



**City Council
Special Meeting
Monday, August 15, 2022
5:00 PM
Council Chamber & Virtual**

Pursuant to [AB 361](#) Palo Alto City Council meetings will be held as “hybrid” meetings with the option to attend by teleconference/video conference or in person. To maximize public safety while still maintaining transparency and public access, members of the public can choose to participate from home or attend in person. Information on how the public may observe and participate in the meeting is located at the end of the agenda. Masks are strongly encouraged if attending in person.

HOW TO PARTICIPATE

VIRTUAL PARTICIPATION

[CLICK HERE TO JOIN](https://cityofpaloalto.zoom.us/j/362027238) (<https://cityofpaloalto.zoom.us/j/362027238>)
Meeting ID: 362 027 238 Phone: 1(669)900-6833

The meeting will be broadcast on Cable TV Channel 26, live on YouTube at <https://www.youtube.com/c/cityofpaloalto>, and streamed to Midpen Media Center at <https://midpenmedia.org>.

TIME ESTIMATES

Time estimates are provided as part of the Council's effort to manage its time at Council meetings. **Listed times are estimates only and are subject to change at any time, including while the meeting is in progress.** The Council reserves the right to use more or less time on any item, to change the order of items and/or to continue items to another meeting. Particular items may be heard before or after the time estimated on the agenda. This may occur in order to best manage the time at a meeting or to adapt to the participation of the public.

REVISED PUBLIC COMMENTS

Public Comments will be accepted both in person and via Zoom for up to three minutes or an amount of time determined by the Chair. All requests to speak will be taken until 5 minutes after the staff's presentation. Written public comments can be submitted in advance to city.council@cityofpaloalto.org and will be provided to the Council and available for inspection on the City's website. Please clearly indicate which agenda item you are referencing in your email subject line.

PowerPoints, videos, or other media to be presented during public comment are accepted only by email to city.clerk@cityofpaloalto.org at least 24 hours prior to the meeting. Once received, the City Clerk will have them shared at public comment for the specified item. To uphold strong cybersecurity management practices, USB's or other physical electronic storage devices are not accepted.

CALL TO ORDER

SPECIAL ORDER OF THE DAY (5:00 PM - 5:15 PM)

Presentation 1. allcove Presentation

STUDY SESSION

Applicant
Presentation

2. 800-808/814 San Antonio Road [22PLN-00129]. Request for Pre-Screening of a Proposal by TS 800 SA LCC to Rezone the Subject Property from Commercial Services (CS) to Planned Home Zoning and to Redevelop the Site with 75 Condominium Units in a Five-Story Structure. Environmental Assessment: Not a Project. The Formal Application Will be Subject to California Environmental Quality Act (CEQA) Review. (5:15 PM - 6:15 PM)

Staff
Presentation

Public Letters

Applicant
Presentation

3. 616 Ramona Street [22PLN-00146]: Request for Council prescreening for an applicant proposed text amendment to Chapter 18.18.120 to allow a change to the building envelope when replacing non-complying floor area in the Commercial Downtown. Environmental Assessment: Not a Project. The Formal Application Will be Subject to California Environmental Quality Act (CEQA) Review. Zoning District: CD-C(P) Community Commercial Downtown with a Pedestrian Combining District. (6:15 PM - 7:15 PM)

Staff
Presentation

AGENDA CHANGES, ADDITIONS AND DELETIONS

PUBLIC COMMENT (7:15 PM - 7:25 PM)

Members of the public may speak to any item NOT on the agenda. Council reserves the right to limit the duration of Oral Communications period to 30 minutes.

CONSENT CALENDAR (7:25 PM - 7:30 PM)

Items will be voted on in one motion unless removed from the calendar by three Council Members.

At-Places
Memo

4. Approve Minutes from the August 1, 2022 City Council Meeting

5. Approval of Contract Number C22184896 with Schaaf and Wheeler in the Amount of \$253,636 for Design Services for the Embarcadero Trash Capture Device Installation Project, Capital Improvement Program Project SD-22002

Q&A

6. Accept the City Auditor's Quarterly Status Report for January - March 2022

7. Approval of the Office of the City Auditor's Nonprofit Agreement Risk Management Review

Q&A

Q&A

8. Adopt a Resolution Approving a Summary Easement Vacation Adjacent to 1499 Edgewood Drive

Presentation

CITY MANAGER COMMENTS (7:30 PM - 7:50 PM)

ACTION ITEMS

Include: Reports of Committees/Commissions, Ordinances and Resolutions, Public Hearings, Reports of Officials, Unfinished Business and Council Matters.

At-Places
Memo

Presentation

9. Project Homekey: Authorize City Manager to Execute a State Standard Agreement in the Event of Homekey Award; Adopt a Resolution Extending the Declaration of Emergency Shelter Crisis; and Receive an Update on Project Homekey Status and Provide Potential Direction to Staff (7:50 PM - 9:15 PM)
10. Designation of Voting Delegate and Alternate for the League of California Cities Annual 2022 Conference, to be held September 7-9 in Long Beach, CA (9:15 PM - 9:45 PM)

COUNCIL MEMBER QUESTIONS, COMMENTS, ANNOUNCEMENTS

Members of the public may not speak to the item(s)

ADJOURNMENT

INFORMATION REPORTS

Information reports are provided for informational purposes only to the Council and the public but are not listed for action during this meeting's agenda.

11. Police Department Update: California Public Records Act and Racial Identity Profile Act (RIPA)

OTHER INFORMATION

Standing Committee Meetings

Finance Committee Meeting August 16, 2022 - Canceled

Public Comment Letters

Schedule of Meetings

PUBLIC COMMENT INSTRUCTIONS

Members of the Public may provide public comments to teleconference meetings via email, teleconference, or by phone.

- 1. Written public comments** may be submitted by email to city.council@cityofpaloalto.org.
- 2. Spoken public comments using a computer** will be accepted through the teleconference meeting. To address the Council, click on the link below to access a Zoom-based meeting. Please read the following instructions carefully.
 - A. You may download the Zoom client or connect to the meeting in-browser. If using your browser, make sure you are using a current, up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers including Internet Explorer.
 - B. You may be asked to enter an email address and name. We request that you identify yourself by name as this will be visible online and will be used to notify you that it is your turn to speak.
 - C. When you wish to speak on an Agenda Item, click on "raise hand." The Clerk will activate and unmute speakers in turn. Speakers will be notified shortly before they are called to speak.
 - D. When called, please limit your remarks to the time limit allotted.
 - E. A timer will be shown on the computer to help keep track of your comments.
- 3. Spoken public comments using a smart phone** will be accepted through the teleconference meeting. To address the Council, download the Zoom application onto your phone from the Apple App Store or Google Play Store and enter the Meeting ID below. Please follow the instructions B-E above.
- 4. Spoken public comments using a phone** use the telephone number listed below. When you wish to speak on an agenda item hit *9 on your phone so we know that you wish to speak. You will be asked to provide your first and last name before addressing the Council. You will be advised how long you have to speak. When called please limit your remarks to the agenda item and time limit allotted.

[CLICK HERE TO JOIN](#) **Meeting ID: 362 027 238 Phone:1(669)900-6833**



City of Palo Alto

City Council Staff Report

(ID # 14658)

Meeting Date: 8/15/2022

Report Type: Special Orders of the Day

Title: Allcove Presentation

From: City Manager

Lead Department: City Clerk

There is no report for this item. A verbal presentation will take place at the meeting.



City of Palo Alto City Council Staff Report

(ID # 14486)

Report Type: Study Session

Meeting Date: 8/15/2022

Summary Title: 800 San Antonio Road: Prescreening for PHZ

Title: 800-808/814 San Antonio Road [22PLN-00129]. Request for Pre-Screening of a Proposal by TS 800 SA LCC to Rezone the Subject Property from Commercial Services (CS) to Planned Home Zoning and to Redevelop the Site with 75 Condominium Units in a Five-Story Structure. Environmental Assessment: Not a Project. The Formal Application Will be Subject to California Environmental Quality Act (CEQA) Review.

From: City Manager

Lead Department: Planning and Development Services

Recommendation

Staff recommends that Council conduct a prescreening and provide informal comments regarding the applicant's request to rezone the properties at 800 - 814 San Antonio from Service Commercial (CS) to a Planned Home Zoning (PHZ).¹ Comments provided during the prescreening process are not binding on the City or the applicant.

Executive Summary

This prescreening is a request by the applicant to rezone the subject properties, which are currently zoned Service Commercial (CS) to "Planned Home Zoning (PHZ)."¹ The project site consists of two parcels totaling 0.87 acres with 11,600 sf of personal services uses (day spa [body kneads day spa] and learning center [sequoia academy]) and youth club. The project includes demolition of the existing buildings and construction of a single, multi-family residential building with 75 residential condominium units.

This prescreening application responds to the City Council's expressed interest in learning from home builders what it takes to create more housing opportunities in Palo Alto. Utilizing the

¹ Referred to in this report as "Planned Housing Zone" to emphasize the focus on housing as the benefit to the community. PAMC Section 18.38, which outlines the requirement and process for Planned Community (PC) Zoning, remains the underlying code supporting application of this policy.

Planned Community (PC) zoning process, a PHZ application must meet two initial qualifying criteria established by the City Council: 1) provide 20% of the total units as affordable housing selected from a prescribed menu of options, and 2) provide housing units that meet or exceed the demand generated by any net new jobs.

The project would require a formal application consistent with Palo Alto Municipal Code (PAMC), Zoning Regulations, Chapter 18.38 to allow for a Development Plan with increased height, increased floor area ratio (FAR), increased lot coverage, reduced open space, and reduced setbacks compared to existing CS requirements. The project would require a zoning map change to Planned Community for the properties.

Background

In February 2020, Council unanimously endorsed using Planned Housing Zoning (PHZ) for housing and mixed-use housing projects to help spur housing production. In exchange for deviation from certain standards as allowed under the rezoning, if approved by Council, the project must include at least 20% of the housing units as deed restricted for lower-income households. Moreover, the number of housing units must offset the number of net new commercial jobs that are generated by the project.

In accordance with Palo Alto Municipal Code (PAMC) Section 18.79.030(A), a prescreening review is required for legislative changes, including rezoning, prior to the submittal of a formal application. Pre-screenings are intended to solicit early feedback on proposed projects and, like all study sessions, cannot result in any formal action. Since this proposal may return to the City Council as a formal application, Councilmembers should refrain from forming firm opinions supporting or opposing the project.

Project Description

A location map of the proposed site is included in Attachment A. The preliminary schematic drawings, included in Attachment C, are conceptual, as is appropriate at this stage of project consideration. As shown in these schematic drawings, the applicant is proposing a single multi-family residential structure, which would replace three existing buildings, totaling approximately 11,600 sf, located across the site. The 114,581 square foot (sf) proposed development would include 75 residential condominium units. The site includes two parcels and totals 38,194 (0.87 acre). As part of the project, a lot merger and a condominium subdivision would be proposed through a Tentative and Final Map process.

The development would be five stories with a proposed height of 60 feet. Rooftop mechanical equipment is allowed to extend an additional 15 feet in height though it is not clear based on the conceptual drawings whether any equipment or associated screening is proposed to extend beyond the 60-foot proposed height.

A Pedestrian entrance to the residential use would be provided from San Antonio Road. The building would include two levels of below-grade parking. Access to the parking garage would be provided along San Antonio Road from a single entrance/exit. The site currently has two curb cuts; one of the curb cuts would be removed and the other curb cut would be widened to accommodate ingress and egress in accordance with current standards. The below-grade parking structure would include 141 stalls. Under the current code, 143 stalls would be required without parking reductions.

Surrounding Uses

Adjacent zoning and uses include other service commercial (CS) zoned parcels to the north (Enterprise and Hertz car rentals) and south (existing office/commercial recreation uses; a mixed-use multi-family residential/retail project approved to the south [788 San Antonio, File No. 19PLN-00079]). To the West, across San Antonio Road are commercial uses within the GM Zone District, including a biomedical use, Immune-Onc Therapeutics, immediately across the street, and a multi-family residential use within a Planned Community Zone district (the Greenhouse) at the intersection of Leghorn and San Antonio Road. Adjacent buildings are generally single-story buildings; however, the approved residential use at 788 San Antonio would be four-stories tall.

Analysis

Staff will prepare a thorough analysis of the zoning and Comprehensive Plan compliance upon submittal of a formal application if filed. A review of the conceptual plans, however, highlights key concessions that the applicant is requesting.

Comprehensive Plan

The project site's land use designation is Service Commercial. High-density housing is identified as an allowed use in some locations within this land use designation. Council recently amended the Comprehensive Plan to encourage housing within several blocks of San Antonio Road, and modified the Palo Alto Municipal Code (ordinance 5512) to enable the Housing Incentive Program (HIP) to apply to housing projects within these blocks.

Zoning Compliance

For PHZ rezoning projects, Council has the authority to set the parameters for most development standards, which would be reflected in the tailored ordinance for the new PHZ District. However, for informational purposes, Attachment B compares the development standards under the current CS zone district with the proposed project. Although the Greenhouse multi-family residential development is nearby (Zoned PC-2711), the project is not located immediately adjacent to any existing multi-family residential uses.

In 2021, Council approved a mixed-use development via the Housing Incentive Program on a CS zoned site adjacent to the subject site. The adjacent project's zoning remained CS. Therefore, special standards outlined in PAMC Section 18.38.150, such as limiting the height of nearby buildings when adjacent to PC site, do not apply.

In comparison to the existing zoning, the applicant is requesting that the new PHZ allow for increases in floor area, density, lot coverage, and height. Specifically, the applicant is requesting:

- A floor area ratio (FAR) of 2.99:1 where 0.6:1 is allowed per code for exclusively residential housing projects (or 1.5:1 under the housing incentive program allowances);
- To exceed the 50-foot height limit by 10 feet, as measured to the top of the exterior parapet;
- 68% lot coverage where 50% is allowed; and
- A density of 75 units where 26 units would be allowed (allowable density is 30 DU/AC; the project site is 0.87 acre).

This use would replace a commercial development that includes retail-like (personal service) and retail uses.

Retail Preservation

The current 11,600 sf of retail or retail-like (personal service and retail) uses at the site is subject to the retail preservation requirements outlined in PAMC 18.40.180. However, as outlined in PAMC Section 18.40.180(c)(4)(C), a high density (30 or more dwelling units per acre) project located within the CS Zone District, but not within the ground floor or retail combining district, shall only be required to replace 1,500 sf of existing retail or retail-like uses. The project qualifies for this partial exemption; however, the applicant is not proposing to replace any of the ground floor retail at this site, which would require Council approval as part of the PHZ ordinance process.

Multi-Modal Access & Parking

Valley Transit Authority (VTA) bus lines 21 and 40 are the nearest bus lines to the project site. The San Antonio Caltrain station is located approximately 1.4 miles from the project site.

Further information is needed regarding the on-site circulation and vehicle trips to determine whether the project is consistent with the City's Bicycle and Pedestrian Transportation Plan and other transportation policies such as Council's Local Transportation Impact Analysis Policy adopted on June 15, 2019 (CMR 11256). This information would be required as part of any formal application.

The proposed project would be beneficial in that it reduces the number of vehicular curb cuts

along San Antonio Road. The design does not include on-site space for trash pick-up; therefore, it is assumed that the applicant intends to bring the trash bins out to San Antonio Road for pick-up or that Greenwaste can pull out bins from a first-floor area that is less than 25 feet from the road. Under either circumstance, this would require signage to limit parking along a portion of the frontage during trash pick-up hours and may require improvements to the public right-of-way to provide for effective roll-out and pick-up.

Parking

The project would include 141 vehicle parking spaces within two levels of underground parking garage; the City's parking regulations would typically require a minimum of 143 vehicle parking spaces. Although a loading space is not required for residential uses, staff notes that no areas for drop-off/pick-up (e.g. for rideshare, residents moving, etc.) have been provided in this design. The new objective design standards require a standard parking space designated for taxi services (e.g. uber/lyft) and delivery services (e.g. doordash) for housing projects with over 50 units. This should be considered as part of any formal application.

The project plans indicate that 75 long-term and eight short-term bicycle parking spaces would be provided, consistent with the municipal code. Long-term bicycle parking is currently shown on the ground floor adjacent to the main entrance. Short-term is not shown but would be required to be provided as part of any formal application.

Inclusionary Requirement and Jobs Housing Imbalance

The site is currently zoned to allow commercial or mixed-uses and there are three existing buildings on these properties which are currently being used for personal service and youth club uses. These existing buildings would be demolished and replaced with the proposed multi-family residential development. This would lead to an 11,600 sf decrease in commercial space. The project would result in a net reduction in jobs (approximately 20 fewer jobs) along with a net increase in housing units (75 housing units).

The project would provide 20% of the units at Below Market Rate in accordance with Council's requirements for projects seeking to rezone using the PHZ process. The proposal would improve the jobs-housing imbalance by providing housing units in an amount that surpasses the jobs created in the retail use at the site.

Policy Implications

Pre-screenings are intended to solicit early feedback on proposed projects and, like all study sessions, cannot result in any formal action. Therefore, informal comments from Councilmembers would not impart policy. That said, there is interest among other home builders and property owners to learn of the Council's initial reaction to the subject request, which may influence the filing of future prescreening requests.

In addition, Council's feedback on key requests such as the height limit and floor area will help to inform whether there is interest in pursuing Zoning Code text amendments. Such text amendments, if desired, would have policy implications.

The City Council recently adopted objective standards intended for housing development project reviews that do not include a request for legislative action. Because this project includes a request for rezoning, the project review is not streamlined nor subject to the exclusive use of objective standards for review. If the project were a HIP project instead of a rezoning, the objective standards and shortened review could be applied to the project.

Resource Impact

The prescreening and processing of an application, if filed, are services paid for by fees from the applicant. Additionally, impact fees are charged on the project to account for the impacts the project has on public services and infrastructure.

The project could impact local tax revenues due to the minor decrease in the total retail area at the site. Further research would be needed. Due to the confidential nature of sales tax revenues, staff cannot report on current sales tax revenues from the site.

Timeline

Following the prescreening review, the applicant will consider Council's comments and determine how they want to proceed. Any formal application to rezone the property to a PHZ would be subject to the Planning and Transportation Commission (PTC), Architectural Review Board, and Council's purview.

Stakeholder Engagement

The Palo Alto Municipal Code requires that notice of this public hearing be published in a local paper and mailed to owners and occupants of property within 600 feet of the subject property at least ten days in advance. Notice of a public hearing for this project was published in the Daily Post on August 5, 2022, which is 10 days in advance of the meeting. Postcard mailing occurred on August 2, 2022, which is 13 days in advance of the meeting.

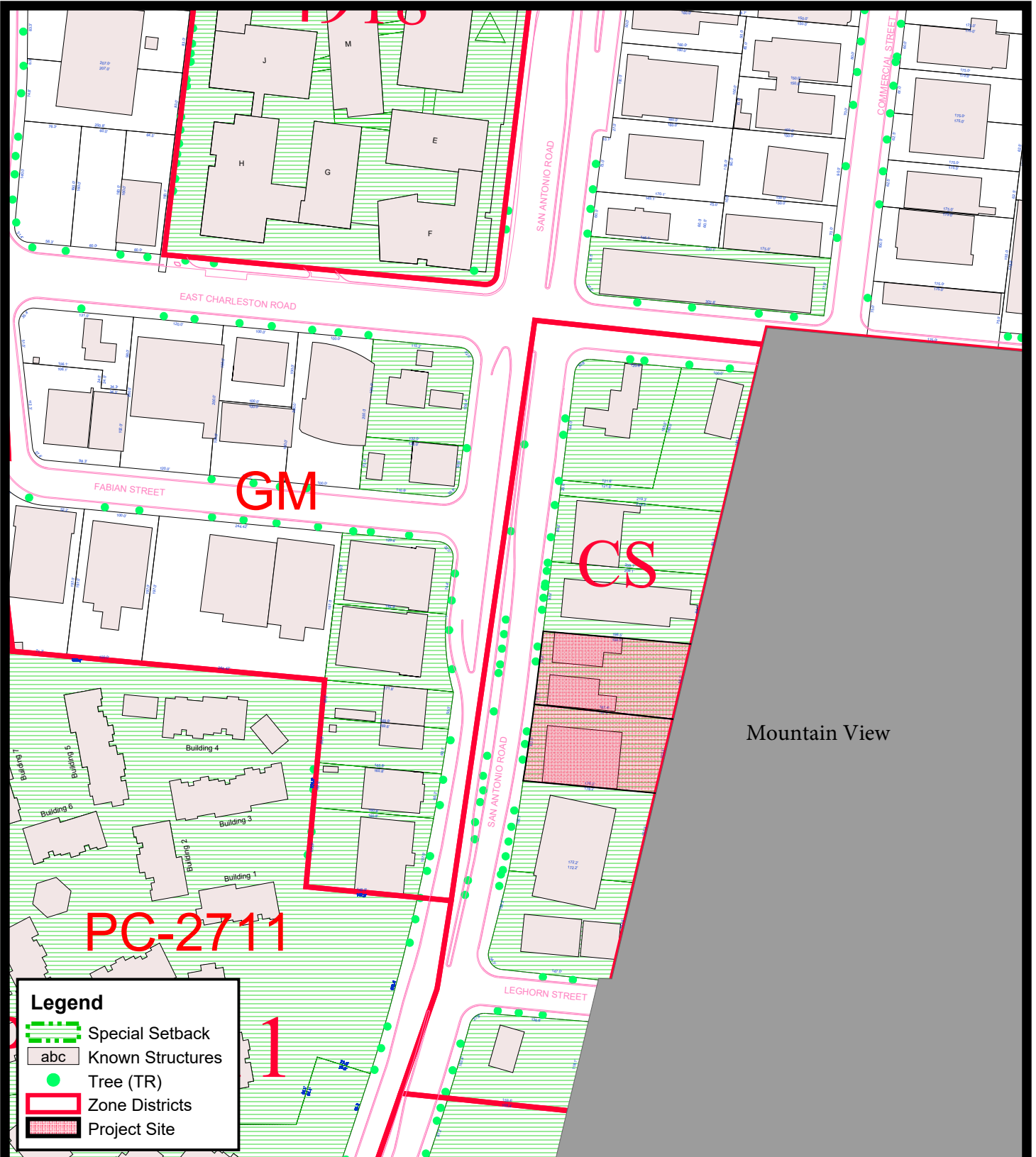
As of the writing of this report no project-related public comments were received.

Environmental Review

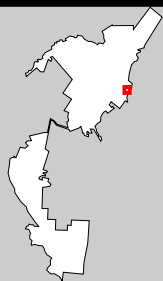
The prescreening is a preliminary review process in which Councilmembers may provide comment, but no formal action will be taken. Therefore, no review under the California Environmental Quality Action (CEQA) is required at this time. A full review in accordance with CEQA would be initiated with the formal filing of a development application.

Attachments:

Attachment2.a: **Attachment A: Location Map(PDF)**
Attachment2.b: **Attachment B: Zoning Comparison Table (DOCX)**
Attachment2.c: **Attachment C: Project Plans (DOCX)**



The City of
Palo Alto



Attachment A: Project Site

This map is a product of the
City of Palo Alto GIS



0' 181'

ATTACHMENT B
ZONING COMPARISON TABLE
800 San Antonio Road, 22PLN-00129

Table 1: COMPARISON WITH CHAPTER 18.16 (CS DISTRICT)
Residential Development Standards

Regulation	Required	Existing	Proposed
Minimum Site Area, width and depth	None	APN 147-03-038 (800 San Antonio Road): 18,719 sf ~102Wx~180D (irregular shape) APN 147-03-043 (808-814 San Antonio Road): 19,475 sf ~80x~190 (irregular shape)	Resulting parcel: 38,194 sf 0.87 acres ~180Wx190D (irregular shape)
Minimum Front Yard	0-10 feet to create an 8-12 foot effective sidewalk width ^{(1), (2), (8)}	~20 feet	24 feet
Rear Yard	10' for residential; none for commercial	~56' to ~85 feet (varies for the three existing buildings across the site)	10 feet
Interior Side Yard	None	None	5 feet
Street Side Yard	5 feet	Not Applicable	Not Applicable
Min. yard for lot lines abutting or opposite residential districts or residential PC districts	10 feet ⁽²⁾	Not Applicable	Not Applicable
Build-to-lines	50% of frontage built to setback on El Camino Real 33% of side street built to setback ⁽⁷⁾	Not Applicable	Not Applicable
Special Setback	24 feet – see Chapter 20.08 & zoning maps	~18-20 feet	24 feet
Max. Site Coverage	50%	30.37% (11,600 sf)	65% (24,826 sf)
Max. Building Height	50 ft or 35 ft within 150 ft. of a residential district (other than an RM-40 or PC zone) abutting or located within 50 feet of the site	~12-14 feet (one story); site is <u>not</u> located within 50 feet of an RM-40 or PC Zone	60 feet

Daylight Plane for lot lines abutting one or more residential zone districts other than an RM-40 or PC Zone	None ⁽⁶⁾	Not Applicable	Not Applicable
Residential Density	30DU/AC except sites on El Camino Real have no maximum	Not Applicable (currently exclusively commercial)	86 DU/AC
Max. Floor Area Ratio (FAR)	0.6:1 residential (22,916 sf) 0.4:1 Commercial	0.3:1 (11,600 sf) commercial FAR	2.99:1 (114,581 sf) residential FAR
Minimum Mixed-use Ground Floor Commercial FAR	0.15:1 ⁽¹⁰⁾	Not Applicable	Not Applicable
Daylight Plane for lot lines abutting one or more residential zoning districts	None (there are no abutting residential zoning districts) ⁽⁶⁾	Not Applicable	Not Applicable
Minimum Landscape/Open Space Coverage	30%	30.37% (11,600 sf)	35%
Usable Open Space (Private and/or Common)	150 sf per unit ⁽²⁾ Total: 11,250 sf required for 75 units	Not Applicable	11,649 sf provided (155 sf per unit)

(1) No parking or loading space, whether required or optional, shall be located in the first 10 feet adjoining the street property line of any required yard.

(2) Any minimum front, street side, or interior yard shall be planted and maintained as a landscaped screen excluding areas required for access to the site. A solid wall or fence between 5 and 8 feet in height shall be constructed along any common interior lot line..

(6) The initial height and slope shall be identical to those of the most restrictive residential zone abutting the site line in question.

(7) 25-foot driveway access permitted regardless of frontage, build-to requirement does not apply to CC district.

(8) A 12-foot sidewalk width is required along El Camino Real frontage

(10) In the CC(2) zone and on CN and CS zoned sites on El Camino Real, there shall be no minimum mixed use ground floor commercial FAR for a residential project, except to the extent that the retail preservation requirements of Section [18.40.180](#) or the retail shopping

(R) combining district ([Chapter 18.30\(A\)](#)) applies.

18.16.080 Performance Standards. All development in the CS district shall comply with the performance criteria outlined in [Chapter 18.23](#) of the Zoning Ordinance, including all mixed-use and residential development

18.16.090 Context-Based Design Criteria. As further described in a separate attachment, development in a commercial district shall be responsible to its context and compatible with adjacent development, and shall promote the establishment of pedestrian oriented design.

Table 2: CONFORMANCE WITH CHAPTER 18.52 (Off-Street Parking and Loading) for Existing Commercial and Proposed Residential*			
Type	Required	Existing	Proposed
Vehicle Parking	1 per studio unit 1 per 1-bedroom unit 2 per 2-bedroom or larger unit At least one space per unit must be covered Total required for 7 1 bedroom, 53 two bedroom and 15 3-	Unclear	141 spaces

	bedroom: 143 parking spaces		
Bicycle Parking	1 per unit (LT); 1 per every 10 units for guests (ST) 75 LT; 8 ST required for project	Unclear	76 long spaces (80 long term, 24 short term)
Loading Space	1 regular space for Taxi Services (per new objective standards)	None	None

Attachment C

Project Plans

Project plans are only available to the public online. Hard copies of the project plans have been provided to Councilmembers.

Directions to review Project plans online:

1. Go to: bit.ly/PAppendingprojects
2. Scroll down to find "800 San Antonio" and click the address link
3. On this project specific webpage you will find a link to the project plans and other important information

Direct Link to Project Webpage:

<https://www.cityofpaloalto.org/News-Articles/Planning-and-Development-Services/800-San-Antonio-Road?transfer=ace9f883-f404-4a51-95d5-7d5851eb3011>



City of Palo Alto City Council Staff Report

(ID # 14522)

Report Type: Study Session

Meeting Date: 8/15/2022

Summary Title: 616 Ramona: Prescreening for Municipal Code Text Amendment

Title: 616 Ramona Street [22PLN-00146]: Request for Council prescreening for an applicant proposed text amendment to Chapter 18.18.120 to allow a change to the building envelope when replacing non-complying floor area in the Commercial Downtown. Environmental Assessment: Not a Project. The Formal Application Will be Subject to California Environmental Quality Act (CEQA) Review. Zoning District: CD-C(P) Community Commercial Downtown with a Pedestrian Combining District.

