



REGULAR MEETING AGENDA

Date: 9/12/2023
Time: 6:00 p.m.
Locations: [Zoom.us/join](https://zoom.us/join) – ID# 814 7839 7160 and
City Council Chambers
751 Laurel St., Menlo Park, CA 94025

**City Councilmember Doerr will be participating from:
152-305
Achkout, Keserwan, Lebanon**

Members of the public can listen to the meeting and participate using the following methods. If you have issues viewing the meeting, please email the city clerk at jaherren@menlopark.gov.

How to participate in the meeting

- Submit a written comment online up to one-hour before the meeting start time:
- city.council@menlopark.gov
- Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID 814 7839 7160
- Access the meeting real-time via telephone at:
(669) 900-6833
Meeting ID 814 7839 7160
Press *9 to raise hand to speak

Watch meeting:

- Cable television subscriber in Menlo Park, East Palo Alto, Atherton and Palo Alto:
Channel 26
- City Council Chambers

Subject to Change: The format of this meeting may be altered or the meeting may be cancelled. You may check on the status of the meeting by visiting the city website menlopark.gov. The instructions for logging on to the webinar and/or the access code is subject to change. If you have difficulty accessing the webinar, please check the latest online edition of the posted agenda for updated information (menlopark.gov/agendas)

Regular Session

- A. Call To Order**
- B. Roll Call**
- C. Report from Closed Session**
- D. Agenda Review**
- E. Public Comment**

Under “Public Comment,” the public may address the Commission on any subject not listed on the agenda. Each speaker may address the Commission once under Public Comment for a limit of three minutes. The Commission cannot act on items not listed on the agenda and, therefore, the Commission cannot respond to non-agenda issues brought up under Public Comment other than to provide general information.

F. Presentations and Proclamations

- F1. Proclamation: National Preparedness Month ([Attachment](#))
Not a California Environmental Quality Act (CEQA) project.
- F2. Proclamation: National Service Dog Month ([Attachment](#))
Not a CEQA project.
- F3. Presentation: San Mateo County Mosquito and Vector Control District annual update ([Attachment](#))
Not a CEQA project.

G. Advisory Body Vacancies and Appointments

- G1. Consider applicant and make an appointment to fill a vacancy on the Finance and Audit Commission ([Staff Report #23-198-CC](#))
Not a CEQA project.

H. Study Session

- H1. Provide direction on restarting the Neighborhood Traffic Management Program ([Staff Report #23-201-CC](#)) ([Presentation](#))
Not a CEQA project.

I. Consent Calendar

- I1. Accept the City Council meeting minutes for August 15, 22, and 29, 2023 ([Attachment](#))
Not a CEQA project.
- I2. Award a construction contract to One Workplace for the Menlo Park Community Campus furniture project ([Staff Report #23-199-CC](#))
Determine this action is categorically exempt under CEQA Guidelines §15302 for existing facilities.

J. Public Hearing

- J1. Adopt a resolution to abandon a storm drain easement at 1585 Bay Laurel Dr. ([Staff Report #23-200-CC](#)) ([Presentation](#))
Determine this action is categorically exempt under CEQA Guidelines §15305 Class 5 exemption for minor alterations in land use.

K. Regular Business

- K1. Authorize the city manager to execute an agreement with Team Sheeper, Inc., to operate Burgess

Pool and the future Menlo Park Community Campus aquatics center ([Staff Report #23-206-CC](#)) ([Presentation](#)) Not a CEQA project.

K2. Adopt a resolution to authorize left-turn restrictions from Oak Grove Avenue onto Garwood Way and Merrill Street ([Staff Report #23-203-CC](#)) ([Presentation](#))
Not a CEQA project.

K3. Receive and file report on labor relations and receive public input on upcoming labor negotiations with Service Employees International Union Local 521, Temporary Employees Unit ([Staff Report #23-197-CC](#))
Not a CEQA project.

L. Informational Items

L1. City Council agenda topics: September – October 2023 ([Staff Report #23-207-CC](#))
Not a CEQA project.

L2. Transmittal of city attorney billing ([Staff Report #23-202-CC](#))
Not a CEQA project.

L3. Police department quarterly update – Q2 April 2023 – June 2023 ([Staff Report #23-208-CC](#))
Not a CEQA project.

L4. Update on City's Housing Element Update project status and next steps ([Staff Report #23-204-CC](#))
Not a CEQA project.

L5. City Council fiscal year 2023-24 priorities work plan ([Staff Report #23-205-CC](#))
Not a CEQA project.

M. City Council Initiated Items

M1. Direction on former Sunset magazine campus ([Staff Report #23-209-CC](#))
Not a CEQA project.

M2. Direction on the USGS campus on Middlefield Road ([Staff Report #23-210-CC](#))
Not a CEQA project.

N. City Manager Report's

O. City Councilmember Reports

P. Closed Session

P1. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the American Federation of State, County, and Municipal Employees Local 829 (AFSCME)

Agency designated representatives: City Manager Justin I.C. Murphy, Administrative Services Director Brittany Mello, Assistant City Manager Stephen Stolte, City Attorney Nira Doherty, Special Counsel Charles Sakai
Not a CEQA project.

P2. Conference with real property negotiators pursuant to Government Code §54956.8
Property location: 975 Florence Ln., Unit 8, Menlo Park, CA
City negotiators: Justin I.C. Murphy, Nira Doherty, Deanna Chow
Negotiating parties: Paul Goswamy (Owner)
Under negotiation: Price, terms of payment, property negotiations
Not a CEQA project.

P3. Conference with legal counsel – existing litigation
Paragraph (1) of subdivision (d) of Section 54956.9)
Name of case: Tobias Kunze and Liliana Kunze Briseno v. City of Menlo Park (Case No. 3-CIV-00590)
Not a CEQA project.

P4. Conference with legal counsel – anticipated litigation
(Paragraph (2) of subdivision (d) of Gov. Code § 54956.9)
Significant exposure to litigation: One case
Not a CEQA project.

Q. Adjournment

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

At every special meeting of the commission, members of the public have the right to directly address the commission on any item listed on the agenda at a time designated by the chair, either before or during 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 before, the public hearing.

Any writing that is distributed to a majority of the commission by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available by request by emailing the city clerk at jaherren@menlopark.gov. Persons with disabilities, who require auxiliary aids or services in attending or participating in commission meetings, may call the City Clerk's Office at 650-330-6620.

Agendas are posted in accordance with California Government Code §54954.2(a) or §54956. Members of the public can view electronic agendas and staff reports by accessing the city website at menlopark.gov/agendas and can receive email notification of agendas by subscribing at menlopark.gov/subscribe. Agendas and staff reports may also be obtained by contacting the city clerk at 650-330-6620. (Posted: 9/7/2023)

National Preparedness Month

WHEREAS, the State of California is prone to major disasters and often suffers severe fires during the hot dry summer seasons during which residents may only have minutes before they must evacuate; and

WHEREAS, Menlo Park and the surrounding areas are also subject to major floods and everyone lives in an area with some flood risk; and

WHEREAS, California has the highest risk of earthquakes in the United States, and secondary disasters following earthquakes may include fires, power outages, downed power lines and flooding; and

WHEREAS, when disaster strikes, the entire Bay Area may sustain catastrophic damage to buildings, roads and airports, and bridges and infrastructure may be down for days or weeks; and

WHEREAS, the loss of life and property, and injuries, can be greatly reduced if appropriate preparedness efforts are taken before a major emergency; and

WHEREAS, Menlo Park residents must be prepared in their residences with the peace of mind that they and their families are ready to weather major emergencies; and

WHEREAS, getting to know our neighbors ahead of a disaster and having a plan to work together until outside help can arrive helps to reduce the potential for emotional and physical pain and suffering that compounds when a disaster strikes, and can lessen the burden on our first responders; and

WHEREAS, the time it takes for our City to recover following a significant emergency will be greatly reduced by a well-prepared community; and

WHEREAS, the people of Menlo Park can hasten recovery from a major emergency by being prepared at work and home, and are thus strongly encouraged to make emergency preparedness efforts.

NOW, THEREFORE, BE IT PROCLAIMED that I, Jen Wolosin, Mayor of the City of Menlo Park, on behalf of the City Council and the City, do hereby recognize September as National Preparedness Month and urge our entire community to take tangible actions to prepare for emergencies to make our community safer for all people.

Jen Wolosin, Mayor
September 12, 2023

National Service Dog Month

WHEREAS, service dogs are specially trained to perform specific tasks for people with disabilities as defined by the Americans with Disabilities Act, including but not limited to retrieving objects, assisting with balance, giving seizure or diabetic or other medical alerts, and assisting those with psychiatric disabilities or visual impairments; and

WHEREAS, service dogs also serve our nation's wounded warriors suffering from conditions such as post-traumatic stress and traumatic brain injury, and provide companionship to their humans while inspiring confidence that allows their humans to better manage disabilities and live fuller lives; and

WHEREAS, service dogs, service dog trainers, and service organizations empower people with disabilities to lead lives with greater independence by providing best-in-class training, ongoing follow-up services, and a deeply committed community of support; and

WHEREAS, before being paired with a human, each service dog requires months of training and practice, and before dogs are placed as potential companions, they must be raised in an environment that is conducive to learning; and

WHEREAS, across America, hundreds of canines are raised by volunteer puppy raisers each year who agree to provide a safe environment, attend classes, teach manners and basic commands, provide for food, veterinary expenses, and transportation, and agree to give up the puppy after an 18-month time period; and

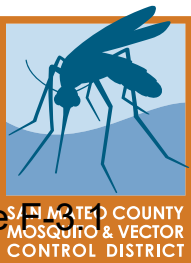
WHEREAS, National Service Dog Month aims to highlight the benefits of service dogs and the laws protecting them, as well as the invaluable impact service dogs have on the lives of people living with disabilities; and

NOW THEREFORE, BE IT RESOLVED that I, Jen Wolosin, Mayor of the City of Menlo Park, on behalf of the City Council and the City, do hereby recognize September as National Service Dog Month, celebrate the extraordinary work of service dogs and those who work with service dogs across the world, and encourage all to join us in honoring these special heroes who dedicate their lives to help their human companions.

Jen Wolosin, Mayor
September 12, 2023

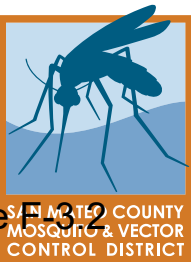


San Mateo County Mosquito and Vector Control District



Who We Are

- Taxpayer-funded special district
- State-certified vector control technicians
- Mission - To safeguard the health and comfort of the people of San Mateo County through a planned program to monitor and reduce mosquitoes and other vectors.



Our Work

(Integrated Pest Management)



Mosquito control



Mosquitofish



Insect and tick ID



Rodent inspections



Yellowjacket control



Community education

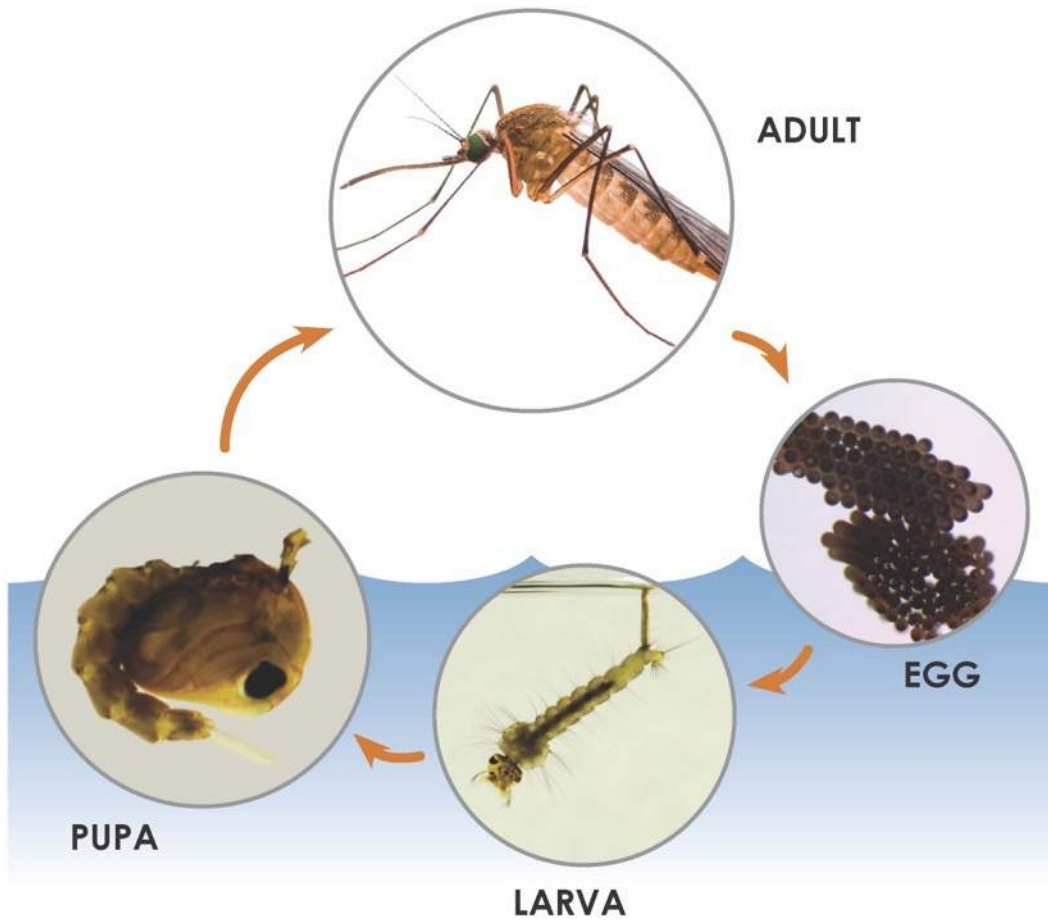


Disease surveillance

**There is no charge for individual services;
services are paid for by tax revenues**



Mosquito Control

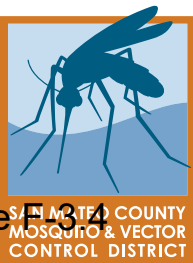


- Mosquitoes lay eggs on or near standing water; larvae and pupae develop in the water
- West Nile virus is a seasonal concern; resident can report dead birds and should use insect repellent when outdoors in the evenings and early mornings

**REPORT
DEAD
BIRDS**



westnile.ca.gov
1-877-WNV-BIRD (1-877-968-2473)



**ONE MOSQUITO
IS ONE TOO MANY**
Report even just **ONE** mosquito.



650-344-8592
www.smcmvcd.org



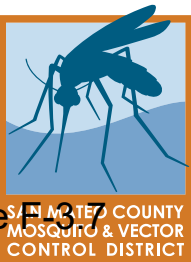
Mosquitofish

- Natural predators of mosquito larvae
- Can be placed in non-natural water, such as unused (green) swimming pools, fountains, fishponds



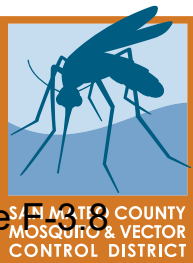
Insect and Tick Identification

- Scientific staff have extensive identification expertise
- Tick collection, identification, and testing for surveillance purposes
- Advice for mites, cockroaches, and other insects



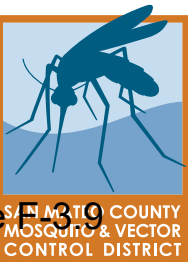
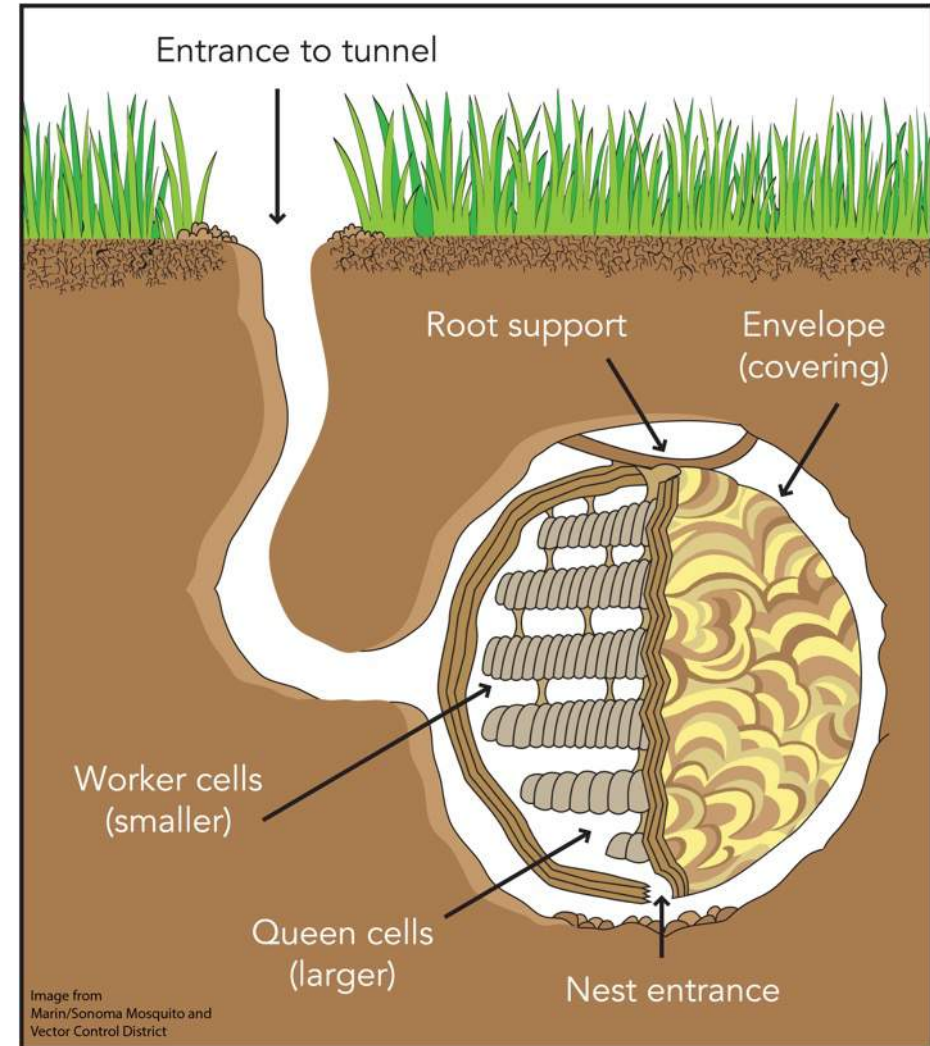
Rodent inspections

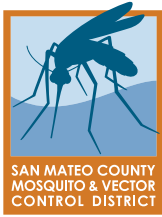
- Comprehensive property inspection
- Identification of rodent attractants and entry points
- Custom inspection report, information, and snap traps
- Advice on best methods for exclusion work, tips on hiring a pest control company or for DIY



Yellowjacket control

- Yellowjackets seek sugar and protein – like at picnics and barbeques
- They are aggressive, sting, and can cause severe allergic reactions
- District staff can treat/remove ground-nesting yellowjackets in cases where the location of the nest is known





Menlo Park 2022 Snapshot



196

Service Requests

Residents can submit service requests via phone or online at smvmvcd.org.



7

Mosquito Service Requests

Technicians collect samples and search the area to find and treat mosquito sources.



96

Yellowjacket Service Requests

Technicians can treat nests if the resident knows where the nest is located.



53

Rodent Service Requests

Technicians conduct a comprehensive exterior inspection and provide a detailed report.



1,116

Mosquito Sources

Known locations with standing water that have potential to breed mosquitoes.



3,086

Site Inspections

Mosquito sources are inspected multiple times each year to detect mosquito breeding.



110

Larval Samples

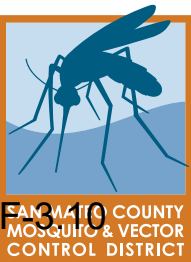
Technicians collect samples for species identification to determine optimal treatment.



813

Site Treatments

Control methods include biorational and chemical products to treat actively breeding sources.



You may recall *Aedes aegypti*...



- Invasive *Aedes aegypti* mosquitoes were found in Menlo Park in 2013
- Through collaboration with residents, this species was eradicated in 2015
- We continue extra surveillance and preventive treatment in the area



Mosquito Control



Residents can play a **key role** in reducing water where mosquitoes can breed by

dumping water once a week

MOSQUITOES ONLY
NEED A TINY BIT OF
WATER TO GROW –
EVEN A BOTTLE
CAP CAN GROW
MOSQUITOES!



Questions? Don't be shy!

www.smcmvcd.org

650-344-8592





STAFF REPORT

City Council

Meeting Date: 9/12/2023
Staff Report Number: 23-198-CC

Advisory Body Vacancies: Consider applicant and make an appointment to fill a vacancy on the Finance and Audit Commission

Recommendation

Staff recommends the City Council consider applicant for an appointment to a vacant seat on Finance and Audit Commission (FAC).

Policy Issues

City Council Policy CC-23-004 (Attachment A) establishes the policies, procedures, roles and responsibilities for the City's appointed advisory bodies, including the manner in which members are selected.

Background

The FAC has an unexpected vacancy which should be filled before the annual recruitment in April 2024.

This recruitment involved a four-week period of advertisements and announcements from Aug. 8 – Sept. 1.

The city clerk's office will provide onboarding and orientation for the new members. This includes the oath of office, commissioner handbook, introduction of advisory body liaison staff, and Brown Act training.

The city clerk's office regularly reviews all agendas and minutes, tracks attendance (Attachment B) and serves as the principal staff contact for all advisory body members. The City has designated staff to act as a subject matter expert and serves as a liaison between the advisory body and the City Council.

Analysis

Pursuant to City Council Policy CC-23-004, members must be residents of the City of Menlo Park and serve for the designated term at the time of appointment.

Residency for the applicant has been verified by the city clerk's office. In addition, the City Council's policy states the selection/appointment process by the City Council shall be conducted open to the public. Note, the application will be provided to the City Council under separate cover and are also available for public viewing at the city clerk's office during regular business hours or by request (Attachment C). The city clerk will ask each City Councilmember for their nominations for the vacancy. The candidate that receives a majority of nominations will be appointed.

Attachment D lists the applicant and their residency District and Attachment E lists currently seated members and their residency District. The appointment can be made by the City Council at this meeting.

The City received the following application:

Finance and Audit Commission – one vacancy:

- Susan Prohaska – District 2

Impact on City Resources

Staff support for advisory bodies and funds for recruitment advertising are provided in the annual budget.

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 Policy CC-23-004
- B. Hyperlink – March 28 City Council attendance Staff Report #23-080-CC:
menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2023-meetings/agendas/20230328-city-council-agenda-packet.pdf#page=96
- C. Application
- D. Application by District
- E. Current advisory body members by District

Report prepared by:

Judi A. Herren, Assistant to the City Manager/ City Clerk

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-23-004
 Adopted June 27, 2023
 Resolution No. 6840



Purpose
To define policies and procedures and roles and responsibilities for Menlo Park appointed commissions and committees.
Authority
Upon its original adoption, this policy replaced the document known as “Organization of Advisory Commissions of the City of Menlo Park.”
Background
<p>The City of Menlo Park currently has seven active Commissions. The active advisory bodies are: Complete Streets Commission, Environmental Quality Commission, Finance and Audit Commission, Housing Commission, Library Commission, Parks and Recreation Commission, and Planning Commission. Those not specified in the City Code are established by City Council ordinance or resolution. Most of these advisory bodies are established in accordance with Resolution No. 2801 and its amendments. Within specific areas of responsibility, each advisory body has a primary role of advising the City Council on policy matters or reviewing specific issues and carrying out assignments as directed by the City Council or prescribed by law.</p> <p>Six of the seven commissions listed above are advisory in nature. The Planning Commission is both advisory and regulatory and organized according to the City Code (Ch. 2.12) and State statute (Government Code §65100 et seq., §65300-65401).</p> <p>The City has an adopted Anti-Harassment and Non-Discrimination Policy (CC-21-0022), and a Travel, Meal, and Lodging Policy (CC-19-002), which are also applicable to all advisory bodies.</p>
Policies and Procedures
<p><u>Relationship to City Council, staff and media</u></p> <ul style="list-style-type: none"> • Upon referral by the City Council, the commission/committee shall study referred matters and return their recommendations and advise to the City Council. With each such referral, the City Council may authorize the City staff to provide certain designated services to aid in the study. • Upon its own initiative, the commission/committee shall identify and raise issues to the City Council’s attention and from time to time explore pertinent matters and make recommendations to the City Council. • At a request of a member of the public, the commission/committee may consider appeals from City actions or inactions in pertinent areas and, if deemed appropriate, report and make recommendations to the City Council. • Each commission/committee is required to develop an annual work plan which will be the foundation for the work performed by the advisory body in support of City Council annual work plan. The plan, once finalized by a majority of the commission/committee, will be formally presented to the City Council for direction and approval no later than September 30 of each year and then reported out on by a representative of the advisory body at a regularly scheduled City Council meeting at least annually, but recommended twice a year. The proposed work plan must align with the City Council’s adopted work plan. When modified, the work plan must be taken to the City Council for approval. The Planning Commission is exempt from this requirement as its functions are governed by the Menlo Park municipal code (Chapter 2.12) and State law (Government Code §65100 et seq., §65300-65401). • Commissions and committees shall not become involved in the administrative or operational matters of City departments. Members may not direct staff to initiate major programs, conduct large studies or establish department policy. City staff assigned to furnish staff services shall be available to provide general staff assistance, such as preparation of agenda/notice materials and minutes, general review of department programs and activities, and to perform limited studies, program reviews, and other services of a general staff nature. Commissions/Committees may not establish department work programs or determine department program priorities. The responsibility for setting policy and allocating scarce City resources rests with the City’s duly elected representatives, the City Council. • Additional or other staff support may be provided upon a formal request to the City Council. • The staff liaison shall act as the commission/committee’s lead representative to the media concerning matters before the commission/committee. Commission/Committee members should refer all media inquiries to their respective liaisons for response. Personal opinions and comments may be expressed so long as the commission/committee member clarifies that their statements do not represent the position of the City Council. • Commission/Committee members will have mandatory training every two years regarding the Brown Act and

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-23-004

Adopted June 27, 2023

Resolution No. 6840

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parliamentary procedures, anti-harassment training, ethics training, and other training required by the City Council or State Law. The commission/committee members may have the opportunity for additional training, such as training for chair and vice chair. Failure to comply with the mandatory training will be reported to the City Council and may result in replacement of the member by the City Council.

- Requests from commission/committee member(s) determined by the staff liaison to take one hour or more of staff time to complete, must be directed by the City Council.

Role of City Council commission/committee liaison

City Councilmembers are assigned to serve in a liaison capacity with one or more city commission/committee. The purpose of the liaison assignment is to facilitate communication between the City Council and the advisory body. The liaison also helps to increase the City Council's familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, City Councilmembers may elect to attend commission/committee meetings periodically to observe the activities of the advisory body or simply maintain communication with the commission/committee chair on a regular basis.

City Councilmembers should be sensitive to the fact that they are not participating members of the commission/committee, but are there rather to create a linkage between the City Council and commission/committee. In interacting with commissions/committee, City Councilmembers are to reflect the views of the City Council as a body. Being a commission/committee liaison bestows no special right with respect to commission/committee business.

Typically, assignments to commission/committee liaison positions are made at the beginning of a City Council term in December. The Mayor will ask City Councilmembers which liaison assignments they desire and will submit recommendations to the full City Council regarding the various committees, boards, and commissions which City Councilmembers will represent as a liaison. In the rare instance where more than one City Councilmember wishes to be the appointed liaison to a particular commission, a vote of the City Council will be taken to confirm appointments.

City Staff Liaison

The City has designated staff to act as a liaison between the commission/committee and the City Council. The City shall provide staff services to the commission/committee which will include:

- Developing a rapport with the Chair and commission/committee members
- Providing a schedule of meetings to the city clerk's office and commission/committee members, arranging meeting locations, maintaining the minutes and other public records of the meeting, and preparing and distributing appropriate information related to the meeting agenda.
- Advising the commission/committee on directions and priorities of the City Council.
- Informing the commission/committee of events, activities, policies, programs, etc. occurring within the scope of the commission/committee's function.
- Ensuring the city clerk is informed of all vacancies, expired terms, changes in offices, or any other changes to the commission/committee.
- Providing information to the appropriate appointed official including reports, actions, and recommendations of the committee/commission and notifying them of noncompliance by the commission/committee or chair with City policies.
- Ensuring that agenda items approved by the commission/committee are brought forth in a timely manner taking into consideration staff capacity, City Council priorities, the commission/committee work plan, and other practical matters such as the expense to conduct research or prepare studies, provided appropriate public notification, and otherwise properly prepare the item for commission/committee consideration.
- Take action minutes; upon agreement of the commission, this task may be performed by one of the members (staff is still responsible for the accuracy and formatting of the minutes)
- Maintain a minute book with signed minutes

Recommendations, requests and reports

As needed, near the beginning of City Council meetings, there will be an item called "Advisory Body Reports." At this time, commissions/committees may present recommendations or status reports and may request direction and support from the City Council. Such requests shall be communicated to the staff liaison in advance, including any written materials, so that they may be listed on the agenda and distributed with the agenda packet. The materials being

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-23-004

Adopted June 27, 2023

Resolution No. 6840

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provided to the City Council must be approved by a majority of the commission/committee at a commission/committee meeting before submittal to the City Council. The City Council will receive such reports and recommendations and, after suitable study and discussion, respond or give direction.

City Council referrals

The city clerk shall transmit to the designated staff liaison all referrals and requests from the City Council for advice and recommendations. The commissions/committees shall expeditiously consider and act on all referrals and requests made by the City Council and shall submit reports and recommendations to the City Council on these assignments.

Public appearance of commission/committee members

When a commission/committee member appears in a non-official, non-representative capacity before the public, for example, at a City Council meeting, the member shall indicate that they are speaking only as an individual. This also applies when interacting with the media and on social media. If the commission/committee member appears as the representative of an applicant or a member of the public, the Political Reform Act may govern this appearance. In addition, in certain circumstances, due process considerations might apply to make a commission/committee member's appearance inappropriate. Conversely, when a member who is present at a City Council meeting is asked to address the City Council on a matter, the member should represent the viewpoint of the particular commission/committee as a whole (not a personal opinion).

Disbanding of advisory body

Upon recommendation by the Chair or appropriate staff, any standing or special advisory body, established by the City Council and whose members were appointed by the City Council, may be declared disbanded due to lack of business, by majority vote of the City Council.

Meetings and officers

1. *Agendas/notices/minutes*

- All meetings shall be open and public and shall conduct business through published agendas, public notices and minutes and follow all of the Brown Act provisions governing public meetings. Special, canceled and adjourned meetings may be called when needed, subject to the Brown Act provisions.
- Support staff for each commission/committee shall be responsible for properly noticing and posting all regular, special, canceled and adjourned meetings. Copies of all meeting agendas, notices and minutes shall be provided to the City Council, city manager, city attorney, city clerk and other appropriate staff, as requested.
- Original agendas and minutes shall be filed and maintained by support staff in accordance with the City's adopted records retention schedule.
- The official record of the commissions/committees will be preserved by preparation of action minutes.

2. *Conduct and parliamentary procedures*

- Unless otherwise specified by State law or City regulations, conduct of all meetings shall generally follow Robert's Rules of Order.
- A majority of commission/committee members shall constitute a quorum and a quorum must be seated before official action is taken.
- The chair of each commission/committee shall preside at all meetings and the vice chair shall assume the duties of the chair when the chair is absent.
- The role of the commission/committee chair (according to Roberts Rules of Order): To open the session at the time at which the assembly is to meet, by taking the chair and calling the members to order; to announce the business before the assembly in the order in which it is to be acted upon; to recognize members entitled to the floor; to state and put to vote all questions which are regularly moved, or necessarily arise in the course of the proceedings, and to announce the result of the vote; to protect the assembly from annoyance from evidently frivolous or dilatory motions by refusing to recognize them; to assist in the expediting of business in every compatible with the rights of the members, as by allowing brief remarks when undebatable motions are pending, if they think it advisable; to restrain the members when engaged in debate, within the rules of order, to enforce on all occasions the observance of order and decorum among the members, deciding all questions of order (subject to an appeal to the assembly by any two members) unless when in doubt he prefers to submit the question for the decision of the assembly; to inform the assembly when necessary, or when referred to for the purpose, on a point of order to practice pertinent to pending business; to authenticate by their signature, when necessary, all the acts, orders, and proceedings of the assembly declaring it will and in all things obeying its commands.

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3. *Lack of a quorum*

- When a lack of a quorum exists at the start time of a meeting, those present will wait 15 minutes for additional members to arrive. If after 15 minutes a quorum is still not present, the meeting will be adjourned by the staff liaison due to lack of a quorum. Once the meeting is adjourned it cannot be reconvened.
- The public is not allowed to address those commissioners present during the 15 minutes the commission/committee is waiting for additional members to arrive.
- Staff can make announcements to the members during this time but must follow up with an email to all members of the body conveying the same information.
- All other items shall not be discussed with the members present as it is best to make the report when there is a quorum present.

4. *Meeting locations and dates*

- Meetings shall be held in designated City facilities, as noticed.
- All commissions/committees with the exception of the Planning Commission, and Finance and Audit Commission shall conduct regular meetings once a month. Special meetings may also be scheduled as required by the commission/committee. The Planning Commission shall hold regular meetings twice a month and the Finance and Audit Commission shall hold quarterly meetings.
- Monthly regular meetings shall have a fixed date and time established by the commission/committee. Changes to the established regular dates and times are subject to the approval of the City Council. An exception to this rule would include any changes necessitated to fill a temporary need in order for the commission/committee to conduct its meeting in a most efficient and effective way as long as proper and adequate notification is provided to the City Council and made available to the public.

The schedule of Commission meetings is as follows:

- Complete Streets Commission – Every second Wednesday at 6:30 p.m.
- Environmental Quality Commission – Every third Wednesday at 6 p.m.
- Finance and Audit Commission – Third Thursday of every quarter at 5:30 p.m.,
- Housing Commission – Every first Wednesday at 6:30 p.m.
- Library Commission – Every third Monday at 6:30 p.m.
- Parks and Recreation Commission – Every fourth Wednesday at 6:30 p.m.
- Planning Commission – Twice a month on a Monday at 7 p.m.

Each commission/committee may establish other operational policies subject to the approval of the City Council. Any changes to the established policies and procedures shall be subject to the approval of the City Council.

5. *Off-premises meeting participation*

While technology allows commission/committee members to participate in meetings from a location other than the meeting location (referred to as “off-premises”), off-premises participation is discouraged given the logistics required to ensure compliance with the Brown Act and experience with technological failures disrupting the meeting. In the event that a commission/committee member believes that their participation is essential to a meeting, the following shall apply:

- Any commission/committee member intending to participate from an off-premise location shall inform the staff liaison at least two weeks in advance of the meeting.
- The off-premise location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at the off-premise location.
- The off-premise location must be accessible to the public and be ADA compliant.
- The commission/committee member participating at a duly noticed off-premises location does not count toward the quorum necessary to convene a meeting of the commission/committee.
- For any one meeting, no more than one commission/committee member may participate from an off-premise location.
- All votes must be by roll call.

6. *Selection of chair and vice chair*

- The chair and vice chair shall be selected in May of each year by a majority of the members and shall serve for one year or until their successors are selected.
- Each commission/committee shall annually rotate its chair and vice chair.

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G. Memberships

Appointments/Oaths

- The City Council is the appointing body for all commissions/committees. All members serve at the pleasure of the City Council for designated terms.
- All appointments and reappointments shall be made at a regularly scheduled City Council meeting, and require an affirmative vote of not less than a majority of the City Council present.
- Before taking office, all members must complete an Oath of Allegiance required by Article XX, §3, of the Constitution of the State of California. All oaths are administered by the city clerk or their designee.
- Appointments made during the middle of the term are for the unexpired portion of that term.

Application and selection process

- The application process begins when a vacancy occurs due to term expiration, resignation, removal or death of a member.
- The application period will normally run for a period of four weeks from the date the vacancy occurs. If there is more than one concurrent vacancy in a Commission, the application period may be extended. Applications are available from the city clerk's office and on the City's website.
- The city clerk shall notify members whose terms are about to expire whether or not they would be eligible for reappointment. If reappointment is sought, an updated application will be required.
- Applicants are required to complete and return the application form for each commission/committee they desire to serve on, along with any additional information they would like to transmit, by the established deadline. Applications sent by email are accepted.
- After the deadline of receipt of applications, the city clerk shall schedule the matter at the next available regular City Council meeting. All applications received will be submitted and made a part of the City Council agenda packet for their review and consideration. If there are no applications received by the deadline, the city clerk will extend the application period for an indefinite period of time until sufficient applications are received.
- Upon review of the applications received, the City Council reserves the right to schedule or waive interviews, or to extend the application process in the event insufficient applications are received. In either case, the city clerk will provide notification to the applicants of the decision of the City Council.
- If an interview is requested, the date and time will be designated by the City Council. Interviews are open to the public.
- The selection/appointment process by the City Council shall be conducted at a City Council meeting. The city clerk will ask each City Councilmember for their nominations; the number of nominations is limited to the number of vacancies. The candidate that receives a majority of nominations will be appointed. If there is a tie, multiple rounds of voting will occur.
- Following a City Council appointment, the city clerk shall notify successful and unsuccessful applicants accordingly, in writing. Appointees will receive copies of the City's Non-Discrimination and Sexual Harassment policies, and disclosure statements for those members who are required to file under State law as designated in the City's Conflict of Interest Code. Copies of the notification will also be distributed to support staff and the commission/committee chair.
- An orientation will be scheduled by the city clerk following an appointment (but before taking office) and a copy of this policy document will be provided at that time.

Attendance

- A compilation of attendance will be submitted to the City Council at least annually listing absences for all commissions/committee members.
- Absences, which result in attendance at less than two-thirds of their meetings during the calendar year, will be reported to the City Council and may result in replacement of the member by the City Council.
- Any member who feels that unique circumstances have led to numerous absences can appeal directly to the City Council for a waiver of this policy or to obtain a leave of absence.
- While it is expected that members be present at all meetings, the chair and staff liaison should be notified if a member knows in advance that they will be absent.
- When reviewing commissioners for reappointment, overall attendance at full commission meetings will be given significant consideration.

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Compensation

- Members shall serve without compensation (unless specifically provided) for their services, provided, however, members shall receive reimbursement for necessary travel expenses and other expenses incurred on official duty when such expenditures have been authorized by the City Council (See Policy CC-19-002).

Conflict of interest and disclosure requirements

- A Conflict of Interest Code has been updated and adopted by the City pursuant to Government Code §87300 et seq. Copies of the conflict of interest code are filed with the city clerk. Pursuant to the adopted Conflict of Interest Code, members serving on the Complete Streets Commission, Housing Commission, and Planning Commission are required to file a Statement of Economic Interest with the city clerk to disclose personal interest in investments, real property and income. This is done within 30 days of appointment and annually thereafter. A statement is also required within 30 days after leaving office.
- If a public official has a conflict of interest, the Political Reform Act may require the official to disqualify themselves from making or participating in a governmental decision, or using their official position to influence a governmental decision. Questions in this regard may be directed to the city attorney.

Qualifications, compositions, number

- In most cases, members shall be residents of the City of Menlo Park and at least 18 years of age.
- Current members of any other City commission/committee are disqualified for membership, unless the regulations for that advisory body permit concurrent membership. Commission/Committee members are strongly advised to serve out the entirety of the term of their current appointment before seeking appointment on another commission/committee.
- Commission/Committee members shall be permitted to retain membership while seeking any elective office. However, members shall not use the meetings, functions or activities of such bodies for purposes of campaigning for elective office.
- There shall be seven (7) members on each commission/committee.

Reappointments, resignations, removals

- Incumbents seeking a reappointment are required to complete and file an application with the city clerk by the application deadline. No person shall be reappointed to a commission/committee who has served on that same body for two consecutive terms; unless a period of one year has lapsed since the returning member last served on that commission/committee (the one-year period is flexible subject to City Council's discretion).
- Resignations must be submitted in writing to the city clerk, who will distribute copies to City Council and appropriate staff.
- The City Council may remove a member by a majority vote of the City Council without cause, notice or hearing.

Term of office

- Unless specified otherwise, the term of office for all commission/committees shall be four (4) years unless a resignation or a removal has taken place.
- If a person is appointed to fill an unexpired term and serves less than two years, that time will not be considered a full term. However, if a person is appointed to fill an unexpired term and serves two years or more, that time will be considered a full term.
- Terms are staggered to be overlapping four-year terms, so that all terms do not expire in any one year.
- If a member resigns before the end of their term, a replacement serves out the remainder of that term.

Vacancies

- Vacancies are created due to term expirations, resignations, removals or death.
- Vacancies are posted by the city clerk in the City Council Chambers bulletin board and on the city website.
- Whenever an unscheduled vacancy occurs in any commission/committee, a special vacancy notice shall be posted within 20 days after the vacancy occurs. Appointment shall not be made for at least 10 working days after posting of the notice (Government Code §54974).
- On or before December 31 of each year, an appointment list of all regular advisory commissions/committees of the City Council shall be prepared by the city clerk and posted in the City Council Chambers bulletin board and on the City's website. This list is also available to the public. (Government Code §54972, Maddy Act).

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Roles and Responsibilities

Complete Streets Commission

The Complete Streets Commission is charged primarily with advising the City Council on realizing the City's adopted goals for complete streets, vision zero, climate action plan, and provide input on major land use and development projects as it relates to transportation. The Complete Streets Commission's responsibilities include:

- To advance the goals of the city's newly adopted climate action plan by making alternatives to driving safer and more attractive
- Advise City Council on the implementation of the transportation master plan.
- Continue to advocate for and advise the City Council on planning and installing pedestrian and bicycle rail crossing and safe cycling/pedestrian infrastructure.
- Continue to support City Council in ongoing initiatives to improve access to Downtown and support downtown businesses.
- Continue to support the implementation of the Safe Routes to School strategy and advocate for community engagement, program continuity and engineering implementation.
- Continue to support City Council's role as a stakeholder with regard to regional multi-modal and transportation demand management programs projects to increase

Environmental Quality Commission

The Environmental Quality Commission is committed to helping the City of Menlo Park to be a leading sustainable city that inspires institutions and individuals and that is well positioned to manage present and future environmental impacts, including the grave threat of climate change. The Environmental Quality Commission is charged primarily with advising the City Council on matters involving climate change, environmental protection, and sustainability.. Specific focus areas include:

- Climate Action Plan - Advise and recommend on the implementation of the climate action plan.
- Climate Resilience and Adaptation - Ensure that our most vulnerable communities have a voice in policies and programs to protect their communities from environmental impacts.
- Urban Canopy - Leverage best practices to advise/recommend on the preservation of heritage trees, city trees and expansion of the urban canopy; and make determinations on appeals of heritage tree removal permits.
- Green and Sustainable Initiatives – Support sustainability initiatives, as needs arise, which may include city-led events, habitat protection, healthy ecology, environmental health protection, healthy air, surface water runoff quality, water conservation and waste reduction.

Finance and Audit Commission

The Finance and Audit Commission is charged primarily to support delivery of timely, clear and comprehensive reporting of the City's fiscal status to the community at large. Specific focus areas include:

- Review the process for periodic financial reporting to the City Council and the public, as needed
- Review financial audit and annual financial report with the City's external auditors
- Review of the resolution of prior year audit findings
- Review of the auditor selection process and scope, as needed

Housing Commission

The Housing Commission is charged primarily with advising the City Council on housing matters including housing supply and housing related problems. Specific focus areas include:

- Community attitudes about housing (range, distribution, racial, social-economic problems)
- Programs for evaluating, maintaining, and upgrading the distribution and quality of housing stock in the City
- Planning, implementing and evaluating City programs under the Housing and Community Development Act of 1974
- Review and recommend to the City Council regarding the Below Market Rate (BMR) program
- Initiate, review and recommend on housing policies and programs for the City
- Review and recommend on housing related impacts for environmental impact reports
- Review and recommend on State and regional housing issues
- Review and recommend on the Housing Element of the General Plan

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Library Commission

The Library Commission is charged primarily with advising the City Council on matters related to the maintenance and operation of the City’s libraries and library systems. Specific focus areas include:

- The scope and degree of library activities
- Maintenance and protection of City libraries
- Evaluation and improvement of library service
- Acquisition of library materials
- Coordination with other library systems and long range planning
- Literacy and ESL programs

Parks and Recreation Commission

The Parks and Recreation Commission is charged primarily with advising the City Council on matters related to City programs and facilities dedicated to recreation. Specific focus areas include:

- Those programs and facilities established primarily for the participation of and/or use by residents of the City, including adequacy and maintenance of such facilities as parks and playgrounds, recreation buildings, facilities and equipment
- Adequacy, operation and staffing of recreation programs
- Modification of existing programs and facilities to meet developing community needs
- Long range planning and regional coordination concerning park and recreational facilities

Planning Commission

The Planning Commission is organized according to State Statute.

- The Planning Commission reviews development proposals on public and private lands for compliance with the General Plan and Zoning Ordinance.
- The Commission reviews all development proposals requiring a use permit, architectural control, variance, minor subdivision and environmental review associated with these projects. The Commission is the final decision-making body for these applications, unless appealed to the City Council.
- The Commission serves as a recommending body to the City Council for major subdivisions, rezoning’s, conditional development permits, Zoning Ordinance amendments, General Plan amendments and the environmental reviews and Below Market Rate (BMR) Housing Agreements associated with those projects.
- The Commission works on special projects as assigned by the City Council.

Special Advisory Bodies

The City Council has the authority to create standing committees, task forces or subcommittees for the City, and from time to time, the City Council may appoint members to these groups. The number of persons and the individual appointee serving on each group may be changed at any time by the City Council. There are no designated terms for members of these groups; members are appointed by and serve at the pleasure of the City Council.

Any requests of city commissions or committees to create such ad hoc advisory bodies shall be submitted in writing to the city clerk for City Council consideration and approval.

