners; and
  - (2) The County is provided with clear and convincing evidence, including an affidavit, that the business has been acquired in an Arm's Length Transaction.

**Sec. B11-584. Permit conveys a limited, conditional privilege.**

Nothing in this Chapter shall be construed to grant any Person obtaining and maintaining a Permit any status or right other than the limited, conditional privilege to act as a Retailer at the location in the County identified on the face of the Permit. All Permits are issued subject to the County's right to amend this Chapter, and Retailers shall comply with all provisions of this Chapter, as amended.

**Sec. B11-585. Fees.**

The Department shall not issue or renew a Permit prior to full payment of any applicable fees. The Board of Supervisors shall, from time to time, establish by resolution the fees to issue or to renew a Permit. The fees shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing a Permit, administering the Permit program, Retailer education, Retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed

the cost of the regulatory program authorized by this Chapter. All fees and interest earned from such fees shall be used exclusively to fund administration and enforcement of this Chapter.

**Sec. B11-586. Compliance monitoring.**

- (a) Compliance with this Chapter shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this Chapter. The County Executive may designate any number of additional individuals to monitor and facilitate compliance with this Chapter.
- (b) The Department or other individuals designated to enforce the provisions of this Chapter shall check each Retailer at least once per 12-month period to determine if the Retailer is complying with all laws applicable to Retailing, other than those laws regulating underage access to Tobacco Products. Nothing in this paragraph shall create a right of action in any Retailer or other Person against the County or its agents.

**Sec. B11-587. Prevention of underage Sales.**

- (a) The Public Health Department, Department of Environmental Health, or other departments or individuals designated to enforce the provisions of this Chapter shall, in conjunction with the Sheriff's Office, check each Retailer at least twice per 12-month period to determine whether the Retailer is conducting business in a manner that complies with laws regulating youth access to Tobacco Products. Nothing in this paragraph shall create a right of action in any Retailer or other Person against the County or its agents.
- (b) The County shall not enforce any law establishing a minimum age for Tobacco Product purchases against an individual who otherwise might be in violation of such law because of the individual's age ("Youth Decoy") if the potential violation occurs when:
  - (1) The Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the County;
  - (2) The Youth Decoy is acting as an agent of a Department or individual designated by the County to monitor compliance with this Chapter; or
  - (3) The Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the County or the California Department of Public Health.

**Sec. B11-588. Penalties for a violation by a Retailer with a Permit.**

- (a) *Administrative fine.* In addition to any other penalty authorized by law, an administrative fine shall be imposed and a Permit shall be suspended if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence that the Retailer, or any of the Retailer's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter, has pled guilty, "no contest" or its equivalent to such a violation, or has admitted to a such a violation.
- (b) *Amount of fine.* The amount of the administrative fine for each such violation shall be as follows:
  - (1) A fine not to exceed \$100.00 for a first violation within a 12-month period;
  - (2) A fine not to exceed \$200.00 for a second violation within a 12-month period; and
  - (3) A fine not to exceed \$500.00 for each additional violation within a 12-month period.
- (c) *Time period for Permit suspension.* The period of the suspension shall be as follows:
  - (1) For a first violation of this Chapter at a location within any 60-month period, the Permit shall be suspended for up to 30 calendar days.
  - (2) For a second violation of this Chapter at a location within any 60-month period, the Permit shall be suspended for up to 90 calendar days.
  - (3) For each additional violation of this Chapter at a location within any 60-month period, the Permit shall be suspended for up to one year.
- (d) *Waiver of penalties for first violation.* The Department may waive any penalties for a Retailer's first violation of any requirement, condition, or prohibition of this Chapter, other than a violation of a law regulating youth access to Tobacco Products, if the Retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Department's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.



- (e) *Corrections period.* The Department shall have discretion to allow a Retailer a period of time to correct any violation of any requirement, condition, or prohibition of this Chapter, other than a violation of a law regulating youth access to Tobacco Products. If the Department exercises its discretion to provide a corrections period, and a Retailer's violation is corrected within the time allowed for correction, no penalty shall be imposed under this section.
- (f) *Written notice of penalties.* Whenever a fine is issued and/or a Permit is suspended based on a violation of this Chapter, the Department shall provide the Retailer written notice of the violation and the fine and suspension, including when the suspension shall take effect.