From: City Manager

Lead Department: Planning and Development Services

Recommendation

Staff recommends that Council conduct a prescreening and provide informal comments regarding the applicant's request to amend Palo Alto Municipal Code (PAMC) Chapter 18.18.120 to allow for a change to the building envelope when replacing noncomplying floor area. This Zoning Code Text Amendment would allow for the redevelopment of the property at 616 Ramona Street with a taller two-story office building, rooftop deck, and underground parking garage. Comments provided during the prescreening process are not binding on the City or the applicant.

Executive Summary

This prescreening is a request by the applicant to amend the City's Zoning Ordinance. Specifically, the applicant proposes to amend PAMC Section 18.18.180 to allow for the replacement of non-complying floor area in the Commercial Downtown (CD) district without restricting the building envelope. The proposed text amendment would accommodate the redevelopment of 616 Ramona Street, a 5,124 square foot (sf) site. The existing site includes a two-story, 8,344 sf office building. The proposed development would include a new, two-story, 8,964 sf office building with a rooftop deck (utilizing 620 sf of transferrable development rights)

and below-grade parking garage.

The proposed code change would align with a previous interpretation of the code, consistent with the staff interpretation presented to Council in 1988. However, in 2016 Council amended the code to more clearly prohibit a change to the building envelope when replacing non-complying floor area.

The project would require a formal application for a Zoning Code Text Amendment, a request for a variance from a special setback, and an Architectural Review application for the new proposed development.

Background

In 1986 Council adopted Ordinance 3696¹, which established a new Commercial Downtown (CD) District and codified development standards for the new zone district. The amendments significantly reduced the allowable floor area for parcels within the CD District. Because these code amendments resulted in many existing buildings that exceeded the newly established gross floor area standards, the adopted amendments included a provision allowing for the replacement of noncomplying floor area.

However, the code provisions raised questions regarding interpretation. In March 1988 staff brought forth an informational report to Council for a code interpretation of the 1986 amendments (CMR 185:8). This code interpretation, included in Attachment C, concluded that buildings could be permitted to be remodeled or replaced provided there would be no increase in the building's noncompliance. It concluded that buildings could be reconfigured in terms of length, height, and width so long as the existing floor area was not increased. In no event would a building's height be allowed to exceed the height limit of the applicable district. In 2006 Council adopted Ordinance 4923, which amended the Commercial Downtown Zone regulations, moving the regulations from Chapter 18.49 to 18.18. The language relating to noncomplying uses remained substantially unchanged. Until 2015, staff continued to review and approve projects within the CD District consistent with the code interpretation presented to Council in 1988.

In 2015 some councilmembers expressed disagreement with this interpretation of this code and directed staff to amend the code for clarity. In January 2017 Council adopted Ordinance 5373,² amending Chapter 18.18.180(a)(2) to clarify the meaning of "building envelope" and to

¹ Ordinance 3696 is available online at: <https://www.cityofpaloalto.org/files/assets/public/city-clerk/ordinances/ordinances-1909-to-present/ordinances-by-number/ord-3696.pdf>

² Ordinance 5373, adopted January 11, 2016, is available online at: <https://www.cityofpaloalto.org/files/assets/public/city-clerk/ordinances/ord-5373.pdf>

more clearly state that noncomplying floor area may not be demolished and replaced in a manner that results in a change to the three-dimensional shape of the existing building. The code was revised as follows:

“(2) The grandfathered use in subsection (1) shall be permitted to remodel, improve, or replace site improvements on the same site, for continual use and occupancy by the same use, provided such remodeling, improvement, or replacement complies with all of the following:

(A) shall not result in increased floor area:

(B) shall not relocate below grade floor area to above grade portions of the building ~~shift the building footprint~~;

(C) shall not result in an increase in the height, length, building envelope, building footprint or any other increase in the size of the improvement. For purposes of this section, “building envelope” shall mean the three-dimensional shape and size occupied by an existing building. It is not the maximum, buildable potential of the site;

(D) shall not increase the degree of noncompliance, except pursuant to the exceptions to floor area ratio regulations set forth in Section 18.18.070; or

(E) in the case of medical, professional, general business or administrative office uses of a size exceeding 5,000 sf in the CD-S or CD-N district that are deemed grandfathered pursuant to subsection (1), such remodeling, improvement, or replacement shall not result in increased floor area devoted to such office uses.

(F) The Director may approve minor changes to the building’s footprint, height, length, and the building envelope through Architectural Review of minor aesthetic architectural improvements and to improve pedestrian orientation provided there is no increase to the degree of any non-complying feature.”

Project Description

The formal application would include a request to amend Chapter 18.18.120(a)(2) of the City of Palo Alto Zoning Ordinance. The amendment would allow for demolition of an existing two-story office building at 616 Ramona Street, a 5,124 square foot (sf), site, and redevelopment of the site with a new two-story building with a third-floor rooftop deck and below-grade parking garage. The project would result in demolition of 8,344 sf of gross floor area, including 3,220 sf of floor area that exceeds the allowable 1:1 floor area ratio, and replacement with 8,964 sf of gross floor area. The additional 620 sf of floor area beyond the existing floor area would be provided through transferred development rights (TDRs). The project also includes a request for a variance from the required six-foot setback along Ramona Street. A location map of the proposed site is included in Attachment A. Attachment D includes the applicant’s project description. The preliminary schematic drawings, included in Attachment E, are conceptual, as

is appropriate at this stage of project consideration.

Surrounding Uses

Adjacent zoning includes PF zoning (City Hall and King Plaza) to the north across Ramona Street, other CD-C(P) zoned parcels to the northeast, and CD-C(P) with a Ground Floor (GF) combining district to the south (rear) of the building and west (along Hamilton). The adjacent building at the corner of Hamilton and Ramona Street includes retail space on the ground floor (Joe & The Juice), office space on the second level, and residential condominiums on the third level. The adjacent building at 630 Ramona is a Historic Resource Category 2 building on the City's local inventory occupied by office uses (real estate office).

Discussion

Staff will prepare a thorough analysis of the zoning and Comprehensive Plan compliance upon submittal of a formal application, if filed. Staff's review of the conceptual plans and project description highlights key requests.

Comprehensive Plan

The existing use of the site is a variety of small general business and medical office uses (e.g. architecture firm, chiropractor, etc.). The use of the site would not change; office use is consistent with the allowable uses within the Comprehensive Plan for the Regional/Community Commercial land use designation. The proposed redevelopment of the building is consistent with policies outlined in the Comprehensive Plan to encourage pedestrian design. These include Policy L-4.7:

Maintain and enhance the University Avenue/Downtown area as a major commercial center of the City, with a mix of commercial, civic, cultural, recreational and residential uses. Promote quality design that recognizes the regional and historical importance of the area and reinforces its pedestrian character.

The project would also address policies in the Natural Element of the Comprehensive Plan that encourage the reduction of natural gas emissions from existing buildings because a new development would be required to comply with the most current CalGreen requirements.

However, the proposed project would add to the massing within the Downtown on a building that exceeds allowable floor area ratio, in order to accommodate redevelopment for office use. This is not specifically discussed in the Comprehensive Plan but is discussed further in the City's zoning ordinance.

Zoning Compliance

The proposed development at 616 Ramona Street is located within the CD-C(P) Zone District Commercial Downtown Community with a Pedestrian Combining District). The Commercial

Downtown Community district is intended to be a comprehensive zoning district for the downtown business area, accommodating a wide range of commercial uses serving city-wide and regional business and service needs, as well as providing for residential uses and neighborhood service needs. The existing office use at the site would continue; this use is consistent with the allowable uses within the commercial downtown community.

A review of the conceptual plans concludes that the project appears to comply with most of the applicable development standards. However, the project replaces noncomplying floor area in a manner that increases the building envelope, which is inconsistent with PAMC Section 18.18.120(a)(2). Therefore, a code amendment would be required to allow for the replacement of this non-complying floor area.

In addition, the project does not comply with the six-foot special setback along Ramona Street. Therefore, a variance would be required to accommodate this deviation from the code.

Generally, the project does improve the building's compliance with the pedestrian combining district requirements by providing an awning, contributing to the pedestrian scale, and more windows that provide views into the space, consistent with the design guidelines for this combining district.

Multi-Modal Access & Parking

The proposed project would provide a new below-grade parking garage which would be accessed from the rear alley. More detailed plans would be necessary as part of any formal application to determine whether the project, as designed, provides appropriate clearances, turning radius, etc. for cars to appropriately access the parking garage and the parking spaces within the garage.

Two on-site spaces would be required if 620 sf of additional floor area were to be added using transferred development rights (TDRs). The in-lieu fees for 33 parking spaces have previously been paid into the Downtown Assessment District for the existing floor area. The project proposes 11 new parking spaces on site (with the ADA spaces counted twice in accordance with the code). Therefore, the project would provide nine parking spaces beyond the 35 required for the project (33 in-lieu and two new on-site spaces).

The project would provide improvements for pedestrians along Ramona Street by redeveloping the site to comply with the existing pedestrian overlay design requirements. Improvements would include a wider sidewalk, balconies that provide pedestrian coverage on the ground level and "eyes on the street" for levels above, as well as increased visibility into the space.

Policy Implications

Prescreenings are intended to solicit early feedback on proposed projects and, like all study sessions, cannot result in any formal action. Therefore, informal comments from Councilmembers would not impart policy. That said, Council's feedback will help to inform whether there is interest in pursuing Zoning Code text amendments. Such text amendments, if desired, would have policy implications.

The requested code amendments address the concept of allowing for replacement of non-complying floor area on a building. The code has historically limited redevelopment of many older, legal noncomplying buildings in the Downtown if the result is greater height or massing. The request is to allow this and other such buildings to be redeveloped for the benefits of improved energy efficiency or to resolve other noncompliance issues for a site (e.g. waste storage or parking). The proposed conceptual amendment could result in the redevelopment of many Downtown sites to modernize existing buildings while retaining existing non-complying floor area.

Resource Impact

The prescreening and processing of an application, if filed, are services paid for by fees from the applicant. Additionally, impact fees are charged on the formal project to account for impacts the project will have on public services and infrastructure.

The proposed text amendment itself would have no impact on revenue. However, if property owners chose to redevelop their sites based on the revised regulations, this may result in increased property tax revenue. The proposed redevelopment of 616 Ramona Street would result in a 50% increase in property taxes according to the developer (see Attachment D). The exact actual increase would be dependent on the proposed tenant.

Timeline

Following the prescreening review, the applicant will consider Council's comments and determine how they want to proceed. Any formal application for a Zoning Code Text Amendment would be subject to review by the Planning and Transportation Commission (PTC) and City Council. Any proposed modifications to the site would be subject to review by the Architectural Review Board.

Stakeholder Engagement

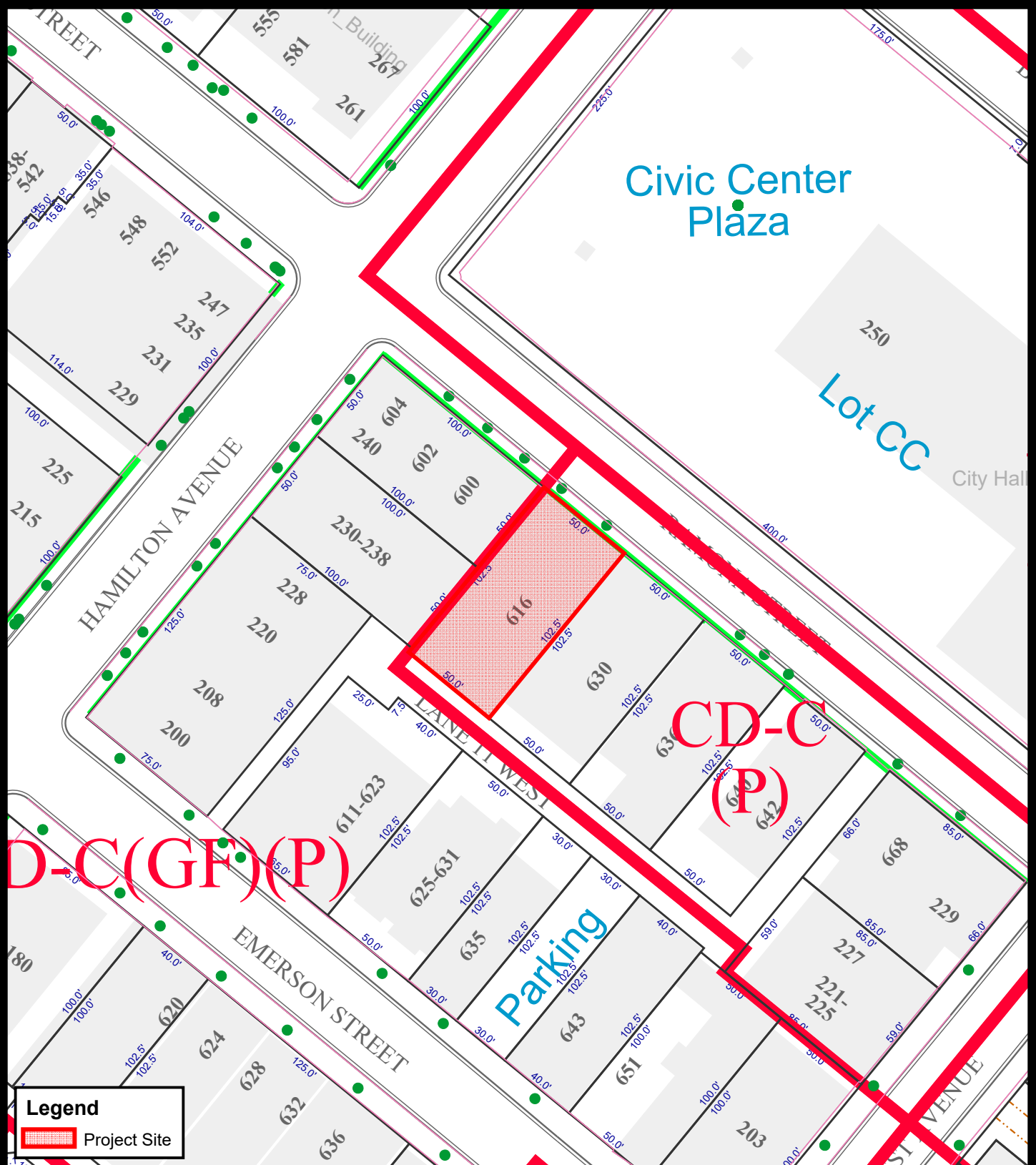
The Palo Alto Municipal Code requires notice of this public hearing to be published in a local newspaper and to be mailed to owners and occupants of property within 600 feet of the subject property at least ten days in advance. Notice of a public hearing for this project was published in the Daily Post on August 5, 2022, which is 10 days in advance of the meeting. Postcard mailing occurred on August 2, 2021, which is 13 days in advance of the meeting. As of the writing of this report, no project-related public comments were received.

Environmental Review

The prescreening is a preliminary review process in which Councilmembers may provide comments, but no formal action will be taken. Therefore, no review under the California Environmental Quality Action (CEQA) is required at this time. A full review in accordance with CEQA would be initiated with the formal filing of a development application.

Attachments:

- Attachment3.a: Attachment A: Project Location (PDF)**
- Attachment3.b: Attachment B: Zoning Comparison Table (DOCX)**
- Attachment3.c: Attachment C: 1998 Council Informational Report Regarding Non-Complying Floor Area in the CD Zone District (PDF)**
- Attachment3.d: Attachment D: Project Description (PDF)**
- Attachment3.e: Attachment E: Project Plans (DOCX)**

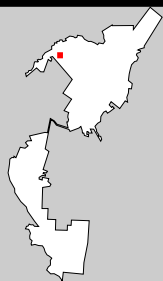


Legend

 Project Site



The City of
Palo Alto



Attachment A: Project Location

This map is a product of the
City of Palo Alto GIS



0' 66'

ATTACHMENT B
ZONING COMPLIANCE TABLE
616 Ramona Street, 22PLN-00146

Table 1: COMPARISON WITH CHAPTER 18.18 (CD-C DISTRICT)
Exclusively Non-Residential Development Standards

Regulation	Required	Existing	Proposed
Minimum Setbacks			
Front Yard	None required (unless there is a special setback)	6 ft	0 ft
Rear Yard	None Required	0 ft	0 ft
Interior Side Yard	None Required	0 ft	0 ft
Street Side Yard	None Required	0 ft	0 ft
Special Setback	Pursuant to Code Section 20.08	6 foot	6 foot
Minimum street setback for sites sharing a common block face with any abutting residential zone district	(4)	Not Applicable	Not Applicable
Minimum yard (ft) for lot lines abutting or opposite residential zone districts	10 feet ⁽¹⁾	Not Applicable	Not Applicable
Maximum Site Coverage	None Required	5,125 sf (100%)	4,860 sf (95%)
Maximum Height	50 ft	Unknown (single-story)	41 ft 10 in
Maximum Floor Area Ratio (FAR)	1.0:1 (5,125 sf) ⁽⁵⁾	8,344 sf	8,204 sf
Maximum Size of New Non-Residential Construction or Expansion Projects	25,000 sf of gross floor area or 15,000 sf above the existing floor area, whichever is greater, provided the floor area limits set forth elsewhere in this chapter are not exceeded	Not Applicable	Not Applicable*
Daylight Plane for lot lines abutting one or more residential zone districts			
Initial Height at side or rear lot line	(Note 2)	Not Applicable	Not Applicable
Slope	(Note 2)	Not Applicable	Not Applicable

*Project proposes to replace non-complying floor area and utilize the allowances under PAMC Section 18.18.060(e)(2) to allow for the addition of exempt floor area on the roof for access to a rooftop deck.

Notes

- 1) The yard shall be planted and maintained as a landscaped screen, excluding area required for site access.
- 2) The initial height and slope shall be identical to those of the residential zone abutting the site line in question.
- 3) The maximum height within 150 feet of any abutting residential zone district shall not exceed the height limit of the abutting residential district.
- 4) The minimum street setback shall be equal to the residentially zoned setback for 150 feet from the abutting single-family or multiple family development.
- 5) FAR may be increased with transfers of development and/or bonuses for seismic and historic rehabilitation upgrades, not to exceed a total site FAR of 3.0:1 in the CD-C subdistrict or 2.0:1 in the CD-S or CD-N subdistricts.

18.18.100 Performance Standards. In addition to the standards for development prescribed above, all development shall comply with the performance criteria outlined in Chapter 18.23 of the Zoning Ordinance. All mixed-use development shall also comply with the provisions of Chapter 18.23 of the Zoning Ordinance.

18.18.110 Context-Based Design Criteria. As further described in a separate attachment, development in a commercial district shall be responsible to its context and compatible with adjacent development, and shall promote the establishment of pedestrian oriented design.

**Table 2: CONFORMANCE WITH CHAPTER 18.52.040 (Off-Street Parking and Loading)
for Downtown University Avenue Parking Assessment District**

Type	Required		Existing	Proposed	Conforms?
Vehicle Parking (within the Downtown Parking Assessment District) PAMC 18.52.040 Table 2	All uses except residential: 1 space per 250 sf	35 spaces	33 spaces ¹	44 spaces ²	Yes
Bicycle Parking (within the Downtown Parking Assessment District) PAMC 18.52.040 Table 2	All uses except residential: 1 space per 2,500 sf 40% Long Term (LT) 60% Short Term (ST)	3 spaces 1 LT 2 ST	Unknown	2 Long Term 4 Short Term	Yes
Loading Space	The project is not required to provide a loading space because it is less than 9,999 sf. Office projects greater than 10,000 sf are required to provide loading spaces.				

¹Spaces are currently provided in-lieu through historic payment into the parking assessment district

²The applicant is proposing a new below-grade parking garage with 11 spaces



staff report

March 10, 1988

HONORABLE CITY COUNCIL
Palo Alto, California

COMMERCIAL DOWNTOWN CD DISTRICT NONCOMPLYING FACILITY REGULATIONS: INTERPRETATION

Members of the Council:

This report is for informational purposes and no City Council action is necessary or recommended.

BACKGROUND

When the Commercial Downtown (CD) District zoning regulations were approved at the conclusion of the Downtown Study in July 1986, the substantially reduced floor area ratio (FAR) provisions resulted in a number of Downtown buildings becoming noncomplying by virtue of their exceeding the new FAR limits. The FARs were reduced from 3.0 to 1; to 1.0 to 1 in CD-C zoned areas and from 2.0 to 1, to 0.4 to 1 in most CD-S and CD-N zoned areas. The objectives of these new CD FAR provisions were to 1) reduce development potential and 2) reduce increases in traffic congestion and increases in the off-street parking deficit. The objectives of these Downtown CD regulations were not intended to trigger demolition of existing buildings over time.

As a result, the CD Noncomplying Facility provisions permitted existing buildings that had become noncomplying to be able to be remodeled, improved or replaced [see attached Section 18.49.040(c)]. Nonetheless, these provisions stipulated that any increase in size resulting from remodeling or rebuilding must qualify for one of the CD District expansion exemptions that were specifically identified [see attached Section 18.49.060(b) of the Zoning Regulations]:

1. Handicapped improvements;
2. Seismic rehabilitation;
3. Historic restoration;
4. Two-hundred (200) square-foot exemptions for buildings not qualifying for either the seismic or historic exemptions; and
5. Residential development in the CD-S and CD-N sub-districts.

CMR:185:8

Staff reports and Planning Commission and City Council minutes on the final phases to the Downtown Study reveal little public discussion on the details of the noncomplying facilities of the provision. Generally, Planning Commission and City Council actions, in approving this provision, acknowledged that it allowed and encouraged many existing buildings to remodel and replace in situations where it was appropriate for them to do so. There was no discussion of the design implication of this CD District Noncomplying Facility provision. Prior to the drafting of the CD District regulations, staff interpreted the concept of this provision by stating that such a provision would permit the remodeling and replacement of noncomplying buildings, provided the present size and configuration did not change. (See attached excerpts: 1) report to the Planning Commission on Downtown Study EIR and Ordinances of February 7, 1986, page 15; and 2) CMR:232:6, Downtown Study... of April 3, 1986, page 34.)

Recently, several preliminary proposals have been submitted to staff for replacing or remodeling noncomplying buildings in the CD District. These proposals would result in substantial reconfiguration of existing buildings but they would not result in increased floor area. Generally, the proposals would result in improved design over the existing buildings by providing more attractive facades and by creating interesting design features, e.g., new courtyards or arcade areas.

INTERPRETATION OF CD DISTRICT NONCOMPLYING FACILITY PROVISIONS

In response to inquiries from property owners, designers and developers as to whether such remodeling and replacement of existing noncomplying buildings in the CD District would be permitted, staff suggests the following interpretation of the CD District Noncomplying facility provisions.

This interpretation of the CD Noncomplying provisions would remain in effect only until the City has an opportunity to act on proposed Urban Design Guidelines for noncomplying buildings that would be submitted by the newly appointed Urban Design Committee.

1. CD District Noncomplying Buildings Where Some Existing Floor Area Below Grade is Eliminated

Such buildings would be permitted to remodel and replace provided there would be no increase in the building's noncompliance, e.g., in floor area or height. [Replacements could result in shifts in floor area, e.g., through elimination of basements and the addition of mezzanines, provided that such changes complied with all building codes.] However, in remodeling or in replacing such buildings, they would not be permitted to change their present size or configuration. Remodeling of buildings on the Historic Building Inventory would have to continue to comply with the provisions of the Historic Preservation Ordinance and with Comprehensive Plan policies regarding the remodeling of historic buildings.

This interpretation is consistent with the staff reports cited above and with a previous interpretation made by the Chief Building Official for the remodeling of a downtown building.

**2. CD District Noncomplying Buildings
Where Existing Floor Area At or Above Grade is Eliminated**

Such buildings would be permitted to be remodeled and replaced provided there would be no increase in the building's noncompliance, e.g., in floor area or in height. However, in remodeling or in replacing, such buildings would be permitted to be reconfigured in terms of length, width and height so long as existing floor area was not increased (except for the aforementioned existing exceptions in the CD regulations). Also, in no event would a building's height be allowed to exceed the height limit (50 feet except 35 feet within 150 feet of a residentially zoned district). Remodeling of buildings on the Historic Building Inventory would have to continue to comply with the provisions of the Historic Preservation Ordinance and with Comprehensive Plan policies regarding the remodeling of historic buildings.

This could mean, for example, that a two-story, 10,000 square-foot building could become a three-story, 10,000 square-foot building with a reduced building footprint, so long as the height restrictions of the applicable district were not exceeded. Such an interpretation not only allows greater design flexibility (subject to Architectural Review Board review and approval), but could also permit provisions for on-site parking due to the reduced building footprint.

Staff wishes to point out that the City Attorney and Chief Building Official have reviewed these interpretations and have found them consistent with the text of the CD District Noncomplying Facility provisions.

EFFECTS OF CD DISTRICT NONCOMPLYING FACILITY INTERPRETATION

Staff believes that these interpretations shall:

1. Not result in increased noncompliance in terms of floor area or height for buildings in the CD District currently exceeding the FAR and/or the height limits; and yet
2. Permit reasonable flexibility for buildings undergoing remodeling and/or replacement so that improved building design, that the City has identified over time as contributing to the enhancement of Downtown Palo Alto, will be encouraged.

In addition, another effect of these interpretations of the CD Noncomplying provisions should preclude unexpected building massing in remodelings that could result if entire basements were replaced by upper-story additions.

FUTURE ACTIONS

Staff is requesting that the Urban Design Committee develop design guidelines for the remodeling and replacement of noncomplying buildings in the CD District. Completion of the Urban Design Committee's work is expected in early 1989.

The aforementioned interpretations of CD District Noncomplying Facility provisions will apply until the City has the opportunity to act on the Urban

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3/10/88

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Design Committee's recommendations for design guidelines on CD District noncomplying buildings.

In addition, staff will continue to include a summary of major building remodelings in subsequent CD District monitoring reports.

Respectfully submitted,

George Zimmerman

GEORGE ZIMMERMAN
Assistant Planning Official

Kenneth R. Schreiber

KENNETH R. SCHREIBER
Director of Planning and
Community Environment

June Fleming

JUNE FLEMING
Assistant City Manager

Attachments: Section 18.49.040(c) of the CD Commercial Downtown Zoning Regulations
Section 18.49.060(b) of the CD Commercial Downtown Zoning Regulations
Excerpt of Report to the Planning Commission of 2/7/86, page 15
Excerpt of CHR:232:6 to the City Council of 4/3/86, page 34

cc: Planning Commission
Architectural Review Board
Historic Resources Board
Urban Design Committee
Downtown Property Owners
Chamber of Commerce
Downtown North Association
University Park Association
Chief Building Official
Zoning Administrator

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3/10/88

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Section 18.49.040 (c) of the CD District Zoning Regulations

(c) Noncomplying Facilities. Chapter 18.94 notwithstanding, a noncomplying facility existing on the effective date of this chapter and which, when built, was a complying facility, shall be deemed to be complying. Such a facility shall be permitted to be remodeled, improved or replaced without necessity to comply with site development regulations. Any such remodeling, improvement or replacement shall result in increased floor area, height, length or any other increase in the size of the facility only pursuant to the exceptions to floor area ratio regulations set forth in section 18.49.060.

Section 18.49.000(b) of the CD District Zoning Regulations

(b) Exceptions to FAR regulations:

1. When a building is being expanded, square footage which, in the judgment of the chief building official, does not increase the usable floor area, but is necessary to conform the building to Title 24 of the California Administrative Code, regarding handicapped access, shall not be counted as floor area.

2. When a building that is in Seismic Category I, II or III is being seismically rehabilitated to the analysis standards referenced in chapter 16.42 of this code, such building shall be allowed to increase its floor area by two thousand and five hundred (2,500) square feet or by twenty-five percent (25%) of the existing building, whichever is greater without having this increase count toward the FAR; however, all square footage shall be counted as square footage for the purposes of the three hundred and fifty thousand (350,000) square foot limit on development (section 18.49.030) and the project size limit (section 18.49.040(a)) and in no event shall a building expand

beyond a FAR of 3.0 to 1 in the CD-C subdistrict and a FAR of 2.0 to 1 in the CD-S and CD-N subdistricts. This exception shall be allowed on a site only once.

3. A building that is in Historic Category 1 or 2 (and which is not in Seismic Category I, II or III) shall be allowed to increase its floor area by two thousand and five hundred (2,500) square feet or by twenty-five percent (25%) of the existing building, whichever is greater without having this increase count toward the FAR; however, all square footage shall be counted as square footage for the purposes of the three hundred and fifty thousand (350,000) square foot limit on development (section 18.49.030) and the project size limit (section 18.49.040(a)) and in no event shall a building expand beyond a FAR of 3.0 to 1 in the CD-C subdistrict and a FAR of 2.0 to 1 in the CD-S and CD-N subdistricts. This exception shall be allowed on a site only once.