Procedure history

Action	Date	Notes
Procedure adoption	1991	Resolution No. 3261
Procedure adoption	2001	
Procedure adoption	2011	
Procedure adoption	2013	Resolution No. 6169
Procedure adoption	2017	Resolution No. 6377
Procedure adoption	6/8/2021	Resolution No. 6631

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Procedure adoption	3/1/2022	Resolution No. 6706
Procedure adoption	3/8/2022	Resolution No. 6718
Procedure adoption	9/20/2022	Resolution No. 6776
Procedure adoption	1/10/2023	Resolution No. 6803
Procedure adoption	6/27/2023	Resolution No. 6840



Advisory body application

Submitted on 20 August 2023, 8:21PM
Receipt number 84
Related form version 8

Applicant's full name (first and last) Susan Prohaska
Desired advisory body (check all that apply) Finance and Audit Committee
Advisory body preference Finance and Audit Committee

Applicant interest, experience and qualifications

Education have a Bachelors degree from UC Berkeley a Masters degree from Stanford and a PhD from Stanford in immunology have also taken several certificate programs at the Stanford Graduate School of Business in entrepreneurship and leadership

Civic affiliations and community activities, including service on other advisory bodies, commissions or committees am volunteering with the 350 Silicon Valley Menlo Park Climate Team and other area groups supporting climate action as well as to restore monarch butterfly and burrowing owl habitat at Shoreline Park in MV previously served for several years as president of my condominium homeowners association Board of Directors and currently serve on the non profit Board of Directors of a local dance studio and company (Zohar Dance in Palo Alto) am also VP of Membership for a local Toastmaster's club

Describe your understanding of the responsibilities of the advisory body that you are applying for and how your personal community or professional experience relate to these responsibilities The responsibilities of the Finance and Audit committee are to Review financial reporting process Review financial audit findings Review auditor selection process Make policy recommendations to the City Council While do not have a finance background my education professional entrepreneurial and volunteer experiences have provided me a management and leadership skill set that will allow me to fulfill the responsibilities required

Describe why you want to serve on this advisory body and what you hope to accomplish as a member am interested in getting involved in and contributing to my community and thus have applied previously to serve on Menlo Park Finance and Audit and Environmental Quality Commissions believe my qualifications interests and collective experience will serve the committee well in addition serving on this committee will allow me to learn more about the priorities and processes of Menlo Park City Council and also enable me to further develop community relationships and leadership skills

Contact and residency information

Email [REDACTED]

Cell phone [REDACTED]

Home phone

Business phone

Address 1	[REDACTED]
Address 2	
City	Menlo Park
State	CA
Zip code	94025
Business address	
Number of years as a Menlo Park resident	2
Current City Council district	District 2
How did you hear about this opportunity (check all that apply)	Email
If I am appointed, the City is authorized to post the following information on the city website (please select at least one):	<p>Cellphone: No</p> <p>Business phone: No</p> <p>Home phone: No</p> <p>Email: Yes</p>

Application acknowledgement and submittal

I certify that the answers given herein are true and complete to the best of my knowledge. agree

Signature

Susan Prohaska

[Link to signature](#)

Table 1: Finance and Audit Commission applicants by District		
Advisory body	Applicant	District
Finance and Audit Commission	Susan Prohaska	2

Table 1: Finance and Audit Commission by District			
Member	Last appointment date	Expiration date	District
Lynne Bramlett	5/23/2023	4/30/2025	3
Jayanta Dey	5/23/2023	4/30/2025	1
Susannah Hill	5/10/2022	4/30/2024	3
Jeff Leroux	4/25/2023	4/30/2025	2
Matt Normington	5/25/2021	4/30/2023	3
Carol Wong	5/25/2021	4/25/2023	4



STAFF REPORT

City Council Meeting Date: 9/12/2023
Staff Report Number: 23-201-CC

Study Session: Provide direction on restarting the Neighborhood Traffic Management Program

Recommendation

Staff requests direction from the City Council on restarting, modifying or replacing the neighborhood traffic management program (NTMP), which could include the following options:

- Restarting the program as it existed before the COVID-19 pandemic
- Streamlining and reframing the program around speed management and slow streets
- Batching NTMP requests to more efficiently complete these projects

Policy Issues

This project is consistent with policies stated in the 2016 General Plan Circulation Element including CIRC-2.5 (Neighborhood Streets), which seeks to manage speeds and cut through traffic; CIRC-2.6 (Local Streets as Alternate Routes) that seeks to discourage local streets as alternatives to state highways; and Program CIRC-2.A (Manage Neighborhood Traffic), which seeks to establish design guidelines by roadway classification. Overall, the Circulation Element policies seek to maintain a safe, efficient, attractive, user-friendly circulation system that promotes a healthy, safe and active community and quality of life throughout Menlo Park.

Background

The City Council adopted the NTMP in November 2004. Attachment A provides a hyperlink to the document. The NTMP was designed to provide a consistent, citywide policy for neighborhood traffic management to ensure equitable and effective solutions. It was developed after traffic calming devices were installed without sufficient community support, which required significant modifications and removal after construction was completed.

The NTMP has the following primary goals and objectives:

Goals:

- To correct demonstrably unsafe conditions, with priority to locations with higher collisions and higher measured speeds
- To provide residents of residential streets with protection and relief from disproportionate traffic increases

Objectives:

- Provide a format for resident involvement in identifying traffic concerns and objectives, as well as the traffic management measures that best suit their neighborhood needs
- Provide a process that includes clear opportunities for members of the affected community to either

support or change the course of action with regard to the recommended plan, as well as temporary and permanent implementation of features

- Discourage cut-through traffic within residential neighborhoods

Requests for the NTMP must satisfy at least one of the following criteria:

- The 85th percentile speed must be in excess of the posted speed limit by more than 5 mph. The 85th percentile speed is the speed at, or below, which 85% of motorists travel.
- The street is primarily residential in nature, is classified as a local street and has an average daily vehicular traffic volume that exceeds 1,500 per day, or, is primarily residential in nature, is classified as a collector street and has an average daily vehicular traffic volume that exceeds 3,000. Attachment B provides a map and table of street classifications from the General Plan Circulation Element.
- Collision data during the last available 36 months demonstrates that the numbers of collisions are above the citywide average for a similar type of street/intersection.

The City's current NTMP process begins with a staff review of the request to confirm that the corridor is appropriate for the NTMP process. Once staff confirm that the NTMP is appropriate, the process includes data collection on speeds and volumes, resident-led gathering of petitions of support for potential improvements, design of potential improvements, piloting the improvements (if possible), additional data collection, surveys of affected residents to confirm support and, if there is resident support, implementation of the final approved design.

Attachment C provides a flowchart for a typical NTMP process. As shown, a minimum of 60% support from the affected neighborhood is required to advance the request, and a minimum 51% support of the improvements is required for permanent installation. These high thresholds were used to ensure there is sufficient support of the improvements before installation, to avoid costly rework or removal after implementation. However, they create a lengthy and time-intensive process for residents and staff processing the requests. Staff has observed that requests are most likely to be successful with the current program in areas where a high proportion of residents live in single-family homes, as corridors with multi-family units have been traditionally harder to engage in the survey and voting processes. Further, staff has also observed that, because the current process is so time intensive, neighborhoods without a vocal and active champion working to gather support and signatures specifically for the desired traffic calming devices are often unsuccessful in navigating the program. Both of these observations raise concerns about the program's equity and accessibility to all residents and neighborhoods.

Current NTMP status

In 2020, the City Council paused the NTMP in response to budgetary impacts and significantly lower traffic volumes that resulted from the COVID-19 pandemic. The Belle Haven traffic calming plan was excluded from the projects that were paused, since it is required as a condition of a development project. The traffic calming project is now under construction.

During the Nov. 16, 2021 City Council meeting, City Councilmembers requested that staff explore restarting the NTMP program. In 2022, the City Council did not conduct a priority setting session, but provided direction that staff continue to prioritize previously requested capital improvement projects.

On April 24, 2022, staff presented concepts for restarting and streamlining the NTMP to the Complete Streets Commission and received feedback. The staff report included separating safety and quality of life requests and identified opportunities to streamline the planning and voting process included in the NTMP (a hyperlink is included as Attachment D). The Commission unanimously approved a motion to update the program process changes as outlined by staff with the following additions:

- Establish a minimum community survey submittal threshold
- Reconsider “quality of life” terminology
- Evaluate the program effectiveness after a sufficient period of time

Since this time, the transportation division has been working to fill two staffing vacancies, the second of which is expected to be filled within the next month. Staff is bringing this item forward now in anticipation of having a staff person on board who could manage this program.

Resident feedback on NTMP

While residents have been appreciative of the extensive community outreach conducted as part of the process, staff have received feedback that the process is restrictive and lengthy. As a result, some have expressed a need to reevaluate the existing process, particularly for requests involving safety.

As more people have returned to in-person activities over the past year, the volume of requests and resident concerns about the absence of the NTMP program have increased as well.

Analysis

As of Aug. 31, the City has 16 NTMP requests categorized as follows:

- Two projects requesting parking restrictions were in progress before the program was paused
- Two requests for speed reduction were initiated before the program was paused
- Twelve requests for speed reduction were received after pause, including seven received since the potential program restart was presented to the Complete Streets Commission

Attachment E summarizes the requests in chronological order of receipt, including functional classification, available traffic volume, and speed and collision data.

Cut through traffic

Certain Menlo Park streets experience high volumes of cut through traffic, and some of the NTMP requests appear to relate to a desire to manage this traffic. Staff used Streetlight InSight, a big data tool that allows quick access to estimated traffic volumes and travel patterns, to estimate cut through traffic for a sample of NTMP requests and related projects (Table 1). Streets like Willow Road between Alma Street and Laurel Street may require specific attention given the relatively high traffic volumes and the significant share of traffic (between 60 and 70% of eastbound vehicles) that use this route to avoid more major routes.

Table 1: Estimated cut through traffic for select NTMP requests 2022

NTMP request	Streets avoided	Street volume ¹	% Cut through
Monte Rosa Avenue (Avy Avenue to Sharon Park Drive)	Sand Hill Road, Alameda de las Pulgas/Santa Cruz Avenue	1,100	30-40%
Willow Road (Alma Street to Laurel Street)	Ravenswood Avenue, Middlefield Road	1,500	70-80%
Oak Avenue (Olive Street to Oak Knoll Avenue)	El Camino Real, Sand Hill Road	900	0-10%
Chilco Street (Hamilton Avenue to Newbridge Street) ²	Bayfront Expressway, Willow Road	700	10-20%
Partridge Avenue	Middle Avenue	200	<5%
Woodland Avenue	University Avenue (Palo Alto)	1,200	10-15%

Source: StreetLight InSight estimates of roadway volumes and cut through volumes using typical travel paths.

Notes:

1. Volumes are estimates from April and September 2022 for the cut through direction only, based on the likely path of cut-through traffic. If cut through traffic is possible in both directions, the volumes represent both directions
Chilco St is included because cut through traffic was one of the significant concerns that precipitated the Belle Haven Traffic Calming Plan.

Coordination with other work

The City is developing a Vision Zero Action Plan (VZAP), also called a Local Road Safety Plan that will identify key safety challenges in Menlo Park, building on the City’s Transportation Master Plan. With completion expected in early 2024, there are several VZAP products that may be relevant to restarting the NTMP, including:

- Safety strategies – the VZAP will identify safety strategies by roadway type, based on the amount and type of use, speeds and adjacent land uses.
- High injury network – the VZAP has identified the 20% of roads that experience over 90% of serious injuries and fatalities.
- Systemic safety – the VZAP is taking a proactive approach to safety, identifying potential improvements for locations that that may not have a history of collisions, but have characteristics similar to other locations that have experienced collisions.

These analyses can help prioritize projects that support the Safe Streets priority that City Council adopted in 2023, which could result in further changes to the NTMP program to align with Vision Zero goals. Attachment G provides a hyperlink to the Aug. 24, Complete Streets Commission staff report, which provides a mid-project status update.

The public works department is also developing a five-year repaving program that will come to City Council in the coming months. The repaving program will identify streets that receive full repaving and those that receive a slurry seal that is intended to extend the life of existing pavements. Repaving is an appropriate time to install traffic calming devices such as speed humps. Slurry seals are more appropriate for minor changes to pavement markings. Staff is working to coordinate NTMP requests with near term repaving projects (i.e., within the next two fiscal years).

Options for next steps to resume processing requests

Staff has developed a set of options for City Council to consider to restart, modify or replace the NTMP:

1. Restart the current program. Continue processing requests under the current NTMP framework. Staff anticipates working on two to three (2 – 3) requests per year based on current program staffing and funding levels. Processing more requests per year would require increasing staff or reducing other

- project demands to provide more resources for this program.
2. Restart and modify the program (Attachment F):
 - A. Slow Streets. Rename the program and focus on speed management requests. Consider parking requests separately; evaluate them on a case-by-case basis and eliminate the trial installation. Residential permit parking requests would be evaluated following resumption of the sale of parking permits and reinstatement of dedicated parking enforcement resources.
 - B. Voting procedure changes. Streamline future resident voting processes to calculate the percent support based on received surveys while providing a minimum response time as requested by the Complete Streets Commission.
 - C. Streamline steps. Reduce the number of times residents are surveyed to vote on a traffic calming project. Currently there are up to three opportunities. Staff recommends taking a single vote if a project reaches the level of final design.
 3. Batch requests for efficiency. Evaluate all requests received through Sept. 1, and prioritize based on observed speeds and share of cut-through traffic. Begin processing requests in order of priority with potential to advance quick build or speed management treatments where these requests align with safety concerns (as demonstrated through data on speeds, collisions, or high levels of through traffic) or with repaving projects. Staff will provide bi-annual updates to the Complete Streets Commission on the requests received, the status of existing requests, and recommendations for new requests to be added, including any re-prioritization of pending requests.

Staff is seeking City Council direction on which of these options to pursue. Staff recommends advancing Options 2 and 3 given the interest from residents. If directed by the City Council, staff would return at a future meeting for City Council to adopt these changes.

Impact on City Resources

Resources expended for this evaluation are part of the City's baseline service levels. The direction provided by the City Council will shape the level of effort required to restart, modify or replace the NTMP program.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§15378.

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 – NTMP document: menlopark.gov/files/sharedassets/public/public-works/documents/transportation/neighborhood-traffic-management-program-ntmp.pdf
- B. Menlo Park street classifications
- C. Existing NTMP process flowchart
- D. Hyperlink – April 13, 2022, Complete Streets Commission staff report for the NTMP: menlopark.gov/files/sharedassets/public/v/1/agendas-and-minutes/complete-streets-commission/2022-meetings/agendas/20220413-complete-streets-commission-agenda-packet.pdf#page=31
- E. List of active NTMP requests and available data

Staff Report #: 23-201-CC

F. Potential modifications to the NTMP process

G. Hyperlink – Aug. 24, Complete Streets Commission staff report for the VZAP:

menlopark.gov/files/sharedassets/public/v/1/agendas-and-minutes/complete-streets-commission/2023-meetings/agendas/20230824_complete_streets_commission_agenda_packet.pdf#page=37

Report prepared by:

Hugh Louch, Assistant Public Works Director – Transportation

Report reviewed by:

Nikki Nagaya, Deputy City Manager

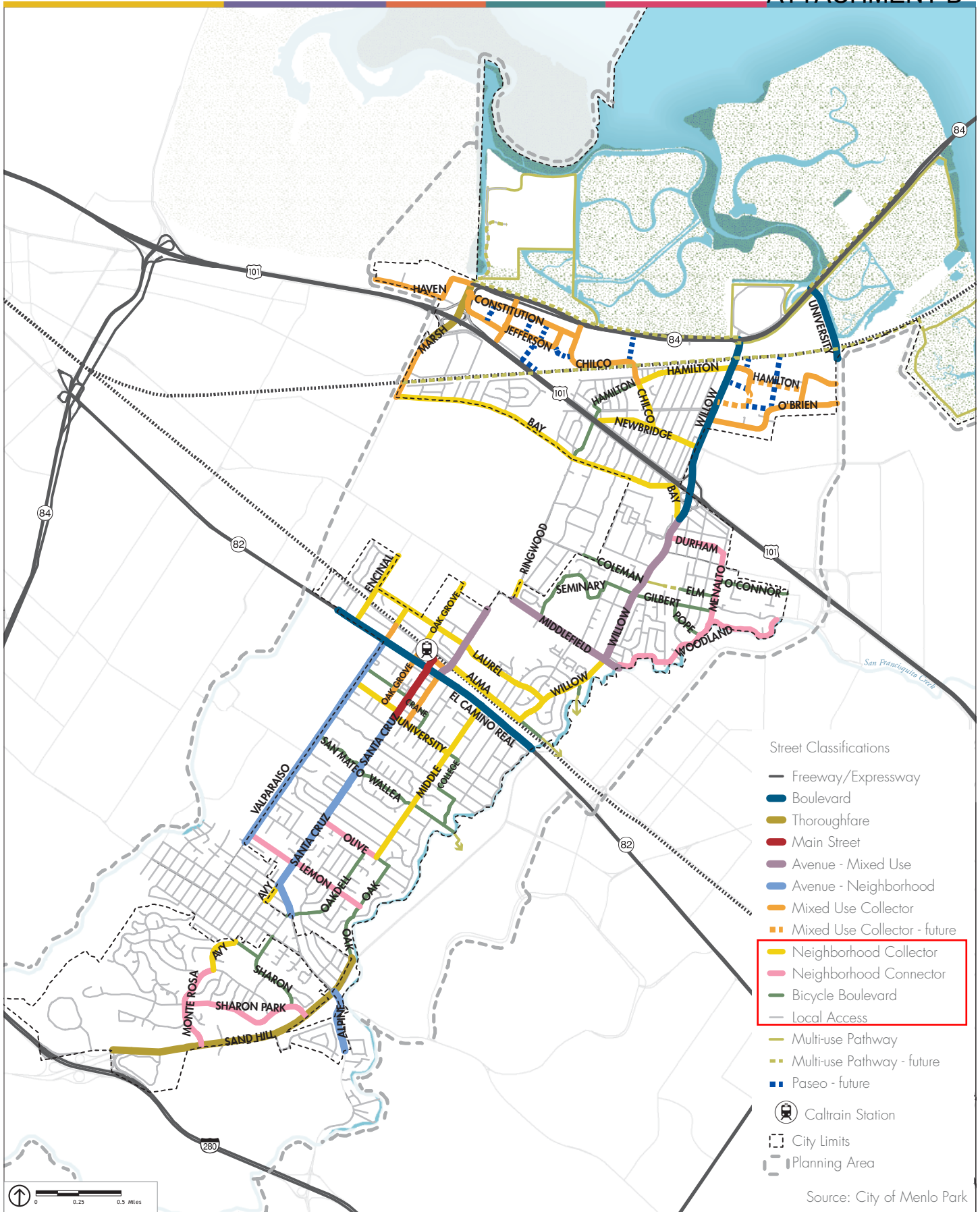


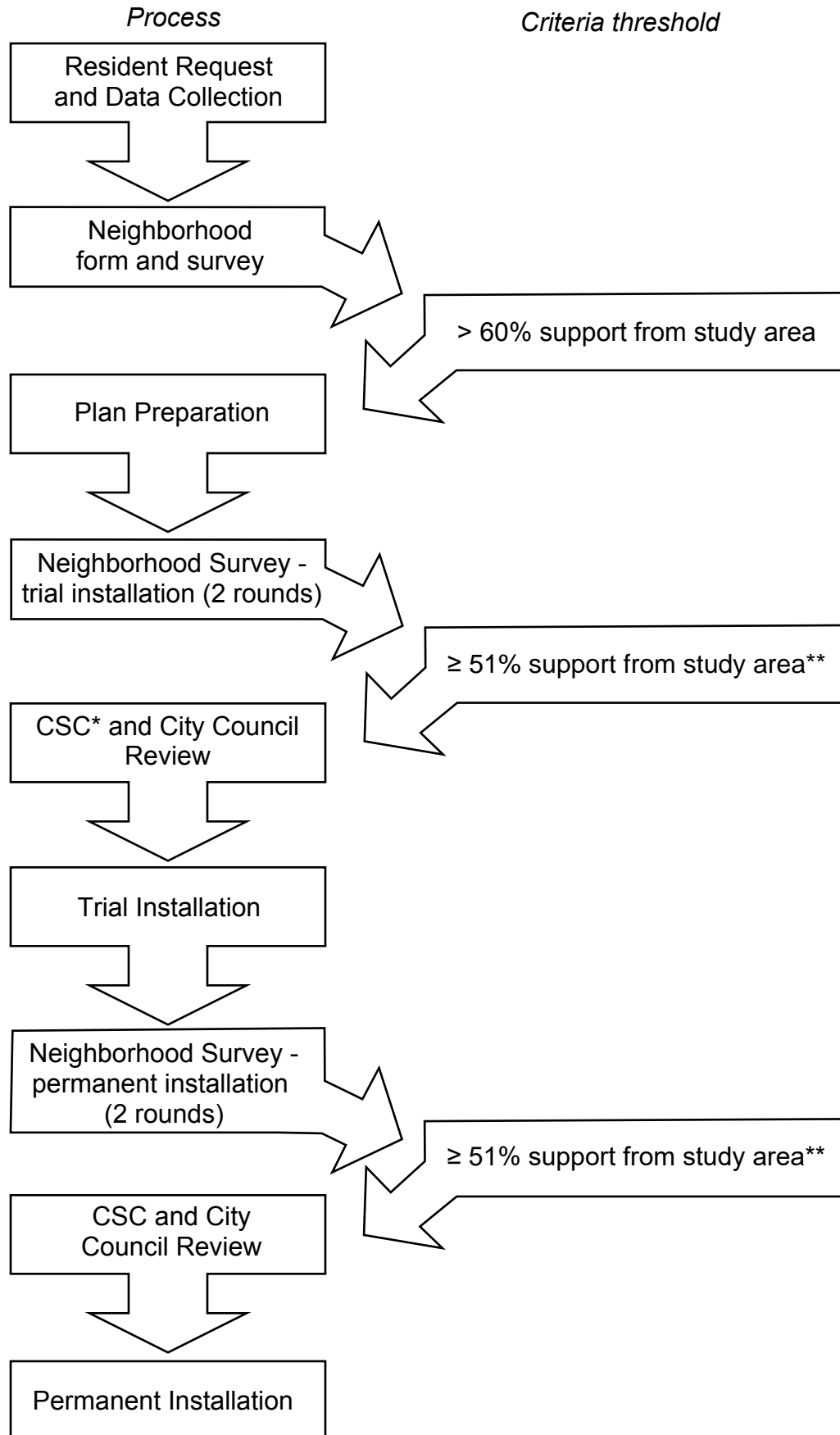
TABLE 1 DESCRIPTION OF STREET CLASSIFICATIONS

Classification	Mode Priority	Description and Guidelines	Examples	FHWA Category
Freeway/ Expressway	Vehicle: ● Other modes: N/A	<i>Limited access, major regional freeways and expressways that are part of the state and regional network of highways and subject to state design standards.</i>	Bayfront Expressway	Expressway
Boulevard	Bicycle: ● Pedestrian: ● Transit: ● Vehicle: ●	<i>Major thoroughfare with higher frequency of transit service and mixed commercial and retail frontages.</i> Provides access and safe crossings for all travel modes along a regional transportation corridor. Emphasizes walking and transit and accommodates regional vehicle trips in order to discourage such trips on nearby local roadways, through collaborations with other cities and agencies. In areas of significant travel mode conflict, bicycle improvements may have lower priority if appropriate parallel corridors exist.	El Camino Real	Primary Arterial
Thoroughfare	Bicycle: ● Pedestrian: ● Transit: ● Vehicle: ●	<i>Major thoroughfare, limited mixed commercial frontages.</i> Provides access and safe crossings for all travel modes along a regional transportation corridor. Emphasizes regional vehicle trips in order to discourage such trips on nearby local roadways, through collaborations with other cities and agencies.	Marsh Road, Sand Hill Road	Primary Arterial
Main Street	Bicycle: ● Pedestrian: ● Transit: ● Vehicle: ●	<i>High intensity, pedestrian-oriented retail street.</i> Provides access to all travel modes in support of Downtown, includes on-street parking. Service to pedestrian-oriented retail is of prime importance. Vehicle performance indicators may be lowered to improve the pedestrian experience. Bicycle priority may be lower where appropriate parallel bicycle corridors exist.	Santa Cruz Avenue	Minor Arterial
Avenue – Mixed Use	Bicycle: ● Pedestrian: ● Transit: ● Vehicle: ●	<i>Streets with mixed residential and commercial frontages that serve as a main route for multiple modes.</i> Distributes trips to residential and commercial areas. Provides a balanced level of service for vehicles, transit, bicycles, and pedestrians, wherever possible. Bicycle priority is greater along identified bicycle corridors. Pedestrian improvements are comfortable to walk along, and provide safe crossings at designated locations.	Willow Road (south of Bay), Middlefield Road	Minor Arterial
● = High Priority ● = Medium Priority ○ = Low Priority				

TABLE 1 DESCRIPTION OF STREET CLASSIFICATIONS (CONTINUED)

Classification	Mode Priority	Description and Guidelines	Examples	FHWA Category
Avenue – Neighborhood	Bicycle: ● Pedestrian: ● Transit: ● Vehicle: ●	<i>Streets with residential frontages that serve as a main route for multiple modes.</i> Distributes trips to residential areas. Provides a balanced level of service for vehicles, transit, bicycles, and pedestrians, wherever possible. Bicycle priority is greater along identified bicycle corridors. Pedestrian improvements are comfortable to walk along, and provide safe crossings at designated locations.	Santa Cruz Avenue (south of University Drive), Valparaiso Avenue	Minor Arterial
Mixed-Use Collector	Bicycle: ● Pedestrian: ● Transit: ◐ Vehicle: ◐	<i>Mixed-use street that serves a significant destination.</i> Prioritizes walking and bicycling. Accommodates intra-city trips while also distributing local traffic to other streets and areas.	Chilco St (north of rail corridor), O'Brien Drive, Haven Avenue	Collector
Neighborhood Collector	Bicycle: ● Pedestrian: ● Transit: ◐ Vehicle: ◐	<i>Primarily residential street that serves a significant destination.</i> Prioritizes walking and bicycling. Accommodates intra-city trips while also distributing local traffic to other streets and areas. Accommodating vehicle traffic while ensuring a high quality of life for residents is a key design challenge.	Bay Road, Laurel Street, Hamilton Avenue	Collector
Neighborhood Connector	Bicycle: ● Pedestrian: ● Transit: ○ Vehicle: ◐	<i>Low-medium volume residential through street.</i> Primarily serves residential neighborhoods. Provides high quality conditions for walking and bicycling and distributes vehicle, pedestrian, and bicycle trips to and from other streets.	Monte Rose Avenue, Woodland Avenue	Local
Bicycle Boulevard	Bicycle: ● Pedestrian: ● Transit: ○ Vehicle: ◐	<i>Low volume residential street, serving mostly local traffic, connecting key bicycle facilities.</i> Provides access primarily to abutting uses. These streets should offer safe and inviting places to walk and bike.	San Mateo Drive, Hamilton Avenue	Local
Local Access	Bicycle: ● Pedestrian: ● Transit: ○ Vehicle: ◐	<i>Low volume residential street, serving mostly local traffic.</i> Provides access primarily to abutting uses. These streets should offer safe and inviting places to walk and bike.	San Mateo Drive	Local
Multi-Use Pathway	Bicycle: ● Pedestrian: ● Transit: N/A Vehicle: N/A	<i>Pedestrian and bicycle pathway.</i> Provides priority access to pedestrians and bicycles only, per Caltrans pathway minimum standards. Multi-use pathways feature high-quality crossings where they traverse major roadways.	Bay Trail	N/A
● = High Priority ◐ = Medium Priority ○ = Low Priority				

Neighborhood Traffic Management Program Process



* CSC = Complete Streets Commission

** Evaluation based on total number of surveys sent

Table D1: Active NTMP requests

Ref #	Status	Location	Roadway Classification	Goal	Request Year	District
1	Ongoing	Alma/E Creek Project - Alma St (Willow Rd-E Creek Dr) - E Creek Dr (Willow Rd-Alma St)	Neighborhood collector	Timed parking restriction	2019	3
2	Ongoing	O'Connor Project - O'Connor St (Elliott Dr-Euclid Ave) - Byers Dr (O'Connor St-Falk Ct)	Bicycle boulevard	Residential permit parking	2019	2
3	Initiated	Monte Rosa Dr (Avy Ave-Sharon Park Dr)	Neighborhood Connector	Speed reduction	2019	5
4	Initiated	Willow Rd (Alma St-Laurel St)	Neighborhood Collector	Speed reduction	2019	3
5	Received	Cambridge Ave (ECR-University Dr)	Local Access	Speed reduction	2019	4
6	Received	Cotton St (Santa Cruz Ave-Middle Ave)	Local Access	Speed reduction	2020	4-5
7	Received	Orange Ave (Santa Cruz-Croner Ave)	Local Access	Speed reduction	2020	4
8	Received	Partridge Ave (El Camino Real-University Dr)	Local Access	Speed reduction	2022	4
9	Received	Oak Ave (Olive St-Oak Knoll Ave)	Bicycle boulevard	Speed reduction	2022	5
10	Received	Johnson St (Santa Cruz Ave-Valparaiso Ave)	Local Access	Speed reduction	2022	4
11	Received	Woodland Ave (Lexington Dr-Concord Dr)	Neighborhood connector	Speed reduction	2023	2
12	Received	San Antonio Ave (Glenwood Ave-Encinal Ave)	Local Access	Speed reduction	2023	3
13	Received	Roble St (El Camino Real-University Dr)	Local Access	Speed reduction	2023	4
14	Received	Marcussen Dr (Oak Grove Ave-Ravenswood Ave)	Local Access	Speed reduction	2023	3
15	Received	San Mateo Dr (Santa Cruz Ave-Valparaiso Ave)	Bicycle boulevard	Speed reduction	2023	4/5
16	Received	Sherwood Way (Alma St-Laurel St)	Local Access	Speed reduction	2023	3

Notes:

1. This list includes ongoing and initiated requests were received prior to pausing the program. Not all would be eligible for the current program. Four requests are not included:
 - a. Belle Haven Traffic Calming Plan was not put on hold because it was a condition of development and has begun construction.
 - b. Coleman Avenue between Willow Road and the City limit was incorporated into the ongoing Coleman-Ringwood Avenues study.
 - c. Willow Road between Middlefield Road and Gilbert Avenue is classified as Avenue-Mixed Use and is not eligible for an NTMP project. Since this request was received, the City installed speed feedback signs. The City is also evaluating adding a crosswalk with a flashing beacon at Blackburn Avenue or Nash Avenue as part of a separate project.
 - d. Blake Street between College Avenue and Middle Avenue will have restricted vehicle access as part of the Middle Avenue complete streets project.
2. Items 9 through 16 were received after the Complete Streets Commission discussed this the NTMP program on April 13, 2022

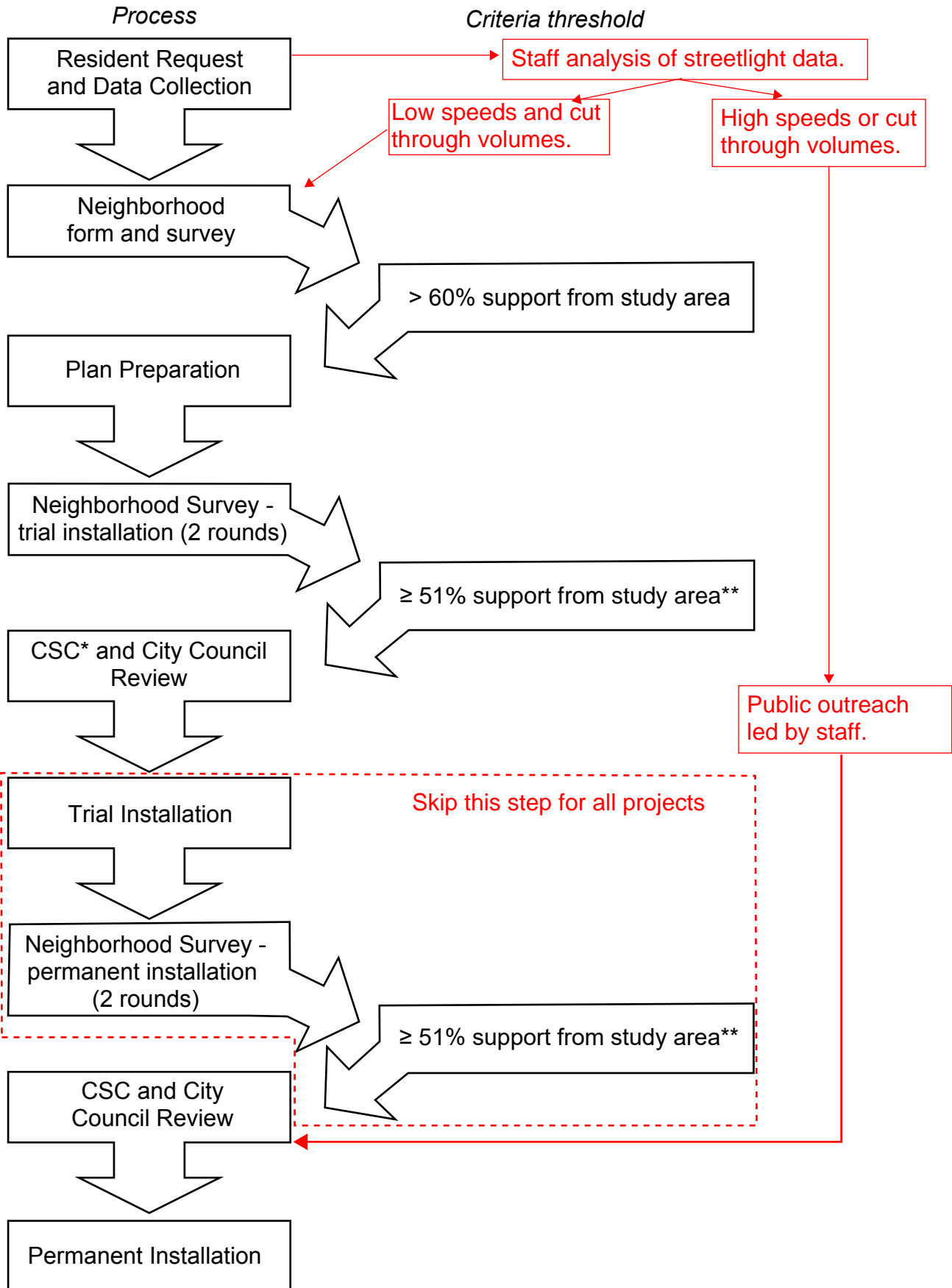
Table D2: Available data for NTMP requests

Ref #	Location	Traffic volumes	Share over 30 mph (%)	Collisions
1	Alma/E Creek Project - Alma St (Willow Rd-E Creek Dr) - E Creek Dr (Willow Rd-Alma St)		parking request	
2	O'Connor Project - O'Connor St (Elliott Dr-Euclid Ave) - Byers Dr (O'Connor St-Falk Ct)		parking request	
3	Monte Rosa Dr (Avy Ave-Sharon Park Dr)	2,100	33%	0
4	Willow Rd (Alma St-Laurel St)	1,800	10%	1
5	Cambridge Ave (ECR-University Dr)	1,400	0%	0
6	Cotton St (Santa Cruz Ave-Middle Ave)	700	3%	1
7	Orange Ave (Santa Cruz-Croner Ave)	1,700	2%	1
8	Partridge Ave (El Camino Real- University Dr)	500	4%	0
9	Oak Ave (Olive St-Oak Knoll Ave)	1,900	22%	1
10	Johnson St (Santa Cruz Ave-Valparaiso Ave)	1,500	0%	2
11	Woodland Ave (Lexington Dr-Concord Dr)	1,200	0%	0
12	San Antonio Ave (Glenwood Ave-Encinal Ave)	500	5%	0
13	Roble St (El Camino Real-University Dr)	1,000	8%	1
14	Marcussen Dr (Oak Grove Ave-Ravenswood Ave)	400	1%	1
15	San Mateo Dr (Santa Cruz Ave-Valparaiso Ave)	1,100	0%	0
16	Sherwood Way (Alma St-Laurel St)	160	3%	0

Source: Streetlight InSight data for weekdays in April and September 2022

Note: The volumes in Table 1 in the staff report are directional volumes, the volumes in this table are two-way volumes.

Potential Updates to the
Neighborhood Traffic Management Program Process



CSC = Complete Streets Commission

* Evaluation based on total number of surveys sent-received



NEIGHBORHOOD TRAFFIC MANAGEMENT PROGRAM

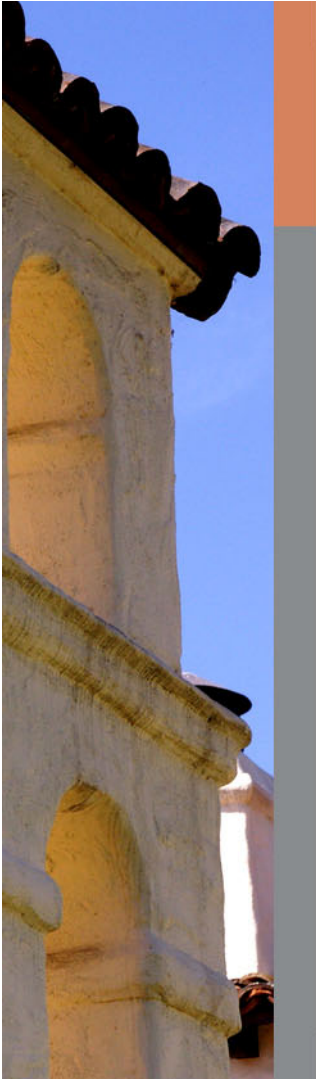
City Council – September 12, 2023



AGENDA

- Background
- Complete Streets Commission feedback
- Current NTMP requests
- City Council direction on program options



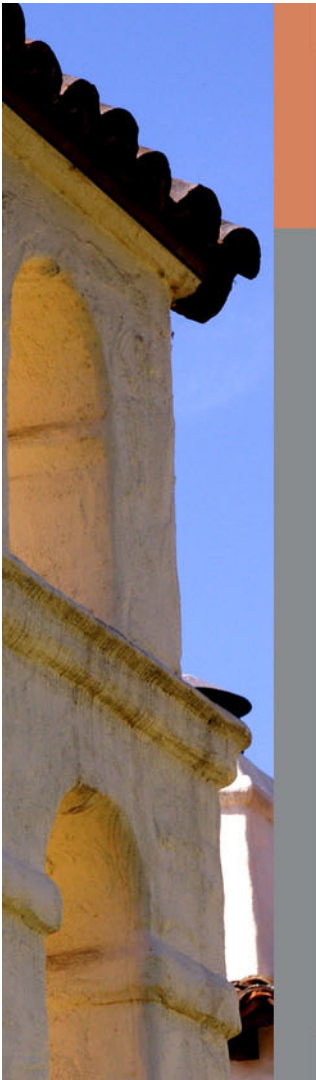


BACKGROUND

- Adopted in 2004

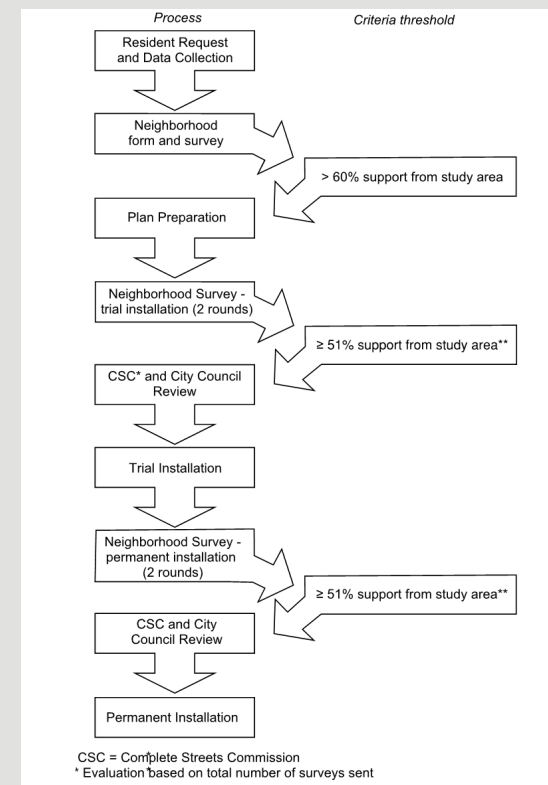
- Goals/Objectives
 - Correct demonstrably unsafe conditions
 - Provide relief from disproportionate traffic increases

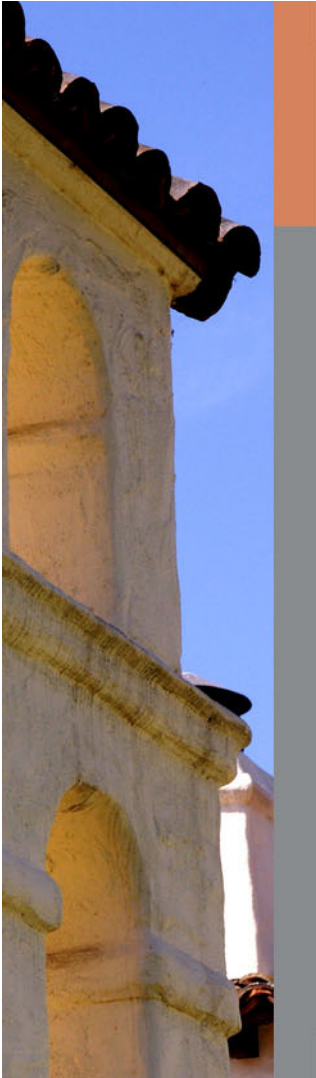
- Objectives
 - Forum for resident involvement
 - Clear process
 - Discourage cut-through traffic



BACKGROUND EXISTING PROCESS

- Criteria
 - 85th percentile speed > speed limit + 5 mph
 - Residential streets
 - Local streets: 1,500+ vehicles
 - Collector streets: 3,000+ vehicles
- Consensus-oriented process, but time intensive
- Typically requires a neighborhood champion





COMPLETE STREETS COMMISSION FEEDBACK



- April 2022 – Staff presented ideas to CSC
 - Separate safety concerns from ‘quality of life’ – simpler process
 - Consider changing the voting requirement to be ‘surveys received ’ instead of ‘surveys sent’

- CSC supported with suggestions
 - Set a minimum timeframe for survey response
 - Reconsider ‘quality of life’ terminology
 - Evaluate program effectiveness

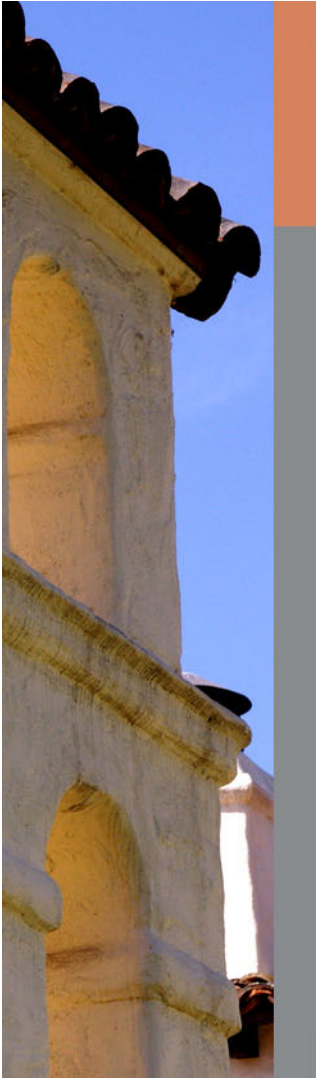
- Ongoing Vision Zero Action Plan will have implications for future programs



CURRENT NTMP REQUESTS

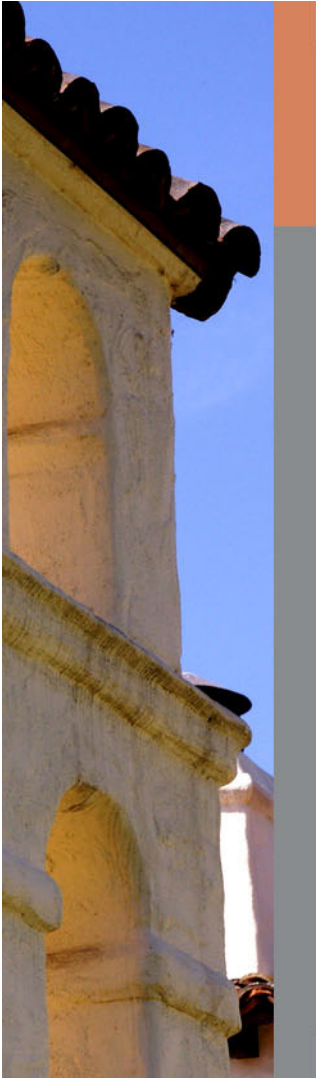
#	Location	Traffic volumes	% over 30 mph	Collisions
3	Monte Rosa Dr (Avy Ave-Sharon Park Dr)	2,100	33%	0
4	Willow Rd (Alma St-Laurel St)	1,800	10%	1
5	Cambridge Ave (ECR-University Dr)	1,400	0%	0
6	Cotton St (Santa Cruz Ave-Middle Ave)	700	3%	1
7	Orange Ave (Santa Cruz-Croner Ave)	1,700	2%	1
8	Partridge Ave (El Camino Real- University Dr)	500	4%	0
9	Oak Ave (Olive St-Oak Knoll Ave)	1,900	22%	1
10	Johnson St (Santa Cruz Ave-Valparaiso Ave)	1,500	0%	2
11	Woodland Ave (Lexington Dr-Concord Dr)	1,200	0%	0
12	San Antonio Ave (Glenwood Ave-Encinal Ave)	500	5%	0
13	Roble St (El Camino Real-University Dr)	1,000	8%	1
14	Marcussen Dr (Oak Grove Ave-Ravenswood Ave)	400	1%	1
15	San Mateo Dr (Santa Cruz Ave-Valparaiso Ave)	1,100	0%	0
16	Sherwood Way (Alma St-Laurel St)	160	3%	0

Note: This list excludes two parking requests



CURRENT NTMP REQUESTS CUT THROUGH TRAFFIC EXAMPLES

NTMP request	Streets avoided	Traffic volume	% Cut through
Monte Rosa Avenue (Avy Ave to Sharon Park Dr)	Sand Hill Road, Alameda de las Pulgas/Santa Cruz Avenue	1,100	30-40%
Willow Road (Alma St to Laurel St)	Ravenswood Avenue, Middlefield Road	1,500	70-80%
Oak Avenue (Olive St to Oak Knoll Ave)	El Camino Real, Sand Hill Road	900	0-10%
Chilco Street (Hamilton Ave to Newbridge St)	Bayfront Expressway, Willow Road	700	10-20%
Partridge Ave (ECR to University Dr)	Middle Avenue	200	<5%
Woodland Ave (Lexington Dr to Concord Dr)	University Avenue (Palo Alto)	1,200	10-15%



CITY COUNCIL DIRECTION ON PROGRAM OPTIONS



- Restart program with no changes – requires resource shifting

- Restart and modify
 - Requests with speed or cut through traffic issues to be handled by staff. These will also be proactively identified through Vision Zero Action Plan
 - Other requests use existing process with changed voting requirements and streamlined process

- Batch requests for efficiency
 - Coordinate with repaving program
 - Group analysis of requests and consolidate presentations to CSC and City Council



THANK YOU



REGULAR MEETING MINUTES – DRAFT

Date: 8/15/2023
Time: 6:00 p.m.
Locations: Teleconference and
City Council Chambers
751 Laurel St., Menlo Park, CA 94025

Special Session

A. Call To Order

Mayor Wolosin called the meeting to order at 5:04 p.m.

B. Roll Call

Present: Combs, Doerr (remote – AB 2449 Just Cause), Nash, Taylor, Wolosin
Absent: None
Staff: City Manager Justin I. C. Murphy, Assistant City Manager Stephen Stolte, City Attorney Nira F. Doherty, Assistant to the City Manager/City Clerk Judi A. Herren

C. Closed Session

- C1. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the American Federation of State, County, and Municipal Employees Local 829 (AFSCME) and Confidential employees

Agency designated representatives: City Manager Justin I.C. Murphy, Administrative Services Director Brittany Mello, Assistant City Manager Stephen Stolte, City Attorney Nira Doherty, Special Counsel Charles Sakai

Regular Session

D. Call To Order

Mayor Wolosin re-called the meeting at 6:03 p.m.

E. Roll Call

Present: Combs, Doerr (remote – AB 2449 Just Cause), Nash, Taylor, Wolosin
Absent: None
Staff: City Manager Justin I. C. Murphy, Assistant City Manager Stephen Stolte, City Attorney Nira F. Doherty, Assistant to the City Manager/City Clerk Judi A. Herren

F. Agenda Review

Staff to provide an update to item J7.

G. Report from Closed Session

No reportable actions.

H. Public Comment

- Troy Goodwin spoke in support of retaining the Onetta Harris Community Center name for the new community center.
- Chester Palesoo spoke in support of retaining the Onetta Harris Community Center name for the new community center.
- Kenneth Harris spoke in support of retaining the Onetta Harris Community Center name for the new community center.
- David Wheaten spoke in support of retaining the Onetta Harris Community Center name for the new community center.
- Greg Goodwin spoke in support of retaining the Onetta Harris Community Center name for the new community center.

I. Presentations and Proclamations

I1. Presentation: Sister Cities annual update

Menlo Park Sister Cities Vice-President and Director Catherine Carlton made a presentation (Attachment).

The Sister City Association Menlo Park students made a presentation (Attachment).