**Sec. B11-589. Penalties for Retailing without a Permit.**

- (a) *Administrative fine.* In addition to any other penalty authorized by law, an administrative fine and an ineligibility period for application or issuance of a Permit shall be imposed if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence, that any Person has engaged in Retailing at a location without a valid Permit, either directly or through the Person's agents or employees, has pled guilty, "no contest" or its equivalent to such a violation, or has admitted to such a violation.
- (b) *Amount of fine.* The amount of the administrative fine for each such violation shall be as follows:
  - (1) A fine not to exceed \$100.00 for a first violation within a 12-month period;
  - (2) A fine not to exceed \$200.00 for a second violation within a 12-month period; and
  - (3) A fine not to exceed \$500.00 for each additional violation within a 12-month period.
- (c) *Time period for Permit ineligibility.* The ineligibility period shall be as follows:
  - (1) For a first violation of this section at a location within any 60-month period, no new Permit may be issued for the Person or the location (unless Ownership of the business at the location has been transferred in an Arm's Length Transaction) until 30 calendar days have passed from the date of the violation.

- (2) For a second violation of this section at a location within any 60-month period, no new Permit may be issued for the Person or the location (unless Ownership of the business at the location has been transferred in an Arm's Length Transaction) until 90 calendar days have passed from the date of the violation.
- (3) For each additional violation of this section at a location within any 60-month period, no new Permit may be issued for the Person or the location (unless Ownership of the business at the location has been transferred in an Arm's Length Transaction) until one year has passed from the date of the violation.
- (d) *Waiver of penalties for first violation.* The Department may waive any penalties for a Retailer's first violation of this section, unless the violation also involves a violation of a law regulating youth access to Tobacco Products, if the Retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Department's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.
- (e) *Written notice of penalties.* Whenever a fine is issued and/or a Permit is suspended pursuant to this section, the Department shall provide the Retailer written notice of the fine and suspension, including when the suspension shall take effect.
- (f) *Appeals.* Any penalties imposed under this section may be appealed pursuant to Section B11-590 of this Chapter. A timely appeal shall stay enforcement of the appealed penalties while the appeal is ongoing.

**Sec. B11-590. Appeals.**

- (a) Any Retailer served with a written notice of penalties may request an administrative hearing to appeal the existence of the violation, the amount of the fine, and/or the length of the suspension by returning a completed hearing request form to the Office of the County Hearing Officer within 10 days from the date of the written notice of penalties.
- (b) The Retailer shall include the following in or with the hearing request form:
  - (1) A statement indicating the reason the Retailer contests the written notice of penalties;
  - (2) Any evidence the Retailer wants the Hearing Officer to consider;

- (3) An advance deposit of the amount of any fine challenged; and
  - (4) The address of the Retailer and, if available, an email address that can be used for contact and correspondence by the Office of the County Hearing Officer and the Department. The Retailer may request service of notice by mail.
- (c) The hearing request form shall be deemed filed on the date received by the Office of the County Hearing Officer. A timely appeal shall stay enforcement of the appealed penalties while the appeal is ongoing.
  - (d) After receiving a timely hearing request form, the Office of the County Hearing Officer shall notify the Department as soon as practicable and then shall schedule an administrative hearing. The Office of the County Hearing Officer shall provide the Retailer and the Department at least ten calendar days' written notice of the date, time, and place of the administrative hearing and the name of the Hearing Officer who will conduct the hearing. The notice shall be given to the Retailer either by email, if requested, or by first class mail, postage prepaid.
  - (e) Between the time the Retailer requests the administrative hearing and the time of the Hearing Officer's decision, the Retailer, the Department, and each of their representatives shall not engage in *ex parte* communications with the Office of the County Hearing Officer or the Hearing Officer regarding the matters at issue in the hearing.
  - (f) The hearing shall be conducted by the Hearing Officer on the date, time, and place specified in the notice to the Retailer. A Retailer's failure to appear at the hearing shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies as a precedent to judicially challenge the existence of the violation and the imposition of the fine and suspension.
  - (g) At the hearing, the Retailer and the Department shall have the opportunity to present evidence, including witnesses, relevant to the Hearing Officer's determination of the matter. Neither the provisions of the Administrative Procedure Act (Government Code Section 11500 et seq.) nor the formal rules of evidence in civil or criminal judicial proceedings shall apply to such hearing. The Hearing Officer may admit any evidence, including witnesses, relevant to the determination of the matter, except as otherwise provided in section B11-591(c).
  - (h) The written notice of penalties and any other reports prepared by or for the Department concerning the violation shall be admissible and accepted by the

Hearing Officer as prima facie evidence of the violation and the facts stated in those documents.