4. A building that is not in Historic Category 1 or 2 nor in Seismic Category I, II or III shall be allowed to increase its floor area by two hundred (200) square feet without having this increase count toward the FAR; however, all square footage shall be counted as square footage for the purposes of the three hundred and fifty thousand (350,000) square foot limit on development (section 18.49.030) and the project size limit (section 18.49.040(a)) and in no event shall a building expand beyond a FAR of 3.0 to 1 in the CD-C subdistrict and a FAR of 2.0 to 1 in the CD-S and CD-N subdistricts. This exception shall be allowed on a site only once.

5. In the CD-S and CD-N subdistricts, (i) RM(3) or RM(2) density shall apply to residential developments and (ii) in a mixed residential and nonresidential development, RM(3) or RM(2) density shall be allowed in addition to the 0.4 nonresidential FAR. In no case shall the floor area ratio of the nonresidential uses exceed the base FAR set forth above.

Excerpt: Report to the Planning Commission of 2-7-86, p. 15

8. Grandfather Clauses: Noncomplying Structures

This provision would permit continuation, remodeling, improvement and replacement of noncomplying structures within the Study Area (i.e., the area of the new CD zone) provided such remodeling, improvement or replacement did not change the present size and configuration of the noncomplying structure. It should also be pointed out that such a provision for noncomplying structures in the new CD zone differs from the current provision in the Zoning Ordinance [Chapter 18.94.100(b)] which requires a noncomplying structure to be rebuilt as a complying structure if the value of potential damage to a structure exceeds 50 percent of the cost required to bring the damaged portion of the structure into compliance with the zoning regulations.

Recommendation:

Staff concurs with the Commission's January 21 direction and recommends that the Planning Commission recommend to the City Council approval grandfather clauses for noncomplying structures within the Study Area (i.e., the new CD zone).

Excerpt: CMR 232:6 of 4-3-86, pp 34 and 35.

10. Grandfather Clauses: Existing Structures in CD District

Proposal:

This provision would permit continuation, remodeling, improvement and replacement of noncomplying structures within the new CD district provided such remodeling, improvement or replacement did not change the present size and configuration of the noncomplying structure. This provision for noncomplying structures in the new CD zone differs from the current provision in the Zoning Ordinance [Chapter 18.94.100(b)] which requires a non-complying structure to be rebuilt as a complying structure if the value of potential damage to a structure exceeds 50 percent of the cost required to bring the damaged portion of the structure into compliance with the zoning regulations.

This item is discussed in the following reports to the Planning Commission:

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4/3/86
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- (1) Downtown Study EIR and Proposals of January 17, 1986 (as Item 12) on page 12;
- (2) Downtown Study EIR and Ordinances of February 7, 1986 (as Item 8) on page 15.

The Planning Commission's discussion appears in the minutes of the following meeting of the Downtown Study public hearing:

- (1) Meeting of February 20, 1986 on pages 21 and 22.

Recommendation: The Planning Commission recommends City Council approval of the identified grandfather clauses for noncomplying structures within the new CD district.



June 9, 2022

Mayor Pat Burt, Vice Mayor Kou
and Council Members
City of Palo Alto
City Clerk's Office
250 Hamilton Avenue, 7th floor
Palo Alto, CA 94303

Re: 616 Ramona Street – City Council Prescreening

Honorable Mayor Burt, Vice Mayor Kou and Council Members,

Attached is Hayes Group Architect's submittal package for 616 Ramona Street for a council prescreening. The project applicant is Hayes Group Architects on behalf of our client, R&M Properties. This package includes an electronically submitted plan set, including the site survey, contextual photos, the proposed site plan, floor plans, elevations, sections, and perspectives.

1. EXISTING CONDITIONS

The 5,125 SF project site is midblock on Ramona Street, adjacent to a four-story, mixed-use building to the north and a Category 2 Historic Resource to the south. The existing two-story office building, constructed in 1962, is old and of another era, lacking windows, adequate floor to floor and floor to roof heights, energy efficiencies, ADA accessibility and pedestrian amenities. We are proposing its removal. The surrounding neighborhood is a mix of retail, restaurants and office uses. City Hall Plaza is directly across the street. The property backs onto Lane 11 West, a twenty-foot-wide alley at the rear that is used for building utilities.

The zoning district is CD-C(P), Downtown Commercial, Pedestrian Shopping Combining District. This district allows a commercial FAR of 1.0/1 that can be expanded up to 3.0/1 with bonus and exempt floor areas. There is a fifty-foot height limit and no setbacks or maximum site coverage requirements. Although there are no easements on this property, there is a six-foot Special Setback along the Ramona Street frontage for which a variance request will be made to eliminate this setback so that the new building will fit in with the existing context of the street edge. The 240 Hamilton project next door to the north was granted a variance from these outdated Special Setbacks on both Hamilton and Ramona frontages in 2012.

The site is more than 150 feet from any residentially zoned properties, does not contain an historic resource and is, therefore, an eligible Transfer Development Rights receiver site pursuant to PAMC 18.18.080(e).

The existing, office building consists of 8,344.3 SF of gross floor area constituting a 1.63/1 Floor area Ratio (FAR) where a 1.0/1 FAR is the base permitted FAR. Because of this, the building is considered a Noncomplying (Grandfathered) Facility.

HAYES
GROUP
ARCHI
TECTS

Pursuant to PAMC 18.18.120(b), any noncomplying grandfathered facility shall be permitted to remodel, improve, or replace site improvements on the same site, provided such remodeling, improvement, or replacement complies with all of the following:

- (A) shall not result in increased floor area;
- (B) shall not relocate below grade floor area to above grade portions of the building;
- (C) shall not result in an increase of the height, length, building envelope, building footprint, or any other increase in the size of the improvement;
- (D) shall not increase the degree of noncompliance, except pursuant to the exceptions to floor area ratio regulations set forth in Section [18.18.070](#), Floor Area Bonuses.

No parking is provided onsite; however, the property owner is assessed for 33 parking spaces for the existing floor area in the Downtown Parking Assessment District for parking that is required but not provided on site.

2. PROPOSED PROJECT

The proposed project consists of a new, two-story, office building with a full level of underground parking, a second-floor roof terrace and an upper roof terrace. The existing floor area is being replaced and will be distributed as indicated in the attached plan set. The underground parking will be accessed from the rear alley by way of a vehicle elevator that will descend one story below grade to provide access to the eleven parking spaces, including five in a puzzler lift, one ADA van space and one EV Van space (each counting as two spaces) and two other parking spaces.

Pursuant to 18.18.110, Context Based Design Criteria, the new building relates to the context in the following ways:

1. Maintaining the street rhythm and syncopation by breaking up the mass and introducing columns that divide the main façade into three bays like the historic building next door.
2. Transitioning the building height from the four-story building to the north to the historic building to the south, by placing the taller stair feature next to the four-story building and stepping down toward the historic resource.
3. Creating a trellis form at the second-floor balcony that reinforces the sidewalk edge while being architecturally reminiscent of the roof massing of the historic building, where the roof form has been added to a simple rectangular box to address the street.
4. Creating ground floor entries that face the street and a stair feature with glazing that reveals activity inside.
5. Providing plenty of ground floor street facing glass and second floor terrace overlooking the street and city hall plaza to activate the street and enhance the pedestrian experience.
6. Providing additional parking below grade, out of sight, and accessed from the rear service alley.
7. Providing all building services accessed from the rear alley.
8. Providing terrace railings that reinforce the crafted metal railings of the historic building's railings and balconies.
9. Using materials that are derived from the neighboring buildings like metal panels, plaster, concrete and glass and metal railings.
10. Relating to city hall by way of vertically oriented arrays of glass and railings.
11. Minimizing the ground floor lobby serving the upper floor and roof terrace to allow for greater ground floor pedestrian oriented uses.



12. Setting back the main second floor and upper roof terrace to respect the historic building next door.
13. Creating an upper roof terrace for outdoor activities in support of the building occupants.

The proposed building provides separate entries for the first-floor use and the upper-floor use. A trellis structure above the street facing second floor terrace defines the front of the building and reinforces the street edge. Outdoor spaces at the front, rear and upper roof provide opportunities for occupants to go outside to work, collaborate and socialize, an important amenity as we enter a post-pandemic world.

Mechanical equipment is located at the upper, roof terrace level, between the stairs, and used not only for screening the equipment but for providing support for PV solar panels. Additional PV solar panels are arrayed on the trellis structure in the middle of the roof terrace that defines outdoor, protected, seating areas. This will be an all-electric building generating a portion of its energy from the rooftop arrays. The floor area required for access via stairs and elevator to the new rooftop terrace and garden is considered exempt floor area pursuant to PAMC 18.18.060(e)2.

3. CONFLICT WITH PALO ALTO ZONING ORDINANCE 18.18.120(b), NONCOMPLYING GRANDFATHERED FACILITIES

Although the Palo Alto Municipal Code section on noncomplying, grandfathered facilities allows the replacement of existing floor area in a new building, the new building cannot increase the height, length or building envelop of the former building even if those increases are consistent with site development requirements in PAMC 18.18.060 and result in a better building. The effect of this is paralyzing on our building stock and the future replacement of old, outdated and unfit buildings that should be replaced to respond to the needs of our time.

For many years, between 1988 and 2014, city staff interpreted this section of the municipal code in accordance with a city manager's staff report, dated March 10, 1988 (*attachment 1*), which took a much more real-world, logical approach to the replacement of existing floor area in noncomplying buildings. I can cite many new buildings my firm has completed in the downtown starting with the Palo Alto Bike Shop in 1996 that were noncomplying facilities in terms of FAR that were permitted to replace the existing floor area in new, completely reconfigured buildings. More of these projects included the former Jos Bank's building, the Keene's shoes building, 240 Hamilton -the building next door to the proposed building, the Philz Coffee building on Forrest/Alma and 317/323 University Avenue. All of these projects have two things in common: 1) they replaced floor area of noncomplying grandfathered facilities and 2) they resulted in new, modern buildings with completely different building envelopes than before, adding to the vibrancy of the downtown.

4. BENEFITS

This proposed project is not possible without a new approach to working with owners of noncomplying facilities. The benefits to the downtown are new buildings that respond to the forces of the community, that connect with the street and sidewalk, that provide additional parking, that are consistent with the environmental initiatives of our time and, in particular, the City of Palo Alto's and that continue to improve the attractiveness of the city's building inventory. There is no downside. There is no increase in the amount of office space, just better buildings, fit for our time.

In short, if allowed to proceed, this particular project would:

HAYES
GROUP
ARCHI
TECTS

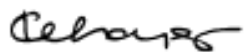
- Not increase office space
- Add 11 parking spaces where none exist now
- Provide complete access for all those with disabilities
- Meet all current building and life safety codes
- Result in a beautiful new building in our downtown
- Increase property tax for this parcel approximately 50x

We are seeking a zoning code text amendment to PAMC18.18.120(b) that addresses the benefits of retiring outdated, noncomplying buildings and encourages building owners to consider new opportunities for their properties without losing the existing floor area.

We look forward to an opportunity to review the benefits of this project and hopefully future projects with you at a prescreening, the first step in our entitlement process.

Please call me at (650) 365-0600x15 if you have any questions.

Sincerely,



Ken Hayes, AIA
Principal

cc: Steve Reller, R&M Properties
Mark Moragne, R&M Properties
Richard Hackmann,

enclosed: CMR dated March 10, 1988



staff report

March 10, 1988

HONORABLE CITY COUNCIL
Palo Alto, California

COMMERCIAL DOWNTOWN CD DISTRICT NONCOMPLYING FACILITY REGULATIONS: INTERPRETATION

Members of the Council:

This report is for informational purposes and no City Council action is necessary or recommended.

BACKGROUND

When the Commercial Downtown (CD) District zoning regulations were approved at the conclusion of the Downtown Study in July 1986, the substantially reduced floor area ratio (FAR) provisions resulted in a number of Downtown buildings becoming noncomplying by virtue of their exceeding the new FAR limits. The FARs were reduced from 3.0 to 1; to 1.0 to 1 in CD-C zoned areas and from 2.0 to 1, to 0.4 to 1 in most CD-S and CD-N zoned areas. The objectives of these new CD FAR provisions were to 1) reduce development potential and 2) reduce increases in traffic congestion and increases in the off-street parking deficit. The objectives of these Downtown CD regulations were not intended to trigger demolition of existing buildings over time.

As a result, the CD Noncomplying Facility provisions permitted existing buildings that had become noncomplying to be able to be remodeled, improved or replaced (see attached Section 18.49.040(c)). Nonetheless, these provisions stipulated that any increase in size resulting from remodeling or rebuilding must qualify for one of the CD District expansion exemptions that were specifically identified (see attached Section 18.49.060(b) of the Zoning Regulations):

1. Handicapped improvements;
2. Seismic rehabilitation;
3. Historic restoration;
4. Two-hundred (200) square-foot exemptions for buildings not qualifying for either the seismic or historic exemptions; and
5. Residential development in the CD-S and CD-N sub-districts.

CMR:185:8

Staff reports and Planning Commission and City Council minutes on the final phases to the Downtown Study reveal little public discussion on the details of the noncomplying facilities of the provision. Generally, Planning Commission and City Council actions, in approving this provision, acknowledged that it allowed and encouraged many existing buildings to remodel and replace in situations where it was appropriate for them to do so. There was no discussion of the design implication of this CD District Noncomplying Facility provision. Prior to the drafting of the CD District regulations, staff interpreted the concept of this provision by stating that such a provision would permit the remodeling and replacement of noncomplying buildings, provided the present size and configuration did not change. (See attached excerpts: 1) report to the Planning Commission on Downtown Study EIR and Ordinances of February 7, 1986, page 15; and 2) CMR:232:6, Downtown Study... of April 3, 1986, page 34.)

Recently, several preliminary proposals have been submitted to staff for replacing or remodeling noncomplying buildings in the CD District. These proposals would result in substantial reconfiguration of existing buildings but they would not result in increased floor area. Generally, the proposals would result in improved design over the existing buildings by providing more attractive facades and by creating interesting design features, e.g., new courtyards or arcade areas.

INTERPRETATION OF CD DISTRICT NONCOMPLYING FACILITY PROVISIONS

In response to inquiries from property owners, designers and developers as to whether such remodeling and replacement of existing noncomplying buildings in the CD District would be permitted, staff suggests the following interpretation of the CD District Noncomplying facility provisions.

This interpretation of the CD Noncomplying provisions would remain in effect only until the City has an opportunity to act on proposed Urban Design Guidelines for noncomplying buildings that would be submitted by the newly appointed Urban Design Committee.

1. CD District Noncomplying Buildings Where Some Existing Floor Area Below Grade is Eliminated

Such buildings would be permitted to remodel and replace provided there would be no increase in the building's noncompliance, e.g., in floor area or height. [Replacements could result in shifts in floor area, e.g., through elimination of basements and the addition of mezzanines, provided that such changes complied with all building codes.] However, in remodeling or in replacing such buildings, they would not be permitted to change their present size or configuration. Remodeling of buildings on the Historic Building Inventory would have to continue to comply with the provisions of the Historic Preservation Ordinance and with Comprehensive Plan policies regarding the remodeling of historic buildings.

This interpretation is consistent with the staff reports cited above and with a previous interpretation made by the Chief Building Official for the remodeling of a downtown building.

**2. CD District Noncomplying Buildings
Where Existing Floor Area At or Above Grade is Eliminated**

Such buildings would be permitted to be remodeled and replaced provided there would be no increase in the building's noncompliance, e.g., in floor area or in height. However, in remodeling or in replacing, such buildings would be permitted to be reconfigured in terms of length, width and height so long as existing floor area was not increased (except for the aforementioned existing exceptions in the CD regulations). Also, in no event would a building's height be allowed to exceed the height limit (50 feet except 35 feet within 150 feet of a residentially zoned district). Remodeling of buildings on the Historic Building Inventory would have to continue to comply with the provisions of the Historic Preservation Ordinance and with Comprehensive Plan policies regarding the remodeling of historic buildings.

This could mean, for example, that a two-story, 10,000 square-foot building could become a three-story, 10,000 square-foot building with a reduced building footprint, so long as the height restrictions of the applicable district were not exceeded. Such an interpretation not only allows greater design flexibility (subject to Architectural Review Board review and approval), but could also permit provisions for on-site parking due to the reduced building footprint.

Staff wishes to point out that the City Attorney and Chief Building Official have reviewed these interpretations and have found them consistent with the text of the CD District Noncomplying Facility provisions.

EFFECTS OF CD DISTRICT NONCOMPLYING FACILITY INTERPRETATION

Staff believes that these interpretations shall:

1. Not result in increased noncompliance in terms of floor area or height for buildings in the CD District currently exceeding the FAR and/or the height limits; and yet
2. Permit reasonable flexibility for buildings undergoing remodeling and/or replacement so that improved building design, that the City has identified over time as contributing to the enhancement of Downtown Palo Alto, will be encouraged.

In addition, another effect of these interpretations of the CD Noncomplying provisions should preclude unexpected building massing in remodelings that could result if entire basements were replaced by upper-story additions.

FUTURE ACTIONS

Staff is requesting that the Urban Design Committee develop design guidelines for the remodeling and replacement of noncomplying buildings in the CD District. Completion of the Urban Design Committee's work is expected in early 1989.

The aforementioned interpretations of CD District Noncomplying Facility provisions will apply until the City has the opportunity to act on the Urban

CNR:185:8

3/10/88

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Design Committee's recommendations for design guidelines on CD District noncomplying buildings.

In addition, staff will continue to include a summary of major building remodelings in subsequent CD District monitoring reports.

Respectfully submitted,

George Zimmerman

GEORGE ZIMMERMAN
Assistant Planning Official

Kenneth R. Schreiber

KENNETH R. SCHREIBER
Director of Planning and
Community Environment

June Fleming

JUNE FLEMING
Assistant City Manager

Attachments: Section 18.49.040(c) of the CD Commercial Downtown Zoning Regulations
Section 18.49.060(b) of the CD Commercial Downtown Zoning Regulations
Excerpt of Report to the Planning Commission of 2/7/86, page 15
Excerpt of CHR:232:6 to the City Council of 4/3/86, page 34

cc: Planning Commission
Architectural Review Board
Historic Resources Board
Urban Design Committee
Downtown Property Owners
Chamber of Commerce
Downtown North Association
University Park Association
Chief Building Official
Zoning Administrator

CHR:185:8

3/10/88

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Section 18.49.040 (c) of the CD District Zoning Regulations

(c) Noncomplying Facilities. Chapter 18.94 notwithstanding, a noncomplying facility existing on the effective date of this chapter and which, when built, was a complying facility, shall be deemed to be complying. Such a facility shall be permitted to be remodeled, improved or replaced without necessity to comply with site development regulations. Any such remodeling, improvement or replacement shall result in increased floor area, height, length or any other increase in the size of the facility only pursuant to the exceptions to floor area ratio regulations set forth in section 18.49.060.

Section 18.49.000(b) of the CD District Zoning Regulations

(b) Exceptions to FAR regulations:

1. When a building is being expanded, square footage which, in the judgment of the chief building official, does not increase the usable floor area, but is necessary to conform the building to Title 24 of the California Administrative Code, regarding handicapped access, shall not be counted as floor area.

2. When a building that is in Seismic Category I, II or III is being seismically rehabilitated to the analysis standards referenced in chapter 16.42 of this code, such building shall be allowed to increase its floor area by two thousand and five hundred (2,500) square feet or by twenty-five percent (25%) of the existing building, whichever is greater without having this increase count toward the FAR; however, all square footage shall be counted as square footage for the purposes of the three hundred and fifty thousand (350,000) square foot limit on development (section 18.49.030) and the project size limit (section 18.49.040(a)) and in no event shall a building expand

beyond a FAR of 3.0 to 1 in the CD-C subdistrict and a FAR of 2.0 to 1 in the CD-S and CD-N subdistricts. This exception shall be allowed on a site only once.

3. A building that is in Historic Category 1 or 2 (and which is not in Seismic Category I, II or III) shall be allowed to increase its floor area by two thousand and five hundred (2,500) square feet or by twenty-five percent (25%) of the existing building, whichever is greater without having this increase count toward the FAR; however, all square footage shall be counted as square footage for the purposes of the three hundred and fifty thousand (350,000) square foot limit on development (section 18.49.030) and the project size limit (section 18.49.040(a)) and in no event shall a building expand beyond a FAR of 3.0 to 1 in the CD-C subdistrict and a FAR of 2.0 to 1 in the CD-S and CD-N subdistricts. This exception shall be allowed on a site only once.

4. A building that is not in Historic Category 1 or 2 nor in Seismic Category I, II or III shall be allowed to increase its floor area by two hundred (200) square feet without having this increase count toward the FAR; however, all square footage shall be counted as square footage for the purposes of the three hundred and fifty thousand (350,000) square foot limit on development (section 18.49.030) and the project size limit (section 18.49.040(a)) and in no event shall a building expand beyond a FAR of 3.0 to 1 in the CD-C subdistrict and a FAR of 2.0 to 1 in the CD-S and CD-N subdistricts. This exception shall be allowed on a site only once.

5. In the CD-S and CD-N subdistricts, (i) RM(3) or RM(2) density shall apply to residential developments and (ii) in a mixed residential and nonresidential development, RM(3) or RM(2) density shall be allowed in addition to the 0.4 nonresidential FAR. In no case shall the floor area ratio of the nonresidential uses exceed the base FAR set forth above.

Excerpt: Report to the Planning Commission of 2-7-86, p. 15

8. Grandfather Clauses: Noncomplying Structures

This provision would permit continuation, remodeling, improvement and replacement of noncomplying structures within the Study Area (i.e., the area of the new CD zone) provided such remodeling, improvement or replacement did not change the present size and configuration of the noncomplying structure. It should also be pointed out that such a provision for noncomplying structures in the new CD zone differs from the current provision in the Zoning Ordinance [Chapter 18.94.100(b)] which requires a noncomplying structure to be rebuilt as a complying structure if the value of potential damage to a structure exceeds 50 percent of the cost required to bring the damaged portion of the structure into compliance with the zoning regulations.

Recommendation:

Staff concurs with the Commission's January 21 direction and recommends that the Planning Commission recommend to the City Council approval grandfather clauses for noncomplying structures within the Study Area (i.e., the new CD zone).

Excerpt: CMR 232:6 of 4-3-86, pp 34 and 35.

10. Grandfather Clauses: Existing Structures in CD District

Proposal:

This provision would permit continuation, remodeling, improvement and replacement of noncomplying structures within the new CD district provided such remodeling, improvement or replacement did not change the present size and configuration of the noncomplying structure. This provision for noncomplying structures in the new CD zone differs from the current provision in the Zoning Ordinance [Chapter 18.94.100(b)] which requires a non-complying structure to be rebuilt as a complying structure if the value of potential damage to a structure exceeds 50 percent of the cost required to bring the damaged portion of the structure into compliance with the zoning regulations.

This item is discussed in the following reports to the Planning Commission:

CMR:232:6

4/3/86
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- (1) Downtown Study EIR and Proposals of January 17, 1986 (as Item 12) on page 12;
- (2) Downtown Study EIR and Ordinances of February 7, 1986 (as Item 8) on page 15.

The Planning Commission's discussion appears in the minutes of the following meeting of the Downtown Study public hearing:

- (1) Meeting of February 20, 1986 on pages 21 and 22.

Recommendation: The Planning Commission recommends City Council approval of the identified grandfather clauses for noncomplying structures within the new CD district.

Attachment E

Project Plans

In order to reduce paper consumption, a limited number of hard copy project plans are provided to Councilmembers for their review. The same plans are available to the public, at all hours of the day, via the following online resources.

Directions to review Project plans online:

1. Go to: bit.ly/PApendingprojects
2. Scroll down to find “616 Ramona” and click the address link
3. On this project specific webpage you will find a link to the project plans and other important information

Direct Link to Project Webpage:

<https://www.cityofpaloalto.org/News-Articles/Planning-and-Development-Services/616-Ramona-Street?transfer=0424d932-ab74-4fb3-b083-7d399ef4ca1a>



City of Palo Alto
Office of the City Clerk
City Council CAO Report

(ID # 14637)

Meeting Date: 8/15/2022

Report Type: Consent Calendar

Title: **Approve Minutes from the August 1, 2022 City Council Meeting**

From: **Lesley Milton, City Clerk**

Staff recommends Council to review and approve the minutes as presented.

ATTACHMENTS:

- **Attachment4.a:** Attachment A: 20220801amCCsm (PDF)



CITY COUNCIL DRAFT ACTION MINUTES

Special Meeting
August 1, 2022

The City Council of the City of Palo Alto met on this date in the Council Chambers and by virtual teleconference at 5:00 P.M.

Present In Person: Burt, Cormack, Filseth, Kou, Stone, Tanaka

Present Virtually: DuBois

Absent: None

Special Orders of the Day

1. Appreciation for Assembly Member Marc Berman

ACTION: Appreciation given, No action taken

Study Session

2. Study Session on Status of National and Regional Airplane Noise Initiatives

ACTION: Discussion only, No action taken

3. 278 Lambert, 3040 - 3250 Park, 3201-3225 Ash & 200 - 404 Portage Prescreening Study Session: Report on Negotiations Between the City Council Ad Hoc and the Sobrato Organization and Prescreening for Development Agreement and Rezoning, Seeking Initial Public Input on Negotiated Terms. Environmental Assessment: Not a Project. Zoning District: RM-30 (Medium Density Multiple-Family Residence District) and GM (General Manufacturing).

ACTION: Discussion only, no action taken

Agenda Changes, Additions and Deletions

None

DRAFT SUMMARY MINUTES

Public Comment

Consent Calendar

Council Member Cormack, DuBois registered a no vote on Agenda Item Number 5.

MOTION: Council Member Cormack moved, seconded by Vice mayor Kou to approve Agenda Item Numbers 4-8.

4. Approve Minutes from the May 23, 2022, June 13, 2022, June 20, 2022 and June 21, 2022 City Council Meetings
5. Adoption of **Resolution 10060** Authorizing Use of Teleconferencing for Council Meetings During Covid-19 State of Emergency
6. Approval of a Memorandum of Agreement with Suez Water Technologies and Solutions (Suez) to Assign Suez' Membrane Aerated Biofilm Reactor (MABR) Equipment and Services to the Future General Contractor for Construction of the Secondary Treatment Upgrades Capital Improvement Project (WQ-19001) at the Regional Water Quality Control Plant
7. Approval of Amendment Number 2 to Lease between Ada's Cafe and City of Palo Alto for the Community Center Cafe at Mitchell Park for 5 Years at \$500.00 per Month on January 1, 2023 with Annual 3% Increases Thereafter
8. Adoption of Interim Urgency **Ordinance 5560** Extension Requiring a Conditional Use Permit to Establish a Firearms Dealer Retail Use. Environmental Assessment: Exempt under CEQA Guidelines 15061(c)(3).

Motion Split for Purpose of Voting

Item 1-4, 6-8 PASSED: 7-0

Item 5 PASSED: 5-2 Cormack, Dubois No

City Manager Comments

Ed Shikada, City Manager

DRAFT SUMMARY MINUTES

Action Items

9. PUBLIC HEARING / QUASI-JUDICIAL. 1033 Amarillo Ave [22PLN-00016]: Request for a Preliminary Parcel Map with Exceptions to Subdivide a 20,787 square foot R-1 property into two (2) lots, where Lot 1 will be 10,668.50 square feet and Lot 2 will be 10,118.77 square feet. Exception is for minimum lot width and maximum lot size. Zoning District R-1 Single Family Residential.

MOTION: Council Member Mayor Burt moved, seconded by Vice Mayor Kou to continue this Item to August 8, 2022.

MOTION PASSED/FAILED: 5-2, Cormack, Tanaka No

10. Adoption of Resolutions: (1) Placing a Business Tax on the November 2022 Ballot; (2) Placing a Measure Affirming the Natural Gas Utility Transfer on the November 2022 Ballot; and (3) Establishing Advisory Spending Guidelines for Business Tax Proceeds.

MOTION: Council Member DuBois moved, seconded by Council Member Filseth to:

- A. Direct staff to bring forth final documents on Consent based on Ad-hoc alternative as listed in Attachment B and adjusting the rate to \$.11 cents per square foot;
- B. Direct staff to bring back a revised Attachment C that accounts for gas transfer not being brought forward; and
- C. Bring the gas transfer item to Council on August 8, 2022 as an Action Item.

MOTION PASSED/FAILED: 5-2

Council Member Questions, Comments and Announcements

Adjournment: The meeting was adjourned at 11:11 P.M.

DRAFT SUMMARY MINUTES

ATTEST:

APPROVED:

City Clerk

Mayor

NOTE: Action minutes are prepared in accordance with Palo Alto Municipal Code (PAMC) 2.04.160(a) and (b). Summary minutes (sense) are prepared in accordance with PAMC Section 2.04.160(c). Beginning in January 2018, in accordance with [Ordinance No. 5423](#), the City Council found action minutes and the video/audio recordings of Council proceedings to be the official records of both Council and committee proceedings. These recordings are available on the City's website.



