



JOINT CITY COUNCIL AND PUBLIC ARTS COMMISSION STUDY SESSION

TUESDAY, MAY 8, 2018 – 6:00 P.M.

Community Meeting Chambers
Los Altos City Hall
One North San Antonio Road, Los Altos, California

1. Public Arts Program: Discuss the role of the Public Arts Program within the City of Los Altos and provide feedback on the Los Altos Arts Tactical Plan, with recommended activities (J. Maginot)

ADJOURNMENT

SPECIAL NOTICES TO THE PUBLIC

In compliance with the Americans with Disabilities Act, the City of Los Altos will make reasonable arrangements to ensure accessibility to this meeting. If you need special assistance to participate in this meeting, please contact the City Clerk 72 hours prior to the meeting at (650) 947-2720.

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at <http://www.losaltosca.gov/citycouncil/online/index.html>. Council Meetings are televised live and rebroadcast on Cable Channel 26.

On occasion the City Council may consider agenda items out of order.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, and that are distributed to a majority of the legislative body, will be available for public inspection at the Office of the City Clerk's Office, City of Los Altos, located at One North San Antonio Road, Los Altos, California at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. Contact the City Clerk at (650) 947-2720 for the final document.

If you wish to provide written materials, please provide the City Clerk with **10 copies** of any document that you would like to submit to the City Council for the public record.

For other questions regarding the City Council meeting proceedings, please contact the City Clerk at (650) 947-2720.



STUDY SESSION

Agenda Item # 1

AGENDA REPORT SUMMARY

Meeting Date: May 8, 2018

Subject: Public Arts Program

Prepared by: Jon Maginot, City Clerk/Assistant to the City Manager

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Revised Public Art Master Plan Recommendations from Public Arts Commission (to be distributed under a separate cover)

Initiated by:

Public Arts Commission

Previous Council Consideration:

February 13, 2018

Fiscal Impact:

None

Environmental Review:

Not applicable

Policy Question(s) for Council Consideration:

- What is the role of the Public Arts Program?

Summary:

- The Public Arts Commission has requested a joint meeting with the City Council as a follow up to the February 13, 2018 joint session

Staff Recommendation:

Meet with the Public Arts Commission to discuss the role of the Public Arts Program within the City of Los Altos and to provide feedback on the Los Altos Arts Tactical Plan, with recommended activities



Subject: Public Arts Program

Purpose

To discuss with the Public Arts Commission the role of the Public Arts Program and to provide feedback on the Los Altos Arts Tactical Plan, with recommended activities

Background

On February 13, 2018, the City Council met with the Public Arts Commission (PAC) to discuss the role of the PAC. This session came about following Council's action on November 14, 2017 to receive the Public Art Master Plan without approving the recommendations contained within. At the February 13, 2018 meeting, Council directed the PAC to review and discuss those items in the proposed Public Art Master Plan that could be implemented.

Discussion/Analysis

The PAC has met several times since the February 13 meeting to discuss the Public Art Master Plan and those items which could be implemented. A subcommittee of three members was formed to take the lead and that subcommittee recommended to the full Commission to present more of a tactical plan for the Public Arts Program. On April 26, 2018, the PAC voted unanimously to recommend presenting a Tactical Public Arts Plan to the City Council.



REGULAR CITY COUNCIL MEETING

TUESDAY, MAY 8, 2018 – 7:00 P.M.

Community Meeting Chambers

Los Altos City Hall

1 North San Antonio Road, Los Altos, California

ESTABLISH QUORUM

PLEDGE OF ALLEGIANCE

Presented by the Boy Scouts, Troop 37

CLOSED SESSION ANNOUNCEMENT

CHANGES TO THE ORDER OF THE AGENDA

SPECIAL PRESENTATION

1. Recognition of Historical Commission Essay Contest Winners
2. Recognition of 10 Yerba Buena, Historic Preservation Award Winner
3. Mayoral Proclamation recognizing Stand Up for Public Schools Day
4. Mayoral Proclamation recognizing Foster Care/Resource Parent Awareness Month

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Members of the audience may bring to the Council's attention any item that is not on the agenda. Please complete a "Request to Speak" form and submit it to the City Clerk. Speakers are generally given two or three minutes, at the discretion of the Mayor. Please be advised that, by law, the City Council is unable to discuss or take action on issues presented during the Public Comment Period. According to State Law (also known as "the Brown Act") items must first be noticed on the agenda before any discussion or action.

CONSENT CALENDAR

These items will be considered by one motion unless any member of the Council or audience wishes to remove an item for discussion. Any item removed from the Consent Calendar for discussion will be handled at the discretion of the Mayor.

1. Council Minutes: Approve the minutes of the April 24, 2018 regular meeting (J. Maginot)
2. Construction Contract Award: Structural Reach Replacement, Project WW-01002: Award the Base Bid for the Structural Reach Replacement, Project WW-01002 to EPS Inc. dba Express Plumbing in the amount of \$1,205,695 and authorize the City Manager to execute a contract on behalf of the City (A. Fairman)
3. Construction Contract Award: Backflow Preventer Installation, Project CF-01016: Award a contract to EPS Inc. dba Express Plumbing in the amount of \$92,700 for Backflow Preventer Installation, Project CF-01016 and authorize the City Manager to execute a contract on behalf of the City (T. Yee)

Jeannie Bruins
Councilmember

Lynette Lee Eng
Vice Mayor

Jean Mordo
Mayor

Jan Pepper
Councilmember

Mary Prochnow
Councilmember

4. Agreement for Countywide Household Hazardous Waste Collection: Authorize the City Manager to execute the Agreements for Countywide Household Hazardous Waste Collection Program and Countywide AB 939 Implementation Fee with the County of Santa Clara on behalf of the City (C. Lamm)
5. Parcel Map: 517 Tyndall Street: Approve the Parcel Map for 517 Tyndall Street (Z. Trabzada)
6. Parking Regulations: Continue discussion of draft parking requirements to a joint City Council/Planning Commission Study Session on June 19, 2018 (Staff)

DISCUSSION ITEMS

7. Affordable Housing Impact Fees: Provide input on the draft Affordable Housing Impact Fees ordinance in preparation of the introduction of the ordinance at the Council meeting of May 22, 2018 (J. Biggs)
8. Story Pole Policy Exemption Request: 4856 El Camino Real: Approve the request for an exemption to the Story Pole Policy for 4856 El Camino Real (Z. Dahl)
9. Express Short-term Rental Prohibition: Introduce and waive further reading of Ordinance No. 2018-441 prohibiting short-term rentals within the City of Los Altos (J. Biggs)
10. Cannabis Retailers – An Overview of California’s Regulatory Provisions: Receive report and provide policy direction to staff whether to prepare regulatory or tax ordinances that would authorize one or more medicinal or adult-use commercial cannabis retailers in the City of Los Altos (City Attorney’s Office)

COUNCIL/STAFF REPORTS AND DIRECTIONS ON FUTURE AGENDA ITEMS

ADJOURNMENT

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Written comments may be submitted to the City Council at council@losaltosca.gov. To ensure that all members of the Council have a chance to consider all viewpoints, you are encouraged to submit written comments no later than 24 hours prior to the meeting.

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If you challenge any planning or land use decision made at this meeting in court, you may be limited to raising only those issues you or someone else raised at the public hearing held at this meeting, or in written correspondence delivered to the City Council at, or prior to, the public hearing. Please take notice that the time within which to seek judicial review of any final administrative determination reached at this meeting is governed by Section 1094.6 of the California Code of Civil Procedure.

**MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF
THE CITY OF LOS ALTOS, HELD ON TUESDAY, APRIL 24, 2018,
BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL, 1 NORTH SAN
ANTONIO ROAD, LOS ALTOS, CALIFORNIA**

ESTABLISH QUORUM

PRESENT: Mayor Mordo, Vice Mayor Lee Eng, Councilmembers Bruins, Pepper and Prochnow

ABSENT: None

PLEDGE OF ALLEGIANCE

Daisy Girl Scouts, Troop 61081 led the Pledge of Allegiance to the flag.

CHANGES TO THE ORDER OF THE AGENDA

Action: Upon a motion by Councilmember Bruins, seconded by Councilmember Prochnow, the Council unanimously removed item number 2 from the agenda due to the proposed Senate Bill not proceeding through the legislative process and deferred item number 7 to a future meeting.

SPECIAL ITEM

A. Commission appointments: Appoint individuals to fill vacancies on the Complete Streets, Environmental, and Planning Commissions

Action: By written ballot, the Council unanimously appointed Paul Van Hoorickx to a term on the Complete Streets Commission expiring in March 2022.

Action: By written ballot, the Council unanimously appointed Doo Ho Lee to a term on the Planning Commission expiring in September 2020.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

The following individual provided comments on items not on the agenda: Los Altos residents Ananya Venkatraman, Keshaw Shah and Gary Hedden.

CONSENT CALENDAR

Mayor Mordo pulled item number 3. Councilmember Pepper pulled item number 7A.

Action: Upon a motion by Councilmember Bruins, seconded by Councilmember Prochnow, the Council unanimously approved the Consent Calendar, with the exception of items number 2, 3, 7, and 7A, as follows:

1. Council Minutes: Approved the minutes of the March 13, 2018 regular meeting, March 27, 2018 regular meeting and April 10, 2018 regular meeting.

2. Letter of Opposition to SB 827: Approve the Mayor signing a letter to Senator Wiener opposing SB 827 – *Removed from the agenda.*
3. Resolution No. 2018-11: 2017 City-wide Street Pavement Maintenance, Projects TS-01001, TS-01003 and TS-01004 acceptance: Adopt Resolution No. 2018-11 accepting completion of 2017 City-wide Street Pavement Maintenance, Projects TS-01001, TS-01003 and TS-01004 and authorize the Public Works Director to record a Notice of Completion as required by law – *Pulled for discussion (see page 3).*
4. Resolution No. 2018-12: Senate Bill 1 Road Repair and Accountability Act: Adopted Resolution No. 2018-12 to incorporate a list of projects planned to be funded with the Road Maintenance and Rehabilitation Account revenues created by Senate Bill 1.
5. Contract Amendment: Annual Storm Drain Improvements, Windimer Drive Storm Drain Ditch, Project CD-01012: Authorized the City Manager to execute an amendment on behalf of the City with Cal Engineering & Geology in the amount of \$27,412 to provide additional consulting services for survey, mapping and easement preparation for the Annual Storm Drain Improvements, Windimer Drive Storm Drain Ditch, Project CD-01012.
6. Contract Amendment: Geographic Information Systems (GIS) Update, Project WW-01008: Authorized the City Manager to execute an amendment on behalf of the City with Vestra Resources, Inc. in the amount of \$66,010 to provide additional professional consulting services for updating the core dataset for the City's Permit Tracking System integration and technical support services for the Geographic Information Systems (GIS) Update, Project WW-01008.
7. Resolution No. 2018-13: FY 2018/19 City Fee Schedule: Adopt Resolution No. 2018-13 setting the FY 2018/19 Fee Schedule for the City of Los Altos – *Deferred to a future meeting.*
- 7A. Approval of Extension of Contract for City Attorney Services: Authorize the City Manager to send a letter to Best, Best & Krieger extending the contract for city attorney services for an additional year – *Pulled for discussion (see page 2).*

ITEMS PULLED FROM CONSENT CALENDAR

- 7A. Approval of Extension of Contract for City Attorney Services: Authorize the City Manager to send a letter to Best, Best & Krieger extending the contract for city attorney services for an additional year

Councilmember Pepper requested that the agreement for city attorney services include a time for a review of the City Attorney and another review closer to the expiration of the agreement.

Action: Upon a motion by Councilmember Bruins, seconded by Councilmember Prochnow, the Council unanimously authorized the City Manager to send a letter to Best, Best & Krieger extending the contract for city attorney services for an additional year.

Direction: Council directed that annual performance reviews for the City Manager and City Attorney be conducted in a timely manner.

3. Resolution No. 2018-11: 2017 City-wide Street Pavement Maintenance, Projects TS-01001, TS-01003 and TS-01004 acceptance: Adopt Resolution No. 2018-11 accepting completion of 2017 City-wide Street Pavement Maintenance, Projects TS-01001, TS-01003 and TS-01004 and authorize the Public Works Director to record a Notice of Completion as required by law.

Mayor Mordo asked why this project came so far under budget and whether the City is being too conservative in budgeting practices.

Action: Upon a motion by Mayor Mordo, seconded by Councilmember Pepper, the Council unanimously adopted Resolution No. 2018-11 accepting completion of 2017 City-wide Street Pavement Maintenance, Projects TS-01001, TS-01003 and TS-01004 and authorized the Public Works Director to record a Notice of Completion as required by law.

DISCUSSION ITEMS

8. Professional Services Agreement: Grant Park Center Commercial Kitchen Design: Authorize the City Manager to execute a professional services agreement between the City of Los Altos and LCA Architects in an amount not to exceed \$124,500 for design services for the Grant Park Center Commercial Kitchen, Project CD-01008

Special Projects Manager Brees presented the report.

Vice Mayor Lee Eng supported continuing with the project and directing staff to re-issue the Request for Proposals.

Action: Upon a motion by Councilmember Bruins, seconded by Councilmember Prochnow, the Council eliminated the Grant Park Center Commercial Kitchen, Project CD-01008, by the following vote: AYES: Bruins, Mordo, Pepper and Prochnow; NOES: Lee Eng; ABSTAIN: None; ABSENT: None.

9. Mission Trail Waste Systems: Receive an update on the performance of Mission Trail Waste Systems and provide staff direction on a contract extension

Engineering Services Manager Lamm presented the report and Garth Schultz of R3 Consulting presented the results of the performance review.

Vice Mayor Lee Eng and Councilmember Pepper supported conducting a competitive procurement process for solid waste collection services.

Action: Upon a motion by Councilmember Bruins, seconded by Councilmember Prochnow, the Council directed staff to negotiate a ten-year extension to the agreement with Mission Trail Waste Systems, with direction to look for improvements as noted by Council, including, but not limited to,

potential discount rates for seniors and composting and e-waste services, by the following vote: AYES: Bruins, Lee Eng, Mordo and Prochnow; NOES: Pepper; ABSTAIN: None; ABSENT: None.

Mayor Mordo recessed the meeting at 9:03 p.m. The meeting resumed at 9:10 p.m.

10. Gun Control: Determine what, if any, actions by the City are appropriate and direct staff accordingly

Public Comments: The following individual provided public comments: Los Altos resident Myra Orta.

Direction: Councilmembers directed staff to advertise and explore gun buyback programs, to look at the prohibition of gun sales City-wide and to look at the prohibition of toy gun sales City-wide.

COUNCIL/STAFF REPORTS AND DIRECTIONS ON FUTURE AGENDA ITEMS

City Manager Jordan reported the City is fighting an infestation of western tussock moth caterpillars, that the Planning Commission is still considering recommendations from the City-wide Parking Committee and that the Cities Association of Santa Clara County general membership meeting will be on May 10, 2018.

Councilmember Bruins reported Silicon Valley Clean Energy celebrated the one-year anniversary of its launch of service. She announced the Bike to the Future event on May 5, 2018 and a Community Summit on Firearms and Safety on April 28, 2018. She further reported she attended a memorial event for Gold Star Families on April 14, 2018, a meeting of the Financial Commission, a meeting of the Design Review Commission, a screening of the movie "Los Altos: A Place Called Home" on April 23, 2018 with Mayor Mordo and Councilmember Prochnow.

Councilmember Pepper reported she attended a meeting of the Cities Association of Santa Clara County Board on April 12, 2018, an Acterra event on April 19, 2018 and a Gold and Silver Event for Girl Scouts on April 22, 2018.

Councilmember Prochnow reported she attended County Supervisor Simitian's event on understanding Islam and a meeting of the Public Arts Commission on April 12, 2018.

Future agenda items

The Council directed the Environmental Commission to explore banning plastic straws and plastic water bottles.

ADJOURNMENT

Mayor Mordo adjourned the meeting at 9:49 P.M.

Jean Mordo, MAYOR

Jon Maginot, CMC, CITY CLERK



CONSENT CALENDAR

Agenda Item # 2

AGENDA REPORT SUMMARY

Meeting Date: May 8, 2018

Subject: Construction Contract Award: Structural Reach Replacement, Project WW-01002

Prepared by: Aida Fairman, Senior Civil Engineer

Reviewed by: Susanna Chan, Public Works Director

Approved by: Chris Jordan, City Manager

Attachment:

1. Bid Summary for Structural Reach Replacement, Project WW-01002

Initiated by:

City Council, CIP Project WW-01002

Previous Council Consideration:

March 27, 2016

Fiscal Impact:

Based on the low responsive and responsible bid, the estimated project costs are:

Project Item	Project Budget
Design	\$183,435.00
Construction	\$1,205,695.00
Inspection and testing services	\$70,000.00
Printing/Environmental Doc/Misc.	\$14,000.00
Construction contingency (15%)	\$186,854.25
Estimated Total Cost	\$1,653,984.25
Project Budget	\$1,654,129.34

Environmental Review:

Categorically Exempt pursuant to CEQA Section 15301 (b)

Policy Question(s) for Council Consideration:

Not Applicable

Summary:

- The Structural Reach Replacement, Project WW-01002 consists of the removal and replacement of 12 sewer main segments using pipe reaming and open cut pipe replacement construction methods



Subject: Construction Contract Award: Structural Reach Replacement, Project WW-01002

Staff Recommendation:

Award the Base Bid for the Structural Reach Replacement, Project WW-01002 to EPS Inc. dba Express Plumbing in the amount of \$1,205,695.00 and authorize the City Manager to execute a contract on behalf of the City



Subject: Construction Contract Award: Structural Reach Replacement, Project WW-01002

Purpose

Authorize the City Manager to execute a contract on behalf of the City with EPS Inc. dba Express Plumbing (EPS Inc.) in the amount of \$1,205,695.0 to provide construction services for the Structural Reach Replacement, Project WW-01002

Background

The 2013 Sanitary Sewer Master Plan Update recommended replacement of segments of pipe at various locations throughout the City. These are locations that typically have multiple moderate to severe structural defects. This project consists of replacing twelve sewer segments at various locations throughout the City. Segments are located at:

- Solana Drive
- Edith Avenue
- Mt. Hamilton Avenue
- Civic Center to San Antonio Road
- Easement to N. Springer Road
- Fremont Avenue (two segments, North, South)
- Easement from Beechwood under Foothill Expressway to Grant Road
- Easement near Barley Hill Road
- Easement to Mimosa Court
- Easement to Morningside Road
- Easement at Foothill College Community College

Some of the sewer segments will be replaced using the open cut method and some of the sewer segments will be replaced using a trenchless method. Professional design services and construction support is provided by Bellecci & Associates per the agreement executed with the City on September 14, 2016.

Discussion/Analysis

On April 24, 2018, one bid was opened for the Structural Reach Replacement, Project WW-01002. The bid results are included as Attachment 1.

The base bid includes repairs of twelve segments throughout the City as identified in the Sanitary Sewer Master Plan.

It is recommended that the award of the Base Bid be made to EPS Inc., which was determined to be the lowest responsive bid in the amount of \$1,205,695.

EPS Inc. has no deficiencies against its General Contractor's license. There are no violations for EPS, Inc., listed in the Federal Government's Occupational Safety and Health Administration (OSHA) database. The Company has been in business for over 18 years and has satisfactorily completed similar projects for the Town of Los Altos Hills, the City of Berkeley, and the City of Los Altos.



Subject: Construction Contract Award: Structural Reach Replacement, Project WW-01002

Options

- 1) Award the Base Bid for Project WW-01002 to EPS Inc. in the amount of \$1,205,695 and authorize the City Manager to execute a contract on behalf of the City.

Advantages: EPS Inc. is the low responsive bid and can complete the work for Project WW-01002 within the approved project budget.

Disadvantages: None

- 2) Re-advertise Project WW-01002.

Advantages: None

Disadvantages: Additional funds may need to be appropriated if the bid results are higher than the project budget.

Recommendation

The staff recommends Option 1.

Bid Summary
Tuesday, April 24, 2018
Structural Reach Replacement
Project WW0100217

Engineer's Estimate
Base Bid: \$1,245,835.00

Contractor	Base Bid
EPS Inc. dba Express Plumbing	\$1,205,695



CONSENT CALENDAR

Agenda Item # 3

AGENDA REPORT SUMMARY

Meeting Date: May 8, 2018

Subject: Construction Contract Award: Backflow Preventer Installation, Project CF-01016

Prepared by: Theresa Yee, Project Manager

Reviewed by: Susanna Chan, Public Works Director

Approved by: Chris Jordan, City Manager

Attachment:

1. Bid Summary for Backflow Preventer Installation Project CF-01016

Initiated by:

City Council, CIP Project CF-01016

Previous Council Consideration:

Adopted Fiscal Year 2018-22 5-Year Capital Improvement Plan

Fiscal Impact:

Based on the low responsive and responsible bid, the project costs are within the budget of the FY 2018/2022 Adopted 5-Year Capital Improvement Plan, and are estimated to be:

Item	Project Budget
Construction	\$ 92,700.00
Printing/Advertising/Misc.	\$ 1,000.00
10% Inspection	\$ 9,370.00
15% Contingency	\$ 15,461.00
Total Cost	\$ 118,531.00
Available Funds To-date	\$ 173,721.00

Environmental Review:

Categorically Exempt pursuant to CEQA Section 15301; Class 1 (b) "existing facilities."

Policy Question(s) for Council Consideration:

None.

Summary:

- The Backflow Preventer Installation Project CF-01016 will provide for the installation of backflow preventers at waterlines in locations throughout the City as required by California Title 17 Code of Regulations.



Subject: Construction Contract Award: Backflow Preventer Installation, Project CF-01016

Staff Recommendation:

Award a contract to EPS Inc. dba Express Plumbing in the amount of \$92,700 for City-wide Backflow Preventer Installation Project CF-01016 and authorize the City Manager to execute a contract on behalf of the City



Subject: Construction Contract Award: Backflow Preventer Installation, Project CF-01016

Purpose

Authorize the City Manager to execute a contract on behalf of the City with EPS Inc. dba Express Plumbing in the amount of \$92,700 to install backflow preventers in locations throughout the City.

Background

The backflow preventer device installation project is part of the FY 2018/2022 Adopted 5-Year Capital Improvement Plan (CIP) and is required cross-connection implementation mandated by the California State Resources Control Board, Title 17, for actual or potential connections between a potable water system used to supply water for drinking purposes and any source or system containing water that is not potable.

Working with Cal Water, staff developed a list of locations and specifications needed to bring the waterlines up to the cross-connection requirements.

An Information for Bid (IFB) was prepared and issued on February 22, 2018, and on March 20, 2018, representatives from seven (7) firms appeared for a mandatory pre-bid conference at the City's Municipal Services Center.

Discussion/Analysis

On April 12, 2019, one (1) bid was received for the Backflow Preventer Installation Project CF-01016. The bid by EPS Inc. dba Express Plumbing was received in the amount of \$97,200 for the 42 locations that the City identified as requiring backflow preventer devices.

The bid by EPS Inc. dba Express Plumbing has verified as responsive and responsible.

Options

- 1) Award a contract to EPS Inc. dba Express Plumbing in the amount of \$92,700 and authorize the City Manager to execute this contract on behalf of the City

Advantages: Conformance with required implementation mandated by the State Resources Control Board, Title 17 would be accomplished upon installation of the backflow preventer devices

Disadvantages: None

- 2) Do not award a contract for the installation of backflow preventers

Advantages: None



Subject: Construction Contract Award: Backflow Preventer Installation, Project CF-01016

Disadvantages: Failure to install and maintain the backflow preventer devices may lead to a water service interruption and possible loss of water services

Recommendation

Staff recommends Option 1.



**CITY OF LOS ALTOS
BACKFLOW PREVENTER INSTALLATION
PROJECT CF-01016**

BID SUMMARY

BIDS OPENED:
APRIL 12, 2018 AT 2:00 P.M.
at City Hall
One North San Antonio Road
Los Altos, CA 94022

Bids Received:

Contractor	Total Bid
EPS Inc. dba Express Plumbing	\$92,700



CONSENT CALENDAR

Agenda Item # 4

AGENDA REPORT SUMMARY

Meeting Date: May 8, 2018

Subject: Agreement for Countywide Household Hazardous Waste Collection

Prepared by: Christopher Lamm, Engineering Services Manager

Reviewed by: Susanna Chan, Public Works Director

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Agreement for Countywide Household Hazardous Waste Collection Program
2. Agreement for Countywide AB 939 Implementation Fee

Initiated by:

Staff

Previous Council Consideration:

April 14, 2015; May 10, 2016; May 23, 2017

Fiscal Impact:

The amount of \$70,143.24 will be included in the proposed FY 2018/19 Solid Waste Budget.

Environmental Review:

Not applicable

Policy Question(s) for Council Consideration:

- None

Summary:

- On April 14, 2015, the City Council approved agreements for the City's participation with Santa Clara County for Household Hazardous Waste (HHW) Program management, which must be amended annually
- HHW is an important, part of solid waste diversion and it is illegal to dispose of hazardous waste in sanitary landfills, therefore the program provides residents a safe method to dispose of items that require special handling

Staff Recommendation:

Authorize the City Manager to execute the Agreements for Countywide Household Hazardous Waste Collection Program and Countywide AB 939 Implementation Fee with the County of Santa Clara on behalf of the City



Subject: Agreement for Countywide Household Hazardous Waste Collection

Purpose

Authorize the City Manager to execute the Agreements for Countywide Household Hazardous Waste Collection Program and Countywide AB 939 Implementation Fee with the County of Santa Clara on behalf of the City

Background

On April 14, 2015, the City Council approved a three-year agreement for the City's participation with Santa Clara County for Household Hazardous Waste (HHW) Program management. The City has participated in the program since 2000. The Countywide HHW Collection program enables residents to conveniently dispose of small quantities of hazardous waste at any of the collection facilities in the County, and at a well-publicized annual event in the City. Hazardous wastes that are not allowed to be placed in household garbage containers include, but are not limited to, cleaning products, mercury thermostats, pesticides, flammable liquids, corrosives, solvents, car batteries, used motor oil, antifreeze, paint, fluorescent lights, electronic waste and other items.

AB 939 mandates and provides authority for agencies to collect funds for planning and implementation of integrated waste management programs. The HHW is a minor, but important, part of the diversion of waste to landfills. It is also illegal to dispose of hazardous waste in sanitary landfills, therefore the program provides residents a safe method to dispose of items that require special handling.

The agreement with the County for HHW Program and AB 939 implementation provides for collection of fees on waste disposed or treated at County landfills. The agreement provides for the City to receive \$1.50 per ton of landfilled waste that the City then uses to partially fund integrated waste management programs. A fee of \$2.60 per ton is collected for County-wide HHW programs. The HHW Program agreement defines the County, for the specific services it provides to municipalities, as the program manager.

Discussion/Analysis

This agreement between the City and County will begin a new three-year term to provide HHW collection services, the agreement must be amended annually with a new operating schedule and a new augmentation amount for service levels above what is funded through AB 939 Implementation Fees. The AB 939 Fees will continue to support a four percent level of participation by Los Altos residents in the County HHW Program. Funding augmentation for the HHW Program for FY 2018/19 is needed in the amount of \$70,143.24 based on anticipated participation from City residents. It is important to note when reviewing the attached amendment that the County uses the term "FY 2019" to describe the fiscal year from July 1, 2018 to June 30, 2019.



Subject: Agreement for Countywide Household Hazardous Waste Collection

Options

- 1) Authorize the City Manager to execute the Agreements for Countywide Household Hazardous Waste Collection Program and Countywide AB 939 Implementation Fee with the County of Santa Clara on behalf of the City

Advantages: The County administration of the HHW and AB 939 Fee is an efficient program that provides residents with safe, convenient and economical means of disposing HHW

Disadvantages: None

- 2) The City could choose to not participate in the County's administration of AB 939 Fees, which would require an alternative method be developed to recover the City's costs of administering source reduction and recycling, and to collect and dispose of HHW.

Advantages: None

Disadvantages: Due to the comparatively small size of Los Altos, economies of scale gained by central administration of these programs county wide would be lost if this alternative was pursued.

Recommendation

The staff recommends Option 1.

**AGREEMENT FOR COUNTYWIDE
HOUSEHOLD HAZARDOUS WASTE
COLLECTION PROGRAM**

This Agreement is made by and between the _____ (CITY) and the County of Santa Clara (COUNTY) on the _____ day of _____ 2018.

RECITALS

WHEREAS, the County Board of Supervisors has approved a Countywide Household Hazardous Waste Collection Program whereby residents of the County and participating jurisdictions will have an opportunity to safely dispose of household hazardous wastes (HHW), regardless of the specific location at which the collection has been scheduled; and

WHEREAS, the participating jurisdictions desire to provide residents with convenient opportunities to safely dispose of their HHW in order to encourage the proper disposal of toxic products, and avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard; and

WHEREAS, the participating jurisdictions desire to provide a safe, convenient, and economical means for residents to dispose of HHW. These wastes include, but are not limited to, common household products such as household cleaning products, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, car batteries, mercury thermostats, fluorescent lamps, household batteries, and electronic waste. Residents of the CITY listed above will be eligible to bring HHW to any Household Hazardous Waste Collection Event or facility where these wastes will be accepted for proper disposal as described below; and

WHEREAS, the participating jurisdictions desire to schedule Household Hazardous Waste Collection Events (Events) for residents for FY 2019 through FY 2021 (July 1, 2018 – June 30, 2021); and

WHEREAS, the participating jurisdictions desire to provide household hazardous waste collection services to a minimum of 4% of the households per fiscal year in each participating jurisdiction; and

WHEREAS, the County Board of Supervisors has approved a Countywide AB939 Household Hazardous Waste Fee (AB939 HHW Fee), as authorized by Public Resources Code 41901, to be collected at \$2.60 in FY 2019 through FY 2021 (July 1, 2018 – June 30, 2021) on each ton of waste landfilled or incinerated within the county, received at any non-disposal or collection facility located within the county and subsequently transported for disposal or incineration outside of the county, collected from any location within the county by a solid waste hauler operating

pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the county, or removed from any location in the county by any person or business for disposal or incineration outside the county.

NOW, THEREFORE, CITY and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CITY will participate in the Countywide Household Hazardous Waste Collection Program (CoHHW Program) available to its residents. Participating jurisdictions are those jurisdictions that enter into an AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

2. PROGRAM FUNDING SOURCE

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The AB939 HHW Fee, of \$2.60 per ton, collected as part of the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for CoHHW Program services.

Funds derived from the AB939 HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San Jose Facility Use Surcharge will be apportioned based on CITY's anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose, CA 95133.
- C. Variable Cost Per Car provides a base level service of 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- D. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.

E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at nonprofit charitable reuse organizations as defined in PUBLIC RESOURCES CODE SECTION 41904.

The projected AB939 HHW Implementation Fee Allocation by jurisdiction is set out in Attachment A, attached hereto and incorporated herein.

3. FIXED PROGRAM COST

Fixed Program Costs shall be \$2.99 per household in Fiscal Years 2019, 2020 and 2021. Estimated HHW Fixed Costs are projected in Attachment B, attached hereto and incorporated herein. Fixed Program Costs may include, but are not limited to up to ten (10) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance and union negotiated salary and benefit changes.

4. ABANDONED WASTE DISPOSAL COST

Abandoned Waste Disposal Costs for Fiscal Year 2019, 2020 and 2021 will be \$0.05 per household for all households in the cities and towns of Santa Clara County and in the unincorporated area of the County. The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations defined in PUBLIC RESOURCES CODE SECTION 41904. Estimated Abandoned Waste Disposal Cost is projected in Attachment A, attached hereto and incorporated herein.

For the purposes of this agreement, PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organization as follows: "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

5. SAN JOSE FACILITY USE SURCHARGE

The San Jose Facility Use Surcharge is estimated to be \$6.83 per car for Fiscal Years 2019, 2020 and 2021. The total San Jose Facility Use Surcharge for CITY will be based on CITY's participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose. Estimated San Jose Facility Use Surcharges are projected in Attachment A, attached hereto and incorporated herein.

6. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$62 per car for Fiscal Years 2019, 2020 and 2021. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program Costs are allocated on a per household basis and San Jose Facility Use Surcharge is allocated on a participation basis, the Variable Cost Per Car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached in a particular jurisdiction, the CoHHW Program may use the remaining balance of funds, in cooperation with the CITY that has less than 4% participation levels, to increase public outreach and/or provide additional services in that jurisdiction the following year.

7. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, San Jose Facility Use Surcharge, and Variable Cost Per Car allocation. Available Discretionary Funds will be paid as directed by each jurisdiction. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events.

8. ADMINISTRATION AND PAYMENT OF THE AB939 HHW FEE

The Santa Clara County Recycling and Waste Reduction Division will administer the AB939 HHW Fee, as part of the existing online disposal reporting and payment system. Administration and payment will be made in accordance with the AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE. Notwithstanding the foregoing, the COUNTY shall maintain records of the amount, use, and distribution of Fixed Program Cost expenditures for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. CITY may request in writing a review by COUNTY of the Fixed Program Cost records. The review shall be performed within 30 days of request and results shall be reported to participating cities in writing.

9. PROGRAM PUBLICITY

The CoHHW Program shall have available to the public a HHW brochure for distribution. The brochure will be made available at various events, including but not limited to, environmental events and community fairs. The brochure may also be distributed, upon request, to cities within the County and to County residents and businesses. The CITY shall be responsible for developing and coordinating citywide awareness of the HHW Program. The CoHHW Program shall be responsible for Countywide public education for used oil recycling. CoHHW Program public awareness responsibilities shall include, but not be limited to, the following activities:

- Serving as the formal contact to the local media such as local newspapers and television news stations;
- Providing participating jurisdictions with educational materials developed for the CoHHW Program;
- Promoting oil and oil filter recycling by developing, purchasing, and distributing educational materials, media relations materials, basic art work and camera ready advertising materials for distribution countywide and for use by jurisdictions;
- Representing the program through educational presentations at schools and businesses and attendance at community events such as local fairs and festivals; and
- Providing participating jurisdictions opportunities to review and comment on the development of countywide outreach materials.

CITY's public awareness responsibilities, at the sole discretion of the CITY, shall include, but not be limited to, the following activities:

- Providing a copy of HHW promotional materials to the CoHHW Program for review for accuracy and completeness, prior to publication;
- Developing and distributing communications to residents for local and CITY newsletters, newspapers and to the electronic media;
- Providing the CoHHW Program with a copy of locally produced materials; and,
- Conducting and supporting outreach and publicity to attain the 4% goal of household participation.

10. TEMPORARY HHW EVENTS

COUNTY shall conduct Temporary HHW Events at various sites located in Santa Clara County. COUNTY shall obtain all necessary permits and licenses required for the Temporary HHW Events and shall provide or contract for the services of properly trained, qualified personnel and hazardous waste haulers, and shall provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at the Temporary HHW Events.

11. HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES

COUNTY shall conduct collection operations at two County Household Hazardous Waste Collection Facilities (CoHHWCF).

The CoHHWCF are located at:

- ◆ *San Martin, 13055 Murphy Avenue, San Martin*
- ◆ *San Jose, 1608 Las Plumas, San Jose*

The COUNTY shall obtain all necessary permits and licenses required for the CoHHWCF and shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected.

12. SMALL BUSINESS RECYCLING AND DISPOSAL PROGRAM

COUNTY will provide services to accept hazardous waste from Conditionally Exempt Small Quantity Generators (CESQG). A CESQG is defined by federal regulation as a business that generates less than 100 Kilograms (220 lbs.) of hazardous waste or 1 Kilogram (2.2 lbs.) of extremely hazardous waste per month. Eligible businesses within the County will be allowed to bring their hazardous waste to CoHHWCF. Services to businesses will be provided on a cost recovery basis, which will include program administration, on-site collection, transportation, and disposal costs. COUNTY will assume responsibility for fee collection from participating businesses. This program may, at the sole discretion of CITY, be subsidized by participating jurisdictions using outside funding not associated with AB939 HHW Fee. For purposes of definition, CESQG as defined is equivalent to Very Small Quantity Generator (VSQG) in 40 CFR 262.14.

