EAST PALO ALTO CITY COUNCIL
REGULAR MEETING AMENDED AGENDA

November 7, 2023, 6:30 PM
EPA Government Center
2415 University Ave, First Floor
East Palo Alto, CA 94303

NOTICE

This meeting will be held virtually and in-person at the Council Chambers located on 2415 University Ave, First Floor East Palo Alto, CA 94303. The virtual portion of this City Council meeting will be conducted in accordance with City of East Palo Alto Resolution adopted pursuant to Assembly Bill 361.

The public may participate in the City Council Meeting via Zoom Meeting or by attending in-person in the Council Chambers at 2415 University Ave, First Floor East Palo Alto, CA 94303. Community members may provide comments by emailing cityclerk@cityofepa.org, submitting a speaker card at the meeting or using the **"RAISE HAND"** feature when the Mayor or City Clerk call for public comment. Emailed comments should include the specific agenda item on which you are commenting.

Please click this URL to join

https://us06web.zoom.us/j/88060621033

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+1 253 215 8782 or
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Webinar ID: 880 6062 1033

International numbers available: https://zoom.us/u/aMWYF4KT

1. **CALL TO ORDER AND ROLL CALL**

2. **APPROVAL OF THE AGENDA**

3. **APPROVAL OF CONSENT CALENDAR**

3.1 Clarification on the City's Local Minimum Wage

Recommendation: Adopt a resolution:

1. Clarifying rounding of the annual increase to the nearest nickel.
2. Authorizing the recalculation of the Local Minimum Wage to $17.00 per hour for all employers in the City of East Palo Alto to be effective January 1, 2024; and
3. Directing staff to finalize and distribute an updated bulletin concerning the change to employers in the City of East Palo Alto.

3.2 Notice of Completion – 2022 Annual Street Resurfacing Project

Recommendation:

Adopt a resolution:

1. Accepting the 2022 Annual Street Resurfacing Project, CIP- ST- 07-13-22; and
2. Authorizing the release of a retention balance in the amount of $180,663.94; and
3. Authorizing recordation of the Notice of Completion with the County of San Mateo, and releases the contract retention balance; and
4. Finding that the project is categorically exempt under California Environmental Quality Act (CEQA) Guideline Article 19, Categorical Exemption, Section 15301 (Existing Facilities).

3.3 Monthly Cash Treasury Report for August 2023

Recommendation:

Accept and file the Cash Treasury Report for the month of August 2023.

Recommendation:

Adopt a Resolution authorizing:

1. the City Manager to execute on-call contracts for emergency storm response and related services for a term of three years, each with an amount of $100,000 with Badger Daylighting Corporation; C2R Engineering, Inc.; and Yerba Buena Engineering & Construction, Inc.; and
2. An additional appropriation from the General Fund reserve in the amount of $300,000.

3.5 Authorization to apply for the TDA Article 3 Bicycle and Pedestrian Program for the Pulgas Avenue Mini-Roundabout Improvements

Recommendation:

Adopt a Resolution authorizing the City Manager to:

1. Submit an application for the Transportation Development Act Article 3 Bicycle and Pedestrian Program for the Pulgas Avenue mini-roundabout improvements at Pulgas Avenue and Runnymede Street and Pulgas Avenue and Beech Street; and
2. Execute all grant-related documents, in a form approved by the City Attorney.

3.6 Authorize Acceptance of CalAPP Grant Fund Award from the California Energy Commission for the Hardware, Training, and Implementation for SolarAPP+

Recommendation:

Adopt a resolution authorizing the acceptance of CalAPP Grant Fund Award from the California Energy Commission for the hardware, training and implementation of SolarAPP+ for the Building Division of the Community & Economic Development Department.

3.7 City Council Meeting Minutes

Recommendation:

Adopt the September 5, 2023 and September 19, 2023 City Council Meeting Minutes.

3.8 Side Letter Agreements for the Memorandum of Understanding Between the City of East Palo Alto and the Management Employees' Association (MEA), and unrepresented Employment Groups for FY 2023-24

Recommendation: Adopt a resolution authorizing the City Manager to execute Side Letter Agreements for the Memoranda of Understanding Between the City of East Palo Alto and the Management Employees' Association (MEA), and unrepresented Employment Groups for FY 2023-24.

3.9 Family Court Awareness Month Proclamation

4. CLOSED SESSION - NONE

5. PUBLIC COMMENT

6. INFORMATIONAL REPORTS - NONE

7. SPECIAL PRESENTATIONS

7.1 East Palo Alto Soft Story Seismic Risk Special Presentation

7.2 San Mateo County Libraries East Palo Alto Library Branch Annual Report

7.3 San Mateo County Office of Education Child Care Partnership Council 2022 needs Assessment Special Presentation

8. POLICY AND ACTION

8.1 Joining California Asset Management Program (CAMP)

Recommendation:

Adopting a resolution authorizing the City to join the California Asset Management Program (CAMP) as a Participant.

9. PUBLIC HEARING

9.1 Introduction of East Palo Alto Opportunity to Purchase Act ("EPA OPA")

Recommendation:

1. Waive the First Reading and introduce an ordinance(s) titled:

a."East Palo Alto Opportunity to Purchase Act (EPA OPA)," for real residential property, adding Chapter 14.25 to the East Palo Alto Municipal Code; or

b. "Tenant Opportunity to Purchase Act," for single-family housing, adding Chapter 14.26 to the East Palo Alto Municipal Code; or

c. "Community Opportunity to Purchase Act", for multifamily housing, adding Chapter 14.27 to the East Palo Alto Municipal Code;

2. Direct the City Manager to return with Administrative Guidelines for the City Council's consideration; and

3. Find that the adoption by the City Council of the amendments is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines.

10. COUNCIL REPORTS

11. ADJOURNMENT

This AGENDA is posted in accordance with Government Code Section 54954.2(a)

This Notice of Availability of Public Records: All public records relating to an open session item which are not exempt from disclosure pursuant to the Public Records Act, that are distributed to the majority of the City Council will be available for public inspection at the City Clerk's Office, 2415 University Avenue, East Palo Alto, CA at the same time that the public records are distributed or made available to the City Council. Such documents may also be available on the East Palo Alto website www.cityofepa.org subject to staff's ability to post the documents prior to the meeting. Information may be obtained by calling (650) 853-3100.

The City Council meeting packet may be reviewed by the public in the Library or the City Clerk's Office. Any writings or documents pertaining to an open session item provided to a majority of the City Council less than 72 hours prior to the meeting, shall be made available for public inspection at the front counter at the City Clerk's Office, 2ND Floor, City Hall, 2415 University Avenue, East Palo Alto, California 94303 during normal business hours. Information distributed to the Council at the Council meeting becomes part of the public record. A copy of written material, pictures, etc. should be provided for this purpose.

East Palo Alto City Council Chambers is ADA compliant. Requests for disability related modifications or accommodations, aids or services may be made by a person with a disability to the City Clerk's office at (650) 853-3127 no less than 72 hours prior to the meeting as required by Section 202 of the Americans with Disabilities Act of 1990 and the federal rules and regulations adopted in implementation thereof.

DECLARATION OF POSTING

This Notice is posted in accordance with Government Code §54954.2(a) or §54956. Members of the public can view electronic agendas and staff reports by accessing the City website. Under penalty of perjury, this Agenda was posted to the public at least 72 hours prior to the meeting.

POSTED: October 31, 2023
AMENDED: November 3, 2023

ATTEST:

James Colin
City Clerk

Future Meetings:

Meeting	Date	Time
Special Meeting	November 14, 2023	6:30 p.m.
Regular Meeting	November 21, 2023	6:30 p.m.
Regular Meeting	December 5, 2023	6:30 p.m.

CONSENT ITEM 3.1

EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: November 7, 2023

TO: Honorable Mayor and Members of the City Council

VIA: Melvin E. Gaines, City Manager

BY: Amy Chen, Director of Community & Economic Development

SUBJECT: Clarification on the City's Local Minimum Wage

Recommendation

Adopt a resolution:

1. To rectify an accounting error, authorizing the recalculation of the Local Minimum Wage to $17.00 per hour for all employers in East Palo Alto, California to be effective January 1, 2024, consistent with Section 5.10.030.B of the East Palo Alto Municipal Code, to ensure that the minimum wage increase is rounded to the nearest nickel; and

2. Directing staff to finalize and distribute an updated bulletin concerning the change to employers in the East Palo Alto, California.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

- Promote Housing, Economic and Workforce Development

Background

On September 1, 2020, the City Council adopted an ordinance, set forth as Attachment 2 to this staff report, a Local Minimum Wage Ordinance (LMWO), codified as East Palo Alto Municipal Code Section 5.10.010 et seq., of $15 per hour for all employers in the City of East Palo Alto to be effective January 1, 2021. Each year the hourly rate increases are adjusted annually by the Consumer Price Index (CPI).

On October 3, 2023, the City Council adopted a resolution confirming the Local Minimum Wage was increased to $17.10, effective January 1, 2024. The City created a webpage to describe the adopted Ordinance and to make updated materials available online (Webpage link: https://www.ci.east-palo-alto.ca.us/econdev/page/local-minimum-wage).

The purpose of this staff report is to notify City Council of a need to recalculate the minimum wage and to provide clarification on calculating the annual increase. Staff requests authorization to post an updated flyer with the recalculated minimum wage.

Analysis

An escalator was built into the LMWO so that the hourly wage can be simply updated each year. Section 5.10.030.B of the East Palo Alto Municipal Code provides:

> "Beginning on January 1, 2022, and each January thereafter, the minimum wage shall increase by a percentage amount equal to the prior year's increase, if any, in the Consumer Price Index (CPI) for San Francisco-Oakland-San José, as determined by the United States Department of Labor. The change shall be calculated by using the August to August change in the CPI to calculate the annual increase, if any, and *rounded to the nearest nickel*. A decrease in the CPI shall not result in a decrease in the minimum wage."

For the past three years, Staff utilized Generally Accepted Accounting Principles (GAAP) to round the annual increase up or down rather than the ordinance reference to rounding to the nearest nickel.

The Local Minimum Wage for the last three years has been recalculated using the correct ordinance reference: *round to the nearest nickel*. Staff requests authorization to post updated flyers with the recalculated minimum wage for the past three years.

Calendar Year	Original	Recalculated Wage
2021	$15.00	N/A
2022	$15.60	$15.55
2023	$16.50	$16.45
2024	$17.10	**$17.00**

Next Steps

The City must publish and make available to employers an updated bulletin notice announcing the recalculated minimum wage rates for 2022, 2023, and 2024. Please see draft bulletin notice for 2024 under Attachment 3 of this staff report. Although only the bulletin for 2024 is attached, city staff will correct all notices even though those years have passed to ensure a clear public record of the local minimum wage is corrected. Staff are drafting outreach materials to inform the business community and other stakeholders of the new requirements related to the LMWO.

Fiscal Impact

There is no fiscal impact associated with the contents of this staff report.

Public Notice

The public was provided notice by making the agenda and report available on the City's website and on a bulletin board located at City Hall: 2415 University Avenue, East Palo Alto.

Environmental

The action being considered does not constitute a "Project" within the meaning of the California Environmental Quality Act (CEQA), pursuant to CEQA Guideline section 15378 (b)(5), in that it is a government administrative activity that will not result in direct or indirect changes in the environment.

Attachments

1. Resolution
2. Local Minimum Wage Ordinance
3. DRAFT Updated LMWO Noticing Materials for 2024

RESOLUTION NO. XX – 2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO

CORRECTING LOCAL MINIMUM WAGE RATE TO BE EFFECTIVE JANUARY 1, 2024

WHEREAS, on September 1, 2020, the City Council adopted the Local Minimum Wage Ordinance (codified at Section 5.10.010 et seq. of the East Palo Alto Municipal Code; and

WHEREAS, the Local Minimum Wage Ordinance provides that beginning on January 1, 2022, and each January thereafter, the minimum wage shall increase, rounded to the nearest nickel, by a percentage amount equal to the prior year's increase, if any, in the Consumer Price Index for San Francisco-Oakland-San José, as determined by the United States Department of Labor; and

WHEREAS, the Consumer Price Index for the San Francisco Area, August 2023 report, from the United States Bureau of Labor Statistics shows area prices rose 3.4 percent from August 2022; and

WHEREAS, Section 5.10.030.B of the East Palo Alto Municipal Code provides for an escalator that was built into the LMWO so that the hourly wage can be simply updated each year.

WHEREAS, the Local Minimum Wage Ordinance provides that by November 1 of each year the City shall publish and make available to employers a bulletin announcing adjustments to the minimum wage rate to take effect January 1 of the following year.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO HEREBY:

1. Finds the foregoing recitals are true and correct, and are incorporated by this reference into this action;
2. Authorizes the Local Minimum Wage to $17.00 per hour for all employers in the City of East Palo Alto to be effective January 1, 2024, consistent with Section 5.10.030.B of the East Palo Alto Municipal Code, to ensure that the minimum wage increase is rounded to the nearest nickel; and
3. Directs staff to finalize and distribute an updated bulletin concerning the change to employers in the City of East Palo Alto.

PASSED AND ADOPTED this 7th day of November 2023**,** by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____

Lisa Gauthier, Mayor

ATTEST:

_____

James Colin, City Clerk

APPROVED AS TO FORM:

_____

John D. Lê, City Attorney

Chapter 5.10 - MINIMUM WAGE ORDINANCE

5.10.010 - Title and purpose.

A. This chapter shall be known as the "minimum wage ordinance."

B. The purpose of this chapter is to protect the public health, safety and welfare. It does this by requiring that employers or their respective subcontractors compensate their employees in such a manner as to enable and facilitate their individual self-reliance within the City of East Palo Alto. Therefore, this ordinance adopts a new chapter of the East Palo Alto Municipal Code authorizing a minimum wage within the City of East Palo Alto.

(Ord. No. 06-2020, § 2, 9-1-2020)

5.10.020 - Definitions.

As used in this chapter, the following terms shall have the following meanings:

A. "Calendar week" shall mean a period of seven consecutive days starting on Sunday.

B. "City" means the City of East Palo Alto.

C. "Employee" means any person who:

(1) In a calendar week performs at least two hours of work within the geographic boundaries of the City for an employer; and

(2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California Minimum Wage Law, as provided by the State of California Industrial Welfare Commission.

D. "Employer" means any person (including a natural person, corporation, non-profit corporation, general partnership limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality or any other legal or commercial entity, whether domestic or foreign) who directly or indirectly (including through the services of a temporary services or staffing agency or similar entity) employs or exercises control over the wages, hours, or working conditions of any employee.

E. "Minimum wage" shall have the meaning set forth in Section 5.10.030 of this chapter.

(Ord. No. 06-2020, § 2, 9-1-2020)

5.10.030 - Minimum wage.

Employers shall pay employees no less than the minimum wage set forth in this chapter for each hour worked within the geographic boundaries of the city.

A. On January 1, 2021, the minimum wage shall be an hourly rate of fifteen dollars ($15.00).

B. Beginning on January 1, 2022, and each January thereafter, the minimum wage shall increase by a percentage amount equal to the prior year's increase, if any, in the Consumer Price Index (CPI) for San Francisco-Oakland-San José, as determined by the United States Department of Labor. The change shall be calculated by using the August to August change in the CPI to calculate the annual increase, if any, and rounded to the nearest nickel. A decrease in the CPI shall not result in a decrease in the minimum wage.

C. An employer may not deduct an amount from wages due an employee on account of any tip or gratuity, or credit the amount or any part thereof, of a tip or gratuity, against, or as part of, the wages due the employee from the employer.

D. No employer may fund increases in compensation required by this chapter, nor otherwise respond to the requirements of this chapter, by reducing the wage rate paid to any employee, nor by increasing charges to them for parking, meals, uniforms or other items, nor by reducing the citation or other non-wage benefits of any such employee, nor by increasing the share any employee pays towards her/his benefits, except to the extent such prohibition would be pre-empted by the Federal Employee Retirement Income Security Act.

E. A violation for unlawfully failing to pay the minimum wage shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

F. All requirements and provisions of this chapter shall be preempted and ineffective if the state minimum wage is or becomes greater than the minimum wage established by this chapter.

(Ord. No. 06-2020, § 2, 9-1-2020)

5.10.040 - Notice and posting.

A. By November 1 or each year, the city shall publish and make available to employers a bulletin announcing the adjusted minimum wage rate, to take effect January 1 of the following year. In conjunction with this bulletin, the city shall provide employers a notice suitable for posting in the workplace, informing employees of the current minimum wage rate and of their rights under this chapter. The notice shall be printed in English, Spanish, and other languages as provided in any implementation regulations under this chapter. Employers shall post these notices in a

conspicuous place in the workplace or job site where it will be seen by all employees. Employers' use of such notice shall constitute compliance with this subsection. Failure to post such notice shall constitute a violation of this chapter.

B. Each employer shall give written notification to every current employee, and to each new employee at time of hire, of his or her rights under this chapter, and the name, address, and phone number of the employer. The notification shall be printed in English, Spanish, and other languages as provided in any implementation regulations under this chapter.

(Ord. No. 06-2020, § 2, 9-1-2020)

5.10.050 - Implementation and payroll records.

A. The city manager, or designee, may promulgate regulations for the implementation and enforcement of this chapter. Any regulation promulgated by the city shall have the force and effect of law and may be relied on by employers, employees, and other parties to determine their rights and responsibilities under this chapter. Any regulations may establish procedures for ensuring fair, efficient and cost-effective implementation of this chapter, for monitoring employee compliance with this chapter, and for providing administrative hearings or determining whether an employer has violated the requirements of this chapter.

B. Nothing herein shall preclude the city council from imposing a cost recovery fee on all employers to pay the cost of administering this chapter.

C. Employers shall retain payroll records for a period of three years, and shall allow the city access to these records, with appropriate notice and at a mutually agreeable time, to monitor compliance with this chapter.

D. Where an employer fails to retain adequate payroll records documenting wages paid, or does not allow the city reasonable access to such records, an employee's account is presumed accurate, absent clear and convincing evidence otherwise.

E. An employee or any other person may report to the city in writing any suspected violation of this chapter.

F. The city shall be responsible for investigating any possible violations of this chapter by an employer or other person. The city shall have the authority to inspect workplaces, interview persons, and request the city attorney to subpoena books, papers, records or other items relevant to the enforcement of this chapter.

G. The city shall make every effort to resolve complaints informally, in a timely manner.

(Ord. No. 06-2020, § 2, 9-1-2020)

5.10.060 - Enforcement.

A. Where prompt compliance is not forthcoming, the city shall take any appropriate enforcement action to secure compliance. In addition to all other civil remedies, the city may enforce this chapter pursuant to Chapter 1 of the East Palo Alto Municipal Code. To secure compliance, the city may use the following enforcement measures:

   1. The city may issue an administrative citation with a fine of not more than fifty dollars ($50.00) for each day or portion thereof and for each employee or person as to whom the violation occurred or continued.
   2. The city may issue an administrative compliance order.
   3. The city may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

B. Any person aggrieved by a violation of this chapter, any entity a member of which is aggrieved by a violation of this chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law may bring a civil action in a court of competent jurisdiction against the employer or other person violating this chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of fifty dollars ($50.00) to each employee or person whose rights under this chapter were violated for each day that the violation occurred or continued, reinstatement in employment, and/or injunctive relief.

C. This section shall not be construed to limit an employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights, nor shall exhaustion of remedies under this chapter be a prerequisite to the assertion of any right.

D. Except where prohibited by state or federal law, city agencies or departments may revoke or suspend any registration certificates, permits, or licenses held or requested by the employer until such time as the violation is remedied.

E. The remedies for violation of this chapter include, but are not limited to:

   1. Reinstatement, and the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of fifty dollars ($50.00) to each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this code or state law.
   2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Sec. 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Sec. 200) of Division 2 of the California

Labor Code, to the date the wages are paid in full.

3. Reimbursement of the city's administrative costs of enforcement and reasonable attorney's fees.

F. If a repeated violation of this chapter has been finally determined, the city may require the employer to post public notice of the employer's failure to comply in a form determined by the city.

(Ord. No. 06-2020, § 2, 9-1-2020)

5.10.070 - Retaliation prohibited.

A. It shall be unlawful for an employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this chapter. Rights protected under this chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this chapter; and the right to inform any person of his or her potential rights under this chapter and to assist him or her in asserting such rights. Protections of this chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this chapter.

B. Taking adverse action against a person, including, without limitation, terminating employment, within one hundred twenty days (120) days of the person's exercise of rights protected under this chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights, unless there is clear and convincing evidence of just cause for such discharge.

(Ord. No. 06-2020, § 2, 9-1-2020)

5.10.080 - Waiver through collective bargaining.

A. Except for employees in the property services industry (i.e., janitors, landscapers, groundskeepers, and security guards), the provisions of this chapter may be waived in whole or in part with respect to employees covered under a collective bargaining agreement if all of the following circumstances apply:

1. Both parties to the collective bargaining agreement agree in writing to such waiver in whole or in part; and
2. The collective bargaining agreement contains provisions which specifically allow waivers of municipal minimum wage rates in excess of the contractually required wage rates for any group or groups of covered employees; and
3. The entire collective bargaining agreement, including the provisions referred to in subsection A.2 above, was negotiated and entered into prior to the date or when such waiver would take effect.

(Ord. No. 06-2020, § 2, 9-1-2020)

5.10.090 - No pre-emption of higher standards.

The purpose of this chapter is to ensure minimum labor standards. This chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the city. This chapter shall not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

(Ord. No. 06-2020, § 2, 9-1-2020)

5.10.100 - Federal or state funding.

This chapter shall not be applied to the extent it will cause the loss of any federal or state funding of city activities.

(Ord. No. 06-2020, § 2, 9-1-2020)

CITY OF EAST PALO ALTO

POST WHERE EMPLOYEE MAY READ EASILY
VIOLATORS SUBJECT TO PENALTIES

OFFICIAL NOTICE
EAST PALO ALTO MINIMUM WAGE RATE IS

$17.10

per hour

Effective January 1, 2024

Per the Chapter 5.10 of the East Palo Alto Municipal Code - MINIMUM WAGE ORDINANCE - Beginning January 1, 2021, when this ordinance took effect, employers must pay to each employee who performs at least two (2) hours of work per week in East Palo Alto.

Effective January 1, 2024, the minimum wage is no less than **$17.10 per hour.**

The minimum wage requirement set forth in the East Palo Alto Minimum Wage Ordinance applies to adult AND minor employees who work two (2) or more hours per week (tips not included). Beginning January 1, and annually thereafter, the City will adjust the minimum wage based on the Regional Consumer Price Index.

Under the Ordinance, employees who assert their rights to receive the City's minimum wage are protected from retaliation. Employees may file a civil lawsuit against their employers for any violation of the Ordinance or may file a complaint with the Office of Economic Development. The City will investigate possible violations and will require access to payroll records. The City will enforce violations of the minimum wage ordinance by ordering reinstatement of employees, payment of back wages unlawfully withheld and penalties.

If you have questions, need additional information or believe you are not being paid correctly, contact your employer or the Office of Economic Development at:

East Palo Alto Office of Economic Development
1960 Tate St, East Palo Alto, CA 94303
Phone: (650) 853-3100
Email: CED@cityofepa.org

Este folleto también está disponible en español. This flyer is also available in Spanish.
Employers are responsible for translating this notice into languages spoken by 5% or more of their employees.

DRAFT

CITY OF EAST PALO ALTO

PUBLICAR DONDE EL EMPLEADO PUEDA LEER FÁCILMENTE
INFRACTORES SUJETOS A SANCIONES

AVISO OFICIAL
EL SALARIO MÍNIMO EN EAST PALO ALTO ES

$17.10

por hora

A partir del 1 de enero de 2024

Según el Capítulo 5.10 del Código Municipal de East Palo Alto - ORDENANZA DE SALARIO MÍNIMO - A partir del 1 de Enero de 2021, los empleadores deben pagar a cada empleado que labore al menos dos (2) horas de trabajo por semana en East Palo Alto.

A partir del 1 de enero de 2024, el salario mínimo no es menos de **$17.10 por hora.**

El salario mínimo establecido en la Ordenanza de Salario Mínimo de East Palo Alto se aplica a los empleados adultos y menores de edad que laboran dos (2) horas o más por semana (propinas no incluidas). Empezando el 1 de enero, y anualmente después de esta fecha, la Ciudad ajustará el salario mínimo basado en el Índice Regional de Precios al Consumidor.

Bajo la Ordenanza, los empleados que hagan valer sus derechos para recibir el salario mínimo de la Ciudad están protegidos contra retaliación. Los empleados pueden presentar una demanda civil en contra de su empleador por cualquier incumplimiento de la ordenanza o pueden presentar una queja ante la Oficina de Desarrollo Económico de la Ciudad. La Ciudad investigará posibles infracciones o incumplimientos y requerirá acceso a los registros de nómina. La Ciudad hará cumplir cualquier violación de la Ordenanza de Salario Mínimo de la Ciudad de East Palo Alto exigiendo la reincorporación de los empleados, el pago de salarios atrasados, ilícitamente retenidos, y multas.

Si tiene preguntas, necesita información adicional o si cree que no se le están pagando correctamente, póngase en contacto con su empleador o con la Oficina de Desarrollo Económico en:

Oficina de Desarrollo Económico de la Ciudad de East Palo Alto
1960 Tate St., East Palo Alto, CA 94303
Teléfono: (650) 853-3100
Correo Electrónico: CED@cityofepa.org

DRAFT

EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: November 7, 2023

TO: Honorable Mayor and Members of the City Council

VIA: Melvin E. Gaines, City Manager

BY: Batool Zaro, Associate Engineer
Humza Javed, Public Works Director

SUBJECT: Notice of Completion – 2022 Annual Street Resurfacing Project

Recommendation

Adopt a resolution:

1. Accepting the 2022 Annual Street Resurfacing Project, CIP- ST- 07-13-22; and
2. Authorizing the release of a retention balance in the amount of $180,663.94; and
3. Authorizing recordation of the Notice of Completion with the County of San Mateo, and releases the contract retention balance; and
4. Finding that the project is categorically exempt under California Environmental Quality Act (CEQA) Guideline Article 19, Categorical Exemption, Section 15301 (Existing Facilities).

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

- Implement the Comprehensive Transportation and Mobility Plan
- Promote Health & Public Safety

Background

On May 17, 2022, City Council awarded the 2022 Annual Street Resurfacing Project to G. Bortolotto & Company. The 2022 Annual Street Resurfacing Project consisted of rehabilitation and preventive maintenance of City streets including pothole/base repairs, slurry seals, and

pavement overlays. In addition to pavement rehabilitation, the project included sidewalk construction and improved striping configurations for the bicycle facilities on Pulgas Avenue, Clarke Avenue, West Bayshore Road, East Bayshore Road, Newell Road, Woodland Avenue, and Bay Road. The new striping improvements included re-configuration of bicycle lane transitions at intersections, buffered bicycle lanes, green thermoplastic bicycle facilities, and improved pavement markings for Class 2 and 3 bicycle facilities. Every crosswalk that was re-surfaced in the project areas was re-striped to improve pedestrian safety. Moreover, the project included curb ramp improvements in accordance with Americans with Disability Act (ADA) regulations and short-term improvements as approved in the City's Mobility Study such as speed humps and bulb-outs.

As part of the project, the City has rehabilitated 25 streets, added approximately 7 miles of bike lanes, constructed 9 speed humps, and installed 63 ADA ramps.

Analysis

Construction work for the project began July 2022 and the project was substantially completed by December 2022. In early 2023 staff completed additional improvements along Michigan Avenue as well as University Avenue which were funded by the San Mateo County Transportation Authority (TA).

The City is currently holding a retention balance in the amount of $180,663.94 which is to be released upon acceptance of the improvements by the City and within 35 days after recordation of the Notice of Completion. The retention funds are available and have been previously allocated by the City Council in the project budget.

The project was inspected throughout construction and was accepted by staff. The construction of the project is complete, and retention must be released to the contractor for the work that has been completed. In addition, a Notice of Completion (NOC) needs to be recorded with the County to formally complete the project.

Fiscal Impact

There is no fiscal impact by this action as all project expenditures have remained within the approved capital budget.

Public Notice

The public was provided notice of this agenda item by posting the City Council agenda on the City's official bulletin board outside City Hall and making the agenda and report available at the City's website and at the San Mateo Co. Library located at 2415 University Avenue, East Palo Alto.

Environmental

This project is categorically exempt under California Environmental Quality Act (CEQA)

Guideline Article 19, Categorical Exemption, Section 15301 (Existing Facilities). Section 15301 of the CEQA guidelines provides for “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

Projects eligible for this exemption include “existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities”. (14 Cal. Code Regulations § 15301(c).) Because the Project seeks to improve an existing roadway, the Project will not result in the expansion of existing uses, and thus, Project is exempt under this provision.

Attachments

1. Resolution
2. Notice of Completion (Draft)

RESOLUTION NO. XX - 2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO

ACCEPTING THE 2022 ANNUAL STREET RESURFACING PROJECT, CIP- ST-07-13-22, AUTHORIZING THE RECORDATION OF THE NOTICE OF COMPLETION WITH THE COUNTY OF SAN MATEO AND RELEASING THE CONTRACT RETENTION BALANCE

WHEREAS, on May 17, 2022, City Council awarded the 2022 Annual Street Resurfacing Project to G. Bortolotto & Company; and

WHEREAS, the 2022 Annual Street Resurfacing Project consisted of rehabilitation and preventive maintenance of City streets, striping improvements, and concrete improvements; and

WHEREAS, construction work for the project began July 2022 and the project has been fully completed and accepted by City staff; and

WHEREAS, the City has rehabilitated 25 streets, added approximately 7 miles of bike lanes, constructed 9 speed humps, and installed 63 ADA ramps as part of the project; and

WHEREAS, the City is currently holding a retention balance in the amount of $180,663.94 which is to be released upon acceptance of the improvements by the City and within 35 days after recordation of the Notice of Completion.

WHEREAS, the retention funds are available and have been previously allocated by the City Council in the project budget.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO HEREBY:

1. Finds the foregoing recitals are true and correct, and are incorporated by this reference into this action;
2. Accepts the 2022 Annual Street Resurfacing Project, CIP- ST- 07-13-22; and
3. Authorizes the release of a retention balance in the amount of $180,663.94; and
4. Authorizes recordation of the Notice of Completion with the County of San Mateo, and releases the contract retention balance; and
5. Finds that the project is categorically exempt under California Environmental Quality Act (CEQA) Guideline Article 19, Categorical Exemption, Section 15301 (Existing Facilities).

PASSED AND ADOPTED this 7th day of November 2023**,** by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Gauthier, Mayor

ATTEST:

James Colin, City Clerk

APPROVED AS TO FORM:

John D. Lê, City Attorney

RECORDATION REQUESTED BY AND
AFTER RECORDATION RETURN TO:

The City of East Palo Alto
2415 University Avenue
East Palo Alto, California 94303
Attn: City Clerk

BY: MAIL (X) PICK-UP ( )

PLEASE RECORD WITHOUT FEE PURSUANT TO GOVERNMENT CODE SECTION 6103

NOTICE OF COMPLETION

Notice is hereby given pursuant to the California Civil Code that the City of East Palo Alto ("City") accepted as complete, on October 17, 2023, the 2022 Annual Street Resurfacing Project, CIP- ST- 07-13-22**,** (the "Project"). The Project consisted of pavement rehabilitation, roadway striping, and concrete improvements citywide in East Palo Alto, CA. Construction work commenced in July 2022 and was substantially completed in December 2022.