City of Palo Alto City Council Staff Report

(ID # 14424)

Meeting Date: 8/15/2022

Report Type: Consent Calendar

Title: Approval of Contract Number C22184896 with Schaaf and Wheeler in the Amount of \$253,636 for Design Services for the Embarcadero Trash Capture Device Installation Project, Capital Improvement Program Project SD-22002

From: City Manager

Lead Department: Public Works

Recommendation

Staff recommends that Council approve and authorize the City Manager or their designee to execute Contract No. C22184896 (Attachment A), with Schaaf and Wheeler, Consulting Engineers, in a not to exceed amount of \$253,636 for design services including \$230,578 for basic services and \$23,058 for additional services for the Embarcadero Trash Capture Device Installation Project, Capital Improvement Program project SD-22002.

Background

The City of Palo Alto (City) is required to comply with the San Francisco Bay Municipal Regional Stormwater National Pollutant Discharge Elimination System permit (Order R2-2022-0018), also known as the Municipal Regional Permit (MRP). The MRP outlines various requirements for protecting the City's storm drain system and local receiving waters from pollutants commonly found in urban stormwater runoff, including trash and other priority pollutants like polychlorinated biphenyls (PCB) and mercury. The MRP requires that the 76 Permittees (including the City) meet the goal of 100 percent trash load reduction, or no adverse impact to receiving waters from trash, by July 1, 2025. In addition, the MRP requires Permittees to address significant PCBs and mercury load reductions to the San Francisco Bay each permit term per the Total Maximum Daily Loads (TMDL) adopted by the San Francisco Bay Regional Water Quality Control Board. Water quality objectives were established in each TMDL to protect beneficial uses of the San Francisco Bay. PCBs and mercury concentrations are highly associated with sediments, leading to bioaccumulation and biomagnification along the food chain. Consequently, the consumption of some fish in San Francisco Bay can be a threat to human health given the elevated levels of PCBs and mercury in fish tissue.

The California Department of Transportation (Caltrans) is required by the State Water Resources Control Board (State Water Board) to address trash generated in its right-of-way. Caltrans' State Stormwater Permit issued by the State Water Board allows Caltrans to partner

with local municipalities by providing funding for regional water quality treatment facilities in significant trash generating areas (as identified in the Caltrans Statewide Trash Implementation Plan). Caltrans receives trash reduction compliance credits for contributions to regional projects.

Discussion

On June 14, 2021 ([Staff Report #12267](#)), Council authorized the City to enter into a Cooperative Implementation Agreement (CIA) with Caltrans, which expires May 1, 2023, to be reimbursed for the design and construction of a large trash capture device (TCD). This TCD will not only reduce trash but also PCBs and mercury pollutant loads by capturing sediment, thereby providing regulatory credit for both entities. The CIA states that the City will be reimbursed up to \$613,000 to fund both the project construction and design phases, with the City funding the long-term operations and maintenance (estimated at a total of \$272,000 over 50 years). Due to staffing constraints, the project was delayed approximately 12 months. As a result, the project may be not be completed by the CIA expiration date, and the City may not be reimbursed for the total project cost. However, Caltrans has indicated that if the City shows in good faith that staff is moving forward as swiftly as possible with the design and construction of the project, Caltrans will help fund the difference in Fiscal Year 2024. This would entail establishing a new CIA with Caltrans for the remainder of the funding.

This contract will include conducting engineering and hydraulic analysis, special studies for a large TCD, and the design of either a debris separating baffle box or nutrient separating baffle box with the existing City storm drain pipeline location in front of the Golf Links parking lot nearby Embarcadero Road.

Request for Proposal (RFP) Process

On April 26, 2022, the City released an RFP (No. 184896) for the Embarcadero Trash Capture Device Project for professional services. A notice was sent to prospective consultants and was posted on the City's eProcurement Platform, PlanetBids. One proposal was received for this RFP.

Summary of Solicitation Process

PROPOSAL DESCRIPTION/NUMBER	EMBARCADERO TRASH CAPTURE DEVICE PROJECT RFP #184896
<i>Proposed Length of Project</i>	1.5 years
<i>Number of Vendors Notified</i>	2547
<i>Number of Proposal Packages Downloaded</i>	27
<i>Total Calendar Days to Respond to Proposal</i>	21
<i>Public Link to Solicitation</i>	https://pbsystem.planetbids.com/portal/25569/bo/bo-detail/93482
<i>Number of Proposals Received</i>	1

<i>Range of Proposal Amounts Submitted</i>	\$242,448
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Staff reviewed the original proposal of \$242,448 and was able to reduce the cost to \$230,578 by removing and reducing tasks. Furthermore, some tasks have the potential to be performed by staff which could provide additional cost savings to the City. Staff has reviewed the proposal and recommends the contract be awarded to Schaaf and Wheeler based on their knowledge of the City's storm water system and their experience designing these types of projects.

Resource Impact

Funding for this contract is available in the Embarcadero Trash Capture Device Installation project (SD-22002). If the project cannot be completed before the CIA expiration date and does not receive full reimbursement per the CIA, Caltrans has indicated that it may provide the additional necessary funds in Fiscal Year 2024. However, if the City is not able to enter into a new CIA to offset the additional costs, the Stormwater Management Fund Reserves may need to be used to make up the difference and staff would return to Council for a budget amendment.

Policy Implications

This recommendation does not represent any change to existing City policies.

Stakeholder Engagement

The Embarcadero Trash Capture Device Project is being coordinated within Public Works Engineering Services, Stormwater Compliance workgroup, Caltrans, and the Regional Water Quality Control Board.

Environmental Review

CEQA analysis of this Project will be performed as part of the scope of this Agreement.

Attachments:

- **Attachment5.a:** Attachment A: Schaafer & Wheeler Contract, C22184896

CITY OF PALO ALTO CONTRACT NO. C22184896**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF PALO ALTO AND
SCHAAF & WHEELER, CONSULTING CIVIL ENGINEERS**

This Agreement for Professional Services (this “Agreement”) is entered into as of the 15th day of August 2022 (the “Effective Date”), by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and SCHAAF & WHEELER, CONSULTING CIVIL ENGINEERS, a California corporation, located at 4699 Old Ironsides Drive, Suite 350, Santa Clara, CA 95054 (“CONSULTANT”).

The following recitals are a substantive portion of this Agreement and are fully incorporated herein by this reference:

RECITALS

A. CITY intends to comply with the San Francisco Bay Municipal Regional Stormwater NPDES Permit to protect the City’s storm drainage system through the Embarcadero Trash Capture Device (TCD) Project (the “Project”) and desires to engage a consultant to provide engineering design, analysis, planning, and construction management support services in connection with the Project (the “Services”, as detailed more fully in Exhibit A).

B. CONSULTANT represents that it, its employees and subconsultants, if any, possess the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY, in reliance on these representations, desires to engage CONSULTANT to provide the Services as more fully described in Exhibit A, entitled “SCOPE OF SERVICES”.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit A in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM.

The term of this Agreement shall be from the date of its full execution through December 31, 2023 unless terminated earlier pursuant to Section 19 (Termination) of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit B, entitled “SCHEDULE OF PERFORMANCE”. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and

timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services shall be based on the compensation structure detailed in Exhibit C, entitled "COMPENSATION," including any reimbursable expenses specified therein, and the maximum total compensation shall not exceed **Two Hundred Thirty Thousand Five Hundred Seventy-Eight Dollars (\$230,578)**. The hourly schedule of rates, if applicable, is set out in Exhibit C-1, entitled "SCHEDULE OF RATES." Any work performed or expenses incurred for which payment would result in a total exceeding the maximum compensation set forth in this Section 4 shall be at no cost to the CITY.

☒ Optional Additional Services Provision (This provision applies only if checked and a not-to-exceed compensation amount for Additional Services is allocated below under this Section 4.)

In addition to the not-to-exceed compensation specified above, CITY has set aside the not-to-exceed compensation amount of **Twenty-Three Thousand Fifty-Eight Dollars (\$23,058)** for the performance of Additional Services (as defined below). The total compensation for performance of the Services, Additional Services and any reimbursable expenses specified in Exhibit C, shall not exceed **Two Hundred Fifty-Three Thousand Six Hundred Thirty-Six Dollars (\$253,636)**, as detailed in Exhibit C.

"Additional Services" means any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit A. CITY may elect to, but is not required to, authorize Additional Services up to the maximum amount of compensation set forth for Additional Services in this Section 4. CONSULTANT shall provide Additional Services only by advanced, written authorization from CITY as detailed in this Section. Additional Services, if any, shall be authorized by CITY with a Task Order assigned and authorized by CITY's Project Manager, as identified in Section 13 (Project Management). Each Task Order shall be in substantially the same form as Exhibit A-1, entitled "PROFESSIONAL SERVICES TASK ORDER". Each Task Order shall contain a specific scope of services, schedule of performance and maximum compensation amount, in accordance with the provisions of this Agreement. Compensation for Additional Services shall be specified by CITY in the Task Order, based on whichever is lowest: the compensation structure set forth in Exhibit C, the hourly rates set forth in Exhibit C-1, or a negotiated lump sum.

To accept a Task Order, CONSULTANT shall sign the Task Order and return it to CITY's Project Manager within the time specified by the Project Manager, and upon authorization by CITY (defined as counter-signature by the CITY Project Manager), the fully executed Task Order shall become part of this Agreement. The cumulative total compensation to CONSULTANT for all Task Orders authorized under this Agreement shall not exceed the amount of compensation set forth for Additional Services in this Section 4. CONSULTANT shall only be compensated for Additional Services performed under an authorized Task Order and only up to the maximum amount of compensation set forth for

Additional Services in this Section 4. Performance of and payment for any Additional Services are subject to all requirements and restrictions in this Agreement.

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the Services performed and the applicable charges (including, if applicable, an identification of personnel who performed the Services, hours worked, hourly rates, and reimbursable expenses), based upon Exhibit C or, as applicable, CONSULTANT's schedule of rates set forth in Exhibit C-1. If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT's invoices shall be subject to verification by CITY. CONSULTANT shall send all invoices to CITY's Project Manager at the address specified in Section 13 (Project Management) below. CITY will generally process and pay invoices within thirty (30) days of receipt of an acceptable invoice.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it, its employees and subcontractors, if any, possess the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subcontractors, if any, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services. All Services to be furnished by CONSULTANT under this Agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement, as amended from time to time. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT's errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any change order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds the CITY's stated construction budget by ten percent (10%) or more, CONSULTANT shall make recommendations to CITY for aligning the Project design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. CONSULTANT acknowledges and agrees that CONSULTANT and any agent or employee of CONSULTANT will act as and shall be

deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which CONSULTANT performs the Services requested by CITY under this Agreement. CONSULTANT and any agent or employee of CONSULTANT will not have employee status with CITY, nor be entitled to participate in any plans, arrangements, or distributions by CITY pertaining to or in connection with any retirement, health or other benefits that CITY may offer its employees. CONSULTANT will be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, workers' compensation, unemployment compensation, insurance, and other similar responsibilities related to CONSULTANT's performance of the Services, or any agent or employee of CONSULTANT providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between CITY and CONSULTANT or any agent or employee of CONSULTANT. Any terms in this Agreement referring to direction from CITY shall be construed as providing for direction as to policy and the result of CONSULTANT's provision of the Services only, and not as to the means by which such a result is obtained.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written approval of the City Manager. Any purported assignment made without the prior written approval of the City Manager will be void and without effect. Subject to the foregoing, the covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators and assignees of the parties.

SECTION 12. SUBCONTRACTING.

☐ **Option A: No Subcontractor:** CONSULTANT shall not subcontract any portion of the Services to be performed under this Agreement without the prior written authorization of the City Manager or designee. In the event CONSULTANT does subcontract any portion of the work to be performed under this Agreement, CONSULTANT shall be fully responsible for all acts and omissions of subcontractors.

☒ **Option B: Subcontracts Authorized:** Notwithstanding Section 11 (Assignment) above, CITY agrees that subcontractors may be used to complete the Services. The subcontractors authorized by CITY to perform work on this Project are:

Bess Testlab, Inc., 2463 Tripaldi Way, Hayward, CA 94545
Cal Engineering & Geology (CE&G), 6455 Almaden Expressway, Suite 100, San Jose, CA 95120
Kier & Wright, 3350 Scott Boulevard, Building 22, Santa Clara, CA 95054
WRA, Inc., 4225 Hollis Street, Emeryville, CA 94608
Verux, Inc., 2443 Fair Oaks Boulevard, #150, Sacramento, CA 95825

CONSULTANT shall be responsible for directing the work of any subcontractors and for any compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning compensation of subcontractors. CONSULTANT shall be fully responsible to CITY for all acts and omissions of subcontractors. CONSULTANT shall change or add subcontractors only with the prior written approval of the City Manager or designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Caitlin Gilmore, PE, Vice President, 4699 Old Ironsides Drive, Suite 350, Santa Clara CA 95054, Telephone 408-246-4848, Email: cgilmore@swsv.com as the CONSULTANT's Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services and represent CONSULTANT during the day-to-day performance of the Services. If circumstances cause the substitution of the CONSULTANT's Project Manager or any other of CONSULTANT's key personnel for any reason, the appointment of a substitute Project Manager and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's Project Manager. CONSULTANT, at CITY's request, shall promptly remove CONSULTANT personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property.

CITY's Project Manager is Young Tran, Senior Engineer, Public Works Department, Engineering Division, 250 Hamilton Avenue, Palo Alto, CA, 94301, Telephone: 650-329-2160, Email: young.tran@cityofpaloalto.org. CITY's Project Manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate Project Manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. All work product, including without limitation, all writings, drawings, studies, sketches, photographs, plans, reports, specifications, computations, models, recordings, data, documents, and other materials and copyright interests developed under this Agreement, in any form or media, shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work product pursuant to this Agreement are vested in CITY, and CONSULTANT hereby waives and relinquishes all claims to copyright or other intellectual property rights in favor of CITY. Neither CONSULTANT nor its subcontractors, if any, shall make any of such work product available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Services.

SECTION 15. AUDITS. CONSULTANT agrees to permit CITY and its authorized representatives to audit, at any reasonable time during the term of this Agreement and for four (4) years from the date of final payment, CONSULTANT's records pertaining to matters covered by this Agreement, including without limitation records demonstrating compliance with the requirements of Section 10 (Independent Contractor). CONSULTANT further agrees to maintain and retain accurate books and records in accordance with generally accepted accounting principles for at least four (4) years after the expiration or earlier termination of this Agreement or the completion of any audit hereunder, whichever is later.

SECTION 16. INDEMNITY.

☒ [Option A applies to the following design professionals pursuant to Civil Code Section 2782.8: architects; landscape architects; registered professional engineers and licensed professional land surveyors.] 16.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents

(each an “Indemnified Party”) from and against any and all third party demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney’s fees, experts fees, court costs and disbursements (“Claims”) to the extent that such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party. CITY will reimburse CONSULTANT for the proportionate percentage of defense costs exceeding CONSULTANT’s proportionate percentage of fault as determined by the final judgment of a court of competent jurisdiction.

☐[Option B applies to any consultant who does not qualify as a design professional as defined in Civil Code Section 2782.8.] 16.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney’s fees, experts fees, court costs and disbursements (“Claims”) resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from a Claim arising from the active negligence or willful misconduct of an Indemnified Party that is not contributed to by any act of, or by any omission to perform a duty imposed by law or agreement by, CONSULTANT, its officers, employees, agents or contractors under this Agreement.

16.3. The acceptance of CONSULTANT’s Services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. No waiver of a condition or nonperformance of an obligation under this Agreement is effective unless it is in writing in accordance with Section 29.4 of this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted shall apply solely to the specific instance expressly stated. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit D, entitled “INSURANCE REQUIREMENTS”. CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best’s Key Rating Guide ratings of A-:VII or higher which are licensed or

authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. If CONSULTANT fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided under this Agreement or at law, the City Manager may terminate this Agreement sooner upon written notice of termination. Upon receipt of any notice of suspension or termination, CONSULTANT will discontinue its performance of the Services on the effective date in the notice of suspension or termination.

19.2. In event of suspension or termination, CONSULTANT will deliver to the City Manager on or before the effective date in the notice of suspension or termination, any and all work product, as detailed in Section 14 (Ownership of Materials), whether or not completed, prepared by CONSULTANT or its contractors, if any, in the performance of this Agreement. Such work product is the property of CITY, as detailed in Section 14 (Ownership of Materials).

19.3. In event of suspension or termination, CONSULTANT will be paid for the Services rendered and work products delivered to CITY in accordance with the Scope of Services up to the effective date in the notice of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's Services provided in material conformity with this Agreement as such determination is made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will

survive any expiration or termination of this Agreement: 14, 15, 16, 17, 19.2, 19.3, 19.4, 20, 25, 27, 28, 29 and 30.

19.4. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement, unless made in accordance with Section 17 (Waivers).

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
 City of Palo Alto
 Post Office Box 10250
 Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the Project Manager at the address of
CONSULTANT recited on the first page of this Agreement.

CONSULTANT shall provide written notice to CITY of any change of address.

SECTION 21. CONFLICT OF INTEREST.

21.1. In executing this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subcontractors or other persons or parties having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California, as amended from time to time. CONSULTANT agrees to notify CITY if any conflict arises.

21.3. If the CONSULTANT meets the definition of a "Consultant" as defined by the Regulations of the Fair Political Practices Commission, CONSULTANT will file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act of 1974, as amended from time to time.

SECTION 22. NONDISCRIMINATION; COMPLIANCE WITH ADA.

22.1. As set forth in Palo Alto Municipal Code Section 2.30.510, as amended from time to time, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person due to that person's race, skin color, gender, gender

identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

22.2. CONSULTANT understands and agrees that pursuant to the Americans Disabilities Act (“ADA”), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor or subcontractor, are required to be accessible to the disabled public. CONSULTANT will provide the Services specified in this Agreement in a manner that complies with the ADA and any other applicable federal, state and local disability rights laws and regulations, as amended from time to time. CONSULTANT will not discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Agreement.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the CITY’s Environmentally Preferred Purchasing policies which are available at CITY’s Purchasing Department, hereby incorporated by reference and as amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY’s Zero Waste Program. Zero Waste best practices include, first, minimizing and reducing waste; second, reusing waste; and, third, recycling or composting waste. In particular, CONSULTANT shall comply with the following Zero Waste requirements:

(a) All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY’s Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable-based inks.

(b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY’s Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Department’s office.

(c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE. CONSULTANT shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONSULTANT shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code Section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code Section 4.62.060.

SECTION 25. NON-APPROPRIATION. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code, as amended from time to time. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS.

☐ 26.1. **This Project is not subject to prevailing wages and related requirements.** CONSULTANT is not required to pay prevailing wages and meet related requirements under the California Labor Code and California Code of Regulations in the performance and implementation of the Project if the contract:

- (1) is not a public works contract;
- (2) is for a public works construction project of \$25,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j); or
- (3) is for a public works alteration, demolition, repair, or maintenance project of \$15,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j).

OR

☒ 26.1. **This Project is subject to prevailing wages and related requirements as a “public works” under California Labor Code Sections 1720 et seq. and related regulations.** CONSULTANT is required to pay general prevailing wages as defined in California Labor Code Section 1773.1 and Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Pursuant to Labor Code Section 1773, the CITY has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the State of California Department of Industrial Relations (“DIR”). Copies of these rates may be obtained at the CITY’s Purchasing Department office. The general prevailing wage rates are also available at the DIR, Division of Labor Statistics and Research, web site (see e.g. <http://www.dir.ca.gov/DLSR/PWD/index.htm>) as amended from time to time. CONSULTANT shall post a copy of the general prevailing wage rates at all Project job sites and shall pay the adopted prevailing wage rates as a minimum. CONSULTANT shall comply with all applicable provisions of Division 2, Part 7, Chapter 1 of the California Labor Code (Labor Code Section 1720 et seq.), including but not limited to Sections 1725.5, 1771, 1771.1, 1771.4, 1773.2, 1774, 1775, 1776, 1777.5, 1782, 1810, 1813 and 1815, and all applicable implementing regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq. (8 CCR Section 16000 et seq.), as amended from time to time. CONSULTANT shall comply with the requirements of Exhibit E, entitled “DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS”, for any contract for public works construction, alteration, demolition, repair or maintenance, including but not limited to the obligations to register with, and furnish certified payroll records directly to, DIR.

SECTION 27. CLAIMS PROCEDURE FOR “9204 PUBLIC WORKS PROJECTS”. For

purposes of this Section 27, a “9204 Public Works Project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Cal. Pub. Cont. Code § 9204.) Per California Public Contract Code Section 9204, for Public Works Projects, certain claims procedures shall apply, as set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

☐ **This Project is a 9204 Public Works Project** and is required to comply with the claims procedures set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

OR

☒ **This Project is not a 9204 Public Works Project.**

SECTION 28. CONFIDENTIAL INFORMATION.

28.1. In the performance of this Agreement, CONSULTANT may have access to CITY’s Confidential Information (defined below). CONSULTANT will hold Confidential Information in strict confidence, not disclose it to any third party, and will use it only for the performance of its obligations to CITY under this Agreement and for no other purpose. CONSULTANT will maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the security, confidentiality and integrity of the Confidential Information. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to its employees, agents and subcontractors, if any, to the extent they have a need to know in order to perform CONSULTANT’s obligations to CITY under this Agreement and for no other purpose, provided that the CONSULTANT informs them of, and requires them to follow, the confidentiality and security obligations of this Agreement.

28.2. “Confidential Information” means all data, information (including without limitation “Personal Information” about a California resident as defined in Civil Code Section 1798 et seq., as amended from time to time) and materials, in any form or media, tangible or intangible, provided or otherwise made available to CONSULTANT by CITY, directly or indirectly, pursuant to this Agreement. Confidential Information excludes information that CONSULTANT can show by appropriate documentation: (i) was publicly known at the time it was provided or has subsequently become publicly known other than by a breach of this Agreement; (ii) was rightfully in CONSULTANT’s possession free of any obligation of confidence prior to receipt of Confidential Information; (iii) is rightfully obtained by CONSULTANT from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of CONSULTANT without any use of or access to the Confidential Information; or (v) CONSULTANT has written consent to disclose signed by an authorized representative of CITY.

28.3. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to the extent required by order of a court of competent jurisdiction or governmental body, provided that CONSULTANT will notify CITY in writing of such order immediately upon receipt and prior to any such disclosure (unless CONSULTANT is prohibited by law from doing so), to give CITY an opportunity to oppose or otherwise respond to such order.

28.4. CONSULTANT will notify City promptly upon learning of any breach in the security of its systems or unauthorized disclosure of, or access to, Confidential Information in its possession or control, and if such Confidential Information consists of Personal Information, CONSULTANT will provide information to CITY sufficient to meet the notice requirements of Civil Code Section 1798 et seq., as applicable, as amended from time to time.

28.5. Prior to or upon termination or expiration of this Agreement, CONSULTANT will honor any request from the CITY to return or securely destroy all copies of Confidential Information. All Confidential Information is and will remain the property of the CITY and nothing contained in this Agreement grants or confers any rights to such Confidential Information on CONSULTANT.

28.6. If selected in Section 30 (Exhibits), this Agreement is also subject to the terms and conditions of the Information Privacy Policy and Cybersecurity Terms and Conditions.

SECTION 29. MISCELLANEOUS PROVISIONS.

29.1. This Agreement will be governed by California law, without regard to its conflict of law provisions.

29.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

29.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

29.4. This Agreement, including all exhibits, constitutes the entire and integrated agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements, negotiations, representations, statements and undertakings, either oral or written. This Agreement may be amended only by a written instrument, which is signed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code, as amended from time to time.

29.5. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the unaffected provisions of this Agreement will remain in full force and effect.

29.6. In the event of a conflict between the terms of this Agreement and the exhibits hereto (per Section 30) or CONSULTANT's proposal (if any), the Agreement shall control. In the event of a conflict between the exhibits hereto and CONSULTANT's proposal (if any), the exhibits shall control.

29.7. The provisions of all checked boxes in this Agreement shall apply to this

Agreement; the provisions of any unchecked boxes shall not apply to this Agreement.

29.8. All section headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

29.9. This Agreement may be signed in multiple counterparts, which, when executed by the authorized representatives of the parties, shall together constitute a single binding agreement.

SECTION 30. EXHIBITS. Each of the following exhibits, if the check box for such exhibit is selected below, is hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- ☒ EXHIBIT A: SCOPE OF SERVICES
- ☒ EXHIBIT A-1 PROFESSIONAL SERVICES TASK ORDER
- ☒ EXHIBIT B: SCHEDULE OF PERFORMANCE
- ☒ EXHIBIT C: COMPENSATION
- ☒ EXHIBIT C-1: SCHEDULE OF RATES
- ☒ EXHIBIT D: INSURANCE REQUIREMENTS
- ☒ EXHIBIT E: DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS

THIS AGREEMENT IS NOT COMPLETE UNLESS ALL SELECTED EXHIBITS ARE ATTACHED.

CONTRACT NO. C22184896 SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement as of the date first above written.

CITY OF PALO ALTO

**SCHAAF & WHEELER, CONSULTING
CIVIL ENGINEERS**

Officer 1

DocuSigned by:

Caitlin J. Tharp

BBF25B19F525424...

By: _____

Caitlin J. Tharp

Name: _____

Vice President RCE 76810

Title: _____

City Manager

APPROVED AS TO FORM:

Officer 2

DocuSigned by:

Daniel J. Schaaf, Secretary

38554FFBD1594CC...

By: _____

Daniel J. Schaaf, Secretary

Name: _____

Vice President

Title: _____

City Attorney or Designee

EXHIBIT A SCOPE OF SERVICES

CONSULTANT shall provide the Services detailed in this Exhibit A, entitled “SCOPE OF SERVICES”.

Feasibility and Project Scoping Phase

Conduct engineering analysis, master planning, hydraulic analysis and special studies for the CITY’s Trash Capture Device (TCD) project to include, but not be limited to:

- A. Define proposed scope of work such as project description and scope of services, including deliverables, schedule of performance and compensation.
- B. Coordinate with regulatory agencies for the development, identification, and completion of environmental and/or encroachment permitting requirements until permit is approved (if required).
- C. If necessary, provide mitigation analysis (i.e., vegetation, tree removal impacts) and design per regulatory agency requirement/s.
- D. Perform site investigation for feasibility
- E. Apply for and obtain CEQA Categorical Exemption.

Design Phase

- A. Analyze and/or develop detailed design schedules.
- B. Regularly meet with CITY project team for updates and projections.
- C. Assess and provide design plans (50%, 95%, and Bid Set).
- D. Ensure that the TCD design and device meets the full trash capture requirements set forth by the State Water Board and the Regional Water Quality Control Board (RWQCB) and be on the approved list of certified full trash capture units.
- E. Design plans, details, and specifications suitable for bid and award. Final bid documents must incorporate comments from various CITY’s departments and other agencies having jurisdiction.
- F. Provide assistance with diversion planning and/or design for the TCD project in AutoCAD and PDF file format.

Construction Management Support

CONSULTANT shall provide construction management support services on the TCD Project to include, but not be limited to:

- A. Bid-related services: Respond to questions during bid solicitation period, review bids for conformance, and review various contract documents.
- B. Construction-related services: Manage and review submittals, monitor construction schedule, progress, and budget; respond to requests for information (RFI's) and review final record details; provide inspection and quality assurance reviews; and perform third party review during construction phase for code compliance, coordination, constructability, and/or quality assurance. Provide any specialty support (structural, mechanical, electrical). All RFI's must be answered within five (5) business days, including responses from sub-consultants.
- C. Post-construction related services: Punch list management and recommendation for substantial completion; coordinate final construction documents, prepare and provide as-built drawings in both AutoCAD R2018, Geographic Information Systems (GIS), and PDF formats.

EXHIBIT A-1 PROFESSIONAL SERVICES TASK ORDER

CONSULTANT shall perform the Services detailed below in accordance with all the terms and conditions of the Agreement referenced in Item 1A below. All exhibits referenced in Item 8 are incorporated into this Task Order by this reference. CONSULTANT shall furnish the necessary facilities, professional, technical and supporting personnel required by this Task Order as described below.

CONTRACT NO.

OR PURCHASE ORDER REQUISITION NO. (AS APPLICABLE)

- 1A. MASTER AGREEMENT NO. (MAY BE SAME AS CONTRACT / P.O. NO. ABOVE):
- 1B. TASK ORDER NO.:
2. CONSULTANT NAME:
3. PERIOD OF PERFORMANCE: START: COMPLETION:
4. TOTAL TASK ORDER PRICE: \$ _____
BALANCE REMAINING IN MASTER AGREEMENT/CONTRACT \$ _____
5. BUDGET CODE _____
COST CENTER _____
COST ELEMENT _____
WBS/CIP _____
PHASE _____
6. CITY PROJECT MANAGER'S NAME & DEPARTMENT: _____
7. DESCRIPTION OF SCOPE OF SERVICES (Attachment A)
MUST INCLUDE:
 - SERVICES AND DELIVERABLES TO BE PROVIDED
 - SCHEDULE OF PERFORMANCE
 - MAXIMUM COMPENSATION AMOUNT AND RATE SCHEDULE (as applicable)
 - REIMBURSABLE EXPENSES, if any (with "not to exceed" amount)
8. ATTACHMENTS: A: Task Order Scope of Services B (if any): _____

I hereby authorize the performance of the work described in this Task Order.