13. ABANDONED HOUSEHOLD HAZARDOUS WASTE

The CoHHW Program will allow for the disposal of abandoned HHW by government agencies and qualified nonprofit charitable reusers. Abandoned HHW means HHW left at a property by an unknown party. Abandoned household hazardous waste does not include waste generated by a known organization or agency in the course of normal business operations such as, but not limited to, the assembly or manufacture of products from new or used materials or the provision of charitable services such as classroom education, meal preparation, and shelter, or the provision of services for a fee.

A) GOVERNMENT AGENCIES

Government agencies shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs.

B) NONPROFIT CHARITABLE REUSER

A Nonprofit Charitable Reuser organization as established in Public Resources Code Section 41904, is a nonprofit as defined in Section 501(c) (3) of the United States Internal Revenue Code, or a distinct operating unit or

division of the charitable organization. A Nonprofit Charitable Reuser is further defined as an organization that reuses and recycles donated material and receives more than 50% of its revenues from the handling and sale of those donated goods or materials. In order to qualify as a Nonprofit Charitable Reuser, the business must submit to the County Executive a request to be so designated. The County Executive shall review the request and supporting documentation and shall make a final decision on the designation. COUNTY will accept abandoned HHW from Nonprofit Charitable Reusers and will waive disposal fees on the cost of disposal of the abandoned HHW in an annual amount not to exceed funds available from the existing unexpended abandoned waste fund. Funding for disposal available to Nonprofit Charitable Reuser shall be on a first come first serve basis. Once the cost for disposal of the abandoned HHW from Nonprofit Charitable Reusers is equal to the available funds, disposal fees shall no longer be waived, and Nonprofit Charitable Reusers shall be charged for disposal of abandoned HHW according to the CoHHW Program's published rates for CESQGs. No additional costs shall be applied to the budget of a participating jurisdiction.

14. HOUSEHOLD HAZARDOUS WASTES ACCEPTED

HHW accepted by the CoHHW Program shall be limited to materials as defined in Health and Safety Code Section 25218, as amended from time to time, and include, but are not limited to, automotive fluids, automotive and other types of batteries, latex and oil paint, oil filters, garden chemicals, household cleaners, pool chemicals, mercury thermostats, fluorescent lamps containing mercury, household batteries, e-waste and other common hazardous consumer products.

15. WASTES NOT ACCEPTED

Certain hazardous wastes shall not be accepted for collection and disposal. These include, but are not limited to, compressed gas cylinders larger than 5 gallons, radioactive materials, and explosives. Other wastes not accepted by the CoHHW Program are wastes generated as part of operating a business, including a home operated business, except that waste from CESQGs as provided for in Section 12 of this Agreement shall be accepted.

16. ADDITIONAL SERVICES UNDER THIS AGREEMENT

CITY may elect to augment funding provided for in this Agreement with CITY funds. Additional services shall be made available upon written agreement between the CITY's authorized representative and the County Executive. Additional services may include, but are not limited to, additional appointments (charged at the Variable Cost Per Car rate), door-to-door HHW collection, used oil filter collection, universal waste collection, electronic waste collection, and abandoned waste collection.

CITY agrees to augment up to an additional \$ _____ to the Countywide HHW Program during Fiscal Year 2019 for the purpose of attaining or increasing resident participation above the 4% service level at the scheduled collection dates listed in Attachment C, attached hereto and incorporated herein. Augmentation will be calculated at the Variable Cost Per Car rate. Other services will be charged based on a cost recovery basis. CITY authorizes the COUNTY to use CITY'S Available Discretionary Funding portion of the AB939 HHW Fee, if available, to pay for the above agreed additional augmentation amount.

At the end of each fiscal year, a final annual cost statement shall be prepared by COUNTY and issued to CITY by November 30th. The annual cost statement will take into consideration costs incurred on behalf of CITY for additional services and all payments made by CITY to COUNTY. If any balance is owed to COUNTY, it will be due within 30 days following receipt of the annual cost statement. If any credit is owed to CITY, COUNTY will refund that amount to CITY within 30 days following delivery of the annual cost statement.

17. INFORMATION AND APPOINTMENT LINE

COUNTY will operate a telephone information and appointment desk Monday through Friday, from the hours of 9:00 a.m. to 5:00 p.m. The information service will register residents for the Temporary HHW Events and the collections at CoHHWCF. The information service will provide information about hazardous household materials. CITY will be notified immediately if resident participation approaches a level of service that may not be supported by available funding.

18. SCHEDULING AND SITE SELECTION

COUNTY shall work with CITY to determine the date(s) of Temporary Events and collections at the CoHHWCF. CITY shall coordinate with COUNTY in locating and securing sites for Temporary HHW Events. It is recognized that some of the jurisdictions participating in the CoHHW Program may not have appropriate sites available. A proposed HHW schedule for Fiscal Year 2019 of Temporary Events and collections at CoHHWCF is included as Attachment C. COUNTY will schedule an adequate number of collection days to serve the 4% level of service. The COUNTY determines the adequate number of collection days by tracking attendance at each event.

19. OUTSIDE FUNDING

During the term of this agreement, COUNTY may seek outside funding sources to begin services that would supplement existing services such as permanent collection sites, equipment, retail take-back collection and operational funding. If funding is obtained, the Program will, at COUNTY's discretion, proceed with development of additional programs without affecting CITY's available funding allocation.

20. REGIONAL GRANT AND OIL PAYMENT PROGRAM PARTICIPATION

The CoHHW Program is hereby given permission by all participating jurisdictions to apply for future grants and the Oil Payment Program, from the California Department of Resources Recycling and Recovery (CalRecycle). The CoHHW Program will act on behalf of all participating jurisdictions, as the lead applicant and administrator. The CoHHW Program will oversee how the moneys are used and work in cooperation with CITY as to how the funds will be spent. Nothing in this section shall preclude a participating jurisdiction from applying for grant funds in any case where the CoHHW Program does not apply.

21. EMERGENCY SERVICES

Participating jurisdictions, at their option, may desire to provide residents with convenient emergency opportunities to safely dispose of their HHW in the event of a disaster. The purpose of this emergency planning for HHW is to minimize potential public health and safety impacts, as well as to minimize costs and confusion. Attachment D sets out CITY and COUNTY responsibilities for the collection of household hazardous wastes in response to an emergency. CITY shall make good faith efforts to provide the public with information related to the problems associated with HHW. Upon the decision to hold an emergency collection event, it is CITY's responsibility to make a good faith effort to prepare and disseminate the necessary outreach to notify the public of an emergency collection event. An emergency collection event shall be initiated by a written request from CITY to COUNTY. Emergency collection events can be scheduled in as little as ten (10) working days of CITY's written request or at an agreed upon date thereafter. The emergency collection plan is set out in Attachment D, County Household Hazardous Waste Emergency Collection Plan.

COUNTY agrees to conduct the Emergency Collection Event at a mutually agreeable site and time. The COUNTY will obtain the necessary permit from the State Department of Toxic Substances Control and will handle wastes in accordance with State law. COUNTY will bill CITY for all Emergency Collection Events on a cost recovery basis and all payments shall be due COUNTY within thirty days following the receipt of the invoice.

22. PRIVATE SPONSORED EVENTS

COUNTY may also secure funding from corporations or agencies to conduct HHW Collection Events for corporate employees and residents of participating jurisdictions and to pay for special programs such as Universal Waste collection at retail locations. The transportation, treatment and disposal liability for nonresident employee participation in these events shall be shared by all participating jurisdictions and the COUNTY, as described in Section 26 of this Agreement. Summary information concerning these corporate sponsored events, if any, will be included in the CoHHW Program's annual report to the participating jurisdictions.

23. INSURANCE REQUIREMENTS

Contractors who provide hazardous waste transportation, treatment, or disposal services shall have the required insurance as outlined in Attachment E, Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contract. Other contractors shall have insurance in amounts to be determined by COUNTY Insurance Manager, after consultation with CITY. COUNTY shall obtain insurance certificates from each of the contractors prior to the contractor providing service to the program naming the COUNTY as an additional insured.

24. WASTE TRACKING AND REPORTING

COUNTY will provide a mid-year report to CITY regarding participation rates from each participating jurisdiction by March 15, 2019. Mid-year and year end reports will outline the types and quantities of waste collected, the amount of waste diverted for reuse or recycling and the waste management method for each waste stream and associated costs for services. COUNTY will prepare a report summarizing program activities which will be delivered to the participating jurisdictions no later than six months after the end of COUNTY's fiscal year.

It will be assumed for cost and reporting purposes that each participating jurisdiction is contributing to the waste stream in proportion to the number of its residents who directly participate.

COUNTY shall take steps to assure that the bi-annual statements to jurisdictions reflect the funds necessary to cover costs for CITY participation in services scheduled during the next quarter.

25. PARTICIPATION REPORTING

COUNTY shall employ means necessary to verify the place of residence of all participants in the CoHHW Program.

26. HOLD HARMLESS AND INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or

arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 23 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the COUNTY as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.

27. TERMINATION

This Agreement may be terminated by either the COUNTY or CITY upon thirty (30) days written notice given by the terminating party.

28. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2018 to June 30, 2021, or until all revenue from the last quarter's Fee payments has been distributed, whichever is later.

29. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

30. EXECUTION BY COUNTERPART

This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which shall together constitute one and the same instrument.

31. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

32. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designates.

33. NOTICES

All notices and communications herein required shall be in writing to the other party as follows, unless expressly changed in writing:

CITY of _____	City Representative _____
	Representative's Title _____
	City Address _____

Santa Clara County

Director
Consumer and Environmental Protection Agency
1553 Berger Drive
San Jose, CA 95112

34. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

Attachments:

- A Projected Fiscal Years 2019, 2020, and 2021 AB939 HHW Fee Funding Allocation by Jurisdiction
- B Estimated HHW Program Fixed Costs for Fiscal Years 2019, 2020, and 2021
- C HHW Schedule of Collection Events for Fiscal Year 2019
- D Household Hazardous Waste Emergency Collection Plan
- E Exhibit B-2D (revised) Insurance Requirements for Environmental Services Contracts

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IN WITNESS WHEREOF, the parties have executed this AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM on the dates as stated below:

“COUNTY”

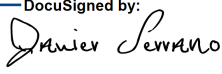
S. Joseph Simitian, President
Board of Supervisors

Date: _____

ATTEST:

MEGAN DOYLE Date
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
 4/23/2018

15FE8EECFBF74C5...
Javier Serrano Date
Deputy County Counsel

“CITY”

CITY/TOWN OF _____,
A municipal corporation

By: _____

Title: _____

Date: _____

Attachment A: Projected Fiscal Years 2019-2021 Annual HHW Fee Funding Allocation by Jurisdiction

Cities	No of Households	4% of Households	Disposal Tonnage	AB939 HHW Fee \$2.60 per Ton	Fixed Cost \$2.99 per HH	SJ Facility \$6.83 Surcharge	Variable Cost \$62 per Car	Abandoned Waste Disposal Cost \$.05 per Household	Discretionary Fund	Estimated Augmentation	Anticipated Participation	Anticipated Participation at SJ Facility
Campbell	17,832	713.28	38,979.51	\$ 101,346.73	\$ 53,317.68	\$ 6,718.88	\$ 44,223.36	\$ 891.60	\$ (3,804.80)	\$ 26,104.34	1,073	984
Cupertino	21,064	842.56	44,875.46	\$ 116,676.20	\$ 62,981.36	\$ 3,061.12	\$ 3,720.00	\$ 1,053.20	\$ 48,615.52	\$	60	45
Gilroy	16,258	650.32	49,766.41	\$ 129,392.67	\$ 48,611.42	\$ 1,075.34	\$ 40,319.84	\$ 812.90	\$ 38,573.17	\$ 15,294.16	897	158
Los Altos	11,660	466.40	18,006.34	\$ 46,816.48	\$ 34,863.40	\$ 4,937.12	\$ 28,916.80	\$ 583.00	\$ (22,483.84)	\$ 70,143.24	1,235	723
Los Altos Hills	3,108	124.32	3,164.89	\$ 8,228.71	\$ 9,292.92	\$ 8,712.6	\$ 7,707.84	\$ 155.40	\$ (9,798.70)	\$ 15,780.46	221	128
Los Gatos	13,289	531.56	25,570.37	\$ 66,482.96	\$ 39,734.11	\$ 7,974.75	\$ 32,956.72	\$ 664.45	\$ (14,847.07)	\$ 57,896.15	1,226	1,168
Milpitas	21,532	861.28	74,523.39	\$ 193,760.81	\$ 64,380.68	\$ 3,987.38	\$ 53,399.36	\$ 1,076.60	\$ 70,916.80	\$ 5,351.84	948	584
Monte Sereno	1,311	52.44	1,207.90	\$ 3,140.54	\$ 3,919.89	\$ 957.60	\$ 3,251.28	\$ 65.55	\$ (5,053.78)	\$ 11,285.40	153	140
Morgan Hill	14,415	576.60	51,502.27	\$ 133,905.90	\$ 43,100.85	\$ 1,875.95	\$ 35,749.20	\$ 720.75	\$ 52,459.15	\$ 54,659.20	1,458	275
Mountain View	35,595	1,423.80	54,389.71	\$ 141,413.25	\$ 106,429.05	\$ 5,572.91	\$ 88,275.60	\$ 1,779.75	\$ (60,644.06)	\$ 73,899.66	1,638	817
Palo Alto	29,124	0.00	43,478.06	\$ 113,042.96				\$ 1,456.20	\$ 111,586.76			
San Jose	332,574	13,302.96	683,263.56	\$ 1,776,485.26	\$ 994,396.26	\$ 116,026.35	\$ 824,783.52	\$ 16,628.70	\$ (175,349.57)	\$ 436,037.25	17,508	16,999
Santa Clara	46,535	1,861.40	166,527.00	\$ 432,970.20	\$ 139,139.65	\$ 10,062.63	\$ 115,406.80	\$ 2,326.75	\$ 166,034.37	\$ 82,450.70	3,191	1,474
Saratoga	11,226	449.04	19,744.70	\$ 51,336.22	\$ 33,565.74	\$ 5,439.47	\$ 27,840.48	\$ 561.30	\$ (16,070.77)	\$ 42,275.69	872	797
Sunnyvale	58,308	2,332.32	110,483.61	\$ 287,257.39	\$ 174,340.92	\$ 6,687.49	\$ 144,603.84	\$ 2,915.40	\$ (41,290.26)	\$ 63,029.32	2,683	980
Unincorporated	18,538	741.52	42,334.16	\$ 110,068.82	\$ 55,428.62	\$ 2,417.54	\$ 45,974.24	\$ 926.90	\$ 5,321.51	\$ 29.76	742	354
Total	652,369	24,929.80	1,427,817.34	\$ 3,712,325.08	\$ 1,863,502.55	\$ 174,910.78	\$ 1,497,128.88	\$ 32,618.45	\$ 144,164.42	\$ 954,237.18	33,904	25,627

Notes: No of HH based on 1/1/17 estimates. Disposal tonnage is based on FY2016-2017 actual. Anticipated participation and anticipated participation at SJ facility are based on 15% increase from FY2016-2017 actual participation.

Attachment B: Estimated Annual HHW Program Fixed Costs for Fiscal Years 2019, 2020, and 2021

FIXED COST		
Staff Salary and Benefits	.5 HMPM, Sr. HMS, 3 HMTs, Acct II, Sr MA, AMA, .8 OSIII,	\$1,210,647
County Admin Overhead		\$242,129
County Counsel		\$13,000
Phones and Communications		\$10,100
Facilities Lease Costs	San Jose	\$174,911
Vehicle Costs		\$32,500
Office Supplies and postage		\$1,825
Maintenance, Software		\$27,000
HHW Hotline		\$38,500
Garbage & Utilities		\$34,750
Membership & Dues		\$10,000
Training & Conference		\$4,600
Safety Wear		\$11,000
Printing		\$5,800
Other Services & Supplies		\$46,500
ESTIMATED ANNUAL TOTAL		\$1,863,262

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY
COLLECTION EVENTS FOR FISCAL YEAR 2018-2019***

2018/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
July	Fri,Sat	6,7	San Martin	Permanent	
	Thurs,Fri,Sat	5,6,7	San Jose	Permanent	
	Thurs,Fri,Sat	12,13,14	San Jose	Permanent	
	Thurs,Fri,Sat	19,20,21	San Jose	Permanent	
	Saturday	21	Sunnyvale	Temporary	
	Thurs,Fri,Sat	26,27,28	San Jose	Permanent	
August	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Saturday	11	Mountain View	Temporary	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Thurs,Fri,Sat	23,24,25	San Jose	Permanent	
September	Thurs,Fri,Sat	30,31,1	No Event	No Event	LABOR DAY WEEKEND
	Fri,Sat	7,8	San Martin	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	San Jose	Permanent	
October	Saturday	29	Santa Clara	Temporary	
	Fri,Sat	5,6	San Martin	Permanent	
	Saturday	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
November	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
	Fri,Sat	2,3	San Martin	Permanent	
	Thurs,Fri,Sat	1,2,3	San Jose	Permanent	
	Thurs,Fri,Sat	8,9,10	San Jose	Permanent	
	Thurs,Fri,Sat	15,16,17	San Jose	Permanent	
	Thurs,Fri,Sat	22,23,24	No Event	No Event	THANKSGIVING
December	Fri,Sat	30,1	San Martin	Permanent	
	Thurs,Fri,Sat	29,30,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Thurs,Fri,Sat	27,28,29	No Event	No Event	

**ATTACHMENT C: HHW SCHEDULE OF PERMANENT & TEMPORARY COLLECTION
EVENTS FOR FISCAL YEAR 2018-2019 (Continued)**

2019/Month	Day	Date	Location	Type of Event	County Holidays/ Notes
January	Fri,Sat	4,5	San Martin	Permanent	
	Thurs,Fri,Sat	3,4,5	San Jose	Permanent	
	Thurs,Fri,Sat	10,11,12	San Jose	San Jose	
	Thurs,Fri,Sat	17,18,19	San Jose	San Jose	
	Saturday	19	Sunnyvale	Temporary	
	Thurs,Fri,Sat	24,25,26	San Jose	Permanent	
February	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	31,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
March	Fri,Sat	1,2	San Martin	Permanent	
	Thurs,Fri,Sat	28,1,2	San Jose	Permanent	
	Thurs,Fri,Sat	7,8,9	San Jose	Permanent	
	Thurs,Fri,Sat	14,15,16	San Jose	Permanent	
	Thurs,Fri,Sat	21,22,23	San Jose	Permanent	
	Thurs	28	San Jose	Permanent	
	Fri & Sat	29 & 30	No Event	No Event	Caser Chavez Day
April	Fri,Sat	5,6	San Martin	Permanent	
	Thurs,Fri,Sat	4,5,6	San Jose	Permanent	
	Thurs,Fri,Sat	11,12,13	San Jose	Permanent	
	Saturday	TBD	Los Altos	Temporary	
	Thurs,Fri,Sat	18,19,20	San Jose	Permanent	
	Saturday	20	Sunnyvale	Temporary	
	Thurs,Fri,Sat	25,26,27	San Jose	Permanent	
Saturday	27	Santa Clara	Temporary		
May	Fri,Sat	3,4	San Martin	Permanent	
	Thurs,Fri,Sat	2,3,4	San Jose	Permanent	
	Thurs,Fri,Sat	9,10,11	San Jose	Permanent	
	Thurs,Fri,Sat	16,17,18	San Jose	Permanent	
	Thurs,Fri	23,24	San Jose	Permanent	
Saturday	27	No Event	No Event	MEMORIAL DAY WEEKEND	
June	Fri,Sat	31,1	San Martin	Permanent	
	Thurs,Fri,Sat	30,31,1	San Jose	Permanent	
	Thurs,Fri,Sat	6,7,8	San Jose	Permanent	
	Thurs,Fri,Sat	13,14,15	San Jose	Permanent	
	Thurs,Fri,Sat	20,21,22	San Jose	Permanent	
	Saturday	22	Milpitas	Temporary	
Thurs,Fri,Sat	27,28,29	San Jose	Permanent		

*SUBJECT TO CHANGE

11/16/2017

ATTACHMENT D: COUNTY HOUSEHOLD HAZARDOUS WASTE EMERGENCY COLLECTION PLAN

1. Purpose

The purpose of the Household Hazardous Waste Emergency Collection Plan is to minimize potential public health and safety impacts, as well as to minimize costs and confusion during an emergency or disaster. This Attachment describes the services the County can provide and the responsibilities of each party for the collection of household hazardous wastes (HHW) in response to an emergency as defined by the local jurisdiction.

Jurisdictions should contact local emergency agencies, the Governor's Office of Emergency Services (OES), and the Department of Toxic Substances Control (DTSC) for more specific information on hazardous materials emergency response.

2. Timing of HHW

While it is important to have special collection opportunities for disaster-related HHW as soon as possible to avoid illegal disposal or harm to people and/or the environment, having an event or service too soon after a disaster may result in low participation. Sufficient public notification, assessment and monitoring of the disaster, and cleanup process by the designated City HHW Coordinator(s) is essential.

3. Public Information/Notification

Cities should be prepared to provide the public with information related to the problems associated with HHW along with information about special collection events and services. Upon the decision to hold an emergency collection event, it is the City's responsibility to prepare and deliver the necessary public outreach to notify the public of an upcoming event. A City's public outreach program should evaluate all forms of media including: newspaper ads, posters, flyers, press releases, banners, door-to-door notices, roadside signs, signs on dumpsters, radio public service announcements, social media outlets and television public access stations. Be aware of communities where multiple language outreach efforts will be necessary.

4. State HHW Collection Permits

The State Department of Toxic Substances Control (DTSC) is responsible for issuing the necessary state permits for HHW collection facilities. During an emergency, the County will obtain the necessary emergency permit for special collection of household hazardous waste from DTSC through their expedited approval process.

5. Collection Events

Temporary collection events can be set-up at various sites including parking lots, city maintenance yards, within neighborhoods needing service, and at landfills or a

centralized location to service larger segments of the population. Waste collected will be transported with a transportation vehicle provided by the HHW Program. In addition, events can be scheduled at the two existing Countywide Household Hazardous Waste Collection Facilities (CoHHWCF). The following options are available to each participating City.

- Neighborhood Drop-off Events: The County is able to provide localized service to specific areas in need of household hazardous waste collection services. The County will work with City Solid Waste Coordinators to conduct coordinated efforts to residents in the affected area. After a specific event, waste will be transported by County staff or a hazardous waste contractor to an appropriate facility.
- Mobile HHW Event: The County conducts Household Hazardous Waste Collection Event (Events) at various sites located in Santa Clara County throughout the year. Events will be expanded to give priority to disaster victims when requested by the City. The County shall obtain all necessary permits and licenses required for the events and shall provide and/or contract for the services of properly trained personnel and hazardous waste haulers. The County shall also provide or secure suitable equipment and supplies to properly receive, package, label, haul, recycle and dispose of the household hazardous wastes collected at events.
- CoHHWCF: The County operates two permitted HHW collection facilities for the collection and storage of HHW. The County shall provide or contract for services, equipment, and supplies to properly receive, package, label, haul, recycle and dispose of wastes collected at the CoHHWCF.

The CoHHWCF are located at:

- *San Martin, 13055 Murphy Ave, San Martin*
- *San Jose, 1608 Las Plumas, San Jose*

6. Costs, Documentation, and Reimbursements

Cities will be billed on a cost recovery basis. Costs of emergency events will be tracked and billed separately. Emergency funding applications pending from the State or Federal government for reimbursements in no way relieves the City of responsibility to make timely payment to the County in accordance with the terms of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

The County agrees to provide the City with a detailed accounting of services provided for an emergency collection. Documentation will track the time and materials of staff, outside contractor expenses, and quantities and types of waste collected to demonstrate that the wastes were generated above and beyond existing collection programs.

Services to businesses will be provided on a cost recovery basis and according to Section 12 of the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM, which includes program administration, on-site collection, transportation, and disposal costs. The County will assume responsibility for collecting fees from participating businesses.

7. State and Federal Assistance and Funds

It is the city's responsibility to pursue reimbursement from State or Federal agencies.

State Office of Emergency Services (OES)

The OES is responsible for requesting assistance on behalf of local jurisdictions for resources beyond the capability of the jurisdiction. State assistance may include assistance available from State, Federal, or private sources. If a local jurisdiction is declared a state disaster area, and the local jurisdiction deems that the needs of the disaster response are beyond its capabilities, then the local jurisdiction can request assistance and reimbursement of costs from OES.

Follow Standardized Emergency Management System (SEMS)

All requests and emergency responses must be in accordance with the SEMS. The State Department of Toxic Substances Control may have funding available for hazardous waste response and collection.

Federal Assistance

If a state disaster area is declared a federal disaster, then federal funding assistance may be available through the State OES. Funding and assistance may be available from Federal agencies such as FEMA and the U.S. EPA.

Damage estimates: The city should provide to the State OES estimates of damages and a "scope of work requested." It is recommended that the local HHW coordinator meet ahead of time with local emergency agencies or State OES contacts regarding the proper procedures and wording of requests for assistance.

Funding Process: The funding process may vary depending on the unique circumstances of the disaster. The process can either be the traditional FEMA reimbursement process, or by direct assistance from EPA.

REFERENCES

California Integrated Waste Management Board, Integrated Waste Management Disaster Plan: Guidance for local government on disaster debris management, January 1997.

EXHIBIT B-2D (revised)

INSURANCE REQUIREMENTS FOR
ENVIRONMENTAL SERVICES CONTRACTS

(Hazardous Waste Disposal, Remediation Services, Environmental Consulting, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

EXHIBIT B-2D (revised)

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

EXHIBIT B-2D (revised)

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. Coverage shall include Environmental Impairment Liability Endorsement MCS90 for contracts requiring the transportation of hazardous materials/wastes.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Contractors Pollution Liability Insurance

Coverage shall provide a minimum of not less than five million dollars (\$5,000,000) per occurrence and aggregate for bodily injury, personal injury, property damage and cleanup costs both on and offsite.

7. Professional Errors and Omissions Liability Insurance (required for contractors providing professional services, such as through a professional engineer, registered geologist, etc.)

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.

EXHIBIT B-2D (revised)

- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

8. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
- 3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
- 4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or

EXHIBIT B-2D (revised)

countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

**AGREEMENT FOR COUNTYWIDE
AB939 IMPLEMENTATION FEE**

This Agreement is made by and among the Cities and Towns of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Morgan Hill, Monte Sereno, Mountain View, Palo Alto, San José, Santa Clara, Saratoga, and Sunnyvale (CITIES) and the County of Santa Clara (COUNTY) on the _____ day of _____ 2018. The term CITIES may refer to Cities collectively or a City individually.

RECITALS

WHEREAS, pursuant to Public Resources Code Section 41901, a city, county, or city and county may impose fees in amounts sufficient to pay the costs of preparing, adopting, and implementing an integrated waste management plan;

WHEREAS, the Board of Supervisors established the Countywide AB939 Implementation Fee effective July 1, 1992 to fund local costs of preparing, adopting, and implementing integrated waste management plans and programs;

WHEREAS, the Recycling and Waste Reduction Commission of Santa Clara County (“Commission”) has determined that a Countywide AB939 Implementation Fee (Fee) is necessary, pursuant to Public Resource Code 41901, to assist in funding the costs of preparing, adopting and implementing integrated waste management plans and programs in the fifteen cities and the unincorporated area of the county;

WHEREAS, in 2015, the Board of Supervisors approved the Fee for Fiscal Years 2016, 2017, and 2018 at \$4.10 per ton of waste to be disposed;

WHEREAS, the Commission hereby recommends that the Board approve the Fee for Fiscal Years 2019, 2020, and 2021 at \$4.10 per ton of waste to be disposed;

WHEREAS, the Fee shall be imposed on each ton of waste landfilled or incinerated within the County; received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; or removed from any location in the County by any person or business for disposal or incineration outside the County; and

WHEREAS, State law requires jurisdictions to plan and implement household hazardous waste (HHW) services; and

WHEREAS, HHW programs provide household hazardous waste management services to residents of Santa Clara County and are necessary services to enable jurisdictions to meet the requirements of State law; and

WHEREAS, jurisdictions in Santa Clara County desire to provide safe, convenient, and economical means for residents to properly dispose of household hazardous wastes in an environmentally safe manner in order to avoid unauthorized or improper disposal in the garbage, sanitary sewer, storm drain system, or on the ground, in a manner which creates a health or environmental hazard. These wastes include, but are not limited to, common household products such as household cleaning products, furniture polish, solvents, oven cleaner, pesticides, oil based paints, motor oil, antifreeze, fluorescent lamps, and batteries; and

WHEREAS, the County will collect the Fee on behalf of the fifteen cities and the unincorporated area and will apportion the Fee according to the terms of this Agreement.

NOW, THEREFORE, CITIES and COUNTY AGREE AS FOLLOWS:

1. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which the COUNTY will collect and distribute the Fee of \$4.10 per ton in Fiscal Years 2019, 2020 and 2021 of waste to be disposed. The Fee is divided into two parts: 1) a Program Fee of \$1.50 per ton to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan in the fifteen cities and the unincorporated area of the County; and 2) a Household Hazardous Waste (HHW) Fee of \$2.60 per ton to provide funding to implement the Countywide HHW Program. The Program Fee will be allocated among jurisdictions as described in Exhibit C, attached hereto and incorporated herein. The HHW Fee will be allocated to the COUNTY, CITIES, and Countywide HHW Program and participating jurisdictions as described in Exhibit C, attached hereto and incorporated herein. The Fee shall be imposed on each ton of waste landfilled or incinerated within the County; received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County; collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County; or removed from any location in the County by any person or business for disposal or incineration outside the County. Non-Disposal Facilities are defined as those facilities included in the County of Santa Clara Non-Disposal Facility Element (and subsequent amendments to that Element) and are listed in Exhibit A, attached hereto and incorporated herein.

2. SERVICES PROVIDED BY COUNTY

COUNTY will collect and distribute the Fee. COUNTY will collect the Fee from landfills and non-disposal facilities listed in Exhibit A, and any landfill or non-disposal facility subsequently permitted, on a quarterly basis using data from tonnage reports filed by landfill and non-disposal facility operators with the County Recycling and Waste Reduction Division. The COUNTY shall require each landfill and non-disposal facility to submit required payment, documentation of tonnages disposed, and state-mandated Disposal Reporting System Reports on a quarterly basis, within 45 days of the end of each calendar quarter. Late submissions and/or payments shall be subject to a late filing penalty and delinquent penalties. COUNTY will research Santa Clara County tonnage reported to COUNTY by landfills outside the COUNTY in significant

amounts to determine the identity of the hauler. That hauler will subsequently be billed in the same fashion subject to the same penalties as mentioned above. Collected funds and any late filing payments and delinquency penalties shall be distributed to CITIES and Countywide HHW Program based on the formula set forth in Exhibits B and C. COUNTY shall not be obligated to distribute funds that COUNTY has been unable to collect from landfill or non-disposal facility operators.

3. ROLE OF CITIES

CITIES shall review the Disposal Reporting System Reports as prepared and submitted by the COUNTY and within 30 days of receipt shall report to COUNTY, with appropriate documentation, errors in waste allocations among jurisdictions.

4. COLLECTION AND USE OF FEE

Each ton of waste will be subject to the Fee. Best efforts will be made to prevent tonnage from being assessed a double fee (once at a non-disposal facility and again at a landfill within Santa Clara County). The Program Fee funding share paid to CITIES shall be used to assist in funding the costs of preparing, adopting, and implementing the integrated waste management plan of each of the CITIES and the unincorporated area of the COUNTY. The HHW Fee portion shall assist in funding the costs of each of the CITIES share of HHW operations.

5. INSURANCE

Each party shall maintain its own insurance coverage, through third party insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage or liability arising out of the performance of its responsibilities pursuant to this Agreement. CITIES agree to provide evidence of such insurance to COUNTY via Certificate of Insurance or other documentation acceptable to the COUNTY upon request.

6. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITIES and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree that each of the parties hereto shall fully indemnify and hold each of the other parties harmless from any claim, expense or cost, damage or liability arising out of, or in connection with, performance of its responsibilities pursuant to this Agreement and as described in Exhibit D.

Additionally, CITIES shall indemnify, hold harmless, and defend COUNTY, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses, including attorney fees and court costs, arising from any misuse of the Fee distributed to CITIES. COUNTY shall indemnify, hold harmless, and defend CITIES, its officers, agents, and employees with respect to any loss, damage, liability, cost or expenses,

including attorney fees and court costs, brought by third parties based on COUNTY's sole negligence in the collection or distribution of said Fees.

7. DISTRIBUTION OF FEE

COUNTY shall distribute the Fee to CITIES and the Countywide HHW Program pursuant to the formulas described in Exhibits B and C within 45 days of receipt of landfill and non-disposal facility payments and disposal documentation required for calculation of Fee distribution amounts. Distributions shall begin December 15, 2018, and continue quarterly through October 15, 2021.

8. PARTICIPATION IN THE COUNTYWIDE HHW PROGRAM

CITIES, at their option, may individually participate in the Countywide HHW Program by entering into the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

9. LATE PAYMENTS

If Fee payments and disposal documentation are not received from landfill or non-disposal facility operators prior to scheduled distribution of payments to CITIES and the Countywide HHW Program, payment distribution shall be calculated on a pro rata share of monies received. Upon collection, late payments and accrued delinquent penalties, if any, shall be distributed among CITIES and the Countywide HHW Program according to the formula in Exhibits B and C.

10. ACCOUNTING

COUNTY shall maintain records of all transactions related to collection, use and distribution of the Fee for at least five (5) years after the termination date of this Agreement, unless otherwise required by law to retain such records for a longer period. Such records will be available for inspection upon written request by CITIES, and will include but not be limited to tonnage reports submitted by landfills and non-disposal facilities, waste stream documentation provided by cities, payments made by the landfills and non-disposal facilities to the COUNTY and by the COUNTY to CITIES, and expenditures for programmatic and overhead costs.

11. REQUEST FOR REVIEW

In the event CITIES have a dispute regarding the calculation of its share of the Fee or the distribution or use of the Fee, CITIES may request in writing a review by COUNTY within 10 days of receipt of their Fee allocation. The review shall be performed within 30 days of request and results shall be reported to CITIES in writing.

12. EFFECTIVE DATE OF AGREEMENT

This agreement is effective upon approval by all fifteen CITIES and the COUNTY.

13. AMENDMENT

This Agreement may be amended only by a written instrument signed by all fifteen CITIES and the COUNTY.

14. INDEPENDENT CONTRACTOR

Each party shall perform responsibilities and activities described herein as an independent contractor and not as an officer, agent, servant or employee of any of the parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.

15. TERM OF AGREEMENT

The term of this Agreement shall be from July 1, 2018 to June 30, 2021, or until all funds collected covering the period through June 30, 2021 have been distributed, whichever is later. COUNTY shall bill the operators of the landfills and non-disposal facilities listed in Exhibit A for the Fee commencing with the Quarter ending September 30, 2018. Said landfills and non-disposal facilities will be billed for the Fee through June 30, 2021.

16. NOTICES

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such address as the party may designate in writing in accordance with this section.

City of _____

Contact: _____

Title: _____

Address: _____

County of Santa Clara

Contact: Recycling and Waste Reduction Division Manager
Recycling and Waste Reduction Division

Address: 1555 Berger Drive, Suite 300

City: San Jose, CA 95112

17. CONTROLLING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

18. ENTIRE AGREEMENT

This document embodies the entire Agreement between the parties with respect to the subject matter hereof. No modification of this Agreement shall be effective unless and until modification is evidenced by writing signed by all parties or their assigned designees.

19. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

20. CONTRACT EXECUTION

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

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IN WITNESS WHEREOF, the parties have executed this **AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE** on the dates as stated below:

“COUNTY”

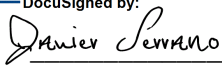
S. Joseph Simitian, President
Board of Supervisors

Date: _____

ATTEST:

Megan Doyle Date
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
 3/22/2018

Javier Serrano Date
Deputy County Counsel

“CITY”

CITY/TOWN OF _____,
A municipal corporation

By: _____

Title: _____

Date: _____

EXHIBIT A

LANDFILLS LOCATED IN SANTA CLARA COUNTY

Guadalupe Rubbish Disposal Site
Kirby Canyon Sanitary Landfill
Newby Island Sanitary Landfill
Zanker Materials Processing Facility
Zanker Road Landfill

**NON-DISPOSAL FACILITIES AND TRANSFER STATIONS LOCATED IN
SANTA CLARA COUNTY**

California Waste Solutions Recycling & Transfer Station
City of Palo Alto Green Composting Facility
Environmental Resource Recovery, Inc. (Valley Recycling)
Green Earth Management LLC Kings Row Recycling Facility
Green Waste Materials Facility and Transfer Station
Green Waste Recovery Facility
Guadalupe Landfill
Lam Hauling Chipping and Grinding
Lam Hauling Inert Debris Type A
Leo Recycle
Material Recovery Systems Facility
Mission Trail Waste Systems, Inc.
Newby Island Compost Facility
Pacheco Pass Transfer Station
Pacific Coast Recycling, Inc.
Premier Recycle Facility
Recology Silicon Valley Processing and Transfer Facility
The Recyclery at Newby Island
San Martin Transfer Station
Smurfit-Stone Recycling San Jose Facility
South Valley Organics
Stanford Recycling Center and Direct Transfer Facility
Sunnyvale Food Materials Transfer/Processing Operations
Sunnyvale Materials Recovery and Transfer Station (SMaRT Station)
Valley Recycling San Jose CDI Processing/Transfer Facility
Wood Processing Facility at Recology Pacheco Pass
Z-Best Composting Facility
Zanker Materials Processing Facility
Zanker Road Class III Landfill
Zero Waste Energy Development Company Anaerobic Digestion Facility

EXHIBIT B

FORMULA FOR DISTRIBUTION OF AB939 PROGRAM FEE

As documented in quarterly reports submitted by the County to the State Disposal Reporting System, each jurisdiction located in Santa Clara County (County) will receive \$1.50 per ton of solid waste, which originates from their respective jurisdiction, that is:

- a) disposed of in landfills or incinerated within the County,
- b) received at any non-disposal or collection facility located within the County and subsequently transported for disposal or incineration outside of the County,
- c) collected from any location within the County by a solid waste hauler operating pursuant to a franchise, contract, license, or permit issued by any local jurisdiction and subsequently transported for disposal or incineration outside of the County, or
- d) removed from any location in the County by any person or business for disposal or incineration outside the County.”

Fees collected from undocumented disposed tonnage, or tonnage originating outside of Santa Clara County, will be distributed according to each jurisdiction's percent of countywide population, according to the latest available population report issued by the California Department of Finance.

EXHIBIT C

COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE PROGRAM FEE (HHW Fee)

1. PROGRAM FUNDING SOURCE

HHW Program services are directly mandated under AB939, which establishes statutory authority to provide for funding to support planning and implementation of integrated waste management programs. The AB939 HHW Fee, of \$2.60 per ton, collected as part of the AGENCY AGREEMENT FOR COUNTYWIDE AB939 IMPLEMENTATION FEE will be the primary source of funding for Countywide Household Hazardous Waste (CoHHW) Program services.

Funds derived from the AB939 HHW Fee will be allocated among five types of CoHHW Program service costs as follows:

- A. Fixed Program Costs will be apportioned based on the number of households in each participating jurisdiction. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- B. San Jose Facility Use Surcharge will be apportioned based on CITY's anticipated participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San Jose.
- C. Variable Cost Per Car provides a base level service of 4% of households in all participating jurisdictions. The number of households will be determined at the beginning of each Fiscal Year by statistics compiled by the California Department of Finance, Demographic Research Unit from their most recent Report, "Population Estimates for California Cities and Counties."
- D. Available Discretionary Funding funded on tonnage generated per participating jurisdiction.
- E. Abandoned Waste Disposal Costs will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations as defined in PUBLIC RESOURCES CODE SECTION 41904.

2. FIXED PROGRAM COST

Fixed Program Costs shall be \$2.99 per household in Fiscal Years 2019, 2020 and 2021. Estimated HHW Fixed Costs are projected in Attachments A and B, attached hereto and incorporated herein. Fixed Program Costs may include, but are not limited to up to ten (10) CoHHW Program staff members, facility leasing costs, vehicle lease costs, office rent, office

supplies, county administrative overhead, county legal counsel, training costs, equipment and facility maintenance and union negotiated salary and benefit changes.

3. ABANDONED WASTE DISPOSAL COST

Abandoned Waste Disposal Costs for Fiscal Year 2019, 2020 and 2021 will be \$0.05 per household for all households in the cities and towns of Santa Clara County and in the unincorporated area of the County. The Abandoned Waste Disposal Cost will fund disposal of HHW illegally abandoned at Nonprofit Charitable Reuser organizations defined in PUBLIC RESOURCES CODE SECTION 41904. Estimated Abandoned Waste Disposal Cost is projected in Attachment A of the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

For the purposes of this agreement, PUBLIC RESOURCES CODE SECTION 41904 defines a nonprofit charitable reuse organization as follows: "Nonprofit charitable reuser" means a charitable organization, as defined in Section 501(c)(3) of the federal Internal Revenue Code, or a distinct operating unit or division of the charitable organization, that reuses and recycles donated goods or materials and receives more than 50 percent of its revenues from the handling and sale of those donated goods or materials.

4. SAN JOSÉ FACILITY USE SURCHARGE

The San José Facility Use Surcharge is estimated to be \$6.83 per car for Fiscal Years 2019, 2020 and 2021. The total San José Facility Use Surcharge for CITY will be based on CITY's participation at the County Household Hazardous Waste Collection Facility located at 1608 Las Plumas Avenue, San José. Estimated San José Facility Use Surcharges are projected in Attachment A of the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM.

5. VARIABLE COST PER CAR

The Variable Cost Per Car is the cost associated with actual labor, waste disposal, transportation and other services provided to the residents at the County Household Hazardous Waste Collection Facilities (CoHHWCF) and at Temporary Events. The Variable Cost Per Car is estimated to be approximately \$62 per car for Fiscal Years 2019, 2020 and 2021. The estimated cost per car will be adjusted to reflect actual service costs. After Fixed Program Costs and San Jose Facility Use Surcharge are allocated on a per household basis, the Variable Cost Per Car will be used to calculate the costs to service 4% of households across all participating jurisdictions. If the level of 4% of households is not reached in a particular jurisdiction, the CoHHW Program may use the remaining balance of funds, in cooperation with the CITY that has less than 4% participation levels, to increase public outreach and/or provide additional services in that jurisdiction the following year.

6. AVAILABLE DISCRETIONARY FUNDING

The Available Discretionary Funding portion of the AB939 HHW Fee will be allocated based on the tons of waste generated within each jurisdiction, and after allocation of Fixed Program Costs, San José Facility Use Surcharge, and Variable Cost Per Car allocation. Available Discretionary Funds will be paid as directed by each jurisdiction. Available Discretionary Funds must be used for HHW purposes. Options for how to spend these funds include, but are not limited to, increasing the number of residents served in that jurisdiction by the CoHHW Program, subsidizing curbside used motor oil collection, electronic waste (e-waste) collection, universal waste collection, emergency HHW services, funding HHW public education, the support of capital infrastructure projects to accommodate HHW drop-off and collection events, or providing special programs such as retail collection of certain waste and/or door-to-door collection of HHW for the elderly and/or persons with disabilities and neighborhood clean-up events.

7. PROGRAM FUNDING PASS-THROUGH

Annual funding calculations include HHW Fees collected on behalf of all County jurisdictions. CITIES, at their option, may participate in the Countywide Household Hazardous Waste Program by entering into the AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM. CITIES not participating in the Agency Agreement will receive their pro-rata share of funding received by the COUNTY from the HHW Fee.

If CITIES not participating in the AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM desire to permit residents to participate in HHW Program services on an emergency basis, then services to these residents will be provided on a cost recovery basis. A charge equal to the established rates charged by the Countywide HHW Program to Conditionally Exempt Small Quantity Generators (CESQG) will be billed to the CITIES. A CITY'S representative must call the Countywide HHW Program appointment line to schedule an appointment for the resident. The pro-rata share of liability will be shared as defined in Section 27 of AGENCY AGREEMENT FOR COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM and as described in Exhibit D.

EXHIBIT D

**SECTION 27 OF AGENCY AGREEMENT
FOR COUNTYWIDE HOUSEHOLD HAZARDOUS
WASTE COLLECTION PROGRAM**

HOLD HARMLESS AND INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between CITY and COUNTY pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead COUNTY and CITY agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other parties under this Agreement.

Additionally, CITY shall indemnify COUNTY for CITY's apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of the household hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. Apportionment for disposal liability shall be determined by each participating jurisdiction's pro rata proportion of household participation in the Program. Apportionment for transportation and treatment liability shall be determined by each participating jurisdiction's pro rata household participation at the event where the waste was generated. COUNTY will use reasonable efforts to obtain recovery from all available resources, including insurance, of any liable hauler or liable disposal facility operator. No liability shall be apportioned to CITY for transportation, treatment or disposal in any case where COUNTY has contracted for such services and has failed to require the contractor to maintain the insurance requirements set forth in Section 24 above.

CITY shall further indemnify COUNTY for CITY's apportioned share of liability incurred and attributed to the Countywide HHW Program for the transportation, treatment or disposal of household hazardous waste at corporate sponsored events where non-county resident employees of the corporate sponsor are authorized to participate in the event. Liability for the nonresident portion of the disposal of waste shall be shared by the cities and the COUNTY as described above. The nonresident portion shall be determined by calculating the percentage of nonresidents participating in the event. This percentage will then be subtracted from the total liability for the household hazardous waste prior to assessing CITY's apportioned share of any liability for the household hazardous waste.

COUNTY shall require CESQGs and Nonprofit Charitable Reusers to indemnify COUNTY for their apportioned share of any liability incurred and attributed to the Countywide HHW Program for the transportation, treatment, or disposal of their hazardous waste, once the waste has been accepted by a licensed hazardous waste hauler. The CESQG and Nonprofit Charitable Reuser portion of the waste shall be determined by calculating the percentage, by weight, of the total household hazardous waste accepted by the CoHHW Program. This percentage will be used to calculate the portion of liability attributed to CESQGs and Nonprofit Charitable Reusers and will be subtracted from the total liability prior to assessing CITY's apportioned share of any liability for household hazardous waste.



CONSENT CALENDAR

Agenda Item # 5

AGENDA REPORT SUMMARY

Meeting Date: May 8, 2018

Subject: Parcel Map: 517 Tyndall Street

Prepared by: Zubair Trabzada, Junior Engineer

Reviewed by: Susanna Chan, Public Works Director

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Parcel Map

Initiated by:

517 Tyndall St. Development

Previous Council Consideration:

October 10, 2017

Fiscal Impact:

None

Environmental Review:

Not applicable

Policy Question(s) for Council Consideration:

None

Summary:

- Tentative Map was approved on October 10, 2017
- Council to approve Parcel Map of 517 Tyndall Street

Staff Recommendation:

Move to approve the Parcel Map for 517 Tyndall Street



Subject: Parcel Map: 517 Tyndall Street

Purpose

Approve Parcel Map of 517 Tyndall Street

Background

On October 10, 2017, the City Council approved a design review application and the associated Tentative Map for a new development at 517 Tyndall Street. The recommended action will finalize the tentative parcel map for the project.

Discussion/Analysis

Parcel Map for the development at 517 Tyndall St. conforms to the Tentative Map approved on October 10, 2017. The map and survey have been checked and found to be technically correct and in conformance with all regulations, laws and the approved tentative map. All conditions of approval associated with this Parcel Map have been complied with. All required fees and deposits have been received. The Parcel Map is available in the Engineering Division office for inspection.

Options

- 1) Approve Parcel Map of 517 Tyndall Street

Advantages: Developer complies with the condition of approval and can complete the building permit application

Disadvantages: None

- 2) Do not approve Parcel Map of 517 Tyndall Street

Advantages: None

Disadvantages: Developer will not be able to continue construction. Council must provide reasons for disapproval

Recommendation

The staff recommends Option 1.

OWNERS' STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THE MAP; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID PROPERTY; THAT WE HEREBY CONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.
OWNER:

OWNER: TYNDALL STREET TOWNHOMES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: LESLIE ANTHONY POLTRACK, MANAGER

OWNER'S ACKNOWLEDGEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THE CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THE CERTIFICATE IS ATTACHED AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF _____
ON _____, 201_ BEFORE
ME, _____

PERSONALLY APPEARED _____ WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND

NOTARY'S SIGNATURE

PRINTED NOTARY'S NAME

NOTARY'S PRINCIPAL PLACE OF BUSINESS

NOTARY'S COMMISSION NO.

EXPIRATION OF NOTARY'S COMMISSION

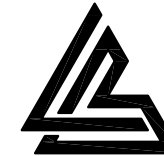
SOILS REPORT

A SOILS REPORT AND GEOLOGIC REPORT ON THIS PROPERTY HAS BEEN PREPARED BY EARTH INVESTIGATIONS CONSULTANTS, INC., DATED OCTOBER 13, 2016, A COPY OF WHICH HAS BEEN FILED WITH THE CITY OF LOS ALTOS.

TRACT MAP NO. 10452

BEING A SUBDIVISION OF LOT 3, BLOCK 36 AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP No. 3, TOWN OF LOS ALTOS", FILED FOR RECORD NOVEMBER 4, 1907 IN BOOK "M" OF MAPS, PAGE 1, SANTA CLARA COUNTY RECORDS ALSO BEING THE LANDS OF TYNDALL STREET TOWNHOMES, LLC PER THAT CERTAIN GRANT DEED RECORDED AUGUST 15, 2017 AS INST. NO. 23726323, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

CITY OF LOS ALTOS SANTA CLARA COUNTY CALIFORNIA
DECEMBER 2017



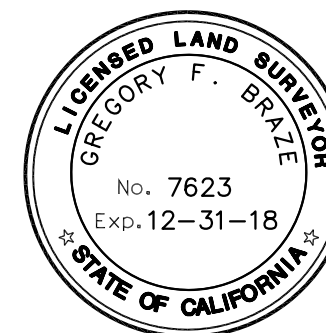
LEA & BRAZE ENGINEERING, INC.

CIVIL ENGINEERS • LAND SURVEYORS
2495 INDUSTRIAL PARKWAY WEST HAYWARD, CALIFORNIA 94545
(510) 887-4086 FAX (510) 887-3019
WWW.LEABRAZE.COM

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF TYNDALL STREET TOWNHOMES, LLC IN MARCH 2016. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IN ANY; THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN; THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR THAT THEY WILL BE SET IN THOSE POSITIONS ON OR BEFORE DECEMBER 2018; THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATE: _____ SIGNED: GREGORY F. BRAZE
LS 7623
EXP. 12-31-2018



CITY CLERK'S STATEMENT

I HEREBY STATE THAT THIS MAP, DESIGNATED AS TRACT NO. 10452, CONSISTING OF TWO (2) SHEETS WAS APPROVED BY THE CITY COUNCIL OF LOS ALTOS, STATE OF CALIFORNIA, BY RESOLUTION NO. _____ AT A DULY AUTHORIZED MEETING OF SAID CITY COUNCIL HELD ON THE _____ DAY OF _____, 20____.

JON MAGINOT, CITY CLERK
CITY OF LOS ALTOS, CALIFORNIA

BY: _____
DEPUTY
DATE: _____

CITY LAND SURVEYOR'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREON SUBDIVISION MAP AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

DATE: _____ MARK A. HELTON, LS 7078
CITY OF LOS ALTOS, CALIFORNIA
LICENSE EXPIRES 12-31-2018



CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT I HAVE EXAMINED THE HEREON FINAL MAP OF TRACT 10452; THAT THE SUBDIVISION AS SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF; THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT, AS AMENDED, AND OF ANY LOCAL ORDINANCE APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

DATED: _____ CHRISTOPHER LAMM RCE#82461
CITY OF LOS ALTOS, CALIFORNIA
LICENSE EXPIRES 09-30-2018



RECORDER'S STATEMENT

FILE NO. _____, FEE \$ _____ PAID. ACCEPTED FOR RECORD AND FILED THIS _____ DAY OF _____, 201_ AT _____ M., IN BOOK _____ OF MAPS, AT PAGE(S) _____, SANTA CLARA COUNTY RECORDS AT THE REQUEST OF LEA & BRAZE ENGINEERING.

REGINA ALCOMENDRAS,
COUNTY RECORDER
SANTA CLARA COUNTY,
CALIFORNIA

BY: _____
DEPUTY

LEGEND

- ⊙ FOUND MONUMENT AS NOTED
- SET 3/4" IRON PIPE WITH PLASTIC PLUG "L.S. 7623"
- () RECORD DATA PER REFERENCE, IF DIFFERENT FROM MEASURED DATA
- DISTINCTIVE BORDER LINE
- PROPERTY LINE
- - - CENTERLINE

BASIS OF BEARINGS

THE BEARING NORTH 90°00'00" EAST BETWEEN TWO FOUND MONUMENTS ON THE CENTERLINE OF CUESTA DRIVE AS SHOWN ON TRACT No. 9501, FILED IN BOOK 765 OF MAPS AT PAGES 18 AND 19, SANTA CLARA COUNTY RECORDS IS THE BASIS OF ALL BEARINGS SHOWN UPON THIS MAP.

NOTES

1. ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.
2. THE TOTAL GROSS AREA OF THIS SURVEY IS 7,100± SQUARE FEET.
3. THE DISTINCTIVE BORDER LINE DENOTES THE BOUNDARY OF THE SUBDIVISION.

TRACT NO. 9501
765 M 18-19

FOUND 3/4" IRON PIPE W/PLASTIC PLUG & TACK, LS 7547(4)

N90°00'00"E
25.00'

S00°00'00"E
25.00'

45.00'

45.00'

CUESTA DRIVE (50' WIDE)

BASIS OF BEARINGS
N90°00'00"E 350.00' (350.07')(4)(5)

FOUND GRANITE MONUMENT & HOLE IN MONUMENT WELL ⊙ LASSEN (3)(5)(6) 3" BRASS DISK PER(4)

FOUND 2.5" BRASS DISK & PUNCH IN MONUMENT WELL (2)(3)(4)(5)(6)

TRACT NO. 10048
838 M 16-18

TYNDALL STREET (50' WIDE)

N00°00'00"E 125.00'

50.00'

25.00'

25.00'

N00°00'00"E 50.00'

250.00'

N00°00'00"E

PARCEL MAP
846 M 17-18

LOT 3
BLOCK 36
"M" MAPS 1
AREA = 7,100± SQ.FT.

N90°00'00"W 142.00'

N90°00'00"E 142.00'

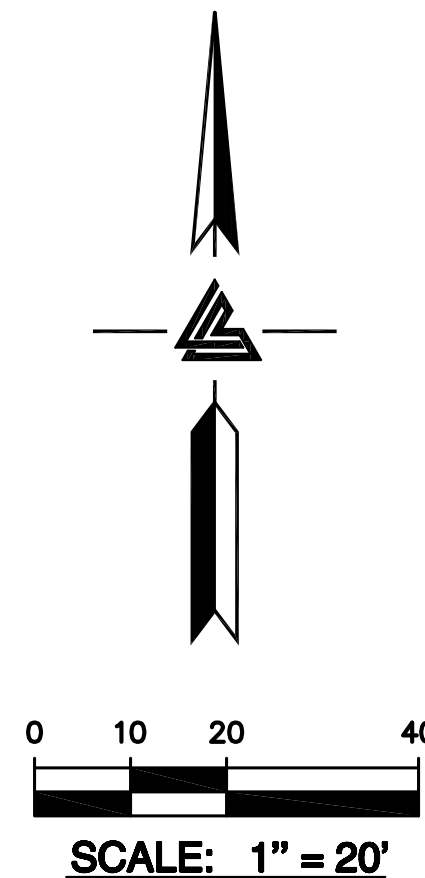
TRACT NO. 8366
622 M 26-28

TRACT NO. 5659
369 M 25-27

FOUND 3/4" IRON PIPE W/PLASTIC PLUG & TACK, RCE 18764(2)

ALLEY (16' WIDE)

S00°00'00"E 50.00'



REFERENCES

- (1) MAP NO. 3, TOWN OF LOS ALTOS FILED: NOVEMBER 4, 1907 VOLUME "M" OF MAPS, PAGE 1
- (2) TRACT No. 5659, TYNDALL OAKS FILED: APRIL 2, 1976 BOOK 369 OF MAPS, PAGES 25-28
- (3) TRACT No. 8366 FILED: DECEMBER 14, 1990 BOOK 622 OF MAPS, PAGES 26-28
- (4) TRACT No. 9501 FILED: OCTOBER 10, 2003 BOOK 765 OF MAPS, PAGES 18-19
- (5) TRACT No. 10048 FILED: JULY 27, 2010 BOOK 838 OF MAPS, PAGES 16-18
- (6) PARCEL MAP FILED: JULY 19, 2011 BOOK 846 OF MAPS, PAGES 17-18

TRACT MAP NO. 10452

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CITY OF LOS ALTOS SANTA CLARA COUNTY CALIFORNIA
SCALE: 1"=20' DECEMBER 2017

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WWW.LEABRAZE.COM



CONSENT CALENDAR

Agenda Item # 6

AGENDA REPORT SUMMARY

Meeting Date: May 8, 2018

Subject: Parking Regulations

Prepared by: Staff

Attachment(s): None

Summary:

- This item was noticed in the Town Crier for the May 8, 2018 Council Meeting and so is appearing on the agenda. The Planning Commission is still considering the draft parking requirements; therefore, it is recommended that the Council continue discussion of this item to a joint Study Session with the Planning Commission

Staff Recommendation:

Move to continue discussion of draft parking requirements to a joint City Council/Planning Commission Study Session on June 19, 2018



DISCUSSION ITEMS

Agenda Item # 7

AGENDA REPORT SUMMARY

Meeting Date: May 8, 2018

Subject: Affordable Housing Impact Fees

Prepared by: Jon Biggs, Community Development Director

Approved by: Chris Jordan, City Manager

Attachments:

1. Draft Ordinance Establishing an Affordable Housing Impact Fee for Residential and Non-Residential Development
2. Summary; Residential and Non-Residential Nexus Analyses and Study, Keyser Marston Associates, Dated - December 2016
3. City Council Minutes – May 9, 2017

Initiated by:

City Council

Previous Council Consideration:

The City Council last reviewed affordable housing impact fees on May 9, 2017.

Fiscal Impact:

If adopted the Affordable Housing Impact Fee would generate funds for the City to use towards its affordable housing initiatives. There would be an administrative cost associated with collecting and dispersing these affordable housing fees; however, the expenses are expected to be nominal and the fees themselves may be used to make up for such costs.

Environmental Review:

The adoption of this Ordinances is (1) not a Project under the California Environmental Quality Act (CEQA) and is therefore exempt pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(4) because it constitutes a governmental fiscal activity that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment; (2) statutorily exempt pursuant to CEQA Guidelines section 15267(Financial Assistance to Low or Moderate Income Housing; (3) not intended to apply to specifically identified affordable housing projects and as such it is speculative to evaluate any such future project now and, moreover, they will be subject to appropriate environmental review at such time as approvals for those affordable housing project are considered; and/or (4) not intended to, nor does it, provide CEQA clearance for future development-related projects by mere establishment or payment of the fees. Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

Policy Questions for Council Consideration:

- Should Los Altos adopt affordable housing impact fees?



Subject: Affordable Housing Impact Fees

-
- If affordable housing impact fees are adopted, to what land uses should they apply?

Summary:

- The Keyser Marston Associates affordable housing nexus studies conducted for Los Altos support adopting affordable housing impact fees.
- The draft ordinance provides that residential ownership and residential rental developments and non-residential developments pay a fee to mitigate their impacts on the supply of affordable housing.
- The ordinance provides for the production of affordable housing or enhancement of affordable housing opportunities in-lieu of paying the affordable housing impact fee.

Staff Recommendation:

That the City Council move to direct staff to prepare and publish a public hearing notice in preparation for Council consideration of the introduction of an affordable housing impact fee ordinance at its meeting of May 22, 2018.



Subject: Affordable Housing Impact Fees

Purpose

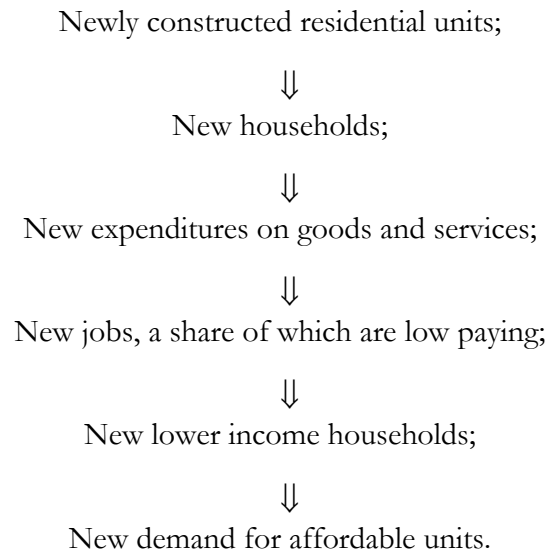
Consideration of the appropriateness of adopting affordable housing impact fees for non-residential (ownership and rental units) and residential development. Adopting these fees would implement Program No. 4.3.7 of the 2015-2023 Housing Element of the City’s General Plan.

Background

What are affordable housing impact fees?

Affordable housing impact fees are development fees that are intended to mitigate the impact residential and non-residential development have on the supply of affordable housing. The fees collected may be used to develop affordable housing, rehabilitate affordable housing, and provide limited administration costs as they relate to building and maintaining affordable housing.

To adopt affordable housing impact fees, the City must determine a nexus, or connection, between development and its impact on and need for an affordable housing supply. For residential development, the nexus analysis concept is as follows:



For commercial development, the nexus analysis concept is similar: new commercial buildings add new workers; new workers create a need for additional housing in proximity to the jobs; a portion of the new housing needs to be affordable to workers in lower income households.

The City’s 2015-2023 Housing Element Program No. 4.3.7 sets forth a requirement to consider adopting affordable housing linkage fees for commercial development. On May 26, 2016, the City Council expanded the scope of this program to include residential development.



Subject: Affordable Housing Impact Fees

To help establish a basis to consider such fees, the City joined a multi-jurisdictional study organized by the Silicon Valley Community Foundation. The resulting studies were made up of three reports prepared by Keyser Marston Associates.

1. Summary, Context Materials and Recommendations Affordable Housing Nexus Studies;
2. Residential Nexus Analysis; and
3. Non-Residential Nexus Analysis.

The commissioned nexus reports demonstrated a clear basis to adopt affordable housing impact fees. The reports demonstrate the high range of possible fees and recommended lower justifiable amounts.

On March 16, 2017, the Planning Commission held a hearing and made several recommendations on the affordable housing impact fees to the City Council. The City Council took up consideration of the Planning Commission's recommendations and affordable housing impact fees at its meeting of May 9, 2017. There was agreement amongst the City Council that affordable housing impact fees should be charged and directed preparation of a draft ordinance to institute the fees.

Discussion/Analysis

The City Council is being asked to consider a draft ordinance (attachment 1) that would require payment of affordable housing impact fees for residential and non-residential development projects. The fees would apply to residential ownership and rental projects that result in a net increase of two or more units. It would also apply to non-residential projects that result in a net increase of 500 or more square feet of floor area.

The fee for each project will be based on the new gross floor area of the project, which will be multiplied by a square foot fee, which will be established by a resolution of the City Council if the ordinance is adopted. At its meeting in May of 2017, the City Council indicated that the following fees for the indicated use would be appropriate:

1. Staff is to propose a fee for multiple-family ownership developments (staff is considering \$50 per square foot);
2. A \$45 per square foot fee for multiple-family rental developments;
3. A \$15 per square foot fee for non-residential development;
4. A \$25 per square foot fee for office developments.

Per the draft ordinance, any fee collected must go into the City's affordable Housing Mitigation fund and used to support the development of affordable housing in the City or the region.



Subject: Affordable Housing Impact Fees

The draft ordinance also provides that a developer may request alternatives in-lieu of paying the affordable housing impact fee. Generally, the alternatives amongst the three categories of projects that will be required to pay the fee include:

- Construction of affordable units on-site; or
- Dedication of land for affordable unit production; or
- Designation of affordable units off-site.

Requests for these in-lieu alternatives require consideration and approval by the City Council, which may approve the request if it determines that the alternative will mitigate the impact of the project on the need for affordable housing.

It is worth pointing out that those projects that provide affordable housing units on the project site, in-line with the requirements of Chapter 14.28, will not need to pay an affordable housing impact fee. This makes sense because they will be addressing the impacts on the affordable housing supply by increasing the supply of affordable housing units.

The draft ordinance does include a section that gives the City Council the discretion to waive the affordable housing impact fee. This can be done if the applicant can demonstrate, to the satisfaction of the City Council and based on substantial evidence, that there is no reasonable relationship between the development and its impact on the affordable housing supply or that applying the fee would be a taking per the U.S. and State Constitution.

Next Steps

The City Council is being asked to review the draft ordinance and provide staff with direction on modifications that can be incorporated so that a draft ordinance can be brought back for consideration of its introduction.

With the concurrence of the City Council, staff will move forward with publishing a notice indicating consideration of the affordable housing impact fee ordinance at a May 22, 2018 public hearing. If the ordinance is introduced at this meeting, staff will bring the ordinance forward for adoption at the June 12, 2018 City Council meeting.

Options

- 1) Direct staff to move forward with publication of the appropriate noticing and bring forward an affordable housing impact fee ordinance

Advantages: May provide a substantial amount of fee revenue that can be beneficial in achieving affordable housing opportunities.



Subject: Affordable Housing Impact Fees

Disadvantages: Potentially increase the cost of residential and non-residential development

2) Decline moving forward with an affordable housing impact fee ordinance.

Advantages: Would not result in additional costs in the production of residential and non-residential development.

Disadvantages: Will not provide funds that can be used to provide and pursue affordable housing opportunities.

Recommendation

The staff recommends Option 1.

ORDINANCE NO. 2018-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS ADDING CHAPTER 3.49 TO THE LOS ALTOS MUNICIPAL CODE TO ESTABLISH AFFORDABLE HOUSING IMPACT FEES FOR RESIDENTIAL AND NON-RESIDENTIAL DEVELOPMENT AND ADOPTING CEQA EXEMPTION FINDINGS

WHEREAS, existing local, state and federal resources are insufficient to meet the City of Los Altos' needs for affordable housing; and

WHEREAS, expansion of the supply of affordable housing will require funding to bridge the gap between the costs of developing new affordable housing and the amount new moderate and lower income households can afford to pay; and

WHEREAS, the Mitigation Fee Act, codified at California Government Code sections 66000, *et seq.*, establishes the legal requirements for a jurisdiction to establish and implement a development impact fee program in conformance with constitutional standards; and

WHEREAS, many cities and counties have adopted and imposed affordable housing impact fees on new development to address new developments' impacts on the need for affordable housing; and

WHEREAS, the City Council desires to create an Affordable Housing Impact Fee to fund affordable housing projects within the City and the region; and

WHEREAS, the City's 2015-2023 Housing Element provides that the City will facilitate the development of new affordable housing units, by, among other things, implementing Housing Element Program No. 4.3.7 to consider, study and explore a commercial development affordable housing linkage fee; and

WHEREAS, on May 26, 2016, the City Council expanded the scope of Housing Element Program No. 4.3.7 to include evaluation of an affordable housing linkage fee to include residential development; and

WHEREAS, to establish a basis for an affordable housing impact fee program, the City joined a multi-jurisdictional study organized by the Silicon Valley Community Foundation; and

WHEREAS, the Silicon Valley Community Foundation effort resulted in three reports prepared by Keyser Marston Associates, dated December 2016: (1) Summary, Context Materials and Recommendations Affordable Housing Nexus Studies; (2) Residential Nexus Analysis; and (3) Non-Residential Nexus Analysis (collectively "Nexus Studies"); and

WHEREAS, the Nexus Studies demonstrate that new residential and non-residential developments and additions to structures containing these types of uses generate an increased demand for affordable housing and that these can be mitigated through the imposition of housing impact fees; and

WHEREAS, on March 16, 2017, the City's Planning Commission held a duly noticed public hearing on the program recommendations of the Nexus Study and made recommendations regarding the adoption of an affordable housing linkage fee; and

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WHEREAS, the Nexus Studies and the Planning Commission’s recommendations were presented for public review and comment at the City Council’s regularly scheduled public meeting of May 9, 2017; and

WHEREAS, the City Council considered the Nexus Studies; and

WHEREAS, on _____, 2018, the City Council held a duly noticed public hearing and considered the Affordable Housing Impact Fee, together with the Nexus Studies and all other information relevant to evaluation and adoption of such Fee; and

WHEREAS, this Ordinance is consistent with the Los Altos General Plan as a whole and implements the Los Altos General Plan’s Adopted Housing Element Goal 4, Policy 4.3, Program 4.3.7 for the 2015-2023 by establishing an affordable housing impact fee to help fund the development of new affordable housing units;

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CODE: Title 3 of the Los Altos Municipal Code is hereby amended to include a new chapter as follows:

CHAPTER 3.49 – AFFORDABLE HOUSING IMPACT FEES

3.49.010 - Purpose.

This chapter requires the payment of housing impact fees for the impact of residential and non-residential development on the need for affordable housing in the City of Los Altos and to implement the Housing Element of the City’s General Plan and California Government Code Section 65583(c), which expresses the state housing policy that requires cities to assist in the development of adequate housing to meet the needs of lower income households.

3.49.020 - Housing Mitigation Fund.

All housing impact fees shall be placed in the City's Housing Mitigation Fund and used to support the development of affordable housing within the City and the region.

3.49.030 - Applicability.

A. New Construction. Projects that include new residential ownership construction, non-residential construction or new rental housing construction shall be subject to the housing impact fees required in this chapter. Payment of the housing impact fees shall be added as a condition of approval for all development projects subject to this chapter.

B. Pipeline Projects. The following development projects shall be exempt from payment of the housing impact fees required in this chapter:

1. Projects for which a development application pursuant to this title has been filed and deemed complete by (date ordinance is effective); and

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2. Projects that have received final approval pursuant to this title by (date ordinance is effective), and which are subsequently the subject of a pending application for modifications to the approved plans or permit, except that any increase in floor area from the amount already approved shall be subject to the housing impact fees required by this chapter.

3.49.040 –Housing Impact Fee

A. Adoption of Housing Impact Fees. Housing impact fee amounts for each applicable use shall be established by City Council resolution, which may be amended from time to time by Council. The fee amounts shall be adjusted annually based on the Consumer Price Index for all urban consumers for the San Francisco-Oakland-San Jose area unless otherwise modified by council. Such fees shall not exceed the cost of mitigating the impact of developments on the need for housing for lower-income households in the city.

B. Timing of Payment. Housing impact fees shall be paid prior to issuance of the first building permit for the project. A developer may pay all or a portion of the fee owed at any time prior to issuance of the building permit, at the rate in effect at the time payment is made. For phased projects, the amount due shall be paid on a pro rata basis across the entire square footage of the approved development, and each portion shall be paid prior to the issuance of any building permit for each phase.

3.49.050 Housing Impact Fees for Residential Ownership Development.

A. Applicability. A housing impact fee shall be imposed on all new residential ownership developments that result in a net increase of two (2) units or more, regardless of zoning designation of the project site, unless the applicant elects to provide one of the alternatives listed in subsection (D).

B. Calculation of Fee. The amount of the fee, as further described in the fee resolution, is imposed on a per square foot basis for new gross habitable floor area commensurate with the building type (e.g., townhome or condominium). The following formula shall be used in calculating the required housing impact fee for new residential rental housing developments: (New gross habitable square foot area of all units) minus (existing gross habitable square foot area of all units) multiplied by (per square foot fee) equals (total housing impact fee).