The fee owner of the Property is the City of East Palo Alto, located at 2415 University Avenue, East Palo Alto, California, 94303.

The Project was undertaken at the Property pursuant to a contract between the City and G. Bortolotto & Company., whose principal place of business is 582 Bragato Road San Carlos, CA 94070 which provided for the labor and materials to be furnished for the Project.

The Work included, but is not limited to pavement rehabilitation, roadway striping, and concrete improvements. Said work and improvements were accepted as completed by the City Council of the City of East Palo Alto at a regular meeting held on the 7th day of November 2023. The Project was completed for the total construction contract amount of $3,935,541.7 including retention.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

[SIGNATURES FOLLOW ON NEXT PAGE]

Executed this the ____ day of_____, 2023, at East Palo Alto, California.

APPROVED AS TO FORM:

By:_____
John D. Lê
City Attorney

THE CITY OF EAST PALO ALTO

By:_____
Humza Javed, PE
Public Works Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

State of California)
County of San Mateo)

On _____ ____ before me, _____, Notary Public, 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 and official seal.

Signature _____

EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: November 7, 2023

TO: Honorable Mayor and Members of the City Council

VIA: Melvin E. Gaines, City Manager

BY: Tomohito Oku, Finance Director
Bo-kyoung Kim, Finance Services Manager

SUBJECT: Monthly Cash Treasury Report for August 2023

Recommendation

Accept and file the Cash Treasury Report for the month of August 2023.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

Priority No. 4: Ensure Our Financial and Organizational Health

Background

Pursuant to Section 53646 of the Government Code of the State of California, the City Treasurer may submit a quarterly report to the City Council regarding the funds and investments of the City. Further, City Investment Policy Section XVIII requires monthly reporting of investment transactions, as specified. Because the City participates in State and County investments pools and does not independently broker or engage outside investment advisors to transact investments, the monthly reporting provides a snapshot of overall cash receipts, transfers, and disbursements on a monthly basis.

Analysis

The Monthly Cash Treasury Report ("Report") covers cash and investments of the City in the three cash and investment accounts: Wells Fargo Bank, San Mateo County Pool, and the California State Local Agency Investment Fund. The Report does not include petty cash, or the California State Community Infrastructure Program (SCIP) bond proceeds held by a trustee in

the name of the City. For investment purposes, City cash is pooled, except for bond proceeds held by a trustee. The City does not have, nor is it legally required to have, separate bank accounts for each individual fund. However, all cash is segregated in the City's accounting records. Monthly cash transactions for the monthly period ending August 31, 2023, are as follows:

Account	Beginning Balance	Receipts	Disbursements	Quarterly Interest Allocation	Inter-Account Transfers	Ending Balance
Wells Fargo Bank	3,675,831.08	2,261,102.51	(5,418,379.15)	-	3,000,000.00	3,518,554.44
LAIF	65,476,440.76	-	-	-	5,000,000.00	70,476,440.76
San Mateo County Pool	64,717,440.40	1,291,280.25	-	-	(8,000,000.00)	58,008,720.65
Total	133,869,712.24	3,552,382.76	(5,418,379.15)	-	-	132,003,715.85

The Wells Fargo cash balance reflects the book value balance (i.e., total outstanding checks not cashed are deducted from the account balance). The month-to-date cash and investment balance decreased by approximately $1.8M compared to the balance as of July 31, 2023.

August receipts, a total of approximately $3.6M, primarily consist of FY21-22 VLF Shortfall ($0.7M) and FY20-21 Excess ERAF ($0.6M), Tax distribution ($0.5M), Four seasons TOT ($0.4M), Veolia payment (0.3M), and other various receipts.

August disbursements total $5.4M, primarily consist of Payroll costs ($1.1M), PLAN JPA General Liability member contribution ($0.8M), SFCJPA member contribution (0.4M), Recology services ($0.7M), Granite Rock payment (0.3M), and other recurring operating expenditures.

City staff made a strategic decision to transfer a portion of the investment fund from San Mateo County Pool to LAIF to achieve greater investment diversification and potentially higher returns while maintaining a prudent level of risk.

The table below reflects recent treasury yield comparisons up to five-year notes since that is the maximum maturity the City may invest:[1]

	Aug-23	Jul-23	Aug-22
6-month Treasury Bill	5.28	5.27	3.25
2-year Treasury Note	4.85	4.88	3.45
5-Year Treasury Note	4.23	4.18	3.30

Local Agency Investment Fund (LAIF) average monthly effective yields were 3.434% in August which increased by 0.129% from July 2023. San Mateo County monthly gross earnings for August were 3.206% compared to 3.509% in July 2023. The County Pool earnings estimates for FY 23-24 are at 3.75%.

Staff believes the City has investment liquidity and anticipated revenues to meet the City's anticipated expenditure requirements for the ensuing six months.

[1] Daily US Treasury Yield Curve. Treasury.gov

The following table shows a breakdown of cash and investment balance by fund type.

Summary August 31, 2023				
		Deposit Value		Market Value
General Fund (Inc. Petty cash of $10,800)	$	28,142,814	$	28,142,814
General Sub-Funds (Commited/Reserved)	$	22,913,167	$	22,913,167
City Funds Restricted and Committed	$	80,732,942	$	80,732,942
Successor Agency Trust	$	1,825,593	$	1,825,593
Unrealized Gain on Investment Pools	$	-	$	(2,722,482)
	$	133,614,515	$	130,892,035

The book market value totals $130,892,035 including an unrealized loss[2] of $2,722,482, reflecting treasury yields during the calendar year. All except for General Fund balance is restricted by either City Council or external parties for specific purposes. Unrestricted cash and investment balance under General Fund ($28,142,814) may be used at Council discretion.

Fiscal Impact

None. This report is informational.

Public Notice

The public was provided notice by making the agenda and report available on the City's website and on a bulletin board located at City Hall: 2415 University Avenue, East Palo Alto.

Environmental

The proposed action does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15378(b)(4) and (5) in that it is a governmental fiscal, organizational or administrative activity that will not result in direct or indirect changes in the environment.

[2] Investment FMV factor is provided Quarterly basis. Thus, as of 6/30/23 FMV factor is used to calculate Unrealized Gain on Investments.

EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: November 7, 2023

TO: Honorable Mayor and Members of the City Council

VIA: Melvin E. Gaines, City Manager

BY: Humza Javed, Public Works Director
Jay Farr, Maintenance Manager

SUBJECT: On-Call Emergency Contract Services for storm response

Recommendation

Adopt a Resolution authorizing:

1. The City Manager to execute on-call contracts, in a form approved by the City Attorney, for emergency storm response and related services for a term of three years, each with an amount not to exceed $100,000 with Badger Daylighting Corporation; C2R Engineering, Inc.; and Yerba Buena Engineering & Construction, Inc., including authority to approve up to two, one-year extensions for each agreement; and
2. An additional appropriation from the General Fund reserve in the amount of $300,000.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

- Promote Health & Public Safety

Background

On October 11, 2023, the Public Works Department issued a Request for Proposal (RFP) to the public, inviting bids for on-call storm response emergency services contracts. The primary objective of these contracts is to provide on-call emergency services, focusing on storm drainage improvement, debris removal, and pumping services within the geographic boundaries of the City of East Palo Alto.

In the wake of the severe storm that occurred in 2022, the Public Works Department faced an immense challenge in dealing with substantial debris accumulation at various points along the creek. This debris, transported by the force of water, became wedged within the San Francisquito creek's channel, creating an obstruction in the natural water flow. This scenario necessitated the utilization of heavy equipment for debris removal and its proper disposal. Additionally, the city grappled with street flooding, which led to an urgent request for assistance in pumping out excess water from local streets.

Looking ahead to future weather events, the city has taken a proactive stance to bolster its storm response capabilities. The Public Works Department is in need of experienced on-call contractors equipped with the necessary heavy machinery and skilled operators. These contractors will be added to the public works roster and will be on standby to address emergencies, ensuring flood prevention and efficient management of storm-related issues. Their responsibilities will encompass repairing and installing drainage inlets, pumping excessive water, performing valley gutter cleanup and repair, debris removal, and undertaking various storm drain construction work, all aimed at averting local flooding incidents throughout the City.

Analysis

On October 25, 2023, the Public Works Department received three proposals in response to the RFP: Badger Daylighting Corporation, C2R Engineering, Inc., and Yerba Buena Engineering & Construction, Inc. The three firms can provide equipment and a various range of services pertaining to storm response activities. For example, Badger Daylighting Corporation is a pumping company and has previously provided pumping services to the City during the Winter 2022 storms. C2R Engineering, Inc. and Yerba Buena Engineering & Construction, Inc. are licensed engineering construction firms that are able to provide on-call storm drain repair and related services.

Fiscal Impact

This recommendation is not included in the Fiscal Year 2023-24 budget. Staff is seeking an additional appropriation from the General Fund reserve in the amount of $300,000. As these are on-call contracts, the services may not be used. Any unspent funds will return to the General Fund when the contract terms end.

Public Notice

The public was provided notice by making the agenda and report available on the City's website and on a bulletin board located at City Hall: 2415 University Avenue, East Palo Alto.

Environmental

The proposed action does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15378(b)(4) and

(5) in that it is a governmental fiscal, organizational or administrative activity that will not result in direct or indirect changes in the environment.

Attachments

1. Resolution
2. RFP

RESOLUTION NO.– 2023

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF EAST PALO ALTO**

ADOPT A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON-CALL CONTRACTS FOR EMERGENCY STORM RESPONSE AND RELATED SERVICES FOR A TERM OF THREE YEARS, EACH WITH AN AMOUNT OF $100,000, WITH BADGER DAYLIGHTING CORPORATION; C2R ENGINEERING, INC.; AND YERBA BUENA ENGINEERING & CONSTRUCTION, INC. WITH THE OPTION OF TWO ONE-YEAR EXTENSIONS.

WHEREAS, in the wake of the Winter 2022 storms, the Public Works Department faced challenges in responding to storm related issues throughout the City; and

WHEREAS, the City is taking a proactive stance to bolster its storm response capabilities; and

WHEREAS, the City needs on-call support to respond to storm related emergency services such as storm drainage improvement, debris removal, and pumping services within the City of East Palo Alto; and

WHEREAS, on October 11, 2023, the Public Works Department issued a Request for Proposal (RFP) to the public, inviting bids for on-call storm response emergency services; and

WHEREAS, on October 25, 2023, the Public Works Department received three proposals in response to the RFP; and

WHEREAS, three proposals were received from Badger Daylighting Corporation; C2R Engineering, Inc.; and Yerba Buena Engineering & Construction, Inc; and

WHEREAS, the three firms that submitted proposals are licensed engineering firms with the expertise to repair and install drainage inlets, pump excessive water, perform valley gutter cleanup and repair, debris removal, and undertake various storm drain related work to avert local flooding throughout the City; and

WHEREAS, it is recommended the City execute contracts with all three firms for on-call storm related response; and

WHEREAS, funds for this work are available through the General fund reserve.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO HEREBY:

1. Finds the foregoing recitals are true and correct, and are incorporated by this reference into this action; and

2. Adopts a Resolution authorizing the City Manager to execute on-call contracts for emergency storm response and related services for a term of three years, each with an amount of $100,000, with Badger Daylighting Corporation; C2R Engineering, Inc.; and Yerba Buena Engineering & Construction, Inc., including authority to approve up to two, one-year extensions for each agreement; and

An additional appropriation from the General Fund reserve in the amount of $300,000.

PASSED AND ADOPTED this 7th day of November 2023**,** by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Lisa Gauthier, Mayor

ATTEST:

James Colin, City Clerk

APPROVED AS TO FORM:

John D. Lê, City Attorney

REQUEST FOR PROPOSALS

ON-CALL

STORM RESPONSE EMERGENCY SERVICES

CITY OF EAST PALO ALTO, CA

Issue Date: October 11, 2023

CITY OF EAST PALO ALTO

Incorporated in 1983
2415 University Avenue
East Palo Alto 94303
Telephone: (650) 853-3100

REQUEST FOR PROPOSALS FOR ON-CALL STORM RESPONSE EMERGENCY SERVICES

PURPOSE

The City of East Palo Alto intends to solicit proposals from qualified companies to provide on call services for storm water drainage improvement, debris removal and pumping services within the City of East Palo Alto boundary.

1.0 PROPOSAL SUBMITTAL REQUIREMENTS

1.1. To be considered, each bidder must submit a response to this Request for Proposals (RFP) and respond to the SELECTION CRITERIA identifying your understanding of the services requested. The proposal must be signed, in ink, by an official authorized to bind the bidder to its provision.

1.2. Proposals must be marked as "On-Call Storm Response Emergency Services" and must be received **by 2:00 p.m. PST, Wednesday, October 25, 2023.** The bidder is responsible for the timely receipt of their proposal. Late or faxed proposals will **not** be considered.

1.3. The content of this RFP, it's under scope of work, the proposal and any mutual understandings resulting from oral presentations will become contractual obligations if a contract ensues. The failure of the successful proposer to accept these obligations may result in the cancellation of a proposed contract. The City of East Palo Alto further reserves the right to interview the key personnel assigned by the successful proposer to this project. **The City of East Palo Alto reserves the right to reject any and all proposals.**

2.0 NONDISCRIMINATORY PRACTICES

2.1. In accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-4, the City hereby notifies all bidders that it will affirmatively insure that in regard to any contract entered into pursuant to this advertisement, minority business enterprises will be offered full opportunity to submit bids in response to this invitation and will not be discriminated against on the basis of race, color, sex, or national origin for an award.

2.2. The contractor awarded the contract will be subject to the Anti-Harassment Policies, adopted by the City Council of the City of East Palo, on December 16, 2004, which complies with AB1825. (See Attachment 2, Exhibit C, Anti-Harassment Policy).

3.0 LIABILITY

3.1 The City of East Palo Alto assumes no responsibility or liability for costs incurred by the contractor prior to the signing of an agreement. The total liability of the City of East Palo Alto is limited to the terms and conditions of any contract resulting from this RFP.

4.0 INDEMNIFICATION

4.1 The contractor shall indemnify and hold harmless the City of East Palo Alto and its agents and employees, from and against all claims, damages, losses, and expenses, including attorney fees arising out of or resulting from the performance of the work, which includes all labor, materials and equipment required to produce the services required by the contract, provided that any such claim, damage, loss or expense: 1) is injury to or destruction of tangible property (other than the work itself), including the loss of use resulting there from; and 2) is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. The contractor assumes full responsibility and liability for compliance with any and all local, state, federal laws and regulations applicable to the contractor and its employees, including, but not limited to, compliance with the Occupational Safety and Health Act of 1970.

5.0 GENERAL PROPOSAL REQUIREMENTS

5.1 The proposals shall include the following:

5.1.1 Name of firm or company, business address, name of contact person, telephone number, and email address (if applicable).

5.1.2 Labor costs for all ranking classifications.

5.1.3 References, especially government organizations, preferably governmental entities in California; and specifically in the San Francisco Bay Area.

5.1.4 Description of your firm, personnel and services provided.

5.1.5 Reason(s) why you believe your firm should provide these services to the City of East Palo Alto.

5.1.6 Copies of all applicable licenses and insurance certificates (i.e., worker's compensation, general liability, unemployment compensation, etc.).

5.1.7 Any other pertinent information that you believe will assist the City in understanding your company and assurances if awarded the contract, i.e., most recent financial statement, bonding certificate.

5.2 All information contained in this proposal is subject to disclosure.

6.0 **SELECTION CRITERIA**

Responses to this RFP will be evaluated based upon the following factors as presented to the bid proposals:

6.1 **Capability, Qualifications and References – (50%)**

6.1.1 The written proposal should indicate the ability of the contractor to meet the terms of the RFP.

6.1.2 The written proposal should indicate the competence of personnel whom the bidder intends to assign to the project.

6.1.3 Qualifications will be measured by documentation of training and experience, with particular reference to work experience and an emphasis on clear understanding and implementation of Best Management Practices (BMPs) for waterway and outfall clean-up. BMPs for the indicated sites include: minimizing the impact of land disturbance and soil mobilization; eliminating the potential for waterway contamination of any disrupted or removed contents from the outfall cleanup site; and discarding of all clean-up materials in accordance with all applicable municipal codes and laws including but not limited to: appropriate debris disposal, recycling of recoverable materials (if feasible), and (where applicable) hazardous materials remediation. Experience shall be equal or greater in scope to that described herein.

6.1.4 Hazardous Waste Recovery: Competency with hazardous materials recovery is

not required for this proposal, however, appropriate training for identification of "unknown" substances or "potentially" hazardous waste shall be demonstrated and appropriate delegation of duties for hazardous waste mitigation shall be adhered to for proper disposal. Procedures for identifying potentially hazardous waste shall be included in the proposal along with a plan for delegation of hazardous waste cleanup.

6.1.5 Costs of potentially hazardous waste cleanup are not required to be addressed in the total cost of service proposal, as project locations are not known to contain hazardous waste. However, it is expected that contractors will retain a hazardous waste disposal company who will be on call, on stand-by during clean up and construction, in the event that hazardous materials are found. In the event that hazardous waste is identified, immediate City staff contact shall be made, and costs associated with this clean-up effort shall be addressed through a change-order upon staff approval. Emphasis will be placed upon the qualifications and experience of the bidder's project manager.

6.2 **Method of Approach – (30%)**

6.2.1 This factor will be judged based upon the Work Plan provided in the Proposal.

6.3 **Price - (20%)**

6.3.1 This factor will be based on the total cost of the labor for services.

7.0 NEED FOR SERVICE

The City of East Palo Alto owns and maintains storm drain infrastructure throughout the City. The storm drainage infrastructure needs response and repair especially during the rainy season. The scope of work under this RFP includes as-needed services as follows: Repair and installation of drainage inlets, pumping of excessive water, valley gutter cleanup/repair, debris removal, and other storm drain construction work to prevent local flooding throughout the City.

8.0 GENERAL CONDITIONS

8.1 Insurance required during entire length of agreement is as follows:

1. Worker's Compensation coverage per statutory requirements
2. Liability coverage as follows:

Bodily Injury	Property Damage
$1 million per person	$1 million each accident
$1 million each aggregate	$1 million aggregate

8.2 The contractor shall comply with any and all rules and regulations established by

the city regarding security, health and safety, and conduct of contractors and employees.

8.3 The contractor shall have a designated agent on the job site to provide adequate. and continuous supervision at all times that its employees are working.

8.4 The contractor shall promptly remove any of its employees who, in the judgment of the City, either has performed his/her duties unsatisfactory or has violated the agreement.

8.5 The contractor, including all outside contractors, shall comply with all City and Cal OSHA safety policies.

9.0 SUMMARY

This RFP is designed to allow qualified service providers to demonstrate their capability of providing their services to the City of East Palo Alto.

9.1 Six copies of the completed proposals must be received **no later than 2:00 p.m. on Wednesday, October 25, 2023.**

Proposals must be addressed in the following manner:

City of East Palo Alto
Public Works Department
150 Tara Road
East Palo Alto, CA 94303
Attn: Jay Farr, Maintenance Manager

9.2 Format: Proposals should be 81/2 x 11 inches, bound in a single document and organized into sections following the order specified under contents.

9.3 Contents: Proposal shall contain the following information:

A. Labor Rates
Describe hourly labor rates and overtime rates for all classifications.

B. Firm Description
Provide a description of your firm and list relevant information about capabilities, rate of services, and length of time in existence.

C. Relevant Experience
Describe relevant experience dealing with storm drain systems, cleaning up outfalls, removing debris, pumping excessive flooding water from roadways, stabilizing storm drain outfalls for other public or private entities, municipalities or similar organizations.

D. Key Personnel Qualifications
Identify key personnel assigned to the project, their respective roles, and a synopsis of their relevant experience.

E. References
List of private, and/or public agencies or clients for whom similar work has been performed. Provide the name, title and phone number of a contact person. The City may request a copy of a similar plan prepared by your firm for another client.

F. Insurance
The individual or firm receiving the contract shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontracts as set forth in Exhibit "B" which is attached hereto and incorporated by reference herein. The cost of such insurance shall be included in the consultant's proposal.

EVALUATION CRITERIA

Proposals will be evaluated on the basis of the following criteria:

a. Capabilities and resources of the firm to perform the contracted work.
b. Qualifications and experience of key individuals.
c. Ability to complete the work on a short schedule and timeline.
d. Cost effectiveness.
e. How well the submitted proposal for service fits the needs of the city.
f. Experience and qualification of project manager

The above selection criteria are provided to assist responders to proposals and are not meant to limit other considerations that may become apparent during the course of the selection process.

Proposals will be reviewed and evaluated by the City of East Palo Alto, and a recommendation for award of contract will be presented to the East Palo Alto City Council for disposition. Incomplete and/or late proposals will not be considered.

OTHER CONSIDERATIONS

The City of East Palo Alto reserves the right to reject any and all proposals. This Request for Qualifications does not commit the City to award a contract, pay any costs incurred in the preparation of proposals, or to procure or contract for supplies or services.

The City of East Palo Alto reserves the right to negotiate with any qualified source or to

cancel, in part of or in its entirety, this Request for Proposals, if it is in the best interest of the City to do so. The City may require the selected bidders to participate in negotiations, and submit such price, technical or other revisions of the proposal that may result from negotiations.

QUESTIONS

Questions should be directed in writing to:

Jay Farr
Public Works Maintenance Manager
150 Tara Road
East Palo Alto, CA 94303
Email: jfarr@cityofepa.org

Sample

GENERAL CONSTRUCTION CONTRACT

This General Construction Contract ("Contract") is made at East Palo Alto, California, dated for reference this _____ day of __, 20___, by and between the City of East Palo Alto, a municipal corporation ("City") and [type in Contractor's name], a [type in the type of entity], hereinafter referred to as "Contractor", who agree as follows:

1. Scope of Work. Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete the project in a good and workmanlike manner. The work consist(s) of furnishing all labor, materials, equipment, tools and services necessary to [type project description], as further set forth in the Scope of Work, Exhibit A. The Project also includes [type additional information if necessary], as called for, and in the manner designated in, and in strict conformity with, the Plans and Specifications prepared by [type who prepared Plans and Specifications] and adopted by the City. These Plans and Specifications are entitled [type exact name of Plans and Specifications].

The contractor understands and agrees that the work will be performed and completed as required in the Plans and Specifications under the sole direction and control of the Contractor, and subject to inspection and approval of the City, or its representatives. The City hereby designates as its representative for the purpose of this contract the City Engineer for Construction or an employee of the City who will be designated in writing by the Public Works Director.

2. Contract Price. The City agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the sum of exceed [insert dollar amount in words - e.g. Two Thousand Five Hundred Fifty Dollars and 13 Cents] ([insert dollar amount in number- e.g., $2,550.13]) subject to final determination of work performed and materials furnished at unit prices per Exhibit "A", and subject to additions and deductions in accordance, as provided in the Documents and in accordance with Contract Documents. The sum includes base bid and accepted Additive Alternate(s) No. [type number(s) of alternatives]. All other Additive Alternate(s) are rejected by City and are not included in this contract.

3. The Contract Documents. The complete Contract consists of the following documents: Notice Inviting Bids; Instructions to Bidders; Performance Bond; Payment Bond; Guaranty; Plans and Specifications for [type name of project], Project No. [type project number]. These documents are all incorporated herein by reference.

This Contract also contains the following Exhibits, attached and incorporated by reference:

Exhibit A – [Type in Contractor's name] Construction Bid Proposal
Exhibit B – Faithful Performance Bond
Exhibit C – Labor and Materials Bond
Exhibit D – Insurance Requirements
Exhibit E – City of East Palo Alto's Policy Against Discrimination, Harassment, and Retaliation

The documents incorporated by reference and any exhibits, including any attachments, comprise the complete contract and are collectively referred to as the Contract Documents. Any and all obligations of the City and the Contractor are fully set forth and described therein. All of the above documents are intended to work together so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

4. Permits. Compliance with Law. Contractor shall, at its expense, obtain all necessary permits and licenses, easements, etc., for the construction of the project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health and safety.

5. Inspection by City. The contractor shall at all times maintain proper facilities and provide safe access for inspection by the City to all parts of the work, and to the shops wherein the work is in preparation. Where the Specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the City of its readiness for inspection and without the approval thereof or consent thereto by the latter. Should any such work be covered up without such notice, approval, or consent, it must, if required by City, be uncovered for examination at the Contractor's expense.

6. Extra or Additional Work and Changes. Should City at any time during the progress of the work request any alterations, deviations, additions or omissions from the Specifications or Plans or other Contract Documents it shall be at liberty to do so, and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of the contract price, as the case may be, by a fair and reasonable valuation, agreed to in writing between the parties hereto. No extra work shall be performed, or change be made unless in pursuance of a written order from the Public Works Director or authorized representative, stating that the extra work or change is authorized and no claim for an addition to the contract sum shall be valid unless so ordered.

7. Time for Completion. All work under this contract shall be completed before the expiration _____(XXX) calendar days from the date specified in the Notice to Proceed.

If Contractor shall be delayed in the work by the acts or neglect of City, or its employees or those under it by contract or otherwise, or by changes ordered in the work, or by strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the

City, or by any cause which the City shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the City may decide.

This provision does not exclude the recovery of damages for delay by either party under other provisions.

8. Inspection and Testing of Materials. Contractor shall notify City a sufficient time in advance of the manufacture or production of materials, to be supplied under this contract, in order that the City may arrange for mill or factory inspection and testing of same, if City requests such notice from Contractor.

9. Termination for Breach, etc. If Contractor should file a bankruptcy petition and/or be judged bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if Contractor or any subcontractors should violate any of the provisions of the Contract, City may serve written notice upon Contractor and its surety of City's intention to terminate the Contract. The notice shall contain the reasons for such intention to terminate the Contract, and, unless within ten days after serving such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten days, the Contract shall cease and terminate. In the event of any such termination, City shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided, however that, if the surety within fifteen days after the serving upon it of notice of termination does not give City written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty days from the date of the serving of such notice, City may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be liable to City for any excess cost occasioned City thereby, and in such event City may without liability for so doing take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Contractor as may be on the site of the work and necessary therefor.

10. City's Right to Withhold Certain Amounts and Make Application Thereof. In addition to the amount which City may retain under Paragraph 21 until the final completion and acceptance of all work covered by the Contract, City may withhold from payment to Contractor such amount or amounts as in its judgment may be necessary to pay just claims against Contractor or any subcontractors for labor and services rendered and materials furnished in and about the work. The City may apply such withheld amount or amounts to the payment of such claims in its discretion. In so doing City shall be deemed the agent of the Contractor and any payment so made by City shall be considered as a payment made under the Contract by City to the Contractor and City shall not be liable to Contractor for any such payment made in good faith. Such payment may be made without prior judicial determination of the claim or claims.

11. Notice and Service Thereof. All notices required pursuant to this Contract shall be communicated in writing, and shall be delivered in person, by commercial courier or

by first class or priority mail delivered by the United States Postal Service. Transmission of notice by facsimile or by telephone may be deemed sufficient if the requirement for written notice is waived, in writing, by the receiving party. Notices delivered in person shall be deemed communicated as of actual receipt. Notices sent by mail or courier service shall be deemed communicated as of three days after mailing or dispatch, unless that date is a date on which there is no mail or delivery service, in which case communication shall be deemed to occur the next mail service or delivery day. The burden of proof of compliance with this requirement for written notice shall be on the sending party. All notices sent pursuant to this Contract shall be addressed as follows:

City: City of East Palo Alto
Public Works Maintenance Division
Attn: Jay Farr
150 Tara Road
East Palo Alto, CA 94303

Contractar: _____

_____

_____

12. Assignment of Contract. Neither the Contract, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Contractor without the prior written approval of City.

13. Compliance with Specifications of Materials. Whenever in the Specifications, any material or process is indicated or specified by patent or proprietary name, or by name of manufacturer, such Specifications must be met by Contractor, unless City agrees in writing to some other material, process or article offered by Contractor which is equal in all respects to the one specified.

14. Contract Security. Contractor shall furnish a surety bond in an amount at least equal to 100 percent of the contract price as security for the faithful performance of this Contract. Contractor shall also furnish a separate surety bond in an amount at least equal to 100 percent of the contract price as security for the payment of all persons for furnishing materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond. Bonds shall be issued by an admitted surety insurer authorized to operate in the state of California.

15. Insurance. Contractor shall not commence work under this Contract until all insurance required as set forth in Exhibit B has been obtained and such insurance has been approved by the City, nor shall Contractor allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been

so obtained and approved. Contractor shall furnish the City with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract and particularly Paragraph 16 hereof. Any policy of insurance required of the Contractor under this Contract shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to the City of any pending change in the limits of liability or of any cancellation or modification of the policy. Insurance carrier shall be California-admitted.

16. Hold Harmless. Contractor agrees to defend, save, indemnify and hold harmless City and all its officers, employees, agents, independent contractors and volunteers against any and all liability, claims, judgments, or demands, including demands arising from injuries or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigation arising through the active negligence or willful misconduct of City, or of City's officials, agents, employees, independent contractors or volunteers who are directly responsible to City. Contractor shall make good and reimburse City for any expenditures, including reasonable attorneys' fees, City may make by reason of such claim or litigation, and, if requested by City, Contractor shall defend any such suits at the sole cost and expense of Contractor.

17. Hours of Work. Eight hours of labor during any one calendar day and forty hours of labor during any one calendar week shall constitute the maximum hours of service upon all work done hereunder, and it is expressly stipulated that no laborer, worker, or mechanic employed at any time by the Contractor or by any subcontractor or subcontractors under this Contract, upon the work or upon any part of the work contemplated by this Contract, shall be required or permitted to work thereon more than eight hours during any one calendar day and forty hours during any one calendar week, except, as provided by Section 1815 of the Labor Code of the State of California, work performed by employees of contractors in excess of eight hours per day and forty hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. It is further expressly stipulated that for each and every violation of Sections 1811-1815, inclusive, of the Labor Code of the State of California, all the provisions whereof are deemed to be incorporated herein, Contractor shall forfeit, as a penalty to City, fifty dollars ($50.00) for each laborer, worker, or mechanic employed in the execution of this Contract by Contractor, or by any subcontractor under this Contract, for each calendar day during which the laborer, worker, or mechanic is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week in violation of the provisions of the Sections of the Labor Code.