I hereby acknowledge receipt and acceptance of this Task Order and warrant that I have authority to sign on behalf of Consultant.

APPROVED:
CITY OF PALO ALTO

APPROVED:
COMPANY NAME: _____

BY: _____
Name _____
Title _____
Date _____

BY: _____
Name _____
Title _____
Date _____

EXHIBIT B
SCHEDULE OF PERFORMANCE

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the Project Managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed ("NTP") from the CITY.

Milestones	Completion Number of Weeks (as specified below) from NTP
1. Feasibility & Project Scoping	14 weeks
2. Design	31 weeks
3. Construction Management Support	74 weeks

☒ Optional Schedule of Performance Provision for On-Call or Additional Services Agreements.
(This provision only applies if checked and only applies to on-call agreements per Section 1 or agreements with Additional Services per Section 4.)

The schedule of performance shall be as provided in the approved Task Order, as detailed in Section 1 (Scope of Services) in the case of on-call Services, or as detailed in Section 4 in the case of Additional Services, provided in all cases that the schedule of performance shall fall within the term as provided in Section 2 (Term) of this Agreement.

EXHIBIT C COMPENSATION

CITY agrees to compensate CONSULTANT for Services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the rate schedule attached as Exhibit C-1 up to the not to exceed budget amount for each task set forth below.

CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below, provided that the total compensation for the Services, including any specified reimbursable expenses, and the total compensation for Additional Services (if any, per Section 4 of the Agreement) do not exceed the amounts set forth in Section 4 of this Agreement.

CONSULTANT agrees to complete all Services, any specified reimbursable expenses, and Additional Services (if any, per Section 4), within this/these amount(s). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth in this Agreement shall be at no cost to the CITY.

BUDGET SCHEDULE

TASK	NOT TO EXCEED AMOUNT
Task 1 (Feasibility and Project Scoping)	\$120,042
Task 2 (Design)	\$79,200
Task 3 (Construction Management Support)	\$31,336
Sub-total for Services	\$230,578
Reimbursable Expenses (if any)	\$0
Total for Services and Reimbursable Expenses	\$0
Additional Services (if any, per Section 4)	\$23,058
Maximum Total Compensation	\$253,636

REIMBURSABLE EXPENSES

CONSULTANT'S ordinary business expenses, such as administrative, overhead, administrative support time/overtime, information systems, software and hardware, photocopying, telecommunications (telephone, internet), in-house printing, insurance and other ordinary business expenses, are included within the scope of payment for Services and are not reimbursable expenses hereunder.

Reimbursable expenses, if any are specified as reimbursable under this section, will be reimbursed at actual cost. The expenses (by type, e.g. travel) for which CONSULTANT will be reimbursed are: **NONE** up to the not-to-exceed amount of: **\$0.00**.

EXHIBIT C-1 SCHEDULE OF RATES

CONSULTANT's schedule of rates is as follows:

Scope	Labor Categories (e.g., Consultant, Sr. Consultant, etc.)	Est. Hours	Hourly Rate	Extended Rate
Phase 1 - Feasibility and Project Scope				
Task 1.A Define Project and Project Coordination	Schaaf & Wheeler - Principal-in-Charge	6	\$250	\$1,500
	Schaaf & Wheeler - Project Manager	60	\$250	\$15,000
	WRA - Director	16	\$260	\$4,160
	WRA - Environmental Planner II	8	\$177	\$1,416
	WRA - Clerical Support	2	\$84	\$168
Task 1.B Regulatory Agencies Coordination	Schaaf & Wheeler - Project Manager	8	\$250	\$2,000
	WRA - Director	6	\$260	\$1,560
	WRA - Environmental Planner II	6	\$177	\$1,062
	WRA - Senior Scientist	20	\$177	\$3,540
	WRA - Technician	20	\$121	\$2,420
Task 1.C Mitigation Analysis	Schaaf & Wheeler - Project Manager	2	\$250	\$500
	WRA - Director	5	\$260	\$1,300
	WRA - GIS Professional II	4	\$185	\$740
	WRA - Technician	20	\$121	\$2,420
Task 1.D Site Investigations				
<i>Task 1.D.1 Geotechnical Investigation</i>	Schaaf & Wheeler - Principal-in-Charge	2	\$250	\$500
	Schaaf & Wheeler - Project Manager	4	\$250	\$1,000
	Schaaf & Wheeler - Project Engineer	2	\$185	\$370
	CE&G - Principal Engineer	9	\$250	\$2,250
	CE&G - Senior Engineer/Geologist	29	\$210	\$6,090
	CE&G - Project Engineer	52	\$175	\$9,100
	CE&G - Senior GIS / CADD Specialist	6	\$150	\$900
	CE&G - Project Assistant	2	\$95	\$190
	CE&G - Reimbursables (drilling sub, utility locator, lab testing, and mileage)	n/a	n/a	\$7,915
<i>Task 1.D.2 Topographic Survey and Boundary Research</i>	Schaaf & Wheeler - Principal-in-Charge	2	\$250	\$500
	Schaaf & Wheeler - Project Manager	4	\$250	\$1,000
	Schaaf & Wheeler - Project Engineer	2	\$185	\$370
	Kier + Wright - Principal Engineer	3	\$256	\$768
	Kier + Wright - Project Surveyor	10	\$166	\$1,660
	Kier + Wright - Survey Technician	36	\$119	\$4,284
	Kier + Wright - 2-man Survey Crew	10	\$319	\$3,190
<i>Task 1.D.3 Utility Locating</i>	Schaaf & Wheeler - Principal-in-Charge	2	\$250	\$500
	Schaaf & Wheeler - Project Manager	4	\$250	\$1,000
	Schaaf & Wheeler - Project Engineer	2	\$185	\$370
	BESS - 2- Person Utility Potholing w/air vacuum truck	8	\$295	\$2,360
	BESS - 2- Person Surface Restoration w/ equipment	8	\$285	\$2,280
	BESS - 1-Person Traffic Control w/arrow truck	8	\$145	\$1,160

Scope	Labor Categories (e.g., Consultant, Sr. Consultant, etc.)	Est. Hours	Hourly Rate	Extended Rate
Task 1.E Apply and Obtain CEQA Categorical Exemption	Schaaf & Wheeler - Project Manager	4	\$250	\$1,000
	WRA - Cultural Resources Study	n/a	n/a	\$3,500
	WRA - Director	14	\$260	\$3,640
	WRA - Senior Scientist	24	\$177	\$4,248
	WRA - Environmental Planner II	42	\$177	\$7,434
	WRA - GIS Professional II	12	\$185	\$2,220
	WRA - Technician	32	\$121	\$3,872
Subconsultant Markup (10%)		n/a	n/a	\$8,585
TOTAL NOT TO EXCEED, TASK 1				\$120,042
Phase 2 – Design				
Task 2.A Design Report	Schaaf & Wheeler - Principal-in-Charge	4	\$250	\$1,000
	Schaaf & Wheeler - Project Manager	16	\$250	\$4,000
	Schaaf & Wheeler - Project Engineer	80	\$185	\$14,800
Task 2.B Regularly Meet With City Project Team for Updates and Projections	Schaaf & Wheeler - Principal-in-Charge	10	\$250	\$2,500
	Schaaf & Wheeler - Project Manager	10	\$250	\$2,500
	Schaaf & Wheeler - Project Engineer	10	\$185	\$1,850
Task 2.C PS&E				
Task 2.C.1 50%	Schaaf & Wheeler - Principal-in-Charge	8	\$250	\$2,000
	Schaaf & Wheeler - Project Manager	24	\$250	\$6,000
	Schaaf & Wheeler - Project Engineer	80	\$185	\$14,800
Task 2.C.2 95%	Schaaf & Wheeler - Principal-in-Charge	6	\$250	\$1,500
	Schaaf & Wheeler - Project Manager	16	\$250	\$4,000
	Schaaf & Wheeler - Project Engineer	60	\$185	\$11,100
	Verux - SWPPP	n/a	n/a	\$2,500
Task 2.C.3 Bid Documents	Schaaf & Wheeler - Principal-in-Charge	4	\$250	\$1,000
	Schaaf & Wheeler - Project Manager	8	\$250	\$2,000
	Schaaf & Wheeler - Project Engineer	40	\$185	\$7,400
Subconsultant Markup (10%)				\$250
TOTAL NOT TO EXCEED, TASK 2				\$79,200
Phase 3 – Construction Management Support				
Task 3.A Bid-Related Services	Schaaf & Wheeler - Principal-in-Charge	4	\$250	\$1,000
	Schaaf & Wheeler - Project Manager	8	\$250	\$2,000
	Schaaf & Wheeler - Project Engineer	24	\$185	\$4,440
Task 3.B Construction-Related Services	Schaaf & Wheeler - Principal-in-Charge	2	\$250	\$500
	Schaaf & Wheeler - Project Manager	25	\$250	\$6,250
	Schaaf & Wheeler - Project Engineer	50	\$185	\$9,250
	CE&G - Principal Engineer	2	\$250	\$500
	CE&G - Senior Engineer	6	\$210	\$1,260
Task 3.C Post Construction Services	Schaaf & Wheeler - Principal-in-Charge	4	\$250	\$1000
	Schaaf & Wheeler - Project Manager	8	\$250	\$2000
	Schaaf & Wheeler - Project Engineer	16	\$185	\$2960
Subconsultant Markup (10%)				\$176
TOTAL NOT TO EXCEED, TASK 3				\$31,336
TOTAL NOT TO EXCEED (TASK 1 – 3)				\$230,578

EXHIBIT D INSURANCE REQUIREMENTS

CONSULTANTS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS AS SPECIFIED HEREIN.

REWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS AS SPECIFIED HEREIN.				
REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY	STATUTORY	STATUTORY
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONSULTANT, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONSULTANT AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONSULTANT'S AGREEMENT TO INDEMNIFY CITY.

II. THE CONSULTANT MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL: <https://www.planetbids.com/portal/portal.cfm?companyid=25569>

III. ENDORSEMENT PROVISIONS WITH RESPECT TO THE INSURANCE AFFORDED TO ADDITIONAL INSUREDS:

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

EVIDENCE OF INSURANCE AND OTHER RELATED NOTICES ARE REQUIRED TO BE FILED WITH THE CITY OF PALO ALTO AT THE FOLLOWING URL:

<HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569>

OR

HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP

EXHIBIT E

DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS

This Exhibit shall apply only to a contract for public works construction, alteration, demolition, repair or maintenance work, CITY will not accept a bid proposal from or enter into this Agreement with CONSULTANT without proof that CONSULTANT and its listed subcontractors are registered with the California Department of Industrial Relations (“DIR”) to perform public work, subject to limited exceptions. City requires CONSULTANT and its listed subcontractors, if any, to comply with all applicable requirements of the California Labor Code including but not limited to Labor Code Sections 1720 through 1861, and all applicable related regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. This Exhibit E applies in addition to the provisions of Section 26 (Prevailing Wages and DIR Registration for Public Works Contracts) of the Agreement.

CITY provides notice to CONSULTANT of the requirements of California Labor Code Section 1771.1(a), which reads:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

This Project is subject to compliance monitoring and enforcement by DIR. All contractors must be registered with DIR per Labor Code Section 1725.5 in order to submit a bid. All subcontractors must also be registered with DIR. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with DIR. Additional information regarding public works and prevailing wage requirements is available on the DIR web site (see e.g. <http://www.dir.ca.gov>) as amended from time to time.

CITY gives notice to CONSULTANT and its listed subcontractors that CONSULTANT is required to post all job site notices prescribed by law or regulation.

CONSULTANT shall furnish certified payroll records directly to the Labor Commissioner (DIR) in accordance with Subchapter 3, Title 8 of the California Code of Regulations Section 16461 (8 CCR Section 16461).

CITY requires CONSULTANT and its listed subcontractors to comply with the requirements of Labor Code Section 1776, including but not limited to:

Keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by, respectively, CONSULTANT and its listed subcontractors, in connection with the Project.

The payroll records shall be verified as true and correct and shall be certified and made available for inspection at all reasonable hours at the principal office of CONSULTANT and its listed subcontractors, respectively.

At the request of CITY, acting by its Project Manager, CONSULTANT and its listed subcontractors shall make the certified payroll records available for inspection or furnished upon request to the CITY Project Manager within ten (10) days of receipt of CITY's request.

☐ CITY requests CONSULTANT and its listed subcontractors to submit the certified payroll records to CITY's Project Manager at the end of each week during the Project.

If the certified payroll records are not provided as required within the 10-day period, then CONSULTANT and its listed subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and CITY shall withhold the sum total of penalties from the progress payment(s) then due and payable to CONSULTANT.

Inform CITY's Project Manager of the location of CONSULTANT's and its listed subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to CITY's Project Manager within five (5) business days of any change of location of those payroll records.

Eight (8) hours labor constitutes a legal day's work. CONSULTANT shall forfeit as a penalty to CITY, \$25.00 for each worker employed in the execution of the Agreement by CONSULTANT or any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular, Sections 1810 through 1815 thereof, except that work performed by employees of CONSULTANT or any subcontractor in excess of eight (8) hours per day, or forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day, or forty (40) hours per week, at not less than one and one-half (1&1/2) times the basic rate of pay, as provided in Section 1815.

CONSULTANT shall secure the payment of workers' compensation to its employees as provided in Labor Code Sections 1860 and 3700 (Labor Code 1861). CONSULTANT shall sign and file with the CITY a statutorily prescribed statement acknowledging its obligation to secure the payment of workers' compensation to its employees before beginning work (Labor Code 1861). CONSULTANT shall post job site notices per regulation (Labor Code 1771.4(a)(2)).

CONSULTANT shall comply with the statutory requirements regarding employment of apprentices including without limitation Labor Code Section 1777.5. The statutory provisions will be enforced for penalties for failure to pay prevailing wages and for failure to comply with wage and hour laws.



City of Palo Alto City Council Staff Report

(ID # 14376)

Meeting Date: 8/15/2022

Report Type: Consent Calendar

Title: Accept the City Auditor's Quarterly Status Report for January - March 2022

From: City Manager

Lead Department: City Auditor

Recommendation

the Policy and Services Committee and the City Auditor recommends the City Council take the following action:

- 1) Accept the Office of the City Auditor's Quarterly Status Report covering January – March 2022

Discussion

Quarterly Status Report – January – March 2022

In accordance with Task 5 [of our agreement with the City](#), Baker Tilly is required to report quarterly on a variety of topics, generally including progress to plan.

Our presentation includes the following high level status updates organized by task within our agreement with the City:

- Task 1 – Citywide Risk Assessment
 - Presented to and Approved by P&S on March 8, 2022 ([ID #13911](#))
- Task 2 – Annual Audit Plan
 - Presented to and Approved by P&S on March 8, 2022 ([ID #13911](#))
- Task 3 – Financial Audit
 - Finalized selection of Financial Auditor and prepared to obtain City Council approval of a new contract at an April Meeting
- Task 4 – Execute Audit Plan
 - Obtained City Council consent of the Construction Project Controls audit activity report ([ID #13888](#))
 - Obtained City Council consent of the initial Public Safety Building memo ([ID #13890](#))

- Presented the Economic Recovery Advisory report to the Policy and Services Committee ([ID #13909](#))
 - Obtained City Council approval of the Wire Payment Process and Controls Review task order ([ID #13891](#))
- Task 5 – Periodic Reporting and Hotline Monitoring
 - Presented the Quarterly Report for the period ending 12/31/21 to the Policy and Services Committee ([ID #14011](#))
- Task 6 – City Auditor Evaluation
 - N/A

This item was reviewed by the Policy and Service Committee on June 14, 2022, and unanimously approved.



City of Palo Alto City Council Staff Report

(ID # 13916)

Meeting Date: 8/15/2022

Report Type: Consent Calendar

Title: Approval of the Office of the City Auditor's Nonprofit Agreement Risk Management Review

From: City Manager

Lead Department: City Auditor

Recommendation

The Policy and Services Committee, City Auditor, and Staff recommend that the City Council approve the attached Non-Profit Agreement Risk Management Review report.

Background

Baker Tilly, in its capacity serving as the Office of the City Auditor (OCA), performed a citywide risk assessment that assessed a wide range of risk areas, including strategic, financial, operational, compliance, technological, and reputation risks. The purpose of the assessment was to identify and prioritize risks to develop the annual audit plan.

During the [FY2021 risk assessment](#), the OCA identified risks related to nonprofit agreements and included an audit activity in the annual audit plan.

Discussion

Through various agreements, the City of Palo Alto (City) often supports nonprofit organizations that serve the community to help advance the mission of the organizations. Such agreements include grant agreements (e.g., Community Development Block Grant (CDBG)), professional services agreements, general services agreements, facilities agreements, and lease agreements. The OCA performed a review on a sample of the City's nonprofit agreements. .

The objectives of the audit activity were to:

- 1) Determine whether appropriate policies and procedures are applied consistently by all departments of the City of Palo Alto for entering into and monitoring agreements with nonprofit organizations.
- 2) Determine whether adequate processes and monitoring activities are implemented to ensure that performance requirements are met by nonprofit organizations.

Through the audit, the OCA identified two (2) findings that lead to five (5) recommended actions. The analysis, observations, and recommendations are summarized in the attached report.

- Finding 1: Out of 10 Nonprofit service agreements the OCA reviewed, three (3) agreements did not include adequate information on performance and reporting expectations. Additionally, three (3) agreements had some instances of noncompliance with the required reports and deliverables. The OCA recommends the following:
 - All nonprofit agreements should define the service level expectations, including the goals, performance measures, and reporting requirements that enable the City to monitor the performance of nonprofit organizations and achievement of intended benefits.
 - The City should take steps to ensure that the City's responsibilities in the agreements are achievable before the agreements are signed.
 - The City should track performance to identify the risks associated with continuing or discontinuing the contractual relationships with nonprofits and take appropriate actions.
- Finding 2: For six (6) nonprofit lease agreements that do not have separate service agreements, four lease agreements do not include any performance and reporting requirements other than brief descriptions of services to be provided on the premises. Two (2) other agreements require only annual submission of a report of operations. Additionally, the City's Leased Use of City Land/Facilities Policy does not discuss the process to ensure that the intended services are provided on the premises. Furthermore, the City's non-monetary support was not analyzed using the estimated fair market rental value as required by the policy. The OCA recommends the following:
 - Lease agreements with significantly reduced rent amounts should include performance and reporting requirements, if there is no separate agreement for the services provided on the premises.
 - The City's non-monetary support should be analyzed based on the estimated fair market rental value and non-monetary benefits to be provided by nonprofit organizations to determine the appropriate compensation for nonprofits' use of the City-owned properties.

The City Manager's Office generally concurred with each finding and has drafted action plans for each item that can be found in Appendix D to the audit report.

The Office of the City Auditor will perform periodic follow up procedures to validate that the recommendations have been addressed as indicated in management responses.

Timeline, Resource Impact, Policy Implications

The timeline for implementation of corrective action plans is identified within the attached report. Staff anticipated this work to be done in FY 2023 including work with the City Council on policy development in alignment with the recommended actions identified by OCA.

Stakeholder Engagement

The Office of the City Auditor worked primarily with the City Manager's Office and engaged with additional stakeholders, including the Community Services Department, the Administrative Services Department, and the City Attorney's Office.

Environmental Review

The audit report and its findings are not considered a Project under the California Environmental Quality Act (CEQA).

Attachments:

- **Attachment7.a:** Office of the City Auditor - Nonprofit Agreement Risk Management Review



City of Palo Alto

Office of the City Auditor

Nonprofit Agreement
Risk Management Review

June 14, 2022

Executive Summary

Purpose of the Audit

Baker Tilly US, LLP (Baker Tilly), in its capacity serving as the Office of the City Auditor (OCA), performed a Nonprofit Agreement Risk Management Review. The objectives of this review were to:

- 1) Determine whether appropriate policies and procedures are applied consistently by all departments of City of Palo Alto (the City) for entering into and monitoring agreements with nonprofit organizations.
- 2) Determine whether adequate processes and monitoring activities are implemented to ensure that performance requirements are met by nonprofit organizations.

Report Highlights

Finding 1: Nonprofit Service Agreements

(Page 18)

It is important for the City to assess and monitor performance of nonprofit organizations to ensure that the intended services are provided to citizens efficiently and effectively. In many of the 10 nonprofit service agreements the OCA reviewed, the Scope of Services section included the City's expectations such as goals, expected activities, performance measures, deliverables, and periodic reporting requirements. However, three agreements did not include adequate information on performance and reporting expectations. Additionally, three agreements had some instances of noncompliance with the required reports and deliverables. The responsibilities the City is required to perform are also included in some agreements.

Key Recommendations

- All nonprofit agreements should define the service level expectations, including the goals, performance measures, and reporting requirements that enable the City to monitor the performance of nonprofit organizations and achievement of intended benefits. The higher the risk associated with an agreement, the more refined the performance and reporting expectations should be. The City should also ensure that appropriate City resources are assigned to high-risk agreements to manage such contracts and relationships adequately. Appropriate corrective actions should be taken upon identification of poor performance.
- The City should take steps to ensure that the City's responsibilities in the agreements are achievable before the agreements are signed.
- The City should track performance to identify the risks associated with continuing or discontinuing the contractual relationships with nonprofits and take appropriate actions.

Finding 2: Nonprofit Lease Agreements

(Page 19)

The City enters into lease agreements as a means of supporting nonprofit organizations in the community. The OCA obtained all lease agreements the City had with nonprofit organizations as of August 2021 and compared the terms. Six out of 12 lease agreements with annual rent of \$1 or less have separate service agreements that are administered by the City's project managers from the applicable City departments. For the other six agreements without separate service agreements, four lease agreements do not include any performance and reporting requirements other than brief descriptions of services to be provided on the premises. Two other agreements require only annual submission of a report of operations.

Additionally, the City's Leased Use of City Land/Facilities Policy does not discuss the process to ensure that the intended services are provided on the premises. Furthermore, the City's non-monetary support was not analyzed using the estimated fair market rental value as required by the policy.

Key Recommendations

- Lease agreements with significantly reduced rent amounts should include performance and reporting requirements, if there is no separate agreement for the services provided on the premises. Depending on the risks associated with an agreement, the City may need to assign a project manager, a liaison and/or a relationship manager from the appropriate City department(s) to monitor the performance.
- The City's non-monetary support should be analyzed based on the estimated fair market rental value and non-monetary benefits to be provided by nonprofit organizations to determine the appropriate compensation for nonprofits' use of the City-owned properties.

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Introduction

Objective

The purpose of this audit activity was to:

- 1) Determine whether appropriate policies and procedures are applied consistently by all departments of City of Palo Alto (the City) for entering into and monitoring agreements with nonprofit organizations.
- 2) Determine whether adequate processes and monitoring activities are implemented to ensure that performance requirements are met by nonprofit organizations.

Background

The City strives to provide services that benefit its citizens. Through various agreements, the City often supports nonprofit organizations that serve the community to achieve their mission. Such agreements include grant agreements (e.g. CDBG¹), professional services agreements, general services agreements, facilities agreements, and lease agreements. The City encourages the formation of public/private partnerships and has established the Public/Private Partnerships Policy.

Public-Private Partnership (PPP)

The PPP is defined in the PPP Reference Guide² as “a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility and remuneration is linked to performance.”

Although PPPs often use private sector investment to finance infrastructure projects when public funding is not readily available, there are different types of PPPs formed to address various needs of governments for many functions. Unlike a simple contractual relationship such as outsourcing, “a genuine PPP implies a triadic relationship between the public authority, the private-sector partner, and members of the public concerned with the service. A PPP is-or should be-a mutually beneficial agreement directed toward serving social purpose.”³

Partnerships with community-based organizations are different from typical contracting services. Partnerships involve a contractual relationship between organizations with common missions for their mutual benefits. Therefore, it is important to identify the most suitable partners for the services to be delivered. Successful partnerships rely on communicating regularly, establishing expectations, and assessing performance.⁴ It is important to ensure that

¹ “Annually, the City of Palo Alto receives funds from the U.S. Department of Housing and Urban Development (HUD) to administer the Community Development Block Grant (CDBG) program. This program funds various nonprofit agencies to implement services that benefit low- and moderate-income persons and address community development needs.” [Community Development Block Grant – City of Palo Alto, CA](https://www.cityofpaloalto.org/files/2017/01/Community-Development-Block-Grant-CDBG-Program-Overview.pdf)

² PPP Reference Guide in the PPP Knowledge Lab administered and maintained by the World Bank Group ([PPP Knowledge Lab | PPP Reference Guide](https://pppknowledge.org/guide/sections/83-what-is-the-ppp-reference-guide) <https://pppknowledge.org/guide/sections/83-what-is-the-ppp-reference-guide>)

³ Sadran, Pierre. “public-private partnership”. Encyclopedia Britannica, 25 Sep. 2019, <https://www.britannica.com/topic/public-private-partnership>.

⁴ Making the Most of Contractual Collaborations with Community-Based Non-Profits, 2013, https://www.ca-ilg.org/sites/main/files/file-attachments/making_the_most_of_contractual_collaborations_with_community-based_non-profits_final_7-19-13_0.pdf?1436996039

contractual relationships are reflective of the expectations the City holds for all of its partners. As relationships increase in longevity, this importance is amplified.

The benefits of PPPs are the combination of the private sector with its expertise, resources, and technology and the public sector with services to the public and protection of their interest. However, there are some challenges for the public sector. The procurement and contracting processes for PPPs can be complex. Citizens may not understand PPPs and criticize a lack of transparency.⁵ According to the Guidebook on Promoting Good Governance in Public-Private Partnerships⁶, one of the challenges a government faces is “instigating the procedures and processes involved in delivering successful PPPs and establishing new institutions. Moreover, PPPs require a new type of public expertise that facilitates projects and monitors their performance.” The Guidebook also states, “to work well they require well-functioning institutions, transparent, efficient procedures and accountable and competent public and private sectors, i.e. ‘good governance’.”

The City’s PPP Policy

The City’s Public/Private Partnerships Policy (POLICY AND PROCEDURES 1-25/MGR) dated August 2007 categorizes partnerships into three categories and describes them as follows:

1. “Co-Sponsorships” are the most common type of PPPs and can take the form of one-time event or annual agreements. They are entered into by staff and normally have no or minimal financial impact.
2. “Alliances” involve organizations that have been created for the sole purpose of supporting a City program. They do not receive any direct financial benefit but work closely and cooperatively with staff to implement City goals. They are approved by the City Council if there are any staffing or budgetary implications to the partnership.

Public/private partnership is an agreement between the City and a nonprofit or private organization to provide services or to assist in funding of public facilities and programs. Such partnerships may take various forms, including:

- Acceptance of or solicitation of service or facility proposals
- Facilitation of such proposals through the City’s regulatory process
- Waiver of City General Fund fees to help reduce project costs
- Contributions of City matching funds for construction of facilities to be owned and controlled or operated by the City
- Provision of facilities to private partner at no charge or at a subsidized rent

Source: Public/Private Partnerships Policy (POLICY AND PROCEDURES 1-25/MGR) dated August 2007

3. “Joint Ventures”⁷ involve organizations that have programs or missions independent of the City and enter into a contractual relationship with the City for

⁵ Public-Private Partnerships (P3s): What Local Government Managers Need to Know by Lawrence L. Martin, PhD, MBA, Professor of Public Affairs, University of Central Florida, Orlando; A Policy Issue White Paper for ICMA, International City/County Management Association ([Public-Private Partnerships \(P3s\): What Local Government Managers Need to Know | icma.org](https://icma.org/documents/public-private-partnerships-p3s-what-local-government-managers-need-know) <https://icma.org/documents/public-private-partnerships-p3s-what-local-government-managers-need-know>)

⁶ United Nations, 2008 ([Guidebook on Promoting Good Governance in Public-Private Partnerships | UNECE](https://unece.org/economic-cooperation-and-integration/publications/guidebook-promoting-good-governance-public) <https://unece.org/economic-cooperation-and-integration/publications/guidebook-promoting-good-governance-public>)

⁷ “Joint Venture” under the City’s policy is not the same as a legal joint venture under California partnership laws.

mutual benefits. Each joint venture is uniquely negotiated by the staff and approved by the City Council.

According to the City's policy, PPPs may be initiated by staff, by City Council, or by a private/nonprofit organization. A City-initiated partnership may incorporate incentives, including waiver of non-enterprise fund building and planning fees, reduced lease rates, and free use of space, that are negotiated on a case-by-case basis.

The City's Agreements with Nonprofit Organizations

The City has established partnerships with nonprofit organizations⁸ in the administration of services such as senior services, the animal shelter, urban forestry, local museum, and suicide prevention activities. As of June 2021, there were 46 nonprofit service agreements with a FY21 contract amount of \$10,000 or more, as summarized below. The detailed information is available in [Appendix A](#).