- (i) The Hearing Officer may continue the hearing from time to time, in his or her sole discretion, to allow for its orderly completion. After receiving the evidence submitted at the hearing, the Hearing Officer may further continue the hearing and request additional information from either the Department or the Retailer.
- (j) After considering the evidence and testimony submitted the Hearing Officer shall issue a written decision regarding the matters properly raised in the request for administrative hearing. The Hearing Officer's decision shall:
  - (1) Be based on a preponderance of the evidence.
  - (2) Include a statement of the reasons for the decision.
  - (3) Be issued within 20 calendar days of the close of the hearing.
  - (4) Be served on both the Retailer and the Department. The decision shall be given to the Retailer either by email, if requested, or by first class mail, postage prepaid.
- (k) Based on the Hearing Officer's decision, the Office of the County Hearing Officer shall promptly refund to the Retailer any amount of the advance fine deposit the Department is not entitled to and shall provide the remainder to the Department.
- (l) The Hearing Officer's written decision shall constitute the final administrative decision of the County.

**Sec. B11-591. Enforcement.**

- (a) Any violation of this Chapter is hereby declared to be a public nuisance.
- (b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- (c) Whenever evidence of a violation of this Chapter is obtained in any part through the participation of an individual under the age of 21 years old, such an individual shall not be required over his or her objection to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged

violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

- (d) Violations of this Chapter may be remedied by a civil action brought by the County Counsel, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. For the purposes of the civil remedies provided in this Chapter, each day on which a Tobacco Product is offered for Sale in violation of this Chapter, and each individual retail Tobacco Product that is Sold or Distributed in violation of this Chapter, shall constitute a separate violation of this Chapter.
- (e) Any Person found guilty of violating any provision of this Chapter shall be deemed guilty of an infraction, punishable as provided by California Government Code § 25132.
- (f) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

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**Sec. B11-592. No conflict with federal or state law.**

Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by, or in conflict with, federal or state law, rules, or regulations.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Santa Clara, State of California, on November 19, 2019, by the following vote:

AYES: CHAVEZ, CORTESE, ELLENBERG  
SIMITIAN, WASSERMAN

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE



S. JOSEPH SIMITIAN, President  
Board of Supervisors

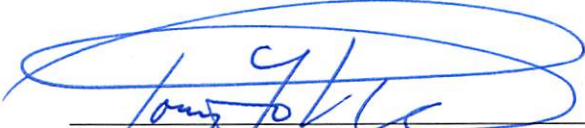
Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:



MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



TONY LOPRESTI  
Deputy County Counsel

2103018



## STAFF REPORT

**City Council**  
**Meeting Date:** 12/10/2019  
**Staff Report Number:** 19-271-CC

**Regular Business:** **Authorize a pool rental fee waiver of \$12,000 for Mr. Max Fennell to conduct a 12-week learn-to-swim program at the Belle Haven pool beginning in January 2020, and authorize staff to waive standard contract instructor revenue share requirements for the program**

### Recommendation

Staff recommends that the City Council authorize a pool rental fee waiver of \$12,000 for Mr. Max Fennell to conduct a 12-week learn-to-swim program at the Belle Haven pool beginning in January 2020, and authorize staff to waive standard contract instructor revenue share requirements for the program.

### Policy Issues

The City currently contracts with Team Sheeper LLC to operate and program both the Burgess and Belle Haven pools. Additionally, the City contracts with various instructors for fee class instruction.

### Background

On November 5, 2019, City Council directed staff to negotiate an agreement with local entrepreneur and professional triathlete Mr. Max Fennell. The Director and Assistant Director of Community Services met with Mr. Fennell on several occasions to discuss various operating models, including the City's current contract instructor revenue share model.

### Analysis

Mr. Fennell's revised proposal (Attachment A) continues the request for City contribution of \$47,500. The revised proposal does not reflect the City's standard practice for contract instructors. At this time, staff recommends that the City Council authorize a waiver of pool rental fees, not to exceed \$12,000, and waiver of the City's revenue share model. Staff's recommendation provides Mr. Fennell with the venue to conduct a learn-to-swim program. Under the City's agreement with Team Sheeper, LLC, third parties may rent the pool for private purposes with Team Sheeper, LLC providing a minimum of two trained lifeguards, staff to conduct required pool chemistry testing, and staff to enforce risk management practices. If the City grants a pool rental fee waiver, the City must compensate Team Sheeper LLC for costs incurred to open the pool outside of regular hours.