Contractor, and each subcontractor, shall, in accordance with California Labor Code Section 1776 or as the same may be later amended, keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with work under

this agreement. Each payroll record shall contain or be verified by a written declaration under penalty of perjury, in accordance with Labor Code Section 1776(a). Such payroll records shall be made available at all reasonable times at the Contractor's principal office to the persons authorized to inspect such records pursuant to Labor Code Section 1776. A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, as well as to the City's representative. In the event the Contractor or a Subcontractor fails to comply in a timely manner within ten days to a written notice requesting the records, such contractor or subcontractor shall forfeit twenty-five dollars ($25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, in accordance with Labor Code Section 1776(g).

18. Wage Rates. Pursuant to the Labor Code of the State of California, or any applicable local law, City has ascertained the general prevailing rate per diem wages and rates for holidays, and overtime work in the City, for each craft, classification or type of laborer, worker, or mechanic needed to execute this Contract. City has adopted, by reference, the general prevailing rate of wages applicable to the work to be done under the Contract, as adopted and published by the Division of Labor Standards Enforcement and Labor Statistics and Research of the State of California, Department of Industrial Relations, to which reference is hereby made for a full and detailed description. A copy of the prevailing wage rates may be reviewed in the office of the Public Works Director, City of East Palo Alto, 1960 Tate Street, East Palo Alto, California. Wage rates can also be obtained through the California Department of Industrial Relations website at: http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm

Neither the notice inviting bids, nor this Contract shall constitute a representation of fact as to the prevailing wage rates upon which the Contractor or any subcontractor may base any claim against City.

It shall be mandatory upon Contractor and upon any subcontractor to pay not less than the specified rates to all laborers, workers, and mechanics employed in the execution of the Contract. It is further expressly stipulated that Contractor shall, as a penalty to City, forfeit fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic paid less than the stipulated prevailing rates for any work done under this Contract by Contractor or by any subcontractor; and Contractor agrees to comply with all provisions of Section 1775 of the Labor Code.

In case it becomes necessary for Contractor or any subcontractor to employ on the project under this Contract any person in a trade or occupation (except executives, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate is herein specified, Contractor shall immediately notify City who will promptly thereafter determine the prevailing rate for such additional trade or occupation and shall furnish Contractor with the minimum rate based thereon. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of

the initial employment of the person affected and during the continuance of such employment.

19. Accident Prevention. Precautions shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

20. Contractor's Guarantee. City shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to the building, work, or equipment or any part thereof, or in, on, or about the same during its construction and before acceptance. Contractor unqualifiedly guarantees the first-class quality of all workmanship and of all materials, apparatus, and equipment used or installed by Contractor or by any subcontractor or supplier in the project which is the subject of this Contract, unless a lesser quality is expressly authorized in the Plans and Specifications, in which event Contractor unqualifiedly guarantees such lesser quality; and that the work as performed by Contractor will conform with the Plans and Specifications or any written authorized deviations therefrom. In case of any defect in work, materials, apparatus or equipment, whether latent or patent, revealed to City within one year of the date of acceptance of completion of this Contract by City, Contractor will forthwith remedy such defect or defects without cost to City.

21. Liquidated Damages. Time shall be the essence of this Contract. If Contractor fails to complete, within the time fixed for such completion, the entire work mentioned and described and contracted to be done and performed, Contractor shall become liable to City for liquidated damages in the sum of _____ Hundred and No/100 Dollars ($XXX.00) for each and every calendar day during which work shall remain uncompleted beyond such time fixed for completion or any lawful extension thereof. The amount specified as liquidated damages is presumed to be the amount of damage sustained by City since it would be impracticable or extremely difficult to fix the actual damage; and the amount of liquidated damages may be deducted by City from moneys due Contractor hereunder, or its assigns and successors at the time of completion, and Contractor, or its assigns and successors at the time of completion, and its sureties shall be liable to City for any excess.

22. Additional Provisions.

None.

IN WITNESS WHEREOF, two identical counterparts of this contract, each of which shall for all purposed be deemed an original thereof, have been duly executed by the parties.

CITY OF EAST PALO ALTO
a municipal corporation

By_____
Melvin E. Gaines
City Manager

By_____
James Colin
City Clerk

[INSERT CONTRACTOR'S NAME & TYPE OF COMPANY]

License No. _____

By_____
[INSERT NAME]
[INSERT TITLE]

By_____
[INSERT NAME]
[INSERT TITLE]

APPROVED AS TO CONTENT

By_____
Humza Javed
Public Works Director

APPROVED AS TO FORM:

_____
John D. Lê
City Attorney

Exhibit A
Pricing Sheet

No.	Position/Title	Hourly Rate	Overtime Rate	Emergency Rate
1	Equipment Operator	$	$	$
2	Truck Driver	$	$	$
3	Laborer	$	$	$
4	Foramen	$	$	$
5	Superintendent	$	$	$
6	Hydro Vacuum Truck Operator	$	$	$
7	Apprentice Worker	$	$	$
8	Journeyman Worker	$	$	$
9	Traffic Control	$	$	$
10	Lead Worker	$	$	$

EXHIBIT B

INSURANCE REQUIREMENTS

PLEASE GIVE TO YOUR INSURANCE AGENT

There shall be a contractual liability endorsement extending the GRANTEE'S coverage to include the contractual liability assumed by the GRANTEE pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the CITY, at the address shown in Section 22 of the Agreement of any pending cancellation of the policy. GRANTEE shall notify CITY of any pending change to the policy. All certificates shall be filed with the City.

A. Commercial General Liability Insurance: Contractor's General Liability insurance shall include contractual liability coverage. Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance (Commercial General Liability Insurance) on an occurrence basis as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as claims for property damage which may arise from the Contractor's operations under this Agreement, whether such operations be by Contractor or by any sub-Contractor or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall be not less than One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000), in aggregate or Three Million Dollars ($3,000,000) combined single limit bodily injury and property damage for each occurrence.

B. Automobile Liability Insurance: CONTRACTOR shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars ($1,000,000.00) per accident for bodily injury and property damage.

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

D. Professional Liability Insurance: Contractor shall take out and maintain during the life of this Agreement a policy of professional liability insurance, protecting it against claims arising out of the acts, errors, or omissions of Contractor pursuant to this Agreement, in the amount of not less than One Million Dollars ($1,000,000) per claim. Said professional liability insurance is to be kept in force for not less than one (1) year after completion of services described herein.

E. Broader Insurance Coverage: In the event that Contractor maintains broader coverage and/or higher limits than the City's minimum requirements, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that

such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance shall be called upon to protect it as a named insured. B. Additional Insured Status: The City of East Palo Alto, its subsidiary agencies, directors, officers, employees, agents, independent contractors and volunteers shall be named as additional insureds on any such policies of comprehensive general and automobile liability insurance.

F. Primary and Non-Contributory Coverage: Except for professional liability and worker's compensation insurance, the policies shall also contain a provision that the insurance afforded to the City, its subsidiary agencies, and their directors, officers, employees, agents, independent contractors and volunteers based on additional insured status shall be primary and non-contributory insurance to the full limits of liability of the policy, and that if the City, its subsidiary agencies and their directors, officers, employees, agents, independent contractors and volunteers have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

G. Verification of Coverage: Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause).

H. Notice of Cancellation: Contractor shall provide thirty (30) days' notice, in writing, to the City, at 2415 University Avenue, East Palo Alto, CA 94303, of any pending change or cancellation of the policy.

I. Deductibles or Self-Insured Retentions: Prior to the execution of this Agreement, any deductibles or self-insured retentions must be declared to and approved by City.

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

K. The City of East Palo Alto, its Council Members, subsidiary agencies, directors, officers, agents, employees, and servants shall be named as additional insured on any such policies of comprehensive general and automobile liability insurance, except professional liability and worker's compensation, which shall also contain a provision that the insurance afforded thereby to the CITY, its subsidiary agencies, and their officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the CITY, its subsidiary agencies and their officers and employees have other insurance against a loss covered by a policy, such other insurance shall be excess insurance only.

EXHIBIT C

CITY OF EAST PALO ALTO'S POLICY AGAINST DISCRIMINATION, HARASSMENT AND RETALIATION

EFFECTIVE DATE: 12/21/2004
REVISED DATE: 1/12/07
ADOPTED BY CITY COUNCIL: 12/21/2004

I. PURPOSES

The purposes of this policy are to emphasize the City's commitment to keeping its workplace free of harassment, discrimination and retaliation, to define and provide examples of the conduct that is prohibited, to summarize the respective responsibilities for preventing, reporting, investigating, and responding to violations and to give clear warning of the serious consequences that violators will face.

A copy of this policy shall be provided to all persons who are subject to it, and shall be posted on City bulletin boards in all City facilities.

II. POLICY

All of the following are prohibited by this Policy:

- Discrimination or harassment in any aspect of City employment based on any legally protected characteristic or status, including sex, gender, sexual orientation, race, color, national origin, language, ancestry, religion, age, marital status, domestic partner, physical disability, mental disability, or medical condition.

- Retaliation for opposing, filing a complaint about, or participating in an investigation of, any such harassment or discrimination.

- Aiding, abetting, inciting, compelling, or coercing or any such discrimination, harassment or retaliation, or attempting to do so.

The City will take all reasonable steps necessary to prevent such misconduct from occurring, and to remedy and punish any occurrence. Any City employee, Council member, member of any advisory body, including any Commissioner, Committee member, or Board member found having engaged in any such misconduct will be subject to disciplinary action up to and including termination or censure or removal and will be deemed to have acted outside the course and scope of his or her employment.

This policy applies to all City employees, volunteers, interns, vendors, and CONSULTANTs as well as to all applicants for City positions.
The policy shall not be interpreted or applied in any manner that would be inconsistent with any applicable State or Federal law or regulation or increase the legal liability of the City.

III. DESCRIPTION AND EXAMPLES OF PROHIBITED HARASSMENT

Harassment on the basis of sex is unlawful, and is prohibited by this policy. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- An individual's submission to such conduct is made explicitly or implicitly, a term or condition of that individual's employment; or,

- An individual's submission to or rejection of such conducts is used as the basis for an employment decision affecting that individual; or,

- The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, abusive, or offensive work environment.

Sexual harassment need not be motivated by sexual desire or gratification, and may include nonsexual conduct motivated by the violator's hostility towards the victim's gender, or towards the victim's nonconformity to gender stereotypes. Sexual harassment includes not only conduct motivated by gender, but also by pregnancy, childbirth, or a related condition. A harasser may be either male or female, and the victim may either be the same sex or the opposite sex. Even a person who is not the intended target of harassment may be harassed by it if he or she witnesses it.

Sexual harassment may be verbal, visual, or physical. For example:

- Verbal harassment may consist of derogatory, threatening, or intimidating comments, epithets, slurs or jokes; references to gender, physical appearance, attire, sexual prowess, marital status, or pregnancy; or sexual advances, propositions, or demands.

- Visual harassment may consist of displaying or circulating derogatory or offensive posters, cartoons, drawings, photographs, pin-ups, computer images, or electronic media transmissions.

- Physical harassment may consist of assault, battery, or unwelcome, unnecessary and offensive touching (kissing, hugging, patting, rubbing, pinching, brushing against), stating, leering, gesturing, whistling or making noises, impeding or blocking movement, or physical interfering with normal work or movement.

In addition to prohibiting harassment based on sex or gender, this policy also prohibits harassment based on sexual orientation, or upon any other legal protected characteristic or status, such as race, religion, creed, color, national origin, language, ancestry, physical disability, mental disability, medical condition, marital status, domestic partner, or age.

Harassment on the basis of such factors is subject to the principles applicable to sexual harassment, as stated above.

IV. REPORTING DISCRIMINATION, HARASSMENT OR RETALIATION

Any City employee, volunteer, intern, vendor, CONSULTANT, or applicant who becomes aware of any discrimination, harassment or retaliation prohibited by this policy shall report it immediately to their immediate supervisor, or higher ranking supervisor, or the Assistant City Manager. Under no circumstances shall such a report be required or expected to be made to the person who engaged in the misconduct that is subject to this report.

The responsibility to report conduct prohibited by this policy arises even if the conduct is directed toward someone else and even if the person toward whom it is directed does not want it reported. Reports may be made orally or in writing, free of requirements as to form.
Because reports of conduct prohibited by this policy will be treated as serious charges, the making of a deliberately false report, or a report made with reckless disregard for its truth or falsity, may subject the maker to disciplinary action.

V. INVESTIGATION AND RESOLUTION

The City of East Palo Alto will investigate all reported violations of this policy. All employees, volunteers, interns, vendors and CONSULTANTs, members of the City Council, or members of a City advisory body shall cooperate with any such investigation.

Any supervisor, manager department head, member of the City Council, or member of a City advisory body who receives a report of, or who becomes aware of, conduct prohibited by this policy shall promptly report it to the Personnel Officer. Upon receiving the report, the Personnel Officer shall direct any report that accuses a City Council member or appointee to the City Council for investigation and resolution. The City Council shall delegate the responsibility to conduct a prompt, full, and fair investigation to the qualified private investigator. Upon receiving a report regarding a non-City Council member or appointee, the Personnel Officer shall conduct a prompt, full, and fair infestation, or delegate that responsibility to a qualified City employee or private investigator. The person performing the investigation shall:

- Interview the complainant, the accused, and any other person the investigator believe to have knowledge relevant to the charges;
- Gather and review any documentary, electronic, or physical evidence relevant to the charges;
- Consult with legal counsel as needed;
- Determine whether the charges can or cannot be substantiated; and
- Develop recommendations for appropriate remedial and/or disciplinary action, if any.

VI. OUTSIDE ADMINISTRATIVE AGENCIES

In addition to the remedies described in this Policy, the U.S. Equal Employment Commission and the California Department of Fair Employment and Housing provide administrative complaint and investigation processes as to harassment, discrimination or retaliation on the basis of a protected status. The toll free telephone number for such office is listed below:

California Department of Fair Employment and Housing 1.800.233.3212
U.S. Equal Employment Opportunity Commission 1.800.669.4000

CONSENT ITEM 3.5

EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: November 7, 2023

TO: Honorable Mayor and Members of the City Council

VIA: Melvin E. Gaines, City Manager

BY: Humza Javed, Public Works Director
Batool Zaro, Associate Engineer

SUBJECT: Authorization to apply for the TDA Article 3 Bicycle and Pedestrian Program for the Pulgas Avenue Mini-Roundabout Improvements

Recommendation

Adopt a Resolution authorizing the City Manager to:

1. Submit an application for the Transportation Development Act Article 3 Bicycle and Pedestrian Program for the Pulgas Avenue mini-roundabout improvements at Pulgas Avenue and Runnymede Street and Pulgas Avenue and Beech Street; and

2. Execute all grant-related documents, in a form approved by the City Attorney.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

Implement the Comprehensive Transportation and Mobility Plan

Background

The City/County Association of Governments of San Mateo County (C/CAG) recently released a call for projects for the Transportation Development Act (TDA) Article 3 Program. The program is intended to fund eligible pedestrian and bicycle projects using TDA Article 3 funds, which are derived from Local Transportation funds and the State Transit Assistance fund. It is

estimated that a total of $2,590,706 will be available for this FY 2023/24.

Analysis

The City of East Palo Alto is preparing an application for improving the existing temporary traffic circles to mini roundabouts at the intersections of Pulgas Avenue and Runnymede Street; and Pulgas Avenue and Beech Street. The proposed project would include pedestrian safety improvements at the two intersections as well as traffic calming measures. Specifically, the project would include the installation of ADA-compliant curb ramps, two mini-roundabouts, and striping and signage improvements at both intersections.

The project cost estimate is approximately $500,000. The City is requesting $400,000 in construction funding, and there is a 10% match requirement. The grant amount is $400,000 and the City match is in addition to the $400,000.

Grant applications are due November 13, 2023, and projects shall be selected by CCAG in May 2023.

Fiscal Impact

The project cost estimate is $500,000. If the City is awarded the maximum $400,000 grant amount, there is a 10% city match requirement. The match is not included in the $400,000. The city match as well as the remaining project balance can be reimbursed through Measure W local tax. Staff would request these funds be appropriated when requesting that the City Council accept the grant award.

Public Notice

The public was provided notice of this agenda item by posting the City Council agenda on the City's official bulletin board outside City Hall and making the agenda and report available at the City's website and at the San Mateo Co. Library located at 2415 University Avenue, East Palo Alto.

Environmental

The action being considered does not constitute a "Project" within the meaning of the California Environmental Quality Act (CEQA), pursuant to CEQA Guideline section 15378 (b)(5), in that it is a government administrative activity that will not result in direct or indirect

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO

AUTHORIZING THE CITY MANAGER TO: SUBMIT AN APPLICATION FOR TRANSPORTATION DEVELOPMENT ACT ARTICLE 3 BICYCLE AND PEDESTRIAN PROGRAM FOR THE PULGAS AVENUE MINI-ROUNDABOUT IMPROVEMENTS AT THE INTERSECTIONS OF PULGAS AVENUE AND RUNNYMEDE STREET AND PULGAS AVENUE AND BEECH STREET; AND EXECUTE ALL GRANT-RELATED DOCUMENTS, IN A FORM APPROVED BY THE CITY ATTORNEY

WHEREAS, the City/County Association of Governments of San Mateo County ("C/CAG") recently released a call for projects for the Transportation Development Act ("TDA") Article 3 Program ("Program"); and

WHEREAS, the Program is intended to fund eligible pedestrian and bicycle projects using TDA Article 3 funds; and

WHEREAS, the City of East Palo Alto ("City") intends to submit a funding application to fund existing temporary traffic circles, including mini roundabouts at the intersections of the Pulgas Avenue and Runnymede Street and Pulgas Avenue and Beech Street, which is estimated to cost $500,000; and

WHEREAS, the grant funding request is for $400,000 with an additional City local match of 10%, the remaining balance is anticipated to be drawn from the General Fund; and

WHEREAS, the City match and remaining construction balance can be funded through Measure W funds.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO HEREBY:

1. Finds the foregoing recitals are true and correct, and are incorporated by this reference into this action;

2. Authorizes the City Manager to:

    a. submit an application for TDA Article 3 Bicycle and Pedestrian Program for the Pulgas Avenue mini-roundabout improvements at Pulgas Avenue and Runnymede Street and Pulgas Avenue and Beech Street; and

    b. Execute all grant related documents, in a form approved by the City Attorney.

PASSED AND ADOPTED this 7th day of November 2023**,** by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Gauthier, Mayor

ATTEST:

James Colin, City Clerk

APPROVED AS TO FORM:

John D. Lê, City Attorney

EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: November 7, 2023

TO: Honorable Mayor and Members of the City Council

VIA: Melvin Gaines, City Manager

BY: Amy Chen, Director of Community & Economic Development

SUBJECT: Authorize Acceptance of CalAPP Grant Fund Award from the California Energy Commission for the Hardware, Training, and Implementation for SolarAPP+

Recommendation

Adopt a resolution authorizing the City Manager to:

1. Accept on behalf of the City of East Palo Alto the CalAPP Grant Fund Award from the California Energy Commission for the hardware, training and implementation of SolarAPP+ for the Building Division of the Community & Economic Development Department; and

2. Execute the attached Grant Agreement Authorizing the Acceptance of Terms and Conditions with California Energy Commission.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

- Promote Health & Public Safety

Background

Pursuant to Senate Bill 379, codified at California Government Code Section 65850.52 (“CA GC 65850.52”), California cities and counties are required to implement an online,

automated permitting software platform for the compliance review and issuance of residential solar energy and solar storage permits so that the State of California (the "State") meets its energy goals. In response to CA GC 65850.52, The U.S. Department of Energy's National Renewable Energy Laboratory developed SolarAPP+, which is an online portal that automates code-compliance plan review and allows a jurisdiction to issue permits in real time for residential solar energy systems as well as solar energy systems paired with solar energy storage. The State, through the California Energy Com, also allocated approximately $20 million to the California Energy Commission ("CEC") to provide grant funding to cities and counties that adopt SolarAPP+. To that end, on June 1, 2022, the CEC released a grant solicitation and application package entitled California Automated Permit Processing Program ("CalAPP").

Although SolarAPP+ is a free software platform, the grant funding is designed as an incentive to assist jurisdictions with the costs associated with implementation and to streamline execution. The maximum grant funding available to participating jurisdictions ranges between $40,000 and $100,000 and is dependent on the population size of the jurisdiction.

On April 20, 2023, the City of East Palo Alto applied for grant funding from the CEC and based on the grant application criteria, the City was awarded a maximum of $40,000 to be used for the purchase of hardware, training for staff, and implementation and execution of the SolarAPP+ permitting platform.

Staff requests City Council to authorize the City Manager to accept on behalf of the City of East Palo Alto the grant fund award from the California Energy Commission, terms and conditions of the grant agreement (see attachment), and the implementation of SolarAPP+.

Analysis

On June 19, 2023, the CEC notified City officials of its grant allocation of $40,000. The grant funds awarded to the City shall cover expenses including, but not limited to, hardware, such as mobile tablets for Building Staff which will give them immediate access to permit plans and specifications in the field and the ability to provide contractors with inspection results remotely, in real time. Additionally, the grant funds will also cover both software implementation costs and the staff time spent on training.

Staff recommends Council accept the awarded grant funds because the implementation of SolarAPP+ within the Building Division will accelerate solar permit deployment in the City. SolarAPP+ was designed to provide developers with instant code-compliance review of their residential solar plans before submitting their application for a solar permit, which will dramatically reduce the amount of time a residential solar permit application spends in plan check review. Instant permit approval allows contractors to

accelerate their installation process, thereby saving the contractor and the City valuable time, thus increasing the volume of permits the City can process and boosting productivity. Deferring residential solar permit processing to SolarAPP+ allows staff to focus on more complex permit applications and increase output, which positively contributes to the ever- expanding economic growth of the City.

Fiscal Impact

There is no fiscal impact associated with the contents of this staff report.

Public Notice

The public was provided notice of this agenda item by making the agenda and report available on the City's website and on a bulletin board located at City Hall: 2415 University Avenue, East Palo Alto.

Environmental

The proposed action does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15378(b)(4) and (5) in that it is a governmental fiscal, organizational or administrative activity that will not result in direct or indirect changes in the environment.

Attachments

1. Resolution.
2. Grant Agreement Authorizing the Acceptance of Terms and Conditions with California Energy Commission.

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO

AUTHORIZINGTHE CITY MANAGER ON BEHALF OF THE CITY OF EAST PALO ALTO TO ACCEPT THE CALAPP GRANT FUND AWARD FROM THE CALIFORNIA ENERGY COMMISSION FOR THE HARDWARE, TRAINING, AND IMPLEMENTATION OF SOLARAPP+ FOR THE BUILDING DEPARTMENT AND TO SIGN THE GRANT AGREEMENT AUTHORIZING THE ACCEPTANCE OF TERMS AND CONDITIONS WITH CALIFORNIA ENERGY COMMISSION

WHEREAS, the City's building division is responsible for conducting plan check of solar energy and storage permit applications; and

WHEREAS, pursuant to Senate Bill 379, codified at California Government Code section 65850.52, the State requires all cities and counties to implement an online, automated permitting software platform; and

WHEREAS, the U.S. Department of Energy, National Renewable Energy Laboratory developed an automated, online permitting software platform called SolarAPP+ to assist the State in meeting its energy goals; and

WHEREAS, SolarAPP+ was designed to provide developers and jurisdictions with instant code-compliance review and subsequent permit approval of residential solar permit applications to accelerate the construction of renewable energy resources within local communities; and

WHEREAS, utilization of SolarAPP+ allows staff to focus on more complex permit applications without delaying permit applications that can be reviewed through the SolarAPP+ automated review process; and

WHEREAS, the State allocated $20 million to the California Energy Commission (the "CEC") to provide grant funding to eligible jurisdictions that adopt SolarAPP+; and

WHEREAS, on June 1, 2022, the CEC released its grant solicitation and application package entitled the California Automated Permit Processing Program ("CalAPP"); and

WHEREAS, on April 20, 2023, the City applied for the CalAPP and was awarded $40,000; and

WHEREAS, City staff recommends City Council consider authorizing the acceptance of the grant award of $40,000 from the CEC for the implementation of SolarAPP+.

NOW, THEREFORE, BE IT RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO HEREBY:

1. Accept on behalf of the City of East Palo Alto the CalAPP Grant Fund Award from the California Energy Commission for the hardware, training and implementation of SolarAPP+ for the Building Division of the Community & Economic Development Department; and

2. Authorizes the City Manager to Execute the attached Grant Agreement Authorizing the Acceptance of Terms and Conditions with California Energy Commission.

PASSED AND ADOPTED this 7th day of November 2023**,** by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Gauthier, Mayor

ATTEST:

James Colin, City Clerk

APPROVED AS TO FORM:

John D. Lê, City Attorney

STATE OF CALIFORNIA

GRANT AGREEMENT

CEC-146 (Revised 3/2019)

CALIFORNIA ENERGY COMMISSION

RECIPIENT	AGREEMENT NUMBER
City of East Palo Alto	**APP-22-174**
ADDRESS 1960 Tate St. East Palo Alto CA, 92071	AGREEMENT TERM **04/21/2023 to 05/31/2027** The effective date of this Agreement is either the start date or the approval signature date by the California Energy Commission representative below, whichever is later. The California Energy Commission shall be the last party to sign. No work is authorized, nor shall any work begin, until on or after the effective date.

PROJECT DESCRIPTION

The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the agreement.

Exhibit A – Application with Scope of Work	Page(s): 4
Exhibit B – APP General Terms and Conditions	Page(s): 5
Exhibit C – Contact List	Page(s): 1

REIMBURSABLE AMOUNT	$ 40,000
MINIMUM MATCH SHARE REQUIRED	$ 0
TOTAL OF REIMBURSABLE AMOUNT AND MINIMUM MATCH	$ 40,000

The undersigned parties have read the attachments to this agreement and will comply with the standards and requirements contained therein.

CALIFORNIA ENERGY COMMISSION		CONTRACTOR	
AUTHORIZED SIGNATURE Adrienne Winuk	DATE 6/15/2023	AUTHORIZED SIGNATURE Romeo Herrera	DATE 6/15/2023
NAME Adrienne Winuk		NAME	
TITLE Contracts, Grants, and Loans Office Manager		TITLE Chief Building Official	
CALIFORNIA ENERGY COMMISSION ADDRESS 715 P Street, MS 18, Sacramento, CA 95814			

ATTACHMENT 01
Grant Application Form – EXHIBIT A

California Automated Permit Processing (CalAPP) Program

1. APPLICANT INFORMATION (REQUIRED)

Jurisdiction Name (please use full legal name as it would appear on the executed grant):

East Palo Alto

Jurisdiction Type (select one):

☒ City ☐ County ☐ City and County

Current Estimated Population State of California Department of Finance Demographics (https://dof.ca.gov/forecasting/Demographics/):

☒ Less than 50,000 ☐ From 100,000 to 200,000

☐ From 50,000 to 99,999 ☐ Greater than 200,000

Project Manager *(serves as point of contact for all communications)*	Name	Romeo Herrera
	Street Address	1960 Tate St
	City and Zip Code	East Palo Alto, 94303
	Phone Number	(650) 853-5908
	E-Mail Address	rherrera@cityofepa.org

2. FUNDING (REQUIRED)

Assigned Maximum Grant Amount (select ***one***)

☒ **Group 1 ($40,000):** Population less than 50,000

☐ **Group 2 ($60,000):** Population from 50,000 to 99,999

☐ **Group 3 ($80,000):** Population from 100,000 to 200,000

☐ **Group 4 ($100,000):** Population greater than 200,000

3. PROJECT INFORMATION (REQUIRED)

A. Online, automated solar permitting platform to be adopted:

☒ SolarAPP+

☐ Other. If selected, complete Section 4 ("Additional Information")

B. Please select allowable budget item(s) anticipated to be used (Select at least one):

☒ Ongoing in-house staff labor costs associated directly with adoption and maintenance of the platform

☒ Ongoing third-party or consultant time associated directly with adoption and maintenance of the platform

☒ Ongoing staff training and education, specific to the platform

☐ Ongoing training events for local installers, specific to the platform

☒ Essential hardware or equipment necessary to support adoption of the platform

☒ Maintenance, such as adding support for energy storage paired with solar energy system permitting, and subscription cost for permit tracking software in support of adopted permitting platform

C. Estimated Project Timeline*

*Enter actual dates if activities already began

Activity	Date (Month/Year)
Begin Development/Pilot	July 1, 2023
Full Adoption	June 30, 2027
Staff Training	June 30, 2027
Training for Local Installers	

4. ADDITIONAL INFORMATION (if applicable)

NOTE: Only complete this section if you implement a platform other than SolarAPP+

Please identify whether the following features are supported by the implemented platform. All features are required for the platform to qualify for funding. CEC staff will verify prior to payment approval.

Performs an automated plan review for residential solar energy systems that completes automatic code compliance checks based on user inputs (such as a contractor), thereby enabling or otherwise issuing permits instantly when the project is confirmed as code compliant, without the need for human review	☐ Yes	☐ No
Supports online, immediate fee payment once an application is complete, which may include auto-invoicing of permit fee costs	☐ Yes	☐ No
Supports immediate generation of a permit job card following payment confirmation	☐ Yes	☐ No
Blocks noncompliant applications from receiving a permit	☐ Yes	☐ No
EITHER: 1) Stand-alone permitting tool; **OR** 2) Integrates with current software and inspection platform already in use	☐ Yes	☐ No

5. REPORTING (REQUIRED)

Following adoption and verification of a qualifying platform, the Energy Commission may request, and the Recipient will provide if requested, annual data on the number of permits issued for solar energy systems and a solar energy system paired with an energy storage system including relevant characteristics of those systems, such as system capacity. Please indicate your acceptance of these terms.	☒ Yes	☐ No

6. CERTIFICATION (REQUIRED)

- I am authorized to complete and sign this form on behalf of the applicant.
- I authorize the California Energy Commission to make any inquiries necessary to verify the information presented in this application.
- I have read and understand the terms and conditions contained in this solicitation. I accept the terms and conditions contained in this solicitation on behalf of the applicant, and the applicant is willing to enter into an agreement with the Energy Commission to conduct the proposed project according to the terms and conditions without negotiation.
- I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Name of Authorized Representative:	Amy Chen
Title:	Director of Community and Economic Development
Phone Number:	(650) 853-3193
E-mail Address:	achen@cityofepa.org
Date:	April 20, 2023
Signature of Authorized Representative:	

NOTE: Do not overlap signature with surrounding border lines.

California Automated Permit Processing (CalAPP) Program
ATTACHMENT 2 – Terms and Conditions

Added language appears in **bold underlined** font and deleted language appears in strikethrough and within square brackets.

1. Background and Authority for this Grant

California Senate Bill 129 (2021) included an appropriation to the California Energy Commission (CEC) to support a grant program for cities, counties, or cities and counties to establish online solar permitting.

2. Documents Incorporated by Reference and Priority

Incorporated by reference into this agreement are the following documents:

A. Grant Funding Opportunity (GFO) 21-402.
B. Recipient's application to CalAPP.

As between and the incorporated documents and the remainder of this Agreement, the rest of this Agreement takes priority in case of a conflict.