C. Gross habitable Square Foot Area. Gross habitable square foot area means the total living area of each dwelling unit within a project measured to the outside of the exterior walls and does not include areas outside of the dwelling units such as common areas, corridors, parking facilities, outside storage lockers and shared laundry facilities.

D. Alternatives In Lieu of a Housing Impact Fee. As an alternative to paying the affordable housing impact fee for residential ownership developments, a developer may request to provide affordable ownership units on the project site, dedicate land for affordable housing, or provide affordable units off-site, as detailed in this section.

1. On-site units. A developer may request to mitigate the housing impacts through construction of affordable residential ownership units on the subject development site at the numbers indicated at Chapter 14.28.

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2. Off-site units or dedication of land. As an additional alternative, a developer may request to designate affordable units in an off-site location or dedicate land for the construction of affordable units. The City priority shall be for a location that is accessible to public transit. Any off-site units shall be either new or renovated to near-new conditions. Such requests shall be granted in the sole discretion of the City Council if the City Council determines that the proposed alternative will mitigate the impact of the project on the need for affordable housing.

3. In calculating the number of required affordable units either on-site or off-site, any fraction of a whole unit shall be satisfied by either developing one additional affordable unit or by paying the remaining fee amount as further described in the fee resolution.

4. All affordable units developed either on-site or off-site shall be subject to the City's standard Affordable Housing Agreement and Deed Restriction.

5. The applicant must enter into an Affordable Housing Developer Agreement with the City to be recorded against the property prior to recordation of a final or parcel map or issuance of any building permit, acknowledging that the affordable units or land dedication are provided in consideration for a direct financial contribution from the City in the form of a waiver of the housing impact fee.

E. The City Council may approve this request if the proposed alternative forms of affordable housing opportunities in the City are equal to or greater than the payment of the housing impact fee.

3.49.060 Housing Impact Fees for Multiple-Family Residential Rental Development.

A. Applicability. A housing impact fee shall be imposed on all new residential rental developments that result in a net increase of two (2) units or more, regardless of zoning designation of the project site, unless the applicant elects to provide one of the alternatives listed in subsection (D). For purposes of this section, new market-rate rental housing developments shall include developments that have recorded a condominium map but the developer intends to initially rent the units.

B. Calculation of Fee. The amount of the fee, as further described in the fee resolution, is imposed on a per square foot basis for new gross habitable floor area commensurate with the building type (e.g., townhome or condominium). The following formula below shall be used in calculating the required housing impact fee for new residential rental housing developments: (New gross habitable square foot area of all units) minus (existing gross habitable square foot area of all units) multiplied by (per square foot fee) equals (total housing impact fee).

C. Gross habitable Square Foot Area. Gross habitable square foot area means the total living area of each dwelling unit within a project measured to the outside of the exterior walls and does not include areas outside of the dwelling units such as common areas, corridors, parking facilities, outside storage lockers and shared laundry facilities.

D. Alternatives In Lieu of a Housing Impact Fee. As an alternative to paying the affordable housing impact fee for residential rental developments, a developer may request to provide affordable

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units on the project site, dedicate land for affordable housing, or provide affordable units off-site, as detailed in this section.

1. On-site units. A developer may request to mitigate the housing impacts through construction of affordable residential rental units on the subject development site at the numbers indicated at Chapter 14.28.

2. Off-site units or dedication of land. As an additional alternative, a developer may request to designate affordable units in an off-site location or to dedicate land for the construction of affordable units. The City priority shall be for a location that is accessible to public transit. Any off-site units shall be either new or renovated to near-new conditions. Such requests shall be granted in the sole discretion of the City Council if the City Council determines that the proposed alternative will mitigate the impact of the project on the need for affordable housing.

3. In calculating the number of required affordable rental units either on-site or off-site, any fraction of a whole unit shall be satisfied by either developing one additional affordable unit or by paying the remaining fee amount as further described in the fee resolution.

4. All affordable units developed either on-site or off-site shall be subject to the City's standard Affordable Housing Agreement and Deed Restriction.

5. The applicant must enter into an Affordable Housing Developer Agreement with the City to be recorded against the property prior to recordation of a final or parcel map or issuance of any building permit, acknowledging that the affordable units or land dedication are provided in consideration for a direct financial contribution from the City in the form of a waiver of the housing impact fee.

E. The City Council may approve this request if the proposed alternative forms of affordable housing opportunities in the City are equal to or greater than the payment of the housing impact fee.

3.49.070 Housing Impact Fees for Non-residential Development.

A. Applicability. A non-residential housing impact fee shall be imposed on all new construction of commercial, office, retail and hotel/motel development projects that result in a net increase of 500 square feet or greater of new floor area, regardless of zoning designation of the project site, unless the applicant elects to provide one of the alternatives listed in subsection (D).

B. Calculation of Fee. The amount of the housing impact fee, as further described in the fee resolution, is imposed on a per square foot basis for new gross floor area. The following formula below shall be used in calculating the amount of the housing impact fee: (Gross square feet non-residential floor area) minus (existing square feet floor area) multiplied by (per square foot fee) equals (total housing impact fee).

C. Exemptions to New Gross Floor Area. The following areas are exempt from the new gross floor area used in housing impact fee calculations for non-residential developments:

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1. Any incidental and accessory storage, structures or appurtenances, such as sheds, trash enclosures, ground-mounted equipment enclosures, garden features, trellises or shade structures;

2. Architectural design features not utilized for occupancy or storage; and

3. Existing floor area square footage of structures that were vacated or demolished no more than 12 months prior to the filing date of the development application.

D. Alternatives In Lieu of a Housing Impact Fee. As an alternative to paying the affordable housing impact fee, a developer may request the following:

1. On-site units. A developer may request to mitigate the housing impacts through construction of affordable residential units on the subject development site. If applicable, the number of affordable units shall be those indicated at Chapter 14.28.

2. Off-site units or dedication of land. As an additional alternative, a developer may request to designate affordable units in an off-site location or to dedicate land for the construction of affordable units. The City priority shall be for a location that is accessible to public transit. Any off-site units shall be either new or renovated to near-new conditions. Such requests shall be granted in the sole discretion of the City Council if the City Council determines that the proposed alternative will mitigate the impact of the project on the need for affordable housing.

3. In calculating the number of required affordable units either on-site or off-site, any fraction of a whole unit shall be satisfied by either developing one additional affordable unit or by paying the remaining fee amount as further described in the fee resolution.

4. All affordable units developed either on-site or off-site shall be subject to the City's standard Affordable Housing Agreement and Deed Restriction.

5. The applicant must enter into an Affordable Housing Developer Agreement with the City to be recorded against the property prior to recordation of a final or parcel map or issuance of any building permit, acknowledging that the affordable units or land dedication are provided in consideration for a direct financial contribution from the City in the form of a waiver of the housing impact fee.

E. The City Council may approve this request if the proposed alternative forms of affordable housing opportunities in the City are equal to or greater than the payment of the affordable housing impact fee.

3.49.080 Waiver.

Notwithstanding any other provision of this chapter, the requirement to pay the housing impact fee may be waived, adjusted or reduced by the City Council if an applicant shows, based on substantial evidence, that there is no reasonable relationship between the impact of the proposed development and the requirement to pay the housing impact fee, or that applying the requirements of this chapter would take property in violation of the United States Constitution or California Constitution or would result in any other unconstitutional result.

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3.49.090 Enforcement.

The provisions of this chapter shall apply to all agents, successors and assigns of an applicant proposing or constructing a development governed by this chapter. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to, actions to revoke, deny or suspend any permit, including a development approval, building permit or certificate of occupancy. The City shall be entitled to costs and expenses for enforcement of the provisions of this chapter, or any agreement pursuant thereto, as awarded by the court, including reasonable attorneys' fees.

3.49.100 Severability.

If any portion of this chapter is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, that decision will not affect the validity of the remaining portions of this zoning code. The City Council declares that this chapter and each portion would have been adopted without regard to whether any portion of this chapter would be later declared invalid, unconstitutional, or unenforceable.

SECTION 2. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 3. CEQA - EXEMPTION. The City Council finds and determines the adoption of this Ordinance is (1) not a Project under the California Environmental Quality Act (CEQA) and is therefore exempt pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(4) because it constitutes a governmental fiscal activity that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment; (2) statutorily exempt pursuant to CEQA Guidelines section 15267(Financial Assistance to Low or Moderate Income Housing; (3) not intended to apply to specifically identified affordable housing projects and as such it is speculative to evaluate any such future project now and, moreover, they will be subject to appropriate environmental review at such time as approvals for those affordable housing project are considered; and/or (4) not intended to, nor does it, provide CEQA clearance for future development-related projects by mere establishment or payment of the fees. Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

SECTION 4. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 5. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on ____, 2018 and was thereafter, at a regular meeting held on ____, 2018 passed and adopted by the following vote:

ORDINANCE NO. 2018-__

AYES:

NOES:

ABSENT:

ABSTAIN:

Jean Mordo, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK



KEYSER MARSTON ASSOCIATES

SUMMARY, CONTEXT MATERIALS AND RECOMMENDATIONS AFFORDABLE HOUSING NEXUS STUDIES

Prepared for:
City of Los Altos

Prepared by:
Keyser Marston Associates, Inc.

December 2016

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ATTACHMENT A – RESIDENTIAL NEXUS ANALYSIS REPORT

ATTACHMENT B – NON-RESIDENTIAL NEXUS ANALYSIS REPORT

I. INTRODUCTION

This Summary, Context Materials, and Recommendations report (“Summary Report”) provides a concise version of the affordable housing nexus studies prepared by KMA and presents analyses designed to provide context for policy decisions. It also outlines recommendations for the City of Los Altos regarding updates to the City’s affordable housing requirements for residential development and consideration of a potential new affordable housing impact fee for non-residential development.

The report has been prepared by Keyser Marston Associates, Inc. (KMA) for the City of Los Altos, pursuant to contracts both parties have with the Silicon Valley Community Foundation. The report was prepared as part of a coordinated work program for twelve jurisdictions in Alameda and Santa Clara Counties. Silicon Valley Community Foundation with Baird + Driskell Community Planners organized and facilitated this multi-jurisdiction effort. Silicon Valley Community Foundation, which engaged KMA to prepare the analyses, serves as the main contracting entity with each participating jurisdiction, and has provided funding support for coordination and administration of the effort.

Two separate nexus technical reports are attached to this Summary Report, Attachment A: Residential Nexus Analysis and Attachment B: Non-Residential Nexus Analysis. The two nexus reports provide the technical analyses and documentation to support adoption of affordable housing impact fees on residential and non-residential development in the City of Los Altos.

A. Background and Context

The City of Los Altos has an existing inclusionary housing policy requiring residential projects in the City to include a 10% share of units as affordable. The City does not have an affordable housing requirement that applies to non-residential projects; however, the analyses that have been prepared for the City will enable consideration of a new affordable housing impact fee applicable to non-residential development in the City as well.

The City’s Multiple Family Affordable Housing Regulations were adopted in 1995 and updated in 2009 (Code Chapter 14.28). The regulations require that projects exceeding four units per acre include at least 10% of the units (rounded to the next whole number) at affordable prices. The regulations apply to projects with five or more units. The inclusionary program has not included a fee option. Since the 2009 *Palmer* court decision (described further in the Residential Nexus Analysis), the City has not had the ability to mandate compliance with its inclusionary requirements for rental projects. However, the City has continued to implement its inclusionary program for rental projects through voluntary agreements with projects also receiving a density bonus under State Density Bonus law. It is possible that future legislation could restore the ability of California cities to apply inclusionary requirements to rental projects.

The analyses summarized in this report will enable the City to consider adoption of an affordable housing impact fee applicable to rental apartments, a jobs housing linkage fee applicable to non-residential development and other updates to its affordable housing requirements.

B. Organization of this Report

This report is organized into the following sections:

- Section I provides an introduction;
- Section II presents a summary of KMA's findings and recommendations;
- Section III summarizes the nexus analyses;
- Section IV presents analyses and materials prepared to provide context for policy decisions, including:
 - A. Multifamily Apartment Financial Feasibility Analysis – presents the analysis and findings of the real estate financial feasibility analysis for apartments;
 - B. On-site compliance cost analysis – analysis of the forgone revenue experienced by market rate residential projects in complying with the City's inclusionary requirements;
 - C. Residential affordable housing requirements in other jurisdictions – provides a summary of existing inclusionary and impact fee requirements for 18 jurisdictions in Alameda and Santa Clara counties;
 - D. Non-Residential Development Costs – Analysis of development costs for various types of non-residential development as context for consideration of potential impact fee levels for non-residential development; and
 - E. Jobs housing linkage fee programs in other jurisdictions – provides information regarding 34 adopted linkage fee programs in jurisdictions throughout the Bay Area and elsewhere in California.
- Attachment A is the full Residential Nexus Analysis report.
- Attachment B is the full Non-Residential Nexus Analysis report.

II. SUMMARY OF FINDINGS AND RECOMMENDATIONS

In this section, KMA provides a summary of the analysis findings and recommendations for the City of Los Altos' consideration for updates to the City's affordable housing requirements applicable to residential and non-residential development. Recommendations reflect consideration of the following factors:

1. The findings of the nexus analysis. The nexus study establishes the maximum fee that may be charged to mitigate the impacts of new development on the need for affordable housing. Impact fees for rentals and non-residential development are limited to the maximums identified by the nexus. For-sale inclusionary requirements are generally not bound by nexus findings.
2. The City's policy objectives specified in the Housing Element.
3. The current requirements in neighboring jurisdictions.
4. Setting fees and requirements high enough to support a meaningful contribution to affordable housing in Los Altos.
5. Setting a fee low enough to not discourage development.

A. Residential Findings and Recommendations

KMA's recommendations for updates to the City's Affordable Housing Ordinance, including a new impact fee for rentals, are presented in this section, along with a summary of the factors considered by KMA.

1. Nexus Analysis Findings

The findings of the residential nexus analysis are summarized below. The findings per square foot refer to net residential area (exclusive of parking, corridors and other common areas).

Maximum Supported Residential Impact Fees, City of Los Altos						
	<i>Single Family Detached</i>	<i>Single Family - Small Lot</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments - Lower Density</i>	<i>Apartments - Higher Density</i>
Per Market Rate Unit	\$137,500	\$104,400	\$71,300	\$67,800	\$53,400	\$48,000
Per Square Foot	\$39.40	\$52.30	\$47.50	\$52.10	\$48.50	\$53.30

Source: Attachment A, Residential Nexus Analysis.

KMA recommends that impact fees for rental projects be set below the levels shown above and that in-lieu fees applicable to for-sale projects that have ten or fewer units in the project be set below the levels identified above.

2. Affordable Housing Requirements in Other Jurisdictions

KMA assembled and summarized the affordable housing requirements for 18 jurisdictions in Santa Clara and Alameda Counties including those participating in the multi jurisdiction work program plus nine additional cities selected by the participants. The following is a condensed version focusing on selected comparisons. A complete summary is provided in Section IV, Table 3.

Rentals: Overview of Adopted Rental Housing Impact Fees in Santa Clara County

The chart below shows selected examples of cities that have adopted impact fees for rental development following the 2009 *Palmer* decision (which eliminated the ability to apply inclusionary requirements to rental projects). Requirements are clustered around \$17 per square foot, with Mountain View, Sunnyvale, and Fremont all following San Jose’s lead in establishing a rental impact fee requirement at this level. Cupertino’s fees are \$20 per square foot for projects up to 35 dwelling units per acre and \$25 per square foot for projects over 35 units per acre. The minimum size project subject to the fee ranges from five units for Mountain View down to single units for Cupertino. Los Altos does not currently have an impact fee for rentals.

Impact Fees in Other Jurisdictions – Rental Units		
<i>City</i>	<i>Impact Fee</i>	<i>Min. Project Size Subject to Fee</i>
Cupertino	\$20 / sq. ft. (\$25 for projects over 35 du/acre)	1 unit
San Jose	\$17/sq. ft.	3 units
Mountain View	\$17/sq. ft.	5 units
Sunnyvale	\$17/sq. ft. (\$8.50 for projects with 4 – 7 units)	4 units
Fremont	\$17.50/sq. ft.	2 units

*See Table 3 for more detail.

Ownership Affordable Housing Requirements

For ownership projects, Los Altos’ onsite requirements are fairly consistent with the other cities’. The onsite requirements for the cities analyzed are in the 10% – 15% range, with the exception of Fremont, which has a combined onsite obligation and fee payment. The following table briefly summarizes the programs.

Inclusionary Requirements in Other Jurisdictions - Ownership Units				
<i>City</i>	<i>Percent</i>	<i>Affordability Level</i>	<i>Fee</i>	<i>Fee by Right?</i>
Los Altos	10%	Low and Moderate	None	N/A
Campbell	15%	Low and Moderate	\$34.50	Only projects 6 du/ ac. or less
Santa Clara	10%	Very Low to Moderate	None	N/A
Cupertino	15%	½ Moderate, ½ Median	\$15 detached; \$16.50 attached \$20 multifamily	Projects under 7 units only
San Jose*	15%	Moderate	Affordability gap based on attached unit re-sales.	Yes
Mountain View	10%	Median	3% of sales price	Projects under 10 units only
Sunnyvale	12.5%	Moderate	7% of sales price	Projects under 20 units only
Fremont	Attached 3.5% + fee Detached: 4.5% + fee	Moderate	With on-site units: Attached: \$18.50 psf Detached: \$17.50 psf If no on-site units: Attached: \$27 psf Detached: \$26 psf	Yes

*Suspended during litigation but to be reinstated in 2016
See Table 3 for more detail.

3. Multifamily Apartment Financial Feasibility

The analysis indicates that the economics of multifamily rental projects is currently robust and projects are generally feasible in the West Valley. Even in a strong market, rising land costs tend to absorb any “surplus” projects may have in their pro formas; however, the market is able to adjust to new costs such as increased fees in a variety of ways. One way markets can adjust is through downward pressure on land prices created when developers price new fees into the economics of their projects and adjust what they can afford to pay for land. When market rents are rising, this condition helps projects absorb increased fees. The table below illustrates how relatively modest improvements in project economics are sufficient to absorb illustrative fee levels of \$10, \$20, \$30 and \$40 per square foot. Calculations are also shown for each \$1 in new fees so calculations can be made for any fee level that may be considered.

Potential Market Adjustments to Absorb New Fees

Potential Market Adjustments to Absorb Illustrative Fee Levels					
	Each \$1 Fee	\$10 Fee	\$20 Fee	\$30 Fee	\$40 Fee
Increase in Rents/Income	0.11%	1.1%	2.2%	3.3%	4.5%
Decrease in Direct Costs	0.43%	4.3%	8.7%	13.0%	17.4%
Decrease in Land Values (based on \$119/sf)	0.42%	4.2%	8.5%	12.7%	16.9%

Adjustments are not additive. Each would independently be sufficient to absorb new fees. Depending on the market cycle and other factors, a combination of the above market adjustments would be expected to contribute in absorbing a new fee.

4. Market Context

Los Altos has the highest median home price in Santa Clara County, exceeding \$2.6 million in December 2015. With many recently built single family units in excess of 4,000 square feet, the total price of new units is often over \$4 million, with values averaging over \$1,000 psf. The median price has increased substantially every year since 2009.

There have also been a handful of condominium and townhome projects in recent years. Sales prices for these projects have averaged in the range of \$1,000 per square foot. Although, given there are relatively few projects on which to base estimates and to ensure the analysis captures the least expensive units likely to be built in Los Altos, the analysis uses a more conservative sales price estimate of approximately \$800 psf for townhomes and \$850 psf for condominiums.

There has been an absence of new rental apartment projects in recent years in Los Altos, but should they be developed, evidence of market strength in the neighboring communities would suggest rents on the order \$3,600 for a 900 square foot unit would be achievable.

5. Program Recommendations

Following are KMA's recommendations for updating the affordable housing requirements in Los Altos. These recommendations are based on Los Altos' residential market, the multifamily financial feasibility analysis, nexus analysis results, input from City staff, and programs in nearby jurisdictions.

- a. *For-Sale Requirement* – Maintain Los Altos' 10% on-site requirement as a minimum. Currently the City's program does not include a fee option as an alternative to providing affordable units on-site. If the City wishes to add a fee option, consider a fee level which approximates the cost of providing affordable units on-site as quantified in Table 2 of this report. In terms of fee structure, consider setting fees as a percentage of sales price as is the practice in the nearby cities of Palo Alto, Mountain View, Sunnyvale and Menlo Park. The cost of complying with the City's 10% requirement equates to a fee level of 8% - 9% of sales price for single family units and 7% of sales price for attached units based on the analysis in

Table 2. It should be noted that, even if a fee option is offered, some projects would likely continue to provide units on-site for purposes of qualifying for the State Density Bonus.

- b. *Fee for Small Projects (4 units or less)* – For small projects, potentially including single units, consider a fee in the range of \$40 per square foot. For lower density single family projects with 4 dwelling units per acre or less, a fee in the range of \$35 per square foot is recommended. The indicated fee levels are based on the maximums supported by the nexus. These fee levels are well below the cost associated with complying with the City’s existing on-site affordable unit requirements applicable to projects with five or more units. A phase in of the requirement based on the number of units in the project could be considered if there is a desire to charge one and two unit projects a lesser amount.
- c. *Lower-Density For-Sale Projects (4 units per acre or less)* – Currently the City exempts projects of four dwelling units per acre or less from the City’s 10% inclusionary requirement. These projects have some of the highest values and generally can support a strong affordability requirement; however, on-site units are often not a good fit. One option is to apply the City’s 10% requirement but allow payment of an in-lieu fee as an alternative. If a generally applicable fee is to be introduced, it could be applied to lower density projects as well, or a fee option could be included just for lower density projects set at, say, 8% - 9% of sales price. Another option would be to establish an impact fee for lower density projects (rather than an in-lieu fee), which could be up to \$35 per square foot based on the nexus analysis findings, a requirement far less than 8% - 9% of sales price.
- d. *Additions* – The nexus analysis enables the City to consider applying affordable housing impact fees to additions to existing structures and the incremental residential area resulting from “Teardown / Rebuild” activity. San Carlos is an example of a program that applies a reduced fee for additions over 1,000 square feet. However, charging for additions is not common. If the City applies fees to additions, consider fees at a similar per square foot fee level to that applied small projects (see above) or perhaps a reduced rate. Inclusion of a minimum size threshold for fee application will avoid the administrative burden of charging very small additions.
- e. *Rentals Requirements* – We recommend that an impact fee be added for rental projects and for the City to continue encouraging on-site units as an alternative to the fee. Despite the Palmer decision, recent projects have complied with the City’s on-site requirements to become eligible for a State Density Bonus. Even with introduction of a new fee, the on-site solution is likely to remain an attractive option for projects due to the State Density Bonus benefit. Setting the fee near the nexus maximums, up to \$45 per square foot, would provide added encouragement for projects to provide on-site units as an alternative to paying the fee. Setting a lower fee more consistent with nearby jurisdictions, say in the \$20 to \$25 PSF range, would likely result in projects choosing to pay the fee in situations where a State Density Bonus is not being sought.

B. Non-Residential Affordable Housing Impact Fees

The analysis prepared by KMA will enable the City of Los Altos to consider adoption of a new affordable housing fee applicable to non-residential development in the City. The following section provides KMA's recommendations regarding a fee range should the City choose to move forward with establishing a new jobs housing linkage fee, along with a summary of the factors considered by KMA.

1. Nexus Analysis Findings

The KMA non-residential nexus analysis found very high supportable fee levels. The high fee levels supported by the analysis are not unusual for high cost areas such as Los Altos. The nexus analysis establishes only the maximums for impact fees and will bear little relationship to the fee levels the City may ultimately select. The table below indicates the nexus analysis results.

Building Type	Maximum Supported Fee Per Square Foot
Office	\$140.10
Retail	\$260.70
Hotel	\$125.50

Note: Nexus findings are not recommended fee levels.
See Attachment B, Non-Residential Nexus Analysis for detail.

In our opinion, fee levels for cities should be selected based on a combination of the strength of the local real estate for the building types that will pay the fee, and local policy objectives. We also believe it is appropriate to take into account the fee levels in neighboring jurisdictions and cities that are comparable to Los Altos in real estate demand.

2. Fees in Other Jurisdictions

The chart below summarizes fee levels for jurisdictions in Santa Clara County and the Peninsula that have adopted non-residential fees. Neighboring jurisdictions to Los Altos have some of the highest affordable housing fees in the Bay Area, including Mountain View, Palo Alto, and Sunnyvale with fees on office at \$25, \$20, and \$15 psf, respectively. Other nearby cities that do not currently have affordable housing fees on non-residential development but may consider a new fee as part of this multi-jurisdiction effort include Santa Clara, Campbell, Saratoga, Fremont, Milpitas, and Santa Clara County. San Jose has determined that it will not pursue a fee on non-residential development at this time. More details can be found in Section IV and Table 4.

Non-Residential Housing Impact Fees – Santa Clara Co. & Peninsula

Non-Residential Fees	Office \$/SF	Retail \$/SF	Hotel \$/SF	Industrial \$/SF
Mountain View	\$25.00	\$2.68	\$2.68	\$25.00
Cupertino	\$20.00	\$10.00	\$10.00	\$20.00
Palo Alto	\$19.85	\$19.85	\$19.85	\$19.85
Sunnyvale	\$15.00	\$7.50	\$7.50	\$15.00
San Francisco	\$24.61	\$22.96	\$18.42	\$19.34
Redwood City	\$20.00	\$5.00	\$5.00	N/A
Menlo Park	\$15.57	\$8.45	\$8.45	\$8.45

See Table 4 for more details including features such as exemptions and size thresholds.

3. Total Development Costs

KMA estimated the total development cost associated with each building type and examined fee levels in the context of total costs. Total costs include construction, all permits and fees, land, financing and other. This facilitates an evaluation of whether the amount is likely to affect development decisions. Four non-residential prototype projects were selected for review of total development costs. The prototypes include office, hotel, retail, and light industrial. Los Altos is not anticipating light industrial development in the future and therefore that category was not included in this summary. The cost estimates were prepared based on local information and our firm's extensive work with real estate projects throughout Silicon Valley and the Bay Area. More detail on the analysis can be found in Section IV. The results are summarized below:

Total Development Costs – Non-Residential	
Building Type	Cost
Office	\$525 - \$625 per sq.ft.
Hotel	\$325 - \$425 per sq.ft.
Retail / Restaurant / Service	\$400 - \$500 per sq.ft.

One useful way to evaluate alternative fee levels is to examine them as a percent of total development costs. For example, at 2% to 5% of costs, we would see the following fee levels:

Fees as a Percent of Development Costs				
Building Type	2%	3%	4%	5%
Office	\$11 psf	\$17 psf	\$23 psf	\$29 psf
Hotel	\$7 psf	\$11 psf	\$15 psf	\$19 psf
Retail / Restaurant	\$9 psf	\$13 psf	\$18 psf	\$22 psf

4. Market Context

Los Altos non-residential development activity is predominantly smaller scale and locally serving in nature, consistent with the City's status as a predominantly residential community. The high income of the population makes the City a desirable location for retailers even if not a major shopping destination. The City is not a major tech center or office center, but what office space there is commands premium rent levels.

5. Recommended Fee Levels for Non-Residential

Given the maximums established by the nexus analysis, the strength of Los Altos' office, retail and hotel markets, and the fees in neighboring jurisdictions, should the City decide to proceed with a non-residential affordable housing fee, KMA recommends consideration of fees within the range of \$20 to \$25 per square foot for office and \$10 to \$15 per square foot for other non-residential development. The table below presents the recommended range:

KMA Recommended Fee Range, Non-Residential, City of Los Altos	
<i>Land Use</i>	<i>Recommended Fee</i>
Office	\$20.00 to \$25.00 psf
Other Non-Residential	\$10.00 to \$15.00 psf

III. SUMMARY OF NEXUS ANALYSES

This section provides a concise summary of the residential and non-residential nexus analyses prepared for the City of Los Altos. The analyses provide documentation necessary for adoption of new affordable housing impact fees applicable to residential and non-residential development. The analyses establish maximum supportable impact fee levels based on the impact new residential and non-residential development has on the need for affordable housing. Findings represent the results of an impact analysis only and are not recommended fee levels.

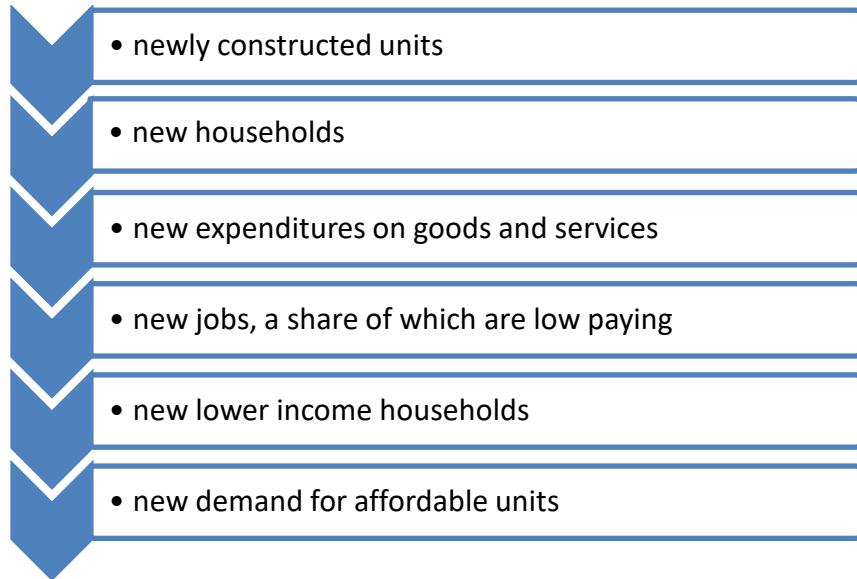
While nexus findings represent upper limits for impact fee-type requirements, inclusionary program requirements, including applicable in-lieu fees, are not bound by nexus findings based on the ruling by the California Supreme Court in the San Jose inclusionary housing case. Under current law, inclusionary units cannot be mandated for rental projects; however, this could change with future State legislation.

Full documentation of the analyses can be found in the reports titled Residential Nexus Analysis and Non-Residential Nexus Analysis.

A. Residential Nexus Analysis Summary

The residential nexus analysis establishes maximum supportable impact fee levels applicable to residential development. The underlying concept of the residential nexus analysis is that the newly constructed units represent net new households in Los Altos. These households represent new income in the City that will consume goods and services, either through purchases of goods and services or “consumption” of governmental services. New consumption generates new local jobs; a portion of the new jobs are at lower compensation levels; low compensation jobs relate to lower income households that cannot afford market rate units in Los Altos and therefore need affordable housing.

Nexus Analysis Concept



1. Market Rate Residential Prototypes

In collaboration with City staff, a total of six market rate residential prototypes were selected: four ownership prototypes and two rental prototypes. The intent of the selected prototypes is to identify representative development prototypes likely to be developed in Los Altos in the immediate to mid-term future.

A summary of the six residential prototypes is presented below. Market survey data, City planning documents and other sources were used to develop the information. Market sales prices and rent levels were estimated based on KMA's market research.

Prototypical Residential Units for City of Los Altos						
	<i>Single Family Detached</i>	<i>Single Family - Small Lot</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments - Lower Density</i>	<i>Apartments - Higher Density</i>
Avg. Unit Size	3,500 SF	2,000 SF	1,500 SF	1,300 SF	1,100 SF	900 SF
Avg. No. of Bedrooms	4.00	3.00	2.50	3.00	2.00	1.50
Avg. Sales Price / Rent Per Square Foot	\$3,500,000 \$1,000 /SF	\$2,200,000 \$1,100 /SF	\$1,200,000 \$800 /SF	\$1,100,000 \$846 /SF	\$4,000 /mo. \$3.64 /SF	\$3,600 /mo. \$4.00 /SF

Estimates for the Townhome and Condominium are somewhat below sales prices achieved in recent projects to ensure that the analysis captures the least expensive new market rate

ownership units likely to be built in Los Altos. The analysis and findings are conservative given many projects are likely to exceed these estimates.

2. Household Expenditures and Job Generation

Using the sales price or rent levels applicable to each of the six market rate residential prototypes, KMA estimates the household income of the purchasing/renting household. Household income is then translated to income available for expenditures after deducting taxes, savings and household debt, which becomes the input to the IMPLAN model. The IMPLAN model is used to estimate the employment generated by the new household spending. The IMPLAN model is an economic model widely used for the past 35 years to quantify the impacts of changes in a local economy. For ease of presentation the analysis is conducted based on an assumed project size of 100 market rate units.

A 20% downward adjustment is made to the IMPLAN employment estimates based on the expectation that a portion of jobs may be filled by existing workers who already have housing locally. The 20% adjustment is based upon job losses in declining sectors of the local economy over a historic period. Workers from declining sectors are assumed to fill a portion of the new jobs in sectors that serve residents.

The translation from market rate sales prices and rent levels for the prototypical units to the estimated number of jobs in sectors such as retail, restaurants, health care and others providing goods and services to new residents is summarized in the table below.

Household Income, Expenditures, Job Generation, and Net New Worker Households						
	<i>Single Family Detached</i>	<i>Single Family - Small Lot</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments - Lower Density</i>	<i>Apartments - Higher Density</i>
Avg. Sales Price / Rent	\$3,500,000	\$2,200,000	\$1,200,000	\$1,100,000	\$4,000	\$3,600
Gross Household Income	\$616,000	\$353,000	\$237,000	\$225,000	\$164,000	\$147,000
Net Annual Income available	\$264,900	\$201,200	\$137,500	\$130,500	\$103,000	\$94,000
Total Jobs Generated [from IMPLAN] (100 Units)	159.7	121.3	82.9	78.7	62.1	55.8
Net New Jobs after 20% reduction for declining industries (100 units)	127.8	97.0	66.3	62.9	49.7	44.7

See Attachment A Residential Nexus Analysis report for full documentation.

3. Compensation Levels of Jobs and Household Income

The output of the IMPLAN model – the numbers of jobs by industry – is then entered into the Keyser Marston Associates jobs housing nexus analysis model to quantify the compensation levels of new jobs and the income of the new worker households. The KMA model sorts the jobs by industry into jobs by occupation, based on national data, and then attaches local wage distribution data to the occupations, using recent Santa Clara County data from the California Employment Development Department (EDD). The KMA model also converts the number of employees to the number of employee households, recognizing that there is, on average, more than one worker per household, and thus the number of housing units in demand for new workers is reduced. For purposes of the adjustment from jobs to housing units, the average of 1.72 workers per working household in Santa Clara County is used.

Adjustment from No. of Workers to No. of Households						
	<i>Single Family Detached</i>	<i>Single Family - Small Lot</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments - Lower Density</i>	<i>Apartments - Higher Density</i>
Net New Jobs (100 Units)	127.8	97.0	66.3	62.9	49.7	44.7
Divide by No. of Workers per Worker Household	1.72	1.72	1.72	1.72	1.72	1.72
Net new worker households (100 Units)	74.4	56.5	38.6	36.7	28.9	26.0

The output of the model is the number of new worker households by income level (expressed in relation to the Area Median Income, or AMI) attributable to the new residential units and new households in Los Altos. Four categories of addressed: Extremely Low (under 30% of AMI), Very Low (30% to 50% of AMI), Low (50% to 80% of AMI) and Moderate (80% to 120% of AMI).

Following are the numbers of worker households by income level associated with the Los Altos prototype units.

New Worker Households per 100 Market Rate Units						
	<i>Single Family Detached</i>	<i>Single Family - Small Lot</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments - Lower Density</i>	<i>Apartments - Higher Density</i>
Extremely Low (0%-30% AMI)	13.3	10.1	6.9	6.5	5.2	4.7
Very Low (30%-50% AMI)	20.1	15.3	10.4	9.9	7.8	7.0
Low (50%-80% AMI)	17.1	13.0	8.9	8.4	6.6	5.9
Moderate (80%-120% AMI)	10.9	8.3	5.7	5.4	4.2	3.8
Total, Less than 120% AMI	61.4	46.7	31.9	30.3	23.9	21.4
Greater than 120% AMI	13.0	9.9	6.7	6.4	5.0	4.6
Total, New Households	74.4	56.5	38.6	36.7	28.9	26.0

See Attachment A Residential Nexus Analysis report for full documentation.