**Table 1: The City's Nonprofit Service Agreements as of June 2021
(FY21 Contract Amount of \$10K or More)**

Responsible Department	FY21 Contract Amount	# of Nonprofit Agreements
Community Services	1,983,433	7
Community Services/Human Services	1,518,188	14
Planning & Development Services/CDBG	1,300,067	12
Public Works	363,258	3
Transportation	350,000	1
Utilities	324,472	2
Administrative Services	160,000	1
Planning	145,000	1
City Manager	100,000	2
PWD-Watershed Protection	84,795	1
Library	35,000	1
Fire	15,000	1
Grand Total	\$ 6,379,213	46

As the City continues to experience difficult years with limited fiscal resources and staffing due to the COVID-19 pandemic and on-going recovery, successful PPPs are significantly important to provide the services and programs that meet the needs of the public efficiently and carry out the City's mission in a sustainable manner.

Lease of City Land/Facilities

The City's Leased Use of City Land/Facilities Policy (POLICY AND PROCEDURES 1-11/ASD) dated October 2006 was established to ensure that City real property is used in the best interest of the Palo Alto citizens and taxpayers. The development and operation of facilities on City-owned property should further public use or provide a public benefit. Open competitive and/or bid

⁸ The Internal Revenue Services' Exempt Organizations Business Master File Extract data shows that approximately 820 tax-exempt organizations based in Palo Alto filed tax returns between 2018 and 2021 (as of December 2021). [Exempt Organizations Business Master File Extract \(EO BMF\) | Internal Revenue Service \(irs.gov\)](#)

processes are used to solicit proposals prior to awarding an Option to Lease (or Lease), and the information considered includes the following:

- The extent to which the proposed leased use satisfies a public need for the proposed services and/or uses
- Consistency of the proposed use with existing City goals and objectives
- The impact of the proposed use (traffic impacts, noise impacts, energy conservation, etc.) upon the immediate neighborhood, the community generally, and the environment
- The degree of public access
- The history and assessment of the proposed group's ability to carry out the construction, if any, and operation of the facility and services as proposed

There were 32 lease agreements with nonprofit organizations as of August 2021 ([Appendix B](#)).

Prior audit findings

The prior audit "Audit of Nonprofit Service Agreements" dated August 29, 2019 reported that, while the Office of Human Services that oversees more than half of the City's nonprofit service agreements effectively monitored contractor performance using an established process and tools, some other departments did not have an established process or tools, which resulted in undetected errors and noncompliance. The report listed four recommendations to improve the City's oversight of nonprofit service agreements. Management's corrective actions were scheduled to be completed by December 2020. Two of four corrective actions are related to Palo Alto Downtown Business and Professional Association (PADBPA) and are currently on hold as a result of the onset of the COVID-19 pandemic. The other two corrective actions were reported as "closed". The detailed status of the corrective actions is shown in [Appendix C](#).

Scope

The OCA reviewed a sample of 10 out of 46 nonprofit agreements with a FY21 contract amount of \$10,000 or more as of June 2021. We also interviewed the project managers and administrators and reviewed the agreements and related staff reports as well as the documents used to monitor the performance for the selected agreements.

Methodology

The OCA performed the following procedures:

- Obtained a list of nonprofit agreements from City management.
- Judgmentally⁹ selected the agreements for review, considering the responsible department, the contract amount, the prior year audit, and other criteria.

⁹ Judgmental sampling is a non-statistical sampling that involves selecting a sample based on auditors' experience, knowledge, and professional judgment and is appropriate when auditors do not need to draw conclusions about the population.

- Reviewed the selected agreements, relevant staff reports and public meeting minutes, nonprofit organizations' websites, relevant policies and sections of Municipal Code.
- Interviewed the project managers for the selected agreements and obtained the reports and other documents for performance monitoring.
- Obtained all lease agreements with nonprofit organizations as of August 2021.
- Reviewed all lease agreements provided and summarized the information for comparison.

Compliance Statement

This audit activity was conducted from June 2021 to April 2022 in accordance with generally accepted government auditing standards, except for the requirement of an external peer review¹⁰. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Office of the City Auditor greatly appreciates the support of the Project Managers and Administrators of nonprofit agreements in conducting this audit activity.

Thank you!

¹⁰ Government auditing standards require an external peer review at least once every three (3) years. The last peer review of the Palo Alto Office of the City Auditor was conducted in 2017. The Palo Alto City Council approved a contract from October 2020 through June 2022 with Baker Tilly US, LLP (Baker Tilly) and appointed Kyle O'Rourke, Senior Consulting Manager in Baker Tilly's Public Sector practice, as City Auditor. Given the transition in the City Audit office, a peer review was not conducted in 2020 and will be conducted after the third year of Baker Tilly's contract.

Detailed Analysis

Nonprofit Service Agreements

A list of all nonprofit agreements was compiled by the City departments and included 71 agreements (excluding lease agreements). Some of the agreements were expired, not relevant to the scope and objectives, or had a FY21 contract amount of less than \$10,000. Ultimately, the population of agreements considered for this audit activity included 46 nonprofit agreements, each of which had a FY21 contract amount of more than \$10,000 as of June 2021 ([Appendix A](#)). As shown in Table 1 in the Background section, the Community Services Department is responsible for approximately 50% of nonprofit agreements included in Appendix A.

The OCA selected the 10 nonprofit agreements (Table 2 below) by identifying agreements with a FY21 contract amount of \$100,000 or more and agreements from various departments that were not reviewed during the previous audit since our understanding from the previous audit report is that some departments do not have an established process or tools. The selected agreements included a few agreements from Community Services Department that were reviewed previously but covered all departments that had agreements with a FY21 contract amount of \$100,000 or more.

Table 2: Sample of Nonprofit Organizations by Responsible Department

Responsible Department	FY21 Contract Amount	# of Nonprofit Agreements
Community Services	1,776,260	3
Community Services/Human Services	477,341	1
Transportation	350,000	1
Public Works	333,258	2
Utilities	308,333	1
Administrative Services	160,000	1
Planning	145,000	1
Grand Total	\$ 3,550,192	10

Although most of these agreements were not specifically assigned to the categories (Co-Sponsorships, Alliances, and Joint Ventures) in the formal documents such as staff reports to the City Council, these agreements appear to be Joint Ventures due to the contractual relationship and financial impact.

Many of these organizations have long-term relationships with the City, and the partnerships were initiated in various ways: three organizations were selected through the Request for Proposal (RFP) process; four organizations received a sole source exemption; two organizations were requested by the City Council; and one organization became a separate entity after being a City-funded project.

- [Friends of the Junior Museum and Zoo \(Friends\)](#) has been supporting the Junior Museum and Zoo (JMZ) since 1962 and initially approached the City to raise the capital funds necessary to renovate the JMZ. The City Council directed staff to enter into a "Joint Venture"¹¹ with the Friends in 2007.

¹¹ CMR: 416.07 dated November 14, 2007 [Microsoft Word - CMR 416-07.doc \(cityofpaloalto.org\)](#)

- [Palo Alto Transportation Management Association \(PATMA\)](#) was created to support the City's strategies and entered into a Funding Agreement with the City in 2016 to address concerns expressed by the City Council.
- [Canopy](#) was created¹² to support the City's Urban Forestry Section and has a contract with the City since it became an independent 501(c)3 in 2002. A sole source exemption was granted pursuant to PAMC 2.30.360(d) due to lack of adequate substitute or equivalent provider.
- [Avenidas](#) received in 2015 a sole source exemption pursuant to PAMC 2.30.360(d), as it is the only provider of comprehensive services to senior adults in the community. The City transferred its Senior Adult services to the organization in 1978 and allocated funds in the HSRA¹³ until 2014. When Avenidas requested removal from HSRA, the City Council directed staff to contract directly with Avenidas.
- [Project Safety Net \(PSN\)](#) transitioned from being a City-funded project to a separate nonprofit organization in 2020. As PSN continues to provide youth and teens mental wellness support services, the City will provide its financial support through 2025.
- [Downtown Streets Team \(DST\)](#) has a contract with the City since 2006. A sole source exemption was granted pursuant to PAMC 2.30.360(d) due to lack of adequate substitute or equivalent provider capable of outreach to homeless individuals while providing cleaning services of outdoor spaces.
- [MidPen Media Center](#) was designated as the "Access Corporation" in 2001 to operate and administer cable television public, educational, and government access channels. A sole source exemption was granted pursuant to PAMC 2.30.360(b)(2) to provide cablecasting, production, and streaming services as the solicitation of bids would be impracticable due to the complexity associated with bringing in a new provider.
- [Alta Housing \(formerly Palo Alto Housing Corporation, or PAHC\)](#) has administered the Below Market Rate (BMR) housing program for the City since its inception of the program in 1974. Alta Housing was one of two organizations that responded to a RFP in 2019.
- [Ecology Action](#) was awarded a contract from proposals submitted in response to a RFP in 2014 for energy efficiency services to administer and deliver a commercial energy savings program.
- [Pets In Need \(PIN\)](#) was awarded a contract in 2019 to provide animal shelter services. PIN was the only organization that submitted a proposal in response to RFPs in 2015 and 2016.

¹² [History - Canopy : Canopy](#)

¹³ "Human Services Resource Allocation Process (HSRAP) is a grant program open to organizations who deliver direct services to Palo Alto residents so that they have a safety net of services." [Human Services – City of Palo Alto, CA](#)

Having standardized contract templates is a best practice to ensure that contracts are created efficiently and include all intended terms and clauses although there are no identical contracts as all services provided by these organizations are unique and each department administers own contracts. The following five contracts' structures are almost the same: Canopy (Public Works), Project Safety Net (Community Services), Alta Housing (Planning), Ecology Action (Utilities), and Pets In Need (Community Services). The remaining contracts for review are also very similar but include fewer sections and/or different section titles than those five contracts (as some of them are unique, i.e. Funding Agreement, older agreement, etc.), but several key sections (such as Indemnity, Assignment, Nondiscrimination) are included in almost all contracts.

The Scope of Services and Schedule of Performance are usually included in Exhibit A and Exhibit B, respectively. Scope of Services is where

expectations such as goals, activities, deliverables, and periodic reporting requirements are defined. The agreements for Canopy (Public Works), Avenidas (Community Services), PSN (Community Services), PIN (Community Services), Ecology Action (Utilities), and PATMA (Transportation) list specific performance expectations and reporting requirements that tie to the reports, which enable the City to monitor performance.

Example – Project Safety Net

Recitals

Agreement Sections

1. Scope of Services
2. Term
3. Schedule of Performance
4. Not to Exceed Compensation
5. Invoices
6. Qualifications/Standard of Care
7. Compliance with Laws
8. Errors/Omissions
9. Cost Estimates
10. Independent Contractor
11. Assignment
12. Subcontracting
13. Project Management
14. Ownership of Materials
15. Audits
16. Indemnity
17. Waivers
18. Insurance
19. Termination or Suspension of Agreement or Services
20. Notices
21. Conflict of Interest
22. Nondiscrimination
23. Environmentally Preferred Purchasing and Zero Waste Requirements
24. Compliance with Palo Alto Minimum Wage Ordinance
25. Non-Appropriation
26. Prevailing Wages and DIR Registration for Public Works Contracts
27. Miscellaneous Provisions

Exhibit

- A. Scope of Services
- B. Compensation
- C. Insurance Requirements
- D Use of Premises

The City has individuals serving as liaisons with the board of directors of some of the nonprofit organizations, which helps the City understand the nonprofit partners and communicate better.

- The Friends – The contract requires City's liaison(s) to the Friends board of directors and/or any board committees. The staff liaison and City Council liaison attend the board meetings.
- PSN – The Project Manager is an ex-officio director of the PSN board of directors. The City's Community Services Department and Human Relations Commission are also members of PSN's Partners Council.
- Avenidas – There is a City Council liaison to the Avenidas' board of directors.
- PATMA – A City representative is a member of the PATMA board of directors. The staff liaison and City Council liaison attend the board meetings.

In recent years, there were some unfortunate events that required and will require the City and the relevant nonprofit organizations to work together to address:

- DST faced lawsuits and complaints from former employees about workplace culture in 2010s. When the existing contract expired in November 2020, City Council approved a one-year (instead of three-year) contract after asking about alternative vendors and policy development, and directed staff to obtain documents related to governance from DST. In May 2021, DST provided the City with the documents including revised board bylaws, employee handbook and managers manual. The City's HR Director reviewed the documents and concluded that they were satisfactory. In December 2021, the City Council approved the amendment No. 1 that extend the contract term by two years, through January 11, 2024.
- Soon after the City's investigation of a tragic incident involving PIN employees was concluded, PIN sent a letter to the City in November 2021 to provide one year's formal notice to terminate the agreement. In this letter, PIN noted the City's failure to meet some of the timelines for the construction and renovation projects specified in the Agreement. The Director of the Community Services Department presented to the City Council in February 2022 that the following projects (totaling \$1.8M) have been completed: Medical suite design and construction; Modular building purchase and site prep; New kennel building design; and Existing kennel renovation re-design. She also presented that New Kennel building construction (over \$2M) has not been completed. PIN now has a new Interim Executive Director and is negotiating with the City for a new or amended agreement.

The City's Public/Private Partnerships Policy (POLICY AND PROCEDURES 1-25/MGR) mentions subsidized rent. Out of 10 agreements reviewed, the following three organizations whose agreements are administered by Community Services Department had a separate lease agreement with \$1 annual rent: The Friends, PSN, and Avenidas. The remaining contracts selected for review did not have any lease agreement with the City.

Lease Agreements

The City's Real Estate and Property Management division in the Administrative Services Department provided copies of all lease agreements with nonprofit

organizations as of August 2021. The OCA created a table listing 32 lease agreements for comparison, as shown in [Appendix B](#).

Out of the 32 lease agreements, there are seven agreements with \$0 rent and five agreements with annual rent of \$1 (Table 3 below). The OCA calculated the total annual market rent of these 12 properties to be \$30M based on the [CoStar Submarket Reports](#) generated by the City's Real Property Manager, at the request of OCA, in August 2021. Lease terms such as a security deposit and utility payments vary from agreement to agreement.

**Table 3: The City's Lease Agreements with Nonprofit Organizations as of August 2021
(Annual Rent of \$1 or Less)**

Organization-Tenant	Location	Separate Service Agreement	Non-monetary public benefits	Annual Rent (2021)	Estimated Annual Market Rent Value*
The Elizabeth Gamble Gardens	Gamble Property	No	Development and operation of a public garden center to provide horticultural classes and library, demonstration gardens, etc.	\$ -	\$ 6,648,476
Community Skating, Inc.	Winter Lodge	No	Upgrade, maintain, and operate a public ice skating facility and ancillary services	\$ -	\$ 10,782,106
The Stanford Area Council Boy Scouts of America	Lucie Stern	No	Provide a beneficial service to the youth and community	\$ -	\$ 149,045
Friends of Palo Alto Library (Ground Lease 2009)	Cubberley	Yes	Rent is waived in consideration of SUBLESSEE's continued book and other Library sales which benefit and provide funds for Palo Alto Public Libraries	\$ -	\$ 331,800
Friends of Palo Alto Library (Ground Lease 2010)	Cubberley	Yes	Rent is waived in consideration of LESSEE's continued book and other Library sales and LESSEE's mission to provide funds for City Libraries	\$ -	\$ 331,800
Palo Alto Community Child Care	Ventura	Yes	Provide child care related uses, services and activities	\$ -	\$ 1,393,560
Palo Alto Community Child Care	College Terrace	Yes	Provide child care related uses, services and activities	\$ -	\$ 132,720
Museum of American Heritage	Williams property	No	Operate a historical museum and a park open to public	\$ 1	\$ 435,653
Environmental Volunteers	Sea Scout Base	Yes	Perform the project by developing and operating a facility to house EV's offices and programs and to provide various educational and training programs	\$ 1	\$ 579,522
PROJECT SAFETY NET	Cubberley	Yes	Provide support services to organizations and individuals dedicated to youth wellbeing and suicide prevention.	\$ 1	\$ 31,123
Avenidas 2015	Downtown	Yes	Provide support services to older adults and their caregivers; a broad range of activities and services responsive to the interest and needs of senior citizens	\$ 1	\$ 1,154,664
Friends of Junior Museum and Zoo	JMZ	Yes	Construct the project in full compliance with the Facilities Agreement	\$ 1	\$ 7,963,200

* OCA estimated the annual rent market values by multiplying the size of entire property listed in the leasing agreement by the average monthly market rent of \$5.53 per sq.ft. that was multiplied by 12 months. OCA calculated average monthly market rent of \$5.53 sq.ft. for Palo Alto using the monthly market rent values listed in the CoStar's Submarket Reports for Palo Alto Downtown (Office, Retail, Industrial) and Palo Alto (Office, Retail, Industrial) that were generated by the City's Real Property Manager, at the request of OCA, on August 23, 2021. Therefore, the calculated market rent values may be significantly different from the actual market values as of August 2021.

For the 20 leases with annual rent over \$1, the total annual rent is \$765,500, which is 10% of the estimated total annual market rent (see the [Note 4](#) below the table in Appendix B). These nonprofit organizations provide Palo Alto citizens with a variety of services such as childcare, education, and recreational activities.

The OCA compared some of the terms among lease agreements and noted the following variances:

Utility payments tend to be made by many of the nonprofit organizations with annual rent of \$1 or less. Utility payments are made by the City for the most of lease agreements with annual rent over \$1.

Maintenance

- City is responsible for maintenance and repair of the structure (20 of 32 agreements)
- Tenant is to perform all maintenance and repairs (10 agreements)
- City and Tenant work in cooperation to develop capital improvement related items (2 agreements)

Rent increases are determined based on one of the following two method as described in each agreement:

- Annual adjustment based on Consumer Price Index (13 of 20 agreements)
- Annual percentage (2-3%) increase (7 of 20 agreements)

Late charges may be applied when tenants do not make payments on time. Late fees are determined in various ways. Many agreements require to pay a late charge equal to five percent of the overdue rent if rent is not paid within 10 days after the due date. The variation of this method is as follows:

- 5% after 10 days (11 of 20 agreements)
- 6% after 10th day + \$100 (4 agreements)
- 6% after 5 days plus interest at 12% from the 5th day (2 agreements)
- Charges (based on a schedule of charges) after 10th day and additional charges every 30 days (2 agreements)
- No late charge (1 agreement)

Holding Over clause allows a month-to-month tenancy after the term of the lease has expired. Under this clause, a month-to-month tenancy is subject to all terms and conditions of the lease agreement. There are 18 lease agreements using this clause.

- Four lease agreements expired in 2009
- Two lease agreements expired in 2014
- One lease agreement expired in 2015
- One lease agreement expired in 2017
- Nine lease agreements expired in 2019
- One lease agreement expired in 2020

Best Practices

According to the Guidebook on Promoting Good Governance in Public-Private Partnerships, governance is defined as “the process in government actions and how things are done, not just what is done”, and good governance involves the following six key principles:

- Participation – Involvement of all stakeholders
- Decency – Development and management of rules without harming people
- Transparency – Clarity and openness in decision-making
- Accountability – Responsibility of individuals political power to society
- Fairness – Equal application of rules to everyone in society
- Efficiency – Use of limited human and financial resources without waste, delay, corruption, or burden on future generations

Throughout the OCA’s research around best practices of partnerships with nonprofit organizations, relevant case studies, and articles, there were a number of themes that were present across multiple sources. The OCA identified the common risks and best practice elements listed below for administering and managing contracts with nonprofit organizations.

Common risks associated with nonprofit agreements

- Lack of transparency resulting from inconsistent contract administration and management
- Poor performance or noncompliance with requirements
- Negative financial impact of operational inefficiencies
- Failure to provide the intended services to the public
- Reputational damage done to the City based on actions of a nonprofit partner
- Limited nonprofit service providers or alternatives

Clear policies and procedures It is important that cities ensure that there are clear guidelines and policies associated with entering into any sort of partnership or contract with nonprofit organizations. These policies should prevent much of the uncertainty in determining with whom a city should partner. Additionally, clear policies and procedures mitigate the risk for disparate treatment from one nonprofit organization to the next. Finally, nonprofits can rely on these policies and procedures to ensure that they are not at risk for losing certain benefits without ample notice. For example, if a nonprofit organization is currently receiving the benefits of a \$1 annual lease, it should be clear to the nonprofit when that lease would be expiring or when the organization is no longer eligible for that benefit from a city.

Measurable goals Cities should be clear about the performance they expect from nonprofits. When administering an agreement, a city should understand what is necessary in terms of performance from the nonprofit partner. Performance goals and key performance indicators should be clearly measurable and defined in an agreement. This allows cities to enter into agreements that allow termination of partnerships without ambiguity. If a nonprofit partner is underperforming against

clear performance goals, cities can identify associated risks and actions to be taken in a timely manner. This also provides visibility for those nonprofit partners who are performing extraordinarily well.

Regular evaluations It is not enough to have clear policies and measurable goals. Cities also need to ensure that nonprofit partners are continually performing against those measurable goals through regular evaluations. Each nonprofit's evaluations will look different. This could be primarily financial reports, or perhaps there are measurable operational goals, but, in any case, cities should ensure that these partners are regularly being compared against their measurable goals. If the regular evaluations are going well, cities have the peace of mind in knowing that their resources are being stewarded well. If the regular evaluations expose issues, cities should have clear policies and procedures to determine next steps.

The City of Palo Alto has a number of partnerships and contracts with nonprofit organizations. In order to have a clear understanding as to whether or not the resources and/or benefits exchanged with them are in the best interest of Palo Alto citizens, the City should ensure that all three elements listed above are in operation. These elements help to mitigate the risk of wasted resources on underperforming organizations or even benefit from additional agreements with high performing organizations. Good governance would help the City navigate difficult decisions to achieve the City's goals.

Audit Results

Finding 1: Nonprofit Service Agreements

It is important for the City to assess and monitor performance of nonprofit organizations to ensure that the intended services are provided to the City and/or to citizens efficiently and effectively. In many of the 10 nonprofit service agreements the OCA reviewed, the Scope of Services section included the City's expectations such as goals, expected activities, performance measures, deliverables, and periodic reporting requirements. However, the following Scope of Services did not include adequate information on performance expectations:

- For Palo Alto Housing Corp, periodic reporting requirements are not defined in the agreement although the City expects to receive quarterly and yearly reports (as stated in Staff Report ID [#12212](#)).
- For Downtown Streets Team, the Scope of Services includes services to pick up litter, but the reporting requirements did not include any information related to litter pickup (although the actual monthly report includes the litter pickup data). All requirements relate to outreach.
- For Pets in Need, the City does not have an updated Disaster Preparedness Plan, for which the deadline is not clearly stated in the Agreement.

For the required reports and deliverables, the following instances of noncompliance were noted:

- For Pets In Need, all monthly reports the OCA reviewed did not include the information required in the agreement.
- For Project Safety Net, the December 31, 2021, report has not been completed more than two months beyond due date (as of April 2022). In addition, the June 2021 report showed two unmet outcome measures (due to the pandemic and resource shortage, according to the Project Manager). The Project Manager stated that less attention was paid to monitoring the compliance with the agreement due to limited staffing and a shift in priorities during the pandemic.
- For Ecology Action, the Monthly Report and supporting documentation to be submitted in conjunction with each invoice are not available because the Project Manager who was monitoring this contract retired in August 2021 and the Key Account Manager was not able to find the documents.

The responsibilities the City is required to perform are also included in some agreements. For Pets in Need, the "failure of the City to meet the timelines for the construction and renovation projects specified in the Agreement" was noted in the PIN's Nov-15-2021 letter to the City to provide a termination notice.

As discussed in the Best Practices section of this report, without good governance, the City may not manage risks effectively to achieve the City's goals and serve the best interest of its citizens.

Recommendation

All nonprofit agreements should consistently define the service level expectations, including the goals, performance measures, and reporting requirements that enable the City to monitor the performance of the nonprofit organizations and achievement of intended benefits. The higher the risk associated with an agreement, the more refined the performance and reporting expectations should be. The City should also ensure that appropriate City resources are assigned to high-risk¹⁴ agreements to manage such contracts and relationships adequately. Underperformance should be discussed with the organizations before it becomes an issue, and appropriate corrective actions should be taken to improve performance.

Additionally, the City should ensure that the City's responsibilities to be included in the agreements are achievable before agreements are signed to avoid noncompliance with the requirements.

Furthermore, the City should track the performance of nonprofit organizations and the City to identify the risks associated with continuing the relationships (e.g. risk of not achieving the goals, reputation risk) and discontinuing the relationships (e.g. risk of not finding alternatives) and take appropriate actions to address the risks in a timely manner. The staff should maintain a list of all nonprofit agreements and periodically report to the City Council on performance of nonprofit organizations and any issues identified, resolved, and outstanding as appropriate.

Finding 2: Nonprofit Lease Agreements

The City enters into lease agreements as a means of supporting nonprofit organizations in the community. The OCA obtained all lease agreements the City had with nonprofit organizations as of August 2021 and compared the terms.

Nonprofit organizations that lease the City-owned properties are required to provide appropriate consideration that includes non-monetary benefits, according to the Lease Use of City Land/Facilities Policy. A half of 12 lease agreements with annual rent of \$1 or less have separate service agreements that are administered by the City's project managers from the applicable City departments. For the six agreements without separate service agreements, the following was noted as to the service and performance requirements:

- Two agreements include the "Required Services and Uses" section that provides a brief description of services to be provided on the premises but does not include performance expectations or measures.
- Two agreements include the "Use of Property" section that briefly describes the required uses. There are additional sections such as Independent Contractor, Conflict of Interest, and Non-Discriminations that are usually included in the professional services agreement, but no performance expectations or measures are included.
- One agreement includes the "Use" section that provides a brief description of the requirements and the "Annual Report" section that require the nonprofit organization to annually submit a report containing all activities and programs planned for the upcoming year. However, no performance expectations or measures are included.

¹⁴ Agreements with high risk have more possibility that adverse events occur and more effects that are unfavorable, such as failure, injury, loss, and bad reputation. Management should assess risks related to each nonprofit agreement to determine the adequate resources, processes, etc. to monitor the agreement.

- One agreement includes the “Use of Property” section that provides a brief description of services to be provided on the premises and the requirements to present to the City a budget and a report of the operations annually. However, no performance expectations or measures are included.

Although the Leased Use of City Land/Facilities Policy (POLICY AND PROCEDURES 1-11/ASD) provides guidance on entering lease agreements, it does not discuss the process to ensure that the intended services are provided on the premises. Monitoring performance would help the City understand the nonprofits’ ability to deliver the benefits to the citizens and determine the appropriate rental value (including month-to-month rent amounts) when renewing a leasing agreement.

Additionally, this policy requires that the estimated fair market rental value be considered to determine the rent amounts and that the proposed non-monetary public benefits be clearly articulated. However, during this audit, the City’s Real Estate Division was not able to show the estimated fair market rental values and non-monetary benefits given to the City. Understanding actual benefits to the citizens in exchange for the City’s non-monetary support when entering into or renewing a lease agreement would help the City ensure that lease agreements are written in the best interest of the City.

Without analyzing the City’s non-monetary support using the fair market rental value and without defining and monitoring the performance of nonprofit organizations, the City cannot ensure that it receives adequate compensation from leasing the City-owned properties.

Recommendation

Lease agreements with significantly reduced rent amounts should include performance and reporting requirements to ensure the City receives the expected services, if there are no separate agreements for the services provided on the premises. Depending on the risks associated with an agreement, the City may need to assign a project manager, a liaison and/or a relationship manager from the appropriate City department(s) to monitor the performance. The actual benefit to the City should serve as a basis for reduction of the rent amounts when lease agreements are renewed.

As required by the City’s policy, the City’s non-monetary support should be analyzed based on the estimated fair market rental value and non-monetary benefits to be provided by nonprofit organizations to determine the appropriate compensation for their use of the City-owned properties and to ensure transparency and fairness in allowing rent amounts below the market value.