3. Budget, Invoices, and Payments

a) The CEC is only obligated to reimburse the Recipient for paid costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) not more than this Agreement's budget; and (4) reasonable, actual, and allowable expenses under this Agreement.
b) Recipient acknowledges that the funds under this Agreement have a liquidation date of June 30, 2027, a legal timeframe after which the CEC has no authority to pay the funds. In addition, it takes the CEC administrative time to review, approve, work with the Recipient to correct any errors in, and request the State Controller's Office to pay invoices. Accordingly, Recipient acknowledges that if it does not submit accurate invoices by March 30, 2027, for all amounts due under the Agreement, it risks not receiving payment, and relinquishes all rights to such payments should the CEC not pay it by the liquidation date. Recipient acknowledges that time is of the essence in invoicing by March 30, 2027, for all amounts due under this Agreement.

The Recipient may request payment from the Energy Commission at any time during the term of this Agreement after successful adoption of a qualifying solar permitting platform as verified by the CEC, but no more frequently than monthly. Recipient must use the CAM provided template invoice spreadsheet.

c) If invoicing for in-house staff time, the template invoice spreadsheet must identify the employee's name, hours worked, and billing rate to be included as a reimbursable expense.

d) Unallowable costs include:
   - Software not related to the adoption of a qualifying online, automated permitting platform.

- Any costs incurred or activities conducted prior to entering into a grant agreement with the Energy Commission or incurred after the grant agreement has ended.
- Typically excluded items such as food and beverages.
- Advertising costs.
- Fines and penalties.
- Permit processing fees charged by operator of an online platform.
- All other costs not identified as allowable.
- Unreasonable amounts or rates.

4. Certification

By signing this Agreement, Recipient hereby certifies that all funds received pursuant to this Agreement shall be spent exclusively for its CalAPP project in compliance with this Agreement. The Recipient further certifies that it shall comply with all applicable laws in performing this Agreement.

5. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient and its subcontractors will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient and its subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient and its subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient shall include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

6. Drug-Free Workplace Certification

By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it will comply and will ensure its subcontractors will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.). In addition to any other rights and remedies available to the CEC, failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the CEC determines that any of the following

has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements of the Act.

[~~By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:~~

1) ~~Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).~~

2) ~~Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:~~

   - ~~The dangers of drug abuse in the workplace;~~
   - ~~The person's or organization's policy of maintaining a drug-free workplace;~~
   - ~~Any available counseling, rehabilitation, and employee assistance programs; and~~
   - ~~Penalties that may be imposed upon employees for drug abuse violations.~~

3) ~~Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:~~

   - ~~Will receive a copy of the company's drug-free policy statement; and~~
   - ~~Will agree to abide by the terms of the company's statement as a condition of employment on the project.~~]

~~In addition to any other rights and remedies available to the CEC, failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the CEC determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.~~

7. Americans With Disabilities Act

By signing this Agreement, the Recipient assures the CEC that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Section 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

8. Accounting and Audit

The Recipient will keep separate, complete, and correct accounting of the costs involved in completing the Agreement. The Recipient agrees that the CEC, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Recipient agrees to maintain such records for possible audit for a minimum of three (3) years after the Agreement ends in any way. The Recipient agrees to allow the auditor(s) access to such records during normal business hours and to allow

interviews of any employees who might reasonably have information related to such records. Further, the Recipient agrees to include a similar right of the CEC, the Bureau of State Audits, or their designated representative, to audit records and interview staff in any subcontract related to performance of this Agreement. These rights and responsibilities are in addition to and not restrictive of those in Section 16. Access to Sites and Records.

9. Public Works

The Recipient is responsible for complying with all applicable laws, which can include public works requirements under the Labor Code. Recipient acknowledges acceptance of Agreement funds may trigger public works laws (Labor Code Section 1720 et seq.), a requirement of which is to pay prevailing wages, applying to its entire project. If the project is public works then it is subject to compliance monitoring and enforcement by the Department of Industrial Relations. By signing this Agreement, Recipient certifies that it shall comply with all applicable Public Works laws and requirements.

10. Intellectual Property

As between the Recipient and the CEC, the Recipient owns all intellectual property it or its subcontractors create under this Agreement. The CEC has a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce all intellectual property, such as the products identified in Section 2. above, for governmental purposes the Recipient or its subcontractors create under this agreement. The Recipient shall include a provision securing these rights for the CEC in all of its subcontractor agreements related to performance of this Agreement.

11. Amendment

No amendment or variation of this Agreement shall be valid unless made in writing and signed by both the Recipient and CEC.

12. Governing Law

This Agreement is governed by the laws of the State of California as to interpretation and performance.

13. Independent Capacity

In the performance of this Agreement, Recipient and its agents, subcontractors, and employees will act in an independent capacity and not as officers, employees, or agents of the CEC or the State of California.

14. Severability

If any provision of this Agreement is unenforceable or held to be unenforceable, all other provisions of this Agreement will remain in full force and effect.

15. Waiver

No waiver of any breach of this Agreement constitutes waiver of any other breach. All remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other remedy provided in the Agreement or by law.

16. Access to Sites and Records

The Recipient shall provide during the Agreement and for at least 3 years after the Agreement ends in any way to the CEC or its representatives reasonable access to all project sites and to all records related to this Agreement. These rights and responsibilities are in addition to and not restrictive of those in Section 8. Accounting and Audit.

17. Termination Without Cause

The CEC may terminate this Agreement without cause upon giving written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

18. Third-Party Beneficiary

The Recipient shall in every subcontract under this Agreement include a provision indicating the CEC is a third-party beneficiary to the agreement.

19. Survival of Terms

The following terms survive this Agreement no matter how the agreement ends, such as by its own terms or via termination:

- 8. Accounting and Audit
- 9. Public Works
- 10. Intellectual Property
- 12. Governing Law
- 14. Severability
- 15. Waiver
- 16. Access to Sites and Records
- 18. Third-Party Beneficiary

Exhibit C
CONTACT LIST

California Energy Commission	Recipient
Commission Agreement Manager: Lucio Hernandez California Energy Commission 716 P Street, MS-45 Sacramento, CA 95814 Phone: (916) 477-1799 e-mail: lucio.hernandez@energy.ca.gov	**Project Manager:** Romeo Herrera Chief Building Official 1960 Tate St East Palo Alto, CA 94303 Phone: (650) 853-5908 e-mail: rherrera@cityofepa.org
Confidential Deliverables/Products California Energy Commission Contracts, Grants, and Loans Officer 715 P Street MS-18 Sacramento, CA 95814	**Administrator:** Amy Chen Director of Community and Economic Development 1960 Tate St East Palo Alto, CA 94303 Phone: (650) 853-3193 e-mail: achen@cityofepa.org
Invoices, Progress Reports and Non-Confidential Deliverables to: California Energy Commission Accounting Officer 715 P Street MS-2 Sacramento, CA 95814 Email PDF of Payment Request invoice packet to: invoices@energy.ca.gov	**Accounting Officer:** Tomohito Oku Finance Director 2415 University Ave East Palo Alto, CA 94303 Phone: (650) 853-3122 e-mail: toku@cityofepa.org
Legal Notices: Tatyana Yakshina Grants Manager 715 P Street MS-18 Sacramento, CA 95814 Phone: (916) 827-9294 e-mail: tatyana.yakshina@energy.ca.gov	**Recipient Legal Notices:** John Le City Attorney 2415 University Ave East Palo Alto, CA 94303 Phone: (650) 853-5921 e-mail: jle@cityofepa.org

CONSENT ITEM 3.7

EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE:	November 7, 2023
TO:	Honorable Mayor and Members of the City Council
VIA:	Melvin E. Gaines, City Manager
BY:	James Colin, City Clerk
SUBJECT:	City Council Meeting Minutes

Recommendation

Adopt the September 5, 2023 and September 19, 2023 City Council Meeting Minutes.

Attachments

1. September 5, 2023 and September 19, 2023, Minutes

EAST PALO ALTO CITY COUNCIL
REGULAR MEETING MINUTES
SEPTEMBER 5, 2023

EPA Government Center
2415 University Ave, First Floor – City Council Chamber
East Palo Alto, CA 94303

1. CALL TO ORDER AND ROLL CALL

The meeting was called to order by Mayor Lisa Gauthier at 6:30 p.m.

Attendee Name	Title	Status	Arrived
Carlos Romero	Councilmember	Present	
Ruben Abrica	Councilmember	Present	
Lisa Gauthier	Mayor	Present	
Antonio Lopez	Vice Mayor	Present	
Martha Barragan	Councilmember	Absent	

2. APPROVAL OF THE AGENDA

A motion to approve the agenda was made by Councilmember Ruben Abrica and seconded by Vice Mayor Antonio Lopez and passed unanimously.

3. APPROVAL OF CONSENT CALENDAR

A motion to approve the consent calendar except for items, 3.2, 3.10, 3.12, and 3.13 was made by Councilmember Carlos Romero and seconded by Vice Mayor Antonio Lopez and passed unanimously.

1. **City's Response to the San Mateo County Grand Jury's 2022-2023 Final Report, "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"**
2. **Approval of Agreements for Anti-Displacement Rental Assistance**

   Councilmember Romero pulled item 3.2 for discussion.

   A motion to approve the agenda was made by Councilmember Carlos Romero and seconded by Vice Mayor Antonio Lopez and passed unanimously.

3. **South Bayside Waste Management Authority (SBWMA) Property Acquisition**
4. **Rescind the Water Shortage Emergency Declaration**
5. **965 Weeks Emergency Vehicle Access Easement**
6. **Award Agreements with Bolt Staffing, Muchmore than Consulting, LLC & 22nd Century Technologies, Inc for On-Call Administrative and Technical Staffing Support**
7. **Award Agreements with Regional Government Services (RGS), Muchmore than Consulting, LLC, and CPS HR Consulting for Human Resources Support**
8. **Agreement with Ken Brown Strategic Consulting**
9. **Professional Services Contract for Traffic Signals, Streetlights, & RRFB Services**
10. **Latino/a Culture & History Month**

    Councilmember Abrica presented the Proclamation.

    A motion to approve the agenda was made by Councilmember Ruben Abrica and seconded by Vice Mayor Antonio Lopez and passed unanimously.

11. National Health Center Week Proclamation

12. Suicide Prevention Month Proclamation

Mary Gulner from the suicide Prevention Committee accepted the proclamation.

A motion to approve the agenda was made by Mayor Lisa Gauthier and seconded by Councilmember Carlos Romero and passed unanimously.

13. Recovery Happens Month Proclamation

Sheron Heath from Voices of Recovery accepted the proclamation.

A motion to approve the agenda was made by Councilmember Ruben Abrica and seconded by Vice Mayor Antonio Lopez and passed unanimously.

4. CLOSED SESSION - NONE

5. PUBLIC COMMENT

The following speakers made a public comment during this meeting:

- Sarjeet Singh
- Leonarda Corado
- Q Smith
- Constance French
- Nicole Steward French
- Andrea Williams-Johnson
- Cornelia Fletcher
- Romaine Taniere
- Bernice Turner

Councilmember Abrica requested an item to be added to a future Council meeting agenda regarding speeding.

6. INFORMATIONAL REPORTS - NONE

7. SPECIAL PRESENTATIONS

1. Special Presentation from the San Francisquito Creek Joint Powers Authority

Margaret Bruce, the Executive Director of the San Francisquito Creek Joint Powers Authority provided a presentation regarding the SAFER Bay projects.

2. Special Presentation Boys and Girls Club of the Peninsula

Jenny Obiaya CEO of the boys and Girls Clubs of the Peninsula provided a presentation on the Boys and Girls Club of the Peninsula.

3. Veolia Informational Item

Anthony Harper from the Veolia Water Company provided a presentation regarding the Veolia Water Company's work in the City.

8. ADJOURN CITY COUNCIL REGULAR MEETING TO THE JOINT SUCCESSOR AGENCY

9. JOINT SUCCESSOR AGENCY BOARD SPECIAL MEETING

1. Approval of San Mateo County Community College District Obligation

Tomohito Oku, Finance Director, provided a presentation regarding the San Mateo County Community College District Obligation

A motion to approve item 9.1 was made by Councilmember Carlos Romero and seconded by Mayor Lisa Gauthier and passed unanimously.

10. ADJOURN JOINT SUCCESSOR AGENCY BOARD SPECIAL MEETING and RECONVENE CITY COUNCIL REGULAR MEETING

11. PUBLIC HEARINGS

1. TEFRA Public Hearing Regarding Conduit Financing for the Colibri Commons Apartments

Karen Camacho Housing and Economic Development Manager provided a presentation regarding the Conduit Financing for the Colibri Commons Apartment.

A motion to approve item 11.1 was made by Councilmember Carlos Romero and seconded by Vice Mayor Antonio Lopez and passed unanimously.

12. POLICY AND ACTION

1. Parking Around City Parks and Facilities

Humza Javed, Public Works Director, provided a presentation regarding Parking Around City Parks and Facilities

Gail Wilkerson provided a public comment regarding item 12.1.

2. Draft Community Climate Action Plan and Adaptation Strategies 2030

Fatima Kahn, Environmental Services Aide, provided an update regarding the 2. Draft Community Climate Action Plan and Adaptation Strategies 2030.

A motion to approve item 12.1 was made by Councilmember Carlos Romero and seconded by Vice Mayor Antonio Lopez and passed unanimously.

13. COUNCIL REPORTS

Mayor Gauthier announced the National Day of Service in the City along with Airport Day.

14. ADJOURNMENT

Meeting was adjourned to commemorate the lost lives in Lahaina Hawaii.

The meeting was adjourned at 10:49 p.m.

EAST PALO ALTO CITY COUNCIL
REGULAR MEETING MINUTES
SEPTEMBER 19, 2023

EPA Government Center
2415 University Ave, First Floor – City Council Chamber
East Palo Alto, CA 94303

1. CALL TO ORDER AND ROLL CALL

The meeting was called to order by Mayor Lisa Gauthier at 6:31 p.m.

Attendee Name	Title	Status	Arrived
Carlos Romero	Councilmember	Present	
Ruben Abrica	Councilmember	Absent	
Lisa Gauthier	Mayor	Present	
Antonio Lopez	Vice Mayor	Present	
Martha Barragan	Councilmember	Present	

2. APPROVAL OF THE AGENDA

A motion to approve the agenda was made by Councilmember Romero and seconded by Vice Mayor Lopez and passed unanimously.

3. APPROVAL OF CONSENT CALENDAR

A motion to approve the consent calendar except for items 3.1 and 3.4 was made by Mayor Gauthier and seconded by Vice Mayor Lopez and passed unanimously.

1. Monthly Cash Treasury Report for July 2023

Councilmember Carlos Romero pulled item 3.1 for discussion.

A motion to approve item 3.1 was made by Councilmember Romero and seconded by Mayor Gauthier and passed unanimously.

2. Ravenswood Business District / 4 Corners Specific Plan – Second Contract Amendment to Raimi + Associates Contract

3. Annual Compensation Schedule for FY 2023-24.

4. Submit an Application for the Measure A and W Highway Program 2023 Recommendation:

Councilmember Carlos Romero pulled item 3.1 for discussion.

A motion to approve item 3.4 was made by Councilmember Romero and seconded by Vice Mayor Lopez and passed unanimously.

5. FY 2022-23 Fourth Quarter Treasury Report

6. Authorization of purchasing one utility truck from Downtown Ford Sales for the Maintenance Division

4. CLOSED SESSION - NONE

5. PUBLIC COMMENT

- Sargeet Singh
- Donna Rutherford
- Senter Uhila

6. INFORMATIONAL REPORTS - NONE

7. SPECIAL PRESENTATIONS

1. Midpeninsula Regional Open Space District (Midpen) Presentation

Karen Holman, Board Member from the Open Space District provided a presentation regarding MidPen.

2. Assemblymember Diane Papan - Funding Award Presentation

8. PUBLIC HEARINGS - NONE

9. POLICY AND ACTION

1. **Update on Youth Commission Development**

Maurice Baker, Community Services Manager, provided a presentation regarding a Youth Commission.

Council provided feedback and direction to staff.

2. Resolution in Support of the San Mateo County Juvenile Justice & Delinquency Prevention Commission's Efforts to Keep Youth Under the Age of 18 in Juvenile Justice Facilities instead of adult facilities.

Becca Heiler from In Our Care provided a presentation regarding the SMC Juvenile Justice Resolution.

The following speakers provided public comment on item 3.2

- Mama Dee
- Arnold Morales
- Senter Uhila
- Andrea Zuniga
- Gail Wilkerson
- Paul Bocanegra
- Ofelia Bello

A motion to approve item 9.2 was made by Councilmember Romero and seconded by Mayor Gauthier and passed unanimously.

10. COUNCIL REPORTS

Councilmember Carlos Romero made an announcement regarding COVID vaccine events in the community.

11. ADJOURNMENT

The meeting was adjourned at 8:23 PM.

EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: November 7, 2023

TO: Honorable Mayor and Members of the City Council

VIA: Melvin E. Gaines, City Manager

BY: Ana M. Torres-Mondragon, Human Resource Manager

SUBJECT: Side Letter Agreement for the Memorandum of Understanding Between the City of East Palo Alto and the Management Employees' Association (MEA), Service Employee's International Union, Local 521 (SEIU), and Compensation Plan Amendment for unrepresented Employment Groups for FY 2023-24

Recommendation

1. Adopt a resolution authorizing the City Manager to execute the attached **Side Letter Agreement for the Memorandum of Understanding Between the City of East Palo Alto and the Management Employees' Association (MEA), and Compensation Plan Amendment for unrepresented Employment Groups for FY 2023-2**4.

2. Authorize the City Manager to execute a side letter agreement with Service Employee's International Union, Local 521 (SEIU) if the proposal is approved by a majority of the voting members.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

- Ensure Our Financial and Organizational Health

Background

On July 19, 2022, the City Council authorized the City Manager to negotiate with SEIU, MEA, . This current contract was the first time MEA and SEIU agreed to an eighteen (18) month contract which aligned their MOUs with a calendar year instead of a fiscal year which has been our past practice.

For the reasons set forth below, staff recommend that the City Council authorize a six-month extension to the City's current contracts with the MEA and SEIU labor unions.

Analysis

Six-Month Extension, COLA, and HSA Benefit

The extension would extend the current agreement from December 31, 2023 to June 30, 2024, include a 2.5% Cost-of-Living Adjustment (COLA), and an employer contribution to a Health Savings Account (HSA) when employees enroll into the Kaiser HSA Plan. The City Council authorized the City Manager to negotiate with the bargaining units up to a 2.5% COLA and the HSA employer contribution. The HSA employer contribution will result in net savings when employees enroll in the Kaiser HSA plan instead of the HMO plan. Extending MEA's and SEIU's contracts for an additional six months will allow adequate time to negotiate new labor agreements that align with the City's fiscal year budget, ensuring that our financial planning remains consistent and effective. In addition to fiscal alignment, this extension will also allow additional time to negotiate terms for new agreements that align with the evolving needs of the City.

MEA approved with unanimous consent the side letter agreement. As of the date of this staff report, while SEIU has expressed interest, the vote to approve has been scheduled for Monday, November 6, 2023. Therefore, the City Manager requests authority to execute a side letter agreement with SEIU should the proposal be approved.

Unrepresented Employees

The City Manager recommends a Compensation Plan Amendment which extends the 2.5% COLA adjustment and HSA benefit, including the employer contribution if the employee is enrolled in Kaiser HSA Plan, to unrepresented employees.

Fiscal Impact

There is no fiscal impact in the approval of the side letter agreement. The FY 2023-24 budget includes sufficient budget for personnel to cover the 2.5% COLA.

Public Notice

The public was provided notice by making the agenda and report available on the City's website and on a bulletin board located at City Hall: 2415 University Avenue, East Palo Alto.

Environmental

The proposed action does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15378(b)(4) and (5) in that it is a governmental fiscal, organizational or administrative activity that will not result in direct or indirect changes in the environment.

Attachments

1. Resolution
    a. Exhibit A: Side Letter Agreement for the Memorandum of Understanding Between the City of East Palo Alto and the Management Employees' Association (MEA) (signed)
    b. Exhibit B: Side Letter Agreement for the Memorandum of Understanding Between the City of East Palo Alto and the Service Employee's International Union, Local 521 (SEIU) (unsigned)

RESOLUTION NO. xx– 2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO

AUTHORIZING THE CITY MANAGER TO EXECUTE SIDE LETTER AGREEMENT FOR MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF EAST PALO ALTO AND EAST PALO ALTO MANAGEMENT EMPLOYEES' ASSOCIATION (MEA), AND COMPENSATION PLAN AMENDMENT FOR UNREPRESENTED EMPLOYMENT GROUPS

WHEREAS, On July 19, 2022, the City Council authorized the City Manager to negotiate with SEIU, MEA, and unrepresented employment groups. This current contract was the first time MEA and SEIU agreed to an eighteen (18) month contract which aligned their MOUs with a calendar year instead of a fiscal year which has been our past practice; and

WHEREAS, the extensions would extend the current agreements from December 31, 2023 to June 30, 2024, include a 2.5% Cost-of-Living Adjustment (COLA), and an employer contribution to a Health Savings Account (HSA) when employees enroll into the Kaiser HSA Plan; and

WHEREAS, extending MEA's and SEIU's contract for an additional six months will allow the new labor agreement to align with the City's fiscal year budget, ensuring that our financial planning remains consistent and effective. In addition to fiscal alignment, this extension will also allow additional time to negotiate terms for new agreements that align with the evolving needs of the City; and

WHEREAS, the City Manager recommends a Compensation Plan Amendment extending the same COLA adjustment and HSA benefit, including the employer contribution to same, if the employee is enrolled in Kaiser HSA Plan the unrepresented employees.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO HEREBY:

1. Finds the foregoing recitals are true and correct, and are incorporated by this reference into this action;
2. Authorizes the City Manager to execute Side Letter Agreement for the Memorandum of Understanding Between the City of East Palo Alto and the Management Employees' Association (MEA), and Compensation Plan Amendment for unrepresented Employment Groups for FY 2023-24, attached hereto as Exhibit A; and
3. Authorize the City Manager to execute a side letter agreement with Service Employee's International Union, Local 521 (SEIU) if the proposal is approved by a majority of the voting members, in a form substantially similar the agreement attached hereto as Exhibit B.

PASSED AND ADOPTED this 7th day of November 2023**,** by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Gauthier, Mayor

ATTEST:

James Colin, City Clerk

APPROVED AS TO FORM:

John D. Lê, City Attorney

DocuSign Envelope ID: 93643AED-A2D9-4707-89CF-3E869F93B69A
DocuSign Envelope ID: 7E948062-C4EF-488D-948A-47902DD49154

City of East Palo Alto and MEA – Side Letter Negotiations
Tentative Agreement

ARTICLE 21: Contract Term (Agreed)
The term of the Side Letter shall be from Jan 1, 2024 to June 30, 2024 equivalent to six months.

ARTICLE 17: Wages (Agreed)

A. Employees in this unit will receive a salary increase of 2.5% (two and a half percent) effective the first full pay period of January 2024 (anticipated to be effective January 7, 2024).

ARTICLE 7.3: Benefits (Agreed)
The City shall make a semi-monthly contribution of $83.33 toward an HSA for employees that enroll in Kaiser Permanente HSA high deductible plan. Equivalent to approximately $2,000 annually.

The City and MEA have reached a Tentative Agreement as stated above on 10/31/23

Accepted by:

For the Management Employees' Association Union:	For the City of East Palo Alto:
DocuSigned by: Stanley Young D5C5F0D6C95E45E... Stanley Young, MEA Representative	DocuSigned by: Ana M Torres-Mondragon 14EC557863E547D... Ana M Torres-Mondragon, Human Resources Manager
DocuSigned by: Kevin Lewis 5CDCBC79EEA04BB... Kevin Lewis, MEA Member	DocuSigned by: Brenna Rowe CC82C5ADD43C4FC... Brenna Rowe, Chief Spokesperson Sloan Sakai Yeung & Wong LLP
	DocuSigned by: Melvin E Gaines 4A361DD749224BE... Melvin E. Gaines, City Manager

City of East Palo Alto and SEIU – Side Letter Negotiations
Tentative Agreement

ARTICLE 32: Contract Term

The term of the Side Letter shall be from Jan 1, 2024 to June 30, 2024 equivalent to six months.

ARTICLE 9: Wages

A. Employees in this unit will receive a salary increase of 2.5% (two and a half percent) effective the first full pay period of January 2024 (anticipated to be effective January 7, 2024).

ARTICLE 20: Benefits

The City shall make a one-time contribution of $500 in January 2024 toward an HSA for employees that enroll in Kaiser Permanente HSA high deductible plan. Starting February 2024, the City will then make a semi-monthly contribution of $68.18 toward an HSA for employees that enroll in Kaiser Permanente HSA high deductible plan. Equivalent to approximately $2,000 annually.

The City and SEIU have reached a Tentative Agreement as stated above on _____.

ACCEPTED BY:

For the Service Employee's International Union, Local 521's Union:	**For the City of East Palo Alto:**
Katy Bradley, Chief Negotiator	Melvin E. Gaines, City Manager
Janet Nunez, SEIU Member	Ana M Torres-Mondragon, Human Resources Manager
Salani Wendt, SEIU Member	Brenna Rower, Chief Spokesperson Sloan Sakai Yeung & Wong LLP
Agripina Villegas, SEIU Member	
Lenin Melgar, SEIU Member	

EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: November 7, 2023

TO: Honorable Mayor and Members of the City Council

VIA: Melvin E. Gaines, City Manager

BY: James Colin, City Clerk

SUBJECT: Family Court Awareness Month Proclamation

Recommendation

Present the proclamation for Family Court Awareness Month**.**

Attachments

1. Proclamation

PROCLAMATION OF THE CITY OF EAST PALO ALTO
COMMEMORATING FAMILY COURT AWARNESS MONTH

WHEREAS, the mission of the Family Court Awareness Month Committee (FCAMC) is to increase awareness on the importance of a family court system that prioritizes child safety and acts in the best interest of children, and;

WHEREAS, the mission at the FCAMC is fueled by the desire to create awareness and change in the family court system for the conservatively estimated, 58,000 children a year ordered into unsupervised contact with abusive parents, while honoring the hundreds of children who have been reported as murdered during visitation with a dangerous parent, and;

WHEREAS, the mission of the FCAMC is to increase awareness on the importance of empirically-based education and training on domestic violence and child abuse, including emotional, psychological, physical, and sexual abuse, as well as childhood trauma, coercive control, and post separation abuse for judges and all professionals working on cases within the family court system, and;

WHEREAS, the mission of the FCAMC is to increase awareness on the importance of using scientifically valid, evidence-based, treatment programs and services that are proven in terms of safety, effectiveness, and therapeutic value, and;

WHEREAS, the mission at the FCAMC is to educate judges and other family court professionals on evidence-based, peer-reviewed research. Such research is a critical component to making decisions that are truly in the best interest of children.

NOW, THEREFORE, BE IT RESOLVED THAT, the City of Council of the City of East Palo Alto, hereby declares the Month of NOVEMBER, to be FAMILY COURT AWARENESS MONTH.

I encourage all residents to support their local communities' efforts to prevent the harm of children in the hands of family members and to honor and value the lives of children.

Dated: November 7, 2023

_____

Lisa Gauthier, Mayor

EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: November 7, 2023

TO: Honorable Mayor and Members of the City Council

VIA: Melvin E. Gaines, City Manager

BY: Tomohito Oku, Finance Director

SUBJECT: Participation in California Asset Management Program (CAMP)

Recommendation

Adopting a resolution:

1. Authorizing the City to join the California Asset Management Program (CAMP) as a Participant in the California Asset Management Trust, an investment vehicle formed to invest the proceeds of public agency surplus funds; and
2. Authorizing the City Manager (or designee, including any officers, agents, or employees of the City) to take all actions and to make and execute necessary agreements or documents, including making an initial investment in the Trust and investing available funds going forward in Individual Portfolios managed by the Investment Adviser to the Trust

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

Priority No. 4: Ensure Our Financial and Organizational Health

Background

The City currently keeps most of its investment funds in the California Local Agency Investment Fund (LAIF) as well as San Mateo County Pool (County Pool). LAIF is a state-run

investment alternative for California local governments and special districts offering safety, liquidity and higher rates than money market interest. After an extended period of very low interest rates, rates have been rising. This creates an opportunity for the City to consider additional investment tools that could potentially provide a higher yield for its short-term investment funds.

California Asset Management Program (CAMP) is a California Joint Powers Authority (JPA) that was established, pursuant to and in accordance with the Joint Exercise of Powers Act, by a Declaration of Trust, made as of December 15, 1989, as subsequently amended from time to time (the "Declaration of Trust"), to provide California public agencies with professional investment services. Investment in CAMP is permitted under Section VIII.I of City's Investment Policy. CAMP also established the California Asset Management Trust (Trust), an investment vehicle formed to invest the proceeds of public agency members' surplus funds.

CAMP is governed by a Board of Trustees, which is made up of experienced local government finance officers and treasurers. CAMP offers a range of services to assist Investors/Participants with their investment and arbitrage compliance needs. PFM Asset Management LLC (PFMAM) provides day-to-day portfolio management and program administrative services for CAMP. PFMAM specializes in providing investment management services to public agencies nationwide including 18 local government investment pools comprising $52.6 billion in combined total assets from over 5,500 participants in those services.

Analysis

CAMP Services:

CAMP offers a range of services to assist public agencies with investing their operating funds, bond proceeds, debt service funds, and reserve funds. Whether the City is looking for daily liquidity or cost-effective access to high-quality fixed income markets, CAMP can help with the following options:

1. **CAMP Pool**: This fully liquid, stable net asset value (NAV) investment option stresses daily liquidity and safety of principal as the two primary objectives, as underscored by its AAAm* rating from Standard & Poor's. Earning a competitive yield is a third goal after safety and liquidity.

2. **CAMP Term ("Term")**: This investment option is for agencies with known cash flows to have an opportunity to optimize interest earnings. This fixed-rate, fixed-term investment option, rated AAAf** by Fitch, offers securities with maturities ranging from 60 days to one year. Term investments are designed to match a Shareholder's specific cash flow requirements. Investment principal and interest are paid at maturity, with an automatic sweep into the CAMP Pool.

3. **Specialized service options:** CAMP also offers individually managed portfolios with investment and safekeeping services at a reasonable cost and arbitrage rebate analysis and calculation for bond proceeds invested with CAMP. These services are authorized by the Board of Trustees and administered by CAMP's investment adviser, PFM.

CAMP Pool and its Comparison to LAIF:
The CAMP Pool is a long-established, lower risk short-term investment alternative. Its participants and investors include:

- San Mateo County
- City of Burlingame
- City of Foster City
- City of San Mateo
- City of Los Altos
- Menlo Fire Protection District
- SamTrans
- City of San Jose
- City of Santa Clara

Some of the key benefits of CAMP Pool are as follows:

- Rated AAAm by Standard & Poors,
- Same-day liquidity (11:00 a.m. PST cut-off),
- Unlimited transactions via wire, ACH, or check,
- Competitive yields,
- Online account management,
- Option to open multiple sub-accounts,
- No minimum investment,
- Interest paid monthly,
- No additional out of pocket expenses, and
- Specialized services for bond proceeds.