Mr. Fennell's revised proposal requests a city contribution of \$47,500 to provide a 12-week learn-to-swim program. The contribution is comprised of a pool rental fee waiver of \$12,000 and a \$35,500 operational proposal inclusive of staff costs, payment to Mr. Fennell, insurance, and marketing equipment and gear. The proposal estimates 100 participants for a 12-week program comprised of four hours per session

including overview; drills, stroke and focus; swim practice; and dry land strengthening. Mr. Fennell would determine pricing, class content and dates of the program.

At their November 5 meeting, the City Council authorized staff to negotiate an agreement with Mr. Fennell to provide a learn-to-swim program for community members. At that meeting, City councilmembers expressed concern that Mr. Fennell's proposal lacked an incentive mechanism to ensure success and engagement of up to 100 community members in January 2020.

To address the concerns expressed by City councilmembers, staff met with Mr. Fennell to negotiate a contract instructor agreement. The City's contract instructor model provides a revenue-sharing agreement where instructors receive between 60 and 70 percent of registration fees for each program or class. The City's share of revenue offsets costs for the use of City's facilities, registration support, and marketing through the activity guide. This model provides an incentive to the instructor to provide a competitively priced quality program for participants. In the event that there is insufficient demand for a program, contract instructors have the choice of canceling the program or conducting the program for lower compensation.

If the City does not receive a revenue share of the participant registration fees, then Mr. Fennel would cover the costs of running the program as proposed. The contractor model satisfies City Council's interest in determining demand for the program before investing in it since the contractor determines the minimum required participants to operate the program and would need to scale the program accordingly if desired demand is not met. Typically in the contractor model there is a fee for service paid by the participant where the City and contract share a percentage of the revenue collected. In this case, the City will not require a percentage split and will cover pool rental fees to support Mr. Fennell's proposal. Additionally, the City typically advertises its contractor class programs in the City's Activity Guide, the City's main channel to promote its classes. However, since the contractor identified a start date in January 2020, the program would not benefit from the Guide since the Winter/Spring issue has already been published.

#### Recommendation

Staff recommends that the City Council authorize a waiver of pool rental fees, not to exceed \$12,000, and waiver of the City's revenue share model. Staff's recommendation provides Mr. Fennell with the venue to conduct a learn-to-swim program.

#### Alternatives

1. Provide a pool rental fee waiver of \$12,000 and provide a subsidy of \$350 for Menlo Park residents to participate in the program. Registration will be managed by City staff to verify residency. Non-residents would be required to pay \$350 to participate and the City would not require a revenue share.
2. Require a revenue share for non-resident participants of 70/30, 30 percent to the City to offset registration and facility costs; and provide a pool rental fee waiver of \$12,000; and provide a subsidy of \$350 for Menlo Park residents to participate in the program. Registration will be managed by City staff to verify residency.
3. Agree to Mr. Fennell's proposal and provide a \$47,500 contribution to a lean-to-swim program at Belle Haven pool. \$35,500 payable to Max Fennell for operational proposal, and \$12,000 to Team Sheeper LLC for Belle Haven pool rental fees.

#### **Impact on City Resources**

City staff is recommending City Council authorize a pool rental fee waiver of \$12,000 and payment to Tim Sheeper, LLC in order for Mr. Fennel to conduct the 12-week learn-to-swim-program. Alternatively, the City Council may consider and additional authorization not to exceed \$35,500 to fully subsidize the proposed program.



### **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. Revised proposal from Max Fennel

Report prepared by:

Adriane Lee Bird, Assistant Community Services Director

Derek Schweigart, Community Services Director

Report reviewed by:

Nick Pegueros, Assistant City Manager

## Belle Haven Community Open Swim Proposal

Max Fennell and Aquatics Team

**Day:** Sundays

**Duration:** 12-week program

**Dates:** Fall-Winter

**Times:** 12-4pm

**Staff:** Will provide our own aquatics staff and can provide our own lifeguards.

**Instructors:** An aquatics team assembled by Max Fennell from qualified and certified professionals from the surrounding area.

**Insurance:** We will have liability insurance upon completion of agreement and start of program

**Swim Program:** Community program designed to introduce community members to aquatic sports and fitness. Max Fennell and aquatics team will reach out to community members and youth to raise awareness and invite to participate in the intro to aquatics sports program.