Appendices

Appendix A: The City's Nonprofit Service Agreements as of June 2021 (FY21 Contract Amount of \$10K or More)

No.	Nonprofit Organization Name	Current Contract Start DATE	Current Contract End DATE	Total Contract Amount	FY21 Contract Amount	Responsible Department	Purpose	Reviewed during 2018 Audit	Lease ¹	Reviewed during this audit
1	Abilities United	7/1/19	6/30/21	\$55,101/yr	\$55,101	Community Services /Human Services	HSRAP - Disability services.	Yes	No	No
2	Acterra	4/8/16	6/30/21	\$30,000/yr	\$30,000	Public Works	Irrigation, maintenance, and reporting.	No	No	No
3	Adolescent Counseling Services - Outlet	7/1/19	6/30/21	\$45,261/yr	\$45,261	Community Services /Human Services	HSRAP - Services to lesbian, gay, bisexual, transgender, queer and questioning (LGBTQQ) youth and their straight allies.	No	No	No
4	Alta Housing (formerly Palo Alto Housing Corp)	7/1/19	6/30/21	\$31,949/yr	\$31,949	Community Services /Human Services	HSRAP - Various program for low-income youth and seniors.	No	No	No
5	Association for Energy Affordability, Inc.	5/1/19	6/30/22	\$85,000	\$16,139	Utilities	Heat pump retrofit	No	No	No
6	Avenidas	7/1/20	6/30/25	\$2,626,165	\$477,341	Community Services /Human Services	Senior programs (formerly part of HSRAP).	Yes	Yes	Yes
7	Canopy	12/7/20	12/6/21	\$225,510	\$225,510	Public Works	Urban forestry professional services, outreach, and education.	No	No	Yes
8	Counseling & Support Services for Youth (CASSY)	7/1/19	6/30/21	\$45,261/yr	\$45,261	Community Services /Human Services	HSRAP - Mental health support on Palo Alto Unified School District secondary school campuses.	Yes	No	No
9	Downtown Streets	7/1/20	6/30/21	\$236,000	\$236,000	Planning & Development Services/CDBG	Workforce Development Program. Provide comprehensive support services for homeless/ unemployed to secure employment.	No	No	No
10	Downtown Streets	7/1/20	6/30/21	\$100,000	\$100,000	Planning & Development Services/CDBG	Pre-packed groceries will be delivered to doorsteps to medically vulnerable low-income Palo Alto residents to meet the need and limit contact.	No	No	No
11	Downtown Streets Team	12/7/20	12/6/23	\$323,244	\$107,748	Public Works	Consists of 1) street cleaning services for the City's five parking garages, sidewalks, and alleyways in the Downtown Palo Alto area funded by University Avenue Parking Permit Fund (\$107,748/yr);	Yes	No	Yes
12	Downtown Streets Team	7/1/19	6/30/21	\$38,786/yr	\$38,786	Community Services /Human Services	HSRAP - Services to the homeless, including job skills training, work experience, and food for low-income individuals through the Palo Alto Food Closet.	Yes	No	No
13	DreamCatchers	7/1/19	6/30/21	\$26,624/yr	\$26,624	Community Services /Human Services	HSRAP - Tutoring for low income middle school students.	No	No	No
14	Ecology Action	6/30/15	6/30/21	\$925,000	\$308,333	Utilities	Commercial/Key Account Energy Efficiency.	No	No	Yes



No.	Nonprofit Organization Name	Current Contract Start DATE	Current Contract End DATE	Total Contract Amount	FY21 Contract Amount	Responsible Department	Purpose	Reviewed during 2018 Audit	Lease ¹	Reviewed during this audit
15	Empowerment Institute	9/3/18	12/31/21	\$70,000	\$70,000	City Manager	Empowerment Institute assist City with advancement of community engagement block program.	No	No	No
16	Environmental Volunteers	7/1/21	6/30/22	\$24,626	\$24,626	Community Services	Managing a Trail Ambassador Program at Foothills Nature Preserve	No	Yes	No
17	Friends of the Junior Museum and Zoo²	2/5/18	11/12/21	\$5,300,540	\$1,000,000	Community Services	Facility agreement for construction of the JMZ	No	Yes	Yes
18	Grassroots Ecology	7/1/17	6/30/22	\$75,720/yr	\$75,720	Community Services	Habitat Restoration at Pearson Arastradero Preserve.	No	Yes	No
19	Grassroots Ecology	7/1/18	6/30/23	\$56,827/yr	\$56,827	Community Services	Habitat restoration at Foothills Nature Preserve	No	Yes	No
20	Grassroots Ecology	3/4/19	3/4/22	\$254,385	\$84,795	PWD-Watershed Protection	School outreach and creek monitoring.	No	No	No
21	Kara	7/1/19	6/30/21	\$23,249/yr	\$23,249	Community Services /Human Services	HSRAP - Grief support.	No	No	No
22	La Comida	7/1/19	6/30/21	\$49,386/yr	\$49,386	Community Services /Human Services	HSRAP - Nutrition program for persons 60 years of age or older.	Yes	No	No
23	LifeMoves	7/1/19	6/30/21	\$84,039/yr	\$84,039	Community Services /Human Services	HSRAP - Food services for homeless and very low-income Palo Alto residents.	Yes	No	No
24	LifeMoves	7/1/20	12/31/21	\$294,000	\$294,000	Planning & Development Services/CDBG	Rent Relief Assistance. To assist low, very low, and extremely low income persons (per HUD definitions) by providing financial assistance to cover rent.	No	No	No
25	LifeMoves	1/1/21	6/30/21	\$54,332	\$54,332	Planning & Development Services/CDBG	Longer hours of operation at Hotel De Zink emergency shelter during the COVID-19 emergency.	No	No	No
26	LifeMoves	7/1/20	6/30/21	\$29,932	\$29,932	Planning & Development Services/CDBG	Opportunity Services Center. Provide comprehensive, one-stop, multi-service day drop-in center for critical homeless services.	No	No	No
27	May View Community Health	7/1/20	6/30/21	\$67,610	\$67,610	Planning & Development Services/CDBG	COVID-19 Testing and PPE Supplies	No	No	No
28	Mayview Health Center	7/1/19	6/30/21	\$42,599/yr	\$42,599	Community Services /Human Services	HSRAP - Health services for low income, uninsured Palo Alto residents.	No	No	No
29	MidPen Media Center	7/1/2020	6/30/2023	\$800,000	\$160,000	Administrative Services	Cablecasting, production and streaming services	No	No	Yes
30	Neighbors Abroad	9/30/19	12/31/21	\$30,000	\$30,000	City Manager	Neighbors Abroad provides administrative support to help with website communications, social media, finance and other admin responsibilities in relation to the City's (8) Sister Cities.	No	No	No
31	Palo Alto Community Child Care	7/1/20	6/30/25	\$2,660,566	\$483,592	Community Services /Human Services	Management of City's childcare subsidy program (formerly part of HSRAP).	Yes	Yes	No
32	Palo Alto Historical Association	6/27/16	6/30/21	\$35,000	\$35,000	Library	Management of the City's archives and facilitate public access to information and materials relating to the City.	No	No	No



No.	Nonprofit Organization Name	Current Contract Start DATE	Current Contract End DATE	Total Contract Amount	FY21 Contract Amount	Responsible Department	Purpose	Reviewed during 2018 Audit	Lease ¹	Reviewed during this audit
33	Palo Alto Housing Corporation	7/1/20	6/30/21	\$29,931	\$29,931	Planning & Development Services/CDBG	SRO Resident Support. Provide in-house SRO Service Coordinator for support counseling, employment assistance and crisis intervention.	No	No	No
34	Palo Alto Housing Corp	7/1/19	6/30/21	\$290,000	\$145,000	Planning	Below Market Rate administration.	No	No	Yes
35	Palo Alto Transportation Management Association	11/30/20	7/1/23	Based on annual budget submitted to Council	\$350,000	Transportation	Serving as Transportation Management Association for Palo Alto.	Yes	No	Yes
36	Pets In Need	1/15/19	1/15/24	\$56,355/mo	\$676,260	Community Services	Operating and Management Agreement to operate the Animal Shelter	No	No	Yes
37	Project Safety Net	9/1/20	6/30/25	\$521,604	\$100,000	Community Services	Resource provider for youth and teen mental health	No	Yes	Yes
38	Project Sentinel	7/1/19	6/30/21	\$65,000/yr	\$65,000	Community Services /Human Services	Landlord-Tenant Mediation Program (formerly part of HSRAP).	Yes	No	No
39	Project Sentinel	7/1/20	6/30/21	\$37,480	\$37,480	Planning & Development Services/CDBG	Fair Housing Services. Provide fair housing services including complaint investigation, counseling, advocacy and community education	No	No	No
40	Ravenswood Family Health Network	7/1/20	6/30/27	\$354,550	\$354,550	Planning & Development Services/CDBG	Mobile Health Clinic COVID-19 Testing Project.	No	No	No
41	Silicon Valley Independent Living Center	7/1/20	6/30/21	\$75,000	\$75,000	Planning & Development Services/CDBG	Rent relief assistance for Palo Alto residents with disabilities, veterans and older adults, aged 55 and over.	No	No	No
42	Silicon Valley Independent Living Center	7/1/20	6/30/21	\$11,232	\$11,232	Planning & Development Services/CDBG	Housing and Emergency Services. Assist low-income individuals and families in search for affordable, accessible housing.	No	No	No
43	Stanford Hospital and Clinics	2/6/20	2/5/22	\$45,000	\$15,000	Fire	Medical oversight for ambulance transport services.	No	No	No
44	Theatre Partner Agreements (West Bay Opera, Palo Alto Players, TheatreWorks) ³	7/1/2021	6/30/2022	\$50,000	\$50,000	Community Services	Facility agreements for use of Lucie Stern Theatre and payment of ticket surcharge to City (\$4/ticket sold).	No	No	No
45	Youth Community Services (Youth Connectedness Initiative)	7/1/20	6/30/21	\$50,000/yr	\$50,000	Community Services /Human Services	Funding for the Youth Connectedness Initiative.	No	No	No
46	YWCA of Silicon Valley	7/1/20	6/30/21	\$10,000	\$10,000	Planning & Development Services/CDBG	Rent Relief Assistance for Palo Alto individuals and families experiencing domestic violence.	No	No	No

1 Identified the nonprofit organizations with a lease agreement. See Appendix B for the list of lease agreements.

SOURCE: City Departments

2 The contract date and amount information provided by City management included only for the first amendment. The OCA updated the information to include the entire contract (both original contract and the first amendment). OCA calculated the total contract amount by adding all amounts listed in the City Contributions section (Exhibit D) and the City's Added Contribution of \$1M shown in the first amendment

3 The information provided by the City management was the amount the City recovers from the tickets sold ("\$/ticket sold"). The Resource Impact described in Staff Report ID# 9684 is that the ticket surcharge is expected to "bring in approximately \$90,000 per year to offset operational costs.....Direct departmental operating expenses are currently approximately \$60,000 per year, utilities are an additional \$40,000, and janitorial costs are another \$40,000." Therefore, the OCA added the amount of \$50,000 (\$140,000 - \$90,000) for FY21 contract amount.



Appendix B: The City’s Lease Agreements with Nonprofit Organizations as of August 2021

No.	Organization -Tenant [Note 1]	Location	Separate Service Agreement	Non-monetary public benefits	Current Lease Terms (Years)	Lease Start Date	Lease End Date [Note 2]	A Total Space Leased in Sq. Ft.	B Annual Rent (2021) [Note 3]	C Estimated Annual Rent Market Value [Note 4] [\$5.53*12*A]	D Estimated Annual Market Rent Variance [B-C]	Security Deposit	Utilities	Maintenance	Property Taxes
1	The Elizabeth Gamble Gardens	Gamble Property	No	Development and operation of a public garden center to provide horticultural classes and library, demonstration gardens, etc.	51	31-Aug-1987	31-Aug-2038	100,188	\$ -	\$ 6,648,476	\$ (6,648,476)	\$ 5,000	Tenant pays for all utilities	Tenant perform all maintenance and repairs	Tenant is responsible for all taxes and assessments
2	Community Skating, Inc.	Winter Lodge	No	Upgrade, maintain, and operate a public ice skating facility and ancillary services	50	26-Jan-1990	1-Jan-2040	162,479	\$ -	\$ 10,782,106	\$ (10,782,106)	\$ 5,000	Tenant pays for all utilities	Tenant perform all maintenance and repairs	Tenant is responsible for all taxes and assessments
3	Dance Action	Cubberley	No	Office, dance studio, instruction and rehearsal uses	Month to Month	1-Jan-2005	31-Dec-2009	3,130	\$ 52,824	\$ 207,707	\$ (154,883)	\$ 2,000	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
4	Hua Kuang Reading Room	Cubberley	No	Office, dance studio, instruction and rehearsal uses	Month to Month	1-Jan-2005	31-Dec-2009	672	\$ 11,472	\$ 44,594	\$ (33,122)	\$ 712	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
5	Zohar 2006	Cubberley	No	Office, dance studio, instruction and rehearsal uses	Month to Month	1-Jan-2005	31-Dec-2009	3,740	\$ 66,696	\$ 248,186	\$ (181,490)	\$ 4,000	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
6	The Children's Pre-School Center	Cubberley	No	Office and child care uses	Month to Month	1-Aug-2005	31-Jul-2009	8,772	\$ 33,624	\$ 582,110	\$ (548,486)	\$ 10,262	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
7	California Pop Orchestra	Cubberley	No	Provide office and meeting space	Month to Month	1-Oct-2016	31-Dec-2019	720	\$ 16,203	\$ 47,779	\$ (31,576)	\$ 1,200	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments



No.	Organization -Tenant [Note 1]	Location	Separate Service Agreement	Non-monetary public benefits	Current Lease Terms (Years)	Lease Start Date	Lease End Date [Note 2]	A Total Space Leased in Sq. Ft.	B Annual Rent (2021) [Note 3]	C Estimated Annual Rent Market Value [Note 4] [\$5.53*12*A]	D Estimated Annual Market Rent Variance [B-C]	Security Deposit	Utilities	Maintenance	Property Taxes
8	Living Wisdom School	Cubberley	No	Provide education to 9th through 12th grades	Month to Month	1-Oct- 2016	31-Dec- 2019	1,320	\$ 29,706	\$ 87,595	\$ (57,889)	\$ 2,700	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
9	Reach Program	Cubberley	No	Provide office and rehabilitation services for stroke survivors	Month to Month	1-Oct- 2016	31-Dec- 2019	3,000	\$ 25,184	\$ 199,080	\$ (173,896)	\$ 1,000	City furnishes reasonable quantities of utilities except telephone services Operate Mon. through Fri, during the hours of 8am to 2pm 7 reserved parking spaces	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
10	Brainvyne	Cubberley	No	Provide office and meeting space	Month to Month	1-Nov- 2016	31-Dec- 2019	720	\$ 16,203	\$ 47,779	\$ (31,576)	\$ 1,200	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
11	Palo Alto Soccer Club	Cubberley	No	Provide office and meeting space	Month to Month	1-Nov- 2016	31-Dec- 2019	954	\$ 21,472	\$ 63,307	\$ (41,835)	\$ 1,600	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
12	Dance Magic	Cubberley	No	Provide dance studio for dance education and performing arts	Month to Month	1-Dec- 2016	31-Dec- 2019	1,008	\$ 26,688	\$ 66,891	\$ (40,203)	\$ 2,016	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
13	Minority TV	Cubberley	No	Provide multicultural and multilingual programing; Education and Instruction	Month to Month	1-Jan- 2017	31-Dec- 2017	1,685	\$ 15,233	\$ 111,817	\$ (96,584)	\$ 1,180	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
14	West Valley Flying Club	Airport	No	Operate a flight training and ground school; Provide	5	1-Jul- 2017	30-Jun- 2022	3,227	\$ 259,735	\$ 214,144	\$ 45,591	\$ 10,996	Tenant pays for all utilities except	City and Tenant work in cooperation to	Tenant is responsible for all taxes



No.	Organization -Tenant [Note 1]	Location	Separate Service Agreement	Non-monetary public benefits	Current Lease Terms (Years)	Lease Start Date	Lease End Date [Note 2]	A Total Space Leased in Sq. Ft.	B Annual Rent (2021) [Note 3]	C Estimated Annual Rent Market Value [Note 4] [\$5.53*12*A]	D Estimated Annual Market Rent Variance [B-C]	Security Deposit	Utilities	Maintenance	Property Taxes
				commercial Aeronautical Activities (aircraft maintenance and flight training)									for garbage and recycling services	develop capital improvement related items	and assessments
15	Palo Alto Humane Society	Cubberley	No	Provide administrative services for all field program invention, advocacy, and education	Month to Month	15-Jul- 2020	14-Jul- 2025	400	\$ 5,259	\$ 26,544	\$ (21,285)	\$ 876	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
16	Stanford Flying Club	Airport	No	Operate a flight training and ground school; Provide commercial Aeronautical Activities (flight training, aircraft rental, facilitation thereof)	Month to Month	20-May- 2021	N/A	530	\$ 26,982	\$ 35,171	\$ (8,189)	\$ 1,193	Tenant pays for all utilities except for garbage and recycling services	City and Tenant work in cooperation to develop capital improvement related items	Tenant is responsible for all taxes and assessments
17	The Stanford Area Council Boy Scouts of America	Lucie Stern	No	Provide a beneficial service to the youth and community	50	8-Dec- 1978	7-Dec- 2028	2,246	\$ -	\$ 149,045	\$ (149,045)	\$ -	Tenant pays for all utilities	Tenant perform all maintenance and repairs	City (Taxes are not mentioned in the agreement)
18	Palo Alto Lawn Bowls Club	Palo Alto Lawn Bowls	No	Offer memberships, classes, recreational activities	Month to Month	1-Jan- 2016	31-Dec- 2020	70,000	\$ 13,839	\$ 4,645,200	\$ (4,631,361)	N/A	Tenant pays for all utilities except for water	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
19	Museum of American Heritage	Williams property	No	Operate a historical museum and a park open to public	25	1-May- 2017	30-Apr- 2043	6,565	\$ 1	\$ 435,653	\$ (435,652)	\$ 5,000	Tenant pays for all utilities	Tenant perform all maintenance and repairs	Tenant is responsible for all taxes and assessments
20	Environment al Volunteers	Sea Scout Base	Yes	Perform the project by developing and operating a facility to house EV's offices and programs and to provide various educational and training programs	40	23-Oct- 2008	22-Oct- 2048	8,733	\$ 1	\$ 579,522	\$ (579,521)	\$ 5,000	Tenant pays for all utilities	Tenant perform all maintenance and repairs	Tenant is responsible for all taxes and assessments



No.	Organization -Tenant [Note 1]	Location	Separate Service Agreement	Non-monetary public benefits	Current Lease Terms (Years)	Lease Start Date	Lease End Date [Note 2]	A Total Space Leased in Sq. Ft.	B Annual Rent (2021) [Note 3]	C Estimated Annual Rent Market Value [Note 4] [\$5.53*12*A]	D Estimated Annual Market Rent Variance [B-C]	Security Deposit	Utilities	Maintenance	Property Taxes
21	Friends of Palo Alto Library (Ground Lease 2009)	Cubberley	Yes	Rent is waived in consideration of SUBLESSEE's continued book and other Library sales which benefit and provide funds for Palo Alto Public Libraries	Month to Month	9-Dec-2009	8-Dec-2014	5,000	\$ -	\$ 331,800	\$ (331,800)	N/A	Sublessee pays for all telephone, electricity, and sewer clearing service charge for Relocatable Unit; City pays for all other utilities	Tenant perform all maintenance and repairs	Tenant is responsible for all taxes and assessments
22	Friends of Palo Alto Library (Ground Lease 2010)	Cubberley	Yes	Rent is waived in consideration of LESSEE's continued book and other Library sales and LESSEE's mission to provide funds for City Libraries	Month to Month	10-Dec-2010	9-Dec-2015	5,000	\$ -	\$ 331,800	\$ (331,800)	N/A	City pays for all utilities except for new or additional utility installations	Tenant perform all maintenance and repairs	Tenant is responsible for all taxes and assessments
23	Friends of Palo Alto Library (2012)	Cubberley	Yes	Space for book storage,office space and book and other Library related sales	Month to Month	6-Nov-2012	31-Dec-2014	2,496	\$ 24,830	\$ 165,635	\$ (140,804)	\$ 500	City furnishes reasonable quantities of utilities	Tenant perform all maintenance and repairs	Tenant is responsible for all taxes and assessments
24	Friends of Palo Alto Library (2017)	Cubberley	Yes	Space for book storage,office space and book and other Library related sales	Month to Month	1-Feb-2017	31-Dec-2019	345	\$ 3,330	\$ 22,894	\$ (19,564)	\$ 200	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
25	PROJECT SAFETY NET	Cubberley	Yes	Provide support services to organizations and individuals dedicated to youth wellbeing and suicide prevention.	Month to Month	26-Oct-2020	25-Oct-2025	469	\$ 1	\$ 31,123	\$ (31,122)	\$ 1,400	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
26	Avenidas 2015	Downtown	Yes	Provide support services to older adults and their caregivers; a broad range of activities and services responsive to the interest and needs of senior citizens	50	1-Jan-2015	1-Jan-2065	17,400	\$ 1	\$ 1,154,664	\$ (1,154,663)	N/A	Tenant pays for 25% OF all utilities and City pays for the remaining 75% of the utilities	Tenant perform all maintenance and repairs	Tenant is responsible for all taxes and assessments



No.	Organization -Tenant [Note 1]	Location	Separate Service Agreement	Non-monetary public benefits	Current Lease Terms (Years)	Lease Start Date	Lease End Date [Note 2]	A Total Space Leased in Sq. Ft.	B Annual Rent (2021) [Note 3]	C Estimated Annual Rent Market Value [Note 4] [\$5.53*12*A]	D Estimated Annual Market Rent Variance [B-C]	Security Deposit	Utilities	Maintenance	Property Taxes
27	Avenidas H-5	Cubberley	Yes	Provide support services to older adults and their caregivers	Month to Month	7-Jul-2020	6-Jul-2025	1,395	\$ 21,929	\$ 92,572	\$ (70,643)	\$ 3,655	City furnishes reasonable quantities of utilities except telephone services	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
28	PA Alto Players-Peninsula Center Stage	Lucie Stern	Yes	Administration support for benefits of providing quality theater work for the residents	9	1-Jul-2015	31-Aug-2024	500	\$ 16,605	\$ 33,180	\$ (16,575)	\$ 1,125	City furnishes reasonable quantities of utilities	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
29	Palo Alto Community Child Care	Ventura	Yes	Provide child care related uses, services and activities	Month to Month	1-Jul-2016	30-Jun-2019	21,000	\$ -	\$ 1,393,560	\$ (1,393,560)	\$ -	Tenant pays for all utilities except for water supplied to the open field areas	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
30	Palo Alto Community Child Care	College Terrace	Yes	Provide child care related uses, services and activities	Month to Month	1-Jul-2016	31-Dec-2019	2,000	\$ -	\$ 132,720	\$ (132,720)	\$ -	Tenant pays for all utilities (38% of the total utility costs supplied to the College Terrace Library site)	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
31	Palo Alto Community Child Care	PAUSD	Yes	Provide child care related uses, services and activities	2	1-Jul-2020	30-Jun-2022	15,240	\$ 77,670	\$ 1,011,326	\$ (933,657)	\$ -	Sublessee pays for all utilities for the monthly amount set forth in Exhibit A (\$0.24 per sq. ft.)	City is responsible for maintenance and repair of the structure	Tenant is responsible for all taxes and assessments
32	Friends of Junior Museum and Zoo	JMZ	Yes	Construct the project in full compliance with the Facilities Agreement		28-Jun-2018	12-Nov-2021	120,000	\$ 1	\$ 7,963,200	\$ (7,963,199)	\$ -		Tenant perform all maintenance and repairs	City (Taxes are not mentioned in the agreement)

1 This list was compiled from (a) a List of Tenants included in the Policy and Services Committee Staff Report ID # 12078; (b) a list of nonprofit agreements compiled by Community Services Director; (c) additional lease agreements provided by the City's Real Property Manager

2 Under the Holding Over provision, an expired lease continues on a month-to-month basis subject to all terms and conditions of the expired lease until the parties execute a written extension to the lease or lessee surrenders the property.

3 The 2021 Monthly Rent was calculated based on a current lease agreement or the 2021 total rent amount provided by the City's Administrative Services Department Real Estate Division

4 OCA estimated the annual rent market values by multiplying the size of entire property listed in the leasing agreement by the average monthly market rent of \$5.53 per sq.ft. that was multiplied by 12 months. OCA calculated average monthly market rent of \$5.53 sq.ft. for Palo Alto using the monthly market rent values listed in the CoStar's Submarket Reports for Palo Alto Downtown (Office, Retail, Industrial) and for Palo Alto (Office, Retail, Industrial) that were generated by the City's Real Property Manager, at the request of OCA, on August 23, 2021. OCA simplified the calculation utilizing the readily available information to estimate the market values, instead of gathering the precise market data, for the purpose of obtaining roughly estimated market rent values. Therefore, the calculated market values may be significantly different from the actual market values as of August 2021.



Appendix C: Prior Year Findings and the Status - “Audit of Nonprofit Service Agreements” dated August 29, 2019

Recommendation	Responsible Department(s)	Agree, Partially Agree, or Do Not Agree and Target Date and Corrective Action Plan	To be completed 6 months after Council acceptance and every 6 months thereafter until all recommendations are implemented	
			Current Status	Implementation Update and Expected Completion Date
Finding: The Office of Human Services effectively monitors contractor performance using an established process and tools, which can help other City departments better administer their nonprofit service agreements.				
1. Work with the Administrative Services Department's Purchasing Division, the City Attorney's Office, and the Community Services Department's Office of Human Services to create a citywide template for nonprofit service agreements, and make it available to all City departments. The template should ensure that the City's payments are tied to contractor performance by: a. Specifying program goals, measurable objectives, and performance targets are specified in the scope of services. b. Requiring specific deliverables (e.g., semiannual report, financial statements) are submitted along with each invoice, rather than requiring "a detailed statement" in broad terms that could be subject to interpretation. c. Requiring all deliverables be provided prior to the final payment.	ASD/CAO/CSD/CMO	Concurrence: Agree Target Date: December 2020 Action Plan: Sept 2019 – June 2020: Interdepartmental team reviews and makes adjustments to business processes for nonprofit service agreement creation and management. June 2020 – December 2020: Develop template(s) and any other necessary implementation materials or guidelines.	Closed	Current practice of staff is to evaluate new partnerships arise, staff have been working to ensure coordination and clear agreements while balancing the unique relationships each partner may have. When appropriate, as identified in this audit for like programs such as the award of Human Services Resource Allocation Process (HSRAP), staff does use similar agreements. In the absence of a template, staff routinely coordinate internally by impacted parties and review prior agreements for like terms and consistency.
2. Renew the 2004 agreement with PADBPA to: a. Require that a preliminary BID budget be submitted in accordance with the City's budget schedule to ensure that the City operating budget is aligned with the PADBPA's budget. b. Require that PADBPA include in its annual report previous two years' budgeted and actual revenues and expenses in a format similar to the City's operating budgets for better projection of the following fiscal year budget. c. Require that collection status, including delinquencies and any subsequent collections by PADBPA, be included in the annual report. d. Reflect the outsourcing of the assessment invoicing and collection and elimination of the Economic Development Manager position.	CMO/CAO/ASD	Concurrence: Agree Target Date: June 2020 Action Plan: Sept – Dec 2019: Partner with PADBPA to identify shared understanding of agreement requirements. Jan – June 2020: Partner with CAO and PADBPA to propose revised agreement language and renewal of the agreement to Council.	On-Hold	As a result of the onset of the COVID-19 pandemic and the City Council's action to place any assessment of the Downtown Business Improvement District (BID) on hold, operations of the Downtown BID, including relationships with PADBPA have been placed on hold. The City Council has waived the BID assessment fee through FY 2022. Staff anticipate that in planning for FY 2023 over the coming fiscal year, that staff will work with PADBPA or its successor to incorporate the recommendations into the ongoing partnership. The assessment invoicing and collection associated with the BID is now the responsibility of MuniServices to coincide with the BRC invoicing and system for ease of the businesses. Expected Completion Date: FY 2023 Q1



Recommendation	Responsible Department(s)	Agree, Partially Agree, or Do Not Agree and Target Date and Corrective Action Plan	To be completed 6 months after Council acceptance and every 6 months thereafter until all recommendations are implemented	
			Current Status	Implementation Update and Expected Completion Date
3. Establish a procedure or desk manual to clarify roles and responsibilities for monitoring the BID Fund records in SAP, PADBPA's financial records, and MuniServices' assessment collection data to ensure that accurate and complete financial data are provided to the City Council for informed budget and funding decisions.	CMO	Concurrence: Agree Target Date: March 2020 Action Plan: Incorporate into workplan for item 2.	On-Hold	As a result of the onset of the COVID-19 pandemic and the City Council's action to place any assessment of the Downtown Business Improvement District (BID) on hold, operations of the Downtown BID, including relationships with PADBPA have been placed on hold. The City Council has waived the BID assessment fee through FY 2022. Staff anticipate that in planning for FY 2023 over the coming fiscal year, that staff will work with PADBPA or its successor to incorporate the recommendations into the ongoing partnership. Internally, the Administrative Services Department has assumed responsibility of the financial responsibilities of the BID Fund with the transfer of the BRC from DSD to ASD as well. The management of the PADBPA contract remains with the CMO. The assessment invoicing and collection associated with the BID is now the responsibility of MuniServices to coincide with the BRC invoicing and system for ease of the businesses. Expected Completion Date: FY 2022 Q4
4. Establish an overall monitoring method to ensure that nonprofit organizations with multiple agreements with the City are reviewed by all responsible departments to avoid redundancy while clarifying the goals, objectives, and performance measures to be tracked under each agreement.	ASD	Concurrence: Agree Target Date: June 2020 Action Plan: Identify required resources including staff support to complete this function, develop a proposal for implementation to be considered as part of the annual budget process.	Closed	Baker Tilly is currently in process of a non-profit agreement audit. During that effort Baker Tilly will follow-up on outstanding audit recommendations and account for them in their current audit activity.