The following table shows comparison between CAMP and LAIF pools as of July 31, 2023.

	CAMP	LAIF
Valuation of NAV	Daily	Monthly
S&P Rating	AAAm	Not Rated
Weighted Average Maturity	33 Days	251 Days
Earning	5.43%	3.31%
Interest Payment Frequency	Monthly	Quarterly
Investment Limit	10% of the beneficial interest in the Pool	$75 million per account

In addition to the comparison described above, CAMP have adopted Governmental Accounting Standards Board (GASB) Statement No.79 which provides the safety and liquidity of public funds invested in the pool. GASB 79 incorporates robust guidance and accounting standards for local government investment pools to qualify for electing to measure its investments at amortized cost from a financial reporting perspective. While a local government investment pool could opt not to adopt the standards and default to the fair value reporting standards in GASB 31, PFMAM believes following GASB 79 criteria is crucial to safeguarding investments. As an investment manager for CAMP, PMFAM primary goal is to seek to preserve the safety of principal and liquidity of funds in all rate environments, but especially during times of economic stress. Providing a competitive yield is also an important objective, but secondary to maintaining safety and providing liquidity.

Next Steps

To invest with CAMP, the City has options to invest as either a Participant or an Investor. As a Participant, the City will become a voting member of the JPA whereas the City may merely invest as an Investor. Except for the voting on programmatic changes such as, CAMP's investment policy, governing documents and approving board members, Participants and Investors receive the same services.

If the Council adopts the attached resolution, staff recommends the City join as a Participant and the City can expect the following next steps.

1. **Accepting the Declaration of Trust (Attachment 2)**. First, the City will join with other public agencies pursuant to and in accordance with the Joint Exercise of Powers Act by accepting the Declaration of Trust and thereby become a Participant in the Trust, which Declaration of Trust will be approved and adopted through the attached resolution. The attached resolution will be submitted to CAMP and authorizes the City Manager (and designee, including any appropriate officers, agents and employees of the City) to take all actions and to make and execute any and all certificates, requisitions, agreements, notices, consents, warrants and other documents, and any changes, amendments, modifications, or waivers thereto which they, or any of them, might deem necessary or appropriate in order to accomplish the purposes of the attached resolution. Designees will include Tomo Oku, Finance Director, and Bo-Kyoung Kim, Financial Services Manager.

2. **Initial Investment.** Second, staff recommends that the City first open a CAMP Pool account and transfer a portion of its operating funds from LAIF or County Pool to CAMP while leaving its LAIF and County Pool accounts open and available. Depending on the availability of projected cash flow requirements and the market environment therein, staff will consider allocating funds to a CAMP TERM seeking more competitive yields.

Fiscal Impact

There is no direct budget impact by this action.

Public Notice

The public was provided notice by making the agenda and report available on the City's website and on a bulletin board located at City Hall: 2415 University Avenue, East Palo Alto.

Environmental

The action being considered by the City Council is exempt from the California Environmental Quality Act (CEQA) because it is not a "project" pursuant to 15378(b)(4) because it is a fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant impact on the environment.

The action being considered does not constitute a "Project" within the meaning of the California Environmental Quality Act (CEQA), pursuant to CEQA Guideline section 15378 (b)(5), in that it is a government administrative activity that will not result in direct or indirect changes in the environment.

Awarding this contract is not a project under The California Environmental Quality Act (Section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) because the action has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Attachments

1. Resolution
2. Declaration of Trust

RESOLUTION NO. XX – 2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO

AUTHORIZING THE CITY TO JOIN WITH OTHER PUBLIC AGENCIES AS A PARTICIPANT OF THE CALIFONIA ASSET MANAGEMENT TRUST AND TO INVEST IN SHARES OF THE TRUST AND IN INDIVIDUAL PORTFOLIOS

WHEREAS, Section 6509.7 of Title 1, Division 7, Chapter 5 of the Government Code of the State of California (the "Joint Exercise of Powers Act") provides that, if authorized by their legislative or other governing bodies, two or more public agencies that have the authority to invest funds in their treasuries may, by agreement, jointly exercise that common power; and

WHEREAS, under Sections 6500 and 6509.7(b) of the Joint Exercise of Powers Act, a "public agency" includes, but is not limited to, any California county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission, state department or agency, any joint powers authority formed pursuant to the Joint Exercise of Powers Act by public agencies or any nonprofit corporation whose membership is confined to public agencies or public officials; and

WHEREAS, public agencies that constitute local agencies, as that term is defined in Sections 53600 of Title 5, Division 2, Part 1, Chapter 4, Article 2 of the Government Code of the State of California (the "California Government Code"), are authorized pursuant to Section 53601(p), to invest all money belonging to, or in the custody of, a local agency not required for its immediate need in shares of beneficial interest issued by a joint powers authority organized pursuant to Section 6509.7 of the California Government Code that invests in the securities and obligations authorized in subdivisions (a) to (q), inclusive, of Government Code Section 53601; and

WHEREAS, the California Asset Management Trust (the "Trust") was established, pursuant to and in accordance with the Joint Exercise of Powers Act, by a Declaration of Trust, made as of December 15, 1989, as subsequently amended from time to time (the "Declaration of Trust"), as a vehicle for public agencies to jointly exercise their common power to invest the proceeds of debt issues and Public Agency surplus funds; and

WHEREAS, pursuant to and in accordance with the Joint Exercise of Powers Act, the City of East Palo Alto ("City") desires to join with the other public agencies which are or will be Participants of the Trust by adopting and accepting the Declaration of Trust, a form which is on file in the office of the Finance Director; and

WHEREAS, the City is a "public agency" as that term is defined in Sections 6500 and 6509.7(b) of the Joint Exercise of Powers Act and a "local agency" as that term is defined in Section 53600 of the California Government Code; and

WHEREAS, the City is otherwise permitted to be a Participant of the Trust and to invest funds in the Trust and in the individual portfolios to be managed by the Investment Adviser to the Trust ("Individual Portfolios"); and

WHEREAS, a program guide describing the Trust and the Individual Portfolios (the "Program Guide") is on file in the office of the Finance Director.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO HEREBY:

1. The City shall join with other public agencies pursuant to and in accordance with the Joint Exercise of Powers Act and thereby becoming a Participant in the Trust, which Declaration of Trust is hereby approved and adopted. A copy of the Declaration of Trust, which is available in the office of the Finance Director, shall be filed with the minutes of the meeting at which this Resolution was adopted.

2. The City Manager or its designee is hereby, on behalf of the City, authorized to purchase shares in the Trust from time to time with available funds of the City, and to redeem some or all of those shares from time to time as such funds are needed.

3. The City Manager or its designee is hereby authorized to invest available funds of the City from time to time in one or more Individual Portfolios managed by the Investment Adviser to the Trust and described in the Program Guide.

4. The appropriate officers, agents and employees of the City, including the Finance Director and the Financial Services Manager at the direction of the City Manager, are hereby authorized and directed in the name and on behalf of the City to take all actions and to make and execute any and all certificates, requisitions, agreements, notices, consents, warrants and other documents, and any changes, amendments, modifications, or waivers thereto which they, or any of them, might deem necessary or appropriate in order to accomplish the purposes of this Resolution.

PASSED AND ADOPTED this 7th day of November 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lisa Gauthier, Mayor

ATTEST:

James Colin, City Clerk

APPROVED AS TO FORM:

John D. Lê, City Attorney

EAST PALO ALTO CITY COUNCIL STAFF REPORT

DATE: November 7, 2023

TO: Honorable Mayor and Members of the City Council

VIA: Melvin E. Gaines, City Manager

BY: Benjamin Toney, Partnership for the Bay's Future Policy Fellow
Karen Camacho, Housing & Economic Development Manager

SUBJECT: Introduction of East Palo Alto Opportunity to Purchase Act ("EPA OPA")

Recommendation

1. Waive the First Reading and introduce an ordinance(s) titled:

   a. "East Palo Alto Opportunity to Purchase Act (EPA OPA)," for real residential property, adding Chapter 14.25 to the East Palo Alto Municipal Code; or
   b. "Tenant Opportunity to Purchase Act," for single-family housing, adding Chapter 14.26 to the East Palo Alto Municipal Code; or
   c. "Community Opportunity to Purchase Act", for multifamily housing, adding Chapter 14.27 to the East Palo Alto Municipal Code;

2. Direct the City Manager to return with Administrative Guidelines for the City Council's consideration; and

3. Find that the adoption by the City Council of the amendments is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Alignment with City Council Strategic Plan

This recommendation is primarily aligned with:

- Promote Housing, Economic and Workforce Development

Executive Summary

In October 2018, the City Council adopted the City's Affordable Housing Strategy ("the Strategy") which laid out the City's affordable housing goals and objectives through 2023.[1] One of the key goals of the Strategy, which the City Council officially adopted as a Council Priority in 2021, was to "Advance the Concept of TOPA/COPA and Other Homeownership Opportunities." The East Palo Alto Opportunity to Purchase Act (also referred to herein as "Ordinance," "Chapter" or "EPA OPA") was drafted to combat displacement short term and long term,[2] promote community stability, increase homeownership opportunity for residents, and preserve affordable housing, by facilitating purchases of both single family and multifamily properties across an array of rightsholders: Tenants, Housing Providers (also referred to as "Qualified Nonprofits" or "QNPs"), and the City.

On October 3, 2023, the City Council directed staff to prepare two separate ordinances each addressing different rightsholders (Tenants, QNPs, and City) and property types (single-family and multifamily properties). Three versions of Ordinance language are attached. The original, which assigns rights to Tenants, Housing Providers, and the City; as well as two versions separated by property type which assign rights for single family housing and rights for multifamily housing. Council also directed staff to consider means testing and timeline adjustments in the draft Ordinance.

This Staff report proceeds as follows:

- Background,
- Policy Ordinance Versions, and
- Additional Considerations.

Background

City of East Palo Alto Housing Policies and EPA OPA Goals

Since its incorporation, the City of East Palo Alto has invested in progressive housing policy and reversing the long-term impacts of state-sanctioned racial residential segregation on its generations of residents. It has adopted rent stabilization, just cause for eviction, tenant relocation assistance, inclusionary housing, local preference, and other policies to protect tenants and to promote equitable access to homeownership and stable affordable housing.

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[1] See October 16, 2018 City Council meeting and adoption of 2019-2023 Affordable Housing Strategy Update: http://eastpaloalto.iqm2.com/Citizens/FileOpen.aspx?Type=14&ID=1476&Inline=True.

[2] Tenants living in Single Family Dwellings do not benefit from protections provided in Sections 14.04.080, 14.04.090, 14.04.100, 14.04.120, 14.04.130, 14.04.140, and Subsections 14.04.180.A and B. See full chapter: https://library.municode.com/ca/east_palo_alto/codes/code_of_ordinances?nodeId=TIT14HO_CH14.04RESTJUCAEVOR_14.04.050AP.

Even with housing production and protections as clear policy priorities, the City has struggled in the face of regional employment and housing market trends. The disproportionate impact of the Bay Area housing crisis on East Palo Alto is reflected in recent data from the United States Census, American Community Survey (ACS), and Comprehensive Housing Affordability Strategy (CHAS). Figure 1 below provides a summary of the data.

Table 1: East Palo Alto Data

Category	**East Palo Alto Data**
Median Household Income	$96,349 (family of four)
Low-Income Households in Gentrifying Neighborhoods	78%
Renter-Occupied Attached Single Family Housing	82%
Renter-Occupied Detached Single Family Housing	36%
Renter-Occupied Multifamily Housing[3]	94%
Average Annual Single-Family Home Sales (2015-2020)	128
Average Annual Multifamily Home Sales (2015-2020)	15
Median Market Rents	$3,573
Median Household Affordable Rent	$2,409
Typical Home Values in East Palo Alto (Dec 2020)	$936,610

The risk of displacement is compounded by existing constraints on, and limitations of, key housing policies. Due to state law, single-family home tenants and tenants living in buildings built after 1988 are not protected by the Rent Stabilization (although the Just Cause for Eviction provision still applies), with certain exceptions. For example, tenants in rent-stabilized units are not protected from displacement by owner move-in, or when a tenant moves out, at which time the rent for that unit can be raised to market value.

Most households in East Palo Alto fall into the “very low-income” to “low-income” category, making up to 80% of the San Mateo County Area Median Income (AMI).[4] Over half of renters are cost-burdened, meaning they spend over 30% of their monthly income on rent, and are thus at risk of displacement.[5]

[3] For occupancy data, please see: ABAG/MTC Staff and Baird + Driskell Community Planning, “Housing Needs Data Report: East Palo Alto,” April 2, 2021, page 28, available at: https://www.cityofepa.org/sites/default/files/fileattachments/housing/page/19915/c2_abag_mtc_housing_needs_data_report_east_palo_alto_w_toc_1.pdf (last accessed October 2023).
[4] San Mateo County 2021 Income and Rent Limits, https://housing.smcgov.org/income-and-rent-limits.
[5] U.S. Census Bureau, American Community Survey 5-Year Data (2015-2019), Table B25070, B25091.

The City Council has considered how an ordinance like the EPA OPA ordinance could create additional affordable housing opportunities and promote community ownership, stewardship, and equity in East Palo Alto. In doing so, the City could make progress and partially address some of the known gaps in existing housing policies designed to stem displacement and ensure community stability in East Palo Alto.

Preservation Objectives

As a component from the 2019-2023 Affordable Housing Strategy and a commitment in the Housing Element of the General Plan for the upcoming 6th Cycle of the Regional Housing Needs Assessment, East Palo Alto strives to preserve affordable housing by attaching affordability requirements to existing rental units, once they are purchased at market value. This includes both multifamily and single-family properties, as both have high renter occupancy.

During the 5th Cycle of the Regional Housing Needs Assessment, the City's preservation goals were largely accomplished by identifying existing affordable housing properties at risk of conversion to market value and extending the funding and affordability requirements for those properties.

However, the preservation strategy from the prior cycle of extending affordability of existing properties through Low Income Housing Tax Credit (LIHTC) affordability extensions will not be as reliable in the coming 6th RHNA cycle. As shown in Figure 1 of the Discussion Guide, there are no government-assisted properties at risk of conversion to market rate until at least 2053 (Peninsula Park Apartments).

To meet future preservation objectives, the City Council has directed staff to pursue new policy tools and new models for preservation, including acquisition and rehabilitation, beyond existing strategies. This has included identifying funding sources that could support affordable preservation, as listed in Figure 2 of the Discussion Guide. An ordinance like EPA OPA is one of the tools that could help meet its Housing Element objectives; the City will likely need more programs in addition to achieve preservation objectives.

In the 2023-2031 Housing Element, quantified objectives for affordable housing preservation include 123 units renovated (i.e., updating physical structures) and 95 units conserved (i.e., attaching affordability requirements) over a five-year period for a total of 218 units preserved. This amounts to a rate of approximately 45 preserved units per year if new preservation activity begins in 2024. Figure 3 in the attached Discussion Guide provides an overview of how we can achieve these targets.

An ordinance like EPA OPA could help preserve properties by requiring owners to notify rightsholders of their opportunity to purchase, giving them a chance of stabilized housing through homeownership. With an ordinance like EPA OPA that includes single-family properties, there is an estimate of 36 notifications per year during hot markets

and 16 notifications per year during cooler markets.[6] These numbers estimate the volume of notifications; a smaller number per year would likely be purchased and preserved as affordable housing.[7] This is in part due to the constraints that funding and financing limits place on closing preservation deals – staff has collected information on funding sources that may be useful for rightsholders in purchasing as outlined in Figure 4 of the Discussion Guide.

Exempting single-family properties (including single condominiums/one-unit buildings) drops the volume to 4 notifications per year, with an estimated annual unit count of 16.[8] In such scenario, a likely average of one (1) annual transaction with four (4) units might be reasonable to expect considering that these estimates don't account for transfer type exemptions. Because the Housing Element goal aims for 123 units physically renovated and 95 units conserved with affordability requirements,[9] staff recommends that Council adopt an EPA OPA that applies to all property types, including non-owner –occupied, single-family housing. Note that there are limitations to achieving these renovation and conservation goals. For the 2024-2029 Affordable Housing Strategy, the City will need to identify and propose policy and funding goals that enable the City to meet its commitments as required by California Department of Housing and Community Development.

Proposed Ordinances

On October 3, 2023, Council directed Staff to return with two different versions of Opportunity to Purchase Act Ordinances, including versions separated by property type for Single Family Housing and Multifamily Housing. Staff has also included a third ordinance (referred to as "EPA OPA"), which consists of a combined ordinance that addresses both property types.

Depending on property type, the proposed ordinances under consideration enable rightsholders (Tenants, Qualified Non-Profits, the City) to exercise the Right of First Offer and/or the Right of First Refusal. Timelines governing the process vary by building type, enabling transactions of buildings with more units to have additional time for due diligence and to secure financing.

[6] Note that real estimates are likely smaller due to transfer exemptions.
[7] Sellers have the right to reject first offers made by rightsholders.
[8] Between November 2021 and November 2022, according to the Multiple Listing Service, there were 15 units sold across four multifamily properties.
[9] Note that the TOPA applicability on single-family housing has limitations to creating affordability, as any property purchased with personal financing and no public funds through TOPA does not qualify for deed restriction requirements; only those purchased with City and public financing may have deed-restrictions that would add these single-family housing units into the City's Below Market Rate (BMR) program.

Originally Proposed East Palo Alto Opportunity to Purchase Act

The EPA OPA for real residential property is “combined” in that it governs both property types (single- and multi-family properties) in a single ordinance. It grants Right of First Offer to Tenants, Qualified Non-Profits, and the City as Rightsholders, and grants the Right of First Refusal to Qualified Non-Profits and the City as Rightsholders. Thus, it applies to single-family housing including condominiums, 2-3 unit multifamily properties, and 4+ unit multifamily properties.

Proposed Community Opportunity to Purchase Act for Multi-Family Housing

Under a Community Opportunity to Purchase Act (“COPA”) for multifamily housing, which does not address single-family properties, Qualified Non-Profits and the City have a “Right of First Offer” and “Right of First Refusal” for multifamily properties of 2 or more units. In the proposed EPA OPA and COPA, the timelines are the same for all 2+ unit properties.

Proposed Tenant Opportunity to Purchase Act for Single-Family Housing

Under a Tenant Opportunity to Purchase Act (“TOPA”) for single-family housing, Tenants, Qualified Non-Profits and the City receive the “Right of First Offer” for single family properties. For tenants able to afford a purchase when notified (whether through their own funds, funds collected from family and community, or programmatic funding sources (e.g., downpayment assistance), those rightsholders may exercise the Right of First Offer. For tenants unable to purchase on their own when notified, the Right of First Offer can be assigned to a Qualified Non-Profit that stands in the tenant’s place in the exercise of that right.

Means Testing and Good Faith Negotiations

Staff received direction from the Council to consider incorporating means testing of potential purchasers exercising either their Right of First Offer or Right of First Refusal as a way of curbing abuse and deterring bad faith actors, whose only objective would be to delay real estate transactions. Additionally, staff met with local developer representatives who raised means testing for organizations purchasing multifamily transactions.

All proposed ordinances contain provisions designed to deter bad faith actors. Such provisions include an obligation to bargain in good faith on both sides of the transaction, efforts to communicate, and efforts to make offers promptly. Parties may enforce through litigation of such rights and obligations, and may bring lawsuits against parties alleged to have violated its requirements.

The real estate industry uses the phrase “means testing” to refer to measures used to evaluate a purchaser’s loan eligibility – e.g., credit rating, history of transactions, and other metrics demonstrating capacity to close and manage deals. Means testing can be

factored into decisions on how to allocate loans. Furthermore, when cash offers are made to purchase a home, the purchasers are required to show proof of funds through financial statements. Ordinarily, however, the market performs this function to ensure that individuals or entities make offers on the types of deals that they have the capacity to close on and operate. The proposed ordinances, including COPA, do not govern this market practice. Means testing, i.e., a seller verifying that an offer a purchaser has access to the funds stated in an offer, is allowed at the point an offer is made.

The proposed ordinances, including COPA, already envision a qualification process for Qualified Non-Profits to become rightsholders, to ensure that those organizations having a demonstrated history of acquiring and operating properties make their way onto the list and thus demonstrate fitness to close on such transactions.

Under the proposed ordinances, including COPA, Qualified Non-Profits can become disqualified for failure to comply with the ordinance. If someone believes that a Qualified Nonprofit has acted in bad faith, they may file a formal complaint with the City, at which point an investigation would be conducted. Based on the findings of the investigation, the City Manager or designee has the authority to limit, suspend, or revoke a Qualified Nonprofit's certification.

Given the foregoing, staff does not recommend additional means testing, including for example, numerical thresholds that may unduly chill a Qualified Non-Profits participation in exercising rights contained in the proposed ordinances.

Timelines

Council also directed staff to evaluate timelines for closing of transactions for multifamily properties. Timelines have been adjusted multiple instances throughout this policy process, both through adjustments made to timelines for each period (e.g., statement of interest period, offer period, and closing period). In light of recent Council direction, staff is now recommending shortened timelines for the Offer Period and Closing Period for properties of 4+ units to match timelines of 2-3 units, as noted below.

Table 2: Proposed Timelines for Multifamily properties

Dwelling Type	Statement of Interest Period
Multiple 2-3 Units	15-30 calendar days
Multiple 4+ Units	15-30 calendar days

Dwelling Type	Offer Period
Multiple 2-3 Units	60 calendar days
Multiple 4+ Units	60 calendar days

Dwelling Type	Close of Escrow	Extended Escrow Period
Multiple 2-3 Units	90 calendar days	Any agreement between the parties
Multiple 4+ Units	90 calendar days	Any agreement between the parties

Dwelling Type	Exercise of Right of First Refusal
2-3 Units	20 calendar days
4+ Units	20 calendar days

Timelines are necessary to allow rightsholders to assemble necessary finances to make competitive offers. Particularly for larger multifamily buildings which have longer timelines, additional time is required for a number of reasons:

1. Due diligence for larger buildings requires additional time.

2. Residents need to be made aware of the potential for purchase and agree to the conditions of ownership change (for example, income verification requirements).

3. Considering that OPA properties may come from the stock of substandard housing as identified in the Housing Element, the time for planning and evaluating renovations to upgrade the conditions of the property can also require additional time.

4. For preservation projects, Qualified Non-Profits may not always have financing arranged as applications for funding have differing deadlines, so additional time can support the ability to secure financing and close.

See Figure 4 in the attached Discussion Guide, especially the rightmost column, for variations in timelines for different policies nationwide. It is common for OPA policies to

permit 120+ days to close (with extensions when required by lenders). The foregoing reasons mirror the input staff has received from other jurisdictions, including San Franciso, which has had a COPA-like ordinance for a number of years, in addition to local nonprofit developers.

Administrative Guidelines

City staff plans to return to Council with Administrative Guidelines pertaining to specific requirements and circumstances of a higher level of detail than covered in the Chapter language. The City Council will then have an opportunity to initially approve the Administrative Guidelines necessary to implement the requirements of this Chapter. Thereafter, the City Council may delegate to the City Manager the authority to amend the Administrative Guidelines as needed. Administrative Guidelines will cover details including but not limited to:

- Template: Exemption Application and Certificate of Exemption for exemptions like medical/financial emergency which require application to the City
- Template: Statement of Rights and Obligations for cases in which assignment of rights applies
- Template: Notice of Intent to Sell
- Template: Statement of Interest
- Template: Disclosure Package to accompany Notice of Intent to Sell
- Conditions under which parties come to agreement between seller and rightsholder to accelerate required timelines
- QNP application process and timeline for organizations seeking certification, in addition to guidelines and standards for the selection of QNPs.

<u>Preservation Strategies for Affordable Housing Strategy Update</u>

The City's 2018-2023 Affordable Housing Strategy[10] will need to be updated at year's end. Staff will return to City Council in December with a proposed 2024-2029 Affordable Housing Strategy. The purpose of East Palo Alto's Affordable Housing Strategy ("the Strategy") is to align resources, ensure a unified strategic direction, and facilitate community partnerships to achieve a shared vision of housing affordability. The Strategy recommends that the City focus its limited affordable housing funds into the development of new, deed-restricted affordable housing and the acquisition and rehabilitation of existing units. Further, the Plan outlines potential regulatory changes and other creative approaches that the City and community partners could utilize to increase the production and preservation of affordable housing. Ultimately, the Strategy will help implement the City's 2023-2031 Housing Element policies and

[10] See 2018-2023 Affordable Housing Strategy at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjHpvSqi4GCAxXQJjQIHacVARAQFnoECA4QAw&url=https%3A%2F%2Fwww.cityofepa.org%2Fsites%2Fdefault%2Ffiles%2Ffileattachments%2Fhousing%2Fpage%2F20967%2Faffordable_housing_strategy_201903181537592675.pdf&usg=AOvVaw1mMTpyc1--eR9P2yRI4NaE&opi=89978449.

programs. See Chapter 6 of the Adopted 2023-2031 Housing Element,[11] and sections pertaining to housing preservation and anti-displacement goals.

Next Steps

If the Council waives the first reading and introduces any of the three ordinances, staff will place such item(s) on consent for a second reading at the next available City Council meeting, as is the City's custom and practice.

If an ordinance clears second reading (adoption), then staff will return with draft Administrative Guidelines and an implementation plan that outlines funding, community education, and marketing strategies that the City will implement the adopted ordinance(s).

As a reminder, the Administrative Guidelines will contain an outline of how proposed ordinance(s) that wins the votes needed for adoption works in practice, address "gray areas" for scenarios not explicitly referenced in the ordinance, set threshold criteria to fulfill the ordinance's intent, and promote program uptake. Key topics of the Administrative Guidelines include qualification of Non-Profit Housing Providers, transfer exemption procedures, assignment of rights procedures, noticing and disclosure requirements, prohibited conduct, and more.

Fiscal Impact

There is no fiscal impact associated with this staff report. As discussed above, the City's award of a Partnership for the Bay's Future Breakthrough Grant partially mitigates that cost by adding dedicated staff capacity from the Policy Grant Fellow, who will support with the mechanisms associated with potential implementation.

Public Notice

The public was provided notice of this agenda item by posting the City Council agenda on the City's official bulletin board outside City Hall and making the agenda and report available at the City's website and at the San Mateo County Library located at 2415 University Avenue, East Palo Alto.

Environmental

The proposed action is not subject to CEQA because it is not a "project" which would have a direct physical change or a reasonably foreseeable indirect physical change on the environment pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15378(b)(4) in that it is a governmental fiscal, organizational or administrative activity that will not result in direct or indirect changes in the environment. Even if it were a project subject to CEQA review, this project would be exempt from CEQA Guideline

[11] Adopted 2023-2031 Housing Element available at: https://www.cityofepa.org/housing/page/housing-element-update-1. Note there are unpublished unsubstantial revisions to provide metrics and goals required by the California Department of Housing and Community Development (HCD).

Section 15378 (regulatory actions), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning). The Council therefore directs that the Planning Division may file a Notice of Exemption with the San Mateo County Clerk.

Attachments

1. Discussion Guide
2. David Rosen & Associates Report Final
3. EPA OPA - Single Family Housing and Multifamily Housing
4. TOPA - Single Family Housing Only
5. COPA - Multifamily Housing Only

Discussion Guide

Preservation Objectives

See Figure 1 below for an overview of existing housing units in the City, including affordable housing units, rent-stabilized units, and market-rate units.

Figure 1: Existing Housing Units in East Palo Alto

Project Name	Affordability End Year	Government Assistance	Affordable	RSO	Market Rate	Total
Courtyard at Bay Rd.	**2060**	LIHTC	76			76
Nugent Square**	**2078**	LIHTC	32			32
Serenity Senior	**2069**	LIHTC	40		1	41
Light Tree	**2074**	LIHTC, HUD, HCD	182		3	185
Peninsula Park*	**2053**	LIHTC	65		64	129
Bay Oaks	**2075**	LIHTC	37		1	38
Clarke Ave.		-	15			15
Woodlands Newell	**2068**	LIHTC	47		2	49
Runnymede Gardens	**2055**	LIHTC; HUD; CalHFA	77		1	78
BMR Units	-	-	53			53
Woodland Park Rent Stabilized Units	Upon Vacancy***	-	N/A	1,838		1,838
Other Rent Stabilized Units****	Upon Vacancy	-	N/A	709		709
All Other Housing Units	N/A	-	N/A		4,740	4,740
		Units	624	2547	4812	7983
		Percentage	8%	32%	60%	100%

*NOTE: Peninsula Park – many units marked “market-rate” are currently rented by Section 8 households.
**Long-term affordability covenants for Nugent Square were extended in 2022 resyndication. Project received $7 million for necessary repairs and renovations.
***Due to Costa Hawkins and vacancy decontrol,
*** RSO units may have high rents today, but rent stabilization limits the annual rent increase over time.

Funding

EPA OPA does not require, but can permit, City funding to be used to support acquisitions which will become permanently affordable housing. Many OPA purchases may rely on funding sources from outside the City. Below is Figure 2 covering affordable housing preservation funding resources and a second list outlining funding opportunities to support single family home purchases.

Figure 2: Funding Sources for EPA OPA

Funding Source	Funding Type	Eligible Uses	Max Financial Assistance
Golden State Acquisition Fund	Below market debt	Acquisition	$13,950,000
Foreclosure Intervention Housing Preservation Program (FIHPP)	Grants, debt	Predevelopment, acquisition, rehabilitation, temporary relocation. operating subsidy	$500,000 per unit
Project Homekey	Grants	Acquisition, rehabilitation, of eligible dwelling types and operating support	Varies
HOME Investment Partnerships Program	Varies	Acquisition, rehabilitation	Varies
Community Development Block Grant (CDBG)	Grant	Acquisition, rehabilitation	
Affordable Housing Fund	Below market debt	Predevelopment, acquisition, rehabilitation	$100,000 per unit or the amount needed for project financial feasibility
Community Housing Fund	Below market debt	Variety of loan products; predevelopment through permanent financing	$15,000,000
Supportive and Transitional Housing	Varies	Acquisition, Predevelopment, Construction, Mini-Permanent	$6,000,000 with larger loan size sizes evaluated on a case-by-case basis
Affordability Preservation and Production	Varies	Acquisition, Predevelopment, Construction, Rehabilitation	$6,000,000 with larger loan size sizes evaluated on a case-by-case basis
Workforce Housing	Varies	Acquisition, Predevelopment, Construction	$7,500,000 with larger loan size sizes evaluated on a case-by-case basis

Enterprise-Level Line of Credit	Varies	Revolving Line of credit for acquisition, predevelopment, working capital allowed with acquisition or predevelopment	$6,000,000
Bay Area Transit-Oriented Affordable Housing (TOAH) Fund: Predevelopment Loan	Below market debt	Predevelopment costs for acquisition of Eligible Properties	$750,000
Bay Area Transit-Oriented Affordable Housing (TOAH) Fund: Acquisition Loan	Below market debt	Acquisition	$10,000,000
Community Development Financial Institutions (CDFI's)	Varies	Varies by program; predevelopment, acquisition, bridge financing, some limited permanent financing.	Varies
Regional Early Access Planning 2.0	Below market debt	Acquisition	$250,000 per unit

Funding Sources to Support First Time Homeownership

- **San Mateo HEART Down Payment Assistance Loans**
  - HEART partner Meriwest Mortgage offers a 30-year, conforming or high-balance fixed-rate loan of up to $970,800.
  - HEART offers a 15-year, second lien downpayment loan of up to $182,025.
  - The maximum purchase price for this combination, together with 5% downpayment from the borrower, is $1,213,500.
  - The borrower is not required to buy private mortgage insurance (PMI) which can cost thousands of dollars annually. This results in significant savings to the homebuyer.
- **San Mateo County CDBG funds**
  - SMC has requested a high-level Scope of Program for supporting first-time home purchasers in East Palo Alto
- **CA Dream for All Shared Appreciation Loan**
  - Loan for up to 20% of the home purchase price

Quantified Objectives

Figure 3: Housing Element Preservation Goals over 2-5 Year Time Spans

5 years	4 years	3 years	2 years
45 units per year	55 units per year	75 units per year	110 units per year
225 total units preserved	220 total units preserved	225 total units preserved	220 units preserved

EPA OPA started as a policy that would apply to all properties, approximately 5000, in East Palo Alto when originally drafted. Through the community outreach and public review process, multiple exemptions have been added. As drafted now, EPA OPA may only apply to 32 single-family homes and condos (28 & 4 units annually, respectively) and 4 multifamily transactions per year (estimated 4 units per transaction for a total of 16 units annually).[1]

- With a **100% transaction completion rate after notification, we would reach 48 units per year** (32 from single family housing and 16 from multifamily housing)
- If Council moves forward with **a Multifamily only ordinance, that reduces the estimate of annual notifications to 4 and the estimate of annual units to 16 units per year.**
- A 100% transaction completion rate is not likely, so maximizing the number of notifications is critical to maximizing opportunities.