The programs purpose is to provide aquatic opportunity to the surrounding community members. The program will help to create water confidence, fitness and dry land strength training. Max Fennell will lead his aquatic team in conducting the program for community members. Max Fennell will also reach out to national organizations and personal sponsors to provide a premier experience for community members.

The 12-week program will have a focus around water safety and confidence. The program will be split into four sections through out the day.

1. Overview
2. Drills, stroke and focus
3. Swim Practice
4. dry land strengthening

Towards the end of the program we will hold first time participation into swim run timed events and races.

## Plan of Action

### Marketing

- Belle Haven USPS targeted mailers
- Weekly marketing sponsored post on social media
- Estimated \$50 per post
- Instructional/aquatic tip video to be posted on Menlo Park Rec Social Media Channels

### Strategic partnerships

Stanford Master Swimming and aquatics Varsity teams

- Invite Stanford aquatic varsity team members to guest coach, that would be marketed before the session
- Invite Stanford masters team members from strong championship aquatic backgrounds to guest coach , that would be marked before

Alto Swim club

- Invite Alto Swim team to hold their swim practices before our clinic at Belle Haven. We believe that youth swimmers seeing other swimmers swim before than will help inspire and create a healthy inspired aquatics community at Belle Haven.

USA Swimming

- Reach out to USA Swimming for support as well marketing to promote this aquatic initiative the City of Menlo Park is offering

USA Triathlon

- Reach out to USA Triathlon for support as well marketing to promote this aquatic initiative the City of Menlo Park is offering

Positive Coaching Alliance

- Reach out to PCA for support and guidance to ensure we are coaching and inspire the community through the PCA approach

### Community Outreach

- Reach out to current afterschool programs and surrounding schools about program with marketing material on how to sign up and participate

## Budget

**Based off Menlo swim and sport private lesson numbers we value each community member attending the clinic at \$25 per resident. Menlo Swim and Sport 30 min lesson \$78**

**Our estimates are 100+ Community members in attendance or more which brings the value of the program to \$30,000+**

70% profit split with City of Menlo Park

Pool fee \$250 an hour 12 weeks: **\$12,000\*\*\*\***

Insurance Liability and Workmans Comp: **\$5,000**

5 instructors at \$50 an hour \$200 per session 12 weeks: **\$12,000**

Lifeguards 2-4 \$400 for 4 guards a session 12 weeks: **\$4,800**

GFit strength training \$50 instructor 12 weeks: **\$1,200**

Marketing, Equipment and gear: **\$5,000**

Max Fennell: **\$7,500**

**Total: \$47,500**

**Operational Proposal Amount requested: \$35,000**



**STAFF REPORT**

**City Council Meeting Date:** 12/10/2019  
**Staff Report Number:** 19-259-CC

**Informational Item:** City Council agenda topics: December 2019 to February 2020

**Recommendation**

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

**Policy Issues**

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

**Analysis**

In an effort to provide greater access to the City Council's future agenda items, staff has compiled a listing of anticipated agenda items, Attachment A, through February 11, 2020. The topics are arranged by department to help identify the work group most impacted by the agenda item.

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

**Public Notice**

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

**Attachments**

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

Report prepared by:  
Judi A. Herren, City Clerk

## Tentative City Council Agenda

#	Title	Department	Item type
1	Amend 2019-20 budget, resolution adoption	ASD	Regular
2	Flavor tobacco and e-cigarette sales ban ordinance, second reading and adoption	CA	Consent
3	706 Santa Cruz Ave - Mixed Use Development	CDD	Regular
4	Amendment to conditional development permit for CitizenM Hotel	CDD	Public Hearing
5	Update on Short Term Rental Regulation Community Outreach	CDD	Informational
6	San Mateo County Mosquito and Vector Control District appointment	CMO	Committee Report
7	City Council agenda topics: February 11 2020 – March 10 2020	CMO	Informational
8	City Council agenda topics: February 25 2020 – March 24 2020	CMO	Informational
9	City Council agenda topics: January 14 2020 – March 10 2020	CMO	Informational
10	City Council agenda topics: January 21 2020 – February 25 2020	CMO	Informational
11	City Council appointments to regional boards, commissions and committees	CMO	Regular
12	Mayor and Sister City Committee honor boy scouts for assistance with the Bizen delegation	CMO	Presentation
13	Midpeninsula Regional Open Space District	CMO	Presentation
14	Minutes: 11/19	CMO	Consent
15	Minutes: 12/10 and 12/17	CMO	Consent
16	Provide direction to the City's voting delegate regarding regional vacancies for the City Selection Committee's December meeting	CMO	Regular
17	Recognition of the outgoing Mayor	CMO	Regular
18	Selection of the 2020 Mayor and Vice Mayor	CMO	Regular
19	Sister City Committee recommendation to upgrade Bizen, Japan to full Sister City status	CMO	Consent
20	Sister City Committee update	CMO	Committee Report
21	Update on zero waste plan progress	CMO	Regular
22	Regular meeting schedule ordinance, first reading	CMO, CA	Regular
23	Agreement w/ Robert & Brune Co. for water parts and supplies	PW	Consent
24	Approve scope of work for the Ravenswood Avenue railroad crossing project	PW	Regular
25	Follow up on utility undergrounding	PW	Informational
26	Parking restrictions on Santa Cruz between Johnson and Arbor, resolution adoption	PW	Regular
27	Parking time restrictions Alma St/Creek Dr, resolution adoption	PW	Consent
28	Transportation impact analysis guidelines	PW	Study Session