Housing demand is distributed across the lower income tiers. The finding that the greatest number of households occurs in the Very Low and Low income tiers is driven by the fact that a large share of the jobs most directly associated with consumer spending tend to be low-paying, such as food preparation, administrative, and retail sales occupations.

4. Nexus Supported Maximum Fee Levels

The next step in the nexus analysis takes the number of households in the lower income categories associated with the market rate units and identifies the total subsidy required to make housing affordable. This is done for each of the prototype units to establish the ‘total nexus cost,’ which is the Maximum Supported Impact Fee conclusion of the analysis. For the purposes of the analysis, KMA assumes that affordable housing fee revenues will be used to subsidize affordable rental units for households earning less than 80% of median income, and to subsidize affordable ownership units for households earning between 80% and 120% of median income.

Affordability gaps, or the needed subsidy amounts, are calculated for each of the income tiers. Then the affordability gaps (which is the difference between total development cost and unit value based on the affordable rent or sales price) are multiplied by the number of households in each income tier to produce the total nexus cost (i.e. mitigation cost.).

The Maximum Supported Impact Fees are calculated at the per-unit level and the per-square-foot level and are shown in the table below. The findings per square foot refer to net residential area (exclusive of parking, corridors and other common areas).

Maximum Supported Residential Impact Fees, City of Los Altos						
	<i>Single Family Detached</i>	<i>Single Family - Small Lot</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments - Lower Density</i>	<i>Apartments - Higher Density</i>
Per Market Rate Unit	\$137,500	\$104,400	\$71,300	\$67,800	\$53,400	\$48,000
Per Square Foot	\$39.40	\$52.30	\$47.50	\$52.10	\$48.50	\$53.30

These costs express the maximum supported impact fees for the six residential prototype developments in Los Altos. These findings are **not** recommended fee levels.

B. Non-Residential Nexus Analysis Summary

The non-residential nexus analysis quantifies and documents the impact of the construction of new workplace buildings (office, retail, hotels, etc.) on the demand for affordable housing. It is conducted to support the consideration of a new affordable housing impact fee or commercial linkage fee applicable to non-residential development in the City of Los Altos.

Full documentation of the nexus analysis is contained in the report entitled Non-Residential Nexus Analysis.

The workplace buildings that are the subject of this analysis represent a cross section of typical commercial buildings developed in Los Altos in recent years and expected to be built in the near term future. For purposes of the analysis, the following three building types were identified:

- Office
- Hotel
- Retail / Restaurant / Service

The nexus analysis links new non-residential buildings with new workers; these workers demand additional housing, a portion of which needs to be affordable to the workers in lower income households. The analysis begins by assuming a 100,000 square foot building for each of the three building types and then makes the following calculations:

- The total number of employees working in the building is estimated based on average employment density data.
- Occupation and income information for typical job types in the building are used to calculate how many of those jobs pay compensation at the levels addressed in the analysis. Compensation data is from California EDD and is specific to Santa Clara County. Worker occupations by building type are derived from the 2014 Occupational Employment Survey by the U.S. Bureau of Labor Statistics.
- New jobs are adjusted to new households, using Santa Clara County demographics on the number of workers per household. We know from the Census that many workers are members of households where more than one person is employed and there is also a range of household sizes; we use factors derived from the Census to translate the number of workers into households of various size. Household income is calculated depending on the number of workers per household.
- The number of Extremely Low-, Very Low-, Low-, and Moderate-Income households generated by the new development is calculated and divided by the 100,000 square foot building size to arrive at coefficients of housing units per square foot of building area. The household income categories addressed in the analysis are the same as those in the Residential Nexus Analysis.
- The number of lower income households per square foot is multiplied by the affordability gap, or the cost of delivering housing units affordable to these income groups. This is the Maximum Supported Impact Fee for the non-residential land uses.

The Maximum Supported Impact Fees for the three building types are as follows:

Building Type	Maximum Supported Fee Per Square Foot
Office	\$140.10
Retail	\$260.70
Hotel	\$125.50

Note: Nexus findings are not recommended fee levels.
See Attachment B Non-Residential Nexus Analysis for detail.

The results of the analysis are heavily driven by the density of employees within buildings in combination with the occupational make-up of the workers in the buildings. Retail has both high employment density and a high proportion of low paying jobs.

These figures express the maximum supported impact fee per square foot for the three building types. They are not recommended levels for fees; they represent only the maximums established by this analysis, below which impact fees may be set.

Overlap Analysis

There is a potential for some degree of overlap between jobs counted in the Non-Residential Nexus Analysis and jobs counted in the Residential Nexus Analysis. The potential for overlap exists in jobs generated by the expenditures of City residents, such as expenditures for food, personal services, restaurant meals and entertainment. Retail is the building type that has the greatest potential for overlap to occur because it is often oriented to serving local residents. On the other hand, the potential for overlap is far less with office, industrial, warehouse and hotel buildings that often house businesses that serve a much broader, sometimes national or international, market and that are not focused on services to local residents. Appendix B to the Non-Residential Nexus Analysis provides additional discussion and an analysis demonstrating that, even in the improbable and theoretical case of complete overlap between jobs counted in the two nexus analyses, impact fees at the recommended levels would remain below the maximums supported by the nexus.

IV. CONTEXT MATERIALS

The purpose of this section is to provide information that may be useful to policy makers in considering potential amendments to the City's affordable housing requirements for residential development and potential adoption of a new affordable housing impact fee applicable to non-residential development. The following analyses and summary materials are included:

- **Multifamily Apartment Feasibility Analysis** – Section A. presents the analysis and findings regarding the financial feasibility of new multifamily market rate apartments;
- **Inclusionary Program Compliance Costs** – Section B. analyzes the cost to a market rate residential project of complying with the City's existing inclusionary requirements on-site;
- **Residential Affordable Housing Requirements in Other Jurisdictions** – Section C. provides a summary of inclusionary and impact fee requirements in other Santa Clara and Alameda county jurisdictions;
- **Non-Residential Development Cost Context** – Section D. evaluates total development costs associated with four prototypical building types to facilitate an evaluation of whether fee amounts are likely to affect development decisions; and
- **Jobs Housing Linkage Fee Programs in Other Jurisdictions** – Section E. provides information regarding adopted linkage fee programs in jurisdictions throughout the Bay Area and elsewhere in California.

A. Multifamily Apartment Financial Feasibility Analysis

In adopting or amending affordable housing requirements, cities typically consider a variety of public policy goals including seeking a balance between producing a meaningful amount of new affordable units and establishing requirements at a level that can be sustained by new market rate projects. This section addresses the potential impacts that new housing impact fees could have on the feasibility of new multi-family apartment projects. The analysis is specific to the West Valley cities of Campbell, Saratoga, and Los Altos.

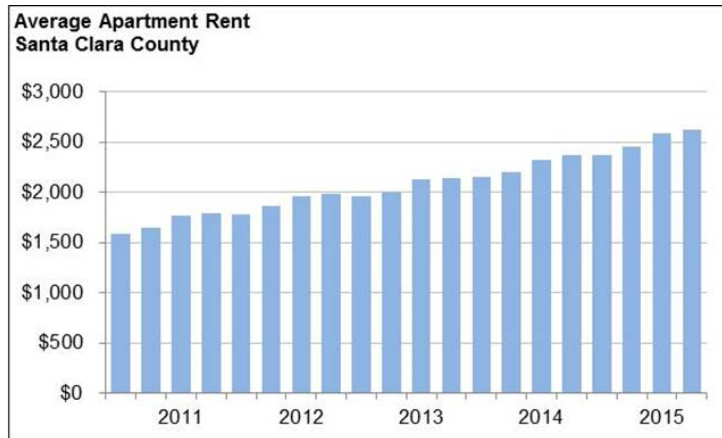
The financial feasibility analysis is focused on rental projects because the City's inclusionary housing requirements for rental projects have not been enforceable since the 2009 *Palmer* decision and adoption of a new rental impact fee would represent an additional cost that would need to be absorbed within the economics of rental projects. In contrast, feasibility of for-sale projects was not analyzed as the City's inclusionary housing policy is already reflected in development economics of new for-sale projects.

Before describing the feasibility analysis, it is useful to put the feasibility analysis into perspective by summarizing how it can be used and where limitations exist in its ability to inform a longer-term policy direction:

- **Prototypical Nature of Analysis** – This financial feasibility analysis, by its nature, can only provide a general assessment of development economics because it is based on prototypical projects rather than specific projects. Every project has unique characteristics that will dictate rents supported by the market as well as development costs and developer return requirements. This feasibility analysis is intended to reflect prototypical apartment projects in the cities of Campbell, Saratoga, and Los Altos but it is recognized that the economics of some projects will likely look better and some likely worse than those of the prototype analyzed.
- **Near Term Time Horizon** – This feasibility analysis is a snapshot of real estate market conditions as of early 2016. The analysis is most informative regarding near term implications a housing impact fee could have for projects that have already purchased sites and are currently in the pre-development stages. Real estate development economics are fluid and are impacted by constantly changing conditions regarding rent potential, construction costs, land costs, and costs of financing. A year or two from now, conditions will undoubtedly be different.
- **Adjustments to Land Costs over Time** – Developers purchase development sites at values that will allow for financially feasible projects. If a housing fee is put in place, developers will “price in” the requirement when evaluating a project’s economics and negotiating the purchase price for development sites. Given that the requirements will apply to all or most projects, it is possible that downward pressure on land costs could result as developers adjust what they can afford to pay for land. This downward pressure on land prices can, at least to some degree, bring costs back into better balance with the overall economics supported by projects.

Apartment Market Context

Like most parts of the Bay Area, Santa Clara County has experienced improving apartment market conditions (for new development) in recent years as exhibited by rising rents and occupancy rates. The improvement in market conditions is attributable to robust regional job growth and the overall strength of the regional economy.



Source: RealAnswers

Many parts of Santa Clara County have experienced significant new investment in market rate apartment development in recent years due to the rapid rise in job growth and apartment rental rates as well as the availability of low cost investment capital (debt and equity).

Financial Feasibility Analysis

The financial feasibility analysis estimates the costs to develop a new apartment project and the rental income that could be generated by the project upon completion. If the rental income is sufficient to support the development costs and generate a sufficient profit margin, the project is considered feasible. This approach to financial feasibility, known as a pro forma approach or income approach, is common practice in the real estate industry and is utilized in one form or another by all developers when analyzing new construction projects.

This analysis organizes the pro forma as a “land residual analysis”, meaning the pro forma solves for what the project can afford to pay for a development site based on the income projections and the non-land acquisition costs of the project. It then compares the residual land values with land costs in the current market in order to test whether developers can afford to buy land and develop projects. The following describes the assumptions utilized in the analysis and the conclusions drawn therefrom.

- The direct construction costs of development include all contractor labor and material costs to construct the project including general requirements, contractor fees, and contingencies. As shown in Table 1 below, the direct construction costs are estimated at \$253,000/unit. This estimate has been made based on third party construction data sources, such as RS Means, and by cost estimates for similar building types elsewhere in the market. Indirect costs of development include architecture and engineering (A&E) costs, municipal fees and permits costs, taxes, insurance, overhead, and debt financing costs. These costs have been estimated at \$103,000/unit.

- Rental income for the apartment prototype has been estimated based on apartment rent comps. Rents are estimated at \$3,900/month, or \$3.55/square foot/month. After a vacancy factor, operating expenses, and property taxes, the net operating income (NOI) is estimated at \$33,900/unit/year. Using this NOI and applying a 5.5% project return, the project value/supported investment is estimated at \$616,000/unit.
- The residual land value is derived by subtracting the development costs before land acquisition from the project value/supported investment. As shown in Table 1, the residual land value without a housing fee for the apartment prototype at 20 units per acre is approximately \$260,000/unit or \$119/square foot of land area.

Once the residual land values have been estimated, the values can be compared to prevailing land values in the market to determine whether the prototypes are financially feasible. In other words, if the residual land values are equal to or higher than market land values, then projects are generally feasible. Conversely, if the residual land values are less than market land values, some improvement in market conditions (lower development costs or higher housing values) will be needed for feasibility.

Land Value Supported

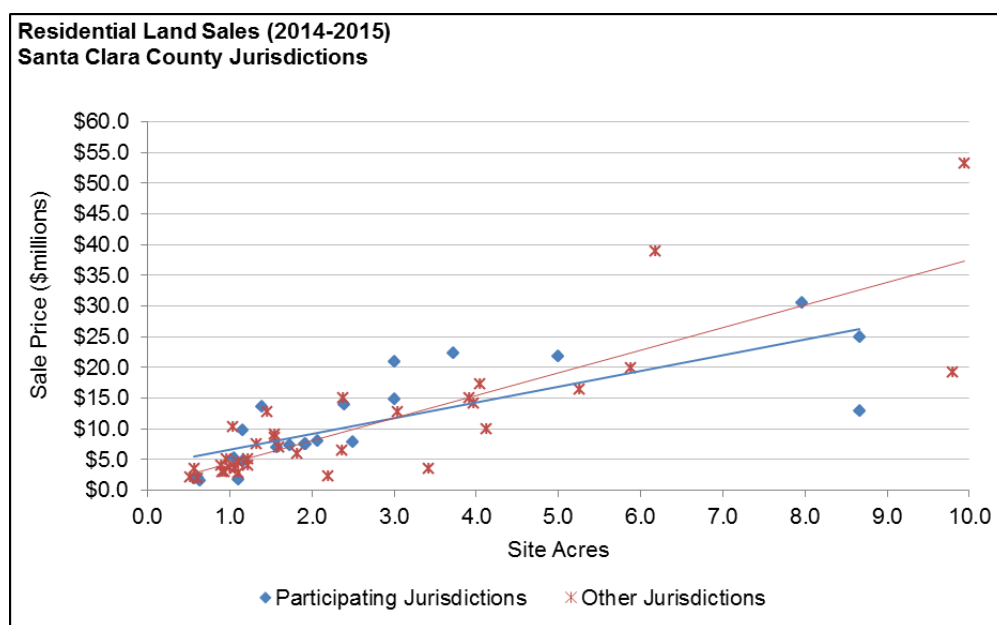
The feasibility analysis summarized in Table 1 on the next page indicates that apartment projects in the West Santa Clara County jurisdictions (cities of Campbell, Saratoga, and Los Altos), assumed at 20 units per acre on average, can afford to pay on average \$119/square foot for land with no affordable housing fee in place. The analysis also tested the land value supported with illustrative fee scenarios of \$10 to \$40 per net square foot. As shown, the supported land value decreases by approximately \$5 per square foot of land for each \$10 per square foot in fees added. The highest illustrative fee tested of \$40 per square foot, which is approaching the maximum supported by the nexus, is estimated to bring the residual land values to just under \$100 per square foot.

**Table 1. Summary of Apartment Feasibility Analysis
West Santa Clara County Jurisdictions**

Program		
Average Unit Size	1,100 sf (NSF)	
Average Bedrooms	2 bedrooms	
Density	20 du/acre	
Parking	Surface	
Development Costs	\$/NSF	\$/Unit
<u>Directs</u>	\$230	\$253,000
<u>Indirects</u>		
A&E	\$12	\$13,000
Fees & Permits (excl. Affordable)	\$36	\$40,000
Overhead & Administration	\$9	\$10,000
Other Indirects	\$21	\$23,000
Debt Financing Costs	\$15	\$17,000
Total Indirects	\$94	\$103,000
Total Costs before Land	\$324	\$356,000
Operating Income	\$/NSF	\$/Unit
Gross Income (\$3,900 rent + other income)	\$44	\$48,100
(Less) Vacancy (5%)	(\$2)	(\$2,400)
(Less) Operating Expenses & Taxes	(\$11)	(\$11,800)
Net Operating Income (NOI)	\$31	\$33,900
Threshold Return on Cost	5.50% ROC	
Total Supported Private Investment	\$560	\$616,000
Residual Land Value with Illustrative Fees	\$/Land SF	\$/Unit
Land Value: No Affordable Housing Fee	\$119	\$260,000
<u>Land Values With Illustrative Fee Scenarios</u>		
<i>Illustrative Fee at \$10/square foot</i>	\$114	\$249,000
<i>Illustrative Fee at \$20/square foot</i>	\$109	\$238,000
<i>Illustrative Fee at \$30/square foot</i>	\$104	\$227,000
<i>Illustrative Fee at \$40/square foot</i>	\$99	\$216,000

Prevailing Land Values

In order to assess prevailing land values for residential development in the Santa Clara County jurisdictions, KMA reviewed relevant land sale comparables (comps) in 2014 and 2015 as well as recent residential land appraisals. The median sale price of the land comps located within the participating Santa Clara County jurisdictions was \$92/square foot. In general, land values will be higher in superior locations such as those with convenient proximity to job centers, public transit, retail and commercial services, and freeway access, as well as for sites that are of ideal size and configuration and have appropriate entitlements for near-term residential development.



Land sales in participating jurisdictions include cities of Santa Clara, Milpitas, Campbell, and Saratoga. Median sale price in participating jurisdictions = \$92/square foot. Land sales in other jurisdictions include Mountain View, Sunnyvale, San Jose, and Cupertino.

Based on the fact that the land sales reviewed for this analysis occurred in 2014 and 2015, the values today would be higher after accounting for land value appreciation. In general, values for the West County jurisdictions of Campbell, Los Altos, and Saratoga will also likely be higher than in Santa Clara and Milpitas given the higher residential values in these cities; however, information is limited due to the very few recorded land transactions occurring in these cities. We estimate land values are in the \$100 to \$120 per square foot range, or within the same range as the \$119 per square foot land value supported by the economics of new multifamily apartment projects as estimated in Table 1. As noted in the beginning of this section, due to the prototype approach to this analysis, some apartment projects will probably support a somewhat higher land value and some projects will support a somewhat lower land value based on location, site, and other individual project considerations.

Feasibility Conclusion

The analysis indicates that the economics of multifamily rental projects are strong under current market conditions and that projects are generally feasible. This finding is consistent with recent development activity in Campbell and Los Altos which includes several recently completed and approved apartment projects.

Potential Market Adjustments to Absorb New Fees

In a strong market, developers are often faced with increasing competition for building sites. These conditions can drive up the cost of land and will have a tendency to absorb any “surplus” projects might have had in their economics. Construction costs can also rise when development activity is strong. As a result, even under the strongest of conditions, projects usually do not have a “surplus” in their pro formas available to absorb new fees. However, markets are able to adjust to new fees just as they adjust to other changing market conditions such as rents and construction costs. Just as strong feasibility conditions contribute to increasing land prices, a new fee can contribute to downward pressure on land prices as developers must build the new fee into the economics of their projects and may adjust what they are willing to pay for land as a result. This can help offset, at least to some degree, the increased cost of a new fee.

Since the feasibility analysis is a snapshot in time analysis based on current market conditions, it can be instructive to consider how relatively modest improvements in project economics (e.g. continued strong increases in rents paired with more moderated increases in construction costs) can help to absorb a new fee. By way of illustration, a \$20/square foot fee could be absorbed by any of the following market adjustments:

- An approximately 2% increase in rents
- An approximately 8.7% decrease in direct construction costs
- An approximately 8.5% decrease in land costs

Additional examples of potential market adjustments at illustrative fee levels of \$10, \$30 and \$40 per square foot are shown in the table below. These calculations can be made for any fee level that may be considered. Note that adjustments are not additive. Each would be independently sufficient to absorb the fee increase. Depending on the market cycle and other factors, a combination of the above market adjustment would be expected to contribute to absorbing the new fee.

Potential Market Adjustments to Absorb New Fees

Potential Market Adjustments to Absorb Illustrative Fee Levels					
	Each \$1 Fee	\$10 Fee	\$20 Fee	\$30 Fee	\$40 Fee
Increase in Rents/Income	0.11%	1.1%	2.2%	3.3%	4.5%
Decrease in Direct Costs	0.43%	4.3%	8.7%	13.0%	17.4%
Decrease in Land Values (based on \$119/sf)	0.42%	4.2%	8.5%	12.7%	16.9%

B. On-Site Compliance Cost Analysis

The inclusionary program in Los Altos requires developers of new for-sale projects to set aside 10% of units for Moderate and Low income households. KMA estimated the foregone revenue for the developer when units are sold at affordable prices; this is referred to as the 'onsite compliance costs.' KMA notes that the 'cost' is compared to the hypothetical condition of no requirement. As Los Altos has long had its inclusionary program in place, land values for residential development have adjusted to absorb this cost, as developers acquiring land know how the obligation will affect their project's economics. A primary purpose of the onsite compliance analysis is to enable an understanding of the cost associated with complying with the City's existing inclusionary requirements, which is often useful as context for consideration of potential fee obligations.

KMA notes that the City offers development incentives designed to reduce the onsite compliance costs; use of the State density bonus program would also reduce onsite compliance costs. This analysis does not take into account those factors. KMA also notes that the City's program exempts projects with densities less than four units to the acre or with fewer than five units total; as a result, it is likely that the single family detached prototypes would be exempt from the current program.

KMA modeled the two scenarios – 10% of units at Moderate and 10% of units at Low. The City's current program requires units up to Moderate with at least one unit at Low. Table 2 presents our estimates of onsite compliance costs for ownership units. With current market rate sales prices, the cost to a developer associated with designating 10% of units at Moderate ranges from \$72,000 to \$305,000 per market rate unit or \$55 to \$89 per square foot residential area, depending on the prototype. The cost to a developer associated with designating 10% of units at Low Income ranges from \$94,000 to \$327,000 per market rate unit or \$68 to \$99 per square foot, depending on the prototype.

Rental projects were not included in the analysis because inclusionary requirements for rentals have not been enforceable since the 2009 Palmer decision.

These figures should not be interpreted as recommended fee levels.

**TABLE 2
COST OF ONSITE COMPLIANCE AND EQUIVALENT IN-LIEU FEES
RESIDENTIAL NEXUS ANALYSIS
CITY OF LOS ALTOS, CA**

		Prototype 1 Single Family Detached		Prototype 2 Small Lot Single Family Detached		Prototype 3 Townhome		Prototype 4 Condominium	
Unit Size ¹		3,500 sq ft		2,000 sq ft		1,500 sq ft		1,300 sq ft	
Number of Bedrooms ¹		4		3		2.5		3	
Market Rate		Per SF	Per Unit	Per SF	Per Unit	Per SF	Per Unit	Per SF	Per Unit
Sales Prices ¹		\$1,000	\$3,500,000	\$1,100	\$2,200,000	\$800	\$1,200,000		\$1,100,000
Affordable Prices²			Per Unit		Per Unit		Per Unit		Per Unit
At Moderate Income (110%)			\$454,650		\$423,150		\$377,050		\$375,850
At Low Income (70%)			\$225,050		\$210,500		\$175,050		\$163,150
Affordability Gap³			Per Unit		Per Unit		Per Unit		Per Unit
Per Affordable Moderate Unit			\$3,045,350		\$1,776,850		\$822,950		\$724,150
Per Affordable Low Income			\$3,274,950		\$1,989,500		\$1,024,950		\$936,850
Cost of Onsite Compliance⁴		Per SF	Per Unit	Per SF	Per Unit	Per SF	Per Unit	Per SF	Per Unit
Inclusionary Percentage @	10.0% Mod	\$87	\$304,535	\$89	\$177,685	\$55	\$82,295	\$56	\$72,415
	10.0% Low	\$94	\$327,495	\$99	\$198,950	\$68	\$102,495	\$72	\$93,685

1. See Residential Nexus Analysis Table A-1.
2. Estimate calculated by KMA based on standard affordable pricing assumptions and may not reflect City's methodology.
3. The difference between the market rate sales prices and the restricted affordable price.
4. Equivalent cost per market rate unit or square foot.

TABLE 2A
ESTIMATED AFFORDABLE HOME PRICES - Moderate Income
RESIDENTIAL NEXUS ANALYSIS
CITY OF LOS ALTOS, CA

Unit Size Household Size	Condo	Townhome	Townhome	SFD	SFD
	3-Bedroom Unit 4-person HH	2-Bedroom Unit 3-person HH	3-Bedroom Unit 4-person HH	3-Bedroom Unit 4-person HH	4-Bedroom Unit 5-person HH
100% AMI Santa Clara County 2016	\$107,100	\$96,400	\$107,100	\$107,100	\$115,650
Annual Income @ 110%	\$117,810	\$106,040	\$117,810	\$117,810	\$127,215
% for Housing Costs	35%	35%	35%	35%	35%
Available for Housing Costs	\$41,234	\$37,114	\$41,234	\$41,234	\$44,525
(Less) Property Taxes	(\$4,500)	(\$4,272)	(\$4,776)	(\$5,076)	(\$5,460)
(Less) HOA	(\$6,000)	(\$3,600)	(\$3,600)	\$0	\$0
(Less) Utilities	(\$1,416)	(\$1,416)	(\$1,776)	(\$3,144)	(\$3,552)
(Less) Insurance	(\$700)	(\$700)	(\$800)	(\$800)	(\$900)
(Less) Mortgage Insurance	(\$4,820)	(\$4,563)	(\$5,103)	(\$5,427)	(\$5,832)
Income Available for Mortgage	\$23,798	\$22,563	\$25,179	\$26,787	\$28,781
Mortgage Amount	\$357,100	\$338,600	\$377,800	\$402,000	\$431,900
Down Payment (homebuyer cash)	\$18,750	\$17,800	\$19,900	\$21,150	\$22,750
Supported Home Price	\$375,850	\$356,400	\$397,700	\$423,150	\$454,650
Key Assumptions					
- Mortgage Interest Rate ⁽¹⁾	5.30%	5.30%	5.30%	5.30%	5.30%
- Down Payment ⁽²⁾	5.00%	5.00%	5.00%	5.00%	5.00%
- Property Taxes (% of sales price) ⁽³⁾	1.20%	1.20%	1.20%	1.20%	1.20%
- HOA (per month) ⁽⁴⁾	\$500	\$300	\$300	\$0	\$0
- Utilities (per month) ⁽⁵⁾	\$118	\$118	\$148	\$262	\$296
- Mortgage Insurance (% of loan amount)	1.35%	1.35%	1.35%	1.35%	1.35%

(1) Mortgage interest rate based on 15-year Freddie Mac average; assumes 30-year fixed rate mortgage.

(2) Down payment amount is an estimate for Moderate Income homebuyers.

(3) Property tax rate is an estimated average for new projects.

(4) Homeowners Association (HOA) dues is an estimate for the average new project.

(5) Utility allowances from Santa Clara County Housing Authority (2016).

**TABLE 2B
ESTIMATED AFFORDABLE HOME PRICES - Low Income
RESIDENTIAL NEXUS ANALYSIS
CITY OF LOS ALTOS, CA**

	Condo	Townhome	Townhome	SFD	SFD
Unit Size	3-Bedroom Unit	2-Bedroom Unit	3-Bedroom Unit	3-Bedroom Unit	4-Bedroom Unit
Household Size	4-person HH	3-person HH	4-person HH	4-person HH	5-person HH
100% AMI Santa Clara County 2016	\$107,100	\$96,400	\$107,100	\$107,100	\$115,650
Annual Income @ 70%	\$74,970	\$67,480	\$74,970	\$74,970	\$80,955
% for Housing Costs	30%	30%	30%	30%	30%
Available for Housing Costs	\$22,491	\$20,244	\$22,491	\$22,491	\$24,287
(Less) Property Taxes	(\$1,956)	(\$1,980)	(\$2,220)	(\$2,520)	(\$2,700)
(Less) HOA	(\$6,000)	(\$3,600)	(\$3,600)	\$0	\$0
(Less) Utilities	(\$1,416)	(\$1,416)	(\$1,776)	(\$3,144)	(\$3,552)
(Less) Insurance	(\$700)	(\$700)	(\$800)	(\$800)	(\$900)
(Less) Mortgage Insurance	(\$2,093)	(\$2,106)	(\$2,376)	(\$2,700)	(\$2,889)
Income Available for Mortgage	\$10,327	\$10,442	\$11,719	\$13,327	\$14,246
Mortgage Amount	\$155,000	\$156,700	\$175,900	\$200,000	\$213,800
Down Payment (homebuyer cash)	\$8,150	\$8,250	\$9,250	\$10,500	\$11,250
Supported Home Price	\$163,150	\$164,950	\$185,150	\$210,500	\$225,050
Key Assumptions					
- Mortgage Interest Rate ⁽¹⁾	5.30%	5.30%	5.30%	5.30%	5.30%
- Down Payment ⁽²⁾	5.00%	5.00%	5.00%	5.00%	5.00%
- Property Taxes (% of sales price) ⁽³⁾	1.20%	1.20%	1.20%	1.20%	1.20%
- HOA (per month) ⁽⁴⁾	\$500	\$300	\$300	\$0	\$0
- Utilities (per month) ⁽⁵⁾	\$118	\$118	\$148	\$262	\$296
- Mortgage Insurance (% of loan amount)	1.35%	1.35%	1.35%	1.35%	1.35%

⁽¹⁾ Mortgage interest rate based on 15-year Freddie Mac average; assumes 30-year fixed rate mortgage.

⁽²⁾ Down payment amount is an estimate for Low Income homebuyers.

⁽³⁾ Property tax rate is an estimated average for new projects.

⁽⁴⁾ Homeowners Association (HOA) dues is an estimate for the average new project.

⁽⁵⁾ Utility allowances from Santa Clara County Housing Authority (2016).

C. Residential Affordable Housing Requirements in Other Jurisdictions

The affordable housing requirements adopted by other jurisdictions are almost always of interest to decision making bodies. Cities inevitably want to know what their neighbors have in place for affordable housing requirements, and often want to examine other cities that are viewed as comparable on some level. The body of information on other programs not only presents what others are adopting, but also illustrates the broad range in program design and customized features available to meet local needs.

The work program design for Multi Jurisdiction Nexus Studies anticipated wide interest in the comparison jurisdictions to be covered. To keep the comparison task manageable, the participating cities and counties voted as to which cities were of greatest interest for inclusion in the comparison survey. For the most part, the participants selected their neighbors and the larger cities of the local region as being of most interest. It was a given that the existing requirements of all participant cities and counties would also be included. Ultimately, eight cities in Santa Clara County and ten cities in Alameda County were selected for inclusion in the comparison material.

A four-page chart summarizes the key features of the eighteen cities in the survey (Table 3). Neither of the two participating counties have yet adopted affordable housing requirements. The chart was designed to focus on the major components of each city's program that would be most relevant to decision making by the participating jurisdictions, primarily the thresholds, the fee levels and on-site affordable unit requirements.

1. Findings from the Survey

Thresholds for On-Site Affordable Requirement

- Whether or not for-sale development projects have the choice “as of right” between paying a fee or doing on-site units is a critical feature of any program. In the eight Santa Clara jurisdictions, six require on-site units and offer no fee “buy out” without a special City Council procedure. Only San Jose and Milpitas offer the fee choice at this time. In contrast, of the ten Alameda jurisdictions, most offer fee payment “as of right.”
- Most fee options are less costly to the developer than providing on-site units. High fees are necessary if the choice between building units or paying fees is to be at all competitive. The high fee cities, such as Fremont, aim to present a real choice and achieve some on-site compliance units as well as fee revenues.
- With the loss of redevelopment and tax increment resources dedicated to housing, many cities have revised their programs to generate more fee revenues. Programs can be

revised to so as to alter options or incentives for projects to provide on-site units versus pay a fee based on the City's preferences.

- The loss of redevelopment has also motivated some cities to lower minimum project sizes to collect fees on very small projects, even single units. Several Santa Clara cities in the chart have adjusted their thresholds down to three to five units for fee payment, and the recently updated Cupertino program goes down to single units. The nexus analysis fully demonstrates the impact generated by single units, and as a result, some cities view charging very small projects and single units a matter of fairness and equity in an “everybody contributes” approach to meeting affordable housing challenges.
- Following the *Palmer* decision, impact fees have been the only avenue for instituting affordable housing requirements on rentals. On-site affordable units are sometimes permitted or encouraged as an alternative to fee payment.

Fee Levels

- Impact fee levels for rentals in the cities of north and west Santa Clara County cluster in the \$15 to \$20 per square foot range for rentals, notably San Jose, Mountain View, Sunnyvale, and Cupertino. Most other cities have not yet adopted impact fees on rentals.
- Fees on for sale units, where permitted, in the Santa Clara cities reflect a range of approaches and levels. Several Silicon Valley cities charge fees as a percent of sales price, a practice not used much outside of Silicon Valley. The percent of sales prices reflects the higher impacts of higher priced units, borne out in the nexus analysis. The approach also scales fees in proportion to the revenue projects would forgo were a portion of units to be made affordable on-site.
- In the East Bay, Fremont is notable for its higher fees and obligation to provide both units and pay fees. Hayward has a lower fee structure. Oakland is a new adoption that will phase in fees up to \$23,000 per market rate unit, less than Berkeley but higher than neighbors to the south.
- East of the hills, some programs like Pleasanton, have been in place for decades but are more modest than most of the newer ones. Dublin is, in many ways, its own special case, with vigorous development activity and affordable unit requirements.

On-Site Requirements

- The Santa Clara cities (excluding Milpitas) have programs in the 10% to 20% range, with 15% most common.

- For the Santa Clara County programs, the affordability level applicable to for-sale projects is usually in the moderate income range, with pricing of on-site units ranging from 90% to 120% AMI, depending on the city. A few cities do seek some units down to Low Income.
- In Alameda cities, on-site requirements are most commonly at the 15% level. Berkeley has a 20% requirement, while Hayward and Oakland have lower requirements. The Fremont percentage is lower but a fee is owed in addition to on-site units.

2. Other General Comments

- Impact / in-lieu fees are presented at adopted levels. Where a multi-year phase-in has been adopted, such as the new Oakland program, the full phase in amount is shown with clarification in the bottom comment section of the chart. Fees on rentals are included only when they have been adopted as impact fees, following the *Palmer* California Supreme Court ruling which precludes on-site requirements and their in-lieu fee alternatives.
- Fees are expressed in different ways from one city to the next. Some fees are charged per square foot, some are a flat fee per market rate unit, and some are charged per affordable unit owed, which is almost always over \$100,000 in the Bay Area. To convert per unit owed to per market rate unit, one can multiply the per unit amount by the percentage requirement.
- On-Site Requirement/Option for Rentals. Many city codes continue to include on-site requirement language for rental projects because codes have not been updated since the *Palmer* ruling and requirements are not being applied (except through negotiation). These requirements are not included in the chart.
- The income levels of the affordable units that are required are summarized in terms of both “eligibility” or “qualifying” levels and the pricing level that is used to establish the purchase price or rent level of the unit. The pricing level is the critical one insofar as the developer’s obligation is concerned. The most typical choice for pricing level is to be consistent with the affordable housing cost definitions in the California Health & Safety Code 50052.5 and 50053.
- Virtually all cities that have on-site requirements for for-sale residential projects without the choice of fee payment, do allow fee payment with special City Council approval. Therefore, the chart notes this feature only by way of a footnote. The City’s practice in granting such approvals may be more consequential than what may be written.

For more complete information on the programs, please consult the website and code language of the individual cities.