[1] Between November 2021 and November 2022, according to the Multiple Listing Service, there were 15 units sold across four multifamily properties.

Figure 4: Timeline Comparisons Across Jurisdictions

Jurisdiction	Policy Name	Housing Type	Type of Right	Right to Exercise	Registration of Interest (days)	Due Diligence Materials	Negotiation Period (days)	Closing (days)
Baltimore, MD	Right of First Refusal	Single-family	Right of First Refusal	Tenant	N/A		30	60 (90 if using federal, state, or local program to assist)
Washington, DC	Tenant Opportunity to Purchase Act (TOPA)	5+ units	Right to Purchase and Right of First Refusal	Tenants	45	Owner must provide within 7 days of request	120 + 15 if third-party contract exists	120 (180 for limited equity cooperatives) + 120 w/ lender letter
		2-4 units		Tenants/Tenant	15 (+7 for individual tenant to act if group does not)		90 (+ 30 for an individual tenant) + 15 if third-party contract exists	90 + 120 w/ lender letter
		Single-family		Elderly tenant or tenant with a disability	20		25 + 15 if third-party contract exists	45 + 30 w/ lender letter
Montgomery County, MD	Right of First Refusal	4+ units	Right of First Refusal	Tenants	45	Owner must provide with offer of sale w/in 5 days of signing third-party contract	90 (concurrent w/ registration of interest)	180 after receipt of offer of sale (+ with mutual agreement)
				Housing Opportunities Commission	N/A		60	
Takoma Park, MD	Tenant Opportunity to Purchase Act (TOPA)	7+ units	Right to Purchase and Right of First Refusal	Tenant or City	45	Owner must provide within 7 days or request	120	120 (180 for limited equity cooperatives) + 120 w/ lender letter
		2-6 units			14 (+7 for individual tenant +7 for City)		30 (+30 for individual tenant +30 for City)	90+
		Single-family			7 (+7 for City)		14	30+ (60 if using govt. asst.)
New Hampshire	Manufactured home park right to purchase	Mfd. home parks	Right of First Refusal	Tenants	N/A		60	Undefined
Minnesota	Manufactured home park right to purchase	Mfd. home parks	Right of First Refusal	Tenants	N/A	Owner must provide	45	Undefined
Washington, DC	District Opportunity to Purchase Act (DOPA)	5+ units	Right of First Refusal	Qualified Developer	30	Owner must provide within 7 days of request	150 +15 if tenants register for TOPA	60 + 120 if tenants get extension under TOPA
Prince George's County, MD	Right of First Refusal	20+ units	Right of First Refusal	County or pre-qualified developer	7	Owner must provide with offer of sale w/in 5 days of signing third-party contract	60	180
Chicago	SRO Preservation Ordinance	SROs	Right of First Offer	Registered Developer	N/A		180	365 (+ with mutual agreement)
San Francisco, CA	Community Opportunity to Purchase Act (COPA)	3+ units	Right of First Offer	Qualified Nonprofit Developer	5		25 + 60 to perform due diligence	Undefined
			Right of First Refusal		5 (30 if no Right of First Offer)			Undefined
Berkeley, CA	Tenant Opportunity to Purchase Act (TOPA)	3+ units	Right of First Offer	Tenants and/or Qualified Nonprofit	30 (3-29 units) 45 (30+ units)	Owner must provide	60 (3-9 units), 90 (10-29 units) 120 (30+ units)	120 to secure financing + 40 w/ lender letter + 14 to close
			Right of First Refusal		N/A		30 Tenants 14 Qualified Nonprofit	
		2 unit and 1 unit w/ multiple households	Right of First Offer		20		45	90 to secure financing + 30 w/ lender letter) + 14 to close
			Right of First Refusal		N/A		30 Tenants 14 Qualified Nonprofit	
		1 unit	Right of First Offer	Tenant and/or Qualified Nonprofit	20		21	30 + 15 w/ lender letter + 14 to close
			Right of First Refusal		N/A		10	

Source: Opportunity to Purchase Policy Options for the City of Minneapolis, Bruton & Nichols 2021

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January 14, 2022
Via email

To: Patrick Heisinger, Rachel Horst

From: Nora Lake-Brown, David Rosen

Subject: Research Regarding Potential Effects of TOPA

This memorandum summarizes the information and analysis conducted by DRA related to the potential economic effects of an Opportunity to Purchase (OPA) ordinance on the housing market and property tax base in the City of East Palo Alto. The purpose of the review is to inform the City Council on potential fiscal and economic effects of OPA on the City.

Summary of Findings and Conclusions

- Single-family home prices, rents and the price of rental units in East Palo Alto are established by housing supply and demand within the regional housing market. Housing demand is strong in many areas of the country, across California, and especially in the Bay Area where rising home prices are spurred on by the continued growth of the Silicon Valley economy.
- The supply of new housing in the Bay Area has not kept pace with demand, and these forces are expected to continue into the near future. EPA's proposed OPA must be viewed in the context of these forces. The ordinance does not limit sales prices on single-family homes or any unit. If the home's tenants are not able to complete a purchase at market price within a set time frame, the home may be sold to any buyer.
- The OPA affects a small proportion of single-family homes in EPA. Buyers will clearly identify those home sales that are covered by the ordinance and those that are not, just like they identify school districts, transit, and other factors influencing their decision to buy. High market demand makes the market very efficient in adjusting to regulatory changes. The OPA should have no effect on prices for home sales not covered by the ordinance. Since price is not limited, DRA also believes the ordinance will have no effect on sales prices for units covered by the ordinance. Changes in interest rates, employment, wages, buyer demand and supply of homes for sale—all factors beyond the control of any city—are the key determinants of market price.

- DRA's "worst case" estimate of the loss in property tax assessment in the City from the purchase of absentee-owned homes and condos by nonprofits under OPA over the next five years is $67 million, or approximately 1.8% of the City's total assessed valuation of $3.7 billion. This worst-case scenario is highly unlikely because:
  - It assumes all absentee-owned homes sold in the next five years are purchased by non-profits and receive a total exemption of property taxes as affordable rental units. Creation of affordable ownership units will result in these units being assessed at affordable prices rather than market prices, resulting in a reduction but not total elimination in the property taxes generated by these units.
  - The subsidy required to cover the "gap" between market home price and affordable home prices will be large and few funds are available for such purchases. DRA estimates the total subsidy required to purchase and make affordable at 80% AMI or below all absentee-owned single-family dwellings and condos sold over the next five years at $97 M to create owner housing and $115 M to create renter housing. Lowering the income targeting to 50% AMI increases the subsidy required to $131 M to create affordable owner housing and $145 M to create affordable renter housing.
  - Subsidizing units purchased under OPA is not an allowable or competitive activity for any of the more than $23 billion in funding sources available for homeless and affordable housing in California in 2022 reviewed by DRA for this assignment. This will limit the number of these purchases and minimize the effect on the City's tax base. Subsidizing absentee-owned units purchased under OPA will require identification of new local government or foundation funding sources. DRA estimates a realistic number of units to be purchased by nonprofits and subsidized at no more than 2 to 3 units per year.

1. Residential Market Context

On a national level, the US has been experiencing high housing price growth, which is expected to continue in the years to come. According to Freddie Mac in July 21:

> High house price growth has been supported by increased demand due to low mortgage rates, disposable after-tax income that has risen during the current recession and a major shortage of housing supply relative to our population. The increase in house price growth will be less transitory than the increase in consumer prices, as the U.S. housing market will continue to struggle with a shortage of available housing for many months to come. [1]

Housing price appreciation has been even more pronounced in California and particularly the Bay Area due to the growth of the technology economy following the Great Recession and further spurred on by the COVID-19 pandemic.

Table 1 shows the growth in the median single-family home price in East Palo Alto and selected Counties since the recovery began in 2012.

Table 1
Appreciation in Single-Family Median Home Prices for Existing Homes
East Palo Alto, Selected Bay Area Counties and California
2012 to 2021

				Percent Increase		
	Dec. 2012	**Dec. 2020**	**Nov. 2021**	**2012 to 2020**	**2020 to 2021**	**2012 to 2021**
East Palo Alto	$285,000	$938,000	$1,030,000	229%	10%	261%
San Mateo County	$775,000	$1,700,000	$2,222,500	119%	31%	187%
Santa Clara County	$681,000	$1,375,000	$1,692,500	102%	23%	149%
San Francisco County	$864,795	$1,581,000	$1,900,000	83%	20%	120%
California	$365,840	$717,930	$782,490	96%	9%	114%

Sources: Compass Bay Area Market Reports (East Palo Alto); California Association of Realtors (counties, California

[1] http://www.freddiemac.com/research/forecast/20210715_quarterly_economic_forecast.page

We are currently in a rising interest rate environment, which factors into the demand and supply of housing equation by influencing the cost of money, financing, and financing proceeds. For investors who are paying all cash, interest rates are immaterial. In fact, in a rising rate environment, all cash buyers are even more advantaged against first time homebuyers who are buying for themselves as owner occupants.

2. Potential Loss in Assessed Valuation from Absentee-Owned Units Purchased by Nonprofit Housing Corporations

DRA evaluated the potential loss in the City's assessed property valuation associated with the purchase of absentee-owned single-family homes and condominiums by nonprofit housing corporations pursuant to the OPA.

2.1. Purchase of a single-family home by a non-profit housing corporation does not necessarily mean the City will lose the full amount of property tax revenues it receives from that home.

- Affordable rental units owned by qualifying nonprofit organizations and restricted to low income households with incomes at or below 80% of area median income (AMI) are eligible for a property tax exemption[2].
- Affordable owner units sold by nonprofit corporations and restricted for at least 30 years as affordable to low income households at 80% of AMI or below are eligible for a property tax assessment that takes the affordability restrictions into consideration[3]. This means the property is assessed at the affordable home sales price rather than market value. DRA calculated affordable home prices by 2021 income level, which are summarized in **Table 2** for single-family homes and **Table 3** for condominiums. Detailed assumptions for this calculation are

[2] https://www.boe.ca.gov/proptaxes/pdf/pub149.pdf
[3] https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=RTC&sectionNum=402.1

contained in **Appendix Table A-1** for single-family homes, and **Table A-2** for condominiums.

- Special assessments will continue to be paid on all units, regardless of assessed value or exemption status.

Table 2
Affordable Home Prices by Income Level and Unit Bedroom Count
Single-Family Homes
City of East Palo Alto
2021

	50% AMI	80% AMI	120% AMI
1 Bedroom	$207,600	$380,100	$610,200
2 Bedroom	$234,500	$428,700	$687,500
3 Bedroom	$261,300	$476,900	$764,500
4 Bedroom	$280,500	$513,400	$824,000
5 Bedroom	$299,400	$549,600	$883,100

Source: DRA.

Table 3
Affordable Home Prices by Income Level and Unit Bedroom Count
Condominiums
City of East Palo Alto
2021

	50% AMI	80% AMI	120% AMI
1 Bedroom	$150,900	$323,400	$553,600
2 Bedroom	$179,900	$374,100	$632,900
3 Bedroom	$208,100	$423,700	$711,300

Source: DRA.

2.2 DRA estimates a potential "worst case" loss of assessed value over 5 years of $67 million, representing only 1.8% of the City's total assessed valuation.

DRA's estimates are based on the following assumptions and data:

- An average of 28 absentee-owned single-family homes and 4 absentee-owned condos sold per year, which equals the average sales rate for all absentee-owned single-family homes and condos in the City between 2017 and 2021 based on analysis of parcel-specific data from Property Radar. This is an increase from the rate of 8 absentee-owned homes and 4 condos sold per year during the 2007 to 2011 period. Using total absentee-owned units overestimates the result because non-owner occupied units owned by East Palo Alto residents are exempt from the OPA.
- The weighted average assessed values for absentee-owned single-family homes and condos in East Palo Alto in December 2021 of approximately $408,000 and $504,000, respectively, are derived from Property Radar data. The average assessed value by unit bedroom count is summarized for single-family homes in **Table 4**.

Table 4
Average Assessed Value of Absentee-Owned Single-Family Homes[1]
City of East Palo Alto
December 1, 2021

	Total Assessed Value	No. of Units	Average Assessed Value
1 Bedroom	$3,974,848	6	$662,475
2 Bedroom	$14,428,751	54	$267,199
3 Bedroom	$35,337,100	99	$356,940
4 Bedroom	$22,664,495	35	$647,557
5 Bedroom	$7,868,800	13	$605,292
6 Bedroom	$908,147	2	$454,074
Weighted Ave.	--	--	$408,000

[1]Excludes single-family homes Property Radar identifies units as "owner-occupied."
Sources: Property Radar; City of East Palo Alto; DRA.

- Assuming 100% of the absentee-owned homes are sold to nonprofits **and** are paying **no** property taxes as qualifying low-income rental units. This worst case scenario is highly unlikely because:
  -
  - There are insufficient capital subsidies available to assist non-profits to purchase all of the absentee-owned homes coming on the market, as discussed further in Section 3.
  - Homes purchased by nonprofits and resold as affordable ownership units would not be exempt from property taxes but would pay property taxes based on affordable sales prices.

2.3 The increase in assessed valuation in the City from the resale of existing owner-occupied units is estimated at $183 million over the next five years, vastly outweighing the potential loss of assessed value from absentee-owned units.

DRA estimates the increase in assessed valuation from the resale of existing owner-occupied single-family homes and condos as follows:

- An average of 53 owner-occupied single-family homes and 9 owner-occupied condos sold per year, which equals the average sales rate for owner-occupied single-family homes and condos in the City between 2017 and 2021 based on analysis of parcel-specific data from Property Radar.
- The weighted average assessed values for owner-occupied single-family homes and condos in East Palo Alto in December 2021 of approximately $451,000 and $575,000, respectively, derived from Property Radar data.

2.4 In addition, DRA estimates that assessed valuation in the City will increase by another $560 million to $800 million over the next five years

(approximately) as the existing pipeline of market-rate housing is built out.

This estimate is based on the following assumptions:

- Approximately 800 market-rate units in the City's development pipeline;
- Average assessed valuation ranging from $700,000 to $1,000,000 per unit, based on 2021 average sales prices for existing condominiums and single-family homes in East Palo Alto. These assumed prices underestimate the actual increase in value as average new home prices are expected to be well above existing home sales prices.

3. Capital Subsidy Resources Necessary for Nonprofits to Purchase Single-Family Homes

Substantial capital resources will be required for nonprofit housing corporations to purchase existing absentee-owned single-family homes and/or condos for the purposes of creating affordable rental or owner units. Under the OPA, nonprofits will be required to pay market rate prices. DRA calculated subsidy requirements using an "affordability gap" methodology which compares the amount households at various income levels can pay for housing and the estimated cost of purchasing absentee-owned single-family homes at market prices under the OPA.

3.1. DRA estimates the five-year capital subsidy required to purchase and subsidize absentee-owned single-family homes and condos to create affordable owner or renter housing as follows[4]:

	50% AMI	80% AMI	120% AMI
Owner	**$131 M**	**$97 M**	**$52 M**
Renter	**$145 M**	**$115 M**	**$65 M**

[4] Assumes all units are converted to affordable owner or renter units at the target income level.

These estimates are based on the following assumptions:

- An average of 28 absentee-owned single-family homes and 4 absentee-owned condos sold per year, equal to the average sales rate for absentee-owned single-family homes in the City between 2017 and 2021.
- DRA calculated per unit affordable home prices (as described in Section 2.1 above) and renter supportable mortgages by income level and unit bedroom count. DRA then calculated a weighted average affordable home price and renter supportable mortgage by income level using the distribution of absentee-owned homes by unit bedroom count shown above in Table 4. Detailed assumptions for the calculation of affordable single-family and condo home prices and supportable rental mortgages by income levels are shown in Appendix **Tables A-1**, **A-2**, **A-3** and **A-4**.
- The weighted average owner and renter per unit affordability gaps to purchase and "buy down" the affordability of these units by income level and tenure are shown in **Table 5**.
- An average market purchase price of $1,106,000 for single-family homes and $783,000 for condos based on the average sales prices for resale of existing units in East Palo Alto during 2021 from Property Radar.

Table 5
Weighted Average Per Unit Affordability Gaps by Income Level
City of East Palo Alto
2021

	Very Low Income 50% AMI	**Low Income 80% AMI**	**Moderate Income 120%**
SFD Owner	$847,700	$633,500	$348,300
Condo Owner	$613,000	$427,000	$178,000
Renter	$905,700	$721,700	$411,700

3.2. Traditional sources of funding for affordable housing may not be used to subsidize units purchased under the TOPA. This will materially limit the number of sales to nonprofit housing corporations.

- California has an unprecedented level of funding available to tackle the problem of homelessness and lack of affordable housing in the State.
- The State Department of Housing and Community Development (HCD) has approximately $1.2 billion in funding remaining under Proposition 1, which authorized $4 billion in general obligation (GO) bonds for housing in 2018. This amount includes funding for the programs listed below, but excludes the Affordable Housing and Sustainable Communities program, which receives ongoing funding subject to Cap and Trade Auction Revenues. None of these funds may be used for OPA homes.

Multifamily Housing Program	$394 M
Veterans Housing and Homelessness Prevention Program (VHHP)	$129 M
Infill Infrastructure Grants (IIG)	$124 M
Serna Farmworker Housing Program	$96 M
No Place Like Home	$496 M

- The California State Budget includes more than $22 billion in funds for housing and homelessness over the next two years. Funding for FY 2021-2022 includes the following programs, which also may not be used to purchase TOPA homes:

Local Homelessness Programs	$1.0 B
Dept. of Social Services Homelessness Programs	$2.0 B
Rental Assistance (Payment of Overdue Rent)	$5.2 B
HCD Pipeline Projects	$1.75 B
Project HomeKey	$1.45 B
Affordable Housing Preservation	$500 M
Infill Infrastructure Grant	$300 M

- The California Tax Credit Allocation Committee (CTCAC) awarded more than $511 M in 9% and 4% Low Income Housing Tax Credits to projects in California in 2020. LIHTC's also are not available for OPA homes.
- The purchase and subsidization of units by nonprofits under the OPA does not qualify for the any of the above funding sources and would

require identification of new local government and/or foundation resources.

4. 1031 Exchanges

Under Section 1031 of the United States Internal Revenue Code, a taxpayer may defer recognition of capital gains and related federal income tax liability on the exchange of certain types of real property through a process known as a 1031 exchange.[5]

4.1 1031 Exchanges only apply to sale of an investment property and replacement purchase of another like-kind investment property of equal or greater value (e.g. sale of one rental property and purchase of another rental property).

4.2 1031 Exchange time limits are measured from when the property to be sold ("relinquished property") closes. Therefore, sale of a property by an East Palo Alto resident under a 1031 Exchange will not be affected by OPA timelines unless they also are purchasing a replacement investment property in East Palo Alto.

4.3 For East Palo Alto residents selling one investment property and purchasing another investment property in East Palo Alto, the OPA timeline is adequate to complete a 1031 Exchange.

- Measured from when the relinquished property closes, the Exchangor has 45 days to nominate (identify) potential replacement properties and a total of 180 days (including the 45-day nominating period) to acquire the replacement property. The 97-day to 127-day time limits proposed for OPA fits within this 180-day time frame.

[5] See https://www.law.cornell.edu/uscode/text/26/1031

4.3 1031 Exchanges comprise a small percentage (less than 5%) of residential transactions nationally.

- According to a 2020 study by the National Association of Realtors, among residential NAR members, 1031 Exchanges comprised an average of less than 5% of sales transactions, with half of members reporting no such transactions.

Patrick Heisinger, Rachel Horst

Appendix Tables

Table A-1
Affordable Home Sales Price Calculations, Owner Housing
Single-Family Homes
City of East Palo Alto
2021

Assumptions

2021 HUD Median Household Income, San Mateo County	$149,600
2021 HUD VLI Limit, Household Size of Four	$91,350
2021 HUD Effective Median Income, HH Size of Four	$182,700
Used in Calculations	$182,700
Affordable Housing Expense As a % of Income	30%

No. of Bedrooms	**Studio**	**1 Bedroom**	**2 Bedroom**	**3 Bedroom**
Household Size	1 Persons	2 Persons	3 Persons	4 Persons
Household Size Income Adjust. Factor	70%	80%	90%	100%
Owner-Paid Utility Allowance (1)	$188	$208	$265	$324

Monthly HOA Fee/Maint. Cost	$200
Monthly Property Insurance	$100
Property Tax Rate (% of AV)	1.00%
Mortgage Interest Rate	5.50%
Term (Years)	30
Downpayment (% of Sales Price)	10.00%

Per Unit Affordable Sales Price by Unit Bedroom Count

		Studio	**1 Bedroom**	**2 Bedroom**	**3 Bedroom**
50% AMI					
Annual Income Limit		$63,945	$73,080	$82,215	$91,350
Affordable Monthly Housing Expense		$1,599	$1,827	$2,055	$2,284
Less: Monthly Utility Allowance		($188)	($208)	($265)	($324)
Less: HOA/Maintenance Expense		($200)	($200)	($200)	($200)
Less: Property Insurance		($100)	($100)	($100)	($100)
Available for Principal, Interest, Taxes		$1,111	$1,319	$1,490	$1,660
Less: Property Taxes	1.20%	$217	$258	$292	$325
Supportable Mortgage Before Prop. Taxes		$195,671	$232,305	$262,421	$292,362
Assumed Assessed Value at Sale	90.00%	$217,413	$258,116	$291,579	$324,847
Available for Mortg. Principal and Interest		$894	$1,061	$1,198	$1,335
Supportable Mortgage		$157,380	$186,845	$211,068	$235,150
Plus: Downpayment @	10.00%	$17,490	$20,760	$23,450	$26,130
Affordable Sales Price (Rounded)		**$174,900**	**$207,600**	**$234,500**	**$261,300**
80% AMI					
Annual Gross Income		$102,312	$116,928	$131,544	$146,160
Affordable Monthly Housing Expense		$2,558	$2,923	$3,289	$3,654
Less: Monthly Utility Allowance		($188)	($208)	($265)	($324)
Less: HOA/Maintenance Expense		($200)	($200)	($200)	($200)
Less: Property Insurance		($100)	($100)	($100)	($100)
Available for Principal, Interest, Taxes		$2,070	$2,415	$2,724	$3,030
Less: Property Taxes	1.20%	$405	$473	$533	$593
Supportable Mortgage Before Prop. Taxes		$364,572	$425,334	$479,756	$533,649
Assumed Assessed Value at Sale	90.00%	$405,080	$472,593	$533,062	$592,943
Available for Mortg. Principal and Interest		$1,665	$1,942	$2,191	$2,437
Supportable Mortgage		$293,229	$342,100	$385,872	$429,219
Plus: Downpayment @	10.00%	$32,580	$38,010	$42,870	$47,690
Affordable Sales Price (Rounded)		**$325,800**	**$380,100**	**$428,700**	**$476,900**
120.0% of AMI					
Annual Gross Income		$153,468	$175,392	$197,316	$219,240
Affordable Monthly Housing Expense		$3,837	$4,385	$4,933	$5,481
Less: Monthly Utility Allowance		($188)	($208)	($265)	($324)
Less: HOA/Maintenance Expense		($200)	($200)	($200)	($200)
Less: Property Insurance		($100)	($100)	($100)	($100)
Available for Principal, Interest, Taxes		$3,349	$3,877	$4,368	$4,857
Less: Property Taxes	1.20%	$655	$759	$855	$950
Supportable Mortgage Before Prop. Taxes		$589,832	$682,824	$769,300	$855,423
Assumed Assessed Value at Sale	90.00%	$655,369	$758,693	$854,778	$950,470
Available for Mortg. Principal and Interest		$2,694	$3,118	$3,513	$3,907
Supportable Mortgage		$474,407	$549,202	$618,755	$688,025
Plus: Downpayment @	10.00%	$52,710	$61,020	$68,750	$76,450
Affordable Sales Price (Rounded)		**$527,100**	**$610,200**	**$687,500**	**$764,500**

(1) For single-family detached units. Source: San Mateo County Housing Authority, effective 3/1/21
Source: DRA

Table A-2
Affordable Home Sales Price Calculations, Owner Housing
Condominium Units
City of East Palo Alto
2021

Assumptions

2021 HUD Median Household Income, San Mateo County	$149,600
2021 HUD VLI Limit, Household Size of Four	$91,350
2021 HUD Effective Median Income, HH Size of Four	$182,700
Used in Calculations	$182,700
Affordable Housing Expense As a % of Income	30%

No. of Bedrooms	**Studio**	**1 Bedroom**	**2 Bedroom**	**3 Bedroom**
Household Size	1 Persons	2 Persons	3 Persons	4 Persons
Household Size Income Adjust. Factor	70%	80%	90%	100%
Owner-Paid Utility Allowance (1)	$155	$168	$212	$262

Monthly HOA Fee/Maint. Cost	$600
Monthly Property Insurance	$100
Property Tax Rate (% of AV)	1.00%
Mortgage Interest Rate	5.50%
Term (Years)	30
Downpayment (% of Sales Price)	10.00%

Per Unit Affordable Sales Price by Unit Bedroom Count

		Studio	**1 Bedroom**	**2 Bedroom**	**3 Bedroom**
50% AMI					
Annual Income Limit		$63,945	$73,080	$82,215	$91,350
Affordable Monthly Housing Expense		$1,599	$1,827	$2,055	$2,284
Less: Monthly Utility Allowance		($155)	($168)	($212)	($262)
Less: HOA/Maintenance Expense		($600)	($600)	($600)	($600)
Less: Property Insurance		($100)	($100)	($100)	($100)
Available for Principal, Interest, Taxes		$744	$959	$1,143	$1,322
Less: Property Taxes	1.20%	$146	$188	$224	$259
Supportable Mortgage Before Prop. Taxes		$131,035	$168,901	$201,307	$232,833
Assumed Assessed Value at Sale	90.00%	$145,594	$187,668	$223,675	$258,703
Available for Mortg. Principal and Interest		$598	$771	$919	$1,063
Supportable Mortgage		$105,392	$135,848	$161,913	$187,270
Plus: Downpayment @	10.00%	$11,710	$15,090	$17,990	$20,810
Affordable Sales Price (Rounded)		**$117,100**	**$150,900**	**$179,900**	**$208,100**
80% AMI					
Annual Gross Income		$102,312	$116,928	$131,544	$146,160
Affordable Monthly Housing Expense		$2,558	$2,923	$3,289	$3,654
Less: Monthly Utility Allowance		($155)	($168)	($212)	($262)
Less: HOA/Maintenance Expense		($600)	($600)	($600)	($600)
Less: Property Insurance		($100)	($100)	($100)	($100)
Available for Principal, Interest, Taxes		$1,703	$2,055	$2,377	$2,692
Less: Property Taxes	1.20%	$333	$402	$465	$527
Supportable Mortgage Before Prop. Taxes		$299,935	$361,930	$418,641	$474,120
Assumed Assessed Value at Sale	90.00%	$333,262	$402,145	$465,157	$526,800
Available for Mortg. Principal and Interest		$1,370	$1,653	$1,912	$2,165
Supportable Mortgage		$241,241	$291,104	$336,717	$381,339
Plus: Downpayment @	10.00%	$26,800	$32,340	$37,410	$42,370
Affordable Sales Price (Rounded)		**$268,000**	**$323,400**	**$374,100**	**$423,700**
120.0% of AMI					
Annual Gross Income		$153,468	$175,392	$197,316	$219,240
Affordable Monthly Housing Expense		$3,837	$4,385	$4,933	$5,481
Less: Monthly Utility Allowance		($155)	($168)	($212)	($262)
Less: HOA/Maintenance Expense		($600)	($600)	($600)	($600)
Less: Property Insurance		($100)	($100)	($100)	($100)
Available for Principal, Interest, Taxes		$2,982	$3,517	$4,021	$4,519
Less: Property Taxes	1.20%	$584	$688	$787	$884
Supportable Mortgage Before Prop. Taxes		$525,195	$619,420	$708,186	$795,894
Assumed Assessed Value at Sale	90.00%	$583,550	$688,245	$786,873	$884,327
Available for Mortg. Principal and Interest		$2,398	$2,829	$3,234	$3,635
Supportable Mortgage		$422,419	$498,205	$569,600	$640,145
Plus: Downpayment @	10.00%	$46,940	$55,360	$63,290	$71,130
Affordable Sales Price (Rounded)		**$469,400**	**$553,600**	**$632,900**	**$711,300**

(1) For single-family detached units. Source: San Mateo County Housing Authority, effective 3/1/21
Source: DRA

Table A-3
Affordable Rents and Supportable Mortgage By Income Level
City of East Palo Alto
2021

Assumptions

2021 HUD Median Household Income, San Mateo County	$149,600
2021 HUD VLI Limit, Household Size of Four	$91,350
2021 HUD Effective Median Income, HH Size of Four	$182,700
Used in Calculations	$182,700
Affordable Housing Expense As a % of Income	30%

No. of Bedrooms	**Studio**	**1 Bedroom**	**2 Bedroom**	**3 Bedroom**	**4 Bedroom**	**5 Bedroom**
Household Size	1.0 Persons	1.5 Persons	3.0 Persons	4.5 Persons	6.0 Persons	7.5 Persons
Household Size Income Adjust. Factor	70%	75%	90%	104%	116%	128%
Tenant-Paid Utility Allowance, San Mateo Co. Hsg. Author. (1)						
Condos/Apts.	$92	$110	$148	$186	$224	$264