J. Consent Calendar

- J1. Accept the City Council meeting minutes for June 20, 27, and July 11, 2023 (Attachment)
- J2. Waive the second reading and adopt an ordinance requiring safe storage of firearms in residence (Staff Report #23-172-CC)
- J3. Waive the second reading and adopt an ordinance amending Sections 16.43.070, 16.44.070, and 16.45.070 of Title 16 of the Menlo Park Municipal Code to clarify the process for determining the appraised value of and the required community amenities value for bonus level development projects in the O (Office), L-S (Life Sciences), and R-MU (Residential Mixed-Use) zoning districts (Staff Report #23-173-CC)
- J4. Authorize the city manager to execute a three-year master agreement for on-call tennis court repair services to Saviano Construction, Inc. and determine this action is categorically exempt under California Environmental Quality Act guidelines section 15301 exemption for existing facilities (Staff Report #23-179-CC)
- J5. Adopt a resolution authorizing the City Manager to execute a memorandum of understanding between City of Menlo Park and Caltrain for San Francisquito Creek embankment stabilization (Staff Report #23-174-CC)
- J6. Adopt a resolution authorizing staff to submit an application to the San Mateo County

Transportation Authority for Measure A & W Highway Program (Staff Report #23-175-CC)

- J7. Adopt a resolution authorizing the South Bayside Waste Management Authority to acquire real property located at 1245 San Carlos Avenue, Unit E, San Carlos, CA. (Staff Report #23-176-CC)

Management Analyst II Joanna Chen and South Bayside Waste Management Authority Executive Director Joe La Mariana provided an update to the cost savings.

- J8. Adopt a resolution approving the fiscal year 2023-24 investment policy for the City and the former Redevelopment Agency of Menlo Park (Staff Report #23-177-CC)

- J9. Receive and file investment portfolio as of June 30, 2023 (Staff Report #23-178-CC)

ACTION: Motion and second (Nash/ Combs), to approve the consent calendar, passed unanimously.

K. Public Hearing

- K1. Consider and adopt resolutions to amend the City of Menlo Park General Plan Circulation Element and El Camino Real/Downtown Specific Plan to add an Alley designation under the Local Access street classification, and allow for the City Council to consider closing public streets within the Main Street and Local Access (Alley) street classifications to vehicular traffic (Staff Report #23-180-CC)

Planning Manager Kyle Perata made the presentation (Attachment).

Mayor Wolosin opened the public hearing.

- Alex Beltramo spoke in opposition of street closures on Santa Cruz Avenue.
- Elias Blawie spoke in opposition of street closures on Santa Cruz Avenue.

Mayor Wolosin closed the public hearing.

The City Council received clarification on regulatory action, circulation patterns (e.g., one-way closure) and the environmental analysis prepared for the proposed amendments.

The City Council discussed public engagement and future agenda items for downtown vibrancy and zoning, streetaries and street closure interactions.

The City Council directed staff to return with a speed limit review and signage.

ACTION: Motion and second (Doerr/ Nash), to adopt a resolution amending the Circulation Element of the General Plan to modify the street classifications in the General Plan Circulation Element to incorporate an Alley designation under the Local Access street classification, and allow for the City Council to consider street closures within the Main Street and Local Access classifications, passed unanimously.

ACTION: Motion and second (Wolosin/ Combs), to adopt a resolution amending the El Camino Real/Downtown Specific Plan (Specific Plan) to allow street closures on Santa Cruz Avenue in additional locations to the Central Plaza identified in the Specific Plan and allow for street closures on additional

streets and alleys in the Specific Plan, provided the closures are consistent with the General Plan Circulation Element and would reinforce the Urban Design Framework and the guiding principles of the Specific Plan, passed unanimously.

L. Regular Business

- L1. Waive the first reading and introduce an ordinance adding Chapter 13.30 Streetaries Outdoor Dining Areas to Title 13 (Streets, Sidewalks and Utilities) and amending Sections 13.18.10 and 13.18.20 of Chapter 13.18 (Use of Public Right of Way) (Staff Report #23-181-CC)

Assistant City Manager Stephen Stolte and HdL Companies representative Kirstin Hinds made the presentation (Attachment).

- Elias Blawie requested agenda material for in-person viewing, high-level executive summary for each staff report and spoke in opposition of Santa Cruz Avenue street closures.
- Randy Avalos requested information on impacts and costs to the city.

The City Council received clarification on cost breakdown for square footage, public works director allowances for some criteria, fees structure of subsidized and non-subsidized (rates opposed to waivers), impacts to new parklets, subsidies, roof requirements, and public outreach to retail businesses with parklets impacted by this ordinance.

The City Council discussed amplified sound in connection with streetaries, aesthetic requirements and reducing requirements if not crucial for safety, exclusion of outdoor uses by retail businesses in Streetaries program, desire to track nonfood business interest over time, Ryans Lane closure and potential new construction impacts on Streetaries.

ACTION: Motion and second (Nash/ Combs), to waive the first reading and introduce an ordinance adding Chapter 13.30 Streetaries Outdoor Dining Areas to Title 13 (Streets, Sidewalks and Utilities) and amending Sections 13.18.10 and 13.18.20 of Chapter 13.18 (Use of Public Right of Way), passed unanimously.

- L2. Consider and adopt a resolution approving (1) Appraisal Instructions for Determining the Value of Community Amenities and (2) Community Amenity Implementing Regulations to determine the appraised value of bonus level developments (Staff Report #23-182-CC)

Planning Manager Kyle Perata made the presentation (Attachment).

The City Council received clarification on receiving future feedback.

The City Council discussed a 15-day early staff report release for the future community amenities study session item, modifications to community amenities between the public hearing and final community amenities proposal, and housing development community amenity proposals public and City Council notification.

ACTION: Motion and second (Taylor/ Nash), to adopt a resolution approving the following:

- Appraisal instructions to determine the value of community amenities under bonus level zoning in the O, L-S and R-MU zoning districts in the Bayfront Area to clarify definitions and appraisal

criteria; and

- Community amenity implementing regulations that standardize the application procedures, appraisal review process and determination of the value of the bonus level development, and identify the process and timing for screening of the applicant's community amenities proposal with the City Council; and
- Update to regulation 3b3a regulations to include a 15-day early release staff report; and
- Update to regulation 3b3 and/or 3b4 adding a statement where proposed modifications between the public hearing and final community amenities proposal be added to a City Council agenda as an informational item; and
- Housing projects notification to the City Council and public,

passed unanimously.

M. Informational Items

M1. City Council agenda topics: August 22 – September 12 (Staff Report #23-183-CC)

- Pam Jones reminded the public of this recurring item.

M2. Transmittal of city attorney billing (Staff Report #23-184-CC)

M3. Short term rental compliance update (Staff Report #23-185-CC)

N. City Manager Report's

City Manager Justin Murphy reported out on upcoming August meetings and the summer concert series.

O. City Councilmember Reports

None.

P. Adjournment

Mayor Wolosin adjourned the meeting at 8:46 p.m.

Assistant to the City Manager/ City Clerk Judi A. Herren



SPECIAL MEETING MINUTES – DRAFT

Date: 8/22/2023
Time: 6:00 p.m.
Locations: Teleconference and
 City Council Chambers
 751 Laurel St., Menlo Park, CA 94025

Special Session

A. Call To Order

Mayor Wolosin called the meeting to order at 6:01 p.m.

ACTION: Motion and second (Wolosin/ Doerr), to add an emergency item for the use of Assembly Bill 2449 (AB 2449) to the agenda, passed unanimously.

Use of AB 2449 Emergency Circumstances

ACTION: Motion and second (Doerr/ Nash), to approve the remote participation under AB 2449 Emergency Circumstances for Vice Mayor Taylor, passed unanimously.

B. Roll Call

Present: Combs, Doerr, Nash, Taylor (remote – AB 2449 Emergency Circumstances), Wolosin
Absent: None
Staff: City Manager Justin I. C. Murphy, Assistant City Manager Stephen Stolte, City Attorney Nira F. Doherty, Assistant to the City Manager/City Clerk Judi A. Herren

C. Special Business

C1. Review and provide feedback on potential Zoning Ordinance, Specific Plan, and conforming General Plan amendments associated with the adopted 2023-2031 Housing Element (Staff Report #CC-186-23)

Principal Planner Tom Smith made the presentation (Attachment).

- Julianne Hanson spoke in support of affordable housing, particularly for teachers and low-income households.
- Joseph Grasc spoke in support of affordable housing and increased diversity in the city.
- Jenny Michele provided comments on housing issues, including zoning for climate resilient buildings, eliminate R-1 housing policies and extend the El Camino Real/Downtown zoning to other locations in the City.
- Olivia Grimes spoke in support of the housing element and increased affordable housing density, particularly increasing the affordable housing overlay to 150 dwelling units per acre and promoting mixed-income developments.
- Jacqui Cebrian spoke in support of additional affordable housing.
- Brian Kissel spoke in support of a height increase to the Sharon Heights Shopping Center parcel

for affordable housing and additional housing development.

- G. Joy Kosobayashi spoke in support of staff recommendations.
- Patti Fry spoke on the number of units developed in projects like Middle Plaza and Springline, on concerns regarding preservation of neighborhood-serving retail and commercial uses and the amount of office development, and on the quality of life for current and future residents related to parking.
- Brittani Baxter spoke in support of affordable housing, increased density bonuses and height requirements.
- Ofelia Bayo spoke in support of affordable housing and increased density on the west side of Menlo Park.
- Lynne Bramlett spoke in support of affordable housing, increased diversity, quiet zones, limiting absent-owners for new unit ownership, and requested review of the open space element.
- Karen Grove spoke in support of increased density of the affordable housing overlay (AHO) and height increase at the Sharon Heights Shopping Center.
- Adina Levin spoke in support of increased density of the AHO and mixed-use developments.
- Joan Skurnick requested clarification on the Sunset Magazine site and a proposed development project.

The City Council took a recess at 7:22 p.m.

The City Council reconvened at 7:29 p.m.

The City Council received clarification on the Sunset Magazine site at 80 Willow Rd., Assembly Bills (AB) 1763 and 2334, El Camino Real/Downtown Specific Plan subdistricts, unlimited density for sites within ½-mile of major transit stops, vehicle miles traveled (VMT) map, floor area ratios (FAR) and large unit requirements, 100% affordable developments, R-3 zoning, Specific Plan height and maximum stories, district zoning, open space element and open space regulations, the applicability of the AHO, and upzoning and downzoning considerations.

The City Council discussed where the AHO would apply and how the AHO could apply to mixed-income developments and requested to see examples when reviewing the zoning ordinances, interest in lowering rents as part of future revisions to the below market rate (BMR) housing guidelines, use an existing nine-story residential building on Valparaiso Avenue as a data point/reference, incentivizing community serving retail, parking minimums/maximums in Downtown, height maximums, downzoning in District 1, avoiding large market-rate units, and incentivizing “for sale” units.

The City Council directed staff to review and provide information on outdoor/shade covering standards of new market rate and affordable housing developments, proceed with establishing a minimum density of 20 du/ac, increasing densities, and removing the residential cap in the El Camino Real/Downtown Specific Plan area, proportionally increase densities and associated development regulations in the ECR/D SE and NE-R subdistricts, consider height increases and density increases above 30 units per acre (du/ac) for the Sharon Heights Shopping Center parcel, allow mixed income and affordable housing in Downtown, and to proceed with the proposal for a new step-up FAR to incentivize the production of units for large families and ownership units.

The City Council took a recess at 9:36 p.m.

The City Council reconvened at 9:45 p.m.

The City Council received clarification on bonus level density, incentives or overlay for retained retail and increased community serving retail, and 30 du/ac across the city.

The City Council discussed environmental impact review (EIR) requirements, exploring higher heights at the Sharon Heights Shopping Center parcel, Regional Housing Needs Allocation (RHNA) numbers, and eliminating parking requirements for commercial.

The City Council directed staff to consolidate certain commercial districts under the C-2-B district regulations, change the maximum AHO bonus for 100-percent affordable projects from 100 du/ac to 150 du/ac, provide examples for heights of 60 and 80 feet for the Sharon Heights Shopping Center, exploring increased density and height in commercial districts without triggering an EIR, incentives or overlay for retaining retail and increased community serving retail, and removing 10,000 square foot minimum lot size to achieve 30 du/ac on R-3 lots around downtown.

D. Adjournment

Mayor Wolosin adjourned the meeting at 10:50 p.m.

Assistant to the City Manager/ City Clerk Judi A. Herren



REGULAR MEETING MINUTES – DRAFT

Date: 8/29/2023
Time: 6:00 p.m.
Locations: Teleconference and
City Council Chambers
751 Laurel St., Menlo Park, CA 94025

Regular Session

A. Call To Order

Mayor Wolosin called the meeting to order at 6:01 p.m.

B. Roll Call

Present: Combs, Doerr, Nash, Taylor, Wolosin
Absent: None
Staff: City Manager Justin I. C. Murphy, Assistant City Manager Stephen Stolte, City Attorney Nira F. Doherty, Assistant to the City Manager/City Clerk Judi A. Herren

C. Agenda Review

Staff to provide an update on item G5.

D. Public Comment

- Linda Jolley spoke on concerns with interactions with the Menlo Park Police Department (MPPD) and requested compensation as a result of those interactions.
- Rachel Bickerstaff spoke in support of naming the new community campus Menlo Meta Community Campus.
- Rose Bickerstaff with donated time from David Bickerstaff spoke on misinformation behind the naming of the community campus and in support of the name Menlo Meta Community Campus.
- Harry Bims with donated time from Sheryl Bims provided criteria for naming the new community campus.
- Yasmeen spoke on the history of Onetta Harris and retaining the Onetta Harris Community Center name of the new community campus.
- Aram James spoke on concerns to the incident with Linda Jolley and MPPD and in support of reparations.

L. Closed Session – public comment

- L1. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the American Federation of State, County, and Municipal Employees Local 829 (AFSCME)

Agency designated representatives: City Manager Justin I.C. Murphy, Administrative Services Director Brittany Mello, Assistant City Manager Stephen Stolte, City Attorney Nira Doherty, Special

Counsel Charles Sakai

None.

- L2. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with unrepresented management

Agency designated representatives: City Manager Justin I.C. Murphy, City Attorney Nira Doherty, Special Counsel Charles Sakai

None.

- L3. Conference with legal counsel – anticipated litigation (Paragraph (2) of subdivision (d) of Gov. Code § 54956.9)
Significant exposure to litigation: One case

None.

E. Presentations and Proclamations

- E1. Presentation: Midpeninsula Regional Open Space District (Midpen) update

MidPen Board members Karen Holman representing Ward 5 and Margaret MacNiven representing Ward 6 made the presentation (Attachment).

- Eduardo Pelegri-Llopart spoke on parks value and making the Belle Haven neighborhood more climate resilient.
- Jacqui Cebrian spoke in support of utilizing the Dumbarton corridor for bicycle and pedestrian trails.

F. Advisory Body Vacancies and Appointments

- F1. Consider applicants and make an appointment to fill a vacancy on the Parks and Recreation Commission (Staff Report #23-187-CC)

Assistant to the City Manager/ City Clerk Judi Herren introduced the item.

The City Council made appointments to fill a vacancy on the Parks and Recreation Commission:

- Kate Wessel – term expiring April 30, 2024

G. Consent Calendar

- G1. Approve the update to the preferred concept for the Middle Avenue Caltrain crossing design (Staff Report #23-188-CC)
- G2. Authorize the city manager to execute a memorandum of understanding with the San Mateo County Transportation Authority to complete the landscaping phase of the Willow Road and U.S. Highway 101 project (Staff Report #23-189-CC)

- Pam D. Jones spoke on concerns related to the current design of the interchange, landscaping timeline, and resident health impacts.

The City Council received clarification on planting timeline and establishment.

The City Council discussed prioritizing this item.

- G3. Authorize the city manager to execute an amendment to the professional services agreement with West Coast Code Consultants (WC3) for improvement plan review services for the Willow Village project (Staff Report #23-190-CC)

ACTION: Motion and second (Taylor/ Nash), to authorize the city manager to execute an amendment to the professional services agreement with WC3 for improvement plan review services for the Willow Village project in the amount of \$220,000, passed 4-0 (Combs recused).

- G4. Authorize the Mayor to sign the City’s response to the San Mateo County Civil Grand Jury Report: “Accessory Dwelling Units: Affordable Housing’s Panacea of Prevarication?” (Staff Report #23-191-CC)

- G5. Waive the second reading and adopt an ordinance for streetaries outdoor dining areas (Staff Report #23-192-CC)

Assistant City Manager Stephen Stolte provided an update to Attachment A, Section 13.30.030, the word "application" will be updated to "permit" in sentence two.

ACTION: Motion and second (Wolosin/ Taylor), to approve the consent calendar with the update to item G5. and excluding item G3., passed unanimously.

H. Regular Business

- H1. Adopt resolutions to approve streetary design standards and streetary fees (Staff Report #23-193-CC)

Assistant City Manager Stephen Stolte and HdL Companies representative Kirstin Hinds made the presentation (Attachment).

The City Council received clarification on the fee update, waiver, and subsidies, permit period differences, parklet and sidewalk café fees, master fee schedule updates based on CPI (consumer price index), and public engagement.

- Randy Avalos requested clarification on ADA (Americans with Disabilities Act) accessibility.

The City Council received clarification on accessibility and wind barriers.

The City Council directed that wind barriers are required to be translucent and encourage natural light, update the annual encroachment lease fee to \$7 per square foot, update the date fees will be imposed to Jan. 1, 2025, and return with the master fee schedule updates for the fees based on

CPI.

ACTION: Motion and second (Wolosin/ Combs), to adopt a resolution to approve streetary outdoor dining fees including updates presented by staff, updating date fees will be imposed to Jan. 1, 2025, and amending the annual encroachment lease fee to \$7 per square foot, passed unanimously.

ACTION: Motion and second (Taylor/ Combs), to adopt a resolution to approve streetary outdoor dining design standards and update the wind barriers to require translucent and encourage natural light, passed unanimously.

The City Council took a recess at 8:40 p.m.

The City Council reconvenes at 8:48 p.m.

H2. Consider and adopt a resolution to close the eastbound travel lane of Santa Cruz Avenue from Curtis Street to Doyle Street to vehicles to allow for expanded outdoor dining opportunities, enhanced public space, and related bicycle infrastructure improvements (Staff Report #23-194-CC)

Planning Manager Kyle Perata made the presentation (Attachment).

- Sandra Ferer spoke in support of retaining the Ryans Lane closure.
- Adina Levin spoke in support of outdoor dining and bicycle route improvements.
- Randy Avalos spoke in support of increased ADA accessibility for those who need to drive.
- Ross Silverstein spoke in support of revitalizing downtown.

The City Council received clarification on Ryans Lane reopening timeline and accessibility requirements.

The City Council discussed retaining the street closure, short and long term safety for the bike lane, and ADA accessibility.

ACTION: Motion and second (Doerr/ Nash), to adopt a resolution approving the long-term street closure of the eastbound direction of Santa Cruz Avenue from Curtis Street to Doyle Street to vehicles and install a new bicycle lane in the eastbound direction that would allow for the expansion of the outdoor seating associated with the existing parklets/outdoor dining along Santa Cruz Avenue and the continued communal seating area within Santa Cruz Avenue, passed 4-1 (Combs dissenting).

I. Informational Items

I1. City Council agenda topics: September 2023 (Staff Report #23-195-CC)

I2. Update on City Council procedures (Staff Report #23-196-CC)

J. City Manager Report's

City Manager Justin Murphy reported out on transportation master plan public input opportunities.

K. City Councilmember Reports

- K1. Confirm voting delegate for the League of California Cities annual conference (Attachment)

Assistant to the City Manager/ City Clerk Judi Herren introduced the item.

ACTION: Motion and second (Wolosin/ Doerr), to select Mayor Wolosin as the League of California Cities voting delegate, passed unanimously.

Mayor Wolosin reported out on the Caltrain Modernization Local Policy Group meeting.

City Councilmember Nash reported out on the Peninsula Clean Energy (PCE) meeting.

City Councilmember Doerr reported out on a meetings with the Sharon Heights golf course and Nuestra Casa.

Vice Mayor Taylor reported out on the Home for All meeting.

L. Closed Session

- L1. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with the American Federation of State, County, and Municipal Employees Local 829 (AFSCME)

Agency designated representatives: City Manager Justin I.C. Murphy, Administrative Services Director Brittany Mello, Assistant City Manager Stephen Stolte, City Attorney Nira Doherty, Special Counsel Charles Sakai

- L2. Closed session conference with labor negotiators pursuant to Government Code §54957.6 regarding labor negotiations with unrepresented management

Agency designated representatives: City Manager Justin I.C. Murphy, City Attorney Nira Doherty, Special Counsel Charles Sakai

- L3. Conference with legal counsel – anticipated litigation (Paragraph (2) of subdivision (d) of Gov. Code § 54956.9)
Significant exposure to litigation: One case

M. Adjournment

Mayor Wolosin adjourned to the closed session at 9:49 p.m.

Mayor Wolosin adjourned the meeting at 11:46 p.m.

Assistant to the City Manager/ City Clerk Judi A. Herren



STAFF REPORT

City Council Meeting Date: 9/12/2023
Staff Report Number: 23-199-CC

Consent Calendar: **Award a construction contract to One Workplace for the Menlo Park Community Campus furniture project and determine this action is categorically exempt under California Environmental Quality Act Guidelines §15302 for existing facilities**

Recommendation

Staff recommends that the City Council award a \$948,154 construction contract to One Workplace L. Ferrari, LLC (Attachment A), approve construction contingency in the amount of \$142,223 (held by the City), approve construction administration fees in the amount of \$40,000, and determine that this action is categorically exempt under California Environmental Quality Act (CEQA) Guidelines §15302 for the Menlo Park Community Campus (MPCC) furniture project.

Policy Issues

The City Council must take action to award or reject construction bids for capital improvement projects per public contracting requirements. The project is included in the fiscal year 2023-24 capital improvement plan as part of the MPCC project.

Background

On Dec. 16, 2019, Meta (formerly known as Facebook) submitted a proposal for the funding and development of a newly constructed multigenerational center to incorporate the former Onetta Harris Community Center, Menlo Park Senior Center, Belle Haven Youth Center Belle Haven Pool, and Belle Haven Branch Library into a single new multiservice facility.

Following a series of reviews and discussions, Jan. 12, 2021, the City Council approved the architectural control, use permit, funding, and improvements agreement for the MPCC project situated at 100-110 Terminal Ave. City Council specifically requested a further review of certain design elements related to the proposed pool area, which were subsequently addressed Jan. 26, 2021, and approved Feb. 1, 2021. Construction began in November 2021 and is anticipated to be completed in early 2024.

On March 14, the City Council approved a budget appropriation of \$1.4 million for furniture and non-fixed equipment for the new facility. This budget appropriation allowed for the procurement and installation of furniture, fitness equipment, a library book sorter, and other non-fixed and assorted equipment items for MPCC.

Analysis

On June 6, the City solicited bids from prospective contractors for the MPCC furniture project. The project's

advertisement was made accessible through Planet Bids, a procurement platform utilized by the City, and also published twice in a local newspaper to ensure comprehensive visibility. Construction bids were opened July 7, and the bid results are shown in Table 1.

Table 1: Bid results	
Bidder	Bid total
Engineer’s estimate	\$1,088,545
One Workplace	\$948,154
KBM-Hogue	\$1,043,767
Roien’s LLC	Non-responsive

Staff discovered omissions in the bid submitted by Roien’s LLC, which violated the Public Contracting Code. The omissions constituted grounds for finding their bid non-responsive and staff distributed a bid rejection notice to Roien’s LLC. No response was received from Roien’s LLC. One Workplace was determined to be the lowest bidder. Their bid price of \$948,154 is 12% below the engineer’s estimate.

Staff has thoroughly evaluated the low bid submitted by One Workplace and found it to be both responsive and responsible per the public contracting code requirements. Subject to the City Council’s award of contract, the furniture is tentatively scheduled to be ordered in fall 2023, to be delivered and installed after the temporary certificate of occupancy is received. Assuming no additional unforeseen construction delays arise, the issuance of the temporary certificate of occupancy is tentatively anticipated during the first quarter of calendar year 2024.

Impact on City Resources

City Council appropriated \$1.4 million for the MPCC furniture March 14, as noted in the March 14, staff report (Attachment B). Table 2 below summarizes the various City funding sources for MPCC.

Table 2: City-share funding sources	
Source	Amount (\$ million)
General fund CIP	\$2.098
Library system improvement fund	\$1.484
Recreation in lieu fund	\$3.795
Water capital fund	\$0.800
Park and Water Bond Act of 2018 (Proposition 68) grant	\$0.198
Grants and donations (total target \$1.000 million)	\$0.850
Measure T general obligation recreation bonds	\$8.800
Total	\$18.025

The estimated construction budget for the furniture is summarized in Table 3 and includes a 15% construction contingency to account for unforeseen issues. Construction administration fees are estimated at \$40,000 and include construction management, consultant services for engineering, and inspection.

Table 3: Construction budget	
Item	Cost
Construction subtotal	\$948,154
Contingency	\$142,223
Construction administration	\$40,000
Total budget	\$1,130,377
Available funding	\$1,400,000

Staff recommends that the City Council award a \$948,154 construction contract to One Workplace, approve contingency (held by the City) in the amount of \$142,223, and approve construction administration fees totaling \$40,000 for the MPCC furniture project.

Environmental Review

On Jan. 12, 2021, the City Council determined that the MPCC project is categorically exempt pursuant to the CEQA Guidelines §15302 Replacement of Existing Facilities. The project has substantially the same purpose and capacity as the existing facilities, and this exemption allows for reasonable increases in square footage to accommodate replacement facilities. On Jan. 21, 2021, staff filed a notice of exemption with the San Mateo County clerk.

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. Construction contract
- B. Hyperlink – March 14, staff report: menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2023-meetings/agendas/20230314-city-council-agenda-packet.pdf#page=553

Report prepared by:
Arian Khosravian, Project Manager

Report reviewed by:
Tanisha Werner, Assistant Public Works Director – Engineering
Sean S. Reinhart, Library and Community Services Director

CONSTRUCTION AGREEMENT

City Manager's Office
 701 Laurel St., Menlo Park, CA 94025
 tel 650-330-6620



Agreement #:
AGREEMENT FOR SERVICES BETWEEN THE CITY OF MENLO PARK AND FIRST PARTY
THIS CONSTRUCTION CONTRACT ("Contract") is made and entered into this ____ day of _____, _____ ("Execution Date") by and between the CITY OF MENLO PARK, a California municipal corporation, ("City") and One Workplace L. Ferrari, LLC ("Contractor").
RECITALS
<p>A. Contractor is a California Corporation duly organized and in good standing in the State of California, License Number 852389. Contractor represents and warrants that it has the background and experience set forth in the Contractor's responses to the notice inviting bids.</p> <p>B. Contractor represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Contract.</p> <p>C. On June 6, 2023, the City issued a Notice to Contractors inviting bids for the Project. A copy of the Contractor's Bid proposal and List of Subcontractors is attached herein and incorporated by this reference.</p> <p>D. The City desires to retain Contractor as an independent contractor to provide the construction and other services identified in this Contract for the Project upon the terms and conditions contained herein.</p>
AGREEMENT
<p>NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants and conditions contained herein, the parties hereby agree as follows:</p> <p>1. DEFINITIONS. Capitalized terms used throughout the Contract Documents shall have the meanings set forth in this Contract and/or the Special Provisions. If there is a conflict between the definitions in this Contract and the Special Provisions, the definitions in this Contract shall prevail.</p> <p>2. PROJECT. The project is the construction of Menlo Park Community Campus Furniture ("Project"). The work includes all labor, materials, equipment, services, permits, licenses and taxes, and all other things necessary for Contractor to perform its obligations and complete the Project, including, without limitation, any Change Orders executed by City and Contractor in accordance with the requirements of the Contract Documents ("Work").</p>

3. CONTRACT DOCUMENTS.

3.1 List of Documents. The Contract Documents (sometimes collectively referred to as "Agreement" or "Bid Documents") consist of the following documents which are on file with the Public Works Department and are hereby incorporated by reference.

- 1) Change Orders
- 2) Field Orders
- 3) Contract
- 4) Bidding Addenda
- 5) Special Provisions
- 6) Project Plans and Drawings
- 7) Technical Specifications
- 8) City Standard Details
- 9) State of California Department of Transportation Specifications, 2006 Edition (Cal Trans specifications)
- 10) Notice to Contractors
- 11) Contractor's Bid
- 12 Bidder Certifications, Questionnaire and Statements
- 13) Reports listed in the Contract Documents
- 14) City of Menlo Park Waste Management Form, Waste Management Daily Transport Report
- 15) City of Menlo Park Truck Route Map and Regulations
- 16) Performance, Payment and Maintenance Bonds

3.2 Order of Precedence. For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, the Contract Documents shall have the order of precedence as set forth in the preceding section. If a claimed inconsistency cannot be resolved through the order of precedence, the City shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.

4. PERMITS. Contractor, at its sole expense, shall obtain and maintain during the term of this Contract, all appropriate permits, licenses and certificates that may be required in connection with the performance of the Work, including, but not limited to, a City business license.

5. DEPARTMENT OF INDUSTRIAL RELATIONS. Contractor and any subcontractor performing Work on this Project shall be registered with the Department of Industrial Relations ("DIR") pursuant to Labor Code Section 1725.5. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code Section 1725.5, with limited exceptions from this requirement for bid purposes only under Labor Code Section 1771.1(a). This Project is subject to compliance monitoring and enforcement by the DIR. It is the responsibility of the Contractor to ensure all DIR requirements and regulations are met and stay current. For more information see <http://dir.ca.gov/Public-Works/SB854.html>.

6. TERM. This Contract is effective on the Execution Date set forth in the initial paragraph of this Contract and shall remain in effect until the Project has been satisfactorily completed by

Contractor, unless earlier terminated pursuant to the terms of this Contract.

7. **TIME OF COMPLETION.** Time is of the essence with respect to all time limits set forth in the Contract Documents. Contractor shall commence the Work on the date specified in the City's Notice to Proceed. Contractor shall diligently prosecute the Work to Substantial Completion within ___ calendar days after the date specified in the City's Notice to Proceed ("Contract Time"). The Contract Time may only be adjusted for extensions of time approved by the City and agreed to by Change Order executed by City and Contractor in accordance with the requirements of the Contract Documents.

8. **COMPENSATION.** The City agrees to compensate Contractor for its satisfactory completion of the Work in compliance with the Contract Documents for the not to exceed amount of Nine hundred and forty-eight thousand and one hundred and fifty-four dollars no cents (\$948,154.00) ("Contract Sum"). Payment shall be as set forth in the Plans, Special Provisions and/or Technical Specifications. The Contract Sum may only be adjusted by Change Orders issued, executed and satisfactorily performed by Contractor in accordance with the requirements of the Contract Documents. The Contract Sum shall be adjusted (upward or downward) only to account for Change Orders. The Contract Sum is and shall be full compensation for all Work performed by Contractor. The Contract Sum shall cover all losses arising out of the nature of the Work or from the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work until its Acceptance by the City, all risks connected with the Work and any and all expenses incurred due to the suspension or discontinuance of the Work.

9. **STANDARD OF PERFORMANCE.** As a material inducement to the City to enter into this Contract, Contractor hereby represents and warrants that it has the qualifications and experience necessary to undertake the Work to be provided and the Project to be completed pursuant to this Contract. Contractor agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. The Work performed pursuant to this Contract shall be performed in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project.

10. **COMPLAINCE WITH LAW.** This Project constitutes a public work within the meaning of California Labor Code Section 1720 et. seq. and is subject to prevailing wage laws. The Work performed by Contractor pursuant to this Contract shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of the City, and any federal, state or local governmental agency having jurisdiction in effect at the time the work is rendered.

11. **REPRESENTATIVE.** Gregory M. Lopez is hereby designated as the project manager/superintendent/foreman of Contractor authorized to act on its behalf with respect to the Work specified in this Contract. It is expressly understood that the experience, knowledge, capability and reputation of One Workplace L. Ferrari, LLC were a substantial inducement for City to enter into this Contract. Therefore, Gregory M. Lopez shall be responsible during the term of this Contract for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. The representative may not be changed by

Contractor without the express written approval of the City.

12. LIQUIDATED DAMAGES.

12.1 Entitlement. City and Contractor acknowledge and agree that if Contractor fails to fully and satisfactorily complete the Work within the Contract Time, the City will suffer, as a result of Contractor's failure, substantial damages which are both extremely difficult and impracticable to ascertain. Such damages may include, but are not limited to: (a) loss of public confidence in the City and its contractors; (b) loss of public use of public facilities; and (c) extended disruption to public.

12.2 Daily Amount. City and Contractor have reasonably endeavored, but failed, to ascertain the actual damage that the City will incur if the Contractor fails to achieve Substantial Completion of the Work within the Contract Time. Therefore, the parties agree that in addition to all other damages to which the City may be entitled other than delay damages, in the event the Contractor shall fail to achieve Substantial Completion of the Work within the Contract Time, Contractor shall pay City as liquidated damages the amount of Five-Hundred Dollars (\$500) per day for each calendar day after the expiration of the Contract Time until Contractor achieves Substantial Completion of the Work. The liquidated damages amount is not a penalty, but a reasonable estimate of the amount of damages the City will suffer.

12.3 Apportionment. Such liquidated damages shall be subject to reduction for delays for which Contractor is entitled to receive an extension of time under the Contract Documents ("Apportionment"). Such Apportionment shall not be affected by the fact that liquidated damages may not be applied for periods of time during which delays have occurred that are caused by both City and Contractor. It is agreed that the liquidated damages shall not be applied for portions of the Work completed prior to the expiration of the Contract Time.

12.4 Exclusive Remedy. City and Contractor acknowledge and agree that this Section 11, Liquidated Damages, shall be the City's only remedy for delay damages caused by the Contractor's failure to achieve Substantial Completion of the Work within the Contract Time.

12.5 Damages upon Abandonment. In the event that the Contractor either abandons the Work or is terminated for default in accordance with the provisions of this Contract, City shall have the right, in its sole discretion exercised by written notice issued either before or after Substantial Completion, to elect to either assert or waive its right to liquidated damages. If City elects to assert its right to liquidated damages, then the liquidated damages shall be calculated from expiration of the Contract Time to the date that Substantial Completion of the Work is achieved by the City or its replacement contractor employed to complete Contractor's performance. If City elects to waive its right to liquidated damages, then Contractor shall be liable to the City, in lieu of the liquidated damages, for all actual Losses (as defined in the General Conditions) proximately resulting from Contractor's failure to complete the Work within the Contract Time.

12.6 Other Remedies. The parties further acknowledge and agree that the City is entitled to any and all available legal and equitable remedies City may have where City's Losses are caused by any reason other than Contractor's failure to achieve Substantial Completion of the Work within the Contract Time.

13. INDEPENDENT CONTRACTOR. Contractor is, and shall at all times remain as to the City, a wholly independent contractor and not an agent or employee of the City. Contractor shall receive no premium or enhanced pay for work normally understood as overtime, nor shall Contractor receive holiday pay, sick leave, administrative leave, or pay for any other time not actually worked. The intention of the parties is that Contractor shall not be eligible for benefits and shall receive no compensation from the City except as expressly set forth in this Contract. Contractor shall have no power to incur any debt, obligation, or liability on behalf of the City or otherwise act on behalf of the City as an agent. Neither the City, nor any of its agents shall have control over the conduct of Contractor, any of Contractor's employees, or any subcontractors, except as set forth in this Contract. Contractor shall at no time, or in any manner, represent that it or any of its agents or employees or subcontractors are in any manner employees of the City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Contract, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Contract. Contractor shall fully comply with the worker's compensation law regarding Contractor, Contractor's employees and subconsultants. Contractor further agrees to indemnify and hold the City harmless from any failure of Contractor and any subconsultants to comply with applicable worker's compensation laws.

14. CONFLICT OF INTEREST. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the work to be performed by Consultant under this Contract, or which would conflict in any manner with the performance of its services hereunder. Contractor further covenants that, in performance of this Contract, no person having any such interest shall be employed by it. Furthermore, Contractor shall avoid the appearance of having any interest which would conflict in any manner with the performance of the work pursuant to this Contract. Contractor agrees not to accept any employment during the term of this Contract which is or may make Contractor financially interested, as provided in California Government Code Sections 1090 and 87100, in any decision made by the City on any matter in connection with which Contractor has been retained pursuant to this Contract. However, nothing herein shall preclude Contractor from accepting other engagements with the City.

15. INDEMNIFICATION.

15.1 To the fullest extent permitted by law, Contractor shall indemnify, defend, with independent counsel approved by the City, and hold harmless the City, and its elective or appointive boards, officers, employees agents and volunteers ("Indemnitee") from and against any and all claims, losses, or liability that may arise out of or result from damages to property or personal injury received by reason of, or in the course of work performed under this Contract due to the acts or omissions of Contractor or Contractor's officers, employees, agents or

subcontractors. The indemnification provisions survive completion of the Work or the termination of this Contract. The acceptance of such services shall not operate as a waiver of such right of indemnification. Notwithstanding the foregoing, nothing contained herein shall be construed as obligating Contractor to indemnify any Indemnitee for any claims, losses or liability resulting from the sole or active negligence or willful misconduct of the Indemnitee. Contractor shall pay City for any costs incurred in enforcing this provision.

15.2 The City does not and shall not waive any rights that they may possess against Contractor because of the acceptance by the City or the deposit with the City of any insurance policy or certificate required pursuant to this Contract. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

15.3 Pursuant to Public Contract Code Section 9201, the City shall timely notify Contractor upon receipt of any third-party claim relating to the Contract.

16. ASSIGNABILITY. The parties agree that the experience and qualifications of Contractor as set forth in the Contractor's Bid are material considerations for the City entering into this Contract. Consultant shall not assign or transfer any interest in this Contract, without the prior written consent of the City, and any attempt by Contractor to do so shall be void and of no effect and a breach of this Contract. For purposes of this section, the sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor or of any general partner or joint venturer or syndicate member of Contractor, if a partnership or joint venture or syndicate or co-tenancy exists, which shall result in changing the control of Contractor, shall be construed as an assignment of this Construction Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.

17. INSURANCE AND BOND REQUIREMENTS.

17.1 Prior to the commencement of any Work, the Contractor shall provide the City with evidence that it has obtained the insurance required by this Section and all bonds, including, but not limited to, payment and performance bonds, required in the Special Provisions. Failure to obtain and maintain the required insurance and bonds to so shall be deemed a material breach of this Contract.

17.2 Insurance Requirements. Contractor shall obtain the following insurance.

A. Worker's Compensation and Employer's Liability Insurance: The CONTRACTOR shall have in effect during the entire life of this Contract workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Contract, the CONTRACTOR makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

B. Commercial General Liability Insurance: The CONTRACTOR shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Contract from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the CONTRACTOR's operations under this Contract, whether such operations be by CONTRACTOR or by any sub-consultant or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) in aggregate, or four million dollars (\$4,000,000) combined single limit bodily injury and property damage for each occurrence. CONTRACTOR shall provide the City with acceptable evidence of coverage, including a copy of all declarations of coverage exclusions.

C. Automobile Liability Insurance: CONTRACTOR shall maintain Automobile Liability Insurance pursuant to this Contract in an amount of not less than one million dollars (\$1,000,000) for each accident combined single limit or not less than one million dollars (\$1,000,000) for any one (1) person, and one million dollars (\$1,000,000) for any one (1) accident, and Three Hundred Thousand Dollars, (\$300,000) property damage.

17.3 CITY and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for the workers' compensation), which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

17.4 In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, CITY, at its option, may, notwithstanding any other provision of this Contract to the contrary, immediately declare a material breach of this Contract and suspend all further work pursuant to this Contract.

17.5. Before the execution of this Contract, any deductibles or self-insured retentions must be declared to and approved by CITY.

18. SUSPENSION. The City may, at any time and from time to time, without cause, order Contractor, in writing ("Suspension Order"), to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time, as City may determine, with such period of suspension to be computed from the date of the Suspension Order. Upon receipt of a Suspension Order, Contractor shall, at City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of work stoppage. Within the period of the above noted aggregate time, or such extension to that period as is agreed upon by Contractor and City, City shall either cancel the Suspension Order or delete the work covered by the

Suspension Order by issuing a Change Order. If a Suspension Order is canceled or expires, Contractor shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension.

19. BOOKS AND RECORDS. Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract in accordance with generally accepted accounting principles and practices consistently applied. City and City's accountants shall be afforded access at all times during normal business hours, to inspect, audit and copy Contractor's records, books, estimates, take-offs, cost reports, ledgers, schedules, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and Contractor shall preserve these for a period of three years after the later of (i) final payment or (ii) final resolution of all Contract Disputes and other disputes or for such longer period as may be required by law. Contractor's compliance with any request by City pursuant to this Section 18 shall be a condition precedent to filing or maintenance of any legal action or proceeding by Contractor against City and to Contractor's right to receive further payments under the Contract Documents. Any failure by Contractor to provide access to its business records for inspection or copying by City shall be specifically enforceable by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

20. WAIVER. Waiver by either party of any breach or violation of any one or more terms or conditions of this Contract shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. Acceptance by the City of the performance of any work by the Contractor shall not be deemed to be a waiver of any term or condition of this Contract. In no event shall the City's making of any payment to Contractor constitute or be construed as a waiver by the City of any breach of this Contract, or any default which may then exist on the part of Contractor, and the making of any such payment by the City shall in no way impair or prejudice any right or remedy available to the City with regard to such breach or default.

21. DEFAULT. In the event the City determines, in its sole discretion, that Contractor has failed or refused to perform any of the obligations set forth in the Contract Documents, or is in breach of any provision of the Contract Documents, the City may give written notice of default to Contractor in the manner specified for this giving of notices in this Contract. Except for emergencies, Contractor shall cure any default in performance of its obligations under the Contract Documents within two (2) business days after receipt of written notice. However, if the breach cannot be reasonably cured within such time, Contractor will commence to cure the breach within two (2) days and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) days after receipt of such written notice.

22. CITY RIGHTS AND REMEDIES.

22.1 Remedies Upon Default. In the event that Contractor fails to cure any default of this Contract within the time period set forth in Section 20, then City may pursue any remedies available under law or equity, including, without limitation, the following: (1) the City may, without terminating the Contract, delete certain portions of the Work, reserving to itself all rights to losses related thereto; (2) the City may, without terminating the Contract, engage others to perform the Work or portion of the Work that has not been performed by the Contractor and withhold the cost thereof to City from future payments to the Contractor, reserving to itself all rights to Losses related thereto; or (3) the City may, without terminating the Contract and reserving to itself all rights to Losses related thereto, suspend all or any portion of this Construction Contract for as long a period of time as City determines, in its sole discretion, appropriate, in which event City shall have no obligation to adjust the Contract Sum or Contract Time, and shall have no liability to Contractor for damages if City directs Contractor to resume Work; (4) the City may terminate all or any part of this Contract for default, reserving to itself all rights of Losses related thereto; or (5) the City may, without terminating the Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

22.2 Additional Provisions. All of City's rights and remedies under this Contract are cumulative, and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as material shall not be construed as implying that other breaches not so designated are not material nor shall such designations be construed as limiting City's right to terminate the Contract, or the exercise of its other rights or remedies for default, to only material breaches. City's determination of whether there has been noncompliance with the Contract so as to warrant exercise by City of its rights and remedies for default under the Contract, shall be binding on all parties. No termination or action taken by City after such termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against Contractor to recover all liquidated damages and Losses suffered by City.

22.3 Delays by Sureties. Without limitation to any of City's other rights or remedies under the law, City has the right to suspend the performance by Contractor's sureties in the event of any of the following: (1) failure of the sureties to begin Work within a reasonable time in such manner as to insure full compliance with the Contract within the Contract Time; (2) abandonment of the Work; (3) if at any time City is of the opinion the Work is unnecessarily or unreasonably delayed; (4) willful violation of any terms of the Contract; (5) failure to perform according to the Contract Documents; or (6) failure to follow instructions of City for its completion within the Contract Time. City will serve notice of such failure upon the sureties and in the event the sureties neglect or refuse to cure the breach within the time specified in such notice, City shall have the power to suspend the performance or any part thereof of the sureties.

22.4 Damages to the City. The City will be entitled to recovery of all Losses under law or equity in the event of Contractor's default under the Contract Documents. In the event that City's Losses arise from Contractor's default under the Contract Documents, City shall be entitled to

withhold monies otherwise payable to Contractor until Final Completion, as defined in the General Conditions, of the Project. If City incurs Losses due to Contractor's default, then the amount of Losses shall be deducted from the amounts withheld. Should the amount withheld exceed the amount deducted, the balance will be paid to Contractor or its designee upon Final Completion of the Project. If the Losses incurred by City exceed the amount withheld, Contractor shall be liable to City for the difference and shall promptly remit same to City.

22.5 Termination of the Contract for Default. Without limitation to any of City's other rights or remedies at law or in equity, and reserving to itself all rights to Losses related thereto, City shall have the right to terminate this Contract, in whole or in part, upon the failure of Contractor to promptly cure any default. City's election to terminate the Contract for default shall be communicated by giving Contractor a written notice of termination in the manner specified for the giving of notices in the Contract. Any notice of termination given to Contractor by City shall be effective immediately, unless otherwise provided therein.

22.6 Termination Without Cause. City shall have the option, at its sole discretion and without cause, of terminating this Contract in part or in whole by giving thirty (30) days written notice to Contractor. Contractor agrees to accept such sums as allowed under this Section as its sole and exclusive compensation and waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind.

22.7 Compensation. Following termination without cause and within forty-five (45) days after receipt of a billing from Contractor seeking payment of sums authorized by this Section, City shall pay to Contractor as its sole compensation for performance of the Work the following: (1) the amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor; (2) reasonable costs of Contractor and its Subcontractors and Sub-subcontractors for demobilizing and administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) days after receipt of the notice of termination in an amount not to exceed the daily sum payable to Contractor for Compensable Delays; (3) previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.

22.8 Subcontractors. Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts permitting termination for convenience by Contractor on terms that are consistent with this Contract and that afford no greater rights of recovery against Contractor than are afforded to Contractor under this Section.

22.9 Contractor's Duties Upon Termination. Upon receipt of a notice of termination for default or for convenience, Contractor shall, unless the notice directs otherwise, do the following: (1) immediately discontinue the Work to the extent specified in the notice; (2) place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued; (3) provide to City a description, in writing no later than fifteen (15) days after receipt of the notice of termination,

of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Work covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other information as City may determine necessary in order to decide whether to accept assignment of or request Contractor to terminate the subcontract, purchase order or contract; (4) promptly assign to City those subcontracts, purchase orders or contracts, or portions thereof, that City elects to accept by assignment and cancel, on the most favorable terms reasonably possible, all subcontracts, purchase orders or contracts, or portions thereof, that City does not elect to accept by assignment; and (5) hereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

23. CONTRACTOR'S RIGHTS AND REMEDIES. Contractor may terminate this Construction Contract for cause only upon the occurrence of one of the following: (1) the Work is stopped for sixty (60) consecutive days, through no act or fault of Contractor, any subcontractor or any employee or agent of Contractor or any subcontractor, due to issuance of an order of a court or other public authority other than City having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable; or (2) if the City does not make payment of sums that are not in good faith disputed by the City and does not cure such default within ninety (90) days after receipt of notice from Contractor, then upon an additional thirty (30) days' notice to City, Contractor may terminate the Contract.

23.1 Damages to Contractor. In the event of termination for cause by Contractor, City shall pay Contractor the sums provided for in Section 21 above. Contractor agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

24. NOTICES. Any notices or other communications required or permitted to be given under this Contract shall be given in writing by personal delivery, by a recognized courier service, or by U.S. mail, postage prepaid, and return receipt requested, addressed to the respective parties as follows:

To City:

Assistant Public Works Director/City Engineer
City of Menlo Park
City Hall, 701 Laurel St.
Menlo Park, CA 94025

To Contractor:

One Workplace L. Ferrari, LLC
2500 De La Cruz Blvd
Santa Clara, CA 95950

25. Notice shall be deemed communicated on the earlier of actual receipt or 48 hours after deposit in the U.S. mail, or the date of delivery shown on deliverer's receipt. In the event of any change of address, the moving party is obligated to notify the other party of the change of address in writing within a reasonable period of time.

In addition, copies of all Claims by Contractor under this contract shall be provided to the City Attorney as follows:

To City Attorney:

City Attorney
Burke, Williams & Sorensen, LLP
181 Third Street, Suite 200
San Rafael, CA 94901

All claims shall be delivered personally or sent by certified mail.

26. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY. In the performance of this Contract, Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental handicap, or medical condition. Contractor will take affirmative action to ensure that employees are treated without regard to race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental handicap, or medical condition.