**TABLE 3
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS - RESIDENTIAL
PARTICIPATING JURISDICTIONS: SANTA CLARA COUNTY¹
AFFORDABLE HOUSING NEXUS ANALYSES**

	Campbell	Los Altos	Milpitas	Santa Clara City
Year Adopted / Updated	2006	Est. 1995, update 2009	2015	Est. 1991, update 2006
Minimum Project Size				
For In-lieu/Impact Fee	FS, <6du/Ac: 10 units FS, >6 du/Ac: n/a	n/a	FS/R: 5 units	n/a
For Build Requirement	FS, <6du/Ac: n/a FS, >6du/Ac: 10 units	FS: 5 units	no build req.	FS: 10 units
Impact / In-Lieu Fee	FS: \$34.50 /sf	none	FS/R: 5% building permit value	FS: Fractional units only (Market Value - Affordable Price) x fractional unit
Onsite Requirement/Option				
Percent of Total Units	FS: 15%	FS: 10%	FS/R: 5%	FS: 10%
Income Level for Qualification	FS: Moderate	FS: Moderate If <10 units, one unit at Low.	FS/R: Low and Very Low	FS: Moderate
Income Level for Pricing(% AMI)	FS: Moderate @ 110%	Not Specified.	Not specified.	Not specified.
Fractional Units	<0.5: round down, >0.5: round up	provide unit	not specified	pay fee or provide unit
Comments		<4 du/Ac: no requirement. Also, requirements may be waived by City Council for projects of 9 units or less.	In-lieu/impact fee introduced as temporary measure while City prepares formal nexus study. Fee has not yet been assessed.	

Abbreviations: R = Rental du = Dwelling Unit FS = For Sale Ac = Acre /sf = per square foot AMI =Area Median Income MF = Multi-Family SF = Single Family

1. Santa Clara County and Saratoga do not currently have an inclusionary housing requirement.

Notes: This chart presents an overview, and as a result, terms are simplified. For use other than general comparison, please consult the code and staff of the jurisdiction. Virtually all cities that do not allow fee payment by right allow developers to seek Council approval of fee payment instead of on-site units, in addition to providing options for off-site construction and land dedication.

**TABLE 3
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS - RESIDENTIAL
NON-PARTICIPATING JURISDICTIONS: SANTA CLARA COUNTY
AFFORDABLE HOUSING NEXUS ANALYSES**

	Cupertino	Mountain View	San Jose	Sunnyvale
Year Adopted / Updated	Est. 1992, update 2015	Est. 1999, rental impact fee in 2012, update 2015	Est. 2010. Rental Fee 2014.	Update 2015
Minimum Project Size For In-lieu/Impact Fee	FS/R: 1 unit	FS: 3 units R: 5 units	FS: 20 units R: 3 units	FS: 8 units R: 4 units
For Build Requirement	FS: 7 units	Mixed FS/R: 6 units FS: 10 units	no build req.	FS: 20 units
Impact / In-Lieu Fee	FS: Detached \$15/sf, Attached \$16.50/sf, MF \$20/sf R: <35 du/Ac \$20/sf, >35 du/Ac \$25/sf	FS: 3% of sales price R: \$17/sf	FS: based on affordability gap R: \$17 /sf	FS: 7% of sales price R: \$8.50/sf (4-7 units), \$17/sf (8+ units)
Onsite Requirement/Option Percent of Total Units	FS/R: 15%	FS/R: 10%	FS: 15%	FS: 12.5% R: On-site credits (see below)
Income Level for Qualification	FS: 1/2 Median 1/2 Moderate R: 40% Low, 60% Very Low	FS: Median R: Low	FS: Moderate	FS: Moderate
Income Level for Pricing(% AMI)	FS: Moderate @ 110%, Median @ 90% R: Low @ 60%, Very Low @ 50% AMI	FS: One unit: 90% AMI Multiple units: 80 - 100% AMI R: Ranges btwn 50-80% AMI	Moderate @ 110% AMI	Moderate @ 100% AMI
Fractional Units	<.5 unit owed: pay fee .5+ unit owed: round up	pay fee or provide unit	R: pay fee FS: pay fee or provide unit	pay fee or provide unit
Comments			Inclusionary zoning to be reinstated 2016. Downtown highrises exempt from impact fee for five years.	On-site rental: developer credited \$300,000/du (Very Low), \$150,000/du (Low). Projects with fewer than 20 units are eligible to pay in-lieu fee.

Abbreviations:

R = Rental
du = Dwelling Unit

FS = For Sale
Ac = Acre

/sf = per square foot
AMI =Area Median Income

MF = Multi-Family
SF = Single Family

Notes: This chart presents an overview, and as a result, terms are simplified. For use other than general comparison, please consult the code and staff of the jurisdiction.

Virtually all cities that do not allow fee payment by right allow developers to seek Council approval of fee payment instead of on-site units, in addition to providing options for off-site construction and land dedication.

**TABLE 3
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS - RESIDENTIAL
PARTICIPATING JURISDICTIONS: ALAMEDA COUNTY¹
AFFORDABLE HOUSING NEXUS ANALYSES**

	Albany	Fremont	Hayward	San Leandro	Union City
Year Adopted / Updated	2005	Est. 2002, update 2015, full phase-in 2017	Update 2015	2004	Est. 2001, update 2006
Minimum Project Size For In-lieu/Impact Fee For Build Requirement	FS: 5 units FS: 7 units	FS/R: 2 units no build req.	FS/R: 20 units no build req.	FS: 2 units FS: 7 units	n/a FS: 1 unit
Impact / In-Lieu Fee	FS: (Market Value - Affordable Price) x units owed	FS: Attached \$27.00 no units, \$18.50 w/ aff units Detached \$26.00 no units, \$17.50 w/ aff units, R: \$17.50 no map, \$27.00 w/ map	FS: Attached \$3.24/sf, Detached \$4/sf R: \$3.24/sf	FS: (Median Sale Price - Affordable Price) x units owed	FS: <7 units: \$160,000 /du owed, 7+ units: \$180 /sf owed
Onsite Requirement/Option Percent of Total Units	FS: 15%	FS: Attached 3.5% plus \$18.50/sf Detached 4.5% plus \$17.50/sf R: 12.9%	FS: Attached 7.5%, Detached 10% R: Attached 7.5%, Detached 10%	FS: 15%	FS: 15%
Income Level for Qualification	FS: <10 units: Low 10+ units: 50% Low, 50% Very Low	FS: Moderate Income R: 19% Extremely Low, 33% Very Low, 25% Low, 24% Moderate	FS: Moderate Income R: 50% Low, 50% Very Low	FS: 60% Moderate, 40% Low	FS: 60% Moderate, 30% Median, 10% Low.
Income Level for Pricing(% AMI)	Not specified.	FS: Moderate @ 110% AMI (120% w/approval) R: Low @ 60% AMI, Very Low @ 50% AMI, Extremely Low @ 30% AMI	FS: Moderate @ 110% AMI R: Low @ 60% AMI Very Low @ 50% AMI	FS: Moderate @ 110% AMI, Low @ 70% AMI	FS: Moderate @ 110% AMI, Median not specified (80-100%) Low @ 70% AMI
Fractional Units	<0.5: pay fee, >0.5: provide unit	pay fee or provide unit	pay fee or provide unit	<0.5: round down, >0.5: round up	pay fee or provide unit
Comments		Full phase-in levels shown. Rental projects with a subdivision map pay the higher fee. FS projects req. to provide onsite units and pay fee.		Fee calculated based on current median sales price. No fees owed since 2008.	Fee payment with City approval only. Single-unit, owner occupied projects exempt.

Abbreviations: R = Rental /sf = per square foot MF = Multi-Family
du = Dwelling Unit Ac = Acre AMI =Area Median Income SF = Single Family

1. Alameda County (not displayed) does not currently have an affordable housing requirement.

Notes: This chart presents an overview, and as a result, terms are simplified. For use other than general comparison, please consult the code and staff of the jurisdiction.

Virtually all cities that do not allow fee payment by right allow developers to seek Council approval of fee payment instead of on-site units, in addition to providing options for off-site construction and land dedication.

**TABLE 3
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS - RESIDENTIAL
NON-PARTICIPATING JURISDICTIONS: ALAMEDA COUNTY
AFFORDABLE HOUSING NEXUS ANALYSES**

	Alameda (city)	Berkeley	Dublin	Oakland	Pleasanton
Year Adopted / Updated	2003	Est. 1986, rental fee 2011, update proposed 2016	Est. 1997, update 2005	2016	Est. 1978, update 2000.
Minimum Project Size For In-lieu/Impact Fee For Build Requirement	FS: 5 units FS: 10 units	FS/R: 5 units no build req.	FS/R: 20 units FS/R: 20 units (partial)	FS/R: 1 unit no build req.	FS/R: 15 units no build req.
Impact / In-Lieu Fee	FS: \$18,431/du	FS: 62.5% x (Sale Price - Affordable Price) x units owed R: Current \$28,000/du <i>Proposed</i> \$34,000/du	FS/R: \$127,061 per aff unit owed (in addition to on-site)	FS/R: MF \$12,000-\$22,000, SF Attached \$8,000-\$20,000, SF Detached \$8,000-\$23,000	FS/R: MF \$2,783/du, SF <1,500 sq ft: \$2,783/du, >1,500 sq ft: \$11,228/du
Onsite Requirement/Option Percent of Total Units	FS: 15%	FS: 20% R: Current 10%, <i>Proposed</i> 20% FS: Low	FS/R: 7.5%, plus fee (12.5% without fee)	FS/R: Option A 5% or Option B 10%	FS/R: MF 15% SF 20%
Income Level for Qualification	FS: 47% Moderate, 27% Low, 27% Very Low	R: Current Very Low <i>Proposed</i> 1/2 Very Low, 1/2 Low	FS: 60% Moderate, 40% Low R: 50% Moderate, 20% Low, 30% Very Low	FS/R: Option A Very Low Option B Low and Moderate	FS: MF Low SF Moderate
Income Level for Pricing(% AMI)	FS: Moderate @ 110%, Low @ 70%, Very Low @ 50%	FS: Low @ 80% R: Low at 81%, Very Low at 50%.	FS: Moderate @ 110%, Low @ 70% R: Moderate @ 110%, Low @ 80%, Very Low @ 50%	FS: Moderate @ 110%, Low @ 70%, Very Low @ 50% R: Moderate 110%, Low @ 60%, Very Low @ 50%	FS: MF 80% AMI SF 120% AMI
Fractional Units	<0.5: round down, >0.5: round up	pay fee	<0.5: round down, >0.5: round up	pay fee or provide unit	<0.5: round down, >0.5: round up
Comments		Council has directed City Manager to draft ordinance with proposed changes to rental program.		Fees vary by neighborhood. Fees phased in through 2020. Full fee levels shown. On-site: May choose Option A or B. Based on draft ordinance prepared for April 19, 2016 council meeting.	

Abbreviations: R = Rental /sf = per square foot MF = Multi-Family
du = Dwelling Unit Ac = Acre AMI =Area Median Income SF = Single Family

Notes: This chart presents an overview, and as a result, terms are simplified. For use other than general comparison, please consult the code and staff of the jurisdiction. Virtually all cities that do not allow fee payment by right allow developers to seek Council approval of fee payment instead of on-site units, in addition to providing options for off-site construction and land dedication.

D. Non-Residential Development Cost Context

The non-residential development cost context analysis considers the impacts a new affordable housing fee could have on the cost of development for new office, retail, hotel, and light industrial projects in Santa Clara County. The analysis enables an understanding of the relative cost burdens new fees have on various types of commercial and industrial development projects and can be useful in scaling fees by type of project.

For commercial and industrial development, the analysis considers the potential fee as a percentage of total development costs rather than the full feasibility analysis included for the multi-family apartments. One of the primary reasons a full feasibility analysis is not performed for the commercial land uses is because there is typically greater variation in the cost and rent structures for commercial projects than for housing projects. Development costs and rents can vary widely for office and retail projects due to the specialized nature of tenant improvements and lease terms from one tenant to another. Costs and revenues also vary widely for hotel projects due to the fact that hotel products range from lower cost limited service and budget hotels to highly amenitized full service and boutique hotels. Finally, affordable housing requirements applicable to non-residential development typically represents a smaller percentage of overall project cost compared to residential requirements. For these reasons, the utility of a full feasibility analysis for commercial projects is generally more limited than for housing projects. Instead an understanding of the total development cost context has generally proved sufficient to guide the selection of fee levels on non-residential projects.

1. Commercial Market Context

Like the residential market, commercial projects in Santa Clara County have experienced strengthening conditions in recent years due to robust job growth and the strength of the overall regional economy. According to a recent market report from Newmark Cornish & Carey, as of Q1 2016 there was about 9.5 million square feet of office development in construction in Silicon Valley out of a total office inventory of 75 million square feet. New retail, hotel and industrial projects are also being built or are in the planning stages in various parts of the county.

2. Development Cost Analysis

For the development cost analysis, KMA utilized the following four commercial prototypes.

- Office development with structured parking at 1.00 floor area ratio (FAR)
- Hotel development with surface and structured parking at 1.00 FAR
- Retail development with surface parking at 0.30 FAR
- Light industrial development with surface parking at 0.40 FAR

In preparing these prototypes it is acknowledged that there could be some differences in overall density from one jurisdiction to another as these prototypes are intended to reflect averages for

the participating jurisdictions in Santa Clara County. However, for purposes of the development cost assessment it is not necessary to analyze every variation of project density or building prototype being built or proposed to be built. The utility of the analysis lies with an understanding of the general range of development costs for new commercial projects and the impact that a new fee can have relative to those costs.

The estimates of total development costs for the commercial prototypes are shown in the following table. The costs include estimates for land acquisition, direct construction costs, and indirect and financing costs of development. In assembling the development cost estimates, KMA utilized a variety of data sources, including the following:

- Land appraisals, CoStar land comps;
- Third party construction cost data sources such as RS Means and Engineering News Record (ENR);
- Pro forma data for current non-residential projects in the Bay Area.

**Non-Residential Development Costs
Santa Clara County Participating Jurisdictions**

	Office		Hotel		Retail		Light Industrial	
Building Square Feet	100,000		75,000		75,000		100,000	
Hotel Rooms			125 rooms					
Parking	Structure		Surface & Structure		Surface		Surface	
FAR	1.00 FAR		1.00 FAR		0.30 FAR		0.40 FAR	
Land Area	2.30 acres		1.72 acres		5.74 acres		5.74 acres	
	<u>\$/SF</u>	<u>Total</u>	<u>\$/SF</u>	<u>Total</u>	<u>\$/SF</u>	<u>Total</u>	<u>\$/SF</u>	<u>Total</u>
<u>Land Acquisition</u>	\$115	\$11,500,000	\$45	\$3,380,000	\$200	\$15,000,000	\$88	\$8,750,000
	\$115 /land sf		\$45 /land sf		\$60 /land sf		\$35 /land sf	
<u>Directs</u>	\$348	\$34,750,000	\$227	\$17,000,000	\$175	\$13,130,000	\$143	\$14,250,000
<u>Indirects</u>								
A&E	\$21	\$2,090,000	\$14	\$1,020,000	\$11	\$790,000	\$9	\$860,000
FF&E/Tenant Improvements	\$59	\$5,850,000	\$58	\$4,380,000	\$36	\$2,700,000	\$19	\$1,900,000
Fees & Permits (excl. Afford)	\$5	\$540,000	\$8	\$590,000	\$7	\$520,000	\$5	\$480,000
Other Indirects & Financing	\$33	\$3,280,000	\$21	\$1,580,000	\$26	\$1,930,000	\$16	\$1,570,000
Total Indirects & Financing	\$118	\$11,760,000	\$101	\$7,570,000	\$79	\$5,940,000	\$48	\$4,810,000
Total Costs	\$580	\$58,010,000	\$373	\$27,950,000	\$454	\$34,070,000	\$278	\$27,810,000
Total Cost Range	\$525 - \$625/sf		\$325 - \$425/sf		\$400 - \$500/sf		\$250 - \$300/sf	

As shown, total development costs for the non-residential prototypes range from a low of approximately \$250-\$300/square foot for the light industrial prototype to a high of approximately \$525-\$625 for the office prototype.

3. Affordable Housing Fees Supported

In general, affordable housing fees on non-residential projects fall within a range of 1% to 5% of total development costs, with the upper portion of the range generally reserved for cities that have very strong market conditions driving non-residential development projects. As noted in Section E., current affordable housing fees on non-residential projects are as high as \$20-\$25/square foot (for office projects) in Santa Clara County jurisdictions that have such fees. Current fees for other non-residential projects, such as retail and hotel, tend to be more in the \$5-\$10 / square foot range.

The table below summarizes the range of potential fees on non-residential projects expressed as a percentage of total development cost. As an example, at 3% of total development cost, a new housing fee would range from approximately \$8 / square foot for light industrial uses to \$17/square foot for office uses. As is common in jobs housing linkage fee programs, light industrial projects tend to have lower fees than higher intensity/higher value projects such as office projects because it is generally more difficult for lower cost projects to absorb new fees. Exceptions include some Silicon Valley cities where distinctions between office and industrial have become blurred and both are charged at the same rate.

Relative Fee Burdens*

	Office	Hotel	Retail	Light Industrial
Total Cost Range	\$525 - \$625/sf	\$325 - \$425/sf	\$400 - \$500/sf	\$250 - \$300/sf
Fee at 1% of Total Cost	\$5.75	\$3.75	\$4.50	\$2.75
Fee at 2% of Total Cost	\$11.50	\$7.50	\$9.00	\$5.50
Fee at 3% of Total Cost	\$17.25	\$11.25	\$13.50	\$8.25
Fee at 4% of Total Cost	\$23.00	\$15.00	\$18.00	\$11.00
Fee at 5% of Total Cost	\$28.75	\$18.75	\$22.50	\$13.75

*Fees calculated at 1-5% of mid-point of cost range.

As was done in the apartment feasibility section of this report, the following table summarizes how newly adopted fees can be absorbed by relatively minor improvements in development economics over time. For example, a newly added fee of \$20/square foot for the office prototype could be absorbed by a roughly 3% increase in rental income (\$20/square foot x 0.15%), a roughly 6% decrease in direct construction costs (\$20/square foot x 0.29%), or a roughly 17% decrease in land values (\$20/square foot x 0.87%). It is noted however that construction costs and rents tend to move in the same direction. Therefore, increases in rents would need to exceed increases in costs in order to produce a net gain in a project's economics.

Potential Market Adjustments to Absorb Every \$1/SF Fee

	Office	Hotel	Retail	Light Industrial
Increase in Rents/Income	0.15%	0.23%	0.19%	0.31%
Decrease in Direct Costs	0.29%	0.44%	0.57%	0.70%
Decrease in Land Values	0.87%	2.22%	0.50%	1.14%

Adjustments are not additive. Each would independently be sufficient to absorb new fees. Depending on the market cycle and other factors, a combination of the above market adjustments would be expected to contribute in absorbing a new fee.

E. Jobs Housing Linkage Fees in Other Jurisdictions

Information on other jobs housing linkage fee programs in nearby or comparable cities is often helpful context in considering new or updated fees. The following section provides information assembled regarding other programs in the Bay Area and elsewhere in California including information on customized features such as size thresholds, exemptions, and build options.

More than 30 cities and counties in California have commercial linkage fees, with the majority of these programs within the Bay Area and greater Sacramento. In Southern California, a few cities have linkage fee programs, of which San Diego is the largest example. Several communities in Massachusetts have linkage fees, including Boston and Cambridge. Seattle recently expanded its linkage fee program city-wide. Boulder, Colorado adopted a new city-wide program last year. Portland and Denver are each in the process of exploring new linkage fee adoptions.

Silicon Valley and the Peninsula, which has some of the strongest real estate market conditions in the Bay Area, is where many of the jurisdictions with the highest fee levels are found. For office, fee levels range from \$15 (Sunnyvale) to \$25 per square foot (Mountain View). Several cities have recently updated fee levels (Cupertino, Mountain View, Sunnyvale), or newly adopted fees (Redwood City). For retail and hotel, fee ranges are much broader as some jurisdictions have adopted similar fee levels across all building types while others have lower fee levels for retail and hotel.

Within the East Bay, fees have been adopted at a more moderate range. For office, fee levels for communities in the inner East Bay (west of the hills) range from \$3.59 (Newark) to \$5.24 (Oakland). Retail fees range from \$2.30 (Alameda) to \$4.50 (Berkeley). Oakland’s program covers only office and warehouse and exempts other uses such as retail.

The table on the following page provides an overview of fee levels for selected examples in Santa Clara County, the Peninsula, and the East Bay. A more complete overview of these programs, and many others, is presented on Table 4 at the end of this section.

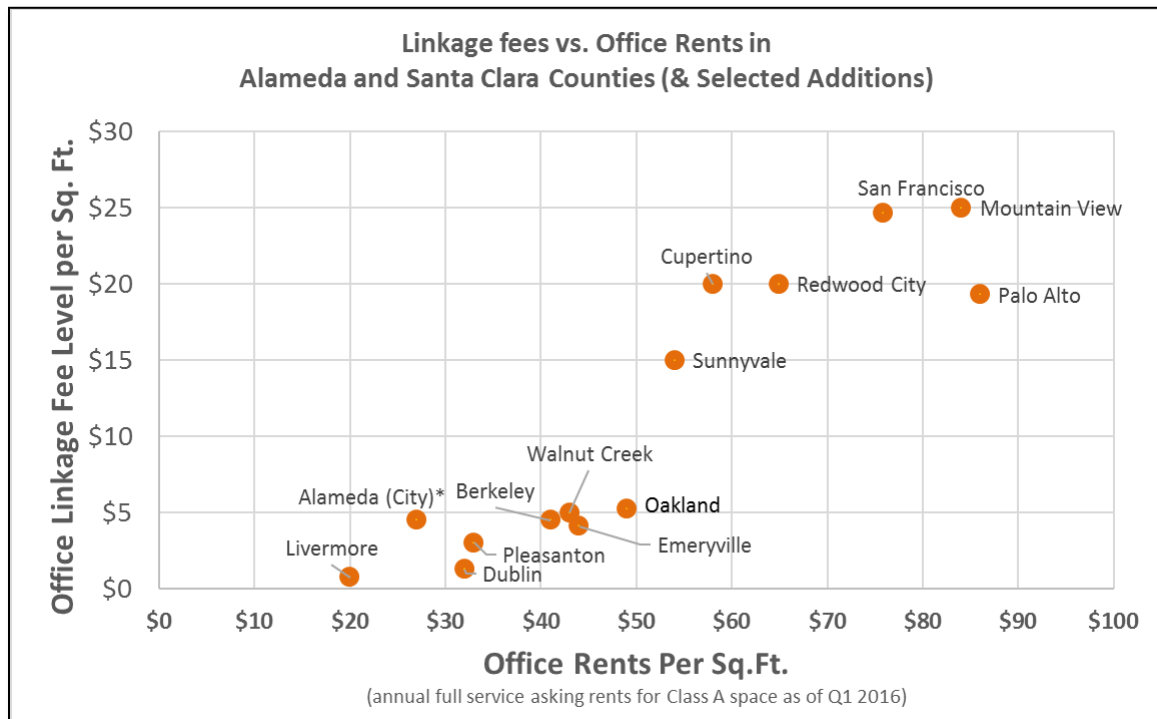
Affordable Housing Fee Levels in Selected Communities

Non-Residential Linkage Fees	Office \$/SF	Retail \$/SF	Hotel \$/SF	Industrial \$/SF
<u>Santa Clara Co. & Peninsula</u>				
Mountain View	\$25.00	\$2.68	\$2.68	\$25.00
Cupertino	\$20.00	\$10.00	\$10.00	\$20.00
Palo Alto	\$19.85	\$19.85	\$19.85	\$19.85
Sunnyvale	\$15.00	\$7.50	\$7.50	\$15.00
San Francisco	\$24.61	\$22.96	\$18.42	\$19.34
Redwood City	\$20.00	\$5.00	\$5.00	N/A
<u>East Bay: West of Hills</u>				
Oakland	\$5.24	N/A	N/A	N/A
Berkeley	\$4.50	\$4.50	\$4.50	\$2.25
Alameda (City)	\$4.52	\$2.30	\$1.85	\$0.78
Emeryville	\$4.10	\$4.10	\$4.10	\$4.10
Newark	\$3.59	\$3.59	\$3.59	\$0.69
<u>East Bay: East of Hills</u>				
Walnut Creek	\$5.00	\$5.00	\$5.00	N/A
Pleasanton	\$3.04	\$3.04	\$3.04	\$3.04
Dublin	\$1.27	\$1.02	\$0.43	\$0.49
Livermore	\$0.76	\$1.19	\$1.00	\$0.24

N/A = No fee or no applicable category

As a way to provide context in terms of the market conditions in each of the communities, the chart on the following page shows office linkage fees (the building type that usually has the highest fees) in relation to office rents by city. Office rents are an indicator of market strength and major driver of real estate values.

Office Linkage Fees vs. Average Office Rents in Selected Communities



*Rents for City of Alameda apply to Class B/C space (Class A rents not available)
Sources: Office rents from market research reports prepared by Colliers International.

By way of comparison, asking rents for available Class A office space in Los Altos as of Q1 2016 averaged just under \$80 per square foot.

Ordinance or Program Features

Linkage fee programs often includes features to address a jurisdiction's policy objectives or specific concerns. The most common are:

- Minimum Threshold Size* – A minimum threshold sets a building size over which fees are in effect. Programs with low fees often have no thresholds and all construction is subject to the fee. Thresholds, which reduce fees for smaller projects, are more common for programs with more significant fees. Some jurisdictions establish a building size over which the fee applies. Sometimes the fee applies to the whole building and sometimes the fee applies only to the square foot area over the threshold. Thresholds are often employed to minimize costs for small infill projects in older commercial areas, when such infill is a policy objective. There is also some savings in administrative costs. The disadvantage is lost revenue. Oakland and Berkeley are examples of communities employing thresholds while Alameda, Newark, and others do not. Mountain View has a reduced charge for the first 10,000 square feet of office space and the first 25,000 square feet of retail or hotel development.

- *Geographic Area Variations and Exemptions* – Some cities with linkage fee programs exclude specific areas such as redevelopment areas or have fees that vary based on geography. A geographic area variation can also be used to adjust the fee in jurisdictions where there is a broad difference in economic health from one subarea to the next. This is generally more common among large cities with a diverse range of conditions.
- *Specific Use Exemptions* – Some cities charge all building types while others choose to exempt specific uses. A common exemption is for buildings owned by non-profits which typically encompasses religious, educational/institutional, and hospital building types. Some programs identify specific uses as exempt such as schools and child care centers.

A more complete listing of the programs surveyed along with information about ordinance features such as exemptions and thresholds is contained in Table 3 at the end of this section.

TABLE 4
SUMMARY OF JOBS HOUSING LINKAGE FEE PROGRAMS, CALIFORNIA

Jurisdiction	Yr. Adopted/ Updated	Fee Level (per Sq.Ft. unless otherwise noted)	Thresholds & Exemptions	Build Option/ Other	Market Strength	Comments
SAN FRANCISCO, PENINSULA, SANTA CLARA COUNTY						
San Francisco Population: 829,000	1981 Updated 2002, 2007	Retail / Entertainment \$22.96 Hotel \$18.42 Production Dist. Repair \$19.34 Office \$24.61 Research and Development \$16.39 Small Enterprise Workspace \$19.34	25,000 gsf threshold Exempt: freestanding pharmacy < 50,000 SF; grocery < 75,000	Yes, may contribute land for housing.	Very Substantial	Fee is adjusted annually based on the construction cost increases.
City of Palo Alto Population: 66,000	1984 Updated 2002	Nonresidential Dvlpmt \$19.85	Churches; universities; recreation; hospitals, private educational facilities, day care and nursery school, public facilities are exempt	Yes	Very Substantial	Fee is adjusted annually based on CPI.
City of Menlo Park Population: 33,000	1998	Office & R&D \$15.57 Other com./industrial \$8.45	10,000 gross SF threshold Churches, private clubs, lodges, fraternal orgs, public facilities and projects with few or no employees are exempt.	Yes, preferred. May provide housing on- or off-site.	Very Substantial	Fee is adjusted annually based on CPI.
City of Sunnyvale Population: 146,000	1984 Updated 2003 and 2015.	Industrial, Office, R&D: \$15.00 Retail, Hotel \$7.50	Office fee is 50% on the first 25,000 SF of building area. Exemptions for Child care, education, hospital, non-profits, public uses.	N/A	Very Substantial	Fee is adjusted annually based on CPI.
Redwood City Population: 80,000	2015	Office \$20.00 Hotel \$5.00 Retail & Restaurant \$5.00	5,000 SF threshold 25% fee reduction for projections paying prevailing wage. Schools, child care centers, public uses exempt.	Yes. Program specifies number of units per 100,000 SF.	Very Substantial	Fee is adjusted annually based on ENR.
City of Mountain View Population: 77,000	Updated 2002 / 2012 /2014	Office/High Tech/Indust. \$25.00 Hotel/Retail/Entertainment. \$2.68	Fee is 50% on building area under thresholds: Office <10,000 SF Hotel <25,000 SF Retail <25,000 SF	Yes	Very Substantial	Fee is adjusted annually based on CPI.
City of Cupertino Population: 60,000	1993, 2015	Office/Industrial/R&D \$20.00 Hotel/Commercial/Retail \$10.00	No minimum threshold.	N/A	Very Substantial	Fee is adjusted annually based on CPI.
Note: This chart has been assembled to present an overview, and as a result, terms are simplified. The information is recent but not all data has been updated as of the date of this report. In some cases, fees are adjusted by an index (such as CPI) which may not be reflected. For use other than general comparison, please consult the code and staff of the jurisdiction.						

**TABLE 4
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Jurisdiction	Yr. Adopted/ Updated	Fee Level (per Sq.Ft. unless otherwise noted)	Thresholds & Exemptions	Build Option/ Other	Market Strength	Comments
EAST BAY						
City of Walnut Creek Population: 66,000	2005	Office, retail, hotel and medical \$5.00	First 1,000 SF no fee applied.	Yes	Very Substantial	Reviewed every five years.
City of Oakland Population: 402,000	2002	Office/ Warehouse \$5.24	25,000 SF exemption	Yes - Can build units equal to total eligible SF times .00004	Substantial	Fee due in 3 installments. Fee adjusted with an annual escalator tied to residential construction cost increases.
City of Berkeley Population: 116,000	1993 2014	Office \$4.50 Retail/Restaurant \$4.50 Industrial/Manufacturing \$2.25 Hotel/Lodging \$4.50 Warehouse/Storage \$2.25 Self-Storage \$4.37 R&D \$4.50	7,500 SF threshold.	Yes	Substantial	Annual CPI increase. May negotiate fee downward based on hardship or reduced impact.
City of Emeryville	2014	All Commercial \$4.10	Schools, daycare centers.	Yes	Substantial	Fee adjusted annually.
City of Alameda Population: 76,000	1989	Retail \$2.30 Office \$4.52 Warehouse \$0.78 Manufacturing \$0.78 Hotel/Motel \$1,108	No minimum threshold	Yes. Program specifies # of units per 100,000 SF	Moderate	Fee may be adjusted by CPI.
City of Pleasanton Population: 73,000	1990	Commercial, Office & Industrial \$3.04	No minimum threshold	Yes	Moderate	Fee adjusted annually.
City of Dublin Population: 50,000	2005	Industrial \$0.49 Office \$1.27 R&D \$0.83 Retail \$1.02 Services & Accommodation \$0.43	20,000 SF threshold	N/A	Moderate	
City of Newark Population: 44,000		Commercial \$3.59 Industrial \$0.69	No min threshold Schools, recreational facilities, religious institutions exempt.	Yes	Moderate	Revised annually
City of Livermore Population: 84,000	1999	Retail \$1.19 Service Retail \$0.90 Office \$0.76 Hotel \$583/ rm Manufacturing \$0.37 Warehouse \$0.11 Business Park \$0.76 Heavy Industrial \$0.38 Light Industrial \$0.24	No minimum threshold Church, private or public schools exempt.	Yes; negotiated on a case-by-case basis.	Moderate	
Note: This chart has been assembled to present an overview, and as a result, terms are simplified. The information is recent but not all data has been updated as of the date of this report. In some cases, fees are adjusted by an index (such as CPI) which may not be reflected. For use other than general comparison, please consult the code and staff of the jurisdiction.						

TABLE 4
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Jurisdiction	Yr. Adopted/ Updated	Fee Level (per Sq.Ft. unless otherwise noted)	Thresholds & Exemptions	Build Option/ Other	Market Strength	Comments
MARIN, NAPA, SONOMA, SANTA CRUZ						
County of Santa Cruz Population: 267,000	2015	All Non-Residential \$2.00	No minimum threshold	N/A	Substantial	
County of Marin Population: 257,000	2003	Office/R&D \$7.19 Retail/Rest. \$5.40 Warehouse \$1.94 Hotel/Motel \$1,745/rm Manufacturing \$3.74	No minimum threshold	Yes, preferred.	Substantial	
San Rafael Population: 59,000	2005	Office/R&D \$7.64 Retail/Rest./Pers. Services \$5.73 Manufacturing/LI \$4.14 Warehouse \$2.23 Hotel/Motel \$1.91	5,000 SF threshold. Mixed use projects that provide affordable housing are exempt.	Yes. Program specifies number of units per 1,000 SF.	Substantial	
Town of Corte Madera Population: 9,000	2001	Office \$4.79 R&D lab \$3.20 Light Industrial \$2.79 Warehouse \$0.40 Retail \$8.38 Com Services \$1.20 Restaurant \$4.39 Hotel \$1.20 Health Club/Rec \$2.00 Training facility/School \$2.39	No minimum threshold	N/A	Substantial	
City of St. Helena Population: 6,000	2004	Office \$4.11 Comm./Retail \$5.21 Hotel \$3.80 Winery/Industrial \$1.26	Small childcare facilities, churches, non-profits, vineyards, and public facilities are exempt.	Yes, subject to City Council approval.	Substantial	
City of Petaluma Population: 59,000	2003	Commercial \$2.19 Industrial \$2.26 Retail \$3.78	N/A	Yes, subject to City Council approval.	Moderate/ Substantial	Fee adjusted annually by ENR construction cost index.
County of Sonoma Population: 492,000	2005	Office \$2.64 Hotel \$2.64 Retail \$4.56 Industrial \$2.72 R&D Ag Processing \$2.72	First 2,000 SF exempt Non-profits, redevelopment areas exempt	Yes. Program specifies number of units per 1,000 SF.	Moderate	Fee adjusted annually by ENR construction cost index.
City of Cotati Population: 7,000	2006	Commercial \$2.08 Industrial \$2.15 Retail \$3.59	First 2,000 SF exempt Non-profits exempt.	Yes. Program specifies units per 1,000 SF	Moderate	Fee adjusted annually by ENR construction cost index.
County of Napa Population: 139,000	Updated 2014	Office \$5.25 Hotel \$9.00 Retail \$7.50 Industrial \$4.50 Warehouse \$3.60	No minimum threshold Non-profits are exempt	Units or land dedication; on a case by case basis.	Moderate / Substantial	
City of Napa Population: 79,000	1999	Office \$1.00 Hotel \$1.40 Retail \$0.80 Industrial, Wine Pdn \$0.50 Warehouse (30-100K) \$0.30 Warehouse (100K+) \$0.20	No minimum threshold Non-profits are exempt	Units or land dedication; on a case by case basis.	Moderate/ Substantial	Fee has not changed since 1999. Increases under consideration.

Note: This chart has been assembled to present an overview, and as a result, terms are simplified. The information is recent but not all data has been updated as of the date of this report. In some cases, fees are adjusted by an index (such as CPI) which may not be reflected. For use other than general comparison, please consult the code and staff of the jurisdiction.