Annual Operating/Maintenance Expenses Per Unit	$8,000
Vacancy Rate	5.00%
Mortgage Interest Rate	6.50%
Mortgage Amortization (Years)	30
Debt Coverage Ratio	1.15

Per Unit Supportable Mortgage	**Studio**	**1 Bedroom**	**2 Bedroom**	**3 Bedroom**	**4 Bedroom**	**4 Bedroom**
50% of Median						
Annual Income Limit	$63,945	$68,513	$82,215	$95,004	$105,966	$116,928
Affordable Monthly Housing Expense	$1,599	$1,713	$2,055	$2,375	$2,649	$2,923
Less: Monthly Utility Allowance	($59)	($70)	($95)	($124)	($151)	($184)
Affordable Monthly Rent	$1,540	$1,643	$1,960	$2,251	$2,498	$2,739
Annual Gross Rental Income Per Unit	$18,480	$19,716	$23,520	$27,012	$29,976	$32,868
Less: Vacancy (Underwriting)	($924)	($986)	($1,176)	($1,351)	($1,499)	($1,643)
Annual Operating/Maintenance Expenses Per Unit	($8,000)	($8,000)	($8,000)	($8,000)	($8,000)	($8,000)
Net Operating Income Per Unit	$9,556	$10,730	$14,344	$17,661	$20,477	$23,225
Available for Debt Service	$8,310	$9,331	$12,473	$15,358	$17,806	$20,195
Supportable Mortgage Per Unit	$109,600	$123,000	$164,400	$202,500	$234,800	$266,300
80.0% of AMI						
Annual Income Limit	$102,312	$109,620	$131,544	$152,006	$169,546	$187,085
Affordable Monthly Housing Expense	$2,558	$2,741	$3,289	$3,800	$4,239	$4,677
Less: Monthly Utility Allowance	($59)	($70)	($95)	($124)	($151)	($184)
Affordable Monthly Rent	$2,499	$2,671	$3,194	$3,676	$4,088	$4,493
Annual Gross Rental Income Per Unit	$29,988	$32,052	$38,328	$44,112	$49,056	$53,916
Less: Vacancy (Underwriting)	($1,499)	($1,603)	($1,916)	($2,206)	($2,453)	($2,696)
Annual Operating/Maintenance Expenses Per Unit	($8,000)	($8,000)	($8,000)	($8,000)	($8,000)	($8,000)
Net Operating Income Per Unit	$20,489	$22,449	$28,412	$33,906	$38,603	$43,220
Available for Debt Service	$17,816	$19,521	$24,706	$29,484	$33,568	$37,583
Supportable Mortgage Per Unit	$234,900	$257,400	$325,700	$388,700	$442,600	$495,500
120% of Median						
Annual Income Limit	$153,468	$164,430	$197,316	$228,010	$254,318	$280,627
Affordable Monthly Housing Expense	$3,837	$4,111	$4,933	$5,700	$6,358	$7,016
Less: Monthly Utility Allowance	($92)	($110)	($148)	($186)	($224)	($264)
Affordable Monthly Rent	$3,745	$4,001	$4,785	$5,514	$6,134	$6,752
Annual Gross Rental Income Per Unit	$44,940	$48,012	$57,420	$66,168	$73,608	$81,024
Plus: Miscellaneous Income	($187)	($200)	($239)	($276)	($307)	($338)
Less: Management Fee/Expense	($8,000)	($8,000)	($8,000)	($8,000)	($8,000)	($8,000)
Annual Operating/Maintenance Expenses Per Unit	($1,499)	($1,603)	($1,916)	($2,206)	($2,453)	($2,696)
Net Operating Income Per Unit	$38,998	$42,210	$52,049	$61,201	$68,983	$76,743
Available for Debt Service	$33,912	$36,705	$45,260	$53,218	$59,985	$66,733
Supportable Mortgage Per Unit	$447,100	$483,900	$596,700	$701,600	$790,900	$879,800

(1) For condos and apartment units. Source: San Mateo County Housing Authority, effective 3/1/21
Source: DRA

Table A-4
Utility Allowances
San Mateo County
East Palo Alto ADU Analysis
2021

No. of Bedrooms	**Studio**	**1 Bedroom**	**2 Bedroom**	**3 Bedroom**	**4 Bedroom**
Apartment/Condo/Duplex					
Heating					
Natural Gas	$17	$21	$24	$26	$29
Electric	$16	$19	$24	$29	$34
Cooking					
Natural Gas	$4	$4	$6	$8	$10
Electric	$7	$8	$11	$15	$18
Water Heating					
Natural Gas	$8	$9	$13	$18	$22
Electric	$15	$18	$23	$28	$33
Other Electric	$21	$25	$37	$52	$66
Water	$69	$71	$90	$111	$133
Trash	$27	$27	$27	$27	$27
Total--All Electric	$59	$70	$95	$124	$151
Total--Natural Gas (& Other Electric)	$50	$59	$80	$104	$127
Assumed Tenant-Paid Utilities (1)	**$59**	**$70**	**$95**	**$124**	**$151**
Assumed Owner-Paid Utilities (2)	**$155**	**$168**	**$212**	**$262**	**$311**
Single-Family Detached					
Heating					
Natural Gas	$25	$30	$34	$38	$42
Electric	$34	$40	$47	$54	$61
Cooking					
Natural Gas	$4	$4	$6	$8	$10
Electric	$7	$8	$11	$15	$18
Water Heating					
Natural Gas	$10	$12	$17	$22	$27
Electric	$19	$22	$29	$35	$42
Other Electric	$32	$40	$61	$82	$103
Water	$69	$71	$90	$111	$133
Trash	$27	$27	$27	$27	$27
Total--All Electric	$92	$110	$148	$186	$224
Total--Natural Gas (& Other Electric)	$71	$86	$118	$150	$182
Assumed Tenant-Paid Utilities (1)	**$92**	**$110**	**$148**	**$186**	**$224**
Assumed Owner-Paid Utilities (2)	**$188**	**$208**	**$265**	**$324**	**$384**

(1) Assumes tenant pays electrict heating, cooking and water heating, and other electric.
(2) Assumes owners pay electric heating, cooking, water heating, other electric, water, sewer and trash.
Source: Housing Authority of the County of San Mateo, effective 3/01/2021

ORDINANCE NO. ___

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF EAST PALO ALTO**

**ADDING CHAPTER 14.25 TO THE EAST PALO ALTO MUNICIPAL CODE
ENTITLED THE EAST PALO ALTO OPPORTUNITY TO PURCHASE ACT**

WHEREAS, the City Council finds that East Palo Alto is experiencing a shortage of affordable housing, especially for extremely low-income, very low-income, low-income and moderate-income residents, and a displacement crisis; and

WHEREAS, rapid displacement is evidenced in East Palo Alto by high rates of eviction, increasing rents, and increasing home values; and

WHEREAS, there is a disproportionate impact of displacement, homelessness, and unmet affordable housing and homeownership needs in East Palo Alto borne by African American, Latinx, and Pacific Islander communities of color; and

WHEREAS, sixty percent (60%) of East Palo Alto's population are renters, and over half of these renters are cost-burdened, meaning they spend over thirty percent (30%) of their monthly income on rent; and

WHEREAS, according to the Bay Area Equity Atlas and the Urban Displacement Project, seventy-two percent (72%) of low-income households in East Palo Alto live in gentrifying neighborhoods; and

WHEREAS, due to state law, tenants living in single-family homes and tenants living in buildings built after 1988 are not protected by rent stabilization (although the Just Cause for Eviction provision applies); tenants in rent-stabilized units are not protected from displacement by owner-move in; and when a tenant moves out, the rent for that unit can be raised to market value; and

WHEREAS, according to the American Community Survey (2015-2019) and San Mateo County Income Limits, the median household income in East Palo Alto of $67,087 is less than half the county's median household income, and most East Palo Alto households fall into the "extremely low-income" to "very low-income" category, or 30-50% AMI, making residents highly susceptible to dramatic shifts in the housing market; and

WHEREAS, according to the Center for Responsible Lending, during the foreclosure crisis from 2004-2008, African Americans and Latinxs in California were more than twice as likely as non-Hispanic Whites to lose their homes to foreclosure; and

WHEREAS, there is a concentration of properties in East Palo Alto owned by individual and entity investors and the majority of these investors are not residents of the City of East Palo Alto; and

WHEREAS, historically, East Palo Alto residents, both owners and renters, have been denied opportunities to build wealth through property ownership due to discriminatory housing policies, including the practice of redlining that impacted longer term residents and continues to impact successive generations of East Palo Alto residents; and

WHEREAS, it is a necessary and important public purpose to provide relief for these economic and social ills arising from the housing challenges facing East Palo Alto residents; and

WHEREAS, approximately 5.8% of properties in East Palo Alto are owned by East Palo Alto residents with a primary residence elsewhere in the city; and

WHEREAS, a limited exemption for these local residents who own other properties within East Palo Alto will promote the purpose of providing relief for these economic and social ills experienced by residents of East Palo Alto; and

WHEREAS, Tenant and Community Opportunity to Purchase Act programs have been adopted in a number of jurisdictions including Washington, D.C. and San Francisco to protect residents' ability to stay in a neighborhood in a cost-effective manner; and

WHEREAS, the City Council desires to prevent further displacement of East Palo Alto households, to supply a variety of affordable rental and ownership housing options, and to protect the health, safety and general welfare of the public through an opportunity to purchase program; and

WHEREAS, this action is exempt from the California Environmental Quality Act ("CEQA"), each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines Section 15378 (regulatory actions). Section 15061 (b) (3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning.)

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT TO THE EAST PALO ALTO MUNICIPAL CODE

The City Council hereby adds Chapter 14.25 ("East Palo Alto Opportunity to Purchase Act") to the East Palo Alto Municipal Code to read as follows:

Chapter 14.25
East Palo Alto Opportunity to Purchase Act

14.25.010 Title and Purpose

A. This Chapter may be referred to as the "East Palo Alto Opportunity to Purchase Act" or "EPA OPA" program.

B. The purpose of this Chapter is to confer upon Tenants, Qualified Non-Profit Housing Organizations, and the City of East Palo Alto an opportunity to purchase upon the transfer or sale of Residential Property to prevent displacement of lower-income tenants, to facilitate ownership for residents, and to create more affordable housing opportunities in East Palo Alto.

14.25.020 Definitions

"Absentee Owner(s)" means an owner (or owners) of a residential property who do not occupy the residential property as the owner's (or owners') principal residence.

"Accessory Dwelling Unit (ADU)" means a separate dwelling unit providing complete independent living facilities for one or more persons containing living, sleeping, kitchen and sanitation facilities as defined in and subject to the provisions in Chapter 18.96.

"Administrative Guidelines" means any requirements for implementation and administration of this Chapter adopted by the City.

"50% AMI Income Household" means households whose income does not exceed fifty percent (50%) of the Area Median Income, adjusted for family size and as published annually by the City.

"Bona Fide Offer to Purchase" means an offer to purchase a property or the interest in the property that is either:

(1) In cases in which a First Offer made by a Rightsholder is acceptable to an Owner, an offer with a price and other material terms at which a willing Owner would sell and a willing Buyer would purchase the property, or the appraised value; or,

(2) In cases following the expiration of marketing prohibition in which a Third-Party Offer is acceptable, an offer with a price and other material terms at which a willing Owner would sell and a willing Buyer would purchase the property, or the appraised value; or,

(3) In cases involving the exercise of the Right of First Refusal, an offer to purchase for the Rightsholder at a price and other material terms that are substantially equivalent to those accepted by an Owner in an arm's length Third-Party Offer.

"City" means the City of East Palo Alto, including any departments within the City that are assigned any responsibilities under this Chapter.

"Condominium" means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property, together with a separate interest in space in a residential structure located on the real property in compliance with Civil Code Section 783. A condominium may include, in addition, a separate interest in other portions of the real property.

"Day or Days" means calendar day(s) unless otherwise stated.

"Dwelling Unit" means a structure or the part of a structure that is used as a residence that provides complete, independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation.

"Duplex" means a single building that contains two dwelling units or two dwelling units on a single parcel. Duplex does not include accessory residential units.

"First Offer" means an offer made by a Rightsholder (Tenant, Qualified Non-Profit Housing Organization, or the City).

"Junior Accessory Dwelling Unit (JADU)" means a dwelling unit that is no more than 500 square feet in size and contained entirely within a single-family residence, as defined in Chapter 18.96.

“Low-Income Households” are households whose income does not exceed sixty percent (60%) of the Area Median Income, adjusted for family size and as published annually by the City.

“Listing or Marketing” means adding the property to the Multiple Listing Service (MLS) or any other private or public online database, or adding or disseminating information about the property, with the intent of informing Third-Parties or their representatives about the opportunity to purchase, promoting the property, or any actions that promote or facilitate communications from prospective buyers.

“Median-Income Households” are households whose income does not exceed eighty percent (80%) of the Area Median Income, adjusted for family size and as published annually by the City.

“Moderate-Income Households” are households whose income does not exceed one hundred and twenty percent (120%) of the Area Median Income, adjusted for family size and as published annually by the City.

“**Multiple-Family Dwelling**” means any property with two or more dwelling units.

“Non-Exempt” means a residential property or a transfer that is not exempt under provisions of this Chapter.

“Notice of Intent to Sell” means a required notice from a non-exempt residential property owner of their intent to sell a residential property, to be provided to the Rightsholders prior to listing or marketing the residential property for sale.

“Offer Period” means the time allotted, as varied by building type following the timely submittal of a Statement of Interest by a Rightsholder, during which Rightsholders may make competitive offers to purchase the property.

“Owner” means any natural person, corporation, association, partnership, joint venture, limited liability company, trustee, business entity and its respective agents, or any other entity, who is the owner of record of a residential property.

“**Owner-Occupied Single-Family Dwelling**” means a single-family dwelling that is occupied by the owner(s) as the owner’s or owners’ principal residence.

“Owner-Occupied Duplex” means a duplex in which at least one unit is occupied by the owner(s) as the owner’s or owners’ principal residence.

“Owner-Occupied Triplex” means a triplex in which at least one unit is occupied by the owner(s) as the owner’s or owners’ principal residence.

“Pre-Marketing Period” means the time before a non-exempt residential property owner may list or market the residential property to prospective Third-Party Purchasers, which may include the Statement of Interest Period and/or the Offer Period.

“Principal Residence” means a residential dwelling that is occupied and is the usual place of return of a natural person. A dwelling qualifies as a primary residence when the person has lived in the dwelling for more than fifty percent (50%) of the time in the year prior to the proposed sale; and the person acknowledges the dwelling as the person’s primary residence by voter registration, address on tax returns, homeowner’s exemption, and/or mailing address.

“Rightsholder Purchaser(s)” or “Rightsholding Purchaser(s)” means Tenants, Qualified Non-Profits, or the City who are purchasing a Residential Property.

“Qualified Non-Profit” or “Qualified Non-Profit Housing Organization” means an organization that is exempt from Federal Income Tax under 26 USC Section 501(c)(3), or a California cooperative corporation that has the capacity to acquire, provide and manage affordable housing for low, very low, and extremely low income households as defined by the City’s annual Area Median Income calculations, has a commitment to prevent displacement, has a demonstrated commitment to community engagement, and is certified by the City through an application process.

“Rent” means the consideration, including security deposit, cleaning deposit and any other deposits, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Rent includes monies and the fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

“Residential Property” means any property containing one or more dwelling units and located in the City.

“Right of First Offer” means the Rightsholder's right to make a first offer to purchase a residential property, during the Offer Period following timely submittal of a Statement of Interest, prior to its listing or marketing to a broader audience by the Owner.

“Right of First Refusal” means the Rightsholder’s right to match a Third-Party Purchaser Bona Fide Offer to Purchase. Single-Family Dwellings are exempt.

“Rightsholder” means Tenant, Qualified Non-Profit Housing Organization, or the City in reference to the Right of First Offer and Right of First Refusal as conferred in this Chapter.

“Single-Family Dwelling” means a building, structure or dwelling unit (e.g. accessory dwelling unit), or portion of a building, structure, or dwelling unit principally designed for the residential habitation of one household, with all secure entrances leading to the same set of interior common areas.

“Statement of Rights and Obligations” means a statement provided by a Qualified Non-Profit to a Tenant that assigns their rights under this Chapter, or by a Qualified Non-Profit that purchases a residential property under this Chapter, outlining its responsibilities as the Rightsholder and/or Subsidized Purchaser.

“Subsidized Purchaser” is any Rightsholder (Tenant, Qualified Non-Profit, or City) receiving public or private subsidy to support a purchase.

“Tenant” means a renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

"Third Party” means any person or entity that is not a Rightsholder and not the Owner/Seller of the property.

“Third-Party Offer” means any offer made by a person or entity for a Residential Property other than a Rightsholder.

“Third-Party Purchaser” means any person or entity that has entered into a bona fide contract of sale for a Residential Property prior to an Owner giving the Rightsholder(s) an opportunity to purchase at a price and terms that represent a Bona Fide Offer to Purchase.

“Triplex” means a single building that contains three dwelling units or three dwelling units on a single parcel. Triplex does not include accessory dwelling units.

14.25.030 Applicability

This Chapter applies to the sale or transfer of all Residential Property in the City unless otherwise exempted.

14.25.040 Exemptions

A. Exempt Residential Property. Residential Property not subject to the requirements of this Chapter:

1. Owner-Occupied Single-Family Dwellings, including those with an Accessory Dwelling Unit(s) (inclusive of any Junior Accessory Dwelling Unit) when the Owner has occupied the Single-Family Dwelling or the ADU as the Owner's Principal Residence for at least one (1) year or more.

2. Non-Owner-Occupied Residential Property owned by an East Palo Alto resident, when the Owner has occupied a Residential Property within East Palo Alto as the Owner's Principal Residence for at least one (1) year or more. This exemption shall not apply to any Residential Property owned by:

    a. A real estate investment trust, as defined in Section 856 of the Internal Revenue Code;

    b. A corporation; or

    c. A limited liability company in which at least one member is a corporation.

3. Owner-Occupied Condominiums when the Owner has occupied the Condominium as the Owner's Principal Residence for at least one (1) year or more.

4. Any Owner-Occupied Duplex with or without any Accessory Dwelling Unit(s) (inclusive of any Junior Accessory Dwelling Unit) when the Owner has occupied any Dwelling Unit on the property as the Owner's Principal Residence for at least one (1) year or more.

5. Any Owner-Occupied Triplex with or without any Accessory Dwelling Unit(s) (inclusive of any Junior Accessory Dwelling Unit) when the Owner has occupied any Dwelling Unit on the property as the Owner's Principal Residence for at least one (1) year or more.

6. Residential Property owned by the local, state, or federal government.

7. Residential Property subject to resale price control under Chapter 18.37 of East Palo Alto's Municipal Code.

8. Residential Property owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

B. Exempt Transfers. Transfers of Residential Property not subject to the requirements of this Chapter:

1. An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, nieces and nephews, and/or grandparents and grandchildren.

2. A transfer for consideration by a decedent's estate if the consideration arising from the transfer will pass from the decedent's estate to, or solely for the benefit of, charity.

3. A transfer of legal title or an interest in an entity holding legal title to a Residential Property pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage. This exemption does not supersede any rights to purchase afforded to Rightsholders under California Civil Code Sections 2924(f)-(h), 2924(m)-(n), or 2929.3.

4. A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where one or more transferors is a current beneficiary of the trust.

5. A transfer by devise, descent, or operation of the law upon the death of a natural person.

6. A transfer pursuant to court order or court-approved settlement.

7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.

8. Any transfer of a fractional interest in a Residential Property that is less than fifty percent (50%) of an undivided interest in the Residential Property.

9. Any transfer in which the transferee receives a low-income housing credit pursuant to 28 U.S.C. § 42.

10. A transfer of a Residential Property with no more than four (4) Dwelling Units made for the purpose of either: (a) paying for imminently necessary health care expenses of an Owner of the Residential Property, or (b) an emergency circumstance placing the Owner in financial hardship and at imminent risk of foreclosure or bankruptcy and the Owner has occupied the Residential Property as the Owner's Principal Residence for at least one (1) year or more. For purposes of this subsection only, "Owner" shall be limited to a natural person having an undivided interest in the Residential Property of at least fifty percent (50%). An Owner may claim this Exempt Transfer within one (1) year of having vacated the Residential Property where the Owner demonstrates the existence of the conditions set forth in this subsection.

C. Transfer Exemption Procedures. The Owner shall submit a Certificate of Exemption signed under penalty of perjury to the City after deciding to sell and before marketing the property, self-certifying one of the exemptions described in subsection B. A Certificate of Exemption must be accompanied by supporting documents as set forth in the Administrative Guidelines. The City shall make the template Certificate of Exemption publicly available, including on the City website. This section shall not be construed to or used in a manner that unreasonably delays an Owner's valid and lawful transfer of a real property interest under Exempt Transfers.

14.25.050 Qualified Non-Profits

A. Certification, Term, and Renewal. The City Council shall certify and recertify Qualified Non-Profits through the Administrative Guidelines which establish the application process. A Non-Profit organization's certification as a Qualified Non-Profit shall be valid for five (5) years. The City Manager or designee shall solicit new applications for Qualified Non-Profit status at least once each calendar year, at which time existing Qualified Non-Profits shall be eligible to apply for renewed certification. A list of Qualifying Non-Profits shall be published on the City's website.

B. Disqualification of Qualified Non-Profits. The City Manager or designee shall promptly investigate any complaint alleging that a Qualified Non-Profit has failed to comply with this Chapter. If after providing the Qualified Non-Profit with notice and opportunity to respond, the City Manager or designee determines that an organization listed as a Qualified Non-Profit has failed to comply with the requirements of this Chapter, the City Manager or designee may decide whether to exercise their discretion to recommend to City Council to limit, suspend, or revoke that organization's certification as a Qualified Non-Profit.

14.25.060 Assignment of Rights

A. A Tenant living in a Non-Exempt Single-Family Dwelling with Absentee Owner(s) may assign rights to a Qualified Non-Profit.
B. A Qualified Non-Profit assignee shall sign and submit a "Statement of Rights and Obligations" to the Tenant. The content of the statement shall be set forth in the Administrative Guidelines.
C. The assignment of rights may occur at any time during the Notice Period no later than the end of the Offer to Purchase period.
D. Neither Qualified Non-Profit assignees nor the assignor shall accept any payment or reward in exchange for the assignment of rights under this section. An offer to rent (or continue renting) the Single-Family Dwelling at terms favorable to a Tenant or Qualified Non-Profit assignee, including at an affordable rate, shall not be considered payment or reward.

14.25.070 Notice of Intent to Sell; Statement of Interest

A. Notice of Intent to Sell. An Owner of a Non-Exempt Residential Property shall provide all Rightsholders a Notice of Intent to Sell prior to listing or marketing a Residential Property for sale. The City shall make the template Notice of Intent to Sell available on the City website. The Notice of Intent to Sell shall be sent to each Rightsholder as set forth in the Administrative Guidelines, and shall include the following:

    1. A statement that the Owner intends to sell the Residential Property.

    2. A statement describing the rights of Rightsholders and stating the deadlines for exercising those rights.

    3. Instructions for submitting a Statement of Interest, including the address and email address where a Statement of Interest may be sent.

B. Statement of Interest. A Rightsholder may respond to the Notice of Intent to Sell by submitting a Statement of Interest during the thirty (30) day Statement of Interest Period. The purpose of the Statement of Interest is to notify the Owner of the Rightsholder's interest in exercising the Right of First Offer and/or Right of First Refusal. To be eligible to submit a Statement of Interest, within the first fifteen (15) days of receiving the Owner's Notice of Intent to Sell, a Rightsholder

shall notify the Owner by reliable means of communication (established by Administrative Guidelines) of the Rightsholder's intent to submit a Statement of Interest. A Rightsholder subsequently has the remainder of the thirty (30) day Statement of Interest Period to deliver the Statement of Interest to the Owner of the Residential Property. The template Statement of Interest shall be available on the City website.

C. Disclosure Package. Within five (5) days of sending a Notice of Intent to Sell to Rightsholder, the Owner must provide a disclosure package that includes documents and information set forth in the Administrative Guidelines, and at minimum, an itemized list of annual income and expenses, including but not limited to rent and other income collected, and costs of management, insurance, utilities, maintenance, and repairs.

D. Effect of Statement of Interest. Receipt of a timely Statement of Interest by the Owner and transmission of a disclosure package to the Rightsholders shall start the Offer Period as follows:

Dwelling Type	**Offer Period**
Single Family	30 calendar days
Multiple 2-3 Units	60 calendar days
Multiple 4+ Units	60 calendar days

During the Offer Period, Rightsholders may submit an offer to purchase the property pursuant to Section 14.25.090.

E. Prohibition on Listing or Marketing Property During the Statement of Interest Period and Offer Period. Before the Owner of a Residential Property may offer, list, market, or solicit offers for that property for sale to any purchaser other than a Rightsholder, the Owner shall notify each Rightsholder of the intent to sell the property. The Owner is prohibited from offering, listing, marketing, or soliciting offers until the Right of First Offer has been exercised or waived by each of the Rightsholders.

14.25.080 Rightsholders and Priority Order

A. Before the Owner of a Residential Property may list or market that property for sale to any purchaser, the Owner shall give all Rightsholder(s) an opportunity to purchase at a price and terms that represent a Bona Fide Offer to Purchase. The Owner is not required to give the Rightsholder(s) an opportunity to purchase when the Owner has received an unsolicited offer unless the Owner takes any action to accept the unsolicited offer.

B. The priority order for Rightsholders for Tenant-Occupied Single-Family Dwellings and Condominiums from Absentee Owner(s) not maintaining a Principal Residence in City is Tenants, Qualified Non-Profits, and the City:

1. Notice of Intent to Sell. The Owner must provide all Rightsholders with a Notice of Intent to Sell, followed by a disclosure package as required in this Chapter.

2. Statement of Interest. All Rightsholders are allowed to submit a Statement of Interest to Purchase.

3. Right of First Offer.

    a. In the event a Tenant submits a Statement of Interest in response to the Notice of Intent to Sell, the statement shall be given priority over any Statement of Interest submitted by a Qualified Non-Profit or the City. Nothing prohibits the Tenant(s) from assigning their Right of First Offer to a Qualified Non-Profit during the Statement of Interest period. A Qualified Non-Profit may be conferred a Right of First Offer if a Tenant assigns in writing the Tenant's Right of First Offer, or executes a written waiver of the Tenant's Right of First Offer, or no Tenant submits a Statement of Interest.

    b. In the event no Tenant submits a Statement of Interest in response to the Notice of Intent to Sell, the statement(s) submitted by Qualified Non-Profit(s) shall be given priority over any statement submitted by the City.

    c. In the event no Tenant or Qualified Non-Profit submits a Statement of Interest in response to the Notice of Intent to Sell, any Statement of Interest submitted by the City shall be given priority.

4. Right of First Refusal.

    a. No Right of Refusal is conferred to Rightsholders for Single-Family Dwellings and Condominiums.

C. The priority order for Rightsholders for Non-Tenant Occupied Single Family Dwellings and Condominiums, Duplexes and Triplexes (with or without tenants) and Multiple-Family Dwellings, with four (4) or more units (with or without tenants), from Absentee Owner(s) not maintaining a Principal Residence in City is Qualified Non-Profits and the City.

1. Notice of Intent to Sell. The Owner is required to provide all Rightsholders with a Notice of Intent to Sell, followed by a disclosure package as required in this Chapter.

2. Statement of Interest. All Rightsholders are allowed to submit a Statement of Interest.

3. Right of First Offer.

    a. In the event any Qualified Non-Profit submits a Statement of Interest in response to the Notice of Intent to Sell, the statement(s) shall be given priority over any statement submitted by the City.

    b. In the event no Qualified Non-Profit submits a Statement of Interest, any Statement of Interest submitted by the City shall be considered, and the City may proceed with the Right of First Offer process.

4. Right of First Refusal.

    a. The Right of First Refusal is applicable only for Duplexes and Triplexes (with or without tenants) and Multiple-Family Dwellings, with four (4) or more units (with or without tenants), from Absentee Owner(s) not maintaining a Principal Residence in City. The Right of First Refusal is not applicable for Single-Family Home Dwellings and Condominiums (with or without tenants) and residential properties and transfers exempt under Section 14.25.040.

b. In the event the Owner rejects the offer(s) submitted by all Rightsholders and takes any action to move forward with a qualifying Third-Party Offer, the Owner must notify all the Rightsholders, who timely submitted a Statement of Interest and a First Offer, and give priority in the order described for the exercise of Right of First Refusal.

c. In the event the Qualified Non-Profits do not submit a match to the Bona Fide Offer to Purchase for the exercise of Right of First Refusal, the City's offer to match Third-Party price and terms in the exercise of Right of First Refusal will stand.

14.25.090 Offer to Purchase

A. Submission of Offer to Purchase. The Rightsholder may deliver to the Owner of the Residential Property an offer to purchase the property at any time prior to the expiration of the Notice Period. The Owner may accept or reject any offer to purchase received from a Rightsholder subsequent to the steps set forth in Section 14.25.080.

Dwelling Type	Notice Period
Single Family	60 calendar days
Multiple 2-3 Units	90 calendar days
Multiple 4+ Units	90 calendar days

B. Acceptance of Offer to Purchase. Upon acceptance of an offer to purchase a Residential Property, the Rightsholder shall make reasonable and good faith efforts to close escrow on the transaction. The timeline for close of escrow is:

Dwelling Type	Close of Escrow	Extended Escrow Period
Single Family	30 calendar days	60 calendar days* + any agreement between the parties
Multiple 2-3 Units	90 calendar days	Any agreement between the parties
Multiple 4+ Units	90 calendar days	Any agreement between the parties

*If the Rightsholder provides written documentation that the lender requires a commercial loan for the purchase of the property.

C. Termination of Right of First Offer. Upon rejection of all offers to purchase made within the Notice Period, or the closure of the Notice Period by expiration or waiver of rights by all qualifying Rightsholders, the Owner may list and market for sale the Residential Property and may solicit and conditionally accept any Third-Party Offer, subject to the requirements of Section 14.25.100.

14.25.100 Exercise of Right of First Refusal

A. The Right of First Refusal is applicable only for Duplexes and Triplexes (with or without tenants) and Multiple-Family Dwellings, with four (4) or more units (with or without tenants), from Absentee Owner(s) not maintaining a Principal Residence in City. The Right of First Refusal is not applicable for Single-Family Home Dwellings and Condominiums (with or without tenants), and residential properties and transfers exempt under Section 14.25.040.

B. The Right of First Refusal is not applicable to accepted or conditionally accepted Third-Party Offers which exceed 115% of the highest rejected First Offer made by a Rightsholder.