27. CONTRACT DOCUMENTS AND PRECEDENCE. The Contract Documents shall consist of the following documents. In case of inconsistencies between Contract Documents, the documents are listed in order of precedence.

28. PUBLIC WORKS CLAIMS. This Contract is subject to Public Contracts Code Section 9204 governing contractor claims.

29. ATTORNEYS' FEES; VENUE. In the event that any party to this Contract commences any legal action or proceeding to enforce or interpret the provisions of this Contract, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled. The venue for any litigation shall be San Mateo County.

30. COOPERATION. In the event any claim or action is brought against the City relating to Contractor's performance or services under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require.

31. NUISANCE. Contractor shall not maintain, commit, nor permit the maintenance or commission of any nuisance in connection with the performance of services under this Contract.

32. GOVERNING LAW. This Contract shall be construed in accordance with and governed by the laws of the State of California.

33. COMPLETE AGREEMENT; SEVERABILITY. This Contract, and any other documents

incorporated herein by reference, represent the entire and integrated agreement between the City and Contractor. This Contract supersedes all prior oral and written negotiations, representations or agreements. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Contract may only be modified by a written amendment duly executed by the parties to this Contract. In case a provision of this Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

34. COUNTERPARTS. This Contract may be signed in multiple counterparts, which shall, when executed by all the parties constitute a single binding contract.

Signatures on next page.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

FOR FIRST PARTY:

Signature

Date

Printed name

Title

Tax ID#

APPROVED AS TO FORM:

Nira F. Doherty, City Attorney

Date

FOR CITY OF MENLO PARK:

Justin I. C. Murphy, City Manager

Date

ATTEST:

Judi A. Herren, City Clerk

Date



STAFF REPORT

City Council

Meeting Date:

9/12/2023

Staff Report Number:

23-200-CC

Public Hearing:

Adopt a resolution to abandon a storm drain easement at 1585 Bay Laurel Dr. and determine this action is categorically exempt under California Environmental Quality Act Guidelines §15305 Class 5 exemption for minor alterations in land use

Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) ordering the vacation and abandonment of a storm drain easement lying within 1585 Bay Laurel Dr. and determine this action is categorically exempt under California Environmental Quality Act (CEQA) Guidelines §15305 Class 5 exemption for minor alterations in land use limitations.

Policy Issues

In order to abandon public easements, the City is legally required to go through a multistep process as specified by the State of California Streets and Highways Code or can abandon public easements through a tentative map as provided for in the Subdivision Map Act (California Government Code §66499.20.2). The Streets and Highways Code has two processes: standard and summary. Each process is specified by the Government Code, State of California, Streets and Highways Code, §8300. §8333 subsection (a) of the California Streets and Highways Code allows a summary vacation of an easement that has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation. Summary vacations have a two-step process, which requires a determination by the Planning Commission, and final action taken by the City Council.

Background

On Aug. 9, 1955, the City Council adopted Resolution No. 1161 (Attachment B) abandoning a portion of Olive Street and retaining a 60-foot-wide storm drain easement. The 30-foot-wide portion of the storm drain easement area falling on 1585 Bay Laurel Dr. has never been used by any utility company. The limits of vacation are precisely defined in Exhibit A to Attachment A and are subject to the summary vacation process as described below. A location map is included in Attachment C.

Analysis

The owner of the property at 1585 Bay Laurel Dr. has applied to initiate vacation of the 30-foot-wide portion of the storm drain easement area on 1585 Bay Laurel Dr. This portion of the storm drain easement has no utilities and has never been used by any utility company. The existing storm drain facilities fall entirely within the 30-foot-wide portion of the easement at 1605 Bay Laurel Dr. that is proposed to remain. No other public facilities are located within the area proposed to be vacated. The 30-foot-wide easement area proposed to remain is sufficient to accommodate the specified stormwater purposes of the retained easement.

Therefore, the 30-foot-wide portion of the storm drain easement area falling on 1585 Bay Laurel Dr. is no longer necessary for any future public purpose.

Utility coordination

Since the existing easement is for the limited purpose of stormwater and no other purpose per City Resolution No. 1161, obtaining “no-objection” letters from other utility companies such as AT&T, PG&E, Comcast, West Bay Sanitary District and California Water Service is not required.

Abandonment procedure

Summary vacations require that the Planning Commission review the project for conformance with the General Plan and forward its determination to City Council for final action. On July 10, the Planning Commission determined that the proposed vacation was consistent with the General Plan (Attachment D). Should the City Council consider the abandonment favorably, a resolution ordering the vacation and abandonment of the easement will be recorded. Staff recommends that the City Council adopt a resolution to abandon the storm drain easement.

Impact on City Resources

There is no direct impact on City resources associated with the actions in this staff report. The fee for staff time to review and process the abandonment has been paid by the applicant.

Environmental Review

The summary vacation is categorically exempt under Class 5, §15305 (Minor Alterations in Land Use Limitations) of the current CEQA guidelines.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Additionally, the public hearing was noticed in print newspaper, The Examiner, on Sept. 1.

Attachments

- A. Resolution to vacate and abandon storm drain easement
- B. Resolution No. 1161 to vacate and abandon a portion of Olive Street
- C. Location map
- D. Planning Commission Resolution No. 2023-34

Report prepared by:

Rambod Hakhamaneshi, Senior Civil Engineer

Report reviewed by:

Tanisha Werner, Assistant Public Works Director - Engineering

RESOLUTION NO.**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ORDERING THE VACATION AND ABANDONMENT OF A STORM DRAIN
EASEMENT LYING WITHIN 1585 BAY LAUREL DRIVE**

WHEREAS, on July 10, 2023, the City Planning Commission of the City of Menlo Park held a Public Hearing and adopted Planning Commission Resolution No. 2023-34 determining that the abandonment of a Storm Drain Easement lying within 1585 Bay Laurel Drive is consistent with the General Plan and has recommended that the City Council approve the requested vacation; and

WHEREAS, the proposed Project requests to abandon a portion of Storm Drain Easement, and the 30-foot wide portion of the Storm Drain Easement area falling on 1585 Bay Laurel Drive has never been used by any utility company. The limits of vacation are precisely defined in Exhibit A and are subject to the summary vacation; and

WHEREAS, a Public Hearing was held before the City Council of the City of Menlo Park regarding the foregoing matter on September 12, 2023; and

WHEREAS, notice of said Public Hearing was duly made by publication, mailing, and posting as required by law, and proof thereof is on file with the City Clerk of the City of Menlo Park; and

WHEREAS, no protests were filed with or received by said City Council; and

NOW, THEREFORE, 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, hereby finds and resolves that the Storm Drain Easement should be vacated pursuant to subsection (a) of Section 8333 of the California Streets and Highways Code which allows a summary vacation of an easement that has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation and the easement to be vacated is not necessary for public use and there have been no objections provided to the proposed vacation by utility companies.

BE IT AND IT FURTHER RESOLVED by the City Council of the City of Menlo Park

- A. That this vacation is made pursuant to Division 9, Part 3, Chapter 4 of the California Streets and Highways Code, Section 8333(a) et seq.; and
- B. That the City Council has determined that the public interest, convenience and necessity require the Storm Drain Easement be vacated; and
- C. That the City Council does hereby order the vacation of the Storm Drain Easement within the property at 1585 Bay Laurel Drive, described on the legal plats and more specifically shown in Exhibit A, attached hereto and incorporated herein by this reference; and
- D. The City Clerk is directed and hereby shall cause a certified copy of this Resolution attested to by the Clerk under seal to be recorded with the San Mateo County Recorder, as required by Streets and Highways Code section 8336; and
- E. That said abandonment is consistent with the General Plan; and
- F. That said abandonment is exempt under current California Environmental Quality Act Guidelines.

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 twelfth day of September, 2023, by the following votes:

AYES: Doerr, Nash, Taylor, Wolosin

NOES: None

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this __ day of September, 2023.

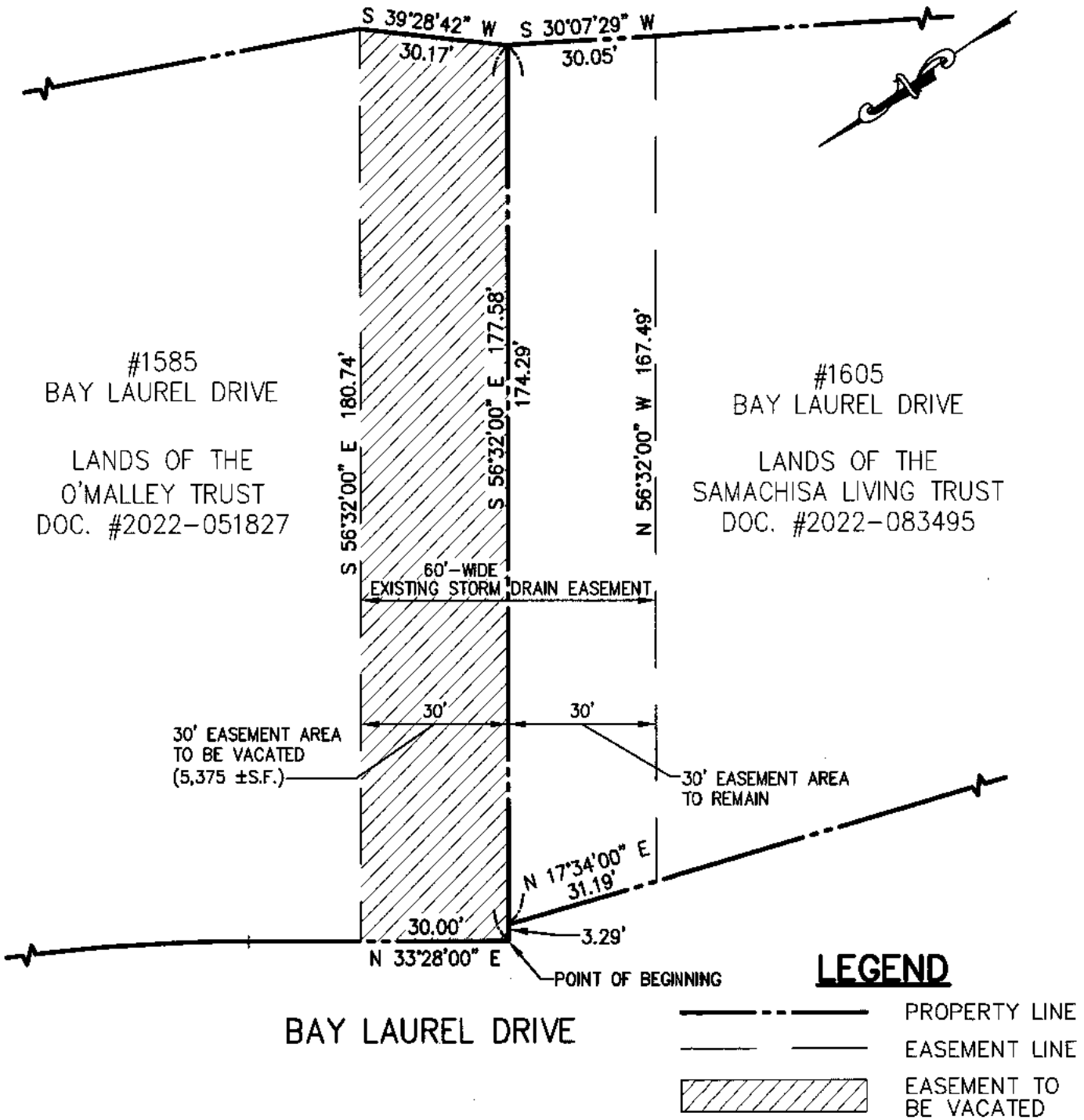
Judi A. Herren, City Clerk

Exhibits:

A. Abandonment of storm drain easement within 1585 Bay Laurel Drive



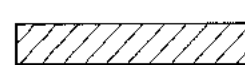
EXHIBIT A

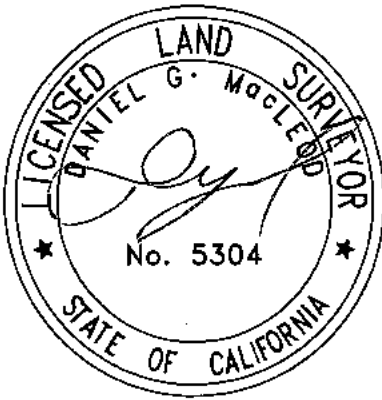
EXHIBIT A



BAY LAUREL DRIVE

LEGEND

-  PROPERTY LINE
-  EASEMENT LINE
-  EASEMENT TO BE VACATED



TITLE: PLAT OF VACATION OF 60'-WIDE STORM DRAIN EASEMENT
 1585 BAY LAUREL DRIVE
 MENLO PARK SAN MATEO COUNTY CALIFORNIA

PLAT: DJK	SCALE: 1" = 30'	DATE: 03-17-23	JOB #: 5040-21
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MACLEOD AND ASSOCIATES

CIVIL ENGINEERING • LAND SURVEYING
 965 CENTER STREET SAN CARLOS CA 94070 (650) 593-8580
 Page J-1.5

RESOLUTION NO. 1161

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ORDERING THE VACATION AND ABANDONMENT OF A PORTION OF OLIVE STREET IN THE CITY OF MENLO PARK UNDER THE PROVISIONS OF THE STREETS VACATION ACT.

ORDER OF VACATION AND ABANDONMENT

WHEREAS, the City Council of the City of Menlo Park, under and pursuant to the provisions of the "Streets Vacation Act of 1941" (Statutes of 1941, Chapter 250, page 1357 et seq. Section 8300 et seq. Streets and Highways Code), did on the 28th day of June, 1955, pass and adopt Resolution No. 1157 declaring the intention of said City Council to vacate a portion of OLIVE STREET, City of Menlo Park, hereinafter described;

AND WHEREAS, a public hearing was had on the 9th day of August, 1955, in the Council Chambers, City Hall, Menlo Park, California, whereat said proposed vacation and abandonment were duly considered, and said matter submitted to said City Council for action;

AND WHEREAS, notice of said hearing was duly given and made in the time, form and manner, and by publication and posting, in the manner required by the aforementioned Statute, and proof thereof is on file with said City Council;

AND WHEREAS, no protests, either written or oral, were filed with or received by said City Council respecting said proposed vacation and abandonment;

And said City Council being fully advised in said matter, and finds that, from all the evidence submitted, that a portion of Olive Street, in the City of Menlo Park, hereinafter particularly described, is unnecessary for present or prospective public purposes, save and excepting that there is expressly existing in said portion

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED by said City Council that the foregoing recitals are true and correct;

BE IT FURTHER RESOLVED by said City Council that the following portion of Olive Street, be and the same is hereby vacated and abandoned as being unnecessary for present or prospective public purposes; and that said portion of Olive Street, herein vacated and abandoned, is described as follows:

All that certain real property situate in the City of Menlo Park, County of San Mateo, State of California, described as follows:

That certain portion of Olive Street extending Southerly from the Southeasterly sideline of Bay Laurel Drive to San Francisquito Creek, in said City of Menlo Park; EXCEPTING THEREFROM, AND RESERVING TO THE CITY OF MENLO PARK, an easement in, and over all, of the above described portion of Olive Street, for the maintenance, operation, improvement, enlargement and extension of a storm water sewer, pipe and storm water drainage structure.

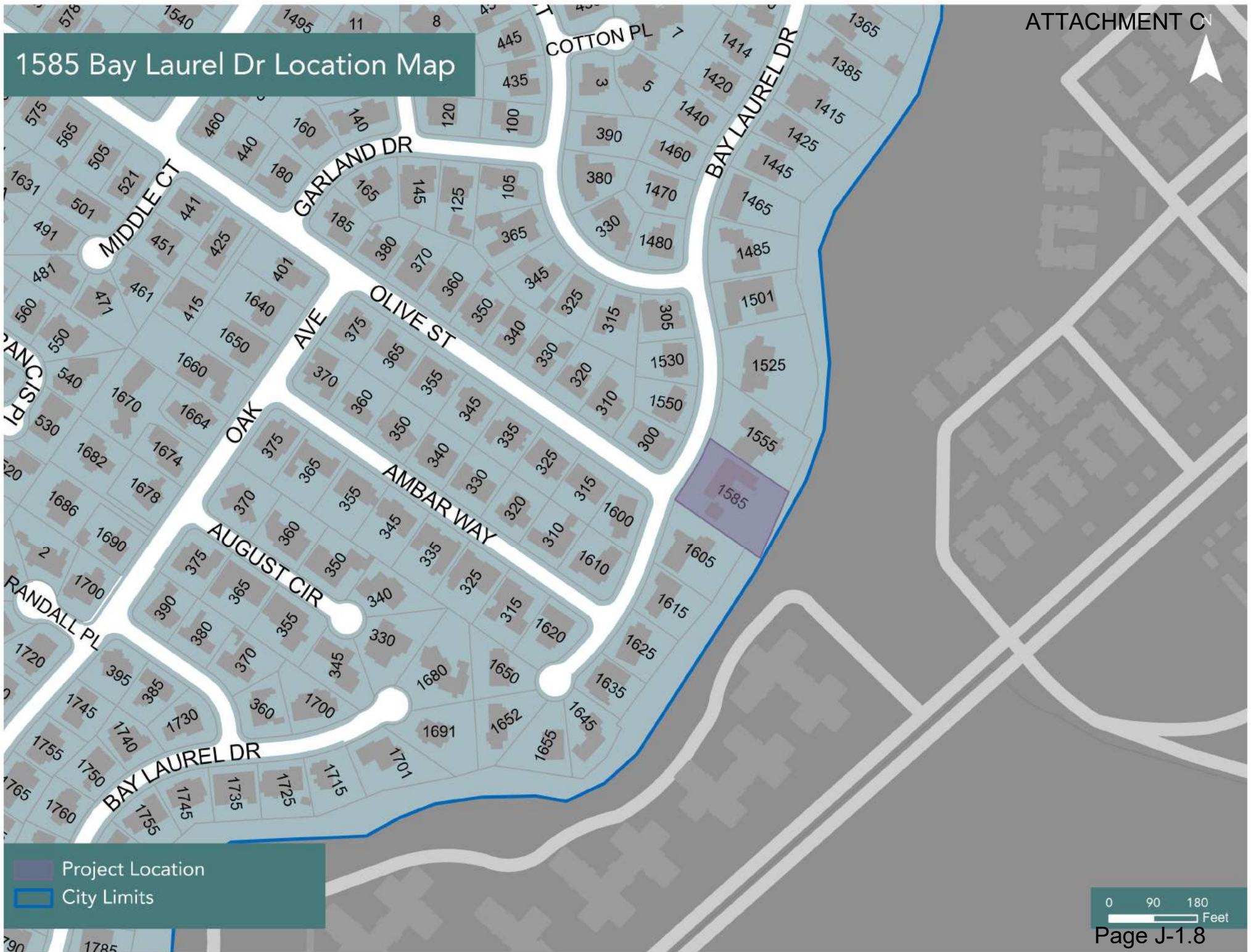
I, MARGARET A. BECKER, do hereby certify that the above and foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Menlo Park, at a regular meeting held by said Council on the 9th day of August, 1955, by the following vote:

AYES: Councilmen: ~~Andrus~~ Bonde, Burgess, Ford and Lawson.

NOES: Councilmen: None

ABSENT: Councilmen: ~~None~~ Andrus.

1585 Bay Laurel Dr Location Map



-  Project Location
-  City Limits



RESOLUTION NO. 2023-34**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MENLO PARK DETERMINING THAT THE ABANDONMENT OF A STORMDRAIN EASEMENT LYING WITHIN 1585 BAY LAUREL DRIVE IS CONSISTENT WITH THE GENERAL PLAN AND RECOMMENDING THAT THE CITY COUNCIL APPROVE THE REQUESTED ABANDONMENT**

WHEREAS, the City of Menlo Park (“City”) received an application requesting abandonment of an existing stormdrain easement lying within 1585 Bay Laurel Drive; and

WHEREAS, the proposed Project requests to abandon a portion of Stormdrain Easement, and the 30 foot wide portion of the stormdrain easement area falling on 1585 Bay Laurel Drive has never been used by any utility companies, which requires a recommendation by the Planning Commission to the City Council; and

WHEREAS, the Planning Commission has considered the stormdrain easement abandonment within 1585 Bay Laurel Drive shown in Exhibit A, which is attached and made apart thereto; and

WHEREAS, the Planning Commission reviewed the proposed stormdrain easement abandonment request and determined that the request complies with the General Plan goals, policies, and programs, and there have been no objections provided to the proposed abandonment by utility companies and easement holders; and

WHEREAS, the Project, requires discretionary actions by the City as summarized above, and therefore the California Environmental Quality Act (“CEQA”) Public Resources Code Section §21000 et seq.) and CEQA Guidelines (Cal. Code of Regulations, Title 14, §15000 et seq.) require analysis and a determination regarding the Project’s environmental impacts; and

WHEREAS, the City is the lead agency, as defined by CEQA and the CEQA Guidelines, and is therefore responsible for the preparation, consideration, certification, and approval of environmental documents for the Project; and

WHEREAS, the Project is categorically except from environmental review pursuant to Cal. Code of Regulations, Title 14, §15305 et seq. (Minor Alternation in Land Use Limitations); and

WHEREAS, all required public notices and public hearings were duly given and held according to law; and

WHEREAS, at a duly and properly noticed public hearing held on July 10, 2023, the Planning Commission fully reviewed, considered, and evaluated the whole of the record including all public and written comments, pertinent information, documents and plans, prior to taking action regarding the Project.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby resolves as follows:

1. The Project is categorically except from environmental review pursuant to Cal. Code of Regulations, Title 14, §15305 et seq. (Minor Alternation in Land Use Limitations).
2. The Planning Commission hereby finds that the stormdrain easement abandonment would be compatible with orderly development, because the easements to be vacated are not necessary for public use and there have been no objections to the abandonment proposal.
3. The Planning Commission hereby finds that the proposed stormdrain easement abandonment within 1585 Bay Laurel Drive shown in Exhibit A is consistent with the General Plan and recommends that the City Council approve the requested abandonment as proposed.

SEVERABILITY

If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

I, Corinna Sandmeier, Principal Planner and Planning Commission Liaison of the City of Menlo Park, do hereby certify that the above and foregoing Planning Commission Resolution was duly and regularly passed and adopted at a meeting by said Planning Commission on July 10, 2023 by the following votes:

AYES: Harris, Do, Ehrich, Riggs, Schindler

NOES: None

ABSENT: Barnes, Ferrick

ABSTAIN: None

IN WITNESS THEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this 10th day of July, 2023.

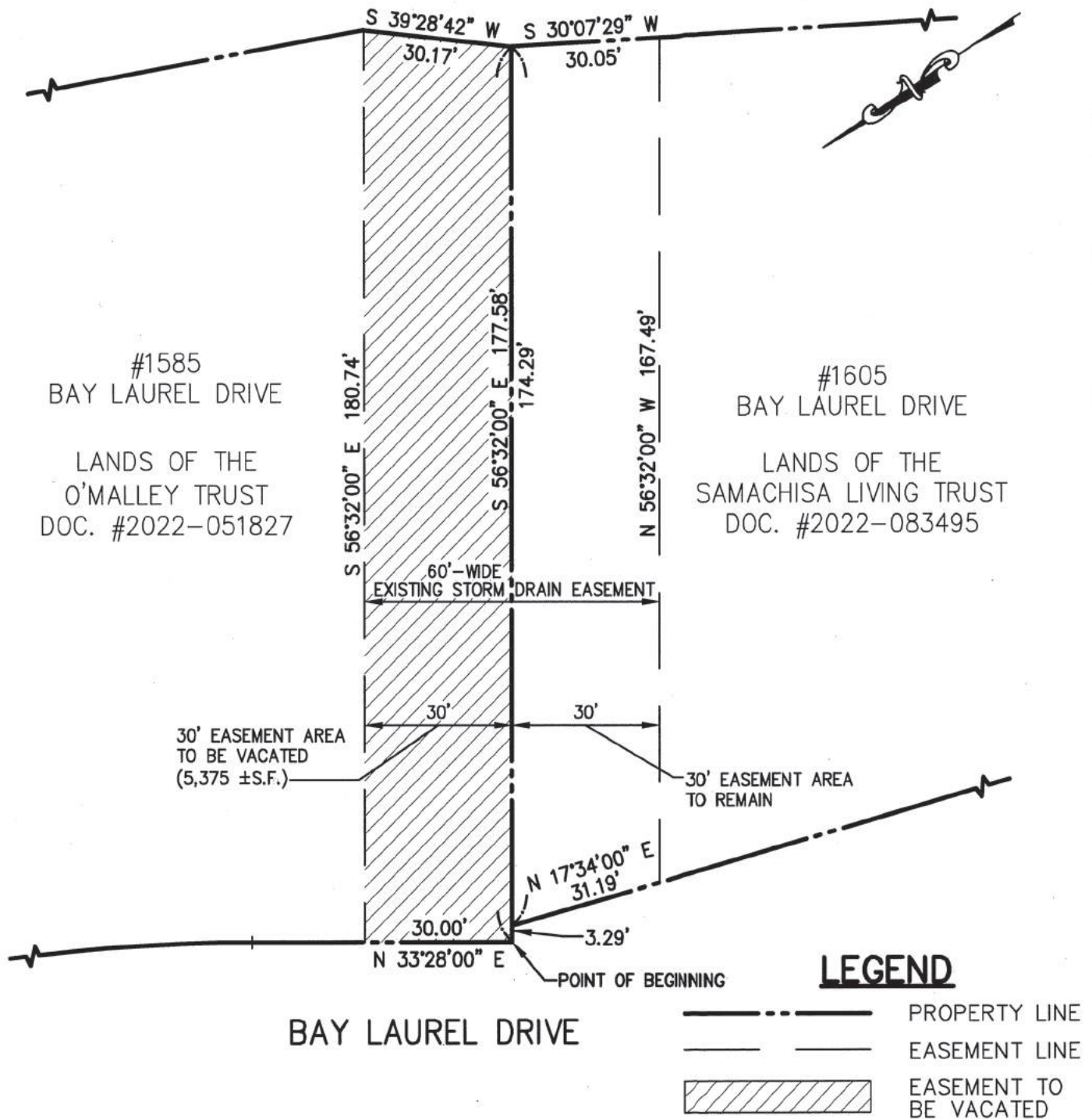
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36680C0214F747E...
 Corinna Sandmeier
 Principal Planner and Planning Commission Liaison
 City of Menlo Park

Exhibits:

- A. Abandonment of stormdrain easement within 1585 Bay Laurel Drive

EXHIBIT A



TITLE: PLAT OF VACATION OF 60'-WIDE STORM DRAIN EASEMENT
1585 BAY LAUREL DRIVE

MENLO PARK SAN MATEO COUNTY CALIFORNIA

PLAT: DJK	SCALE: 1" = 30'	DATE: 03-17-23	JOB #: 5040-21
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MACLEOD AND ASSOCIATES

CIVIL ENGINEERING • LAND SURVEYING

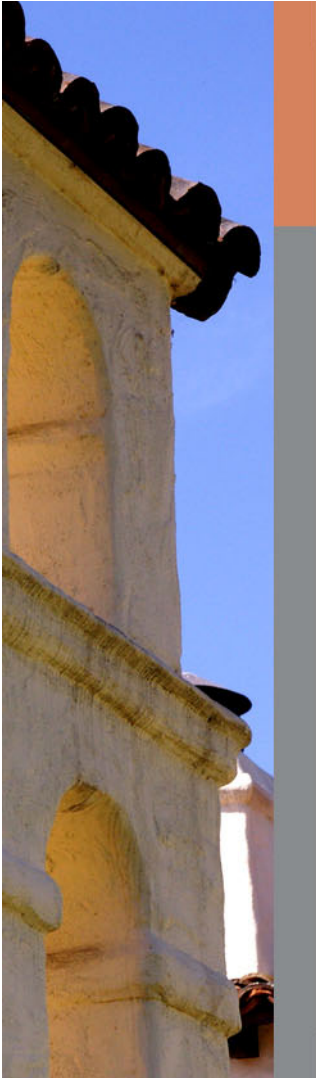
965 CENTER STREET SAN CARLOS CA 94070 (650) 593-8580





RESOLUTION TO ABANDON STORM DRAIN EASEMENT

1585 Bay Laurel Drive, Menlo Park



PROJECT BACKGROUND

- By Resolution 1161 adopted August 9, 1955, the City of Menlo Park abandoned a portion of Olive Street and retained an easement for storm drain purposes only over the entire 60 ft width.
- The 30-foot wide portion of the stormdrain easement area falling on 1585 Bay Laurel Drive has never been used for storm drain or other utility purposes.
- Subsection (a) of Section 8333 of the California Streets and Highways Code allows a summary vacation of easement that has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation.
- On July 10, 2023 the Planning Commission adopted Resolution No. 2023-34 confirming that proposed easement vacation is consistent with the City's General Plan and recommending that the City Council approve the easement vacation.







RECOMMENDED ACTION

- Adopt resolution ordering the vacation and abandonment of the 30-foot wide portion of the storm drain easement on 1585 Bay Laurel Drive.



THANK YOU



STAFF REPORT

City Council

Meeting Date:

9/12/2023

Staff Report Number:

23-206-CC

Regular Business:

Authorize the city manager to execute an agreement with Team Sheeper, Inc., to operate Burgess Pool and the future Menlo Park Community Campus aquatics center

Recommendation

City staff recommends that City Council authorize the city manager to execute an aquatics operator agreement (Agreement) with Team Sheeper, Inc., at Burgess Pool and the future Menlo Park Community Campus (MPCC) aquatics center (Attachment A).

The Agreement enhances the City's aquatics programs by achieving many of the key priorities City Council identified in the aquatics operator request for proposals (RFP). It gives the City substantial influence over the aquatics program delivery and quality control. It provides a stable operational model and ensures that both aquatics centers will remain open year-round, seven days per week, a minimum average 63 hours per week at each location. It affirms that City-owned pools and the programs provided at City-owned pools shall be oriented first and foremost toward full inclusion and access for all residents of Menlo Park, of all backgrounds, interests, abilities and walks of life.

In addition, the Agreement includes specific criteria and mechanisms to ensure that City-owned pools and programs are operated in a manner that is welcoming and inclusive for all Menlo Park residents. It creates a community "working group" of Menlo Park residents, selected by the City, to meet with the aquatics operator and City staff on a regular basis regarding desired services and programs, concerns and suggestions, and general feedback about aquatics operations. It incentivizes use of aquatics facilities and programs by Menlo Park residents, and sets a target that at least 2/3 of aquatics users are incorporated City of Menlo Park residents. It gives the City new and expanded authority to set aquatics user fees, conduct independent financial reviews, and verify program performance data and quality control, up to and including detailed financial reports and annual program performance presentations direct to City Council.

The Agreement offers a cost-effective public-private partnership model that can support high-quality aquatics program delivery to the Menlo Park community over the long term; minimize expenditures of City general fund monies and staff compared to operating an aquatics program directly; place the burden of the day-to-day operational costs and substantial risks of aquatics program operations with a qualified, proven and experienced Menlo Park-based business; maximize public use of City-owned aquatics facilities by residents and ensure that all residents have meaningful access to aquatics programs; and provide clear transparency and accountability to the City Council and directly to the public.

Policy Issues

City Council provides policy direction to the city manager regarding service provision to the community; provides authorization to the city manager to negotiate and execute professional services agreements with

service operators; and sets prioritization for the use of City resources to serve the community.

Background

City Council and Aquatics Ad Hoc Subcommittee timeline

On Feb. 8, 2022, City Council directed staff to prepare an RFP to be issued in autumn 2022 for an aquatics operator at Burgess Pool and the future MPCC aquatics center.

On July 26, 2022, City Council authorized the city manager to execute an amendment to the professional services agreement with Team Sheeper, Inc. for continued operation of Burgess Pool through Aug. 31.

On Aug. 23, 2022, City Council reviewed an aquatics program analysis and provided direction to staff regarding desired elements of the RFP.

On Oct. 11, 2022, City Council reviewed a draft RFP and process timeline and authorized staff to issue the RFP. The RFP was issued Oct. 24, 2022.

On Feb. 14, City Council reviewed the three proposals and preliminary considerations for selecting an aquatics operator (Attachment B).

On Feb. 28, City Council identified Team Sheeper, Inc. as the preferred aquatics operator and directed City staff to negotiate a new aquatics agreement for City Council action. City Council created an Aquatics Ad Hoc Subcommittee to advise and provide input to City staff related to the agreement, and appointed Vice Mayor Taylor and City Councilmember Nash to the subcommittee (Attachment C).

On March 9, March 31, April 6, April 19, May 3, May 17, July 10, July 28 and Sept. 6, the Aquatics Ad Hoc Subcommittee (Taylor/Nash) met with City staff to discuss and advise the agreement negotiations. Representatives from Team Sheeper, Inc., were invited to attend the July 10 and July 28 subcommittee meetings to discuss the subcommittee's vision for an aquatics program that is welcoming, inclusive, and accessible for residents of all backgrounds, interests, abilities and walks of life.

On July 11, City Council authorized the city manager to execute an amendment to the current professional services agreement with Team Sheeper, Inc. for continued operation of Burgess Pool through Sept. 30. The amendment extended the current professional services agreement's duration one additional month; the agreement is now set to expire Sept. 30 (Attachment D).

Aquatics operator RFP key priorities

Per City Council's feedback and direction when the RFP was authorized Oct. 11, 2022, key priorities were incorporated into the RFP. The RFP was structured to offer some flexibility to RFP respondents to develop proposals that balance the City's key priorities with respondents' operational needs. Proposals from qualified aquatics operators that demonstrated a high degree of responsiveness to most or all these priorities in addition to the basic capabilities and competencies that are required to operate quality aquatics programs were deemed more competitive for selection:

1. Operate the Burgess Pool and the future MPCC aquatics center for public access year-round, seven days per week, no fewer than 63 hours per week at each location as calculated by average applied over the course of a full calendar year—with exceptions for closures to observe major holidays or to complete necessary maintenance or repair work.
2. Operate Burgess Pool and MPCC aquatics center with comparable or equivalent operating schedules and programs at both locations, with allowance for some variances to respond to hyperlocal needs and other unique considerations of each site and the neighborhoods in which they are located.

3. Seek City approval for new aquatics user fees or modifications to existing aquatics user fees, with the mutual understanding by City and operator that: a) user fees are the primary source of revenue necessary for operator to deliver and sustain safe, quality aquatics operations for the community; and, b) user fees can and do present barriers to entry for some residents, especially residents who are most vulnerable, and barriers can persist even with the availability of scholarship or subsidy programs.
4. Enter into a revenue sharing agreement with the City to offset a portion of the City's facility maintenance costs at Burgess Pool and the MPCC aquatics center, preferably at a "medium" cost recovery rate to the City of 30% to 70%. The City's total costs to maintain the Burgess Pool facility were approximately \$645,000 in fiscal year 2021-2022.
5. Dedicate operating hours and pool space to open swim/community swim for play and social time during times that are deemed convenient and accessible to Menlo Park resident children and families, as measured in part by community satisfaction surveys to be jointly administered by operator and the City.
6. Offer aqua wellness and/or therapeutic classes in formats and at times that are deemed convenient and accessible to Menlo Park for seniors and others who benefit from such programs, as measured in part by community satisfaction surveys to be jointly administered by operator and the City.
7. Recognize the City's desire to ensure that every Menlo Park resident child has meaningful access to effective water safety instruction at City aquatics centers regardless of their family's ability to pay user fees. Respondent proposes to provide these services to individuals or families who cannot afford the market rate fees.
8. Diversity, equity, inclusion, belonging
 - Provide meaningful employment opportunities in City aquatics facilities to qualified Menlo Park residents, especially residents who live in the immediate vicinity of City aquatics centers.
 - Foster an organizational culture that is based on foundations of equity, inclusion, belonging and justice to create a safe and welcoming environment in City aquatics facilities for all Menlo Park residents regardless of background, income, race, religion, sexual orientation, gender identity, and other lived experiences that contribute to a vibrant and accepting community.
 - Reduce and/or remove barriers to entry for City residents who are most vulnerable, including children and families who reside in low-income households, seniors and people with disabilities.

Selected operator – Team Sheeper, Inc.

City Council Feb. 28 identified Team Sheeper, Inc., as the preferred aquatics operator. Significant determining factors in City Council's decision included that Team Sheeper, Inc., is headquartered in Menlo Park; possesses deep experience providing aquatics programs to the Menlo Park community; has proven capacity to simultaneously operate two City-owned aquatics centers in Menlo Park; and has developed a large and loyal clientele of local aquatics users which is essential to sustain an aquatics center. In its proposal, Team Sheeper, Inc. provided clear, specific responses to the key City priorities and requirements outlined in the RFP, and its proposal was the only proposal that provided detailed operating budgets for both Burgess Pool and the future MPCC aquatics center. City Council directed staff to negotiate a new Agreement with Team Sheeper, Inc., with advice and input from the Aquatics Ad Hoc Subcommittee (Taylor/Nash), to provide the City the opportunity to implement some desired changes to the aquatics program, while minimizing disruption to current pool users.

Analysis

Summaries of key Agreement terms

The Agreement (Attachment A) is the result of extensive negotiation between City staff and representatives from Team Sheeper, Inc., (Operator) with additional advice and input from the Aquatics Ad-Hoc Subcommittee, and informed by the priorities established by City Council in the RFP. The Agreement achieves most of the key priorities established by City Council in the RFP, and is recommended by City

staff. Summaries of key Agreement terms follows.

Agreement duration

The Agreement takes effect Oct. 1 and ends Sept. 30, 2028 (five years), if not terminated earlier per the Agreement's terms and conditions. The Agreement includes an option to extend the Agreement's duration (term) for an additional five years on mutual written agreement by both parties.

Operating hours and schedules

Operator shall operate the Burgess Pool and the future MPCC aquatics center for public access year-round, seven days per week, no fewer than 63 hours per week at each location as calculated by average applied over the course of a full calendar year, with exceptions for closures to observe major holidays or to complete necessary maintenance or repair work. Burgess Pool and MPCC aquatics center shall be operated with comparable or equivalent operating schedules and programs at both locations, with allowance for some variances to respond to hyperlocal needs and other unique considerations of each site and the neighborhoods in which they are located. Operator shall notify the City at least two weeks in advance of any changes to the hours and operating schedules. Proposed operating hours and schedule templates are included with the Agreement as Exhibit C.

Inclusion, access and anti-discrimination

Operator and City mutually affirm and commit to the principle and practice that City-owned pools and the programs provided at City-owned pools shall be oriented first and foremost toward full inclusion and access for all residents of Menlo Park, of all backgrounds, interests, abilities and walks of life, and that City-owned pools and programs shall be operated in a manner that is deemed welcoming and inclusive for all Menlo Park residents, as measured in part by qualitative community feedback and quantitative community surveys to be administered annually by the City in partnership with Operator.

Resident use

Operator shall provide to City staff semiannual visitor reports showing the residence addresses of all pool visitors during the report period, including all the aquatics programs in which each visitor participated, and all the dates on which each visitor used the pool, and the numbers of residents and non-residents actively using each program at Premises, and this information shall be provided by pool site. Operator and City mutually agree to a target of 2/3 (66.7%) or more pool visitors at each location being verified incorporated City of Menlo Park residents. City is responsible for verifying addresses as incorporated City of Menlo Park, using City's geographic information systems.

Community feedback

City will convene a "working group" of Menlo Park residents to informally meet with Operator and City staff on a regular basis regarding desired services and programs, concerns and suggestions, and general feedback about aquatics operations. The community working group will review the Operator's annual performance report, and community survey results. The community working group may, with the support of City staff, annually prepare a written assessment of the information presented in Operator's annual reports, and survey results, with any recommendations the community working group may have for the aquatics program. The working group's written assessment shall be provided to the City Council. The composition of the community working group will rotate occasionally in order to include and reach more participants.

Aquatics user fees

Effective no later than six (6) months after the effective date of the Agreement, Operator shall charge and impose aquatics user fees as set forth in the City of Menlo Park Master Fee Schedule, subject to City Council's authorization of the fees set therein. Resident swim passes and/or swim memberships shall be valid at both aquatics center locations. Until such a time as the City of Menlo Park Master Fee Schedule is

updated to include aquatics users fees as set forth above, Operator shall charge and impose user fees per the fee schedule shown in the Agreement Exhibit E.

Revenue share

Operator shall annually pay to the City an amount equal to 1% of Operator's total annual gross revenues related from resident fees and 1.35% of total annual gross revenues from non-resident fees, or \$20,000, whichever is greater. Annual gross revenues include any and all of Operator's income related to aquatics programs and operations that take place in whole or in part at Menlo Park aquatics facilities. In recognition of Operator's one-time startup costs for opening the new MPCC aquatics center, the revenue share begins 12 months after the Agreement's effective date.

- In calendar year 2022, Operator reported total operating income of \$2.14 million, offset by total operating expenses of \$2.10 million to operate Burgess Pool.
- In calendar year 2021, Operator reported total income of \$2.10 million and total expenses of \$1.83 million to operate Burgess Pool.
- In calendar year 2020, a year marked by the coronavirus pandemic and the closure of the former Belle Haven Pool for construction, Operator reported operating income of \$1.91 million and expenses of \$1.84 million to operate Burgess Pool for the full year and the former Belle Haven Pool for a partial year. Operator also reported receiving a federal Paycheck Protection Program loan of \$307,072 during 2020.
- In calendar year 2019, before the coronavirus pandemic and with both Burgess Pool and the former Belle Haven Pool operated a full year, Operator reported total income of \$3.396 million offset by total expenses of \$3.220 million.

Reporting

Operator shall keep accounts, books, and records relating to Operator's responsibilities at Menlo Park aquatics facilities. Operator shall keep separate accounts, books, and records and shall be subject to separate reviews for each of the two aquatics facilities, Burgess Pool and the future MPCC aquatics center. Each quarter Operator will provide City with detailed reports of income, revenue and expenses. Operator shall provide annual program performance reports to City no later than Feb. 28 of each year, including program data, community survey results, safety reports and other detailed information. Operator will coordinate with City staff to present operator's annual performance report to City Council no later than March 31 of each year.

Auditing

City shall have the right to seek qualified independent financial review of Operator's profit and loss statement and operations related to Premises at any time. Any third-party review performed by the City shall be at its sole expense. City may engage a qualified financial reviewer of its choosing and/or utilize City staff, assigns and/or contractors. Any such review commissioned by City shall be limited solely to financial related to Premises (that is, Burgess Pool and MPCC Pool) and shall not include Operator's business activities unrelated to Premises. Any such review commissioned by City shall not include the individual earnings or private identifying information of individual employees of Operator.

Liquidated damages

In the event of an unplanned and/or unforeseen closure of Burgess Pool and/or MPCC Pool lasting more than five (5) consecutive calendar days where such closure is caused by the failure of City-owned improvements and equipment or other items for which City is responsible, the City shall compensate Operator an amount equal to 1/28 of Operator's monthly gross payroll (or 1/28 of Operator's monthly gross revenues if the closure is during summer peak season) from the previous year and corresponding month for each day of facility full closure after the fifth calendar day. Notwithstanding the foregoing, where Unplanned and/or Planned Closures exceed 15 days in any calendar year, City shall compensate Operator for

Liquidated Damages regardless of whether any such 15 days were consecutive calendar days. In no event shall City compensate Operator for Liquidated Damages in excess of 28 days. Aquatics users who hold valid swim passes and/or swim memberships at the time of any such closures shall be eligible to receive pro-rated refunds and/or account credits, at the Operator's sole expense.

Default

Subject to various definitions and limitations outlined in the Agreement, the occurrence of specified events shall constitute a material default by Operator, including but not limited to: abandonment or discontinuance of operations for more than three business days; failure of Operator to make any payment due to the City; failure to maintain the aquatics centers in a clean, sanitary and safe condition; deterioration of service which materially and adversely affects the operation or service required to be performed by Operator under the Agreement; failure of Operator to be in compliance with local, state and federal law; Operator bankruptcy.

Termination

Operator may terminate the Agreement for convenience and without cause with 180 days advance written notice if notice is given on a date between Jan. 1 and June 30 of any given year, or 120 days advance written notice if notice is given on a date between July 1 and Dec. 31 of any given year. City may terminate the Agreement at any time during the term upon written notice to Operator for any of the causes set forth in the Agreement. Such termination shall be effective no sooner than 30 days after notice or upon such later date of termination as may be stated in City's notice. Upon termination of the Agreement for cause, City may take possession of the premises and equipment, and may license or rent the whole or any part of the premises for the balance or any part of the term of the Agreement and retain any fees received and apply the same in payment on account of Operator.

City Council direction regarding Operator's requested additional revisions to terms

Operator has requested revisions to three terms in the Agreement presented in Attachment A. City staff seeks City Council direction whether to incorporate Operator's requested revisions.

1. Section 15 – Liquidated damages. Operator requests to change the language in this sentence from 15 days to seven days. The sentence currently reads as follows: "Notwithstanding the foregoing, where Unplanned and/or Planned Closures exceed 15 days in any calendar year, City shall compensate Operator for Liquidated Damages regardless of whether any such 15 days were consecutive calendar days." City Council could direct City staff to make the requested change to the language in this sentence, from 15 days to seven days.
2. Section 17 - Indemnification. Operator requests that the City indemnify the Operator in the same terms as the Operator indemnifies the City ("mutual indemnification"). The City's standard professional services agreement does not include mutual indemnification; only one-way indemnification from the vendor to the City. City Council could direct City staff to add language to this section to provide mutual indemnification by and between both parties.
3. Section 25.D – Default for deterioration of service. Team Sheeper requests that the City remove this subsection or provide more specification as to what constitutes a "deterioration of service." This subsection defines "deterioration of service" as any lapse which materially and adversely affects the operation or service required to be performed by Operator, and provides references to specific sections of the Agreement that contain terms and conditions related to Operator's service requirements. City Council could direct City staff to remove this subsection entirely.

Impact on City Resources

The City is responsible for maintenance of the Burgess Pool facility including recurring expenditures for mechanical maintenance and repairs, custodial and landscaping services, utilities (water, sewer, electricity,

gas, telephone and internet), and pool maintenance chemicals and supplies; and one-time expenditures for equipment replacements and minor facility renovations. Total expenses to the City related to maintenance of Burgess Pool were approximately \$645,000 in fiscal year 2021-22. City Council's adopted fiscal year 2023-24 operating budget has sufficient resources allocated toward these anticipated expenditures in the current fiscal year. The City also will be responsible for maintenance of the MPCC aquatics center when it is completed; the new center is tentatively scheduled to open during calendar year 2024.

Rough order of magnitude ("ROM") estimate – City-operated aquatics

City staff does not recommend pursuing a City-operated aquatics program at this time. Should City Council direct staff to directly operate Burgess Pool and/or the future MPCC aquatics center, it is within the City's capabilities to do so, given the necessary time, staff and resources. The City of Menlo Park has not directly operated Burgess Pool since 2006 nor the former Belle Haven Pool since 2011, and currently lacks the necessary staff and resources to operate an aquatics program. Major, ongoing appropriations by City Council of limited City resources would be necessary for the City to operate the aquatics program, during a time of significant economic uncertainty.

Several preparatory steps would be needed before the City assumed direct operations of Burgess Pool and/or the new MPCC pool, including substantial budget authorizations, adjustments to the salary schedule for new classifications, personnel recruitments, and regulatory certifications in a process that would extend several months and involve hundreds of hours of staff time and effort. Staff's preliminary review of other area jurisdictions' staffing models and expenditures, along with analysis of Menlo Park's current salary schedule, job classifications, facility maintenance and capital expenditures, indicates that in order to directly operate Burgess Pool and the MPCC pool seven days per week, year-round, the City of Menlo Park would need to:

- Increase benefited personnel by 4.0 to 7.0 full time equivalent (FTE), including a full-time aquatics supervisor, two full-time aquatics coordinators, two to four office and program assistants, and between 90-150 part-time, temporary non-benefited employees such as lifeguards, instructors and attendants, depending on season – approximately \$0.75 million to \$1.0 million per year for benefited personnel, plus approximately \$1.0 million to \$1.7 million per year for non-benefited personnel.
- Continue to bear the costs to operate and maintain the Burgess Pool and MPCC Pool facilities, including the costs of utilities, equipment replacement and repair, minor renovation projects, and supplies like pool chemicals – approximately \$0.65 million to \$1.0 million per year.
- Bear new administrative costs related to pool operator certifications, risk management, records management and financial administration – approximately \$0.10 million per year.