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SUMMARY OF JOBS HOUSING LINKAGE FEE PROGRAMS, CALIFORNIA

Jurisdiction	Yr. Adopted/ Updated	Fee Level (per Sq.Ft. unless otherwise noted)	Thresholds & Exemptions	Build Option/ Other	Market Strength	Comments
SACRAMENTO AREA						
City of Sacramento Population: 476,000	1989 Most recent update, 2005	Office \$2.25 Hotel \$2.14 R&D \$1.91 Commercial \$1.80 Manufacturing \$1.41 Warehouse/Office \$0.82	No minimum threshold Mortuary, parking lots, garages, RC storage, Christmas tree lots, B&Bs, mini-storage, alcoholic beverage sales, reverse vending machines, mobile recycling, and small recyclable collection facilities	Pay 20% fee plus build at reduced nexus (not meaningful given amount of fee)	Moderate	North Natomas area has separate fee structure
City of Folsom Population: 73,000	2002	Office, Retail, Lt Industrial, and Manufacturing \$1.54 Up to 200,000 SF, 100% of fee; 200,000-250,000 SF, 75% of fee; 250,000-300,000 SF, 50% of fee; 300,000 and up, 25% of fee.	No minimum threshold Select nonprofits, small child care centers, churches, mini storage, parking garages, private garages, private schools exempt.	Yes Provide new or rehab housing affordable to very low income households. Also, land dedication.	Moderate/ Substantial	Fee is adjusted annually based on construction cost index
County of Sacramento Population: 1,450,000	1989	Office \$0.97 Hotel \$0.92 R&D \$0.82 Commercial \$0.77 Manufacturing \$0.61 Indoor Recreational Centers \$0.50 Warehouse \$0.26	No minimum threshold Service uses operated by non-profits are exempt	N/A	Moderate	
City of Elk Grove Population: 158,000	1989 (inherited from County when incorporated)	Office none Hotel \$1.87 Commercial \$0.64 Manufacturing \$0.72 Warehouse \$0.77	No minimum threshold Membership organizations (churches, non- profits, etc.), mini storage, car storage, marinas, car washes, private parking garages and agricultural uses exempt	N/A	Moderate	Office fee currently waived due to market conditions.
Citrus Heights Population: 85,000	1989 (inherited from County when incorporated)	Office \$0.97 Hotel \$0.92 R&D \$0.82 Commercial \$0.77 Manufacturing \$0.61 Indoor Recreational Centers \$0.50 Warehouse \$0.26	No minimum threshold Membership organizations (churches, non- profits, etc.), mini storage, car storage, marinas, car washes, private parking garages and agricultural uses exempt	N/A	Moderate	
Rancho Cordova Population: 67,000	1989 (inherited from County when incorporated)	Office \$0.97 Hotel \$0.92 R&D \$0.82 Commercial \$0.77 Manufacturing \$0.61 Indoor Recreational Centers \$0.50 Warehouse \$0.26	No minimum threshold Membership organizations (churches, non- profits, etc.), mini storage, car storage, marinas, car washes, private parking garages and agricultural uses exempt	N/A	Moderate	
Note: This chart has been assembled to present an overview, and as a result, terms are simplified. The information is recent but not all data has been updated as of the date of this report. In some cases, fees are adjusted by an index (such as CPI) which may not be reflected. For use other than general comparison, please consult the code and staff of the jurisdiction.						

TABLE 4
SUMMARY OF JOBS HOUSING LINKAGE FEE PROGRAMS, CALIFORNIA

Jurisdiction	Yr. Adopted/ Updated	Fee Level (per Sq.Ft. unless otherwise noted)	Thresholds & Exemptions	Build Option/ Other	Market Strength	Comments	
SOUTHERN CALIFORNIA							
City of Santa Monica Population: 92,000	1984 Updated 2002, 2015	Retail	\$9.75	1,000 SF threshold Private schools, city projects, places of worship, commercial components of affordable housing developments exempt.	N/A	Very Substantial	Fees adjusted annually based on construction cost index.
		Office	\$11.21				
		Hotel/Lodging	\$3.07				
		Hospital	\$6.15				
		Industrial	\$7.53				
		Institutional	\$10.23				
		Creative Office	\$9.59				
Medical Office	\$6.89						
City of West Hollywood Population: 35,000	1986	Non-Residential (per staff increase from \$4 to \$8 anticipated for FY16-17)	\$8.00	N/A	N/A	Substantial	Fees adjusted by CPI annually
City of San Diego Population: 1,342,000	1990 Updated 2014	Office	\$1.76	No minimum threshold Industrial/ warehouse, non-profit hospitals exempt.	Can dedicate land or air rights in lieu of fee	Substantial	
		Hotel	\$1.06				
		R&D	\$0.80				
		Retail	\$1.06				
Note: This chart has been assembled to present an overview, and as a result, terms are simplified. The information is recent but not all data has been updated as of the date of this report. In some cases, fees are adjusted by an index (such as CPI) which may not be reflected. For use other than general comparison, please consult the code and staff of the jurisdiction.							

**MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF
THE CITY OF LOS ALTOS, HELD ON TUESDAY, MAY 9, 2017,
BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL, 1 NORTH SAN
ANTONIO ROAD, LOS ALTOS, CALIFORNIA**

ESTABLISH QUORUM

PRESENT: Mayor Prochnow, Vice Mayor Mordo, Councilmembers Bruins, Lee Eng and Pepper

ABSENT: None

PLEDGE OF ALLEGIANCE

Mayor Prochnow led the Pledge of Allegiance to the flag.

CLOSED SESSION ANNOUNCEMENT

1. Conference with Legal Counsel – Anticipated Litigation
Pursuant to Government Code Section 54956.9(d)(2)

Mayor Prochnow reported that no action was taken during the Closed Session meeting.

CHANGES TO THE ORDER OF THE AGENDA

Action: Upon a motion by Mayor Prochnow, seconded by Councilmember Lec Eng, the Council unanimously moved item number 6 to immediately before item number 4.

Action: Upon a motion by Councilmember Bruins, seconded by Councilmember Lee Eng, the Council unanimously continued item number 5 to the May 23, 2017 meeting at the request of the applicant.

SPECIAL PRESENTATION

Mayor Prochnow recognized the Margaret Thompson Historical Essay Contest winners.

Mayor Prochnow presented a proclamation recognizing Pinky Whelan as the 2017 Historic Preservation Award winner.

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Los Altos resident Wallace Palmer encouraged the Council to conduct more quantitative research to reflect the population of Los Altos.

CONSENT CALENDAR

Direction: At the request of Councilmember Lee Eng, the Council directed staff to review the April 20, 2017 joint study session with the Planning and Transportation Commission and continued the minutes from that meeting to a future meeting.

Action: Upon a motion by Councilmember Bruins, seconded by Councilmember Lee Eng, the Council unanimously approved the Consent Calendar, as follows:

1. Council Minutes: Approved the minutes of the April 25, 2017 regular meeting.
2. Professional Services Agreement Amendment: IT Consulting Services: Authorized the City Manager to execute Amendment No. 1 to the agreement between the City of Los Altos and CleanSlate Technology Group for IT Consulting Services.
3. Community Development Block Grant Funding: University Avenue Crosswalk Improvements, Project TS-01035: Approved the revised University Avenue Crosswalk Improvements, Project TS-01035 project description and budget to utilize \$170,050 Community Development Block Grant Capital Improvement Program (CIP) funds and \$40,000 City CIP funds; authorized the City Manager to execute the Community Development Block Grant contract for FY 2017/18; and appropriated up to \$170,050 of eligible Community Development Block Grant funds to the University Avenue Crosswalk Improvements, Project TS-01035.

DISCUSSION ITEMS

6. Identification of Affordable Housing Opportunities: Review and concur with staff that the starting point for identifying affordable housing opportunities should be the goals, policies and programs of the Housing Element of the City's General Plan (taken out of order)

Community Development Director Biggs presented the report.

Public Comments

Mircea (no last name given) encouraged the Council to consider allowing microunits and to increase density in some areas of the City.

Los Altos resident Roberta Phillips stated that the goal is not to create more density, it's to create more affordable housing and to be fair to residents.

Los Altos resident Sue Russell, representing the League of Women Voters, supported measures to increase affordable housing and suggested considering the use of City-owned land for affordable housing.

Direction: Councilmembers generally concurred that the starting point for identifying affordable housing opportunities should be the goals, policies and programs of the Housing Element, specifically looking at opportunity sites for housing, increasing the diversity of unit sizes, setting below market rate units to last in perpetuity and ensuring that the City is properly enforcing the affordable units within the City.

PUBLIC HEARING

4. Ordinance No. 2017-432: Accessory Dwelling Units: Introduce and waive further reading of Ordinance No. 2017-432 amending the accessory dwelling unit regulations

Planning Services Manager Kornfield presented the report.

Mayor Prochnow recessed the meeting at 9:12 p.m. The meeting resumed at 9:22 p.m.

Mayor Prochnow opened the public hearing.

Public Comments

Los Altos resident Anita Enander encouraged the Council to take a minimal approach to allowing accessory dwelling units.

Los Altos resident Diana Aston supported the ordinance.

Los Altos resident Les Poltrack encouraged the Council to remove the requirement that the property owner live on the property in order to rent the accessory dwelling unit.

Los Altos resident Roberta Phillips commented that the ordinance does not meet the need for affordable housing and opposed allowing units on 10,000 square foot lots.

Los Altos residents Abby Ahrens, Ronit Bodner, Alex Samek, and Sue Russell, representing the League of Women Voters, supported the ordinance and encouraged the Council to allow for flexibility in the architecture of accessory dwelling units.

Los Altos resident Roy Lave suggested that the size of the accessory dwelling unit be tied to the size of the lot.

Los Altos Jeremy Macaluso stated that accessory dwelling units can be less intrusive than large homes.

Mayor Prochnow closed the public hearing.

Action: Upon a motion by Councilmember Bruins, seconded by Vice Mayor Mordo, the Council unanimously continued consideration of Ordinance No. 2017-432 to the May 23, 2017 Council meeting and directed staff to draft an ordinance that incorporates Council direction.

Direction: Councilmembers provided general direction to remove the deed restriction that the principal residence of the property owner be maintained on the property, that the minimum lot size be 10,000 square feet, that the maximum accessory dwelling unit size be 800 square feet, and that the parking requirement be one space per accessory dwelling unit.

DISCUSSION ITEMS CONTINUED

5. 4880 El Camino Real – Elevator Tower Height Waiver: Adopt Resolution No. 2017-14 allowing a development waiver for 4880 El Camino Real to allow the elevator height to 15.5 feet above the roof, but subject to keeping the overall height of the building at 69 feet

Item 5 was continued to the May 23, 2017 Council meeting at the request of the applicant.

7. Affordable Housing Linkage Fees: Direct staff to prepare an ordinance requiring residential and commercial linkage fees

Planning Services Manager Kornfield presented the report.

Public Comments

Los Altos residents Gary Hedden and Sue Russell (representing the League of Women Voters) supported the linkage fees and encouraged the Council to consider fees on low-density housing projects.

Los Altos resident Les Poltrack opposed setting a high fee.

Direction: Councilmembers directed staff to prepare an ordinance requiring residential and commercial linkage fees with a majority providing direction on the following: 1) staff is to propose a fee for owner-unit, multiple-family developments; 2) \$15 per square foot for non-residential developments; 3) \$25 per square foot for office developments; and 4) \$45 per square foot for rental unit, multiple-family developments.

8. Commission recruitment and appointment process: Direct staff on desired changes to how the City recruits and appoints Commissioners

This item was continued to the May 23, 2017 meeting.

INFORMATION ONLY ITEM

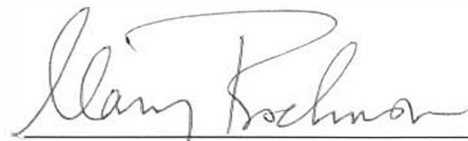
- A. 2017 Council Priorities status update

COUNCIL/STAFF REPORTS AND DIRECTIONS ON FUTURE AGENDA ITEMS

None

ADJOURNMENT

Mayor Prochnow adjourned the meeting at 12:07 a.m.



Mary Prochnow, MAYOR



Jon Maginot, CMC, CITY CLERK



DISCUSSION ITEMS

Agenda Item # 8

AGENDA REPORT SUMMARY

Meeting Date: May 8, 2018

Subject: Story Pole Policy Exemption Request: 4856 El Camino Real

Prepared by: Zachary Dahl, Planning Services Manager

Reviewed by: Jon Biggs, Community Development Director

Approved by: Chris Jordan, City Manager

Attachments:

1. Story Pole Policy Exemption Request Letter
2. City of Los Altos Story Pole Policy

Initiated by:

Applicant

Previous Council Consideration:

None

Fiscal Impact:

None

Environmental Review:

Not applicable

Policy Question(s) for Council Consideration:

- Does the request for an exemption from certain story pole requirements meet the criteria outlined in the City's Story Pole Policy?

Summary:

- The applicant for the development proposal at 4856 El Camino Real is requesting an exception from the City's Story Pole Policy due to safety concerns and impairment of the use of the existing structures on the site.
- The request is proposing to install story poles for the proposed development, but would not be able to meet all requirements in the City's Story Pole Policy

Staff Recommendation:

Given that the spaces within the building are being leased/used and the related on-going activity taking place on the site, staff recommends approval of this request.



Subject: Story Pole Policy Exemption Request: 4856 El Camino Real

Purpose

Consider a request from the applicant of the development proposal at 4856 El Camino Real for an exemption from the City's Story Pole Policy due to safety concerns and impairment of the use of existing structures on the site. The applicant's request with support information is included as Attachment 1.

Background

The City Council adopted an Open Government Policy on March 24, 2015 that included a requirement that all commercial, multiple-family and mixed-use development projects subject to Planning Commission and City Council review must have story poles erected as part of the application process. On August 22, 2017, the City Council amended the Story Pole Policy to require that any exemptions to the Policy must be reviewed and approved by the Council. The criteria for reviewing and approving an exemption is as follows:

1. The City Council may grant exceptions to the Story Pole Policy due to: a) a public health and/or safety concern, or b) that such an installation would impair the use of existing structure(s) or the site to the extent it would not be able to be occupied and the existing business and/or residential use would be infeasible. Some form of poles and netting and/or on-site physical representation of the project may be required, even if an exception is granted.
2. The Story Pole Plan may be limited in scope at the discretion of the City Council. In such cases such as where there are multiple detached structures proposed and where identifying the locations of key structures would suffice, the story poles may be limited to the outline(s) of key structures and/or showing a structure(s) greatest height and mass.
3. In granting an exception, the City Council may require additional digital imagery simulations, computer modeling, built to-scale models or other visual techniques in-lieu of the story pole requirements.

This is the first exemption request that the Council has considered since the adoption of the Policy. A copy of the Story Pole Policy is included as Attachment 2.

Discussion/Analysis

The applicant has submitted a development application for a new 50-unit multiple-family building at 4846 and 4856 El Camino Real. The application is currently being reviewed by the City and a public hearing for the project is anticipated this summer. As specified in the City's Story Pole Policy, story poles must be installed at least 20 days before the first public hearing before the Planning Commission and shall remain in place until final action has been taken by the City Council. This means that story poles for a project will remain in place for at least three to four months to cover the time period during Planning Commission and City Council review.



Subject: Story Pole Policy Exemption Request: 4856 El Camino Real

During initial discussions with the applicant regarding the City's Story Pole Policy, it was conveyed to staff that installation of story poles that were fully compliant with the Policy would be very challenging due to the use of the existing buildings on the site. To ensure that Planning Commission review of the project was not delayed, the applicant was advised to either develop a story pole plan that could fully comply with the City's Policy or submit an exemption request for consideration by the City Council.

Based on the information contained in Attachment 1, the applicant is committed to installing story poles for the proposed project, but is seeking exemptions from certain requirements due to safety concerns and impairment of the use of existing structures on the site.

April 26, 2018

Dear Honorable Council Members,

As part of my application for project review, I am submitting the attached information asking for a partial exemption from the story pole rules. There are two reasons for the request; general site safety and a substantial reduction in the ability to use the existing building.

I've included three attachments:

- 1) Altos One Story Pole Waiver Request
- 2) Altos One Story Pole Site Plan
- 3) Altos One Streetscape Views

Altos One Story Pole Waiver Request: Explanations why the story pole waiver is needed and proposed options to ensure ongoing safety and utility of the building.

Altos One Story Pole Site Plan: Includes full story pole netting requirements, breakdown of building structure, driveway, parking area story pole locations and heights.

Altos One Streetscape Views: Includes 3D views of the building structure from across the street on El Camino Real.

I look forward to your consideration on this matter.

Best regards,

Mircea Voskerician

Altos One – Story Poles Partial Installation Exception Request

We are asking for an exception request due to:

Exception 1: Safety concerns

Exception 2: Impairment of the use of the existing structures and existing businesses

Trip Generation Estimates for 4856 & 4846 El Camino Real, Los Altos

Land Use	Size	Unit	Daily Rate	Daily Trips	AM Peak Hour			PM Peak Hour				
					Peak Rate	Trips In	Trips Out	Total Trips	Peak Rate	Trips In	Trips Out	Total Trips
<u>Proposed Project</u>												
Residential ¹	50.0	units	5.44	272	0.36	5	13	18	0.44	13	9	22
<u>Existing Uses</u>												
Gym ²	2.896	ksf	24.171	70	1.31	2	2	4	3.45	6	4	10
Office ³	1.667	ksf	16.19	27	1.92	2	1	3	2.45	1	3	4
Medical Office ⁴	1.355	ksf	38.16	52	3.69	4	1	5	3.28	1	3	4
School ⁵	1.400	ksf		56						28	28	56
R&D ⁶	2.000	ksf	11.26	23	0.42	1	0	1	0.49	0	1	1
<u>Total Existing</u>	9.318	ksf		228		9	4	13		36	39	75
Net Project				44		-4	9	5		-23	-30	-53
Notes:												
All rates are from: Institute of Transportation Engineers, <i>Trip Generation, 10th Edition</i>												
1. Land Use Code 221: Multifamily Housing (Mid-Rise) (average rates, expressed in trips per unit)												
2. Land Use Code 492: Health/Fitness Club (average rates, expressed in trips per 1,000 s.f. gross floor area)												
3. Land Use Code 712: Small Office Building (average rates, expressed in trips per 1,000 s.f. gross floor area)												
4. Land Use Code 630: Clinic (average rates, expressed in trips per 1,000 s.f. gross floor area)												
5. Daily trips were estimated based on information provided by Think Tank Learning Facility: maximum 20 students and 8 staff members on a regular weekday; hours of operation: Noon - 8:00PM.												
6. Land Use Code 760: Research and Development Center (average rates, expressed in trips per 1,000 s.f. gross floor area)												

4846 ECR exception requested

1). No installation of Staircase Tower Poles (4) due to Exception 1 & 2

Staircase Tower poles (4) would be placed in the ADA parking space and ADA ramp to the existing building, rendering the existing building non-compliant with ADA regulations. The parking space and ramp are located in front of the rear door of Unit A, thereby creating a safety concern for tenants entering and exiting the building.

Placement of these Story Poles takes over an additional 2 parking stalls affecting a total of 3 parking spaces (from a total of 9 stalls) on an already busy parking lot with two tenants. The poles, along with the orange webbing, will also block the fire escape and rear door of the tenant in Unit A, thereby making business operations infeasible. The story pole securing wires will span a minimum of 20 feet from the base of the pole at 120 degrees separation.

4856 ECR exception requested

Building tenants include a medical treatment facility that has a high volume of disabled (blind or in wheelchair) patients and also a learning tutoring center with frequent traffic of students. See the traffic report below for details.

1). No installation of Trash Tower Poles (4) due to Exception 2

The Trash Tower poles (4) are in the middle of the driveway which after being secured with 20 ft wires from the base of each pole at 120 degrees separation, will completely block driveway access to the rear parking area.

2. No installation of Elevator Tower Poles (4) due to Exception 1

Elevator Tower has 2 poles on a tile steep roof which represents a safety concern for installation.

4846&4856 ECR (NETTING)

No installation of any netting on poles (just orange flags at top identifying required height) due to Exception 2

The City requires us to run netting between all poles but due to the span and weight of the netting to accomplish this requirement we will have to install additional story poles every 30 ft. The 24" mesh has a tendency to catch wind and vibrate the poles, which may cause the poles to fall down and at the proposed heights, 50-75' can be dangerous to this site and surrounding sites/sidewalk (per story pole contractor). This will have the following impact:

2 Story poles in front of the property will shut down the driveway making the access to both 4846/4856 completely impossible

2 Story poles on 4846 ECR will eliminate 4 parking stalls out of a total of 9 parking stalls

5 story poles on 4856 ECR rear parking will block the middle of the parking circulation area and eliminate 17 of 28 parking stalls

3 story poles on 4856 ECR border with the 4880 border/fence area will close the fire escape access exit area





4846 Parking Area





4856 ECR Parking area

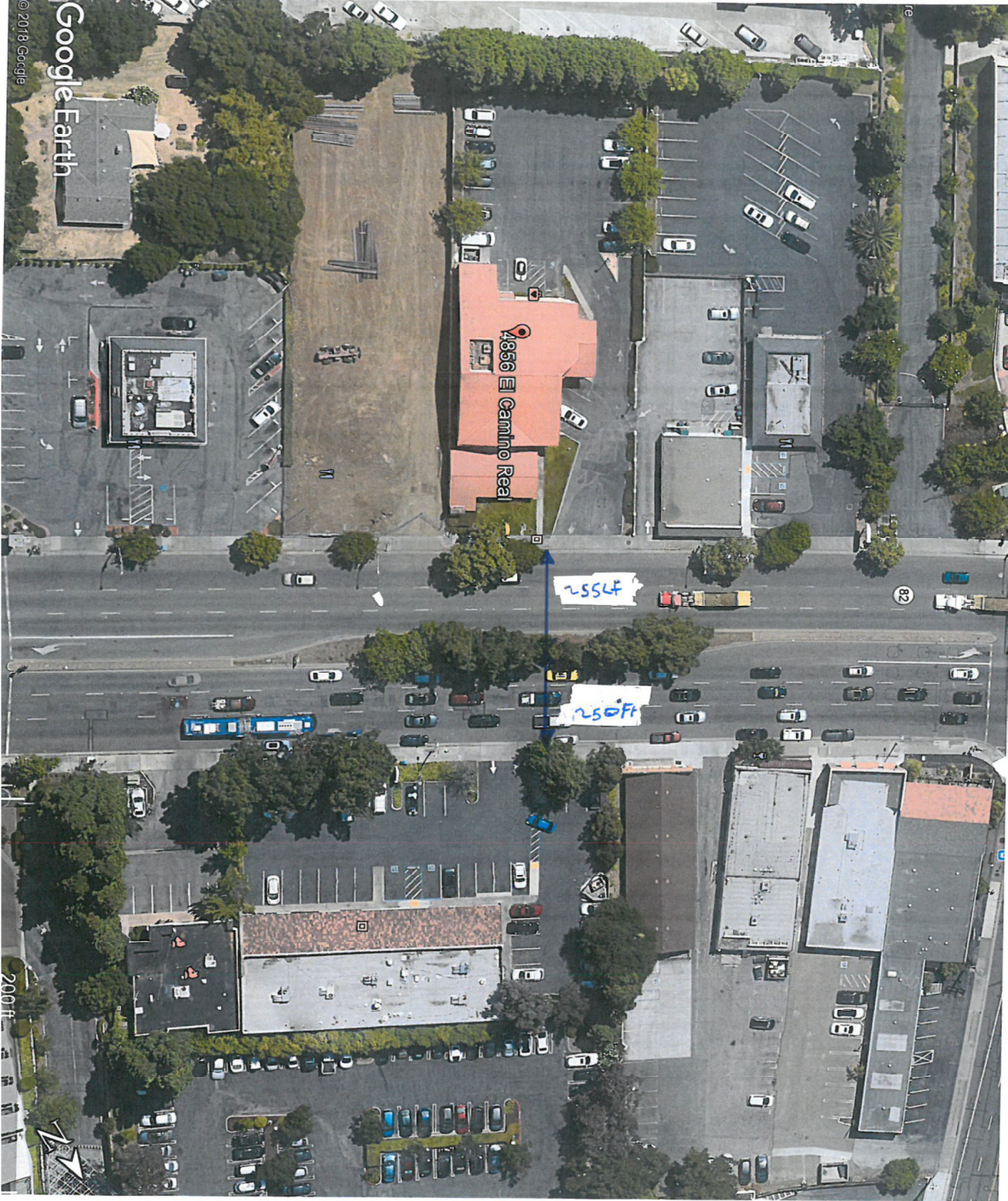




4856 ECR Parking area



Elevator & Trash Tower and rear Staircase Tower (by See's Candy) are not visible from streetscape (across from El Camino Real). Only the Staircase Tower closer to El Camino would be visible from streetscape.



Request for story pole approval:

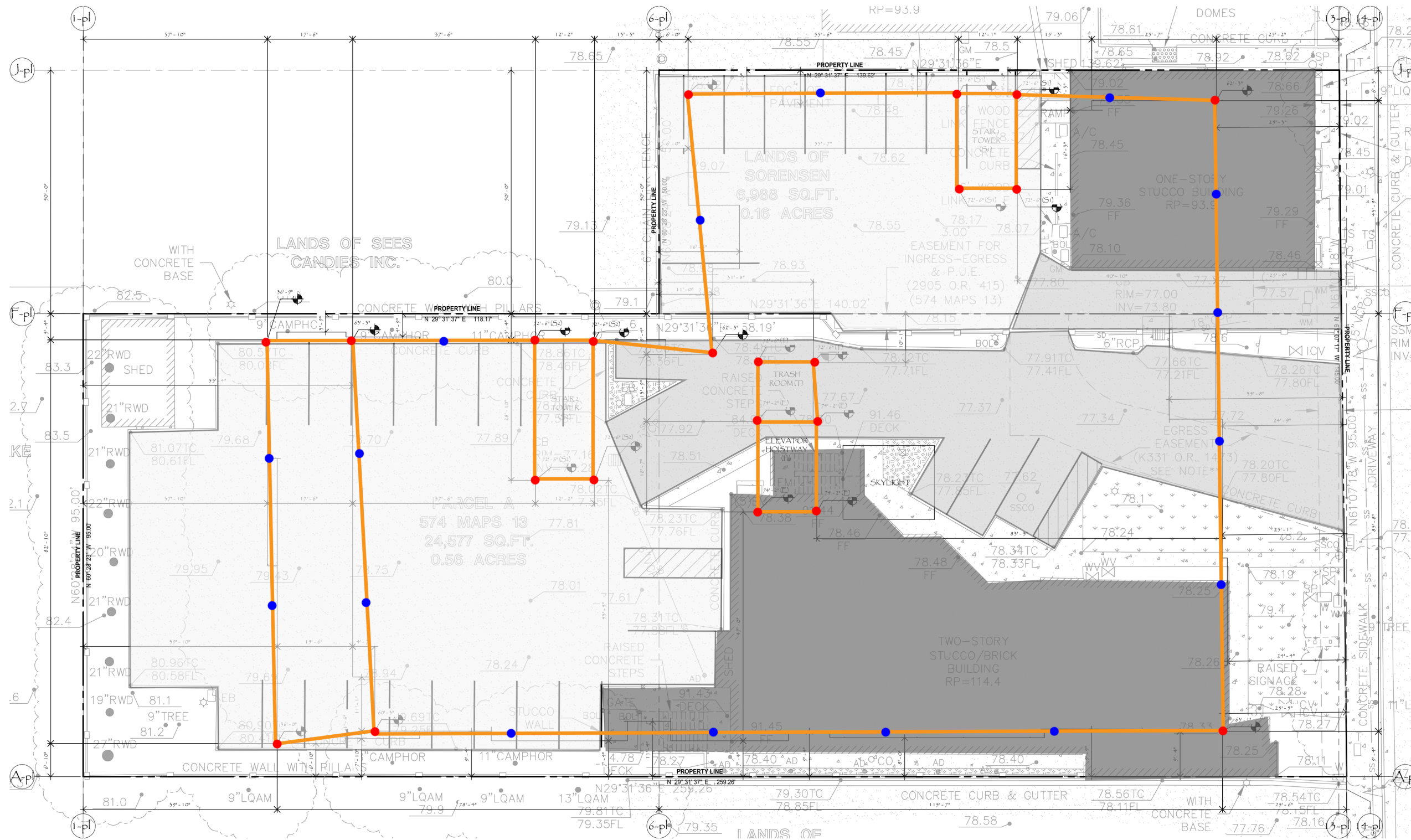
Install 2 front story poles (corners of the building facing El Camino) with orange flags identifying height

Install 2 story poles (elbow building area with Sea's candy) with orange flags identifying height

Install 2 story poles (rear left corner of the building structure bordering Hunan House site-4880) with orange flags identifying height

Install 2 story poles (rear right corner of the building structure bordering See's candy) with orange flags identifying height

Any additional massing study, imaginary simulation or computer modeling that City Council may require in lieu of the story pole requirements.



FINISH FLOOR ELEVATIONS	
BASEMENT LOWER LEVEL	-20'-6"
BASEMENT UPPER LEVEL	-11'-4"
LEVEL 1 GROUND FLOOR	0'
LEVEL 2	11'-7"
LEVEL 3	25'-2"
LEVEL 4	34'-9"
LEVEL 5	46'-4"
ROOF	58'-8 1/2"
ROOF F.F.	60'-2 1/2"
PENTHOUSE ROOF	71'-0"
TOWER HT.	74'-2"

- LEGEND:**
- STORY POLE HEIGHT / TOP OF PARAPET
 - (E) ELEVATOR HOISTWAY
 - (S1) STAIRWAY 1
 - (S2) STAIRWAY 2
 - (T) TRASHROOM

① STORY POLES @ PENTHOUSE ROOF PLAN
SCALE: 1" = 10'-0"

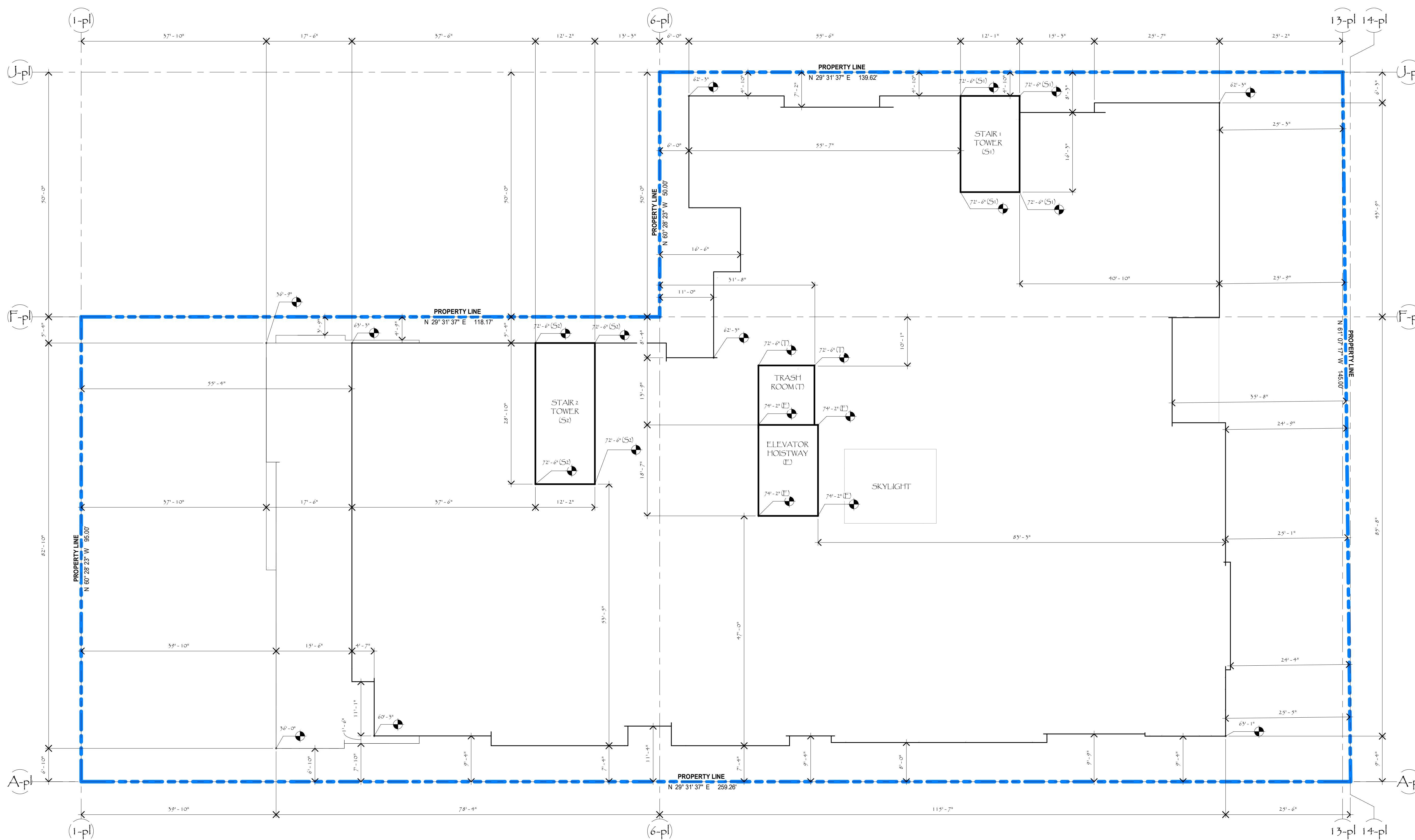
ALTOS ONE
4846 & 4856 El Camino Real
Los Altos, CA 94002
May 11, 2018

LUX ONE LLC
4856 El Camino Real Suite 100
Los Altos, CA 94002

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STORY POLES

3361 Walnut Blvd. Ste. 120, Brentwood, CA 94513
925.634.7000
www.strausdesign.com

A1



FINISH FLOOR ELEVATIONS	
BASEMENT LOWER LEVEL	-20'-6"
BASEMENT UPPER LEVEL	-11'-4"
LEVEL 1 GROUND FLOOR	0'
LEVEL 2	11'-7"
LEVEL 3	23'-2"
LEVEL 4	34'-9"
LEVEL 5	46'-4"
ROOF	58'-8 1/2"
ROOF F.F.	60'-2 1/2"
PENTHOUSE ROOF	71'-0"
TOWER HT.	74'-2"

- LEGEND:**
- STORY POLE HEIGHT / TOP OF PARAPET
 - (E) ELEVATOR HOISTWAY
 - (S1) STAIRWAY 1
 - (S2) STAIRWAY 2
 - (T) TRASHROOM

1 STORY POLES @ PENTHOUSE ROOF PLAN
SCALE: 1" = 10'-0"

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Los Altos, CA 94002
May 11, 2018

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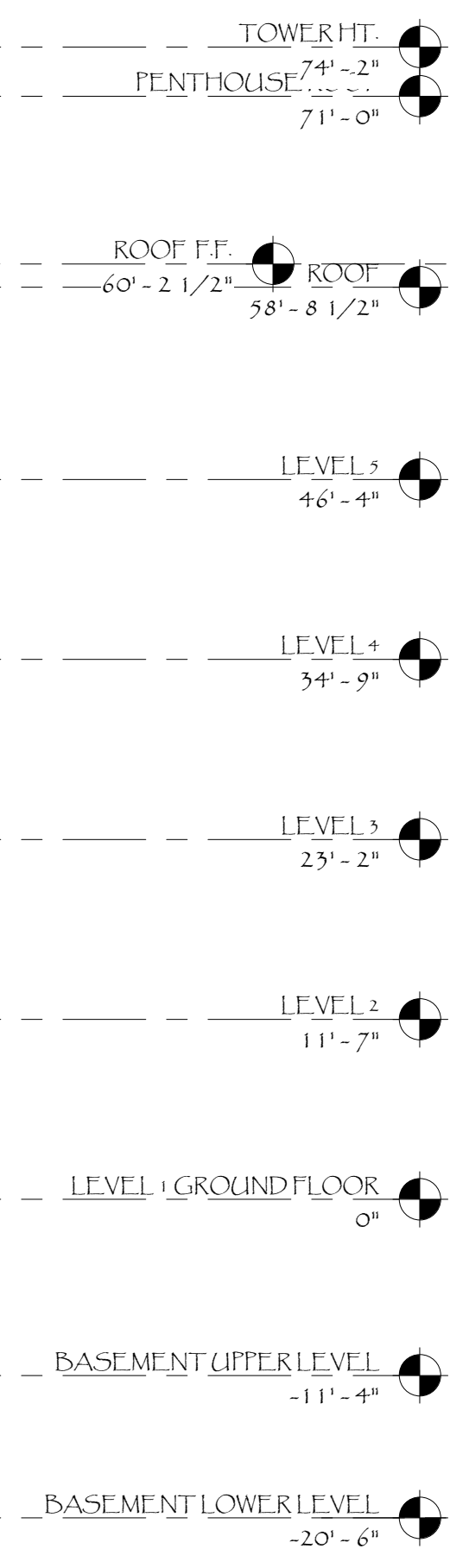
_A1
STORY POLES



SDG Architects, Inc.