Appendix D: Management Response

Recommendation	Responsible Department(s)	Agree, Partially Agree, or Do Not Agree and Target Date and Corrective Action Plan
Finding: Nonprofit Service Agreements		
<p>All nonprofit agreements should consistently define the service level expectations, including the goals, performance measures, and reporting requirements that enable the City to monitor the performance of the nonprofit organizations and achievement of intended benefits. The higher the risk associated with an agreement, the more refined the performance and reporting expectations should be.</p> <p>The City should also ensure that appropriate City resources are assigned to high-risk agreements to manage such contracts and relationships adequately. Underperformance should be discussed with the organizations before it become an issue, and appropriate corrective actions should be taken to improve their performance.</p>	CMO	<p>Concurrence: Agree</p> <p>Target Date: FY 2023</p> <p>Action Plan:</p> <p>The City Manager's Office will assign a team to review and update the City's Public/Private Partnerships Policy (POLICY AND PROCEDURES 1-25/MGR), last updated in 2007, to accommodate provisions to address these elements ensuring clearly defined levels of services and the intended benefits. As part of the drafting of the policy revisions, the varying levels of risk identified will be considered, implementing stricter requirements for these higher risk types of agreements and guidance on appropriate staff oversight. As the number of partnerships with non-profits increases both through contractual and real estate transactions, including increased complexity and risks, additional staffing resources will be necessary to keep pace with best practices and appropriate oversight.</p>
<p>The City should ensure that the City's responsibilities included in the agreements are achievable before agreements are signed to avoid noncompliance with the requirements.</p>	CMO	<p>Concurrence: Agree</p> <p>Target Date: FY 2023</p> <p>Action Plan:</p> <p>As part of the work to update City policies, any City obligations listed in the nonprofit agreements will continue to be reviewed and signed off by all departments or functions directly responsible for satisfying the obligations within the stipulated timeframe. Included in this update will also provide guidance not only to continue current practices but also procedures should staff receive direction that is contrary to recommended timelines.</p>
<p>The City should track the performance of nonprofit organizations and the City to identify the risks associated with continuing the relationships (e.g. risk of not achieving the goals, reputation risk) and discontinuing the relationships (e.g. risk of not finding alternatives) and take appropriate actions to address the risks in a timely manner. The staff should maintain a list of all nonprofit agreements and periodically report to the City Council on performance of nonprofit organizations and any issues identified, resolved, and outstanding as appropriate.</p>	CMO	<p>Concurrence: Agree</p> <p>Target Date: FY 2023</p> <p>Action Plan:</p> <p>As part of the work above, the City will update the Public/Private Partnership Policy to (1) require responsible departments to track the performance of non-profit agreements; and (2) create a periodic reporting system on such performance akin to other reporting standards such as periodic execution of contracts or leases under City Manager's authority to execute. In addition, the Policy shall be updated to identify potential areas of risk to help guide staff and Council when negotiation and evaluating any non-profit partner agreement. However, as a de-centralized function, tracking and reporting city-wide is beyond current resources and will require reprioritization of duties or additional resources.</p>



Recommendation	Responsible Department(s)	Agree, Partially Agree, or Do Not Agree and Target Date and Corrective Action Plan
Finding: Nonprofit Lease Agreements		
Lease agreements with significantly reduced rent amounts should include performance and reporting requirements to ensure the City receives the expected services, if there are no separate agreements for the services provided on the premises. Depending on the risks associated with an agreement, the City may need to assign a project manager, a liaison and/or a relationship manager from the appropriate City department(s) to monitor the performance. The actual benefit to the City should serve as a basis for reduction of the rent amounts when lease agreements are renewed.	ASD	Concurrence: Agree Target Date: FY 2023 Action Plan: As part of the work above, the City will review and revise City’s Leased Use of City Land/Facilities Policy (POLICY AND PROCEDURES 1-11/ASD) to ensure appropriate reference to the City’s updated Public/Private Partnerships Policy. Under these references, the City will consider heavily discounted lease agreements with non-profits under the same frame as non-profits to ensure that the same risk assessment and performance evaluation and metrics occur. Resource needs to support the heightened level of tracking compliance will be required.
As required by the City’s policy, the City’s non-monetary support should be analyzed based on the estimated fair market rental value and non-monetary benefits to be provided by nonprofit organizations to determine the appropriate compensation for their use of the City-owned properties and to ensure transparency and fairness in allowing rent amounts below the market value.	ASD	Concurrence: Partially Agree Target Date: Begin FY 2023, and ongoing prospectively Action Plan: The City will update the Public/Private Partnership Policy to require that staff periodically report to Council the overall amount of space, that is offered to non-profits on a subsidized basis. Staff may recommend specific analysis such as evaluation of fair market value through consulting services in cases involving very large outlays of space, value, and/or risk.



City of Palo Alto City Council Staff Report

(ID # 14441)

Meeting Date: 8/15/2022

Report Type:

Title: Adopt a Resolution Approving a Summary Easement Vacation Adjacent to 1499 Edgewood Drive

From: City Manager

Lead Department: Administrative Services

Recommendation

Staff recommends that the City Council adopt the attached resolution approving a summary vacation of a portion of the Newell Road right-of-way located adjacent to the single-family residence at 1499 Edgewood Drive, Palo Alto, CA, pending completion of the Newell Road Bridge Replacement Project (PE-12011).

Discussion

Newell Road, as shown on Crescent Park, Map No. 2, was dedicated to the City and accepted as a public street by the City Council at its January 14, 1929 meeting and by Resolution No. 710. In May 1998, Public Works Engineering granted an encroachment permit no E-2281 for a portion of the Newell Road right-of-way to a prior owner of the single-family home at 1499 Edgewood Drive to replace an existing fence. The encroachment area is adjacent to the eastern side of the 1499 Edgewood Drive property and provides the owner with additional yard space. The current property owner is seeking fee ownership of the encroachment area and has requested that the City vacate that portion of the Newell Road right-of-way upon completion of the Newell Road Bridge Replacement Project.

The approximate 2,609 square foot portion of the Newell Road right-of-way proposed to be vacated is adjacent to the south of the San Francisquito Creek and Newell Road Bridge. The latter is anticipated to be replaced by the City, in partnership with the City of East Palo Alto, Valley Water, and the San Francisquito Creek Joint Powers Authority, commencing Spring 2023.

As this portion of the Newell Road right-of-way has not been used as a street and there is no plan or need to do so, the right-of-way constitutes excess right-of-way, which may be summarily vacated in accordance with Section 8334 of the California Streets and Highways Code. The City's Utilities, Public Works, and Planning departments have been notified of the proposal to vacate this portion of the Newell Road right-of-way, and all

concur with the vacation. All affected departments reported there were no utilities located within the easement. Accordingly, there is no need to reserve an easement for public facilities.

Resource Impact

The easement vacation processing fee of \$1,761 as set forth in the FY 2022 Municipal Fee Schedule has been paid by the property owner.

Policy Implications

The recommendation does not represent any change to City policies.

Environmental Review

The proposed summary vacation of a portion of the Newell Road right-of-way is categorically exempt from review under the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations Section 15305 as a minor alteration in land use limitations.

Attachments:

- **Attachment8.a:** Attachment A - Resolution Approving Summary Vacation of Right-of-Way Adjacent to 1499 Edgewood Drive

NOT YET APPROVED

Resolution No. ____

Resolution of the Council of the City of Palo Alto Approving a Summary Vacation
of a Portion of the Newell Road Right-Of-Way Adjacent to 1499 Edgewood Drive
Upon Completion of the Newell Road Bridge Replacement Project

R E C I T A L S

1. Chapter 4 of the Public Streets, Highways and Service Easements Vacation Law, commencing with Streets and Highways Code section 8330, provides for summary vacation of streets and public service easements; and
2. The City Council of the City of Palo Alto at its January 14, 1929 meeting and by Resolution No. 710 accepted the dedication of Newell Road as shown on Crescent Park, Map No. 2, as a public street of the City of Palo Alto; and
3. Section 8335 of the Streets and Highways Code authorizes the City Council to vacate a street, highway, or public service easement by adopting a resolution of vacation.
4. The City Council intends, through this Resolution, to summarily vacate the portion of right-of-way received for street purposes as more particularly described as the "Vacation Area" in the legal description attached as Exhibit "A" to this resolution and depicted on the plat map attached as Exhibit "B" to this resolution. The area shall be vacated upon completion of the Newell Road Bridge Replacement Project as evidenced by the City's issuance of a notice of completion.
5. The City Council finds that the proposed vacation meets the following findings in compliance with Streets and Highways Code section 8330 *et seq.* for a summary vacation:
 - a. The Vacation Area described herein on Exhibit "A" and depicted on the plat map attached as Exhibit "B" is excess right-of-way not required for street purposes as it has not been improved and has never been used for street purposes since it was acquired in 1929 and is not necessary now or in the future for the proper functioning of Newell Road; and
 - b. No public facilities are located within the Vacation Area as shown on attached said Exhibits "A" and "B" that would be affected by a summary vacation; and
 - c. The right-of-way, in the area to be vacated, is not needed for present or prospective public facilities other than potentially temporarily the Newell Road Bridge Replacement Project construction; and

NOT YET APPROVED

- d. The public convenience and necessity do not require reservation of any portion of the street right-of-way, in the area to be vacated; and
- e. The street right-of-way to be vacated is not useful as a non-motorized transportation facility; and

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF PALO ALTO RESOLVES AS FOLLOWS:

SECTION 1. Findings and Declarations. The Council hereby adopts the above Recitals as findings of the Council.

SECTION 2. Vacation Approved. As permitted by Streets and Highways Code section 8335, the City Council hereby vacates the right-of-way indicated as "Vacation Area" detailed in Exhibits "A" and "B" to this resolution, effective upon the City's issuance of a notice-of-completion for the Newell Road Bridge Replacement Project. The City Clerk is directed to cause a certified copy of this resolution to be recorded in compliance with Streets and Highways Code 8336 upon the City's issuance of a notice of completion for the Newell Road Bridge Replacement Project.

SECTION 3. Upon approval and recordation of the vacation, Encroachment Permit E-2281 approved on March 30, 1998 shall be terminated.

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NOT YET APPROVED

SECTION 4. The Council finds that this Resolution is categorically exempt under the California Environmental Act pursuant to Title 14 California Code of Regulations section 15305 as a minor alteration in land use limitations.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Public Works

Chief Transportation Official

Director of Administrative Services

Real Property Manager

Legal Description
Exhibit 'A'
Vacation Area-Newell Road

All that certain real property situate in the City of Palo Alto, County of Santa Clara, State of California, being a portion of Newell Road Right of Way as said right of way is shown on the map entitled "CRESCENT PARK MAP NO. 2", filed on February 19, 1929 in Book "X" of Maps at Pages 26 and 27, Santa Clara County records, more particularly described as follows:

BEGINNING at the northeasterly corner of Lot 14, Block 121 as said lot and block is shown on said map of "CRESCENT PARK MAP NO. 2", said point being the beginning of a non-tangent curve, concave westerly, having a radius of 637.00 feet, from which the radius point bears North $82^{\circ} 19' 47''$ West; thence along the general easterly line of said Lot 14, southerly, along said curve, through a central angle of $02^{\circ} 35' 00''$, for an arc length of 28.72 feet to the **TRUE POINT OF BEGINNING**; thence leaving said easterly line, South $81^{\circ} 53' 23''$ East, 34.61 feet; thence South $27^{\circ} 38' 34''$ West, 180.51 feet; thence North $66^{\circ} 05' 49''$ West, 3.86 feet to a point on said general easterly line of said Lot 14, said point being the beginning of a non-tangent curve, concave westerly, having a radius of 637.00 feet, from which the radius point bears North $64^{\circ} 15' 47''$ West; thence along said general easterly line, northerly, along said curve, through a central angle of $15^{\circ} 29' 00''$, for an arc length of 172.14 feet to the **TRUE POINT OF BEGINNING**.

Vacation Area contains an area of 2,609 square feet of land, more or less.

Vacation Area is shown on attached plat Exhibit B and made a par hereof.

Legal description prepared by Cross Land Surveying, Inc. in June 2021 and is based upon a field survey of said Lot 14, in Block 121 as said lot and block are shown on the map entitled "CRESCENT PARK MAP NO. 2", filed on February 19, 1929 in Book "X" of Maps at Pages 26 and 27, Santa Clara County records.

END OF DESCRIPTION

Kristina D. Comer

Kristina D. Comer, PLS 6766

Date June 8, 2021

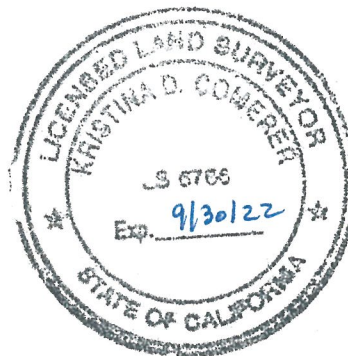


EXHIBIT 'B'

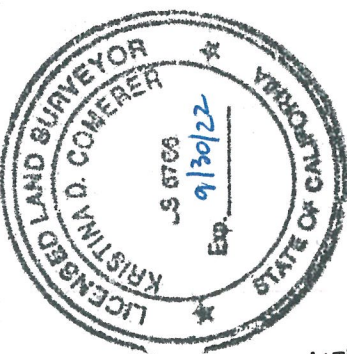
PLAT TO ACCOMPANY

LEGAL DESCRIPTION

VACATION NEWELL ROAD
"CRESCENT PARK MAP NO. 2"
"X" MAPS PAGE 26 & 27

JUNE 2021

SCALE: 1" = 40'



POINT OF
BEGINNING

Kristina D. Comer
KRISTINA D. COMER

DATE: *June 8, 2021*

SAN FRANCISCO
CREEK

SANTA CLARA
COUNTY

CRESCENT PARK
MAP NO. 2
BLOCK 121
"X" M. 26 & 27

SANTA CLARA COUNTY
FLOOD CONTROL AND
WATER DISTRICT EASEMENT
8804 O.R. 234

003-11-020
LANDS OF SHEN AND
CHEN FAMILY TRUST
AREA=23,569 S.F. +/-

SAN MATEO
COUNTY

NEWELL ROAD

VACATION AREA
AREA=2,609 S.F. +/-

EDGEWOOD DRIVE

CURVE TABLE

NO.	RADIUS	DELTA	LENGTH
C1	637.00	02°35'00"	28.72

CROSS LAND SURVEYING, INC.
2210 MT. PLEASANT ROAD
SAN JOSE, CA 95148
(408) 274-7994

PROJECT NO. 21-52



City of Palo Alto City Council Staff Report

(ID # 14590)

Meeting Date: 8/15/2022

Report Type: Action Items

Title: Project Homekey: Authorize City Manager to Execute a State Standard Agreement in the Event of Homekey Award; Adopt a Resolution Extending the Declaration of Emergency Shelter Crisis; and Receive an Update on Project Homekey Status and Provide Potential Direction to Staff

From: City Manager

Lead Department: City Manager

Recommendation

Staff recommends that the City Council:

1. Authorize the City Manager to execute a State Standard Agreement in the event of Homekey grant award from the state of California;
2. Adopt a resolution extending the declaration of Emergency Shelter Crisis; and
3. Receive an update on project Homekey status and provide potential direction to staff.

Background

On September 27, 2021, the City Council adopted a series of actions which enabled staff to prepare necessary materials with LifeMoves to submit an application to the State of California Housing and Community Development Department for Homekey 2.0 to create an interim housing shelter in Palo Alto. The City Council also adopted a resolution (Resolution No. 9994) Declaring a Shelter Crisis for a period of one year to allow streamlining of local project approvals. The City Council also took actions related to Palo Alto Homekey on November 1, 2021 and June 21, 2022.

The City's Homekey application was delayed to a later round of Homekey awards, which are anticipated to be announced in the near future. Once an announcement is made, the City and LifeMoves will need to act quickly to complete construction within one year.

Discussion

Project Update

As of the printing of this report, the project status is that the City and LifeMoves anticipate receiving a Homekey award, but are still awaiting formal announcement. Staff will provide supplemental materials and status updates to the City Council at the meeting if any additional details become available by the August 15 date. Staff is requesting City Council authority for the City Manager to execute the Standard Agreement with the State in the event of a Homekey

grant award. The timelines for project completion are tight; thus this early authorization would be helpful to stay on track.

In the meantime, the project has been presented to the Architectural Review Board (ARB) and received advice regarding design elements to factor into the project. The ARB meeting materials are available online at:

- [Agenda](#) for July 21, 2022 Meeting
- [Staff report](#) to Architectural Review Board with develop plan links on page 12

The presentation to the ARB was for a courtesy review and did not require formal ARB approval. Overall, the ARB was excited to see this project moving forward. Staff is working very closely with LifeMoves to finalize the design elements based on the ARB feedback in addition to departmental review in Palo Alto (as well as Mountain View since this project is on the jurisdictional border).

In addition, Staff continues to work on a lease for the project site; while these discussions continue, staff will execute a temporary Right of Entry Agreement allowing LifeMoves and its contractors to begin work on the site. A formal lease will be presented to the City Council for approval when ready, likely within the next six months.

Resolution Extending Shelter Crisis

The City Council adopted Resolution No. 9994 in September 2021, declaring an emergency shelter crisis for a period of one year. This declaration allowed the City to take advantage of certain statutory exemptions to CEQA in moving the project forward. The Council limited the duration to one year, anticipating that the City would receive a decision on its Homekey application within that time. Because review of the City's application was delayed, however, it is possible that the declaration of shelter crisis will expire before the Homekey project has moved forward. Staff therefore recommend that the Council adopt the attached resolution (**Attachment A**) extending the locally declared emergency shelter crisis.

More information about the resolution is here as also shared in the September 27, 2021 staff report:

Government Code section 8698.4, subsection (a)(4) states "The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) shall not apply to actions taken by a state agency or a city, county, or city and county, to lease, convey, or encumber land owned by a city, county, or city and county, or to facilitate the lease, conveyance, or encumbrance of land owned by the local government for, or to provide financial assistance to, a homeless shelter constructed or allowed by this section." The declaration of an emergency shelter crisis also permits cities to suspend local procedures for emergency shelter projects.

Timeline, Resource Impact, Policy Implications

No new resource impacts known at this time. The City is awaiting formal announcement from the State Department of Housing and Community Development regarding Palo Alto's application for Palo Alto Homekey. The Council has authorized financial support of \$7 million over seven years as part of the grant application which has been included as part of the Councils' adopted budget.

Stakeholder Engagement

Staff remains in close communication with stakeholders including the State Department of Housing and Community Development, LifeMoves, Santa Clara County Office of Supportive Housing, and Santa Clara County Housing Authority in regard to this project.

Environmental Review

Numerous state laws, including but not limited to AB 140 (2021) and AB 2553 (2020) have exempted emergency shelter projects, and specifically projects funded by the Project Homekey program, from the requirements of the California Environmental Quality Act. To the extent any of the actions contemplated by the City Council in relation to this project are not covered by these statutory exemptions, they are exempt pursuant to CEQA Guidelines Section 15269 as actions to mitigate an emergency related to the unhoused population in Palo Alto.

Attachments:

- **Attachment9.a:** Attachment A: Resolution Extending Reso 9994, Declaring a Shelter Crisis

NOT YET ADOPTED

Resolution No. ____

Resolution of the Council of the City of Palo Alto Extending Resolution No. 9994,
Declaring a Shelter Crisis

R E C I T A L S

- A. On September 27, 2021, the City Council of the City of Palo Alto adopted Resolution No. 9994, declaring a Shelter Crisis pursuant to California Government Code Section 8698.4.
- B. By its own terms, Resolution No. 9994 is effective for a period of one year from the date of adoption, unless extended by the Council.
- C. The conditions giving rise to the Declaration of Shelter Crisis in Resolution No. 9994 still exist within the City of Palo Alto.
- D. The Recitals set forth in Resolution No. 9994 are incorporated herein.
- E. The City Council wishes to extend Resolution No. 9994 for a period of one year.

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. This resolution shall repeal and replace Resolution No. 9994.

SECTION 2. The Council finds that a shelter crisis exists within the City of Palo Alto because a significant number of Palo Alto residents are without the ability to obtain stable housing or shelter, resulting in threats to their health and safety and for the reasons stated in the Recitals above.

SECTION 3. The Council hereby declares a shelter crisis within the City of Palo Alto.

SECTION 4. This declaration of Shelter Crisis shall be effective until September 27, 2023 unless extended by the City Council.

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NOT YET ADOPTED

SECTION 5. The Council finds that the adoption of this resolution does not meet the definition of a project under Public Resources Code Section 21065, thus, no environmental assessment under the California Environmental Quality Act is required.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager



City of Palo Alto
Office of the City Clerk
City Council CAO Report

(ID # 14651)

Meeting Date: 8/15/2022

Report Type: Action Items

Title: **Designation of Voting Delegate and Alternate for the League of California Cities Annual 2022 Conference, to be held September 7-9 in Long Beach, CA**

From: **Lesley Milton, City Clerk**

The City Council should consider attendees Council Member Cormack, Vice Mayor Kou, or Mayor Burt and designate one council member as the voting delegate and two council members as alternate voting delegates for the 2022 League of California Cities Annual Conference.

BACKGROUND:

The League's 2022 Annual Conference is scheduled for September 7-9, 2022 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting scheduled for noon on Friday, September 9 at the Long Beach Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy. The resolutions will be agendaized for Council consideration prior to the conference.

In order to vote at the Annual Business Meeting, the City Council must delegate a voting delegate and could appoint up to two alternate voting delegates. At this time only Council Member Cormack and Vice Mayor Kou and Mayor Burt have expressed interest in attending.

Please find attached correspondence received from the League of California Cities.

FISCAL IMPACT:

There is no fiscal impact associated with this item.

ATTACHMENTS:

- **Attachment10.a:** 2022 Annual Conference Voting Delegate Alternate Form (PDF)



CITY: _____

**2022 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM**

Please complete this form and return it to Cal Cities office by Friday, September 2, 2022. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

To vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____ Email: _____

Mayor or City Clerk _____ Date _____ Phone _____
(circle one) (signature)

Please complete and return by Friday, September 2, 2022 to:

Darla Yacub, Assistant to the Administrative Services Director

E-mail: dyacub@calcities.org; Phone: (916) 658-8254



LEAGUE OF
**CALIFORNIA
CITIES**

Council Action Advised by August 31, 2022

DATE: June 1, 2022

TO: City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference & Expo – September 7-9, 2022**

Cal Cities 2022 Annual Conference & Expo is scheduled for September 7-9, 2022 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly) on Friday, September 9. At this meeting, Cal Cities membership considers and acts on resolutions that establish Cal Cities policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote if the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to Cal Cities office no later than Friday, September 2. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please view Cal Cities' event and meeting policy in advance of the conference.

- **Action by Council Required.** Consistent with Cal Cities bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. Conference registration will open by June 1 on the Cal Cities website. In order to cast a vote, at least one voter must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.



LEAGUE OF
**CALIFORNIA
CITIES**

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Long Beach Convention Center, will be open at the following times: Wednesday, September 7, 8:00 a.m. – 6:00 p.m.; Thursday, September 8, 7:00 a.m. – 4:00 p.m.; and Friday, September 9, 7:30 a.m.–12:30 p.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to Cal Cities office by Friday, September 2. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to Cal Cities policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the Cal Cities Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in their possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



City of Palo Alto City Council Staff Report

(ID # 14569)

Meeting Date: 8/15/2022

Report Type: Information Reports

Title: Police Department Update: California Public Records Act and Racial Identity Profile Act (RIPA)

From: City Manager

Lead Department: Police

Recommendation

This is an informational report and no Council action is required.

Discussion

This informational report is to advise Council on the Police Department's process of responding to Public Records Act requests and to update Council on the submission of Racial Identity Profile Act (RIPA) data to the Department of Justice, which began on January 1, 2022, in compliance with AB 953.

Police Department California Public Records Act Process

The Police Department regularly receives requests for records both directly and through other City Department communications. The past fiscal year, the Department processed approximately 2200 police record and public record requests. These requests are handled by the Department's Custodian of Records in coordination, as needed, with the City Attorney's Office and other departments. To process requests to the Department more efficiently, the Department implemented GovQA's public records management platform in November 2021. Since the vast majority of records requests are for incident reports such as traffic collisions and other police reports, maintaining its own system enables the department to most efficiently process and respond to such requests.

Members of the public may request records by visiting the Department's [website](#), making a request in person at the counter at 275 Forest Ave, or asking any member of the Department or other City employee. (To ensure clear communication, individuals who make oral requests may be asked to confirm their request in writing.) On receipt of a request, Department staff determine whether the City has responsive records after gathering and reviewing relevant records. Staff then determines if any exemptions from disclosure may apply. If they do, specific records are redacted or withheld from release. The Department is not required under the PRA to create a new record in order to respond to a Public Record Act request.

The Public Records Act requires that the Department give an initial determination within 10 days of receipt of the request as to whether the Department has responsive records. The Act allows the City an additional 14 days to make that determination in some cases, such as for requests spanning multiple departments, requests that involve searching records in off-site storage, or for particularly voluminous requests. While the Public Records Act does not require the release of documents within these same time frames, the Department often releases responsive records at the same time as giving an initial determination. Some requests, however, do take longer to review and release, such as those containing statutorily-protected information.

A recent media inquiry brought to light the need to ensure that the City is employing features of the GovQA platform to ensure managers are overseeing the Public Records Act process and that staff are prioritizing responses in compliance with the due dates mandated by the Public Records Act.

Police Department AB 953 Racial Identity Profile Act Data Collection Process, Analysis, and Reporting Plans

The state's Racial and Identity Profile Act (RIPA) requires law enforcement agencies to collect and report stop data, including perceived race, gender, age, and sexual orientation of a person stopped by a peace officer. As required for agencies of our size, the Department began collecting Racial Identity Profile Act (RIPA) in late 2021 and officially began the data collection period for the current year on January 1, 2022. In the current process, Department officers submit RIPA data directly to the California Department of Justice (DOJ) through a DOJ web portal. The Department is required to annually report to the Attorney General data on all stops conducted by officers for the preceding calendar year, and must issue its first round of reports to the Attorney General by April 1, 2023. (*See Gov. Code section 12525.5*).

With data collection underway, the Department is working on how to report this data to the public. The City's RIPA data was recently requested under the Public Records Act. The Department had to request the raw data from the DOJ and reconstitute it into a readable spreadsheet. Going forward, the Department is examining generating these reports and the analysis necessary for usability of the data at specific intervals for the public to review. The Department has been working with Stanford SPARQ (Social Psychological Answers to Real-World Questions) over the past year and has explored whether SPARQ is the right partner to work with the RIPA data and analysis on an ongoing basis; however, SPARQ has advised that they are unavailable due to prior commitments. Staff is working on a procurement strategy to contract with a vendor for RIPA data analysis as part of developing the required reporting. Staff will return to the City Council with more information on that agreement when available. At an upcoming Policy and Services Committee Race and Equity Update, the Committee will have an opportunity to discuss the frequency of data sharing and the analysis cycle related to RIPA data.

The Department is anticipating changing the submittal process and moving away from using the DOJ's RIPA reporting portal. In its place, Department officers will use the Department's Records Management System (RMS) software to submit the RIPA data. The RMS system was implemented in December 2021 and currently is used for most police data and investigation report management. The change in submission method will be more efficient for the officer as some data fields will be pre-filled from the stop. Using the City's own RMS will also allow the City to retain RIPA data (instead of having to request Palo Alto's data from the DOJ). The Department anticipates going live with the RMS system for RIPA data entry on January 1, 2023, pending data transmission testing and approval by the DOJ.

Schedule of Meetings

Published August 04, 2022

This is a courtesy notice only. Meeting dates, times, and locations are subject to change. Almost all Palo Alto Council and some Standing Committee meetings are cablecast live on Channel 26. If there happens to be concurrent meetings, one meeting will be broadcast on Channel 29.

Meetings are held in-person and by virtual teleconference.

THURSDAY, August 4

Architectural Review Board Meeting, **Cancelled**

MONDAY, August 8

Sp. City Council Meeting, 5:00 p.m.

TUESDAY, August 9

Rail Committee Meeting, 1:00 p.m.

Policy & Services Committee Meeting, **Cancelled**

WEDNESDAY, August 10

Sp. City Council Closed Session Meeting, 6:00 p.m.

Planning & Transportation Commission Meeting, 6:00 p.m.

THURSDAY, August 11

Historic Resources Board Meeting, 8:30 a.m.

Stormwater Management Oversight Committee, 1:00 p.m.

Human Relations Commission, 6:00 p.m.

MONDAY, August 15

Sp. City Council Meeting, 5:00 p.m.

TUESDAY, August 16

Finance Committee Meeting, **Cancelled**

THURSDAY, August 18

City/School Liaison Committee Meeting, 8:30 a.m.

Architectural Review Board Meeting, 8:30 a.m.

Public Art Commission Meeting, 7:00 p.m.

MONDAY, August 22

Sp. City Council Meeting, 5:00 p.m.

TUESDAY, August 23

Parks and Recreation Commission Meeting, 7:00 p.m.

MONDAY, August 25

Historic Resources Board Meeting, 8:30 a.m.