Based on this analysis, a ROM estimate for the City to directly operate Burgess Pool and MPCC pool year-round, seven days per week is total annual expenditures between \$2.5 million to \$3.8 million per year; with potential annual revenue (cost recovery) between \$0.75 million to \$2 million per year. These estimated ranges of expenditures and revenues track with each other, that is, the lower end of the expenditure range would result in the lower end of the potential revenues, and the higher end of the expenditure range would result in the higher end of the potential revenues.

Should City Council so direct, staff can develop a budget proposal for a City-run aquatics program including specific staff positions and compensation, hours of operation, programs, certifications, supplies and services, facility maintenance and capital expense, revenue projections, and other financial and operating considerations for City Council consideration. City staff estimates that developing a detailed budget proposal would require approximately 80 total hours of staff time and effort, which would significantly divert limited resources away from other time-sensitive priority projects including the preparations for the opening and start of operations in the MPCC.

Environmental Review

The requested 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

1. Agreement and Exhibits
2. Hyperlink – “Preliminary considerations for selecting an aquatics operator for the Burgess Pool and the future MPCC aquatics center,” City Council meeting agenda (item I-2), Feb. 14: menlopark.gov/files/sharedassets/public/v/2/agendas-and-minutes/city-council/2023-meetings/agendas/20230214-city-council-regular-agenda-packet.pdf#page=187
3. Hyperlink – “Identify a preferred aquatics operator and authorize the city manager to negotiate an agreement for an aquatics operator at Burgess Pool and the future MPCC aquatics center; and form an ad hoc City Council subcommittee to advise the agreement negotiation process,” City Council meeting agenda (item H-1), Feb. 28: menlopark.gov/files/sharedassets/public/v/2/agendas-and-minutes/city-council/2023-meetings/agendas/20230228-city-council-agenda-packet.pdf#page=489
4. Hyperlink – “Authorize the city manager to execute an amendment to the professional services agreement with Team Sheeper, Inc. for continued operation of Burgess Pool through Sept. 30,” City Council meeting agenda (item K2.), July 11: menlopark.gov/files/sharedassets/public/v/6/agendas-and-minutes/city-council/2023-meetings/agendas/20230711-city-council-regular-agenda-packet_w-presv2.pdf#page=115

Report prepared by:

Tricia Mullan, Library and Community Services Supervisor
Sean S. Reinhart, Library and Community Services Director

Report reviewed by:

Nira Doherty, City Attorney
Justin Murphy, City Manager

CITY OF MENLO PARK BURGESS AQUATICS CENTER AND MENLO PARK COMMUNITY CAMPUS AQUATICS CENTER POOL MANAGEMENT AND OPERATIONS AGREEMENT

THIS Agreement is entered into as of October 1, 2023 (the “Effective Date”) between the CITY OF MENLO PARK, a municipal corporation (“City”), and Team Sheeper, Inc. (“Operator”), also individually “Party” and collectively “Parties.”

FOR AND IN CONSIDERATION of the mutual terms, covenants, and conditions herein, City hereby grants to Operator the exclusive right to manage and operate the Burgess Aquatics Center and Menlo Park Community Campus Aquatics Center, subject to the following terms and conditions.

1. RECITALS

- A. City owns two aquatics centers: Burgess Aquatics Center located at 501 Laurel St., Menlo Park, CA 94025, and Menlo Park Community Campus (“MPCC”) Aquatics Center located at 100 Terminal Ave., Menlo Park, CA 94025; City anticipates opening the MPCC in late spring or early summer 2024.
- B. Operator is experienced in the management, operation, and supervision of swimming pools and swimming facilities.
- C. City desires to engage Operator to manage and operate the two aquatics centers and facilities.
- D. Team Sheeper, Inc. is a California “S Corporation” that is in the business of operation and management of swimming pool facilities.
- E. The Parties desire to set forth in this Agreement the terms and conditions under which the Operator shall act as the operator and manager of the Burgess Aquatics Center and MPCC Aquatics Center and facilities.

Now, therefore, in consideration of the mutual covenants herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, City and Operator agree as follows:

2. PREMISES

The “Premises” as that term is used herein include the Burgess Aquatics Center (“Burgess Pool”) and the Menlo Park Community Campus Aquatics Center (“MPCC Pool”), as more particularly described below:

- A. Burgess Pool, located at 501 Laurel St. in Menlo Park, CA, consists of the lap pool, instructional pool, toddler activity pool, pool deck, offices, restrooms, locker rooms, showers, lawn area, pool mechanical room, lobby, and all associated areas more particularly depicted and shown in Exhibit A, attached hereto and incorporated herein by this reference.
- B. MPCC Pool, is, as of the effective date of this agreement, under construction and upon completion will be located at 100 Terminal Ave. in Menlo Park, CA, and consists of the lap pool, instructional pool, splash pad, pool deck, outdoor seating areas, offices, restrooms, locker rooms, showers, pool mechanical room, and all associated areas more particularly depicted and shown in Exhibit B, attached hereto and incorporated herein by this reference.

3. TERM

Subject to all of the terms and conditions of this Agreement, Operator shall operate and manage the Premises for a term beginning on the Effective Date and ending on September 30, 2028 (the “Initial Term”), unless terminated earlier in accordance with the terms and conditions set forth herein. If not terminated as set forth hereinafter, Parties shall have an option to extend the term of this Agreement for an additional five (5) years (the “Extended Term”) by giving mutual written notice of the exercise of such option not less than six (6) months prior to the expiration of the initial term. Thereafter, the Agreement shall continue on the same terms and conditions unless amended or terminated in accordance with the terms and conditions set forth herein.

4. SERVICES AND OPERATIONS BY OPERATOR

Except as otherwise provided herein, Operator shall direct, supervise, manage, and maintain the Premises, and develop and implement policies and procedures to facilitate the efficient operation of the Premises in compliance with this Agreement and all reasonable directions of the City, and in a manner that is comparable to or above the standard of care that is reasonable and acceptable for public pool and aquatics operators.

In addition to all requirements set forth in this Agreement, Operator shall be responsible for the following:

- A. Employees. Operator shall hire, administer, and manage employees for the Premises. Such employees shall be employed and retained by Operator in the Operator's sole discretion. The compensation and related expenses for such employees shall be solely paid for and borne by the Operator. All employees shall be employees of the Operator and shall not be City employees, contractors, or volunteers. Unless expressly provided in this Agreement, the City shall not interfere with or participate in the hiring, supervision or discipline of Operator employees or prospects.
- B. LiveScan. Pursuant to California Penal Code Section 11105.3, Operator employees who work with or have contact with minors (under the age of 18) will be required to be fingerprinted per California law as a condition of employment or as a condition of continued employment. As such, all such employees will be required to submit to a fingerprinting via LiveScan on initial employment and will receive updates regarding such LiveScan throughout the employment which will be paid for by Operator. City reserves the right to require non-employees (i.e., vendors, volunteers, etc.), who work with or have contact with minors to be fingerprinted at their own expense.
- C. Records. Operator shall keep or cause to be kept suitable books of control and account as provided in this Agreement according to the Financial Accounting Standards Board (FASB) Generally Accepted Accounting Principles (GAAP).

Operator shall keep true and accurate books and records showing all income and expenses and business transactions in connection with the Premises in separate records of account in a manner reasonably acceptable to City, and City shall have the right through its representatives, and at all reasonable times, including any time during the one year period following the termination of the Agreement, to inspect such books and records including profit and loss statements.

Operator shall pay the costs of all financial statements required by the City under this Agreement.

- D. Operator Operation Obligations. Except as specified in Section 9 – Expenses of Premises, Operator shall maintain or cause to be maintained the Premises and common areas thereof, external and internal, in good and clean condition and repair comparable to the industry standard found at other swimming pools and sports facilities in Northern California and the San Mateo County region, including but not limited to consistency with applicable state and local standards and regulations including but not limited to: California Code of Regulations Title 22; California Health and Safety Code, Division 104; California Building Code Title 24, Divisions I and II; and San Mateo County Environmental Health Services rules, regulations, and inspections. Operator shall be responsible for complying with the City-Owned Improvements and Equipment and Maintenance Schedule attached hereto and incorporated by reference herein as Exhibit F. Exhibit F – City-Owned Improvements and Equipment and Maintenance Schedule – may be modified from time to time by mutual written consent of the City Manager or their designee and Operator.
 - 1) Operator shall be responsible for the following maintenance obligations:

- (a) Operator shall be responsible to maintain chemical rooms, provide daily aquatics inspections/maintenance and oversee the facility management.
 - (b) Operator shall be responsible for providing incidental facility supplies such as, but not limited to office supplies, paper towels, trash and recycling receptacles, cleaning supplies, mats, carpeting.
 - (c) Operator shall maintain standard operating procedure manuals and maintenance records and logs, which records shall consist of daily pool and chemical log and checklists for routine maintenance and janitorial duties (daily, weekly, monthly, quarterly, bi-annually, and annually).
 - (d) If any maintenance or repair work requires immediate emergency attention, Operator may engage a preferred City vendor directly after obtaining consent from the City Staff Liaison or their designee to proceed with emergency maintenance and/or repair work, which consent will not be unreasonably withheld. Operator shall be reimbursed by the City for any costs incurred by Operator in addressing the immediate/emergency maintain/repair work. In the event that Operator's cannot make contact with City Staff Liaison or designee within 24 hours of first attempt to make contact, and as a result Operator cannot obtain authorization to make repairs in the time of an emergency, and the failure to act may result in serious and significant damage to the facilities or bodily injury, Operator in its reasonable discretion may, after notifying Menlo Park Police Dispatch of the time, place, and nature of the emergency, engage a preferred City vendor directly and without prior consent, and, in such circumstances, shall be reimbursed by the City for any reasonable costs incurred by Operator in addressing the immediate/emergency maintenance/repair work.
 - (e) If the Premises or equipment are damaged due to the willful misconduct or negligence of Operator, its employees, subcontractors, or program participants, Operator shall be responsible for any necessary repair or replacement of such damage at Operator's sole cost and expense.
 - (f) Operator shall not make, nor cause to be made, nor allow to be made, alterations or improvements to the Premises, without the prior written consent of City, not to be unreasonably delayed or withheld. All improvements or alterations constructed or installed shall be removed and the Premises restored to substantially the same condition existing prior to such construction or installation, upon the termination of this Agreement, unless the prior written approval of City is secured, allowing such improvements or alterations to remain in place, in which case, title thereto shall vest in City. All improvements undertaken pursuant to this Agreement will be at City's sole expense and City will be responsible for the use and maintenance of the improvements.
- E. Security. Operator shall establish and maintain procedures adequate to ensure the security of the premises including any merchandise, equipment and materials stored at the Premises.
 - F. Compliance with City's Obligations. Operator shall operate the Premises in compliance with all terms and conditions of any ground lease, space lease, mortgage, deed of trust, or other security instrument affecting the Premises, if any, of which Operator has knowledge. Operator shall not make any payments on account of any ground lease, space lease, mortgage, deed of trust, or other security instrument affecting the Premises, unless specifically instructed to do so by City.
 - G. Notice and Cooperation in Legal Proceedings. City and Operator shall each give prompt notice to the other of the commencement of any action, suit, or other legal proceeding against City or the Operator with respect to the operations of the Premises or otherwise affecting the Premises. Operator shall fully cooperate in connection with the prosecution of defense of all legal proceedings affecting the Premises.
 - H. Program Offerings. Operator shall work with City to enhance recreational program offerings at the Premises.

- I. Lifeguards and Training.
 - 1) For both the MPCC Pool and Burgess Pool, Operator shall employ and ensure that at least two qualified lifeguards, possessing all required certifications and/or licenses, shall be on duty at all times people are in the water, per the Operator's approved Emergency Action Plan.
 - 2) Operator shall ensure that lifeguards obtain training and maintain required licensing and certifications at all times during employment by Operator. Lifeguards shall meet or exceed the lifeguard certification standards set by the American Red Cross.
 - 3) At least one lead/management staff member must be on duty and on the Premises at all operational times who shall have the experience and training to make operational decisions, support customer needs, manage customer issues and respond to incidents and emergencies.
- J. Operating Hours and Program Schedule.
 - 1) Operator shall operate Burgess Pool and MPCC Pool for public access year-round, seven days per week, no fewer than 63 hours per week at each location with the exception that Operator may elect to close either pool on the following major holidays, at Operator's discretion: New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Easter Sunday, Veterans Day, Thanksgiving Day, and the week of December 24 through December 31 inclusive.
 - 2) Operator shall operate Burgess Pool and MPCC Pool in a manner reasonably consistent with the hours and operating schedules for each pool more specifically set forth in Exhibit C – Schedule Template. Operator shall notify the City at least two weeks in advance of any changes to the hours and operating schedules.
 - 3) Operator shall operate Burgess Pool and MPCC Pool programming which includes minimum hours of operation and a general description of programs. Said program descriptions shall be agreed upon by the City Manager and Operator no later than the effective date of this agreement, and shall be incorporated into this Agreement as Exhibit D. Any changes to the program schedule set forth in Exhibit D shall be approved by the City Manager or their designee prior to the Operator implementing any such programming changes. City shall not unreasonably withhold approval of such programming changes. Operator shall have the sole discretion to create its schedule in accordance with the hours of operation, general description of programs, and other applicable criteria set forth in this Agreement and its Exhibits.
- K. Noise. Except in the event of an emergency, Operator shall not use any amplified sound, whistles, bullhorns, music, etc., before 8:00 a.m., and/or after 8:00 p.m. during any day of operation. Additionally, Operator shall be subject to the City's noise ordinance and regulations and shall not utilize any amplified sounds, whistles, bullhorns, music, etc. that violates said ordinance and regulations. In order to minimize impacts of major events on residents of the surrounding neighborhoods, Operator will notify the City at least 21 days in advance of all swimming meets or other large group events beyond normal operations to allow the City to notify the neighborhoods in advance of such events.
- L. General Services. In addition to the above, Operator will be responsible for providing all services at the Premises including, at a minimum, the following services and activities:
 - 1) Supervise and control the reservation process.
 - 2) Collect and deposit all daily revenues, including, but not limited to, user fees, merchandise sales, facility rentals, lessons, tournaments, and gift certificate sales.
 - 3) Accommodate City use of the Premises in a reasonable manner for non-traditional events including but not limited to permitted film activity, expositions, and conferences, on reasonable notice and as accommodated by Operator's current schedule.
 - 4) Provide diverse swim programming as well as other recreational type activities that meet with the City's vision and priorities, including but not limited to the programming described in this Agreement and its Exhibits.

- 5) Attend meetings, as requested on reasonable notice, with the City to discuss and/or provide updates on matters related to the Premises.
 - 6) Work cooperatively and collaboratively with the City to provide a positive experience for all users.
 - 7) Clean and maintain the Premises in a manner such that it is attractive to guests and the public.
- M. Cooperation with Lender. If at any time during the Term, City enters into a financing agreement for either of the Pools or the Premises pursuant to which City grants one or more lenders a lien on the Premises or a security interest in some or all of the income generated by the Premises, Operator shall cooperate in all respects as reasonably necessary to consummate such financing and comply with the terms and conditions thereof. Without limiting the generality of the forgoing, Operator shall, if requested by City, (a) execute and deliver such documentation (e.g. estoppel certificate and/or lender consent and recognition agreement) as may be reasonably requested by the lender(s), (b) create and maintain such lockbox and/or disbursement accounts as may be required pursuant to the financing agreement, and (c) deposit funds into and disburse funds from such accounts in accordance with the requirements of the financing agreements. Under no circumstances shall the City, its lenders or other creditors place any lien, adverse claim, or other security interest against Operator assets nor shall Operator be required to execute any document that would create any lien, adverse claim, or other security interest against Operator assets.
- N. Suggestion/Complaint Procedures. Operator agrees to install, maintain and operate the following suggestions-complaint procedure for Premises. Operator shall post and keep posted on a bulletin board at or near the entrance to the Premises, the following notice:

“Your feedback is important. Any suggestions or complaints may be presented verbally to the manager on duty, or by dropping a written comment in the suggestion box, or by letter to [Operator’s postal address], or by sending an email to [Operator’s email address], or by calling [Operator’s phone number]. If you are not satisfied for any reason, your suggestion or complaint will be relayed in writing to the City Manager, 701 Laurel St., Menlo Park, CA 94025.”

Both City and Operator shall in good faith endeavor to respond positively and favorably to such suggestions and complaints in a timely manner.

- O. General Management Responsibilities. Operator shall provide such direction, supervision, professional management, and in-house consulting staff services as may be necessary or desirable to operate the Premises in a manner at least equal to that which is usual and customary in the operation of other properties of substantially comparable location, class, size, and standing, and Operator shall provide such services for the Premises as are consistent with the Premises’ size and facilities. Subject to any specified limitations set forth in this Agreement, Operator shall have control and discretion in the management and operation of the Premises and the provision of the services described in this Agreement.
- P. City Access to Premises. Operator shall provide City access to the Premises at reasonable hours and, except in the event of an emergency, on reasonable prior notice, to (a) inspect the Premises; (b) determine whether Operator is complying with all obligations under this Agreement; (c) post notices of nonresponsibility; and (d) make repairs or perform maintenance required of City by this Agreement, make repairs to any adjoining space or utility services, or make repairs, alterations, or improvements to any other portion of the Premises. All such work shall be done as promptly as reasonably possible, cause as little interference to Operator as reasonably possible and City shall restore all areas to their prior condition promptly after completion of the work. Subject to City’s undertakings in the previous sentence and except to the extent that Section 15’s liquidated damages provisions apply, Operator waives any damage claims for inconvenience to or interference with Operator’s business or loss of occupancy or quiet enjoyment of the Premises caused by City’s entry. At all times City shall have a key with which to unlock the doors in and to the Operator, excluding Operator’s vaults,

safes, and similar areas designated as secure areas in writing by Operator in advance. In an emergency, City shall have the right to use any means that City deems proper to open Operator's doors and enter the Premises. Entry to the Premises by City in an emergency shall not be construed as a forcible or unlawful entry. For purposes of clarity, nothing in this Section shall change, limit, or in any way diminish Operator's entitlement to liquidated damages under Section 15 of this Agreement.

5. RESIDENT USE, INCLUSION, ACCESS, AND ANTI-DISCRIMINATION

- A. Operator and City mutually affirm and commit to the principle and practice that City-owned pools and the programs provided at City-owned pools shall be oriented first and foremost toward full inclusion and access for all residents of Menlo Park, of all backgrounds, interests, abilities, and walks of life, and that City-owned pools and programs shall be operated in a manner that is deemed welcoming and inclusive for all Menlo Park residents, as measured in part by qualitative community feedback and quantitative community surveys to be administered annually by the City in partnership with Operator.
- B. Operator shall provide to City staff semi-annual visitor reports showing the residence addresses of all pool visitors during the report period, including all the aquatics programs in which each visitor participated, and all the dates on which each visitor used the pool, and the numbers of residents and non-residents actively using each program at Premises, and this information shall be provided by pool site. Operator and City mutually agree to a target of 2/3 (66.7%) or more pool visitors at each location being verified incorporated City of Menlo Park residents ("Resident Use Target"). City is responsible for verifying addresses as incorporated City of Menlo Park, using City's geographic information systems.
- C. Operator understands and agrees that it must comply with applicable civil rights laws and regulations, and the City requires compliance with civil rights statutes, including compliance nondiscrimination laws which prohibit discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and prohibit: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity.

6. LICENSING AND LEASING OF PREMISES

Operator may not license, lease, or sublease or grant any real property interest to another individual or without the prior written consent of the City Manager, which consent may require an allocation between the City and Operator of the gross revenue from such licensure. Any license agreement, lease, or sublease for use of the Premises shall be subject to the terms of this Agreement.

7. QUALIFIED PERSONNEL

Operator shall provide adequate qualified personnel to maintain safe and effective aquatics operations at Premises during all hours of operation, including:

- A. Employing personnel with the required qualifications and certifications appropriate for each position.
- B. Assigning sufficient qualified staffing to maintain safe and effective operations at City aquatics facilities.
- C. Maintaining reasonable evidence and documentation of its hiring practices, background checks, certifications, and training, including documentation of pre-service/employment orientation, on-the-job training, regular in-service training, and certification training for each employee.
- D. Seeking City approval prior to engaging the services of subcontractors or other parties not directly employed by Operator to deliver aquatics programs and/or services in City aquatics facilities.
- E. All persons employed or utilized in connection with the operation of the Premises, including relatives and minors, age of thirteen and above, with valid work permits and employed under

the strict guidelines of California Child Labor laws, shall be adequately trained for such purposes, shall be courteous, shall be suitably and neatly attired so as to be recognizable as employees of Operator. Operator shall devote his/her own time and attention to the conduct of the services to be rendered on and from the Premises to the extent reasonably required to ensure such standards of operation called for in this Agreement. Operator acknowledges and agrees that Operator's employees will not be eligible for any City employee benefits and, to the extent Operator's employees otherwise would be eligible for any City employee benefits of any kind but for the express terms of this Agreement, Operator (on behalf of itself and its employees) hereby expressly declines to participate in such City employee benefits of any kind.

- F. Operator shall ensure that all employees who supervise minors meet the provisions of Public Resources Code, Section 5164, that Operator will require employees that have direct supervision over or conduct programs with minors, to be fingerprinted at Operator's expense, on initial employment. Operator will receive updates about Operator's employees via Livescan throughout the employment which will be paid for by Operator. City reserves the right to require non-employees (i.e., vendors, volunteers, etc.), who work with or have contact with minors to be fingerprinted at their own expense. Livescan fingerprinting service is available at the Menlo Park Police Department. Operator shall file with the City a certificate showing that within the last four years, every person employed in the Operator's programs with minors has been examined and has been found to be free of communicable tuberculosis, all in accordance with the provisions of Public Resources Code, Section 5164.

8. AQUATICS USER FEES

For purposes of this Section "aquatics user fees" includes but is not limited to fees, monies and/or remuneration paid by visitors, patrons, guests, facility renters, registrants, team members, and/or users of the Premises.

Effective no later than six (6) months after the effective date of this Agreement, Operator shall charge and impose aquatics user fees as set forth in the City of Menlo Park Master Fee Schedule, as it may be amended from time to time. Any desired changes to aquatics user fees, must be approved by amendment to the City's Master Fee Schedule prior to implementation. Until such a time as the City of Menlo Park Master Fee Schedule is updated to include aquatics user fees, Operator shall charge and impose user fees per the fee schedule and criteria set forth in Exhibit E – Aquatics User Fees.

Resident swim passes and/or swim memberships shall be valid at both aquatics center locations.

9. EXPENSES OF PREMISES

- A. Except as set forth in Section 4 of this Agreement, City shall be responsible for all expenses related to capital improvements and useful life of the Premises and approved by City. Such expenses shall include without limitation the following:
 - 1) City shall be responsible to maintain and repair City Owned Improvements and Equipment as that term is defined in and more specifically set forth in Exhibit F – City-Owned Improvements and Equipment and Maintenance Schedule.
 - 2) If in the course of operating the Premises, Operator identifies any City-owned equipment, facilities or portion thereof in need of maintenance or repair, Operator shall notify the City Staff Liaison or their designee as soon as possible and the City shall be responsible for performing the necessary maintenance or repair work without undue delay. If any maintenance or repair work requires immediate emergency attention, Operator may engage a preferred City contractor directly after obtaining consent from the City Staff Liaison or their designee. Operator shall be reimbursed by the City for any costs incurred by Operator in addressing the immediate/emergency maintain/repair work. In the event that Operator's attempts to contact a City Staff Liaison or designee to authorize repairs in the

time of an emergency are unsuccessful, and the failure to act may result in damage to the facilities or in bodily injury, Operator in its reasonable discretion may, after notifying Menlo Park Police Dispatch of the time, place, and nature of the emergency, engage a preferred City vendor directly and without prior consent, and, in such circumstances, shall be reimbursed by the City for any reasonable costs incurred by Operator in addressing the immediate/emergency maintain/repair work. If the Premises, facilities, or equipment are damaged due to the willful misconduct or negligence of Operator, its employees, subcontractors, or program participants, Operator is responsible for any necessary repair or replacement of such damage at Operator's sole cost and expense.

- 3) City shall provide and be billed directly for all necessary pool chemicals.
 - 4) City shall be responsible for environmental costs related to the storage of chemicals, hazardous materials, etc.
 - 5) City shall provide, without cost to Operator, all utilities necessary to operate the Premises for the purposes identified in this Agreement, including water, sewer, stormwater, electricity, gas, telephone, and internet. Operator shall modify operations to comply with any conservation requirements imposed by any utility operator. Operator shall consult with and obtain City approval prior to making any operational changes that would impact utility costs and regulatory compliance.
 - 6) City shall provide janitorial services at the Premises. The scope of janitorial services is more specifically described and set forth in Exhibit F – City-Owned Improvements and Equipment and Maintenance Schedule.
 - 7) Maintenance and service contracts for the Premises.
 - 8) Property/school/personal property/business/environmental taxes.
- B. In addition to Operator's maintenance obligations set forth in Section 4 of this Agreement, the City shall not be responsible for the following services and/or expenses, which expenses shall be the responsibility of Operator. Such expenses shall include without limitation the following:
- 1) Payroll (including taxes, fees, and benefits) and any other labor related costs and expenses, including without limitation full or part-time on-site personnel of Operator;
 - 2) Insurance – worker's compensation, property, employers liability, commercial general liability, and excess liability;
 - 3) Operator shall employ or contract for a Certified Pool Operator. Operator shall maintain standard operation procedure manuals and maintenance records and logs. These records will include: daily pool and chemical log and checklists for routine maintenance (daily, weekly, monthly, quarterly, biannually, and annually).
 - 4) Supplies, uniforms, equipment, materials used in the Premises for programming;
 - 5) Professional fees – direct out-of-pocket costs incurred for matters related to the operations of programming.

10. REVENUE SHARE

Operator shall annually pay to the City a percentage of Operator's annual gross revenues as more specifically set forth below. As used herein, "annual gross revenues" shall mean the annual gross revenue of the preceding calendar year earned by Operator before any deduction for costs, taxation, accounting, or other purposes, under Generally Accepted Accounting Principles. Annual gross revenues include any and all of Operator's income related to aquatics programs and operations that take place in whole or in part at Premises.

For purposes of this Section, "Resident-Based Annual Gross Revenues" shall mean all fees, monies, and/or remuneration paid by visitors, patrons, guests, facility renters, registrants, team members, and/or users of the Premises who are verified residents of incorporated City of Menlo Park.

For purposes of this Section, "Non-Resident-Based Annual Gross Revenues" shall mean all fees, monies and/or remuneration paid by visitors, patrons, guests, facility renters, registrants, team

members, and/or users of the Premises who are not verified residents of incorporated City of Menlo Park.

Excepting the first 12 months of this Agreement's term, Operator shall annually pay to the City an amount equal to 1% of Operator's total Resident-Based Annual Gross Revenues and 1.35% of total Non-Resident-Based Annual Gross Revenues, or \$20,000, whichever is greater.

The annual revenue share shall be paid to the City by March 15 of each year for the preceding calendar year's annual gross revenues, not including Operator's annual gross revenues received prior to this Agreement's effective date.

11. COMMUNITY FEEDBACK

City will convene a "working group" of Menlo Park residents to informally meet with Operator and City staff on a regular basis regarding desired services and programs, concerns and suggestions, and general feedback about aquatics operations. The community working group will review the Operator's annual performance report, and community survey results. The community working group may, with the support of City staff, annually prepare a written assessment of the information presented in Operator's annual reports, and survey results, with any recommendations the community working group may have for the aquatics program. The working group's written assessment shall be provided to the City Council. The composition of the community working group will rotate occasionally in order to include and reach more participants.

12. TERMINATION

A. Termination for Convenience

- 1) Operator may terminate this Agreement for convenience and without cause with 120 days advance written notice to the other party, if notice is given on a date between July 1 and December 31 of any given year.
- 2) Operator may terminate this Agreement for convenience and without cause with 180 days advance written notice if notice is given on a date between January 1 and June 30 of any given year.
- 3) Termination by City for Cause. This Agreement may be terminated by City at any time during the term upon written notice to Operator for any of the causes set forth in this Section or for any Default as that term is defined and described in Section 25 of this Agreement. Such termination shall be effective no sooner than thirty (30) days after notice or upon such later date of termination as may be stated in City's notice.

The following shall constitute grounds for termination by City for cause: (1) If Operator fails to observe or perform any of its obligations under this Agreement, and such failure continues for thirty (30) days after written notice thereof has been given by City to Operator and operator fails to cure its failure to perform within said thirty (30) day period; (2) If Operator suspends or discontinues business; (3) If Operator Defaults, as that term is defined and described in Section 25 of this Agreement.

B. Upon termination of this Agreement for Cause.

- 1) Operator shall, after thirty (30) day notice or other period as set forth in Section 12.A(3) above, surrender possession of the Premises and all improvements and equipment thereon, including but not limited to, City-Owned Improvements and Equipment to City, and shall discontinue all services, unless the City directs otherwise.
- 2) City may take possession of the Premises as the agent and on account of Operator, and if it so elects may license or rent the whole or any part of the Premises for the balance or any part of the term of this Agreement and retain any license fees received and apply the same in payment on account of Operator. The performance of any or all of said acts by City shall not release Operator from the full and strict compliance with all of the terms, conditions and covenants of this Agreement on Operator's part and Operator shall pay any deficiency that

may exist. Notwithstanding the foregoing, Operator shall only pay or be liable for deficiencies caused by or Operator prior to City taking possession of the Premises.

- 3) Operator shall deliver to City any and all reports, estimates, summaries, financial documents, and such other information and materials as may have been accumulated or produced by Operator in performing work under this agreement at the time of termination, that are required to be produced to the City under this Agreement, whether completed or in process.

13. REPORTING AND AUDITING

- A. Separate Reporting for Each Aquatics Center. All obligations under this Section shall apply to the MPCC Pool and Burgess Pool, and Operator shall keep separate accounts, books, and records for each of the two pools and facilities comprising the Premises.
- B. Books and Records. Operator shall keep accounts, books, and records of the Premises relating to Operator's responsibilities, Premises income statements, Premises revenue, and Premises expenditures according to Generally Accepted Accounting Principles. Such accounts, books, and records shall be available for inspection with 5 days' notice at any time. Upon the effective date of any termination of this Agreement, copies of accounts, books, and records shall be made available to City for inspection.

Operator shall maintain all required records for three years following the creation of any such record.

- C. Reports and Reconciliation of Premises Accounts.
 - 1) Quarterly Financial Reports. Each quarter Operator will provide City with the following detailed reports
 - (a) Income Statements – quarterly income statements including current quarter and year-to-date actual financial P&L. Appropriate descriptions of any significant monthly or year-to-date variances of revenue, expenses, net income, and/or earnings before interest, taxes, depreciation, and amortization (“EBITDA”).
 - (b) Premises Expenses – report of all expenses paid by Operator the previous quarter; a comparison of the current quarter and year-to-date account of actual expenses.
 - (c) Premises Revenue – report of all revenue collected each quarter
 - (d) Additional Reports – a written report describing any material changes in the Premises which occurred during the previous year or are anticipated to occur in the coming year; any material security incidents or material changes to security protocol; event recap and evaluation with suggested changes to protocols.
 - 2) Annual Program Performance Reports. Each quarter Operator will provide City with the following detailed program reports:
 - (a) Total program hours with detailed schedules of individual programs including lane hours, times of day, days of week, and by season.
 - (b) Participation statistics by program area including Menlo Park resident and non-resident use, as defined and described in Sections 4 and 5 of this Agreement and its related Exhibits.
 - 3) Annual Program Performance Reports. Operator shall provide annual performance reports to City no later than February 28 of each year. Operator will coordinate with City staff to present operator's annual performance report to City Council no later than March 31 of each year. Annual Program Performance Reports shall include the following:
 - (a) Community satisfaction survey results, as administered and compiled by City with input from Operator, and provided by City to Operator no later than January 10 of each year.
 - (b) User group feedback by program area.
 - (c) Pool schedule and allocation by program for previous year and projections to the upcoming year.

- (d) User fees collected by program area, including fees paid by Menlo Park residents and non-residents, as defined and described in Sections 5, 8, and 10 of this Agreement and its related Exhibits.
 - (e) Fee comparison to other public pools in the region.
 - (f) Annual audits and reviews demonstrating standards of care are met.
 - (g) Risk management documentation.
 - (h) Training certifications listed by staff member.
 - (i) Emergency Action Plan, as defined and described in Section 22 of this Agreement.
 - (j) Incident reports of any rescues, injuries, emergencies, criminal activity, accidents, or other events that occurred at Premises. Incident reports shall be provided to City staff contemporaneously as well as compiled in annual reports.
 - (k) Operator shall maintain reasonable evidence and documentation of this information and have these records accessible to the City at any time following 10 days written notice.
- 4) Annual Safety Report. Operator shall provide City with an annual safety report. Safety meetings and Premises safety drills shall be conducted and documented within the quarterly report.
- 5) Periodic Reports. Operator shall furnish City reports regarding on-site physical inspections and operating reviews; and a current inventory of all property and equipment in connection with the Premises. The inventory shall be submitted to City no later than February 28 each calendar year.
- D. Third party review of financial records. City shall have the right to seek qualified independent financial review of Operator's profit and loss statement and operations related to Premises at any time. Any third party review performed by the City shall be at its sole expense. City may engage a qualified financial reviewer of its choosing and/or utilize City staff, assigns and/or contractors. Any such review commissioned by City shall be limited solely to financial related to Premises (that is, Burgess Pool and MPCC Pool) and shall not include Operator's business activities unrelated to Premises. Any such review commissioned by City shall not include the individual earnings or private identifying information of individual employees of Operator.
- E. Other Reports and Statements. Operator shall furnish to City, as promptly as practicable, such other reports, statements, and other information with respect to the operation of the Premises as City may reasonably request from time to time.
- 1) Contracts and Other Agreements. City shall maintain at the Premises one copy of all contracts, warranties, equipment leases, maintenance agreements, and all other agreements relating to the Premises. Duplicate copies, which may be in electronic form, of all such documents shall be forwarded by City to Operator immediately upon execution.
 - 2) Final Accounting. Operator shall deliver to City a final Profit and Loss statement for the Premises within 60 days of termination of this Agreement.
 - 3) Inspections. City and its representatives reserve the right to inspect the Operator's records identified in this contract from time to time relating to the Premises. Operator shall cooperate with City and its representatives in exercising such rights.
 - 4) Certification. Operator shall certify that each financial statement is true, correct, and complete in all material respects.

14. WAIVER OF CONSEQUENTIAL DAMAGES

City shall not be liable to Operator and Operator shall not be liable to City for any consequential damages incurred by either party due to the fault of the other, regardless of: the nature of this fault; or whether it was committed by City or Operator, their employees, agents, or subcontractors; or whether such liability arises in breach of contract or warranty, tort (including negligence), statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

15. LIQUIDATED DAMAGES

Notwithstanding Section 14 (Waiver of Consequential Damages), in the event of (a) an unplanned and/or unforeseen closure of Burgess Pool and/or MPCC Pool lasting more than five (5) consecutive calendar days where such closure is caused by the failure of any City Owned Improvements and Equipment, or other items for which City is responsible, or (b) any planned Closure of Burgess Pool and/or MPCC Pool of five (5) consecutive days or more to allow the City to perform any repairs or maintenance that is the obligation of the City under this Agreement, or (c) any planned closure of Burgess Pool and/or MPCC Pool of five (5) consecutive calendar days or more to allow the City to perform capital improvements to City property, provided that at least forty-five (45) days advance written notice is provided to Operator of the date and nature of the capital improvements to be made ("Unplanned and/or Planned Closure"), the City shall compensate Operator for Liquidated Damages. Liquidated Damages shall be (1) an amount equal to 1/28 of Operator's total monthly gross payroll including payroll taxes from the previous year and corresponding month for each day of facility full closure after the fifth calendar day, if the closure occurs from September through May, or (2) If the closure occurs anytime from June 1 through August 31, the City shall compensate Operator an amount equal to 1/28 of Operators total monthly gross revenues from the previous year and corresponding month for each day of full facility closure after the fifth calendar day. For purposes of this Section, "1/28 of Operator's total monthly gross payroll from the previous year and month" shall mean 1/28 of the same month in the previous calendar year's gross payroll including payroll taxes from the previous year and corresponding month, paid solely for aquatics operations at the pool at which the failure of City Owned Improvements and Equipment has occurred ("Liquidated Damages"). Notwithstanding the foregoing, where Unplanned and/or Planned Closures exceed fifteen (15) days in any calendar year, City shall compensate Operator for Liquidated Damages regardless of whether any such fifteen days were consecutive calendar days. In no event shall City compensate Operator for Liquidated Damages in excess of 28 days.

In the event of unplanned and/or unforeseen simultaneous closures of both aquatics centers for more than five (5) consecutive business days, aquatics users who hold valid swim passes and/or swim memberships at the time of said closures shall be eligible to receive pro-rated refunds and/or account credits corresponding to the applicable membership/swim pass fees and the duration of said closures. Any such refunds and/or account credits shall be provided at Operator's sole expense.

Neither of the Parties shall hold the other responsible for damages or delay caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other, or the other's employees and agents.

16. INSURANCE

- A. Operator shall not commence work under this agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City, with certificates of insurance evidencing the required coverage.
- B. There shall be a contractual liability endorsement extending the Operator's coverage to include the contractual liability assumed by the Operator pursuant to this agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the City, at the address shown in Section 9, of any pending cancellation of the policy. Operator shall notify City of any pending change to the policy. All certificates shall be filed with the City.
 - 1) Workers' compensation and employer's liability insurance: Operator shall have in effect during the entire life of this agreement workers' compensation and Employer's Liability Insurance providing full statutory coverage. In signing this agreement, the Operator makes the following certification, required by Section 18161 of the California Labor Code: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-

insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this agreement."

- 2) Commercial General Liability ("CGL"): Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$3 million per occurrence. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - 3) Worker's Compensation: As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limits no less than \$1,000,000 per accident for bodily injury or disease. Operator shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective officials, officers, employees, agents, and representatives.
 - 4) Commercial Automobile Liability: For all of Operator's automobiles including owned, hired, and non-owned automobiles, Operator shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
 - 5) Employment Practices (EPLI): Employment liability insurance reasonably consistent with the size and scope of the facility's operations.
 - 6) Causes of Loss - Special Form Property Insurance: Operator shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all Operator's insurable property, related to the allowed uses of the property under this contract or the premises in an amount to cover the replacement cost.
 - 7) Sexual Abuse & Molestation: Operator shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than \$1,000,000 per occurrence or claim.
- C. City and its subsidiary agencies, and their officers, agents, employees and servants shall be named as additional insured on any such policies of Commercial General Liability and Automobile Liability Insurance, (but not for workers' compensation).
- D. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.
- E. Before the execution of this agreement, any deductibles or self-insured retentions must be declared to and approved by City.

17. INDEMNIFICATION

To the fullest extent permitted by law, Operator shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless City and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of Operator or its sub-Operators), expense and liability of every kind, nature and description that arise from or relate to (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert Operators or expert witnesses incurred in connection therewith and costs of investigation) that arise from or relate to, directly or indirectly, in whole or in part, from: (1) Operator's performance of Services under this Agreement, or any part thereof; (2) any negligent act or omission of Operator, any sub-Operator, anyone directly or indirectly employed by them, or anyone that they control; (3) any actual or alleged infringement of the patent rights, copyright, trade secret, trade name, trademark, service

mark or any other intellectual or proprietary right of any person or persons in consequence of the use by City, or any other Indemnitee, of articles or Services to be supplied in the performance of this Agreement; or (4) any breach of this Agreement (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent such Liabilities are caused by the negligence or willful misconduct of such Indemnitee, but shall apply to all other Liabilities. The foregoing shall be subject to the limitations of California Civil Code Section 2782.8 as to any design professional services performed by Operator and in particular the limitation on Operator's duty to defend whereby such duty only arises for claims relating to the negligence, recklessness or willful misconduct of Operator as well as the limitation on the cost to defend whereby Operator will only bear such cost in proportion to Operator's proportionate percentage of fault (except as otherwise provided in Section 2782.8). The foregoing indemnification provisions will not reduce or affect other rights or obligations which would otherwise exist in favor of the City and other Indemnitees. Operator shall place in any sub-consulting agreements and cause its sub-Operators to agree to indemnities and insurance obligations in favor of City and other Indemnitees in the exact form and substance of those contained in this Agreement.

18. PROMOTIONAL MATERIALS

- A. Operator may place advertising banners, sandwich boards, and/or other promotional signage on Premises, provided that authorization approval is provided in advance in writing by City Staff Liaison.
- B. Operator shall coordinate with City Staff Liaison to include aquatics programs and schedules on City promotional materials in formats and venues of the City's choosing.
- C. City reserves the right to place advertising banners, sandwich boards, and any other signage on Premises at City's discretion.

19. COMPLIANCE WITH LAWS

It shall be the responsibility of Operator to comply with all Local, State and Federal regulations and laws applicable to the work and services provided pursuant to this agreement.

20. HEALTH & SAFETY

Operator shall maintain health and safety standards and associated training records in a reasonable and acceptable manner for the Premises, participants, and its employees in compliance to City standards and applicable regulatory agencies. These standards include but are not limited to:

- A. Employee Injury and Illness Prevention Plan
- B. Hazardous Materials Communications and Business Plan
- C. Bloodborne Pathogens and Biohazardous Exposure Control Plan
- D. Hazard Communication (labeling & MSDS management)
- E. Hearing Conservation
- F. Lifting and Fall Prevention/Protection (Equipment)
- G. Electrical Safety Plan
- H. Lockout, Tagout Equipment Specific Procedures
- I. Emergency Action Planning/Drills
- J. First Aid/CPR/AED
- K. Heat Illness and Sun Protection
- L. Confined Spaces/Entry Equipment
- M. Chemical Storage/Spill Response/Cleanup
- N. Fire Extinguisher
- O. Personal Protective Equipment
- P. Recreational Waterborne Illnesses (RWI's)
- Q. Signage/Labeling
- R. Keeping up to date with all changes, additions, or amendments to the laws, regulations and codes related to pool operations and aquatics programs.

21. RISK MANAGEMENT

Operator shall take all appropriate and necessary steps to provide adequate risk management planning to minimize liability or negligence by Operator. Operator shall manage its risk by demonstrating proficiency in the following areas:

- A. Emergency Action Plan - staff training plan, drills conducted, emergency equipment and communication process.
- B. Facilities & Equipment - inspection, maintenance, and checklists.
- C. Supervision - quality, quantity, lesson plans and progression.
- D. Training - requirements and appropriate staff.
- E. Documentation - manuals, waivers, medical screening, skills screening, risk information provided to public, policies and evaluations.

22. EMERGENCY ACTION PLAN & PROCEDURES

Operator shall create and maintain emergency procedures and emergency action plans for the Premises. An Emergency Action Plan is required under Title 29 of Federal Regulations Sections 1910.38/.120/.156, and Title 8 California Code of Regulations, Sections 3220 and 3221. The Emergency Action Plan covers all employees and non-employees who may be exposed to hazards arising from emergency situations. It must contain information for all employees, including administration and line level employees, which shall use the plan in order to reduce the severity of emergency situations and minimize the risk to life and property. The Emergency Action Plan shall be updated at least annually and included in Operator's annual performance reports to City.

23. RELATIONSHIP OF PARTIES

- A. Representations and Warranties.
 - 1) Operator's Authority. Operator represents and warrants that Operator has full power, authority, and legal right to execute, deliver, and perform this Agreement.
 - 2) City's Authority. City represents and warrants that City has full power, authority, and legal right to execute, deliver, and perform this Agreement.
- B. Operator as Independent Contractor. In taking any action pursuant to this Agreement, Operator shall be acting solely as an independent contractor and nothing in this Agreement, express or implied, shall be construed as creating a partnership, joint venture, employer-employee or principal-agent relationship between Operator and City, or any other relationship between the Parties hereto except that of property owner and independent contractor.
- C. Except as otherwise expressly limited by other provisions of this Agreement, Operator has and shall retain the right to exercise full control and supervision of the operation of the Premises, and full control over the employment, direction, compensation, and discharge of all persons assisting Operator in the operation of the facility under this Agreement. Operator shall be solely responsible for all matters, and shall be solely responsible for Operator's own acts and those of subordinates and employees. Neither Operator, nor any agent or employee of Operator, has authority to enter into contracts that bind the City or create obligations on the part of the City without the prior written authorization of the City. Nothing in the Agreement shall create any contractual relationship between City and subcontractor of Operator nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law.
- D. No Partnership Formed. City is not, and shall not in any way or for any purpose become, an agent, partner, or joint venturer of Operator in its business or otherwise.
- E. Confidentiality. Except as necessary to enforce the terms of this Agreement, as reasonably required to perform the obligations and operations under this Agreement, or as otherwise required by law, Operator and City shall maintain the confidentiality of all matters pertaining to this Agreement and all operations and transactions relating to the Facility. Any information obtained by City pursuant to the provisions of this Agreement shall be treated as confidential, except in any proceedings between the Parties hereto, and except further that City may divulge such information to a lender and/or to any person as required by law.

The City is subject to the California Public Records Act and if required by the California Public Records Act may disclose certain information. The Parties may disclose the terms of this Agreement: (i) to a court pursuant to subpoena or order; (ii) to taxing authorities or accounting professionals as necessary to comply with any statute; (iii) as otherwise required by law or in the performance of duties required under this Agreement; (iv) to prospective insurers; and (v) to any other person or entity upon written consent of the party adverse to them in this Agreement. Further, the Parties agree they will not make any statements or engage in any action or conduct which will damage or disparage the name, business, or reputation of the Parties, whether such disparagement is undertaken unilaterally or in response to questions or solicitations by others, except by compulsion or a court of competent jurisdiction.

- F. Conflict of Interest. Operator warrants and covenants that no official or employee of City nor any business entity in which an official or employee of City is interested; (1) has been employed or retained to solicit or aid in the procuring of this Agreement; (2) will be employed in the performance of this Agreement. In the event City determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of City, Operator, upon request of City, shall terminate such employment immediately. Nothing in this Section shall prohibit the City and Operator from cross-marketing or jointly marketing programs, classes, and other events with City departments.
- G. Non-Solicitation. City agrees that during the term and for a period of twelve (12) months following the expiration or termination of this Agreement, City shall not directly or indirectly solicit, hire, or offer to hire or employ any Operator Employee (as defined below) to work in or in connection with the Premises without Operator's approval which approval shall not be unreasonably withheld. "Operator Employee" means any management-level employee of Operator involved in the management of the Premises (including without limitation the Premises manager).

24. ASSIGNMENT AND SUBLETTING

- A. The Parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Operator, and its members who submitted the Proposal, namely Tim Sheeper. Operator shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Operator's interest in the Agreement or in the Premises, without City's prior written consent, which may be granted or denied in City's discretion which shall not be unreasonably withheld. The merger of Operator with any other entity or the transfer of any controlling or managing ownership or beneficial interest in Operator, or the assignment of a substantial portion of the assets of Operator, whether or not located at the Premises, shall constitute an assignment hereunder. Nothing in this Agreement prohibits Operator from contracting for services at the Premises. Examples of these include but are not limited to, food concessionaire, instructors, training etc. Any limitations on the assignment or subletting in this Section 24 shall not apply in the event of the death, incapacity or marital dissolution of Tim Sheeper.
- B. If Operator desires to assign this Agreement or sublet any or all of the Premises, Operator shall give City written notice thereof with copies of all related documents and agreements associated with the assignment, including without limitation, the name and address of the proposed assignee, the nature of the business proposed to be carried on by the proposed assignee or subtenant, and such financial statements of any proposed assignee or subtenant as City may reasonably require not later than forty five (45) days prior to the anticipated effective date of the assignment or sublease. City shall have a period of thirty (30) days following receipt of such notice and all related documents and agreements to notify Operator in writing of City' approval or disapproval of the proposed assignment or sublease. If City fails to notify Operator in writing of such election, City shall be deemed to have disapproved such assignment or subletting.