1 EAST ELEVATION
SCALE: 3/32" = 1'-0"



2 WEST ELEVATION
SCALE: 3/32" = 1'-0"

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May 11, 2018

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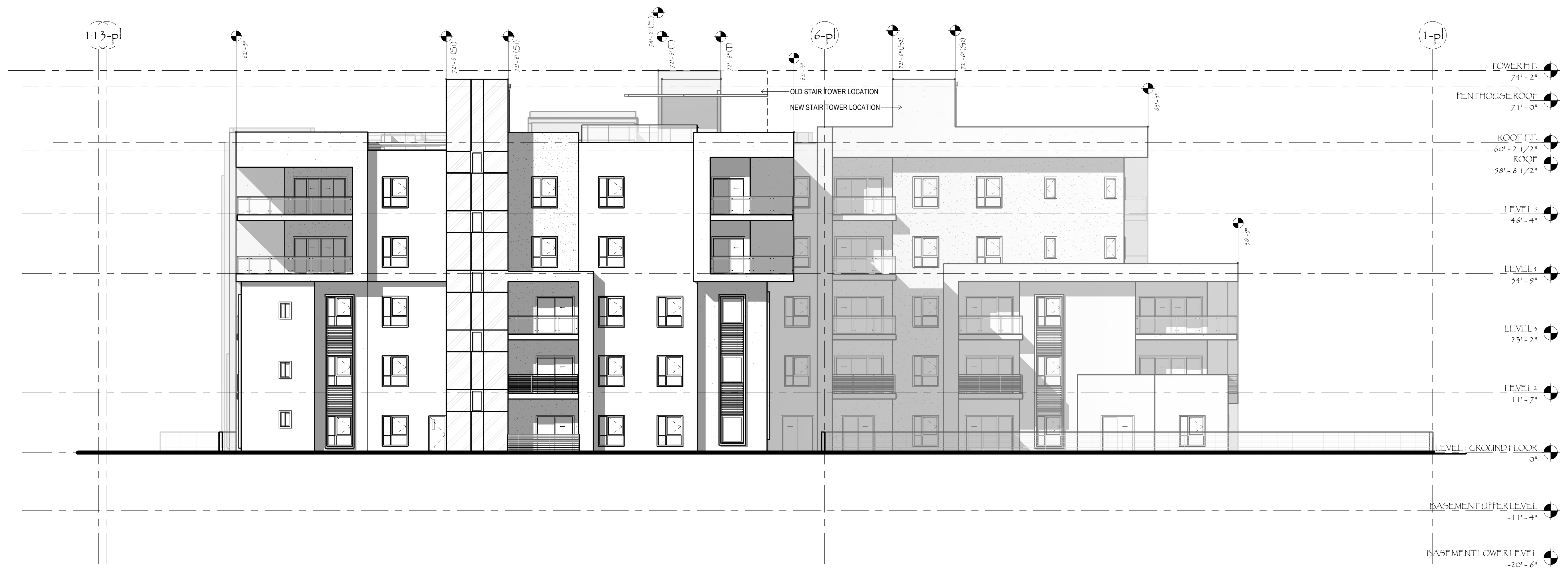
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A2
EAST AND WEST ELEVATIONS

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SDG Architects, Inc.



1 NORTH ELEVATION
SCALE: 3/32" = 1'-0"

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May 11, 2018

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_A3
NORTH ELEVATION

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1 SOUTH ELEVATION
SCALE: 3/32" = 1'-0"

ALTOS ONE

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Los Altos, CA 94002
May 11, 2018

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Los Altos, CA 94002

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_A4
SOUTH ELEVATION

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SDG Architects, Inc.



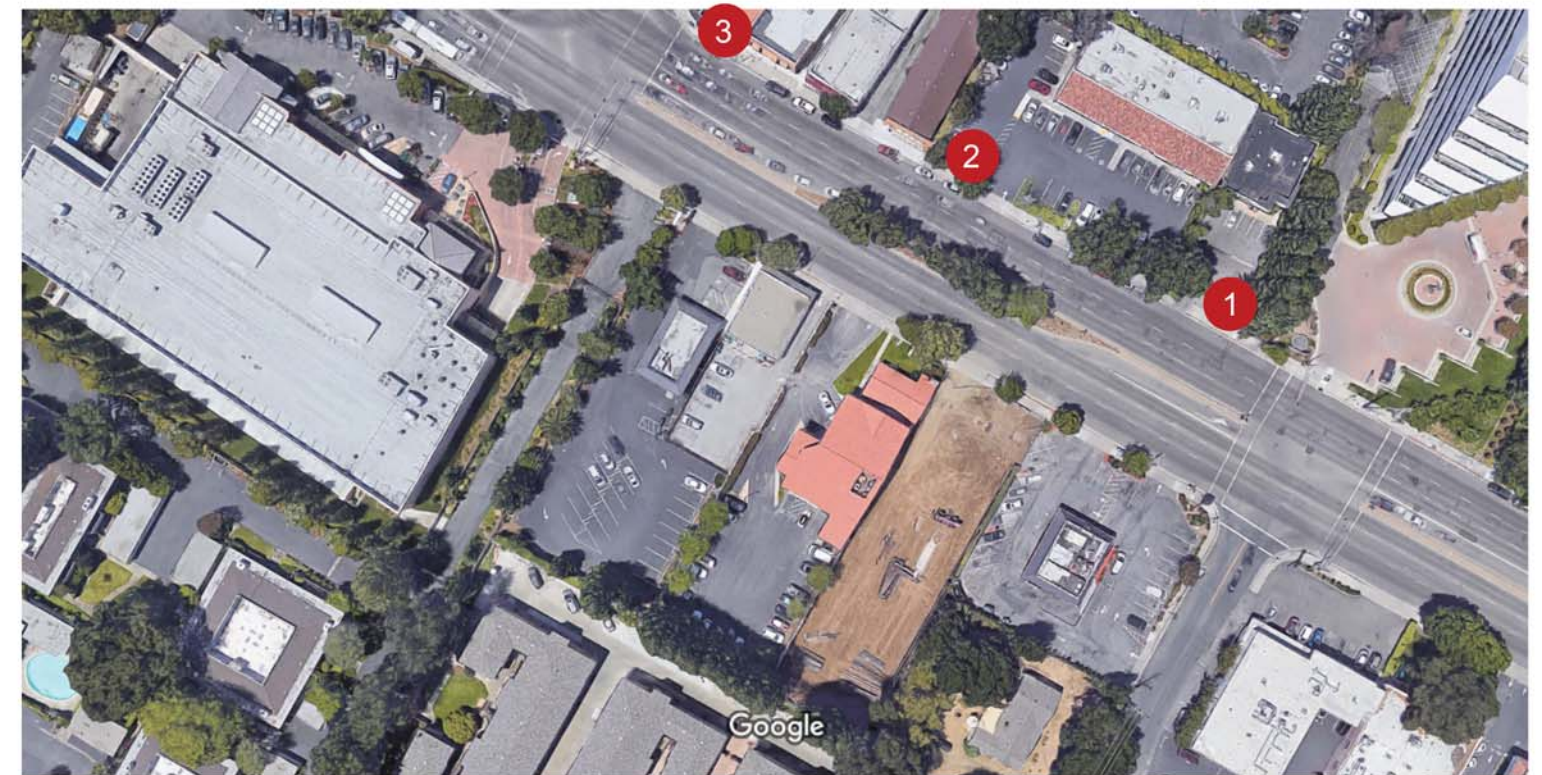
VIEW 1



VIEW 3



VIEW 2



Imagery ©2018 Google, Map data ©2018 Google 50 ft

ALTOS ONE

4846 & 4856 El Camino Real
Los Altos, CA
April 26, 2018

LUXONE LLC

4856 El Camino Real Suite 100
Los Altos, CA 94002

STREETSCAPE VIEWS - B1

EXTERIOR PERSPECTIVES

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SDG Architects, Inc.



CITY OF LOS ALTOS STORY POLES POLICY

Purpose

In accordance with City Council's Open Government Policy, adopted on March 24, 2015, and amended on August 22, 2017, all commercial, multiple-family and mixed-use development projects subject to Planning Commission and City Council review must have story poles erected as part of the application process. The purpose of this policy is to help show the development's height, massing and profile in the context of the actual environment and to help provide a visual notice of a project.

Procedure

1. For projects that require story poles, the applicant's architect or engineer must prepare a Story Pole Plan to indicate the locations where the poles will be installed.
2. A Story Pole Plan shall be approved by the Community Development Director prior to the placement of the poles on the site. Once approved, the applicant shall inform the Community Development Director when the placement of the story poles is complete and submit photographs showing the installation in context.
3. The story poles shall be installed at least twenty (20) days before the first public hearing on the project and shall be kept in place until the project has been acted upon and the appeal period has ended. If the project is appealed, the story poles shall remain until final action is taken. If final consideration of the project is substantially delayed, or the project is substantially modified, the Community Development Director may require the removal or the modification of the story poles.
4. Failure to install story poles in compliance with these standards and/or timelines will result in the continuance of the public hearing on the project until compliance with the standards and/or timelines is achieved.

Plan Requirements

1. The Story Pole Plan must be at an appropriate scale and include: a) a site plan showing the location of any existing structure, the outline of any proposed structures and the location of the story poles; b) elevation views of the story poles; and c) any materials, means of installation and structural requirements.
2. The story poles shall be of sufficient number and location to adequately demonstrate the height, mass, and bulk of the project. At a minimum, story poles shall be placed at all outside building corners of the building wall (excluding eaves) and along the main rooflines (ridges, hips and valleys) of the proposed structure(s) or addition. Architectural elements such as

towers, spires, elevator and mechanical penthouses, cupolas, mechanical equipment screening and similar elements that are visible from the streetscape must be represented by the story poles.

3. A licensed surveyor or civil engineer shall submit written verification that the location and height the poles and netting accurately represents the height, profile and location of the proposed structure(s) or addition.
4. A waiver or amendment to these requirements may only be granted by the City Council.

Materials and Methods

1. Story poles shall be constructed of lumber, metal poles, or other sturdy building material. Such materials shall be designed to withstand the wind and weather. At least two-foot wide brightly colored woven plastic fencing (or netting) must be used to represent the rooflines of the proposed structure(s) or addition. One of the story poles on each elevation must be clearly marked and labeled in five-foot increments measured from the proposed finished grade and consistent with the approved Story Pole Plan.
2. All story poles shall be placed, braced and supported to ensure the health, safety and general welfare of the public. Applicants shall sign an agreement that holds the City harmless for any liability associated with the construction of, or damage caused by the story poles. If at any time, the City determines the story poles to be unsafe, they shall be repaired and reset immediately by the applicant or, at the City's discretion, removed. Depending on the scope of the poles, building permits and inspections may be required at the discretion of the Community Development Director.

Exceptions

1. The City Council may grant exceptions to the Story Pole Policy due to: a) a public health and/or safety concern, or b) that such an installation would impair the use of existing structure(s) or the site to the extent it would not be able to be occupied and the existing business and/or residential use would be infeasible. Some form of poles and netting and/or on-site physical representation of the project may be required, even if an exception is granted.
2. The Story Pole Plan may be limited in scope at the discretion of the City Council. In such cases such as where there are multiple detached structures proposed and where identifying the locations of key structures would suffice, the story poles may be limited to the outline(s) of key structures and/or showing a structure(s) greatest height and mass.
3. In granting an exception, the City Council may require additional digital imagery simulations, computer modeling, built to-scale models or other visual techniques in-lieu of the story pole requirements.



DISCUSSION ITEMS

Agenda Item # 9

AGENDA REPORT SUMMARY

Meeting Date: May 8, 2018

Subject: Express Short-Term Rental Prohibition

Prepared by: Jon Biggs, Community Development Director

Attachment(s):

1. Ordinance No. 2018-441
2. Planning Commission Resolution

Initiated by:

City Council

Environmental Review:

State CEQA Guidelines sections 15378(b)(2) and 15378(b)(5) provide that ongoing administrative activities and organizational activities of governments that will not result in direct or indirect physical changes in the environment do not constitute a “project” as defined by the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) and therefore are exempt from CEQA and no further environmental review is required.

Policy Question(s) for City Council Consideration:

- Hotels are not listed as an expressly permitted use in any residential district in the City. Similarly, short-term rentals (STRs) are not expressly listed as a permitted use in any zoning district. The current municipal code states that any use that is not expressly permitted is prohibited by omission. Therefore, hotels and STRs are both prohibited in all residential districts, and STRs are prohibited throughout the rest of the City as well. Shall the City now make the current prohibition express?

Summary:

- The City Council is considering a draft ordinance that would expressly prohibit lodging in a dwelling unit for compensation for a period of fewer than thirty days.
- The ordinance also adds a section that prohibits advertising an illegal activity or use.
- The City Council is being asked to introduce and waive further reading of the ordinance so that it can return at its next meeting for adoption.

Staff Recommendation:

Introduce and waive further reading of Ordinance No. 2018-441 prohibiting short-term rentals within the City of Los Altos



Subject: Express Short-Term Rental Prohibition

Purpose

The purpose of the ordinance is to clarify the City's current prohibition of short-term rentals in dwelling units to help preserve the low-density single-family residential character of the City of Los Altos.

Background

The City Council has requested that staff draft an ordinance addressing short-term rentals in Los Altos. The attached ordinance draft is the result of an effort by the City Attorney's Office and the Community Development Department in response to City Council direction

Discussion/Analysis

In Los Altos, land uses are principally residential and its Citizens enjoy the quiet nature of their residential neighborhoods and the comfort that can come from knowing one's neighbors.

With the advent of on-line booking sites that connect those seeking short-term accommodations with those that provide them, there has been some concern expressed that this type of land use is not an appropriate one in the City of Los Altos in that it has the potential to negatively impact the character of residential neighborhoods.

STRs are already prohibited citywide because they are not an expressly permitted use in the City's municipal code. However, because of the growth of the STR industry and the increasing number of inquiries being made of the City, staff recommends clarifying the City's STR prohibition by making it express in the City's municipal code.

The draft ordinance adds Chapter 14.30, Short Term Rental Prohibition, to Title 14, Zoning, in the Los Altos Municipal Code. The chapter provides for the prohibition of short-term rentals in every zone district of the City. Within the new Chapter, short-term rentals are defined as:

... a use that provides lodging in a dwelling unit, for compensation, for a period of fewer than thirty consecutive calendar days. "Short-term rental" does not include transient lodging in city-approved hotels and motels.

As noted above, the municipal code currently prohibits all lodging uses (including STRs) by omission in all residential zones, and the only lodging uses allowed in non-residential zones are hotels and motels. As Section 14.02.050 of the Municipal Code notes in part -

"Land uses that are not provided for herein as permitted use, conditional uses, or limited conditional uses, are prohibited."



Subject: Express Short-Term Rental Prohibition

Thus, the prohibition is already effective. Nevertheless, staff has determined that it would be beneficial to the public and staff to include an express acknowledgement of the existing prohibition.

The draft ordinance also adds a section to Chapter 1.20, Violations, of Title 1, General Provisions, of the Municipal Code. This section expressly prohibits the advertising of an illegal activity or illegal use in the City. This will give staff one additional tool to help address STRs, or other illegal uses, when they are encountered.

The City has a legitimate interest in fostering and preserving the long-term residential character of its residential neighborhoods. The establishment of these regulations will help maintain adequate housing stock for permanent residents while ensuring that short-term rental activities do not become a nuisance or threaten the public health, safety, or welfare due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, the accumulation of refuse, and other effects related to short-term rentals.

On April 19, 2018, the Planning Commission held a public hearing on the draft ordinance and after considering public testimony voted 5-0 to recommend adoption of the ordinance to the City Council. PC Resolution included as an attachment to this agenda report.

The Commission in voting to recommend adoption of the draft ordinance did bring up two points that it felt warranted consideration. The first point was whether the definition of a short-term rental was problematic for the month of February, since it has less than 30 days. To address this, Staff has modified the ordinance slightly to account for the month of February.

The second issue regarded other web sites that provided the long-term rental of room in a shared living arrangement or boarding house. The City Attorney has advised that the draft ordinance does not address the long-term rental of rooms. It merely addresses short-term rentals.

Options

- 1) Introduce the ordinance as drafted

Advantages: It would make the City's current prohibition of short-term rental, by omission from the list of permitted uses, express and so would help preserve the character and nature of residential neighborhoods, especially the single-family residential neighborhoods

Disadvantages: It would continue to limit opportunities for the City to regulate short-term rentals in a manner that may provide benefits to the City, like revenues



Subject: Express Short-Term Rental Prohibition

collected through a Transient Occupancy Tax, that could be collected to help support the funding of City services

2) Decline consideration of the draft ordinance

Advantages: STRs will remain prohibited-by-omission without an express prohibition

Disadvantages: The public and City staff will have to continue to rely on the municipal code's implied prohibition in determining whether and how STRs might be allowed. This results in administrative inefficiencies

3) Direct staff to prepare a different ordinance, that would allow and regulate STRs in the City

Advantages: This might provide new opportunities to regulate short-term rentals by allowing them under certain conditions and requiring the collection and remittance of Transient Occupancy Tax, which would support the general fund and help pay for services that the City provides, as well as be a source of income for the owners of a residential property that, in some cases, might allow them to maintain their property and keep it in good repair

Disadvantages: It would likely adversely impact the quality of the residential neighborhoods in Los Altos, especially of the single-family residential neighborhoods, by encouraging the conversion of long-term residential housing stock into commercial lodgings with the adverse impacts that often accompany them as a result of the loss of on-going accountability to neighbors and long-term community involvement

Recommendation

The staff recommends Option 1.

ORDINANCE NO. 2018-441

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS AMENDING CHAPTER 1.20, VIOLATIONS, OF TITLE 1, GENERAL PROVISIONS, BY ADDING PROHIBITIONS ON ADVERTISING ILLEGAL ACTIVITY OR USES, AND ADDING CHAPTER 14.30, SHORT TERM RENTAL PROHIBITION, TO TITLE 14, ZONING, OF THE LOS ALTOS MUNICIPAL CODE

WHEREAS, the City of Los Altos has a unique arrangement of land uses that require regulations and standards that preserve the character of the community and provide for compatibility of adjacent uses; and

WHEREAS, under the City’s police power, the City may enact comprehensive land-use and zoning regulations to promote community values, beauty, health, safety, and welfare; and

WHEREAS, the City may establish residential districts for the quiet enjoyment of its residents, and it may restrict discordant uses that would ultimately destroy the character and benefits of those districts, and it has done so for exactly those reasons; and

WHEREAS, the City has a legitimate interest in fostering and preserving the long-term residential character of its residential neighborhoods; and

WHEREAS, the City’s municipal code states that “[l]and uses that are not provided for herein as permitted uses, conditional uses, or limited conditional uses, are prohibited” (LAMC § 14.02.050); and

WHEREAS, aside from permitted home occupations, commercial uses are not expressly permitted in the City’s residential districts, so they are prohibited; and

WHEREAS, transitory lodging, whether as short-term rentals or hotels, is a commercial use of residential property, and they are not expressly permitted by the City’s zoning ordinance in any residential district, so they are currently prohibited in accordance with LAMC section 14.02.050; and

WHEREAS, the City’s zoning ordinance already defines “hotel” to include any “structure in which there are three or more guest rooms or suites, where lodging ... is provided for compensation”; and

WHEREAS, the City’s definition of “hotel” applies to, among other things, any boardinghouse-type use of residential property where three or more rooms are rented separately from the rest of the house; and

WHEREAS, the municipal code does not currently expressly define short-term rentals; and

WHEREAS, with the rising popularity of online advertising, promoting, and facilitating of both short-term rentals and longer-term boardinghouses, City staff is increasingly asked about the permissibility and regulation of these transitory-lodging uses; and

WHEREAS, to help the public, as well as City staff, to more clearly understand the City’s existing restrictions on transitory-lodging uses, the City desires to make the current prohibition-by-omission express; and

WHEREAS, these regulations help maintain adequate housing stock for permanent residents while ensuring that short-term-rental and other transitory-lodging activities do not become a nuisance or threaten the public health, safety, or welfare due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, the accumulation of refuse, and other effects related to transitory lodgings; and

WHEREAS, staff has thus prepared an ordinance that makes the current prohibition of short-term rentals express in an effort to preserve the unique character and mix of land uses in the City; and

WHEREAS, the purpose of these transitory-lodging regulations is to help maintain the long-term residential character of the single-family residential neighborhoods that comprise most of the City; and

WHEREAS, State CEQA Guidelines sections 15378(b)(2) and 15378(b)(5) provide that ongoing administrative activities and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment do not constitute a “project” as defined by the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) and therefore are exempt from CEQA and no further environmental review is required.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. FINDINGS. After considering the record before it, including but not limited to the agenda report, presentation of staff, public comment, and discussion, the City Council hereby finds that adoption of this Ordinance will help protect and promote public health, safety, comfort, convenience, prosperity, and welfare by clarifying the City’s existing regulations.

SECTION 2. AMENDMENT OF CODE. The following Section, is hereby added to Chapter 1.20, Violations, of Title 1, General Provisions, of the Los Altos Municipal Code.

1.20.060 Advertising an illegal activity or use.

It is a violation of this code for a responsible party to advertise any activity or use that violates this code or state or federal law or regulation and that is advertised to take place within the City. For purposes of this provision, a responsible party includes a property owner, business owner, operator, manager, lessor, lessee, and any other person that conducts or offers to conduct the illegal activity or use; but it does not include a person who publishes the advertisement, such as a newspaper or online booking service.

SECTION 3. AMENDMENT OF CODE. The following, Chapter 14.30, Short-term Rental Prohibition, is hereby added to Title 14, Zoning, of the Los Altos Municipal Code.

Chapter 14.30

SHORT-TERM RENTAL PROHIBITION

14.30.010 Purpose and intent.

The purpose of this chapter is to establish regulations governing the short-term rental of residential property within the city of Los Altos. The City has a legitimate interest in fostering and preserving the long-term residential character of its residential neighborhoods. The establishment of these regulations will help maintain adequate housing stock for permanent residents while ensuring that short-term-rental activities do not become a nuisance or threaten the public health, safety, or welfare due to excessive noise, disorderly conduct, overcrowding, traffic congestion, illegal parking, the accumulation of refuse, and other effects related to short-term rentals.

14.30.020 Definitions.

For purposes of this chapter, the following definitions apply:

"Short-term rental" means a use that provides lodging in a dwelling unit, for compensation, for a period of fewer than thirty, save February which has less, consecutive calendar days. "Short-term rental" does not include transient lodging in city-approved hotels and motels.

14.30.030 Short-term rentals prohibited.

A short-term rental is a prohibited use in every zoning district in the city.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 5. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. Based on all the evidence presented in the administrative record, including but not limited to the staff report for the proposed ordinance, the City Council hereby finds and determines that the proposed ordinance is not a "project" for purposes of CEQA and is exempt from further CEQA review under State CEQA Guidelines sections 15378(b)(2) and 15378(b)(5). Specifically, this ordinance clarifies already existing Municipal Code provisions, will allow the City to better enforce existing prohibitions, and will not allow any new or different land uses than are already permitted in the City's Zoning Code. Therefore, this Zoning Amendment constitutes ongoing administrative activities and will not result in any direct or indirect physical changes in the environment. No further environmental review is necessary at this time.

SECTION 6. CUSTODIAN OF RECORDS. The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council's findings and

determinations are based are located at Los Altos City Hall, One North San Antonio Road, Los Altos, California. The City Clerk is the custodian of the record of proceedings.

SECTION 7. NOTICE OF EXEMPTION. The City Council hereby directs City staff to prepare and file a Notice of Exemption with the County, County Clerk within five working days of the adoption of this ordinance.

SECTION 8. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 9. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2018 and was thereafter, at a regular meeting held on _____, 2018 passed and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Jean Mordo, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

RESOLUTION NO. PC 2018-04

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF LOS ALTOS RECOMMENDING THE CITY
COUNCIL ADOPT AN ORDINANCE AMENDING CHAPTER 1.20,
VIOLATIONS, OF TITLE 1, GENERAL PROVISIONS, BY ADDING
PROHIBITIONS ON ADVERTISING ILLEGAL ACTIVITY OR USES,
AND ADDING CHAPTER 14.30, SHORT TERM RENTAL
PROHIBITION, TO TITLE 14, ZONING, OF THE LOS ALTOS
MUNICIPAL CODE**

WHEREAS, the City of Los Altos has a unique arrangement of land uses that require regulations and standards that preserve the character of the community and provide for compatibility of adjacent uses; and

WHEREAS, under the City's police power, the City may enact comprehensive land-use and zoning regulations to promote community values, beauty, health, safety, and welfare; and

WHEREAS, with the rising popularity of online advertising, promoting, and facilitating of both short-term rentals and longer-term boardinghouses, City staff is increasingly asked about the permissibility and regulation of transitory-lodging uses; and

WHEREAS, to help the public, as well as City staff, to more clearly understand the City's existing restrictions on transitory-lodging uses, the City desires to make the current prohibition-by-omission clear; and

WHEREAS, staff has prepared an ordinance that makes the current prohibition of short-term rentals express in an effort to preserve the unique character and mix of land uses in the City; and

WHEREAS, the purpose of these transitory-lodging regulations is to help maintain the long-term residential character of the single-family residential neighborhoods that comprise most of the City; and

WHEREAS, the Planning Commission held a public hearing on April 19, 2018 and considered all comments, including written comments, on the draft ordinance.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Los Altos hereby recommends the following to the Los Altos City Council:

That the City Council adopt the Draft Amendments to Chapter 1.20, Violations, of Title 1, General Provisions, by adding prohibitions on advertising illegal activity or uses and adding Chapter 14.30, Short Term Rental Prohibition to Title 14, Zoning, of the Los Altos Municipal Code.

Passed at a regular meeting of the Planning Commission of the City of Los Altos held on April 19, 2018 by the following vote:

AYES: Bodner, Bressack, Enander, Mc Tighe, Meadows

NOES: None

ABSENT: Samek

ABSTAIN: None

Vacancy: One



DISCUSSION ITEMS

AGENDA ITEM # 10

TO: City Council

FROM: Christopher J. Diaz, City Attorney
Amanda Charne, City Attorney's Office

SUBJECT: Cannabis Retailers – An Overview of California's Regulatory Provisions

RECOMMENDATION:

Receive report; provide policy direction to staff whether to prepare regulatory or tax ordinances that would authorize one or more medicinal or adult-use commercial cannabis retailers in the City of Los Altos.

PURPOSE

This is an informational report as requested by the City Council.

BACKGROUND

On January 26, 2016, the City Council adopted Ordinance No. 2016-418 which prohibits marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries in the City as provided in Los Altos Code, Chapter 14.82. This Ordinance was created under, and in reference to, the now repealed Medical Marijuana Regulation and Safety Act (MMRSA).

On November 8, 2016, California voters approved Proposition 64 to legalize adult-use/recreational cannabis. Subsequently, the State Legislature repealed the MMRSA, and amended Proposition 64 to consolidate the state licensing rules for both medical and adult-use commercial cannabis activity under a single law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA").

On November 28, 2017, the City Council adopted an interim urgency ordinance to temporarily prohibit all medical and adult-use commercial cannabis uses for 45 days in response to MAUCRSA. Specifically, the interim ordinance prohibits the full range of commercial activities recognized by MAUCRSA. This interim urgency ordinance was extended for an additional 10 months and 15 days, and will expire November 27, 2018 unless further extended.

The City Council is currently considering various options for permanent zoning regulations for commercial cannabis. To aid in this decision, the Council has requested information regarding medicinal and adult-use cannabis retailers.

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DISCUSSION

MAUCRSA preserves local control over commercial cannabis uses. Local governments may continue to adopt and enforce local ordinances to regulate licensed cannabis businesses, such as local zoning and land use requirements, business license requirements, or to completely prohibit the establishment or operation of one or more types of cannabis businesses in the jurisdiction. Further, MAUCRSA prohibits the State licensing authorities from approving an application for a state cannabis license if it would violate the provisions of any local ordinance or regulation.

State Licenses Providing for Retail Cannabis Sales

There are three license types that allow cannabis retail sales activity:

- Retailer - Type 10: A storefront that sells cannabis to customers at its premises and by delivery. A retailer must have a licensed physical location where commercial cannabis activities are conducted.
- Non-storefront Retailer - Type 9: A retailer that conducts sales exclusively by delivery. The Non-storefront Retailer must have a licensed premises but it is not open to the public.
- Microbusiness - Type 12: A microbusiness must engage in at least 3 of the following 4 activities: cultivation (less than 10,000 sq. ft.), manufacturing, distribution, or retail. A microbusiness could include a retail component and would have to comply with all regulatory requirements for retailers.

Cannabis retailers or microbusinesses approved to engage in retail may also obtain a temporary cannabis event organizer license. Temporary events allow up to 4 days of onsite cannabis sales at a county fair or district agricultural association event. However, if adopted, Assembly Bill 2020 would authorize a state temporary event license for an event to be held at any other venue expressly approved by a local jurisdiction for events.

State Regulations Pertaining to Retail Cannabis Activity

The state Bureau of Cannabis Control (BCC) has the responsibility to license cannabis retailers and microbusinesses. The BCC began issuing licenses on January 1, 2018. At the start, the focus has been primarily on issuing temporary licenses (valid for 120 days) to allow existing cannabis businesses to continue operations while their annual license is processed. Temporary licenses are only available until January 1, 2019, and thereafter only annual licenses will be offered. Annual licenses are valid for one year, thus cannabis businesses will need to renew their licenses with the state each year. All licenses are designated either M (Medicinal) or A (Adult Use) to indicate whether commercial medicinal or adult-use activity is authorized, except testing laboratories (which may test medical and adult use cannabis).

A single location may have two separate commercial cannabis licenses if it is for the same type of commercial cannabis activity, the licensee who holds both licenses is identical, the licensee only conducts one type of commercial cannabis activity on the premises, all cannabis and cannabis products are clearly marked with an “A” or “M” and records are kept separately for each license. In short, one cannabis retailer holding both “A” and “M” Type 10 Retailer licenses could sell both medical and adult use cannabis from a single location, provided the ownership is the same, and the records and inventory are tracked separately.

The requirements for A-licenses and M-licenses are generally the same, however. One key exception pertains to customer access. For A-Retailers, access and sales are limited to those 21 years or older. For M-Retailers, access and sales are limited to those 18 years or older with a valid physician's recommendation or county-issued medical cannabis ID card. If the retailer holds both an M-license and an A-license, then access to the premises would be open to both adults (over 21) and persons aged 18 or older with a medical cannabis ID card/physicians recommendation.

No state cannabis licensee's premises can be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius (BPC § 26054(b); 16 CCR § 5026.) This means the default rule is that cannabis retailers cannot locate within 600 feet of schools, day cares or youth centers, but a city may specify a different buffer, either greater or less than 600 feet. In addition, local jurisdictions may, pursuant to local land use authority, place additional limitations on the permissible locations of commercial cannabis businesses.

BCC regulations provide a number of restrictions on the retail sale and delivery of cannabis, including but not limited to:

- Sales and deliveries may only occur between 6:00 a.m. and 10:00 p.m. Pacific Time
- Cannabis goods may not be displayed in a place where they are visible from outside the licensed premises
- Retailers sell pre-packaged cannabis, they cannot package or label cannabis goods
- Cannabis goods must be placed in an opaque exit package prior to leaving the premises
- Daily customer limits are 28.5 grams non-concentrated cannabis for adults, eight ounces for medical customers (unless a physician's recommendation specifies a different amount) and 6 live, immature plants
- No free cannabis may be given away, except to medical patients with a medical cannabis ID card
- Onsite consumption is only allowed if permitted by the local jurisdiction
- Licensees shall not sell alcoholic beverages or tobacco products
- Retailers must prepare a delivery request receipt for each delivery of cannabis goods
- Deliveries may be made only by employees of the retailer aged 21 or older to a physical address in the State of California
- Delivery vehicles may not contain more than \$3,000 of cannabis goods at any time and the retailer must be able to immediately locate all delivery vehicles through a dedicated GPS (not on a cell phone)

See California Code of Regulations, Title 16, Division 42, Chapter 3 for the state regulations specific to cannabis retailers.

The state regulations contain a number of minimum security and operational requirements that apply to all cannabis businesses, such as the requirements for limited access areas, employee badges, alarm systems, video surveillance and security personnel. See California Code of Regulations, Title 16, Division 42, Chapter 1, Article 5. Additionally, cannabis retailers must perform a reconciliation of their inventory at least once every 14 days. Retailers must also maintain records of sales that

detail the employee that processes the sale, the customer, the date and time of the transaction, the goods purchased, and amount paid.

Key Considerations for Allowing Local Cannabis Retail Uses

In considering whether local cannabis retail uses may be appropriate for Los Altos, it may be helpful to start with the following questions:

- What type(s) of retail cannabis uses may be suitable for the community?
 - Retail storefront? Allow onsite consumption?
 - Non-storefront/delivery only?
 - Microbusinesses? Note that a microbusiness would include a retail component and two of the following three activities: cultivation, manufacturing or distribution.
 - Medical only? Medical or recreational?
- Where would these uses be located?
- Should there be a limit on the total number of cannabis businesses? If so, does the City want to adopt a selection process for granting the permits?
- Does the City want to allow commercial cannabis uses whether or not they are taxed? (Should the zoning/regulatory ordinances be conditioned upon passage of a tax or be adopted following a tax election?)
- What is the appropriate regulatory and permitting structure for this City?
 - Conditional use permits are a standard mechanism to control land use impacts and ensure that a proposed use at a specific location is appropriate. Conditional use permits “run with the land” and thus may be transferred to new owners.
 - Therefore, the City may want to consider (either alone or in conjunction with the CUP) an operator’s permit to provide for review and control over the particulars of the individual business owner and business operations. An operator’s permit could be made non-transferrable.

Appropriate City Departments, including Police and Planning, should be heavily involved in this process. In addition, the City may want to consider a community outreach strategy in order to gain a deeper understanding of community attitudes toward retail cannabis uses and to gauge support for a tax measure, if any.

Local Cannabis Taxes

Statewide there is an excise tax of 15% on the privilege of purchasing cannabis at retail. Additionally, there is a cultivation tax of \$9.25/ounce on cannabis flowers and \$2.75/ounce on leaves. Normal state and local sales taxes also apply to cannabis (with the exception that medical cannabis purchases made with a medical marijuana ID card are exempt from state and local sales tax only but not other state or local taxes).

Combining the state cannabis taxes and the combined state and local sales tax rates means that cannabis sales are effectively taxed at roughly 35%. In response to the heavy state tax burden placed on legal cannabis, pending legislation (Assembly Bill 3157) is proposed to temporarily reduce the excise tax to 11% and suspend the cultivation tax until June 1, 2021. In the meantime, some communities have had to reduce their local cannabis taxes in an effort to attract new commercial cannabis businesses and maintain the businesses they have. For example, the City of Berkeley recently reduced their cannabis taxes from 10% to 5%.

Local cannabis taxes require voter approval: 2/3 vote for special tax and a simple majority vote for general tax. Note however, there is a pending state ballot initiative that could potentially require supermajority approval for a general tax and would apply retroactively to tax measures passed this year.

Local governments' sales taxes may not differ from Bradley-Burns Uniform Sales and Use Tax Law in either what is taxed or the rate of the tax, therefore local cannabis taxes are typically structured as an excise tax. The most common is a business license tax based on gross receipts or square footage of the commercial cannabis activity. Typically, the square footage basis for calculating cannabis taxes is used by communities that allow non-retail cannabis uses, such as manufacturing, cultivation and distribution.

ENVIRONMENTAL REVIEW

Not applicable.

RECOMMENDED CITY COUNCIL ACTION

Receive report; provide policy direction on whether staff should prepare regulatory or tax ordinances to authorize one or more medicinal or adult-use commercial cannabis retailers in the City of Los Altos.

Attachments: None.