### Tentative City Council Agenda

#	Title	Department	Item type
29	Willows turn restrictions	PW	Regular
30	Term of lease for pool operations		Closed Session
31	Goal setting		

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**STAFF REPORT****City Council****Meeting Date:** 12/10/2019**Staff Report Number:** 19-272-CC

**Informational Item:** **Update on the Belle Haven Multi-generational Community Center and Library**

**Recommendation**

The purpose of this information item is to provide the City Council and members of the public an update on Facebook's offer to build a Multi-generational Community Center in Library in Belle Haven.

**Policy Issues**

As an information item, there are no policy issues. Upon receiving a written offer, staff will identify any applicable policy issues for the City Council consideration.

**Background**

On October 2, 2019, Facebook announced that they intended to partner with the community and City to build a new Multi-generational Community Center and Library on the site of the current Onetta Harris Community Center, Menlo Park Senior Center and Belle Haven Youth Center located at 100-110 Terminal Avenue. As such, the City placed the new Belle Haven Branch Library Project on temporary hold in order to focus attention on understanding this generous offer.

On October 15, 2019, the City Council considered and accepted the Parks and Recreation Facilities Master Plan, which identifies a new Belle Haven Multi-generational Facility as the number one priority of the Plan. During public comment, Facebook re-iterated its intention to fund and actively manage the construction of such a building. At the meeting, the City Council also authorized the City Manager and City Attorney to begin discussions with Facebook about memorializing this offer in writing.

**Analysis**

This staff report serves as an update on activities since mid-October 2019. The following is a listing of meetings:

- On October 31, Facebook's architectural firm (Hart Howerton) met with staff members from Community Services, Library and Public Works for basic introductions and preliminary information gathering.
- On November 4, 2019, Facebook attended the Belle Haven Neighborhood Association, presented information, and fielded questions about the proposal.
- On November 14, staff met with Mayor Pro Tem Taylor and Facebook to discuss approaches for public engagement regarding the offer.
- On November 15, staff met with Facebook plus attorneys to discuss the initial steps of the process, public engagement, timelines, parameters of future agreement, and reviews by applicable Commissions and the City Council.

As of the printing of this report, the City has not yet received a written proposal/offer from Facebook. Until such time that the City receives something in writing, staff is anticipating next steps for a successful outcome. Staff has started identifying a number of issues for which decisions will need to be made over the coming months and how best to efficiently work through the decision making process, such as the following:

- Creating a public engagement plan that reflects any applicable givens from the offer and when and how to receive input.
- Identifying the type of environmental review, which will dictate the overall project review timeline, and applicable land use entitlements (e.g., architectural control, use permit, right of way vacation and abandonment, etc.)
- Revisiting the current scope of work with Noll & Tam for the Belle Haven Branch Library Site Analysis, Conceptual Designs and Preliminary Cost Estimates project, including aspects of the Community Center component of the project.
- Considering the operational opportunities from a combined facility compared to the five current facilities in Belle Haven.
- Exploring how best to provide interim services during construction.

In addition, staff is recommending the creation of a City Council subcommittee for this project through a separate agenda item on the December 10 agenda.

Staff intends to continue coordinating with Facebook in order bring this generous offer to the City Council for direction early in 2020.

### **Public Notice**

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

### **Attachments**

None.

Report prepared by:  
Justin Murphy, Deputy City Manager