25. DEFAULT

The occurrence of any one or more of the following events shall constitute a material default ("Default") of this Agreement by Operator:

- A. Except in the event of acts of God, accidents, local health orders, and/or disaster events beyond the control of the Operator, or the Operator's employees and agents, the abandonment, vacation, or discontinuance of operations at the Premises for more than three business days unless discontinuance of operations has been previously approved by the City in writing.
- B. The failure of Operator to make any payment required to be made by Operator hereunder, after fourteen (14) days' written notice from City of non-payment. The interest of Operator in the Agreement is assigned or transferred, passes to or devolves upon, by operation of law or otherwise, any other person, firm, or corporation without the prior written consent of the City, except as provided in Section 24 above.
- C. The failure to maintain the Premises and the improvements constructed thereon in a state of repair required by this Agreement, and in a clean, sanitary, and safe condition consistent with similar pools in Northern California, where such failure continues for more than fifteen (15) days after written notice from the City for correction thereof. Nothing herein shall prohibit the City from requiring that safety and health conditions shall be corrected in accordance with the requirements of the Uniform Building Code or Uniform Fire Code, as may be adopted by the City from time to time. The City acknowledges that it is responsible for certain equipment and maintenance at the Premises as more specifically set forth in Exhibit F, and any failings in areas of City's responsibility to maintain the Premises, as defined in Exhibit F, shall not constitute a default.
- D. Deterioration of service for any period which materially and adversely affects the operation or service required to be performed by Operator under the Agreement, including but not limited to the specific terms and conditions set forth in Sections 4, 7, 16, 19, 20, 21 and 24 of this Agreement, and which is not corrected within thirty (30) days after written notice from the City for correction thereof. The failure of Operator to be in compliance with local, state and federal law, where such failure continues for more than fifteen (15) days after written notice from the City for correction thereof.
- E. The filing of a voluntary petition in bankruptcy by Operator, the adjudication of Operator as bankrupt, the appointment of any receiver of Operator's assets, the making of a general assignment for the benefit of creditors, and/or a petition or answer seeking a reorganization of Operator under the federal bankruptcy laws or any other federal or state laws.
- F. Operator's intentional misrepresentation of facts in its required forms, documents, and submittals required as part of this Agreement or in the submittals in the solicitation and selection of an Operator to perform the services under this Agreement.
- G. The filing of any lien or stop notice on account of Operator where such lien/notice is not removed or enjoined and/or a bond for satisfaction of such lien is not posted within ten (10) days.
- H. The failure of Operator to operate in the manner required by this Agreement, or Operator's breach of or default under any provision of this Agreement not otherwise specified above in this Section 25 (Default), where such failure or default continues for more than thirty (30) days after written notice from the City to correct the condition specified.

26. RESPONSIBILITY AND LIABILITY FOR SUB-CONSULTANTS AND/OR SUBCONTRACTORS

Approval of or by City shall not constitute nor be deemed a release of responsibility and liability of Operator or its sub-consultants and/or subcontractors for the accuracy and competency of the Operator's aquatics programs and work, nor shall its approval be deemed to be an assumption of such responsibility by City for any defect in services and/or programs by Operator or its sub-consultants and/or subcontractors.

27. ENTIRE AGREEMENT

This Agreement is intended by the Parties as the complete and final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence any prior or contemporaneous agreement. This Agreement specifically supersedes any prior written or oral agreements between the Parties with respect to the subject matter hereof. No amendment to this Agreement shall be enforceable unless in writing and signed by all parties.

28. AUTHORITY OF PARTIES/SIGNATORIES

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

29. GOVERNING LAW

This Agreement shall be governed in accordance with the laws of the State of California. San Mateo County, California shall be the venue for all disputes arising from this Agreement and the Parties consent to the jurisdiction of the courts of the State of California.

30. SEVERABILITY

The provisions of this agreement are severable. If any portion of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

31. NOTICES

All notices hereby required under this agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid or by overnight courier service.

Notices required to be given to City shall be addressed as follows:

City Manager
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6610
Email jicmurphy@menlopark.gov

Notices required to be given to Operator shall be addressed as follows:

Tim Sheeper
Team Sheeper, Inc.
501 Laurel St.
Menlo Park, CA 94025
Phone 650-504-1114
Email tim@teamsheeper.com

Provided that any Party may change such address by notice, in writing, to the other Party and thereafter notices shall be addressed and transmitted to the new address.

32. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the date first set forth above.

SIGNATURE PAGE TO FOLLOW

CITY OF MENLO PARK

By: _____

Justin I.C. Murphy, City Manager

Approved as to Form:

City Attorney

Nira F. Doherty, City Attorney

ATTEST:

Judi A. Herren, City Clerk

TEAM SHEEPER, INC

501 Laurel Street
Menlo Park, CA 94025

By: _____

Tim Sheeper, Chief Executive Officer

Approved as to Form:

Attorney for Team Sheeper

LIST OF EXHIBITS

- A. PREMISES – BURGESS POOL
- B. PREMISES – MPCC AQUATICS CENTER
- C. SCHEDULE TEMPLATE
- D. PROGRAM DESCRIPTIONS
- E. AQUATICS USER FEES
- F. CITY-OWNED IMPROVEMENTS AND EQUIPMENT AND MAINTENANCE SCHEDULE

EXHIBIT A – PREMISES – BURGESS POOL

EXHIBIT A - PREMISES - BURGESS POOL

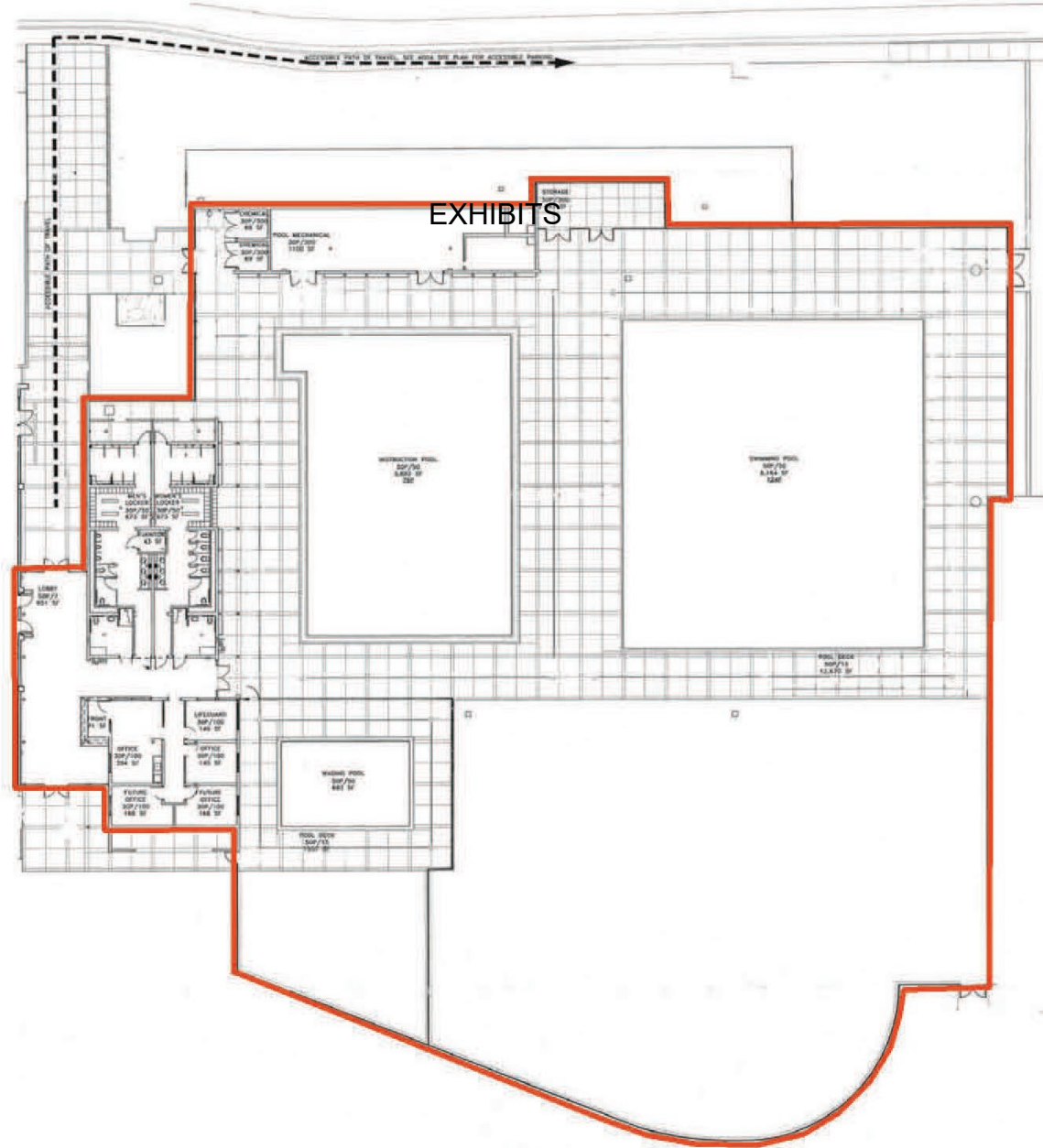


EXHIBIT B – PREMISES – MPCC AQUATICS CENTER

EXHIBIT B – PREMISES – MPCC AQUATICS CENTER

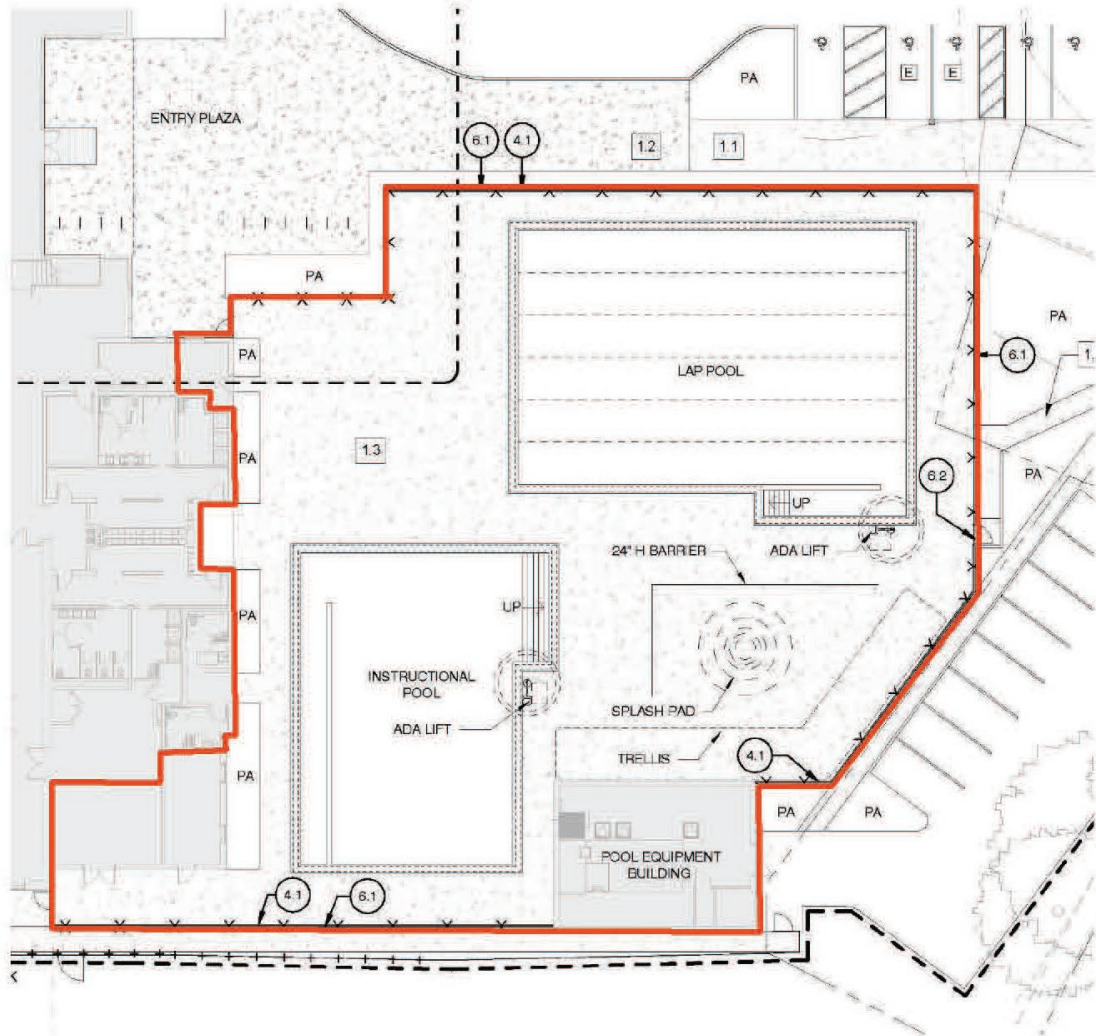


EXHIBIT C – SCHEDULE TEMPLATE

City and Operator agree that operating hours and schedules of aquatics programs may vary from season to season and/or from time to time as community needs and circumstances may change over time. The Parties agree that Operator shall notify the City at least two weeks in advance of any substantive changes to the hours and operating schedules.

1. HOURS OF OPERATION. Operator shall operate the Burgess Pool and the future MPCC aquatics center for public access year-round, seven days per week, no fewer than 63 hours per week at each location as calculated by average applied over the course of a full calendar year—with exceptions for closures to observe major holidays or to complete necessary maintenance or repair work. Burgess Pool and MPCC aquatics center shall be operated with comparable or equivalent operating schedules and programs at both locations, with allowance for some variances to respond to hyperlocal needs and other unique considerations of each site and the neighborhoods in which they are located.

Projected Hours of Operation at Burgess Aquatics Center and Menlo Park Community Campus Aquatics Center:

Season	Weekdays	Saturdays	Sundays
Summer	6am to 8pm	6am to 5pm	6am to 5pm
Non-Summer	6am to 8pm	6am to 4pm	7am to 4pm

2. AQUATICS SCHEDULE TEMPLATE. The Schedule Template shows proportions of lane space/lane hours for each activity for each pool during different seasons. The Schedule Template is intended to apply to both locations (Burgess Aquatics Center and Menlo Park Community Campus Aquatics Center), so that aquatics programs are comparable or equivalent at both locations, with allowance for some variances to respond to hyperlocal needs and other unique considerations of each site and the neighborhoods in which they are located. Including but not limited to:

- Family recreation/ Open swim
- Splash pad/ Baby pool
- Lap swim
- Swim instruction
- Water exercise/ Water wellness
- Masters adult swim
- Adult water polo
- Youth water polo
- Swim team
- Lifeguard instruction

AQUATICS SCHEDULE TEMPLATE

Program	Goal	Pool	Timing	Space	Season
Family Recreation/Open Swim	Max availability during summer, non-summer weekends/weekday evenings	Instructional	Mid day to closing in summer, non summer weekends and weekday evenings	Summer:3 to 6 lanes; Non summer: 2 to 4 lanes	Year round-although demand increases exponentially during summer
Splash Pad/Baby Pool	Summer and non-summer weekends/weekday evenings	Splash pad/baby pool	Mid day to closing in summer, non summer weekends and weekday evenings	Full	Late spring/Summer/Early fall
Lap Swim	Max availability during all business hours	Both	Opening to closing	Anywhere from 3 lanes to 14 lanes; expands and contracts sharing with other programming	Year round - sharing by season with water exercise, lessons, open swim in instructional pool
Swim Instruction	Priority usage with maximum engagement year round	Instructional	Mid morning, after school hours, weekend mornings	1 to 4 lanes	Year round - expanded in summer within swim camps
Water Exercise/Water Wellness	Serve large number of adults in deep and shallow water for vertical movement	Instructional	Early to mid morning	2 to 4 lanes	Year round sharing with lessons in summer
Masters Adult Swim	Serve large number of adult swimmers year round mostly daily mornings	Competition	Early mornings and some weekday noon	7 to 8 lanes	Year round always sharing with lap swim
Youth Swim Teams	Serve large number of youth swimmers year round on weekdays	Competition	After school hours on weekdays until closing	7 to 8 lanes	Year round sharing with lap swim, except none in August
Adult Water Polo	Serve large number of adult players	Competition	Early morning weekend hours	8 lanes	Year round sharing with Lap swimming all year
Youth Water Polo	Serve large number of youth players, beginner or intermediate	Competition	After school hours or weekday evenings	6-8 lanes	Year round may share with laps
Lifeguard Instruction	Train and develop pool lifeguards	Competition	Monthly on weekends	2 to 4 lanes	Year round shares with laps

Total Lanes Per Pool

Burgess Competition-11
 Burgess Instructional-6
 MPCC-Competition-6
 MPCC Instructional-3

EXHIBIT D – PROGRAM DESCRIPTIONS

Program descriptions apply to all City-owned aquatics centers unless otherwise specified.

Lap Swim – Operator shall dedicate lanes to lap swimming in the performance pool and/or instructional pool seven days per week year-round with lifeguards on duty at all times. Operator may observe circle swimming when there are more than two swimmers per lane.

Open swim / Family recreational swim - Open swim shall be offered seven days per week during the summer season, and weekends during the off season. Instructional pool shall offer no fewer than two lanes dedicated to open swim 7 days per week during the summer season. The Burgess wading pool shall be open to the community every day during the summer season. The MPCC splash pad shall be open to the community every day during the summer season.

Youth Swim Lessons – Operator shall provide group and private lessons year-round to build water safety skills for young swimmers as young as 6 months old through adulthood. Curriculum will teach swimmers skills with clear progressions at each level, aiming to be safe swimmers with proper technique. By the end of the four main levels, students will have learned Freestyle, Backstroke, Breaststroke, and Butterfly, and will be able to swim 25 yards independently. Once students graduate from the Swim School, they have the available option to try out for the Bridge Youth Swim Team.

Adult Swim Lessons – Operator may provide group and private swim lessons for adults of varying ability levels from beginner to advanced for ages 19 and up. Adults come to swimming from vastly different backgrounds, strengths and looking to achieve different goals. Instructors will work with each student to reach their individual swim goals whether it is just to be water safe, or join a Masters team.

Water Babies Swim Lessons

Operator shall offer free introductory classes for young children aged 6 months to 18 months while being held in-water by a parent/caregiver under the supervision of a trained swim instructor. The purpose of the program is for families to bond and begin to understand the wonders of water.

Bridge Youth Program - The Bridge Swim Youth program is designed for beginner youth swimmers with limited to no swim team experience (Ages 5-10). Swim team practices will focus on competency in all 4 competitive strokes and working in a team/group environment. This program may feature some assistance from local high school swimmers.

Swim camp – Designed to help youth learn to swim and develop swim skills through daily, level-appropriate lessons from qualified swim instructors. A child's swim level is assessed on the first day of camp, and campers with similar abilities are grouped together. In addition to swim instruction, campers have daily swim-related workouts, free swim, time for land and camp games, crafts, and a snack.

Youth Lifeguard training – Youth lessons designed to teach aspiring lifeguards and swimmers how to save lives on land and in water. Learn rescue skills, communication skills, strength training and fitness.

Water Exercise - Aqua Fit classes use the natural resistive forces of water to strengthen both muscles and the cardiovascular system.

Water therapy – Operator shall provide daily structured therapy and water fitness classes, and ample time for unstructured/passive recreation time for the senior population to utilize the warm water instructional pool. Program to focus on strength and conditioning program for seniors and others working to improve their condition in conjunction with the on-site fitness center.

Community Days – Open house events in which residents are invited to experience the various aquatics programs and services offered. Events may include swim demonstrations, visits from professional swimmers, and free admission. Other features may include food, special programs, prize drawing, games, and related festivities. Community days to be produced at intervals of 6 months.

Masters Swim – Aimed at developing healthy competition and community. Welcomes swimmers of all abilities, age 18 and up, who are interested in regular structured workouts. Previous experience in competitive swimming is not necessary.

EXHIBIT E – AQUATICS USER FEES

1. RESIDENT PRIORITIZATION. Residents of incorporated Menlo Park receive priority access to City-owned aquatics facilities through discounted user fees. Non-resident fees typically are 135% of the corresponding resident fees unless otherwise indicated. Memberships include access to all City-owned aquatics facilities. Fees apply to all City-owned aquatics facilities. Operator shall provide to City staff semi-annual visitor reports showing the verified residence addresses of all pool visitors during the report period, including all the aquatics programs in which each visitor participated, and all the dates on which each visitor used the pool, and the verified numbers of residents and non-residents actively using each program at Premises, and this information shall be provided by pool site, and by each pool/aquatics feature within each site. Operator and City mutually agree to a target of 2/3 (66.7%) or more pool visitors shall be verified incorporated City of Menlo Park residents.

2. AQUATICS USER FEES. Effective no later than six (6) months after the effective date of this Agreement, Operator shall charge and impose aquatics user fees as set forth in the City of Menlo Park Master Fee Schedule. Resident swim passes and/or swim memberships shall be valid at both aquatics center locations. Until such a time as the City of Menlo Park Master Fee Schedule is updated to include aquatics users fees as set forth above, Operator shall charge and impose user fees per the following fee schedule:

Program	Monthly		Single / Drop in		Child	
	Resident	Non-resident	Resident	Non-resident	Resident	Non-resident
Laps	65	72	9	10	NA	NA
Open	NA	NA	9	10	5	6
Open/Family	NA	NA	28	32	NA	NA
Masters	109	119	20	22	NA	NA
Aquafit	75	83	20	22	NA	NA
Lessons Group	NA	NA	29	32	29	32
Lessons Private	NA	NA	79	84	79	84

3. ANALYSIS OF COMPARABLE FEES IN OTHER AREA AQUATICS PROGRAMS. Annually when considering fee increases, Operator and City shall jointly conduct a comparative analysis of user fees in other area aquatics programs. The comparative fee analysis shall include but not be limited to the following information: Pricing for Residents/Non Residents by program area; Employee compensation and rates. Operator and City mutually acknowledge and agree that:

- The high cost of living in the Menlo Park area can present challenges for prospective aquatics employees who desire to live and work in the Menlo Park area
- Competitive compensation is important to recruit and retain qualified staff to consistently deliver safe, effective, high-quality aquatics programs
- Aquatics user fees exist in a competitive marketplace with multiple options available to aquatics users
- Menlo Park desires to deliver a high-quality aquatics experience to users
- Maintaining affordability and accessibility to all Menlo Park residents is a top priority
- Operator shall reduce and/or remove barriers to entry for City residents who are most vulnerable, including children and families who reside in low-income households, seniors, and people with disabilities.
- Every Menlo Park resident child has meaningful access to effective water safety instruction at City aquatics centers regardless of their family’s ability to pay user fees, and operator shall provide these services to individuals or families who cannot afford the market rate fees.

4. MEANINGFUL ACCESS TO CITY-OWNED AQUATICS PROGRAMS. Operator shall provide meaningful access to effective water safety instruction for Menlo Park resident children at City aquatics centers regardless of their family’s ability to pay user fees. Operator shall continue to provide meaningful access to City-owned aquatics programs to income-qualified Menlo Park residents through fee-assisted user rates as noted elsewhere in this Exhibit. Operator shall provide quarterly reports to City detailing the numbers of Menlo Park residents who received fee assistance through this and other programs, the programs in which the residents

participated, and other relevant information as requested by City. With City's awareness and consent, Operator may form partnerships with charitable nonprofit organizations, seek grants, solicit donations, and undertake other appropriate efforts to offset Operator's costs related to providing fee-assisted aquatics programs.

EXHIBIT F – CITY-OWNED IMPROVEMENTS AND EQUIPMENT AND MAINTENANCE SCHEDULE

Parties shall be responsible for complying with the City-Owned Improvements and Equipment and Maintenance Schedule in this Exhibit. This Exhibit may be modified from time to time by mutual written consent of the City Manager or their designee and Operator.

1. DAILY MAINTENANCE. Maintenance tasks to be performed on a daily basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
Remote Monitoring		
	Chlorine	City
	Acid	City
	CO2	City
General Daily		
	Activities	Operator
	Bather Load	Operator
	Weather	Operator
	Air Temp	Operator
	Water Clarity	Operator
Filter Console		
	Influent PSI	Operator
	Effluent PSI	Operator
	Pressure Differential	Operator
	Flow Rate	Operator
	Backwash	Operator
Chemical Controller Console		
	pH	Operator
	HRR/ORP	Operator
	Chlorine	Operator
	CO2	Operator
	Water temp	Operator
	Calibration	Operator
Palin Test		
	pH	Operator
	Free Chlorine	Operator
	Total Chlorine	Operator
	Combined Chlorine	Operator
	Total Alkalinity	Operator
	Calcium Hardness	Operator
	TDS	Operator
	Cyanuric Acid	Operator

Routine Maintenance		
	Backwash	Operator
	Pump Baskets	Operator
	Gutters Cleaned	Operator
	Controllers checked	Operator
	Covers	Operator
	Vacuum	Operator

2. WEEKLY MAINTENANCE. Maintenance tasks to be performed on a weekly basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
Filtration System		
	Backwash System	Operator
	Review backwash performance for operation and efficiency	City
	Monitor and log filtration, influent & effluent pressure	Operator
	Monitor and log filtration flow rate	City
CO2 Room		
	Check LMI Pumps	Operator
	Ensure exhaust fan is functioning	Operator

3. MONTHLY MAINTENANCE. Maintenance tasks to be performed on a monthly basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
Chemical Controller		
	Safety flow test	Operator
	Clean Sensors	Operator
	Clean chlorine injector	Operator
	Inspect chemical pump discharge tubing(replace if needed)	Operator
	Torque chemical pump head bolts and tubing fittings(per manufacturer recommendation)	Operator
	Controller Calibration	City
	Controller history downloaded	City
	Chemical evaluation - chemical balance	Operator
	Chemical corrections	Operator
CO2 Room		

Heater		
	Replace combustion air filter	City
Pool		
	Main Drain Covers	City
	Tile (clean/Repair/Replace)	City
	Coping	City
	Ladders (check, clean, replace)	City
	Railing (check, clean, replace)	City
	Gutter (check, clean, replace)	City
	Lights (Check/Replace)	City
On Deck		
	Lane lines (Check, repair, replace)	City
	Guard Stands (Check, repair, replace)	City
	Pool Cover (Check, repair, replace)	City
	Cover Reel (Check, repair, replace)	City
	Pennants (Check, repair, replace)	City
	Pennant cable and poles (Check, repair, replace)	City
	Starting Platforms (Check, repair, replace)	City
	ADA Chair - Check/lubricate (per manufactures recommendation)	City
	Portable ADA Chair	City

4. TWICE ANNUAL MAINTENANCE. Maintenance tasks to be performed on a twice annually basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
Heater	Inspect and clean(per manufacturer recommendations)	City
Pumps	Lubricate bearings, grease fittings (per manufacturer recommendations)	City
Drains	Hydro flush sewer lines	City
Document Review	Review monthly maintenance items	City
	Review Safety Training Certifications	City
	Review Burgess Staff CPO certifications	City
Pool	Wading Pool Mushroom - check functioning	City

5. ANNUAL MAINTENANCE. Maintenance tasks to be performed on an annual basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
Chemical Treatment	Two point controller calibration	City
Sand Filter	Drain Tanks, remove manway covers to inspect tank internal components	City
	Inspect media throughout the filters for proper consistency, contamination and flatness	City
	Install cleaned manway covers and replace manway gaskets	City
	Fill tanks and bleed air from the system	City
	Restart system and review for proper operation	City
Heaters (Lochinvar)	Log heater inlet, outlet and delta temperature	City
	Inspect flame and heat exchanger	City
	Disassemble heater, inspect and clean gas manifolds, upper cabinet and fans	City
	De-soot and/or clean heat exchanger and inspect for irregularities	City
	Clean and inspect the combustion chamber and inspect refractory materials for cracks or irregularities	City
	Clean burners and reinstall with new gaskets	City
	Test and set gas manifold pressures and combustion chamber air pressure	City
	Test and set inlet water and delta temperatures	City
	Inspect boost pump, bearing	City
	Vacuum debris from heat exchanger and wipe clean	City
	Reassemble heater with new insulation burner plate (as needed), air manifold gaskets, gas manifold gaskets, and burner gaskets	City
	Install new ignitor and flame rods and startup heater	City
	Perform combustion analysis to verify and adjust CO ₂ , NO, NOX emissions	City
	Confirm seal on all internal gas manifold connections with leak detector	City
	Inspect flame condition following maintenance service	City
Pumps	Lubricate bearings, grease fittings (per manufacturer recommendations)	City
Drains	Hydro flush sewer lines	City
Document Review	Review monthly maintenance items	City
	Review Safety Training Certifications	City
	Review Burgess Staff CPO certifications	City
On Deck	Starting Platforms (tighten bolts)	City

Deck	Check for cracks and pitting	City
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6. AS NEEDED / PER MANUFACTURER. Maintenance tasks to be performed on an as-needed basis or as recommended by manufacturer. Responsibilities may be delegated to a qualified vendor.

Maintenance area	Detail/ task	Responsible Party
POOL DECK AREA		
Signage	Updates? Check condition, replace if needed	Operator/City
Guard Stands	Check for safety	Operator/City
Lounge Chairs	Check for defects	Operator
Garbage Cans	Check for defects	Operator
Lockers	Check for defects/Repair	Operator
Benches	Check for defects/Repair	City
Water Fountain	Check for defects/Repair	City
Marketing Board	Check for defects/Repair	City
Portable ADA Chair	Check for defects/Repair	City
Sheds (2)	Check for defects/Repair	Operator
Picnic Benches	Operator	Operator
EQUIPMENT		
Tot Docs		Operator
Safety Equipment		City
Other instructional equipment		Operator
LAWN AREA		
Lawn		City
Irrigation		City
Electric Boxes		City
Picnic Benches		Operator

7. JANITORIAL SERVICES. City shall provide for janitorial services at Premises as follows.

Daily services	Weekly services	Monthly services
<u>Entry way, Restrooms, Locker Rooms</u> - Spot clean walls, partitions and doors - Clean and sanitize sinks and wipe dry - Pick up towels and debris from the floor	<u>Entry way, Restrooms, Locker Rooms</u> - Dust and spot clean ledges and partitions - Detail clean floor edges - Spot clean tiled walls from the waist down	<u>Entry way, Restrooms, Locker Rooms</u> - Wipe clean all ventilation grills - Wipe clean all door jambs.

<ul style="list-style-type: none"> - Clean and polish the mirrors - Clean and sanitize the toilets and urinals - Remove mats, wet mop the floor using a germicidal (NABC) including entry way - Restock and soaps and paper disposables - Dispose of the waste and clean waste receptacles - Disinfect the floor traps - Spray shower walls and floors with disinfectant and rinse clean. 	<ul style="list-style-type: none"> - Scrub shower walls and floors, rinse clean. 	
<p><u>Janitorial Closet</u></p> <ul style="list-style-type: none"> - Maintain this area in a neat and orderly appearance - Empty all buckets, leaving no standing water - Rinse and hang all mops on mop hooks - Empty all debris. 		
<p><u>Office (2x Weekly)</u></p> <ul style="list-style-type: none"> - Vacuum floors in office - Clean office glass inside and out. 		



Authorize the city manager to execute an aquatics operator agreement with Team Sheep, Inc.

City Council – September 12, 2023



Recommendation

1. City staff recommends that City Council authorize the city manager to execute an aquatics operator agreement with Team Sheep, Inc., at Burgess Pool and the future Menlo Park Community Campus (MPCC) aquatics center (Attachment A).
2. Operator requested revisions to three terms in the Agreement presented in Attachment A. However, after the staff report was published, Operator withdrew their requested revisions to two of the terms (liquidated damages and deterioration of service.) City staff seeks City Council direction whether to incorporate Operator's remaining requested revision related to indemnification.





Overview of Agreement

The Agreement:

- Enhances the City's aquatics programs by achieving many of the key priorities City Council identified in the aquatics operator request for proposals (RFP).
- Gives the City substantial influence over the aquatics program delivery and quality control.
- Provides a stable operational model and ensures that both aquatics centers will remain open year-round, seven days per week, a minimum average 63 hours per week at each location.
- Affirms that City-owned pools and the programs provided at City-owned pools shall be oriented first and foremost toward full inclusion and access for all residents of Menlo Park, of all backgrounds, interests, abilities and walks of life.



Overview of Agreement (continued)

- Includes specific criteria and mechanisms to ensure that City-owned pools and programs are operated in a manner that is welcoming and inclusive for all Menlo Park residents
- Creates a community "working group" of Menlo Park residents, selected by the City, to meet with the aquatics operator and City staff on a regular basis to share concerns, suggestions, and general feedback about the aquatics programs
- Incentivizes use of aquatics by Menlo Park residents, and sets a target that at least 2/3 of aquatics users are incorporated City of Menlo Park residents
- Gives the City new and expanded authority to set aquatics user fees, conduct independent financial reviews, and verify program performance data and quality control, including detailed financial reports and annual program performance presentations direct to City Council.



Overview of Agreement (continued)

The Agreement offers a cost-effective public-private partnership model that can:

- Support high-quality aquatics program delivery to the Menlo Park community over the long term
- Minimize expenditures of City general fund monies and staff compared to operating an aquatics program directly
- Place the burden of day-to-day operational costs and risks of aquatics program operations with a qualified, proven and experienced Menlo Park-based business
- Maximize public use of City-owned aquatics facilities by residents and ensure that all residents have meaningful access to aquatics programs
- Provide transparency and accountability to the City Council and directly to the public.





Summary of key agreement terms

- The Agreement (Attachment A) is the result of extensive negotiation between City staff and representatives from Team Sheeper, Inc., (Operator) with additional advice and input from the Aquatics Ad-Hoc Subcommittee, and informed by the priorities established by City Council in the RFP.
- The Agreement achieves most of the key priorities established by City Council in the RFP, and is recommended by City staff.



Summary of key agreement terms

Agreement duration

- The Agreement takes effect Oct. 1 and ends Sept. 30, 2028 (five years), if not terminated earlier per the Agreement's terms and conditions. The Agreement includes an option to extend the Agreement's duration (term) for an additional five years on mutual written agreement by both parties.



Summary of key agreement terms

Operating hours and schedules

- Operator shall operate the Burgess Pool and the future MPCC aquatics center for public access year-round, seven days per week, no fewer than 63 hours per week at each location as calculated by average applied over the course of a full calendar year, with exceptions for closures to observe major holidays or to complete necessary maintenance or repair work. Burgess Pool and MPCC aquatics center shall be operated with comparable or equivalent operating schedules and programs at both locations, with allowance for some variances to respond to hyperlocal needs and other unique considerations of each site and the neighborhoods in which they are located. Operator shall notify the City at least two weeks in advance of any changes to the hours and operating schedules. Proposed operating hours and schedule templates are included with the Agreement as Exhibit C.



Summary of key agreement terms

Inclusion, access and anti-discrimination

- Operator and City mutually affirm and commit to the principle and practice that City-owned pools and the programs provided at City-owned pools shall be oriented first and foremost toward full inclusion and access for all residents of Menlo Park, of all backgrounds, interests, abilities and walks of life, and that City-owned pools and programs shall be operated in a manner that is deemed welcoming and inclusive for all Menlo Park residents, as measured in part by qualitative community feedback and quantitative community surveys to be administered annually by the City in partnership with Operator.



Summary of key agreement terms

Resident use

- Operator shall provide to City staff semiannual visitor reports showing the residence addresses of all pool visitors during the report period, including all the aquatics programs in which each visitor participated, and all the dates on which each visitor used the pool, and the numbers of residents and non-residents actively using each program at Premises, and this information shall be provided by pool site. Operator and City mutually agree to a target of 2/3 (66.7%) or more pool visitors at each location being verified incorporated City of Menlo Park residents. City is responsible for verifying addresses as incorporated City of Menlo Park, using City's geographic information systems.



Summary of key agreement terms

Community feedback

- City will convene a "working group" of Menlo Park residents to informally meet with Operator and City staff on a regular basis regarding desired services and programs, concerns and suggestions, and general feedback about aquatics operations. The community working group will review the Operator's annual performance report, and community survey results. The community working group may, with the support of City staff, annually prepare a written assessment of the information presented in Operator's annual reports, and survey results, with any recommendations the community working group may have for the aquatics program. The working group's written assessment shall be provided to the City Council. The composition of the community working group will rotate occasionally in order to include and reach more participants.



Summary of key agreement terms

Aquatics user fees

- Effective no later than six (6) months after the effective date of the Agreement, Operator shall charge and impose aquatics user fees as set forth in the City of Menlo Park Master Fee Schedule, subject to City Council's authorization of the fees set therein. Resident swim passes and/or swim memberships shall be valid at both aquatics center locations. Until such a time as the City of Menlo Park Master Fee Schedule is updated to include aquatics users fees as set forth above, Operator shall charge and impose user fees per the fee schedule shown in the Agreement Exhibit E.





Summary of key agreement terms

Revenue share

- Operator shall annually pay to the City an amount equal to 1% of Operator's total annual gross revenues related from resident fees and 1.35% of total annual gross revenues from non-resident fees, or \$20,000, whichever is greater. Annual gross revenues include any and all of Operator's income related to aquatics programs and operations that take place in whole or in part at Menlo Park aquatics facilities. In recognition of Operator's one-time startup costs for opening the new MPCC aquatics center, the revenue share begins 12 months after the Agreement's effective date.



Summary of key agreement terms

Revenue share (continued)

- In calendar year 2022, Operator reported total operating income of \$2.14 million, offset by total operating expenses of \$2.10 million to operate Burgess Pool.
- In calendar year 2021, Operator reported total income of \$2.10 million and total expenses of \$1.83 million to operate Burgess Pool.
- In calendar year 2020, a year marked by the coronavirus pandemic and the closure of the former Belle Haven Pool for construction, Operator reported operating income of \$1.91 million and expenses of \$1.84 million to operate Burgess Pool for the full year and the former Belle Haven Pool for a partial year. Operator also reported receiving a federal Paycheck Protection Program loan of \$307,072 during 2020.
- In calendar year 2019, before the coronavirus pandemic and with both Burgess Pool and the former Belle Haven Pool operated a full year, Operator reported total income of \$3.396 million offset by total expenses of \$3.220 million.



Summary of key agreement terms

Reporting

- Operator shall keep accounts, books, and records relating to Operator's responsibilities at Menlo Park aquatics facilities. Operator shall keep separate accounts, books, and records and shall be subject to separate reviews for each of the two aquatics facilities, Burgess Pool and the future MPCC aquatics center. Each quarter Operator will provide City with detailed reports of income, revenue and expenses. Operator shall provide annual program performance reports to City no later than Feb. 28 of each year, including program data, community survey results, safety reports and other detailed information. Operator will coordinate with City staff to present operator's annual performance report to City Council no later than March 31 of each year.



Summary of key agreement terms

Auditing

- City shall have the right to seek qualified independent financial review of Operator's profit and loss statement and operations related to Premises at any time. Any third-party review performed by the City shall be at its sole expense. City may engage a qualified financial reviewer of its choosing and/or utilize City staff, assigns and/or contractors. Any such review commissioned by City shall be limited solely to financial related to Premises (that is, Burgess Pool and MPCC Pool) and shall not include Operator's business activities unrelated to Premises. Any such review commissioned by City shall not include the individual earnings or private identifying information of individual employees of Operator.



Summary of key agreement terms

Liquidated damages

- In the event of an unplanned and/or unforeseen pool closure lasting more than five (5) consecutive calendar days for which City is responsible, the City shall compensate Operator 1/28 of Operator's monthly gross payroll (or 1/28 of Operator's monthly gross revenues if the closures occur during summer peak season) from the previous year and corresponding month for each day of facility full closure after the fifth calendar day. Notwithstanding the foregoing, if such closures exceed 15 days in any calendar year, City shall compensate Operator for Liquidated Damages regardless of whether any such 15 days were consecutive calendar days.
- In no event shall City compensate Operator in excess of 28 days.
- Aquatics users who hold valid swim passes and/or swim memberships at the time of any such closures shall be eligible to receive pro-rated refunds and/or account credits, at the Operator's sole expense.



Summary of key agreement terms

Default

- Subject to various definitions and limitations outlined in the Agreement, the occurrence of specified events shall constitute a material default by Operator, including but not limited to: abandonment or discontinuance of operations for more than three business days; failure of Operator to make any payment due to the City; failure to maintain the aquatics centers in a clean, sanitary and safe condition; deterioration of service which materially and adversely affects the operation or service required to be performed by Operator under the Agreement; failure of Operator to be in compliance with local, state and federal law; Operator bankruptcy.



Summary of key agreement terms

Termination

- Operator may terminate the Agreement for convenience and without cause with 180 days advance written notice if notice is given on a date between Jan. 1 and June 30 of any given year, or 120 days advance written notice if notice is given on a date between July 1 and Dec. 31 of any given year. City may terminate the Agreement at any time during the term upon written notice to Operator for any of the causes set forth in the Agreement. Such termination shall be effective no sooner than 30 days after notice or upon such later date of termination as may be stated in City's notice. Upon termination of the Agreement for cause, City may take possession of the premises and equipment, and may license or rent the whole or any part of the premises for the balance or any part of the term of the Agreement and retain any fees received and apply the same in payment on account of Operator.

Operator's requested additional revisions to terms



Operator requested revisions to three terms in the Agreement presented in Attachment A. After the staff report was published, Operator withdrew their requested revisions to two of the terms, about liquidated damages and deterioration of service. City staff seeks City Council direction whether to incorporate Operator's remaining requested revision, about mutual indemnification.

- Section 17 - Indemnification. Operator requests that the City indemnify the Operator in the same terms as the Operator indemnifies the City ("mutual indemnification"). The City's standard professional services agreement does not include mutual indemnification; only one-way indemnification from the vendor to the City. City Council could direct City staff to add language to this section to provide mutual indemnification by and between both parties.





Recommendation

1. City staff recommends that City Council authorize the city manager to execute an aquatics operator agreement with Team Sheepar, Inc., at Burgess Pool and the future Menlo Park Community Campus (MPCC) aquatics center (Attachment A).
2. Operator requested revisions to three terms in the Agreement presented in Attachment A. After the staff report was published, Operator withdrew their requested revisions to two of the terms, about liquidated damages and deterioration of service. City staff seeks City Council direction whether to incorporate Operator's remaining requested revision, about mutual indemnification.



Thank you



STAFF REPORT

City Council

Meeting Date:

9/12/2023

Staff Report Number:

23-203-CC

Regular Business:

Adopt a resolution to authorize left-turn restrictions from Oak Grove Avenue onto Garwood Way and Merrill Street

Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) to authorize left-turn restrictions from Oak Grove Avenue to Merrill Street and Garwood Way to address safety concerns.

Policy Issues

This turn movement restriction is consistent with the policies and programs stated in the 2016 general plan circulation element (e.g., CIRC-1.3, CIRC-2.11). These policies seek to maintain a safe, efficient, attractive, user-friendly circulation system that promotes a healthy, safe and active community and quality of life throughout Menlo Park.

Section 11.12.010 of the Menlo Park Municipal Code authorizes the City Council to order the installation, use, change or removal of traffic control devices, such as turning markers, restricted turns and similar changes.

Background

Oak Grove Avenue is a two-lane east-west “Neighborhood Collector” with a 25 miles per hour speed limit and features sidewalks, Class II buffered bicycle lanes on both sides of the street, and significant SamTrans and City Shuttle activity for buses exiting the Caltrain station. There is a marked crosswalk with flashing beacons on the west side of the Garwood Way/Merrill Street and Oak Grove Avenue intersection. Daily traffic volume on Oak Grove Avenue between El Camino Real and Laurel Street was just over 9,000 vehicles in the 2019 and 2022 counts.

Before the Springline development at 1300 El Camino Real, Garwood Way terminated behind the Residence Inn and Derry Lane was a curved road that connected Oak Grove Avenue toward El Camino Real. Where Derry Lane met Oak Grove Avenue, a no left turn ‘blank out’ sign would activate when the railroad gates were down to reduce conflicts near the tracks. As part of the Springline development, Derry Lane was abandoned and Garwood Way was extended and aligned with Merrill Street.

The Springline development has sparked significant new activity and several potential conflicts have been identified at the Oak Grove Avenue intersection with Garwood Way/Merrill Street:

- The existing at-grade railroad crossing creates a complex intersection with a history of safety concerns, as well as delays and queues on both sides of Oak Grove Avenue that regularly extend past the Garwood Way/Merrill Street intersection when the railroad gates are down.
- An increasing number of pedestrians are crossing Oak Grove Avenue at Garwood Way as residents,

- employees and visitors to the Springline site access transit and other nearby businesses.
- There are significant volumes of bicyclists using Oak Grove Avenue, including many students.

On Oct. 13, 2021, the Complete Streets Commission reviewed these findings and recommended to the City Council that they approve left-turn restrictions onto Oak Grove Avenue from Garwood Way and Merrill Street.

On Dec. 7, 2021, the City Council authorized these left-turn restrictions. A hyperlink to the staff report is included as Attachment B. At that meeting, the City Council also requested that staff return at a future date after the opening of the Springline development to review overall impacts on traffic circulation near the development. The Springline development is nearing full occupancy of its residents, offices and retail spaces; therefore, staff expects to conduct further review of circulation by the spring of 2024.

In early 2022, the City installed new median islands that restricted left turns from Garwood Way and Merrill Street onto Oak Grove Avenue. Attachment C provides photos of the islands.

Analysis

Since the summer of 2022, the City has been conducting the Caltrain Quiet Zone study to examine improvements at the existing at-grade railroad crossings that will allow the City to designate a quiet zone such that trains would not be required to blow their horns at each crossing. As part of this study, the City and its consultant conducted a field visit with representatives from Caltrain, the California Public Utilities Commission (CPUC), the Federal Railroad Administration (FRA), and Caltrans Division of Rail and Mass Transportation. During this site visit, CPUC representatives expressed concerns with the configuration of the Oak Grove Avenue railroad crossing and potential queueing onto the tracks due to left turns at the intersections adjacent to the railroad.

On June 8 and 9, 2022, staff collected video during select time periods at the Oak Grove Avenue railroad crossing. This video captured both queuing behavior near the tracks and turning movements to and from Merrill Street and Garwood Way. Note that Springline was not yet open; therefore, there was limited use of Garwood Way at this time. Table 1 summarizes the queuing by day and time period as well as the impact of turning movements.

Time period	Vehicles stopped			Left turns to Merrill Street	Vehicles passing in bicycle lane
	On tracks	Far side of tracks	% on tracks		
Morning (7 a.m. – 9 a.m.)	4	7	36%	3	4
Mid-day (11:30 a.m. – 1:30 p.m.)	6	5	55%	6	3
Evening (4 p.m. – 6 p.m.)	3	5	38%	1	3
Total	13	17	43%	10	10

Since collecting this data, staff has observed and heard from community members with concerns about vehicles queuing on the tracks or using the bike lane and crosswalk across Garwood Way to pass vehicles turning left onto Merrill Street. Staff and residents have also observed frequent violations of the existing left

turn restrictions from Garwood Way and Merrill Street. This driving behavior creates increased safety concerns for this intersection.

Using Streetlight InSight data, staff examined turning movements at the intersection (Table 2). Generally, left turns onto Merrill Street are about 10% of traffic on weekdays and 20% on weekends. Left turns to Garwood Way were around 5% on weekdays and weekends. Staff used the most current available data for this type of analysis, but recognize that Springline was beginning occupancy during this period and it may not reflect future conditions.

Table 2: Estimated turning movements at Oak Grove Avenue and Garwood Way/Merrill Street (2023)						
	Weekdays			Weekends		
	All day	A.M. peak hour	P.M. peak hour	All day	A.M. peak hour	P.M. peak hour
Oak Grove Avenue						
Westbound traffic	1,800	200	340	1,300	200	200
Left turn to Merrill Street (%)	9%	12%	8%	20%	21%	19%
Eastbound traffic	1,900	300	291	1,100	200	200
Left turn to Garwood Way (%)	4%	1%	3%	5%	3%	8%
Merrill St/Garwood Way						
Total volumes	400	40	70	350	70	40
Illegal movements (left/thru)*	5	1	2	15	3	2
Illegal share (%)	1.40%	2.40%	2.70%	4.20%	4.20%	4.90%

Source: Streetlight InSight estimates for April and May 2023

* Illegal movements at the Garwood Way and Merrill St intersections are likely underestimated. Occasional visual observations by staff suggest they are closer to 10%.

On April 25, the City Council conducted a study session for the quiet zone study. At Oak Grove Avenue, the proposed improvements included extending the existing median near the railroad tracks to restrict left turns from Oak Grove Avenue onto Merrill Street and Garwood Way. At that meeting, City Councilmembers expressed support for these additional turn restrictions. Attachment D provides the improvement concept for the Oak Grove Avenue railroad crossing, including the extended median.

Eliminating left turns from Oak Grove Avenue onto Merrill Street and Garwood Way will create potential access concerns for local businesses. As such, staff conducted door-to-door outreach with local businesses to discuss the potential left-turn restrictions. Staff provided a letter and a station area parking and circulation map (Attachment E) to all businesses on Oak Grove Avenue and Merrill Street between Aug. 31 and Sept. 7, 2024. Staff spoke in person to several business proprietors or store managers. While all of the individuals staff spoke to understood the safety concerns, some also expressed concern about the economic impact to their business of limiting parking access.

Potential options staff could pursue to help address the concerns of local businesses include:

- Providing additional information about parking opportunities near businesses. The map included in the outreach letter (Attachment E) identifies numerous available places to park within a couple of minutes

walk of the local businesses. Staff could identify opportunities to provide this information online or via social media.

- Intersection signalization – the only other infrastructure option that could be considered at this location is to signalize the intersection. Signalization would require interconnection of the signal with both the railroad crossing and the Caltrans signal at El Camino Real and could cost as much as \$1 million to implement.

Staff recommends that the City Council adopt a resolution to authorize the left turn restrictions to address the immediate safety concerns. The left turn restrictions would be achieved by extending the existing raised median with flexible posts that is in place adjacent to the tracks. If the City Council is interested in pursuing a new signal, staff will return during the budget process for the next fiscal year to advance planning and design activities and identify specific projects that would need to be put on hold to advance this new project.

Impact on City Resources

Resources expended for project evaluation and intersection improvement design are considered part of the City's baseline operations. Construction of the extended median to restrict the left-turns from Oak Grove Avenue to Merrill Street and Garwood Way restrictions would be funded by the City's signage and striping program.

Environmental Review

Installation of a median is categorically exempt under the California Environmental Quality Act (CEQA) Article 19, §15301 Existing Facilities – Class 1. Class 1 allows for minor alterations of existing facilities, including highways and streets, sidewalks, gutters, bicycle and pedestrian access, and similar facilities, as long as there is negligible or no expansion of use.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting. Staff also provided direct notification to local businesses by conducting door to door outreach and dropping off letters and exhibits explaining the changes proposed.

Attachments

- A. Resolution
- B. Hyperlink – Dec. 7, 2021 staff report: menlopark.gov/files/sharedassets/public/agendas-and-minutes/city-council/2021-meetings/agendas/20211207-city-council-agenda-packet.pdf#page=27
- C. Photos of islands installed on Oak Grove Avenue
- D. Oak Grove Avenue quiet zone railroad crossing improvements
- E. Letter to business owners and parking and circulation map of the local area

Report prepared by:

Hugh Louch, Assistant Public Works Director – Transportation

RESOLUTION NO. XXXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING LEFT-TURN RESTRICTIONS FROM OAK GROVE AVENUE TO
GARWOOD WAY/MERRILL STREET**

WHEREAS, the City of Menlo Park Municipal Code 11.12.010 establishes the powers and duties of the City Council to, by resolution, order the installation, use, change or removal of such traffic control devices as the Council deems appropriate and as are permitted by the California Vehicle Code; and,

WHEREAS, California Vehicle Code section 21101(f) authorizes cities to prohibit entry to, or exits from, or both entry to and exits from, any street by means of islands, curbs, traffic barriers or other roadway design features to implement the circulation element of the general plan; and

WHEREAS, the mixed-use redevelopment located at 1300 El Camino Real named Springline demolished Derry Lane and extended and aligned Garwood Way to Merrill Street at Oak Grove Avenue; and,

WHEREAS, on December 7, 2021, the City Council adopted Resolution No. 6687 that prohibited left-turn and through movements onto Oak Grove Avenue from Merrill Street and Garwood Way; and,

WHEREAS, the proximity of Merrill Street and Garwood Way to the Caltrain railroad tracks creates the potential for queuing to extend onto the tracks and conflicts between vehicles, bicyclists, and pedestrians; and,

WHEREAS, the City anticipates that the installation of left turn restrictions from Oak Grove Avenue would eliminate this queuing and reduce vehicle-bicycle-pedestrian conflicts; and,

WHEREAS, on April 25, 2023, the City Council directed staff to pursue left-turn restrictions from Oak Grove Avenue to Merrill Street and Garwood Way as part of a study session on the Caltrain Quiet Zone study; and,

WHEREAS, the restriction of the left-turn movement from Oak Grove Avenue would not create significant roadway operation deficiencies; and,

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

NOW, THEREFORE BE IT RESOLVED, that the City Council of Menlo Park does hereby authorize the restriction of left-turn movements from Oak Grove Avenue to Garwood Way and Merrill Street and the installation of signage and/or design features so as to provide notification of said restriction of left-turn movements.

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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 twelfth day of September, 2023, by the following votes:

AYES:

NOES:

ABSENT:

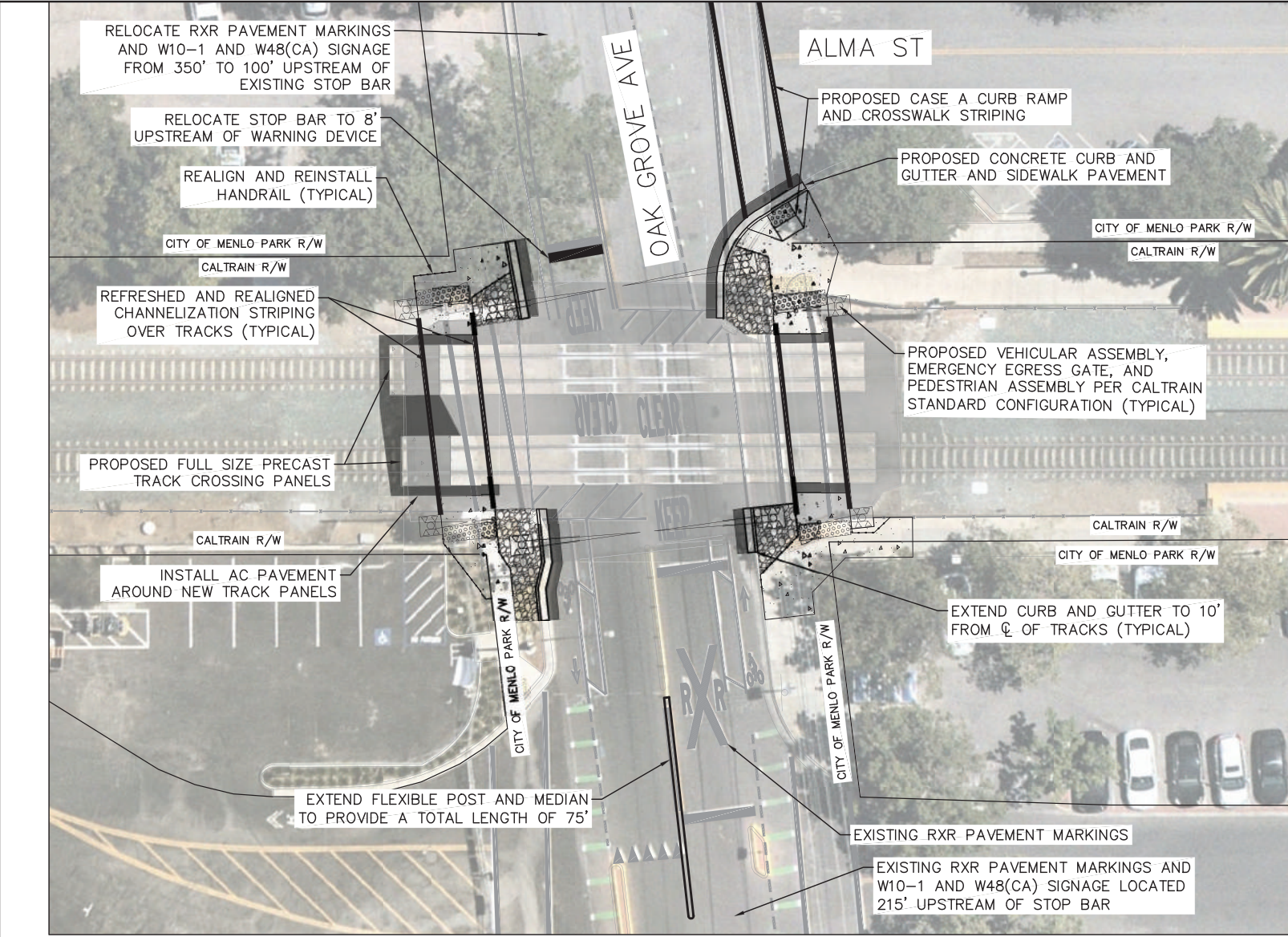
ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ___ day of September, 2023.

Judi A. Herren, City Clerk

Picture of rectangular rapid flashing beacon and new islands restricting left turns that were installed in June 2022





- GENERAL NOTES:**
1. ALL EXISTING PAVEMENT MARKINGS TO REMAIN IN PLACE UNLESS OTHERWISE NOTED.
 2. ALL EXISTING SIGNS TO REMAIN IN PLACE UNLESS OTHERWISE NOTED.
 3. EXISTING COMBINED VEHICULAR AND PEDESTRIAN GATE ARM ASSEMBLIES TO BE UPGRADED TO TWO SEPARATE ASSEMBLIES. WORK TO BE PERFORMED BY CALTRAIN.
 4. FLASHING LIGHT PAIRS TO BE ORIENTED IN THE DIRECTION OF TRAVEL.

SIGN LEGEND:

- W10-1
- W48(CA)
- R3-2

LEGEND

- DETECTABLE WARNING SURFACE
- ASPHALT CONCRETE PAVEMENT
- CONCRETE SIDEWALK
- NON-TRAVERSABLE SURFACE
- HANDRAILING

CONCEPTUAL DESIGN – NOT FOR CONSTRUCTION

REVISIONS			REVISIONS				
NO.	BY	DATE	DESCRIPTION	NO.	BY	DATE	DESCRIPTION



Kimley-Horn
 10 S. Almaden Blvd, Suite 1250
 San Jose, California 95113
 Tel. No. (669) 800-4130

DRAWN BY: _____
 DESIGNED BY: _____
 CHECKED BY: _____
 APPROVED BY: _____

MENLO PARK QUIET ZONE STUDY
 DOT# 754990A
 OAK GROVE AV XING
 CONCEPTUAL DESIGN LAYOUT

JOB NO. _____
 DATE: DECEMBER 2022
 SCALE _____
 SHEET _____ OF _____ SHEETS
 SHEET NO. _____



August 31, 2023

Local Businesses
Merrill Street, Oak Grove & Garwood Way
Menlo Park

RE: Potential Turn Restrictions on Oak Grove Avenue

Local Business Owners,

In the summer of 2022, at the direction of City Council, the City installed medians to restrict turns from Merrill Street and Garwood Way onto Oak Grove Avenue to address potential safety issues arising from expected increases in travel from new development in the area.

Over the last year, the City has been conducting a Quiet Zone study (<https://menlopark.gov/quietzone>) that would significantly reduce the use of train horns in Menlo Park. During field work for that study, the California Public Utility Commission, the agency that manages railroad crossings, asked the City to address queueing onto the railroad tracks caused by left turns from westbound Oak Grove Avenue to Merrill Street. On April 25, 2023, staff presented the findings of the study and received direction from City Council to pursue left turn restrictions from Oak Grove Avenue onto Merrill Street and Garwood Way. On September 12, 2023, staff will be presenting an item for City Council to consider installing these turn restrictions.

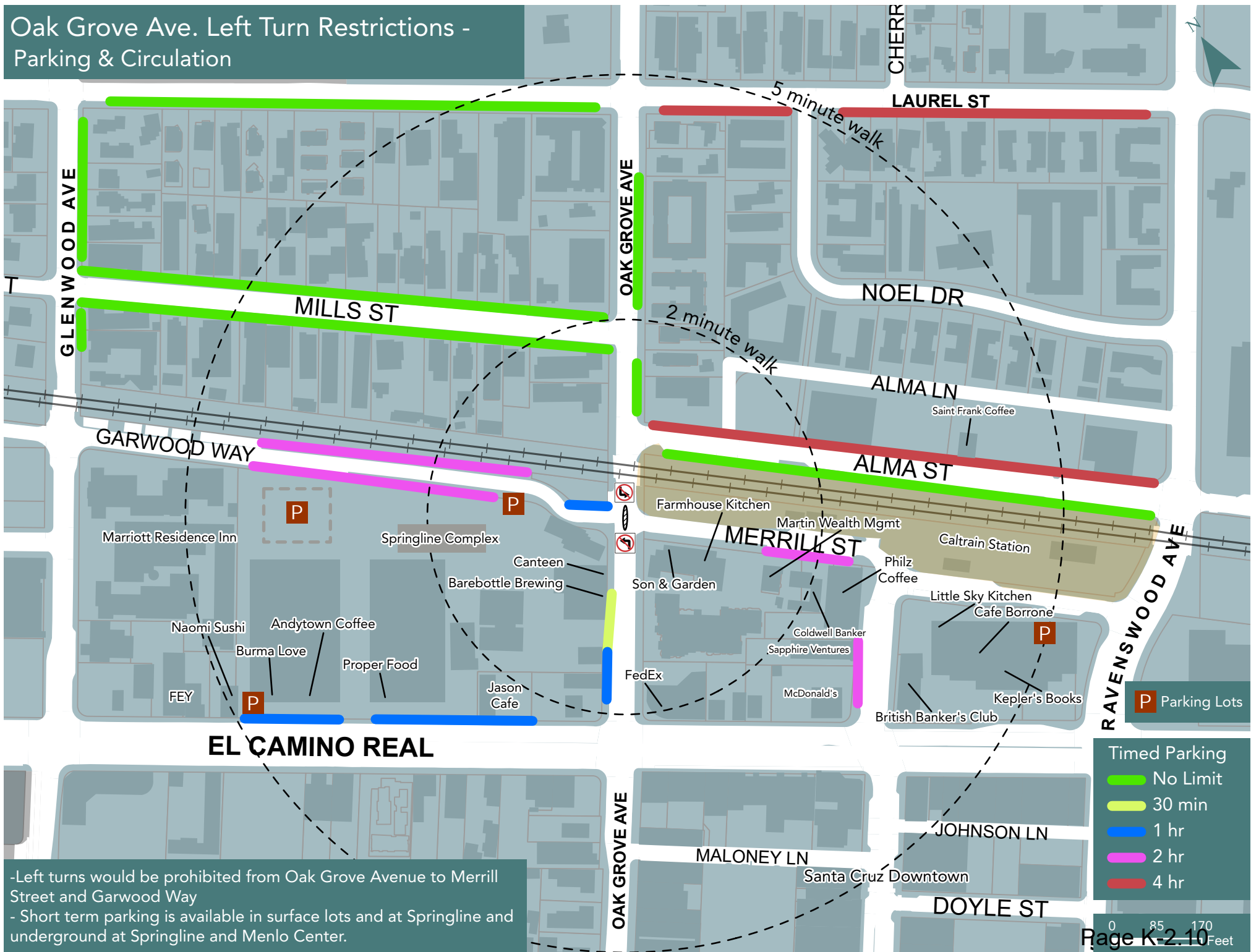
Staff understand that patrons of local business will be impacted by these turn restrictions and have prepared the attached exhibit to explain the restrictions and to provide information about nearby parking opportunities.

If you would like to meet to discuss these changes, please reach out to me at hlouch@menlopark.gov or (650) 330-6741.

Sincerely,

Hugh Louch
Assistant Public Works Director – Transportation

Oak Grove Ave. Left Turn Restrictions - Parking & Circulation



-Left turns would be prohibited from Oak Grove Avenue to Merrill Street and Garwood Way
 - Short term parking is available in surface lots and at Springline and underground at Springline and Menlo Center.



OAK GROVE LEFT TURN RESTRICTIONS

City Council – September 12, 2023

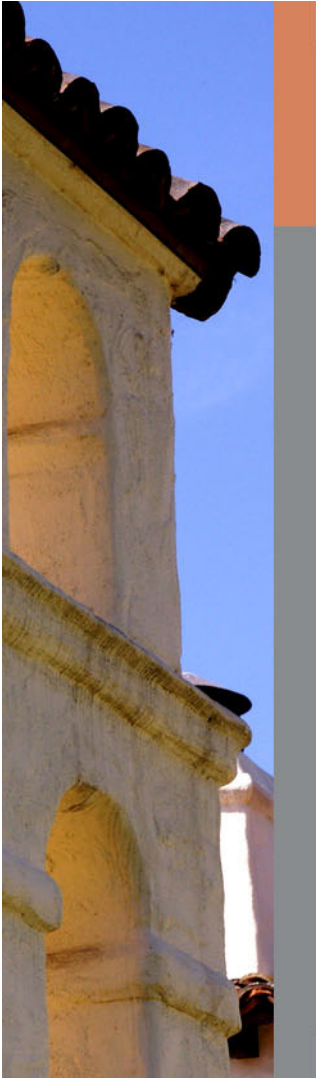
ANNEXA BAYBY
CIVILISIV



AGENDA

- Background
- Safety concerns
- Outreach
- Proposed change





BACKGROUND

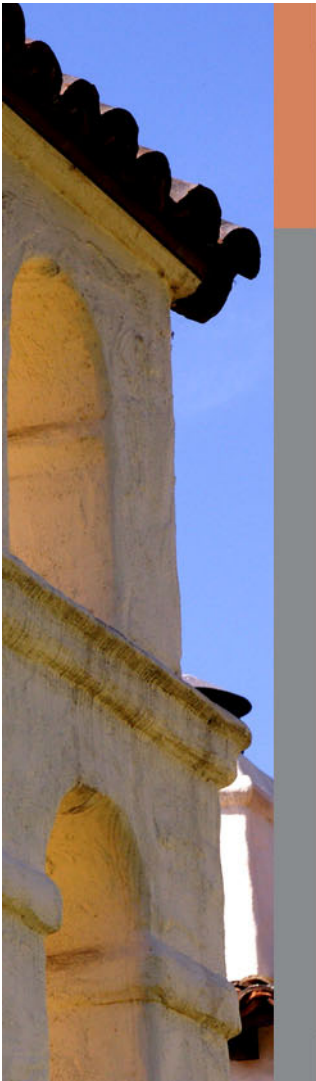
- Oak Grove Avenue
 - Neighborhood Collector
 - About 9,000 vehicles per day
 - Significant ped, bike, and transit use
- Springline development extended Garwood Way, aligned with Merrill Street
- 2021 – City Council approved left turn restrictions from Merrill Street and Garwood Way to Oak Grove Avenue





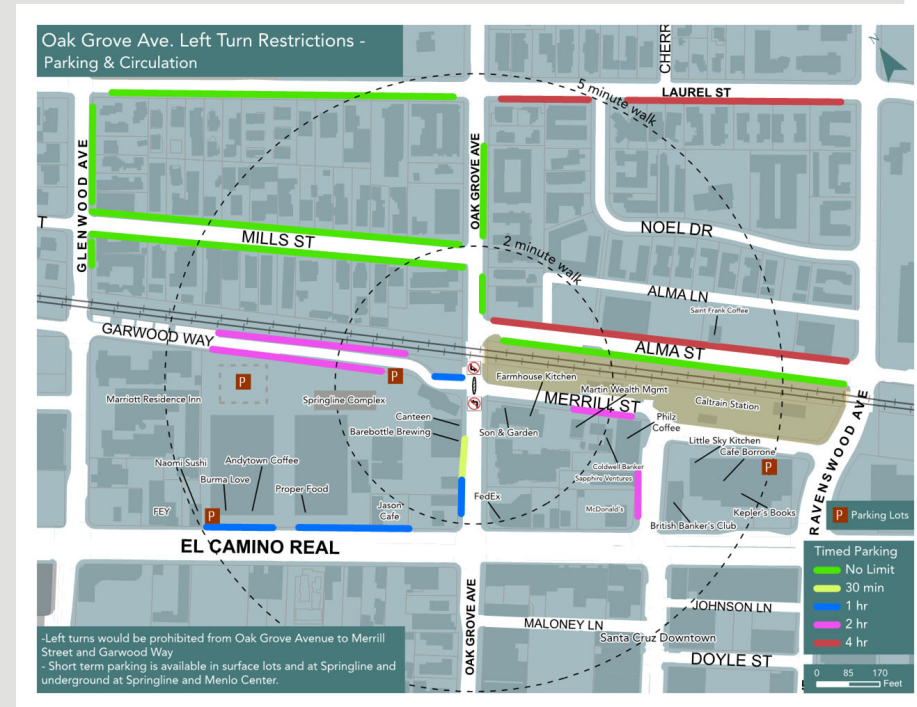
SAFETY CONCERNS

- Complex intersection due to proximity of railroad tracks to Garwood Way/Merrill Street, significant use by all modes of travel
- Vehicles stop on railroad tracks due to left turns to Merrill Street
 - CPUC has identified this as an issue the City needs to resolve
- Non-compliance with existing turn restrictions



OUTREACH

- Letters/in person outreach to businesses
- Some concerns about the impact on businesses
- Substantial parking within 2 to 5 minute walk



RECOMMENDATION

- Extend existing median to eliminate left turns





THANK YOU



STAFF REPORT

City Council
Meeting Date: 9/12/2023
Staff Report Number: 23-197-CC

Regular Business: Receive and file report on labor relations and receive public input on upcoming labor negotiations with Service Employees International Union Local 521, Temporary Employees Unit

Recommendation

Receive and file report on labor relations and receive public input on upcoming labor negotiations with Service Employees International Union Local 521, Temporary Employees Unit (SEIU).

Policy Issues

This report is prepared in accordance with City Council Procedure #CC-11-0001, public input and outreach regarding labor negotiations (Attachment A).

Background

The collective bargaining agreement for temporary employees, who are represented by SEIU, had a term of Oct. 26, 2008, through Oct. 22, 2011. The parties have not bargained on a successor agreement since the labor agreement expired in 2011, and the terms of the existing agreement have remained in place. SEIU has submitted a request to commence negotiations. The City currently employs approximately 93 temporary employees. In a typical year, the City hires 20-30 seasonal temporary employees. SEIU represents those employees who work at least two hundred and eight (208) hours per year, specifically excluding City Councilmembers, police reserves and other temporary staff assigned to public safety functions, classifications contained in other bargaining units, and independent contractors. SEIU also represents the non-sworn frontline personnel at the City through a separate collective bargaining agreement, which was recently adopted by the City Council with a term of July 11 through June 30, 2026.

Analysis

This report transmits personnel and process information to members of the City Council, the subject bargaining unit, and the public to inform upcoming labor negotiations with SEIU. If the parties cannot agree on a successor agreement, the terms of the existing agreement remain until modified pursuant to State-mandated impasse procedures or successful negotiation of a successor agreement.

Labor contract negotiations are governed by the Meyers-Milias-Brown Act (MMBA), Government Code §3500. MMBA requires that local agencies meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized collective bargaining units. MMBA further requires that the City fully consider proposals made by collective bargaining unit representatives before arriving at a determination of policy or course of action.

Negotiable items with direct costs

Base pay. Temporary employees receive an hourly wage within a pay range. The pay ranges for temporary employees are set at the rates specified in the memorandum of understanding (MOU) for permanent SEIU employees (Attachment B), with exceptions for hourly maintenance workers, officials and referees. There are no steps associated with the pay ranges for temporary employees, so employees may be placed anywhere within the range. Employees in this unit are eligible for overtime at one and one-half (1.5) times the employee's regular pay rate.

Base pay for each employee may change due to negotiated general salary increases (GSIs), also known as cost-of-living adjustments (COLAs), or merit-based performance adjustments.

Additional pay. Temporary employees are also eligible for the following pay differentials:

1. Bilingual differential – Employees who are assigned to job duties requiring bilingual skills are eligible to receive 81 cents (\$0.81) per hour above their regular pay rate.
2. Night and weekend differential – Employees assigned to work in the library on weekdays after 5 p.m. or before 8 a.m. or on Saturdays and Sundays receive 5% above their regular pay rate for those hours. Employees assigned to work in the police department assigned to swing, midnight, relief or day shift on the weekend receive 5% above their regular pay rate for those hours.

Benefits. Temporary employees receive paid time off at the rate of 0.034 hours per hour worked.

Additionally, the City provides uniforms to all temporary employees who are required to wear one.

Retirement. All temporary employees earn Social Security credits, unless they are enrolled in CalPERS. Temporary employees who work on an hourly basis and work more than one thousand (1,000) hours in a fiscal year become eligible for CalPERS membership. Once an employee is a member of CalPERS, they remain a member permanently. Currently, there are 16 temporary employees enrolled in PERS.

Other fringe benefits. Other fringe benefits include Medicare and workers' compensation insurance.

Table 1 on the following page outlines the estimated expenditure breakdown for SEIU temporary employees in fiscal year 2023-24.

Table 1: Estimated FY 2023 24 SEIU temporary employees unit personnel costs	
Type	Total
Salary	
Base	\$1,320,187
General salary increase (GSI)*	\$13,202
Salary total	\$1,333,389
Other benefits	
Medicare	\$19,334
Workers' compensation	\$33,335
Other benefits total	\$52,669
SEIU temporary unit total	\$1,386,058

*Estimated cost of 1% pay increase

Attachment C provides a web link to a Citywide benefits summary by group, which includes a comparison of retirement, health benefits, leaves, special pays, allowances and other fringe benefits.

Negotiable items with indirect costs

In addition to the direct costs outlined above, indirect costs items are also open to negotiation. Either side may seek changes in other factors subject to MMBA, such as tools and equipment, employee engagement and retention efforts, and professional development opportunities.

Roles during labor contract negotiations

The following provides an overview of major roles in the process to promote understanding of the labor contract negotiation process:

City Council. The City Council designates the City’s chief negotiator, authorizes the City’s initial bargaining position, considers proposals made by collective bargaining unit representatives through the chief negotiator, and ultimately approves a successor agreement. City Council receives data, analysis, and recommendations from the city manager and designated City staff. City Council Procedure #CC-11-0001, establishes early release requirements for all matters about labor negotiations. Other than approving the successor agreement, the City Council may elect to hold all labor negotiations discussions in closed session.

Chief negotiator. The chief negotiator leads labor agreement discussions, prepares all proposals, counter-proposals, and tentative agreements and is authorized to execute tentative agreements consistent with negotiating authority granted by City Council. The chief negotiator also consults the city manager, or designee, on workplace impacts of proposals, counter-proposals and tentative agreements.

City manager. The city manager is responsible for the efficient administration of all City services, and administration of the City Council approved budget. In the negotiations process, the city manager advises City Council and the chief negotiator on management matters subject to MMBA. The city manager also advises on recruitment and retention tools, employee engagement, and emerging trends in regional workforce management. The city manager designates city staff to support the chief negotiator.

Designated city staff. Labor negotiations can be a time-intensive process requiring significant preparation, coordination, analysis and follow-up work. The city manager typically will assign the assistant city manager, administrative services director, human resources manager, and a management analyst to support the process. To the greatest extent possible, information about labor negotiations is limited to individuals authorized by the city manager, such as how a proposal might impact operations.

Collective bargaining unit's chief negotiator. Each bargaining unit identifies a chief negotiator. The City's negotiating team commits to communicating only with the bargaining unit's chief negotiator unless otherwise authorized by the bargaining unit's chief negotiator.

Collective bargaining unit negotiating team. Each bargaining unit identifies a negotiating team of active City employees to advise their collective bargaining unit's chief negotiator through the labor contract negotiations process. The negotiating team typically meets amongst itself and is also present during all negotiation meetings.

Negotiations calendar and process

The City's chief negotiator and City management will provide the City Council with a negotiation strategy and initial bargaining authority recommendation at their Sept. 26 closed session. Time on the City Council's tentative agenda is reserved for closed sessions at each regular meeting after that to ensure City Council agenda capacity for labor negotiation conversations.

City Council will provide the City negotiator with direction to engage SEIU under the MMBA requirement to negotiate successor agreements with recognized employee groups. The first meeting between the two parties typically includes:

- Introductions
- Ground rules for negotiations
- Future meetings and time constraints
- Discussion of material contained in this report
- Discussion of any additional information requests from the bargaining unit
- Preliminary discussion of interest areas on both sides

Since the existing agreement expired in 2011, the following calendar is illustrative in nature, identifying key dates in order to adopt a successor agreement with SEIU before the end of the calendar year:

- Aug. 28 – City staff release report on negotiations with SEIU
- Sept. 12 – Members of the public offer their input on the City's negotiations position for City Council consideration
- Sept. 26 – City Council meets in closed session, confirms negotiating teams, and provides initial bargaining authority to chief negotiator
- Sept. 27 through Oct. 31 – City and SEIU negotiate successor agreement
- Nov. 10 – Estimated deadline for SEIU membership to ratify tentative successor agreement for effective date of Jan. 1, 2024
- Nov. 20 – Staff release report for ratified tentative successor agreement with SEIU
- Dec. 5 – Public meeting for City Council to consider ratification of a successor agreement with SEIU effective Jan. 1

Resources available to City Councilmembers

Attachment D, "Understanding the Labor Negotiations Process produced by the Institute for Local Government," further describes the roles, process and requirements of labor negotiations.

Impact on City Resources

There are no impacts on City resources as a result of receiving input on this issue. The cost of negotiating this contract is estimated at approximately \$10,000, inclusive of the chief negotiator's fees, if an external negotiator is utilized, legal review and internal staff time. Additional consulting services may be required depending on the scope of negotiation. City Council will meet in closed session to provide direction to the City's negotiating team. The negotiators will meet and confer with the SEIU negotiation team to reach a tentative agreement. Once a tentative successor agreement is ready for City Council ratification, the fiscal impact of that tentative agreement will be released 15 days before the City Council vote at a public meeting.

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 report 15 days prior to the City Council meeting of Sept. 12.

Attachments

- A. City Council Procedure #CC-11-0001
- B. Hyperlink – City of Menlo Park labor agreements: menlopark.gov/laboragreements
- C. Hyperlink – Benefits summary by bargaining unit: menlopark.gov/benefitsummary
- D. Understanding the Labor Negotiations Process produced by the Institute for Local Government

Report prepared by:

Marvin Davis, Interim Finance Director

Brittany Mello, Administrative Services Director

City of Menlo Park

City Council Policy

Department City Council	Page 1 of 1	Effective Date 03/02/2011
Subject Public Input and Outreach regarding Labor Negotiations	Approved by City Council 03/01/2011	Procedure # CC-11-0001

PURPOSE

To incorporate public input into the labor negotiations process.

BACKGROUND

The City Council has expressed a desire to improve public communication and outreach on labor relations to the extent reasonably possible.

POLICY

A regular business item shall be placed on a Council agenda in advance of formal labor negotiations that includes an opportunity for the public to comment. At least seven days prior to this meeting, staff shall post a report that contains relevant information on employee salaries and benefits, as well as the methodology used to determine a competitive and appropriate compensation package. As part of this process, a concerted effort shall be made to request public comment on the negotiations parameters.

As a general rule, staff shall engage the services of a labor attorney to participate in formal labor negotiations with bargaining units representing permanent employees.

During labor negotiations, public comment will be provided prior to the entry into closed session to discuss labor negotiations, in accordance with State law. At the conclusion of the closed session, the Council shall report out any action taken, including in the record the individual votes taken and the characterization of the deliberations. In addition, at some point in the negotiations process, staff shall submit a public report to Council that provides a general status of labor negotiations and that allows for public input prior to concluding negotiations.

Staff shall prepare and make public a staff report, at least fifteen calendar days prior to Council consideration of a tentative agreement or implementation resolution for any bargaining unit, that provides full details and costing associated with the recommended action, shall schedule the matter as a regular business item and shall provide an opportunity for the public to comment.

Understanding the Labor Negotiations Process

August 17, 2012

Under California law,¹ when county or city employees are represented by a union, the agency must negotiate with that union regarding their pay and benefits, working hours, and working conditions. This paper explains the key elements of that process.

Roles

Elected officials determine the agency's bargaining position and consult with staff throughout the negotiation process. Agency staff report back to decision-makers about the face-to-face negotiations' progress and any impediments to reaching agreement.

Before Bargaining

Prior to meeting with the union, the agency's negotiators will meet with elected officials to discuss how to proceed. Having this meeting well in advance of negotiations gives elected officials time to consider relevant issues and develop a set of questions.

Early conversations also give staff time to compile necessary information for decision-makers. Examples of such information may include:

- Anticipated increases in current employee expenditures
- Money available for salaries and benefits
- Cost of salary and benefit enhancements
- What comparable employers are paying
- Turnover statistics

Just as elected officials need time and information to make well-informed decisions, staff will need time to prepare and provide accurate information. As with any issue, limited staff resources may make it advisable to prioritize information requests.

Conversations about the agency's initial bargaining position typically take place in closed session.² The agency's negotiators will share their understanding of what it will take to

Additional Resources

The Institute has two glossaries to assist local officials as they engage with constituents, bargaining representatives and each other about labor relations and public pension issues:

- Labor Relations Terminology:
<http://www.ca-ilg.org/post/labor-relations-terminology>
- Public Pension Terminology:
<http://www.ca-ilg.org/post/public-pension-terminology>

The Institute is grateful to Dr. Rhonda Albey for preparing this piece. Dr. Albey has worked in labor relations for Los Angeles County since 1990.

reach agreement with the union. The agency's governing body will then give negotiators an initial bargaining position.

During Bargaining

No matter how reasonable the agency's initial bargaining position is, it is unlikely that the union will immediately accept it.

The Process Can Be Rough

During the negotiations process, the union may organize demonstrations and/or phone and e-mail campaigns. Discourse may become bullying and emotional.

Don't take it personally – it's all part of the process. Both sides may need to show they are doing their job. Union negotiators need to show their members that they are fighting for them and elected officials need to show they are working hard for the community.

The negotiation process is unpredictable. The agency's negotiators may have misread the union's priorities and goals. Union representatives may have misread the employees' mood. New issues may arise. There may be internal divisions within the union. These challenges may make it impossible to get agreement within the original parameters authorized.

Working with the Agency's Negotiators. As challenges arise, the agency's negotiators may ask for modifications in the bargaining position. This is normal in the course of any type of negotiation, as each party learns more about the interests of the other. Multiple meetings with the negotiating team may be necessary.

Modifications may not involve increases in total expense. An example is moving money from benefits to salaries (or vice-versa). Another example is if decision-makers have authorized higher increases for some position classifications than others, employee representatives may ask to even increases out.

Meeting with Union Officials. As negotiations continue, the union may seek meetings with individual elected official(s) to discuss the agency's bargaining position. As with any group of constituents, an elected official can choose to meet with them or not. If an elected official does meet with union officials, the official should be clear that the official is not speaking on behalf of the governing body.

A word of caution about meeting with employees *without* their union representative during labor

Expect to be Misquoted

People tend to hear what they want to hear.

Someone may say something like "I'll speak to the negotiating team," and mean exactly that – they'll speak to them.

The employees may hear "He/she will speak to the negotiating team and tell them to give us what we want."

Some strategies for minimizing miscommunication are to take notes during the discussion and not to meet with union representatives alone.

negotiations: such meetings can lead to an unfair labor practice accusation of “direct dealing.”³ Avoid any action that makes it appear that the agency is interfering in the union’s relationship with the employees it represents.

If the elected official meets with union representatives, it is helpful to share the conversation with the agency’s bargaining representatives. The conversation may provide insights that will help the agency’s negotiators move the process forward.

If Agreement Is Reached

The agreement still has to be ratified by the rank and file. The union may feel it needs to sell the agreement as a victory for its members. The union may post flyers or e-mails trumpeting their win over management.

For their part, elected officials may hear concerns from constituents that the agency is spending too much on employee salaries and benefits. Agency officials are well-advised to be moderate in their public discourse relating to the agreement. Anything that might be construed as bragging about the agency’s victory in the bargaining process may jeopardize the agreement. The employees won’t ratify the agreement if they think it is a

Post Agreement Issues

While the agency will not have to negotiate during the term of the agreement, issues may arise between negotiations that may require changes.

bad deal or their representatives weren’t sufficiently aggressive on their behalf.

A helpful practice can be a public statement that does not validate either extreme, but says something to the effect that “We reached a deal to provide adequate public services at reasonable cost.”

If Agreement Cannot Be Reached

What happens if the agency can’t reach an agreement? There are procedures under state law for resolving impasse. A local labor relations resolution may provide further guidance on procedures.

Mediation

A mediator may be brought in to try and resolve differences between the agency and the union. Mediators have no authority to impose a settlement, but can be useful in helping the parties look at the problem from a new perspective and to move past personal differences. The state Division of Mediation and Conciliation can provide a mediator.

Fact-finding. Whether or not mediation occurs, the union may request fact-finding as a next step. With the assistance of the

An Expired Contract is not the Same as No Contract

If the contract has expired and agreement has not been reached on a new one, the agency must maintain the status quo until there is a new agreement.

Public Employee Relations Board (PERB), a fact-finding panel is appointed which reviews both parties' proposals, holds hearings and ultimately recommends a settlement.

Unilateral implementation. After exhausting the impasse procedure and holding a public hearing, the agency may impose its final financial offer upon the employees. Management cannot force the union to accept a whole new contract.

Unilateral implementation cannot be used to impose work rule or operational changes and can only be implemented for one year. After that year, or during the year, if the union indicates it has a significant change in its position, the agency must bargain again with the union to try and reach a mutual agreement.

This resource is a service of the Institute for Local Government (ILG) whose mission is to promote good government at the local level with practical, impartial, and easy-to-use resources for California communities. ILG is the nonprofit 501(c)(3) research and education affiliate of the League of California Cities and the California State Association of Counties. For more information and to access the Institute's resources on Local Government 101 go to <http://www.ca-ilg.org/localgovt101>.

The Institute thanks the following individuals for their review and input into this resource:

- Holly Brock-Cohn, Human Resources Director, City of Alameda
- Casey Echarte, Assistant Human Resources Director, City of San Mateo
- Eraina Ortega, Legislative Representative, Employee Relations & Human Resources, California State Association of Counties
- Delores Turner, Assistant City Manager, Administrative Services Department, City of Emeryville

The Institute welcomes feedback on this resource:

- *Email:* rstephens@ca-ilg.org Subject: *Understanding the Labor Negotiations Process*
- *Fax:* 916.444.7535
- *Mail:* 1400 K Street, Suite 205 ▪ Sacramento, CA ▪ 95814

References and Resources

¹ California Government Code 3500, known as the Meyers-Miliias-Brown Act, (MMB) requires negotiation in good faith with the recognized employee representative on specified subjects. It also permits local agencies to adopt their own rules and regulations for the governance of labor relations.

² See Cal. Gov't Code § 54957.6, which provides:

54957.6. (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

³ See Cal. Lab. Code § 1156; *Ruline Nursery Co. v. Agricultural Labor Relations Bd.*, 169 Cal. App. 3d 247, 266, 216 Cal. Rptr. 162, 172 (1985)



STAFF REPORT

City Council Meeting Date: 9/12/2023
Staff Report Number: 23-207-CC

Informational Item: City Council agenda topics: September – October 2023

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 Oct. 10. 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: September – October 2023

Report prepared by:
Judi A. Herren, Assistant to the City Manager/City Clerk

Tentative City Council Agenda

#	Title	Department	Item type	City Council action
1	Accela five year agreement	ASD	Consent	Contract award or amend
2	Closed Session: Anticipated litigation	CA	Closed Session	No action
3	Closed session: labor	CA	Closed Session	No action
4	Agreement to appropriate housing below market rate funds related to notice of funding availability proposals	CDD	Regular	Contract award or amend
5	Amend below market rate (BMR) guidelines regarding resale of ownership units	CDD	Regular	Adopt resolution
6	Purchase and sale agreement 975 Florence Ln.	CDD	Consent	Contract award or amend
7	Consider Planning Commission's recommendation on a vesting tentative map and below market rate housing agreement for 123 Independence Dr. project	CDD	Public Hearing	Adopt resolution, Approve
8	Consider and adopt a resolution to close the Ryans Lane to vehicles to allow for expanded outdoor dining opportunities	CDD, PW	Regular	Adopt resolution
9	Annual inflation protection adjustment for local minimum wage	CMO	Consent	Receive and file
10	Revised agreement with Tripepi Smith for public communications support	CMO	Consent	Contract award or amend
11	Communitywide electrification program with California Energy Commission (CEC) funding	CMO	Study Session	Direction to staff
12	First read and intro of tobacco retailer permit ordinance	CMO	Regular	First read/intro ordinance
13	Power purchase agreement for solar in public facilities program	CMO	Regular	Contract award or amend
14	Proclamation: Latino Heritage Month	CMO	Proclamation	No action
15	Proclamation: National Domestic Violence Awareness Month	CMO	Proclamation	No action
16	Proclamation: Recovery Happens Month	CMO	Proclamation	No action
17	Proclamation: Suicide Prevention Month	CMO	Proclamation	No action
18	Transmittal of city attorney billing (Aug 2023)	CMO	Informational	No action
19	Approve advisory body annual work plans: Library, Parks and Recreation, Housing, Complete Streets, and Environmental Quality Commissions	CMO, CDD, PW, LCS	Consent	Approve
20	Staffing considerations to support Menlo Park Community Campus (MPCC) operations	LCS	Regular	Adopt resolution
21	Flock ALPR, gunshot detection, and video camera	PD	Study Session	Direction to staff
22	Resolution designating public works director and assist public works director as authorized agents for Cal OES and FEMA	PW	Consent	Adopt resolution
23	Agreement amendment with City Redwood City for Atherton Channel cleaning	PW	Consent	Contract award or amend
24	Agreement for Minimum Point of Entry (MPOE) and Dispatch Rooms HVAC Upgrade project	PW	Consent	Contract award or amend
25	Approve vehicle and equipment purchase contracts for fiscal year 2023-24	PW	Regular	Approve
26	Grant of utility easements at Menlo Park Community Campus	PW	Consent	Adopt resolution
27	Provide direction on level of service analysis in traffic impact analysis	PW	Study Session	Direction to staff
28	Provide direction on parking removal policy to address sight line deficiencies	PW	Study Session	Direction to staff
29	Resolution upholding appeal of the Complete Streets Commission's approval remove four on-street parking spaces at 660 Roble Avenue	PW	Consent	Adopt resolution, Decide
30	Stormwater Master Plan	PW	Study Session	No action

Tentative City Council Agenda

#	Title	Department	Item type	City Council action
31	Grand Jury Report response to Bike Safety in San Mateo County	PW, PD	Consent	Approve



STAFF REPORT

City Council
Meeting Date: 9/12/2023
Staff Report Number: 23-202-CC

Informational Item: Transmittal of city attorney billing

Recommendation

This is an informational item and does not require City Council action.

Policy Issues

In accordance with the City Council informational requests, this staff report transmits information to the public.

Background

On Feb. 23, 2021, the City Council approved an agreement with Burke Williams Sorenson, LLP (BWS) for city attorney services.

Analysis

As requested by the City Council, the city attorney has prepared monthly summaries of billing activity (costs/fees) for legal services that could be shared with the public. This staff report transmits the summary for the month of July 2023.

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. Billing summary – July 2023

Report prepared by:
Justin I.C. Murphy, City Manager

JULY 2023 CITY LEGAL SERVICES - Burke, Williams & Sorensen, LLP

Description	Fees	Costs	Total Billed
GENERAL MUNICIPAL MATTERS	\$42,825.00		\$42,825.00
REAL ESTATE, COMPLEX HOUSING, CEQA, NEPA	\$4,281.50	\$300.25	\$4,581.75
HOUSING ELEMENT	\$504.00		\$504.00
CONSTRUCTION AND COMPLEX PUBLIC WORKS	\$4,994.50		\$4,994.50
MENLO UPTOWN	\$2,625.00		\$2,625.00
123 INDEPENDENCE	\$4,559.00		\$4,559.00
FACEBOOK DA	\$957.00		\$957.00
WILLOW VILLAGE	\$4,565.00		\$4,565.00
1350 ADAMS COURT	\$10,740.50		\$10,740.50
1075 O'BRIEN/CS BIO	\$97.00		\$97.00
162-164 JEFFERSON	\$14,162.00		\$14,162.00
1105-1165 O'BRIEN DRIVE	\$873.00		\$873.00
MPMW AND FEES ADVICE	\$8,820.00	\$64.50	\$8,884.50
CODE ENFORCEMENT/ PITCHESS / NUISANCE PR	\$252.00	\$46.00	\$298.00
SRI CAMPUS	\$16,053.50		\$16,053.50
MPCC PG&E EMINENT DOMAIN	\$535.50	\$360.20	\$895.70
HOTEL MOXY/3723 HAVEN AVENUE	\$679.00		\$679.00
1005 O'BRIEN	\$194.00		\$194.00
UUT CLAIM/LITIGATION	\$1,071.00	\$355.15	\$1,426.15
PUBLIC RECORDS ACT	\$1,732.50	\$46.00	\$1,778.50
CITY COUNCIL	\$1,787.50		\$1,787.50
3705 HAVEN	\$533.50		\$533.50
KUNZE DOG LAWSUIT	\$899.50		\$899.50
80 WILLOW	\$4,677.00		\$4,677.00
975 FLORENCE	\$5,925.50		\$5,925.50
CITY LEGAL EXPENSES PAID BY CITY			\$73,904.90
CITY LEGAL EXPENSES PAID BY DEVELOPERS			\$61,611.20
TOTAL			\$135,516.10



STAFF REPORT

City Council

Meeting Date: 9/12/2023
Staff Report Number: 23-208-CC

Informational Item: Police department quarterly update – Q2 April 2023 – June 2023

Recommendation

The purpose of this informational item is to provide an update to the public and to the City Council as requested in the City Council discussions in spring and summer 2021. This is an informational item and does not require City Council action.

Policy Issues

In accordance with the City Council informational requests and interest in Menlo Park Police Department (MPPD) activities and use of equipment, this staff report transmits information to the public.

Analysis

In public discussions with City Council, the following information is provided through regular updates by the MPPD:

1. Racial and Identity Profiling Act (RIPA). The department is required to collect stop data on all police detentions and report the details along specific guidelines to the California Department of Justice (DOJ). MPPD will provide quarterly updates of this data as part of this report beginning with the first calendar quarter of 2023.
2. Results of required periodic auditing of the department's automated license plate reader (ALPR) technology. The department is required to conduct regular audits of the system to ensure it is being used appropriately.
3. Reports of interactions with Animal Control. Specifically, the City Council requested to be notified of any Animal Control Hearings being held for dangerous animal in Menlo Park.
4. Use of force and Taser incidents. Committed to transparency, the MPPD will provide the number of documented use of force incidents and Taser deployments regularly. Every documented use of force incident (including Taser deployments) is investigated and reviewed by the supervisor and command staff by policy.
5. Complaints. Also in the spirit of transparency, the MPPD will provide the number of complaints received and reviewed regularly. The department will also provide limited details on complaints that have come to completion during the quarter.
6. Assembly Bill 481 (AB 481). AB 481, signed into law in Sept. 30, 2021, and applicable to agencies no later than May 1, 2022, requires that law enforcement agencies obtain the approval of the City Council, through the adoption of a Military Equipment Use Policy, by ordinance at a regular meeting held pursuant to specified open meeting laws, before taking certain actions relating to the funding, acquisition or use of military equipment, as defined. The City Council adopted this ordinance at the May 10, 2022, meeting.
7. Community engagement. For a more holistic perspective, the MPPD will also be sharing a general

overview of outreach activities completed by the department on a regular basis.

Quarterly update Q2 / April – June 2023

Racial and Identity Profiling Act (RIPA) update

MPPD contacted 1527 persons in a manner that qualified for RIPA reporting from April through June 2023. The department has a pre-formatted reporting template for this data (Attachment A).

Automated License Plate Readers (ALPR) update

From April through June 2023, MPPD's three mobile mounted ALPR's captured 189,332 license plates. The data captured resulted in 291 "hits" that a captured license plate was currently on an active law enforcement database or wanted list.

MPPD also audits inquiries to the overall ALPR databases made by members of MPPD Staff. Each inquiry to the database requires an articulable investigative reason (case investigation). The ALPR database was offline for the entire reporting period and no inquiries were made.

Animal Control update

During this reporting period, no animal control hearing for animals in Menlo Park were conducted and based upon the information currently available there were no citations issued by Animal Control in our jurisdiction.

Use of force update

From April through June 2023, MPPD was attached to 7,897 incidents, including calls for police service and proactive patrol activity. There were no uses of force meeting the threshold for further documentation reported. Each reported use of force report is presented for review to the Chief and Command Staff, and any training issues are identified and addressed. There was a Taser deployment March 30 that was erroneously omitted from the last quarterly report. A required Use of Force report was submitted for this incident and it is under review in accordance with department policy.

Complaints update

From April through June 2023, MPPD was attached to 7,897 incidents, including calls for police service and proactive patrol activity. No complaints were documented either from the community or self-initiated by this Department. The department always evaluates and/or investigates each complaint according to policy.

While the number above identifies the total complaints taken in within this quarter, complaint investigations take time and may be completed outside of the quarter in which they were generated. During the period of April through June 2023, MPPD's Administration Team completed three complaint reviews/investigations from our caseload. Of those, two were sustained and one was determined to be exonerated.

A sustained finding means that evidence from the internal investigation indicated the complaint was founded. The sustained complaints include one for conduct and one for use of force

AB 481 equipment use update

From April through June 2023, MPPD was attached to 7,897 incidents, including calls for police service and proactive patrol activity. During this time period, there were no operations of MPPD or SWAT personnel that resulted in the use of equipment listed in compliance with AB 481.

Community engagement update

Menlo Park Police officers encounter opportunities regularly to interact with the community in a positive way. During the quarter of April through June 2023, Menlo Park Police officers documented 34 distinct incidents as "OUTREACH" in the computer dispatch system (CAD). While this number is the floor, not the

ceiling of the total positive interactions MPPD has with the public, these incidents were entirely community engagement and public service oriented.

The 34 incidents included officers engaging in conversations over coffee with community members, passing out stickers to children, interactive visits to the local skate park, engagement during downtown foot patrols and at Lions Club sponsored farmers market, in addition to numerous visits to local elementary and middle schools. Members from across the department interacted with members of the community at various events throughout the city in an effort to promote police-community partnerships.

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. MPPD RIPA report Q2 – 2023

Report prepared by:

Scott Mackdanz, Administrative Sergeant

Tracy Weber, Communications and Records Manager

William Dixon, Police Commander

Dave Norris, Police Chief



MENLO PARK POLICE DEPARTMENT RIPA REPORT Q2-2023

PUBLIC SAFETY





Racial and Identity Profiling Act (RIPA) California Assembly Bill 953

OVERVIEW:

In 2015, the State of California passed Assembly Bill No. 953 (AB 953), otherwise known as the Racial and Identity Profiling Act (RIPA). AB 953, hereafter referred to simply as RIPA, requires that law enforcement agencies in the state of California collect perceived demographic data from specified police contacts.

This data, referred to by RIPA as “stop data,” is to be collected in accordance with the California Code of Regulations and submitted to the Department of Justice on a yearly basis.

As outlined by the California Code of Regulations (11 CCR § 999.224), RIPA stop data must be collected during police contacts matching either of the following criteria: “(1) Any detention ... by a peace officer of a person; or (2) any peace officer interaction with a person in which the officer conducts a search...”

Specified data fields for each RIPA stop must be completed at the end of every qualifying contact and certain data collected is based on the officer’s perception. Therefore, it is important to note that the way an officer perceives any given individual might differ from the way that individual identifies themselves.

The collection requirement of this statute was implemented in waves, with each wave having a staggered commencement date based on agency size. Larger agencies in the state began collecting stop data as early as 2018. As a smaller-size agency, Menlo Park Police Department began collecting stop data for RIPA on January 1, 2022 and regularly uploading the data to the Department of Justice shortly thereafter.

The Menlo Park Police Department welcomes the opportunity to use this data to continuously maintain and improve upon our longstanding core values, and providing the people of Menlo Park a transparent overview of each year’s RIPA data and utilizing that data to continuously monitor our work and engage in meaningful conversations with our Community. The following report has been compiled using Menlo Park Police Department RIPA stop data from the period of April 1, 2023, to June 30, 2023.

METHODOLOGY:

The information presented in the RIPA section of this report is representative of the second quarter of 2023 statistical data gathered from the work of on-duty Menlo Park Police Officers. This data includes all stop data reported by our police officers. While a large majority of these stops typically occur within the City of Menlo Park, our jagged boundaries result in occasional stops in adjoining jurisdictions, including Atherton, East Palo Alto, and Unincorporated San Mateo County.

Officers report the following for “perceived characteristics” for each person stopped:

- Perceived Race or Ethnicity of Person Stopped
- Perceived Gender of Person Stopped
- Person Stopped Perceived to be LGBT
- Perceived Age of Person Stopped
- Person Stopped Has Limited or No English Fluency
- Perceived or Known Disability of Person Stopped

Specific officer actions are also tracked if the individual meets the stop requirements of RIPA. These include:

- Reason for stop
- Result of the stop
- Actions taken during the stop

REFERENCE MATERIALS SUPPLEMENTAL TO REVIEW OF COLLECTED DATA:

- Link for the [DOJ Data Portal](#)
NOTE – Various state reports on this site include accumulated annual RIPA data aggregated by year up to 2021, and will not yet include Menlo Park PD Data from 2022
- Link to [2023 RIPA Board Annual Report](#)
- Link to [Menlo Park PD Open Data - Current](#)
- Link to [MPPD Lexipol Policy Manual](#) Bias-Based Policing Policy and RIPA Policy 402 (p. 314)
This includes section 402.4.2 "REPORTING OF STOPS" and 402.7 "REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE"
- Link to the [2020-21 San Mateo County Civil Grand Jury's Report](#) - "BUILDING GREATER TRUST BETWEEN THE COMMUNITY & LAW ENFORCEMENT VIA THE RACIAL AND IDENTITY PROFILING ACT"

DEMOGRAPHICS REFERENCE:

- [City of Menlo Park](#)
- [San Mateo County](#)
- [9 SF Bay Area Counties](#)
- [State of California](#)

As defined in RIPA Regulations – More than one option can be chosen

“Asian” refers to a person having origins in any of the original peoples of the Far East or Southeast Asia, including for example, Cambodia, China, Japan, Korea, Malaysia, the Philippine Islands, Thailand, and Vietnam, but who does not fall within the definition of “Middle Eastern or South Asian” or “Pacific Islander.”

“Black/African American” Refers to a person having origins in any of the Black racial groups of Africa.

“Hispanic/Latino” refers to a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

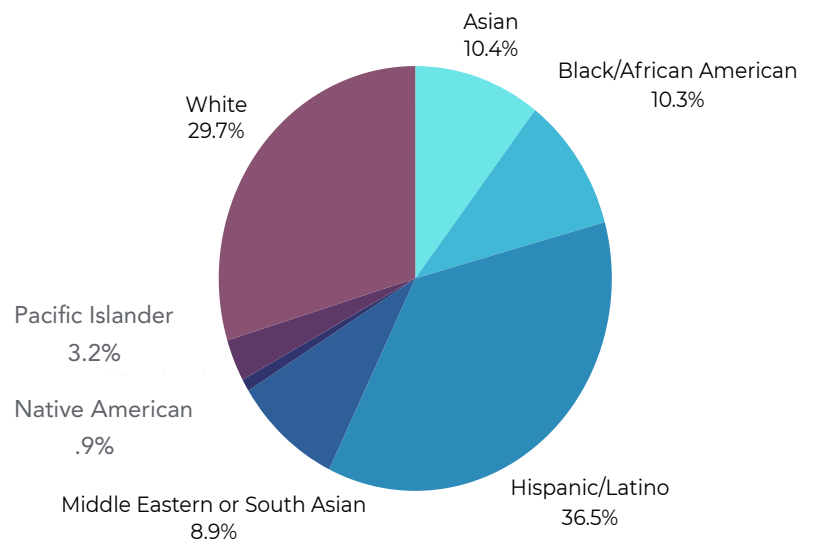
“Middle Eastern or South Asian” refers to a person of Arabic, Israeli, Iranian, Indian, Pakistani, Bangladeshi, Sri Lankan, Nepali, Bhutanese, Maldivian, or Afghan origin.

“Native American” refers to a person having origins in any of the original peoples of North, Central, and South America.

“Pacific Islander” refers to a person having origins in any of the original peoples of Hawaii, Guan, Samoa, or other Pacific Islands, but who does not fall within the definition of “Middle Eastern or South Asian” or “Asian.”

“White” refers to a person of Caucasian descent having origins in any of the original peoples of Europe and Eastern Europe.

Asian	166
Black/African American	164
Hispanic/Latino	581
Middle Eastern or South Asian	142
Native American	15
Pacific Islander	51
White	473



RIPA DATA

TOTAL STOPS
1,527

OFFICER INITIATED
ACTIVITY
1,469

CALLS FOR SERVICE
RESULTING IN STOPS
58

ANNUAL RACIAL AND IDENTITY PROFILING ACT (RIPA) STATISTICS

Consensual encounter resulting in search	14
Determine if student violated school property	0
Investigation to determine if the person is a truant	7
Knowledge of outstanding arrest warrant/wanted person	23
Known to be on parole/probation/PRCS/mandatory supervision	14
Possible conduct warranting discipline under Education Code	0
Reasonable suspicion that the person was engaged in criminal activity	96
Traffic violation	1,373

ACTIONS TAKEN DURING STOP

Asked for consent to search a person	35
Asked for consent to search property	29
Baton or other impact weapon used	0
Canine bit or held a person	0
Canine removed from vehicle or used to search	0
Chemical spray used	1
Curbside detention	21
Electronic control device used	0
Field sobriety test conducted	14
Firearm discharged or used	0
Firearm pointed at person	2
Handcuffed or flex cuffed	70
Impact projectile discharged or used	0
None	1,374
Other physical or vehicle contact	0
Patrol car detention	35
Person photographed	41
Person removed from vehicle by order	19
Person removed from vehicle by physical contact	0
Property was seized	29
Search of person was conducted	104
Search of property was conducted	73
Vehicle impounded	12

RIPA DATA

RESULT OF STOP

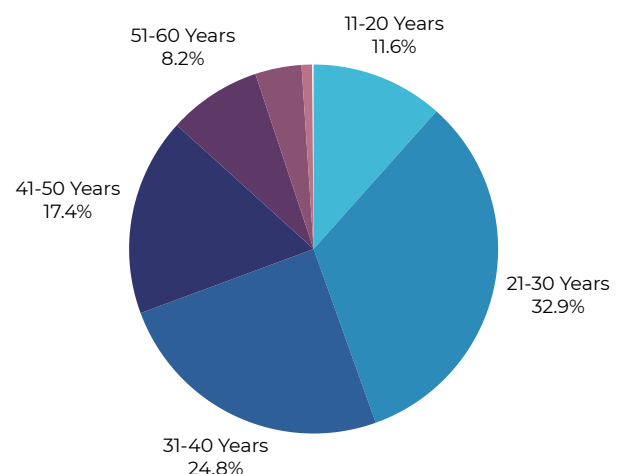
Citation for infraction	443
Contacted parent/legal guardian or other person responsible for the minor	1
Contacted the U.S. Department of Homeland Security	0
Custodial arrest pursuant to outstanding warrant	29
Custodial arrest without warrant	45
Field interview card completed	9
In-field cite and release	45
No action	150
Noncriminal transport for caretaking	0
Psychiatric hold	0
Referral to school administrator	0
Referral to school counselor or other support staff	0
Warning (verbal or written)	825

REASON FOR STOP

Consensual encounter resulting in search	14
Determine if student violated school policy	0
Investigation to determine if the person is truant	7
Knowledge of outstanding arrest warrant/wanted person	23
Known to be on parole/probation/PRCS/mandatory supervision	14
Possible conduct warranting discipline under Education Code	0
Reasonable suspicion that the person was engaged in criminal activity	96
Traffic violation	1,373

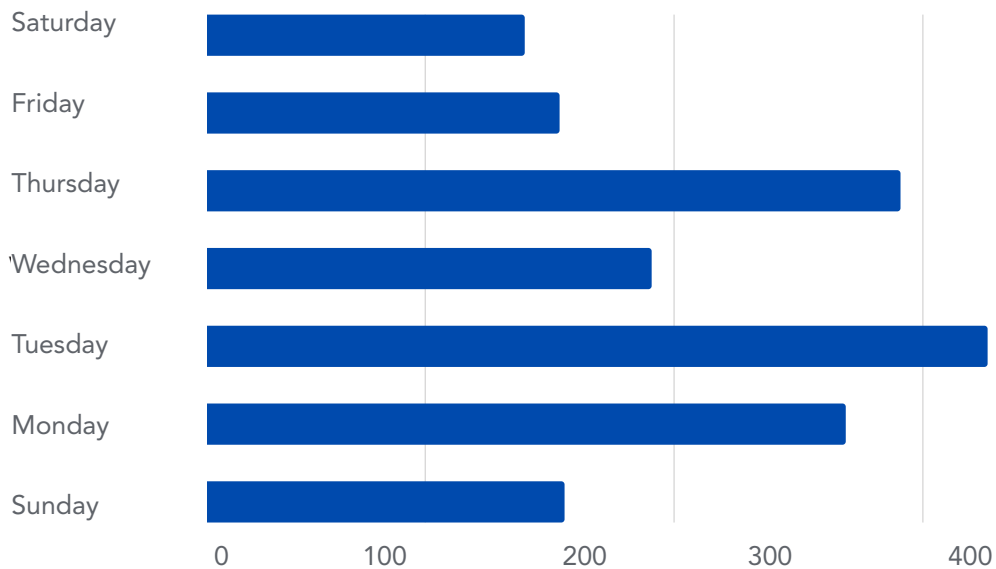
PERCEIVED AGE

0-10 Years	0
11-20 Years	177
21-30 Years	503
31-40 Years	379
41-50 Years	265
51-60 Years	125
61-70 Years	62
71-80 Years	14
81-90 Years	2
90 Years or Older	0

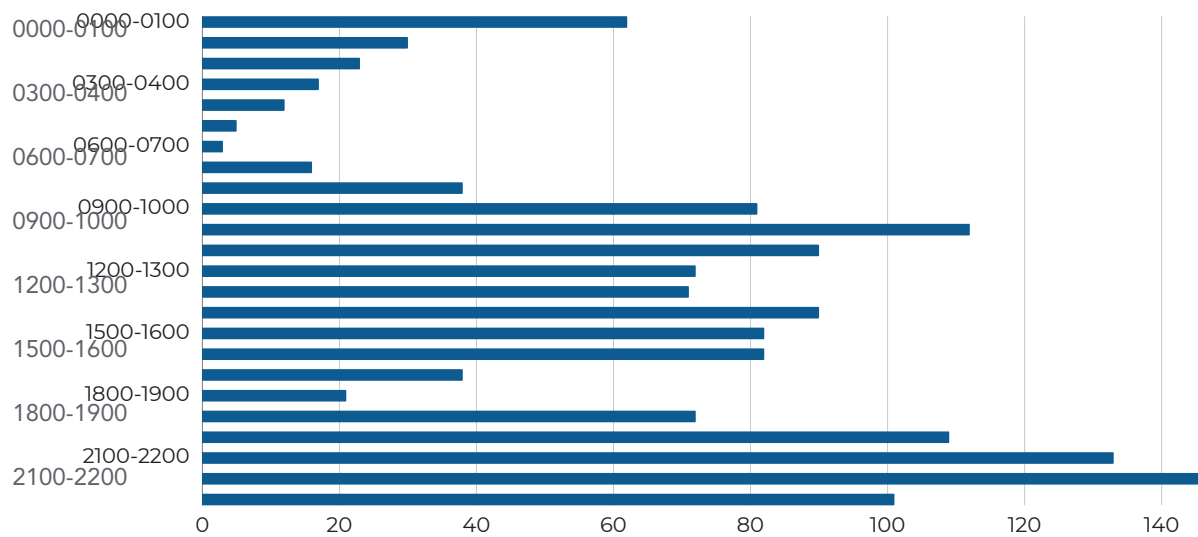


RIPA DATA

STOPS BY DAY OF WEEK



STOPS BY TIME OF DAY



RIPA DATA

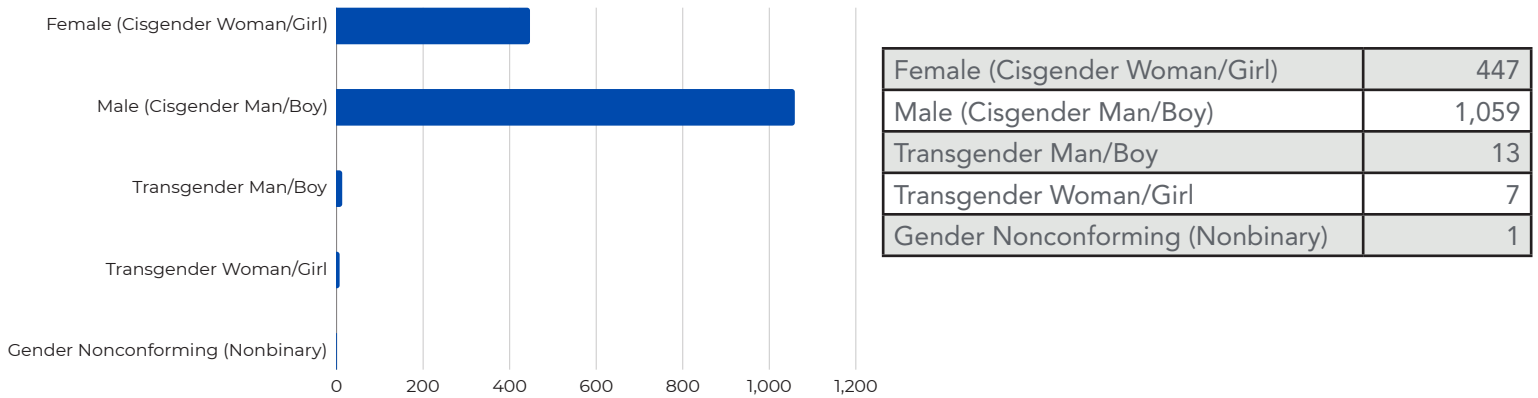
PERCEIVED GENDER

As defined in RIPA Regulations

“Transgender man/boy” means a person who was assigned female at birth but who currently identifies as a man, or boy if the person is a minor.

“Transgender woman/girl” means a person who was assigned male at birth but who currently identifies as a woman, or girl if the person is a minor.

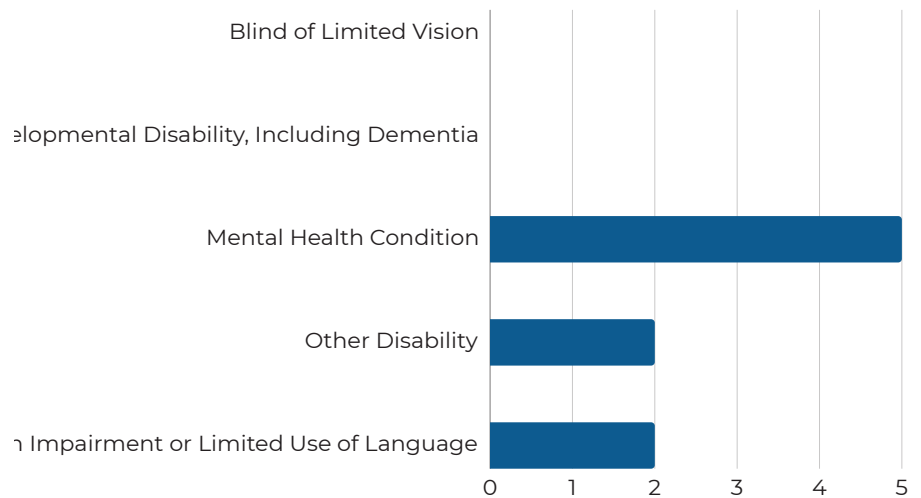
“Gender nonconforming” means a person whose gender-related appearance, behavior, or both, differ from traditional conceptions about how males or females typically look or behave. A person of any gender or gender identity may be gender nonconforming. For this reason, an officer may select “Gender nonconforming” in addition to any of the other gender data values, if applicable.



PERCEIVED DISABILITY

Blind or Limited Vision	0
Intellectual or Developmental Disability, Including Demetia	0
Mental Health Condition	5
Other Disability	2
Speech Impairment or Limited Use of Language	2

It should be noted that for 1,518 contacts, there were no perceived disabilities.



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City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
650-330-6300
menlopark.gov/police

Building
a **Safe** Community



STAFF REPORT

City Council Meeting Date: 9/12/2023
Staff Report Number: 23-204-CC

Informational Item: Update on City's Housing Element Update project status and next steps

Recommendation

The purpose of this informational item is to provide the City Council and members of the public an update on the City's Housing Element Update project, including the Aug. 29 letter (Attachment A) from the State Department of Housing and Community Development (HCD) regarding the City's adopted 2023 to 2031 Housing Element, and a tentative schedule (Attachment B) of next steps in the Housing Element Update project process. This is an informational item and does not require City Council action.

Policy Issues

State housing law requires that jurisdictions throughout California adequately plan to meet the housing needs of everyone within the community and future residents by regularly updating the jurisdiction's General Plan Housing Element. The Regional Housing Needs Allocation (RHNA) identifies the specific number of housing units at each income level category that a jurisdiction must plan for from 2023 to 2031 to comply with state mandates. Menlo Park's RHNA is 2,946 dwelling units across all income levels. Additionally, the Affirmatively Furthering Fair Housing (AFFH) Act requires that all local public agencies facilitate deliberate action to explicitly address, combat, and relieve disparities resulting from past patterns of segregation to foster more inclusive communities.

As part of the Housing Element Update project, the City is also updating its Safety Element and preparing its first Environmental Justice Element. The components of the Housing Element Update consider the interrelation between a number of land use, housing, and environmental factors and policies.

Background

Over the past two and a half years, the City undertook an extensive process of planning and public engagement, and coordination with community members, stakeholders, City decision makers, and other governmental agencies to develop the 2023 to 2031 Housing Element and draft Environmental Justice and Safety Elements. The City Council adopted the Housing Element Jan. 31. In response to comments received on the adopted Housing Element from the State Housing and Community Development Department (HCD) in April, the City Council authorized staff to submit a revised Housing Element (Attachment C) June 27. On Aug. 29, the City received a comment letter from HCD (Attachment A) on the revised Housing Element.

Concurrent with the Housing Element process, the City released a draft Environmental Justice Element (Attachment D) and draft Safety Element (Attachment E). On June 20, the City Council and Planning Commission conducted a joint study session to receive an overview and provide feedback on the draft Environmental Justice and Safety Elements. Staff has been revising and refining the elements based on study session feedback, and will continue to engage project partners like Climate Resilient Communities

(CRC) and ChangeLab Solutions in the process, contingent on approval of a budget amendment described in the Impact on City Resources section of this report.

Analysis

On Aug. 29, the City received a letter from HCD (Attachment A) again acknowledging the City's Housing Element addresses many statutory requirements, but requesting additional changes to the adopted Housing Element for a narrower range of topics compared to the April 7 letter. In summary, the requested changes in the letter are:

- Provide a more robust series of actions to promote housing mobility, increase new housing choices and affordability in higher opportunity areas, promote place-based strategies for community preservation and revitalization, and protect against displacement, with significant numeric metrics (such as number of households assisted, number of housing units constructed, etc.);
- Evaluate a constraint in the amount of parking required for emergency shelters that exceeds the number of spaces necessary for staff only, and include a program to address the constraint;
- Include a program to conduct a mid-cycle evaluation of the Housing Element strategies and programs
- Add a program with numerical objectives committing to facilitate development on federally-owned and school sites during the 2023-2031 planning period, and include alternatives if development does not materialize as identified in the inventory;
- Evaluate lot coverage requirements for the R-3 zoning district as a potential constraint to housing development and include a program committing to allow increased lot coverage in the R-3 zone;
- Specifically address how the City complies with state density bonus law (SDBL), including procedures for a SDBL project, available benefits and non-discretionary actions;
- Provide specific information about the affordable housing overlay (AHO), such as thresholds for projects to qualify for the AHO, and provide evidence demonstrating likelihood of developers taking advantage of the AHO; and
- Provide specific information in Program H4.M regarding reductions in parking requirements and ensure that the reduced amounts will not constrain multifamily housing development.

Staff believes that most of the requested changes are for additional detail and data to support the existing policies and programs in the adopted Housing Element, including one that has already been addressed in Program H1.H regarding a mid-cycle evaluation and one that could be evaluated as part of the proposed R-three zoning-related changes to implement the Housing Element. As of the writing of this informational item, staff is scheduled to meet with HCD on Sept. 12 to receive guidance and clarity, in particular regarding the comments about AFFH and the use of the AHO in the site capacity analysis.

Next steps

As outlined in Attachment B, staff has divided the remaining work to complete the Housing Element Update project into three tasks:

1. Revise the adopted Housing Element where appropriate, following a meeting with HCD staff to discuss the Aug. 29 HCD letter, and resubmit to HCD for conditional certification;
2. Prepare modifications to the El Camino Real/Downtown Specific Plan, the city's commercial zoning districts, the R-3 zoning district, AHO, child day care home regulations, and zoning map for City Council adoption, consistent with the direction received at the Aug. 22 special City Council study session; and
3. Continue refinement of the draft Environmental Justice and Safety Elements based on additional community engagement and feedback, and prepare for City Council adoption.

The timing and major components of these three work tasks are briefly described below and would occur

through the remainder of 2023 and beyond.

For Task 1, revising the adopted Housing Element, staff is preparing the bulk of the requested changes to the document now, and will draft the revisions before meeting with HCD to clarify and confirm the comments and draft responses, with the exception of AFFH actions and application of the AHO to sites capacity, which requires clarity from HCD. Before resubmitting the document to HCD, it is anticipated that the City Council would review the draft changes at a meeting in late September or early October to provide feedback on the revisions and guidance on any items that may affect City policy. Following a required seven-day public review period and 60-day HCD review period, it is anticipated that HCD would provide a formal response on the revisions between November and December 2023. If the opportunity arises to work closely with HCD staff to resolve comments during the review period on an informal basis, the review period may be shorter. Assuming conditional certification of the Housing Element following HCD review, the Planning and Housing Commissions would make a recommendation and the City Council would tentatively meet in January 2024 to consider re-adoption of the Housing Element.

Task 2, changes to the El Camino Real/Downtown Specific Plan, commercial zoning districts, the R-3 district, AHO, child day care home regulations, and associated General Plan amendments would be finalized between now and October 2023, with an initial City Council hearing in late November 2023 to consider adoption of the changes, which may overlap with some of the work for Task 3 below.

Task 3, finalizing the Environmental Justice and Safety Elements, is dependent on the scope of changes to the Housing Element (to be confirmed with HCD staff) and staff capacity. Originally, refinement of the draft documents and additional community engagement was anticipated to occur through fall 2023, with a potential joint City Council and Planning Commission study session in fall 2023 to review the refined draft elements. The joint study session would be followed by public meetings for a Planning Commission recommendation and City Council consideration of adoption of the General Plan elements in late 2023/early 2024. However, given the additional comments on the Housing Element, the need to prioritize its certification, and the deadline for completion of the zoning changes by Jan. 31, 2024, to comply with state law, development of the Environmental Justice and Safety Elements will extend into 2024 to provide adequate time for community engagement, enhancement of the draft documents, and consideration by decision-makers.

It should be noted that dates and actions described above are tentative and subject to the availability of key parties (HCD staff, community stakeholders, Commissions and the City Council, etc.), scheduling of meetings, and time needed to address any unforeseen challenges that could arise during each of the tasks.

Impact on City Resources

As part of the fiscal year 2020-21 budget, the City Council appropriated nearly \$1.5 million from the general fund to support the Housing Element Update (including preparation of the SEIR). On March 14, the City Council approved a second amendment to the professional services agreement with M-Group, the City's Housing Element Update project consultant, for an overall contract total of \$1,547,466. Staff is working with the consultant team to understand anticipated budget augmentations and contract modifications for continued support on the Housing Element and related components to address comments from HCD and feedback from the joint study session. The revisions to the scope of work would include assistance from community partners like CRC and ChangeLab Solutions on the Environmental Justice Element, and staff is expected to bring the information to the City Council for review at an upcoming meeting.

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. On Jan. 31, the City Council adopted Resolution No. 6808 certifying the SEIR for the Housing Element Update and associated CEQA actions. On Feb. 1, a Notice of Determination (NOD) was filed.

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 – Aug. 29 letter from State Department of Housing and Community Development: menlopark.gov/files/sharedassets/public/community-development/documents/projects/housing-element-update/20230829-hcd-review-letter-for-revised-he.pdf
- B. Tentative Housing Element Update project schedule through remainder of 2023
- C. Hyperlink – June 30 revised 2023 to 2031 General Plan Housing Element: menlopark.gov/files/sharedassets/public/v/1/community-development/documents/housing-element-annual-progress-reports/2023-2031-menlo-park-housing-element-clean-copy-version-updated-20230630.pdf
- D. Hyperlink – Draft General Plan Environmental Justice Element: menlopark.gov/files/sharedassets/public/community-development/documents/projects/housing-element-update/environmental-justice-element-20221212-public-review-draft.pdf
- E. Hyperlink – Draft General Plan Safety Element: menlopark.gov/files/sharedassets/public/community-development/documents/projects/housing-element-update/safety-element-20221212-public-review-draft.pdf

Report prepared by:
Tom Smith, Principal Planner

Report reviewed by:
Mary Wagner, Assistant City Attorney
Deanna Chow, Assistant Community Development Director

Proposed Housing Element Update project schedule through early 2024	
Task	Tentative timing
Task 1: Revise Adopted Housing Element for HCD Certification	
1.1 Receive HCD comments on adopted Housing Element	August 29, 2023
1.2 <u>City Council meeting</u> : Info item to describe Housing Element status and next steps	September 12, 2023
1.3 Meet with HCD and prepare revisions to Housing Element	September 2023
1.4 <u>City Council meeting</u> : Review revisions to Housing Element prior to HCD submittal	October 2023
1.5 7-day public review period	October 2023
1.6 Submit revised Housing Element to HCD; 60-day review	October 2023
1.7 End of HCD review period	Early December 2023
1.8 <u>Joint Planning Commission/Housing Commission meeting</u> : Resolution recommending Housing Element amendments	December 2024
1.9 <u>City Council meeting</u> : Resolution adopting revised Housing Element	Mid-January 2024
Task 2: Finalize El Camino Real/Downtown Specific Plan, Zoning Ordinance, General Plan, and Associated Changes	
2.1 Prepare final Specific Plan, Zoning Ordinance, and General Plan changes based on August 22 study session guidance	October 2023
2.2 <u>Planning Commission meeting</u> : Recommendation to City Council	Late October 2023
2.3 <u>City Council meeting</u> : Ordinances for zoning changes	Late November 2023
2.4 <u>City Council meeting</u> : Waive second reading and adopt ordinances for zoning changes	December 2023
Task 3: Finalize Environmental Justice and Safety Elements	
3.1 Refinement of draft documents based on study session #1 feedback and community engagement on revised draft	Fall 2023/Winter 2024
3.2 <u>Joint City Council/Planning Commission meeting</u> : Draft EJ/Safety Elements outreach summary and feedback (SS #2)	Winter 2024
3.3 <u>Planning Commission meeting</u> : Recommendation to City Council	Spring 2024
3.4 <u>City Council meeting</u> : Resolution adopting EJ/Safety Elements	Spring 2024



STAFF REPORT

City Council

Meeting Date: 9/12/2023

Staff Report Number: 23-205-CC

Informational Item: City Council fiscal year 2023-24 priorities work plan

Recommendation

This is an informational item and does not require City Council action.

Policy Issues

The City Council's annual priority and goal setting workshop provided direction to the city manager on aligning resources and work plans for the next year.

Background

The City Council held its annual workshop March 18 with a professional facilitator and City staff. The Council set the following top priorities for fiscal year 2023-24:

- Housing
- Activating downtown, with the added focus of economic development, small businesses and downtown vibrancy
- Climate action
- Emergency preparedness
- Safe streets

Advancement of City Council priorities through the funding of projects, services and staffing was detailed during the fiscal year 2023-24 budget adoption process. Since that time, departments have continued to identify projects that align with City Council priorities, reflected in the fiscal year 2023-24 work plan (Attachment A).

Analysis

City department responsibility varies for work plan items associated with City Council priorities, with the greatest relative responsibility placed on public works, community development, city manager's office, and interdepartmental items that involve more than two departments. There are over 56 work plan items with the following distribution of responsibility:

- Public Works: 41% of items; most concentrated in the safe streets priority
- Community Development: 32% of items; most concentrated in the housing priority
- City Manager's Office: 27% of items; most concentrated in the climate action priority
- Interdepartmental: 25% of items

The work of administrative services, library and community services, and police, while not largely represented in the work plan items under City Council priorities, plays a vital role in providing programs and

services in Menlo Park and supports many of the efforts to accomplish work plan items.

Work plan items will be prioritized on City Council meeting agendas for the next year in addition to items related to regulatory requirements, delivery of core services, the capital improvement program, development review, and other unforeseen issues or emerging community needs. City staff are focused on a wide variety of new projects outside the scope of the City Council priorities work plan, including regulations for tobacco retailers and smoke-free multifamily housing, cybersecurity measures and other IT Master Plan projects, greater utilization of software systems like OpenGov to increase efficiency, and diversity, equity, inclusion and belonging (DEIB) initiatives, among others. Core services also represent a significant portion of staff workload. For the last reporting period available in fiscal year 2021-22, for example, staff processed over 2,000 encroachment, residential, commercial and accessory dwelling units (ADU) permits, conducted over 9,000 inspections, provided more than 3.6 million hours of recreational activities, and delivered nearly 900 million gallons of water to customers in Menlo Park. Information on core services will be further developed throughout this fiscal year.

Staff also maintains a list of City Council requests or direction to pursue new initiatives or projects, including examples like planning for biosafety levels, exploring dedicated grant seeking/writing support, and a variety of study sessions, among others that can be advanced by the City Council as capacity allows.

Staff will report out on work plan progress throughout the fiscal year, and expects to update the document regularly as work plan items evolve. Staff will also continue to report out on volume of services across all departments.

Impact on City Resources

There is significant impact on city resources, including on both budget and department/staff capacity, to accomplish work plan items. While many tasks are embedded in the fiscal year 2023-24 adopted budget, the City Council may consider future funding allocations from the General Fund, special revenue and restricted funds and grants.

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. City Council priorities work plan for fiscal year 2023-24

Report prepared by:
Stephen Stolte, Assistant City Manager

City work plan for fiscal year 2023-24		
City Council priority	Departments	Status
HOUSING		
Implement Housing Element:	CD	
Adopt zoning ordinance amendments related to Housing Element implementation	CD	in progress
Initiate feasibility study for downtown parking lots	CD, PW	
Hold Housing Element study sessions on ECR/D SP, AHO, Commercial site and R3	CD	complete
Implement homeownership preservation program with Habitat for Humanity	CD	adopted funding agreement
Create anti-displacement program	CD	
Issue RFP for BMR program administrator	CD	complete; authorized contract
Issue notice of funding availability (NOFA) and allocate below market rate funds for proposals	CD	NOFA issued
Process housing developments:	interdept	
Approve below market rate housing agreement for 123 Independence Drive	CD	in progress
Initiate EIR for housing development at 3705 Haven Ave.	CD	authorized contract
Process Parkline master plan	CD	in progress
Initiate second phase of BMR Guidelines update	CD	
Enhance information sharing about current development projects and regulations	CD	ongoing
Respond to Grand Jury report, "Accessory dwelling units: affordable housing's panacea or prevarication?"	CD	complete
Amend ADU regulations	CD	
Recruit Housing Manager	CD, ASD	complete
ACTIVATING DOWNTOWN		
Recruit Economic Development Manager	CMO, ASD	filled temporary interim role
Provide economic development support to businesses	CMO	ongoing
Adopt and implement streetaries ordinance for long term outdoor dining program	interdept	adopted ordinance
Approve street closures to enable outdoor dining and bicycle infrastructure	interdept	approved closure on Santa Cruz Ave.
Install bicycle lane on 600-block of Santa Cruz Ave. and associated bicyclist improvements	PW	in progress
Revise permit for farmers' market	PD, interdept	
Refurbish and maintain Santa Cruz Ave. seating area	PW	

CLIMATE ACTION		
Allocate \$4.5 million California Energy Commission funding to communitywide electrification program	CMO	in progress
Analyze and revise scope of work for remaining term of Climate Action Plan	CMO	in progress
Enhance communication and education on electrification	CMO	in progress
Partner with Peninsula Clean Energy's solar/battery program for city facilities	CMO, interdept	in progress
Implement electric vehicle charging plan at city facilities	CMO, interdept	in progress
Continue water heater replacement at city facilities	CMO, interdept	in progress
Explore Burgess pool electrification	CMO, interdept	in progress
Adopt Environmental Justice Element	CD, interdept	in progress
Adopt and implement zero emission landscape equipment ordinance	CMO, PW	adopted ordinance; implementation in progress
Complete construction of clean energy infrastructure (micro-grid) at MPCC	interdept	in progress
Continue to advance planning, funding, and construction of SAFER Bay	PW	in progress
Complete construction of Chrysler Pump Station to improve resiliency of City's stormwater system	PW	in progress
EMERGENCY PREPAREDNESS		
Recruit Emergency Preparedness staff person	interdept, ASD	in progress
Host Public Works Open House on September 16 to engage the community on public works services	PW	in progress
Expand emergency preparedness training among city staff	interdept	in progress
Maintain and enhance emergency preparedness capabilities among city facilities and staff and through use of software like GIS; update relevant emergency-related policies	interdept	ongoing
Coordinate with other PIOs for winter storm season including early coordination with San Francisquito Creek JPA	CMO	in progress
Complete After Action Reports (AAR) for 2022-2023 winter storms and pandemic response	CMO	in progress
Hold emergency preparedness study session	CMO, interdept	
Review and accept the stormwater master plan	PW	in progress
Receive update from the San Francisquito Creek Joint Powers Authority	PW	scheduled
Adopt Safety Element	CD	in progress
Coordinate with MPC Ready for community preparedness activities	CMO	ongoing
Proclamation for National Preparedness Month	CMO	scheduled

SAFE STREETS		
Maintain existing transportation assets including development of a five-year paving plan	PW	in progress
Develop connected multimodal corridors	PW	
Complete gaps in the pedestrian network, with focus on safe crossings	PW	in progress
Continue to implement Safe Routes to Schools program	PW	in progress
Develop a network of low stress bicycle corridors that connect residents to major services and transit	PW	in progress
Deliver projects currently in the capital program pipeline	PW	in progress
Ravenswood Avenue, Belle Haven Traffic Calming, Haven Avenue streetscape, Middle Avenue complete streets and pedestrian/bicycle Caltrain crossing, Middlefield Road pilot, Willow Road pedestrian and bicycle improvements, and Coleman-Ringwood Avenues planning study	PW	Ravenswood Ave. complete / others in progress
Proactively advance safety	PW	
Complete Vision Zero Action Plan	PW	in progress
Implement quick-build project at Menlo-University to address high priority safety issue	PW	complete
Update City policies to advance safety and VMT reduction	PW	
Implement TDM policy and transportation management association	PW	
Transportation impact analysis guidelines and level of service analysis requirements	PW	in progress
Parking design guidelines and policies for on-street and off-street parking to support sustainability, housing and equity goals	PW	in progress



STAFF REPORT

City Council Meeting Date: 9/12/2023
Staff Report Number: 23-209-CC

City Council Initiated Item **Direction on former Sunset magazine campus**

Recommendation

Provide direction to staff on former Sunset magazine campus.

Background

On Sept. 1, City Councilmember Combs requested an agenda item for City Council discussion of former Sunset magazine campus (Attachment A).

Analysis

Pursuant to City Council Procedure #CC-20-013 (Attachment B), the City Council may discuss the item and ask staff questions regarding preliminary scope, analysis and resource requirements. After discussion, with a motion and second, the City Council may take one of the following actions:

- Direct the city manager to prioritize staff resources to prepare a formal staff report for further City Council consideration and/or action, or
- Direct the item to an advisory body for preparation of a formal staff report with no additional staff support required, or
- Direct the city manager to prepare a formal staff report for further City Council consideration as resources are available, or
- Defer action to the City Council's annual goal setting process.

Impact on City Resources

Determined by City Council direction.

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. City Councilmember Combs request
- B. City Council Procedure #CC-20-013

Report prepared by:
Justin I.C. Murphy, City Manager

Herren, Judi A

From: Combs, Drew
Sent: Friday, September 1, 2023 2:16 PM
To: _CCIN
Subject: Agenda requests

In line with city council policy, I'm writing to request the following items be added to the agenda of a future city council meeting:

- Former Sunset magazine campus - Several weeks have passed since the city was made aware of a builders' remedy project for a portion of the former Sunset Magazine campus, but the city council has yet to discuss this matter. Given that this matter could give rise to litigation, it would seem that a closed session would be the most appropriate format. I'll defer to the mayor, city manager and city attorney on the determination of format, but please let this email serve as my formal request that an item regarding this subject be added to a future council meeting.

- USGS site/school zoning - Last year, the council directed that a portion of the USGS campus on Middlefield Rd. be reserved for a future school site. I formally request that the council schedule a review of this decision. No local school board has said the site is needed or formally expressed an interest in building a school on the site. The fact that no one has bid for the site suggests that the council's decision may be hampering any future development, and the housing such a project would provide. Additionally, given that the city still does not have an approved housing element, the development of this site may become even more important.

Drew Combs
Menlo Park City Council
District 2

Drew Combs
City Councilmember
City Hall - 2nd Floor
701 Laurel St.
tel 650-924-1890
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*Note our emails have changed to @menlopark.gov

CITY COUNCILMEMBER REQUESTS

City Council Policy #CC-20-013
Adopted August 25, 2020

ATTA



Purpose

The purpose of this procedure is to provide transparency into requests by individual City Councilmembers that result in the use of staff time. The policy applies to all City Councilmembers equally and allows the full City Council to determine how to use limited city resources.

For this procedure, a “City Councilmember request” is defined as a request to use city resources in a manner that exceeds the City Council approved budget, priorities, or work plan. This includes requests directed to the city manager, city attorney, and all city staff members. This procedure also applies to City Council appointed commissions and committees.

Requests to add items to a future agenda

To make a request

To request consideration of an item at future City Council meetings, City Councilmembers may send the request via email to the city manager, with a copy to the Mayor and Vice Mayor, or via email to city.council@menlopark.org. The request must be received no later than two (2) business days prior to publication of the meeting agenda. The request will automatically appear under “City Council initiated items” at the end of the City Council’s regular agenda.

Initial City Council consideration of request

As an agenda item under “City Council initiated items” the City Council may discuss the item and ask staff questions regarding preliminary scope, analysis, and resource requirements. After discussion, with a motion and second, the City Council may take one of the following actions:

- Direct the city manager to prioritize staff resources to prepare a formal staff report for further City Council consideration and/or action, or
- Direct the item to an advisory body for preparation of a formal staff report with no additional staff support required, or
- Direct the city manager to prepare a formal staff report for further City Council consideration as resources are available, or
- Defer action to the City Council’s annual goal setting process.

If the request does not receive sufficient City Council support, the item is not considered further.

City Council action

When the staff report is available, the report will be placed under “City Council initiated items” for City Council discussion and action at the next City Council meeting, regardless of agenda load management exercised by the Mayor, Vice Mayor, and city manager.

Request to modify operations or for special projects

To make a request

To request consideration of a change in operations or for a special project, a City Councilmember may send the request via email to the city manager, with a copy to the Mayor and Vice Mayor, or via email to city.council@menlopark.org. The request must be received no later than two (2) business days prior to publication of the meeting agenda. The request will automatically appear under “City Council initiated items” at the end of the City Council’s regular agenda.

Initial City Council consideration of request

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CITY COUNCILMEMBER REQUESTS

City Council Policy #CC-20-013

Adopted August 25, 2020

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Emergency and non-agendized items

Emergency and non-agendized items may be added to an agenda only in accordance with state law. Emergency items are only those matters affecting public health or safety such as work stoppages, disasters and other severe emergencies. Adding an emergency item requires a majority vote. Emergency items are very rare. An item that the City Council would like to act on after agenda posting is considered a non-agendized item.

Non-agendized items may be added to the agenda only if the City Council makes findings that (1) the need to consider the item arose after the posting of the agenda, and; (2) there is a need to take immediate action at this meeting of the City Council. These findings must be approved by a four-fifths vote; if less than five members of the City Council are present, the findings require a unanimous vote of those present.

Emergency and non-agendized items are not be used to bypass the City Councilmember request process above.

Procedure history

Action	Date	Notes
Draft procedure presented	July 18, 2020	City Council continued item to August 25, 2020
Procedure adoption	August 25, 2020	Draft procedure amended at City Council direction. Staff edit to clarify definition of a "non-agendized item"



STAFF REPORT

City Council Meeting Date: 9/12/2023
Staff Report Number: 23-210-CC

City Council Initiated Item **Direction on the USGS campus on Middlefield Road**

Recommendation

Provide direction to staff on the USGS campus on Middlefield Road.

Background

On Sept. 1, City Councilmember Combs requested an agenda item for City Council discussion on the USGS campus on Middlefield Road (Attachment A).

Analysis

Pursuant to City Council Procedure #CC-20-013 (Attachment B), the City Council may discuss the item and ask staff questions regarding preliminary scope, analysis and resource requirements. After discussion, with a motion and second, the City Council may take one of the following actions:

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- Direct the item to an advisory body for preparation of a formal staff report with no additional staff support required, or
- Direct the city manager to prepare a formal staff report for further City Council consideration as resources are available, or
- Defer action to the City Council's annual goal setting process.

Impact on City Resources

Determined by City Council direction.

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.

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- B. City Council Procedure #CC-20-013

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- USGS site/school zoning - Last year, the council directed that a portion of the USGS campus on Middlefield Rd. be reserved for a future school site. I formally request that the council schedule a review of this decision. No local school board has said the site is needed or formally expressed an interest in building a school on the site. The fact that no one has bid for the site suggests that the council's decision may be hampering any future development, and the housing such a project would provide. Additionally, given that the city still does not have an approved housing element, the development of this site may become even more important.

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CITY COUNCILMEMBER REQUESTS

City Council Policy #CC-20-013
Adopted August 25, 2020

ATTA



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Initial City Council consideration of request

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- Direct the city manager to prepare a formal staff report for further City Council consideration as resources are available, or
- Defer action to the City Council’s annual goal setting process.

If the request does not receive sufficient City Council support, the item is not considered further.

City Council action

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To make a request

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Initial City Council consideration of request

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CITY COUNCILMEMBER REQUESTS

City Council Policy #CC-20-013

Adopted August 25, 2020

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Emergency and non-agendized items may be added to an agenda only in accordance with state law. Emergency items are only those matters affecting public health or safety such as work stoppages, disasters and other severe emergencies. Adding an emergency item requires a majority vote. Emergency items are very rare. An item that the City Council would like to act on after agenda posting is considered a non-agendized item.

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Procedure history

Action	Date	Notes
Draft procedure presented	July 18, 2020	City Council continued item to August 25, 2020
Procedure adoption	August 25, 2020	Draft procedure amended at City Council direction. Staff edit to clarify definition of a "non-agendized item"