C. Disclosure of Third-Party Offer to Purchase. An Owner interested in accepting a Third-Party Offer less than or equal to one hundred fifteen percent (115%) of the highest First Offer received, shall disclose terms of that Third Party Offer to any Rightsholder that submitted a First Offer. Within two (2) days of signaling intent and/or taking action to accept of the Third-Party Offer, the Owner shall disclose to each Rightsholder that submitted a First Offer all material terms, together with all commercially reasonable disclosures, in substantially the same form and having substantially the same content as would be provided to any prospective Third-Party Purchaser; provided, however, that any confidential information not necessary to comply with the requirements of this section shall be redacted from such offers.

D. Right of First Refusal. Any Rightsholder that submitted a Statement of Interest and an Offer may have the Right of First Refusal. When an Owner takes action to accept a Third Party Offer at a price less than or equal to one hundred fifteen percent (115%) of the First Offer, the Rightsholder may exercise a Right of First Refusal and match the Third Party Offer within the time period set forth in this

section. To exercise its Right of First Refusal, the Rightsholder must make an offer of substantially equivalent price and terms except for the time to close escrow as described in this section and the deposit amount as described in Section 14.25.110; provided, however, the financing of the Rightsholder's purchase shall not be considered a material term of the Offer to Purchase so long as it does not affect the net value of the Sale to the Owner.

E. Time to Exercise Right of First Refusal. Subsequent to accepting, conditionally accepting, or taking any action to accept a Third-Party Offer less than or equal to 115% of the highest rejected First Offer, the Owner shall disclose the terms of that offer and provide any Rightsholder that submitted a Statement of Interest and an Offer these minimum amounts of time to match the Third-Party Offer:

Dwelling Type	**Exercise of Right of First Refusal**
2-3 Units	20 calendar days
4+ Units	20 calendar days

The acceptance of a Rightsholder's First Offer to Purchase by an Owner extinguishes any Right of First Refusal of other Rightsholders.

14.25.110 Closing

A. Time to Close Escrow. Upon acceptance of the Offer to Purchase, the Rightsholder shall have these minimum amounts of times to close escrow:

Dwelling Type	**Close of Escrow**	**Extended Escrow Period**
Single Family	30 calendar days	60 calendar days* + any agreement between the parties
Multiple 2-3 Units	90 calendar days	Any agreement between the parties
Multiple 4+ Units	90 calendar days	Any agreement between the parties

*If the Rightsholder provides written documentation the lender requires a commercial loan for the purchase of the property.

E. Rejection of Offer or Failure to Close. If each Rightsholder entitled to receive an Offer to Purchase waives or fails to exercise the Right of First Offer within the time set forth in this section or if a Rightsholder that accepts an Offer to Purchase fails to close escrow within the time set forth in this section, the Owner may immediately proceed with the sale or transfer of the Residential Property to a Third-Party Purchaser.

F. Notwithstanding any other provision of this section, conditional sales agreements between an Owner and a Third-Party Purchaser are permitted so long as the agreement is subject to the contingency that no Rightsholder exercises a Right of First Refusal conferred by this Chapter.

14.25.120 Contract Negotiation

A. Bargaining in Good Faith. The Rightsholder and Owner shall bargain in good faith. The following constitute prima facie evidence of not bargaining in good faith:

1. The failure of an Owner to offer the Rightsholder a price or term substantially equivalent to that offered to a Third Party, without a reasonable justification for so doing;

2. The failure of an Owner to make a contract with the Rightsholder substantially equivalent to the price and terms of a Third-Party contract within the time periods specified in this Chapter, without a reasonable justification for so doing; or

3. The intentional failure of a Rightsholder or an Owner to comply with the provisions of this Chapter, including but not limited to Rightsholders making offers without intention to close, or Owners soliciting Third-Party Offers to disqualify the Right of First Refusal without the intention to close.

B. Reduced Price. If the Owner sells or contracts to sell the Residential Property to a Third-Party Purchaser for a price more than fifteen percent (15%) less than the price offered by the Rightsholder or for other terms which would constitute not bargaining in good faith, the sale or contract is void and the Owner shall comply anew with all requirements of this Chapter as applicable.

C. Financial Assurances. The Owner may not require the Rightsholder to prove financial ability to perform as a prerequisite to entering into a contract. The Owner may not require the Rightsholder to pay the purchase price in installments unless the Owner provides deferred purchase money financing on terms reasonably acceptable to the Rightsholder. The Owner may require the Rightsholder to prove that the Rightsholder,

either alone or in conjunction with a Third-Party, has comparable financial ability to the Third-Party Purchaser before the Owner will be required to grant deferred purchase money financing to the Rightsholder on the same terms and conditions conditionally accepted between the Owner and the Third-Party Purchaser. If the Rightsholder can prove comparable financial ability alone, the Owner may not require the Rightsholder to secure a third-party guarantor. This proof cannot be required as a prerequisite to contracting. It may be required only as a prerequisite to the Owner granting deferred purchase money financing at settlement.

D. Transfers of Interest in a Partnership or Corporation and Master Leases. In the event of a transfer of interest in a partnership or corporation or in the event of a master lease or agreement that is considered a sale but which does not involve a transfer of record title to the real property, the Owner shall be bargaining in good faith if the Owner offers the Rightsholder the opportunity to acquire record title to the real property or offers the Rightsholder the opportunity to match the type of transfer or agreement entered into with the Third Party. With respect to either type of offer, all provisions of this Chapter apply.

E. Deposit. The Owner shall not require the Rightsholder to pay a deposit of more than three percent (3%) of the contract sales price to make a contract. The deposit is refundable in the event of a good faith failure of the Rightsholder to perform under the contract unless otherwise provided in the contract.

14.25.130 Long-Term Affordability and Tenant Protections in Properties Purchased Pursuant to this Chapter

All Residential Properties purchased pursuant to this Chapter, except for Single-Family Dwellings purchased with no subsidy, shall be subject to rental affordability restrictions and restrictions on the resale value of a given property.

A. Subsidized Purchaser(s). In exchange for the rights conferred by this Chapter, Subsidized Purchasers shall sign and submit a Statement of Rights and Obligations, available on the City website, agreeing to maintain the Residential Property as permanently affordable. This Statement of Rights and Obligations shall be recorded.

B. Rental Units. If, upon purchase, the average rental rate of the units in the property, based on the existing tenancies of the non-purchasing Tenants exceeds a rent affordable to 50% AMI households, the new Owner shall rent each vacant unit to 50% AMI income households until the 50% AMI rental rate average is achieved. Future rental rates of any

vacant units shall not exceed a rent affordable to Low-Income Households. These affordability levels may be amended by Council through resolution.

C. Owned Multiple-Family Units. The sales price shall be calculated based on Chapter 18.37 of the East Palo Alto Municipal Code and the inclusionary housing guidelines. The sales price for any vacant units shall be set at an affordable price to Median Income Households and to Moderate Income Households, with the first vacant unit restricted to Median Income Households. The resale or transfer of ownership units shall be subject to long-term affordability covenants consistent with Section 18.37.100 of the East Palo Alto Municipal Code.

D. Permanent affordability standards shall remain in force in perpetuity or for no less than ninety-nine (99) years and be renewable. The standards shall be evidenced by one of the following:

1. A restrictive covenant placed on the deed to the Residential Property that runs with the land and is enforceable by the City against the purchasers and their successors;

2. A Community Land Trust lease, which is a ninety-nine (99)-year renewable land lease with affordability and Owner-occupancy restrictions; or

3. Affordability covenants in land leases or other recorded documents which run with the land and are enforceable.

E. The sale of a Residential Property pursuant to this Chapter shall not impair the rights of any Tenant under Chapter 14.04 of the East Palo Alto Municipal Code or any other applicable state law or local law. Further, any Tenant who resides in any unit at the time of the sale of a Residential Property under this Chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this section.

F. All covenants created in accordance with this section shall be recorded with the San Mateo County's Recorder's Office.

G. Required Filing to Certify Compliance with Affordability Restrictions. In the case that permanent affordability restrictions materialize as a covenant enforceable by the City, the Owner(s) of the Residential Property shall file a document every three (3) years

with the City in which the Owner(s) affirmatively state the rents for each unit in the Residential Property.

14.25.140 Conduct

A. The sale or transfer of any Residential Property subject to this Chapter is prohibited unless an exemption applies and the Owner complies with Section 14.25.040. Any change of ownership of real property as defined in Revenue & Taxation Code § 64(c) shall be considered a sale or transfer of Real Property for purposes of this Chapter.

B. A Tenant or Rightsholder is prohibited from receiving any consideration in exchange for foregoing any right afforded to them under this Chapter or sell a waiver of any such right.

C. An Owner shall not coerce a Rightsholder to waive their rights, retaliate against or harass a Tenant seeking to exercise their rights, or engage in conduct intended to prevent a Tenant from exercising their rights under this Chapter.

D. Any agreement between the Owner and a Rightsholder to shorten the time periods provided for exercise of any right afforded under this Chapter is prohibited unless all other Rightsholders have waived their rights under this Chapter. Notwithstanding the foregoing, any Rightsholder may affirmatively indicate they have no interest in a Residential Property prior to the expiration of any deadlines and in accordance with the Administrative Guidelines. Nothing in this section shall prohibit an agreement to extend the deadlines set forth herein.

E. Any Rightsholder that Purchases a Residential Building under the right of first offer set forth in Section 14.25.090 shall, to the maximum extent permitted by law and otherwise feasible, be obliged to work with the Owner in good faith to facilitate an exchange of real property of the kind described in 26 US. C. § 1031, for the purpose of facilitating the Owner's realization of any federal tax benefits available under that section of the Internal Revenue Code.

14.25.150 Confidentiality

Any information exchanged between Owner(s) and Rightsholders intended to facilitate the sale of property including, but not limited to, disclosures, any intent to sell, and terms and conditions of an offer of sale, shall be kept confidential to the greatest extent permitted by law. This section shall not prohibit disclosure of information necessary to effectuate the purpose of this Chapter to any Owner, Tenant, Qualified Non-Profit, or to the City or its agents or contractors, nor shall this Chapter be construed to limit disclosure of information in response to a lawfully issued subpoena or court order.

14.25.160 Enforcement

A. Owner Certification. No later than thirty (30) days after any sale, the Owner(s) shall record with the San Mateo County's Recorder's Office, through the escrow company that facilitates the sale of the property, a signed declaration, under penalty of perjury, affirming that the sale of that property substantially complied with the requirements of this Chapter. Owner shall instruct the escrow company to file a copy of the Owner Certification with the City. The City will publish addresses of all such sales on its website.

B. The City Attorney, any non-exempt Owner subject to the provisions of this Chapter, and/or any Rightsholder may bring a civil action to enforce this Chapter and shall be entitled to the remedies set forth in this section to the greatest extent permitted by law.

C. A prevailing party in any action to enforce this Chapter shall be entitled to civil damages according to proof and reasonable attorneys' fees and costs. Any court of competent jurisdiction may enforce the affordability requirements of this Chapter, when applicable. Any court of competent jurisdiction may enjoin a transfer or sale of Property, or rescind a sale of Property, where the Owner failed to comply with requirements of this Chapter, and may order that an Owner comply with the requirements of this Chapter.

D. Penalties for violation of this Chapter:

1. Any violation shall be subject to a civil penalty not to exceed $1,000 per day of violation. Each failure to provide the required notice or disclosure shall be considered a separate violation for each unit on a Property.

2. If the Owner's violation was knowing or willful, mandatory civil penalties equal to ten percent (10%) of the sale price for a first violation; twenty percent (20%) for the second, and thirty percent (30%) for each violation thereafter.

E. Suspension or Disqualification of Qualified Non-Profits. The City shall promptly investigate any complaint alleging that a Qualified Non-Profit has failed to comply with this Chapter. If, after providing the Qualified Non-Profit with notice and opportunity to be heard, the City determines that a Qualified Non-Profit has failed to comply with this Chapter, the City may suspend or revoke a Qualified Non-Profit's certification.

14.25.170 Financial Assistance

A. The City Manager or designee shall develop guidelines, which shall be subject to approval by the City Council, for providing financial assistance to allow for the acquisition of Residential Property. Financial assistance may be provided to Rightsholders. Nothing in this section commits the City Council to providing a specified level of funding for the acquisition of Residential Property under this Chapter.

B. The provision of financial assistance to any Tenant who acquires an interest in a Residential Property pursuant to this Chapter must be conditioned on the Tenant's agreement to reside at the Residential Property for at least three (3) years. The City Manager or designee is authorized to impose a lien on the Residential Property to enforce the requirements of this section.

14.25.180 Implementation

A. The City Council shall initially approve the Administrative Guidelines necessary to implement the requirements of this Chapter. Thereafter, the City Council may delegate to the City Manager the authority to amend the Administrative Guidelines as needed.

B. The City shall annually post and update the City's website with information on the East Palo Alto Opportunity to Purchase Act process, including information about rights and sales.

C. The City Manager or designee shall develop online and printed forms and databases Qualified Non-Profit list and registry, and other administrative services to ensure efficient management of the program.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Ordinance is not subject to CEQA because it is not a “project” which would have a direct physical change or a reasonably foreseeable indirect physical change on the environment pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15378. Even if it were a project subject to CEQA review, this project would be exempt from CEQA Guideline Section 15378 (regulatory actions), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning).

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect and be in full force on _____.

SECTION 6. PUBLICATION.

The City Clerk is hereby directed to cause publication of this Ordinance as required by Government Code Section 36933.

This Ordinance was introduced at the_____ meeting of the City Council of the City of East Palo Alto.

PASSED AND ADOPTED this _____ day of _____, 2022 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Lisa Gauthier, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
John D. Lê, City Attorney

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO

ADDING CHAPTER 14.26 TO THE EAST PALO ALTO MUNICIPAL CODE ENTITLED THE EAST PALO ALTO TENANT OPPORTUNITY TO PURCHASE ACT

WHEREAS, the City Council finds that East Palo Alto is experiencing a shortage of affordable housing, especially for extremely low-income, very low-income, low-income and moderate-income residents, and a displacement crisis; and

WHEREAS, rapid displacement is evidenced in East Palo Alto by high rates of eviction, increasing rents, and increasing home values; and

WHEREAS, there is a disproportionate impact of displacement, homelessness, and unmet affordable housing and homeownership needs in East Palo Alto borne by African American, Latinx, and Pacific Islander communities of color; and

WHEREAS, sixty percent (60%) of East Palo Alto's population are renters, and over half of these renters are cost-burdened, meaning they spend over thirty percent (30%) of their monthly income on rent; and

WHEREAS, according to the Bay Area Equity Atlas and the Urban Displacement Project, seventy-two percent (72%) of low-income households in East Palo Alto live in gentrifying neighborhoods; and

WHEREAS, due to state law, tenants living in single-family homes and tenants living in buildings built after 1988 are not protected by rent stabilization (although the Just Cause for Eviction provision applies); tenants in rent-stabilized units are not protected from displacement by owner-move in; and when a tenant moves out, the rent for that unit can be raised to market value; and

WHEREAS, according to the American Community Survey (2015-2019) and San Mateo County Income Limits, the median household income in East Palo Alto of $67,087 is less than half the county's median household income, and most East Palo Alto households fall into the "extremely low-income" to "very low-income" category, or 30-50% AMI, making residents highly susceptible to dramatic shifts in the housing market; and

WHEREAS, according to the Center for Responsible Lending, during the foreclosure crisis from 2004-2008, African Americans and Latinxs in California were more than twice as likely as non-Hispanic Whites to lose their homes to foreclosure; and

WHEREAS, there is a concentration of properties in East Palo Alto owned by individual and entity investors and the majority of these investors are not residents of the City of East Palo Alto; and

WHEREAS, historically, East Palo Alto residents, both owners and renters, have been denied opportunities to build wealth through property ownership due to discriminatory housing policies, including the practice of redlining that impacted longer term residents and continues to impact successive generations of East Palo Alto residents; and

WHEREAS, it is a necessary and important public purpose to provide relief for these economic and social ills arising from the housing challenges facing East Palo Alto residents; and

WHEREAS, approximately 5.8% of properties in East Palo Alto are owned by East Palo Alto residents with a primary residence elsewhere in the city; and

WHEREAS, a limited exemption for these local residents who own other properties within East Palo Alto will promote the purpose of providing relief for these economic and social ills experienced by residents of East Palo Alto; and

WHEREAS, Tenant and Community Opportunity to Purchase Act programs have been adopted in a number of jurisdictions including Washington, D.C. and San Francisco to protect residents' ability to stay in a neighborhood in a cost-effective manner; and

WHEREAS, the City Council desires to prevent further displacement of East Palo Alto households, to supply a variety of affordable rental and ownership housing options, and to protect the health, safety and general welfare of the public through an opportunity to purchase program; and

WHEREAS, this action is exempt from the California Environmental Quality Act ("CEQA"), each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines Section 15378 (regulatory actions). Section 15061 (b) (3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning.)

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT TO THE EAST PALO ALTO MUNICIPAL CODE

The City Council hereby adds Chapter 14.26 ("East Palo Alto Tenant Opportunity to Purchase Act") to the East Palo Alto Municipal Code to read as follows:

Chapter 14.26
East Palo Alto Tenant Opportunity to Purchase Act

14.26.010 Title and Purpose

A. This Chapter may be referred to as the "East Palo Alto Tenant Opportunity to Purchase Act" or "EPA TOPA" program.

B. The purpose of this Chapter is to confer upon Tenants, Qualified Non-Profit Housing Organizations, and the City of East Palo Alto an opportunity to purchase upon the transfer or sale of Residential Property to prevent displacement of lower-income tenants, to facilitate ownership for residents, and to create more affordable housing opportunities in East Palo Alto.

14.26.020 Definitions

"Absentee Owner(s)" means an owner (or owners) of a residential property who do not occupy the residential property as the owner's (or owners') principal residence.

"Accessory Dwelling Unit (ADU)" means a separate dwelling unit providing complete independent living facilities for one or more persons containing living, sleeping, kitchen and sanitation facilities as defined in and subject to the provisions in Chapter 18.96.

"Administrative Guidelines" means any requirements for implementation and administration of this Chapter adopted by the City.

"50% AMI Income Household" means households whose income does not exceed fifty percent (50%) of the Area Median Income, adjusted for family size and as published annually by the City.

"Bona Fide Offer to Purchase" means an offer to purchase a property or the interest in the property that is either:

(1) In cases in which a First Offer made by a Rightsholder is acceptable to an Owner, an offer with a price and other material terms at which a willing Owner would sell and a willing Buyer would purchase the property, or the appraised value; or,

(2) In cases following the expiration of marketing prohibition in which a Third-Party Offer is acceptable, an offer with a price and other material terms at which a willing Owner would sell and a willing Buyer would purchase the property, or the appraised value; or,

(3) In cases involving the exercise of the Right of First Refusal, an offer to purchase for the Rightsholder at a price and other material terms that are substantially equivalent to those accepted by an Owner in an arm's length Third-Party Offer.

"City" means the City of East Palo Alto, including any departments within the City that are assigned any responsibilities under this Chapter.

"Condominium" means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property, together with a separate interest in space in a residential structure located on the real property in compliance with Civil Code Section 783. A condominium may include, in addition, a separate interest in other portions of the real property.

"Day or Days" means calendar day(s) unless otherwise stated.

"Dwelling Unit" means a structure or the part of a structure that is used as a residence that provides complete, independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation.

"First Offer" means an offer made by a Rightsholder (Tenant, Qualified Non-Profit Housing Organization, or the City).

"Junior Accessory Dwelling Unit (JADU)" means a dwelling unit that is no more than 500 square feet in size and contained entirely within a single-family residence, as defined in Chapter 18.96.

"Low-Income Households" are households whose income does not exceed sixty percent (60%) of the Area Median Income, adjusted for family size and as published annually by the City.

"Listing or Marketing" means adding the property to the Multiple Listing Service (MLS) or any other private or public online database, or adding or disseminating information about the property, with the intent of informing Third-Parties or their

representatives about the opportunity to purchase, promoting the property, or any actions that promote or facilitate communications from prospective buyers.

"Median-Income Households" are households whose income does not exceed eighty percent (80%) of the Area Median Income, adjusted for family size and as published annually by the City.

"Moderate-Income Households" are households whose income does not exceed one hundred and twenty percent (120%) of the Area Median Income, adjusted for family size and as published annually by the City.

"Non-Exempt" means a residential property or a transfer that is not exempt under provisions of this Chapter.

"Notice of Intent to Sell" means a required notice from a non-exempt residential property owner of their intent to sell a residential property, to be provided to the Rightsholders prior to listing or marketing the residential property for sale.

"Offer Period" means the time allotted, as varied by building type following the timely submittal of a Statement of Interest by a Rightsholder, during which Rightsholders may make competitive offers to purchase the property.

"Owner" means any natural person, corporation, association, partnership, joint venture, limited liability company, trustee, business entity and its respective agents, or any other entity, who is the owner of record of a residential property.

"Owner-Occupied Single-Family Dwelling" means a single-family dwelling that is occupied by the owner(s) as the owner's or owners' principal residence.

"Pre-Marketing Period" means the time before a non-exempt residential property owner may list or market the residential property to prospective Third-Party Purchasers, which may include the Statement of Interest Period and/or the Offer Period.

"Principal Residence" means a residential dwelling that is occupied and is the usual place of return of a natural person. A dwelling qualifies as a primary residence when the person has lived in the dwelling for more than fifty percent (50%) of the time in the year prior to the proposed sale; and the person acknowledges the dwelling as the person's primary residence by voter registration, address on tax returns, homeowner's exemption, and/or mailing address.

“Qualified Non-Profit” or “Qualified Non-Profit Housing Organization” means an organization that is exempt from Federal Income Tax under 26 USC Section 501(c)(3), or a California cooperative corporation that has the capacity to acquire, provide and manage affordable housing for low, very low, and extremely low income households as defined by the City’s annual Area Median Income calculations, has a commitment to prevent displacement, has a demonstrated commitment to community engagement, and is certified by the City through an application process.

“Rent” means the consideration, including security deposit, cleaning deposit and any other deposits, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Rent includes monies and the fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

“Residential Property” means any property containing one or more dwelling units and located in the City.

“Right of First Offer” means the Rightsholder's right to make a first offer to purchase a residential property, during the Offer Period following timely submittal of a Statement of Interest, prior to its listing or marketing to a broader audience by the Owner.

“Rightsholder” means Tenant, Qualified Non-Profit Housing Organization, or the City in reference to the Right of First Offer as conferred in this Chapter.

“Single-Family Dwelling” means a building, structure or dwelling unit (e.g. accessory dwelling unit), or portion of a building, structure, or dwelling unit principally designed for the residential habitation of one household, with all secure entrances leading to the same set of interior common areas.

“Statement of Rights and Obligations” means a statement provided by a Qualified Non-Profit to a Tenant that assigns their rights under this Chapter, or by a Qualified Non-Profit that purchases a residential property under this Chapter, outlining its responsibilities as the Rightsholder and/or Subsidized Purchaser.

“Subsidized Purchaser” is any Rightsholder (Tenant, Qualified Non-Profit, or City) receiving public or private subsidy to support a purchase.

“Tenant” means a renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

"Third Party" means any person or entity that is not a Rightsholder and not the Owner/Seller of the property.

"Third-Party Offer" means any offer made by a person or entity for a Residential Property other than a Rightsholder.

"Third-Party Purchaser" means any person or entity that has entered into a bona fide contract of sale for a Residential Property prior to an Owner giving the Rightsholder(s) an opportunity to purchase at a price and terms that represent a Bona Fide Offer to Purchase.

14.26.030 Applicability

This Chapter applies to the sale or transfer of all Residential Property in the City unless otherwise exempted.

14.26.040 Exemptions

A. Exempt Residential Property. Residential Property not subject to the requirements of this Chapter:

1. Owner-Occupied Single-Family Dwellings, including those with an Accessory Dwelling Unit(s) (inclusive of any Junior Accessory Dwelling Unit) when the Owner has occupied the Single-Family Dwelling or the ADU as the Owner's Principal Residence for at least one (1) year or more.

2. Non-Owner-Occupied Residential Property owned by an East Palo Alto resident, when the Owner has occupied a Residential Property within East Palo Alto as the Owner's Principal Residence for at least one (1) year or more. This exemption shall not apply to any Residential Property owned by:

    a. A real estate investment trust, as defined in Section 856 of the Internal Revenue Code;

    b. A corporation; or

    c. A limited liability company in which at least one member is a corporation.

3. Owner-Occupied Condominiums when the Owner has occupied the Condominium as the Owner's Principal Residence for at least one (1) year or more.

4. Residential Property owned by the local, state, or federal government.

5. Residential Property subject to resale price control under Chapter 18.37 of East Palo Alto's Municipal Code.

6. Residential Property owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

7. Multifamily Dwellings of two (2) or more units.

B. Exempt Transfers. Transfers of Residential Property not subject to the requirements of this Chapter:

1. An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, nieces and nephews, and/or grandparents and grandchildren.

2. A transfer for consideration by a decedent's estate if the consideration arising from the transfer will pass from the decedent's estate to, or solely for the benefit of, charity.

3. A transfer of legal title or an interest in an entity holding legal title to a Residential Property pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage. This exemption does not supersede any rights to purchase afforded to Rightsholders under California Civil Code Sections 2924(f)-(h), 2924(m)-(n), or 2929.3.

4. A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where one or more transferors is a current beneficiary of the trust.

5. A transfer by devise, descent, or operation of the law upon the death of a natural person.

6. A transfer pursuant to court order or court-approved settlement.

7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.

8. Any transfer of a fractional interest in a Residential Property that is less than fifty percent (50%) of an undivided interest in the Residential Property.

9. Any transfer in which the transferee receives a low-income housing credit pursuant to 28 U.S.C. § 42.

10. A transfer of a Residential Property with no more than four (4) Dwelling Units made for the purpose of either: (a) paying for imminently necessary health care expenses of an Owner of the Residential Property, or (b) an emergency circumstance placing the Owner in financial hardship and at imminent risk of foreclosure or bankruptcy and the Owner has occupied the Residential Property as the Owner's Principal Residence for at least one (1) year or more. For purposes of this subsection only, "Owner" shall be limited to a natural person having an undivided interest in the Residential Property of at least fifty percent (50%). An Owner may claim this Exempt Transfer within one (1) year of having vacated the Residential Property where the Owner demonstrates the existence of the conditions set forth in this subsection.

C. Transfer Exemption Procedures. The Owner shall submit a Certificate of Exemption signed under penalty of perjury to the City after deciding to sell and before marketing the property, self-certifying one of the exemptions described in subsection B. A Certificate of Exemption must be accompanied by supporting documents as set forth in the Administrative Guidelines. The City shall make the template Certificate of Exemption publicly available, including on the City website. This section shall not be construed to or used in a manner that unreasonably delays an Owner's valid and lawful transfer of a real property interest under Exempt Transfers.

14.26.050 Qualified Non-Profits

A. Certification, Term, and Renewal. The City Council shall certify and recertify Qualified Non-Profits through the Administrative Guidelines which establish the application process. A Non-Profit organization's certification as a Qualified Non-Profit shall be valid for five (5) years. The City Manager or designee shall solicit new applications for Qualified Non-Profit status at least once each calendar year, at which time existing Qualified Non-Profits shall be eligible to apply for renewed certification. A list of Qualifying Non-Profits shall be published on the City's website.

B. Disqualification of Qualified Non-Profits. The City Manager or designee shall promptly investigate any complaint alleging that a Qualified Non-Profit has failed to comply with this Chapter. If after providing the Qualified Non-Profit with notice and opportunity to respond, the City Manager or designee determines that an organization listed as a Qualified Non-Profit has failed to comply with the requirements of this

Chapter, the City Manager or designee may decide whether to exercise his/her discretion to recommend to City Council to limit, suspend, or revoke that organization's certification as a Qualified Non-Profit.

14.26.060 Assignment of Rights

A. A Tenant living in a Non-Exempt Single-Family Dwelling with Absentee Owner(s) may assign rights to a Qualified Non-Profit.

B. A Qualified Non-Profit assignee shall sign and submit a "Statement of Rights and Obligations" to the Tenant. The content of the statement shall be set forth in the Administrative Guidelines.

C. The assignment of rights may occur at any time during the Notice Period no later than the end of the Offer to Purchase period.

D. Neither Qualified Non-Profit assignees nor the assignor shall accept any payment or reward in exchange for the assignment of rights under this section. An offer to rent (or continue renting) the Single-Family Dwelling at terms favorable to a Tenant or Qualified Non-Profit assignee, including at an affordable rate, shall not be considered payment or reward.

14.26.070 Notice of Intent to Sell; Statement of Interest

A. Notice of Intent to Sell. An Owner of a Non-Exempt Residential Property shall provide all Rightsholders a Notice of Intent to Sell prior to listing or marketing a Residential Property for sale. The City shall make the template Notice of Intent to Sell available on the City website. The Notice of Intent to Sell shall be sent to each Rightsholder as set forth in the Administrative Guidelines, and shall include the following:

    1. A statement that the Owner intends to sell the Residential Property.

    2. A statement describing the rights of Rightsholders and stating the deadlines for exercising those rights.

    3. Instructions for submitting a Statement of Interest, including the address and email address where a Statement of Interest may be sent.

B. Statement of Interest. A Rightsholder may respond to the Notice of Intent to Sell by submitting a Statement of Interest during the thirty (30) day Statement of Interest Period. The purpose of the Statement of Interest is to notify the Owner of the Rightsholder's interest in exercising the Right of First Offer and/or Right of First Refusal. To be eligible to submit a Statement of Interest, within the first fifteen (15) days of receiving the Owner's Notice of Intent to Sell, a Rightsholder shall notify the Owner by reliable means of communication (established by Administrative Guidelines) of the Rightsholder's intent to submit a Statement of Interest. A Rightsholder subsequently has the remainder of the thirty (30) day Statement of Interest Period to deliver the Statement of Interest to the Owner of the Residential Property. The template Statement of Interest shall be available on the City website.

C. Disclosure Package. Within five (5) days of sending a Notice of Intent to Sell to Rightsholder, the Owner must provide a disclosure package that includes documents and information set forth in the Administrative Guidelines, and at minimum, an itemized list of annual income and expenses, including but not limited to rent and other income collected, and costs of management, insurance, utilities, maintenance, and repairs.

D. Effect of Statement of Interest. Receipt of a timely Statement of Interest by the Owner and transmission of a disclosure package to the Rightsholders shall start the Offer Period as follows:

Dwelling Type	**Offer Period**
Single Family / Condominium	30 calendar days

During the Offer Period, Rightsholders may submit an offer to purchase the property pursuant to Section 14.26.090.

E. Prohibition on Listing or Marketing Property During the Statement of Interest Period and Offer Period. Before the Owner of a Residential Property may offer, list, market, or solicit offers for that property for sale to any purchaser other than a Rightsholder, the Owner shall notify each Rightsholder of the intent to sell the property. The Owner is prohibited from offering, listing, marketing, or soliciting offers until the Right of First Offer has been exercised or waived by each of the Rightsholders.

14.26.080 Rightsholders and Priority Order

A. Before the Owner of a Residential Property may list or market that property for sale to any purchaser, the Owner shall give all Rightsholder(s) an opportunity to purchase at a price and terms that represent a Bona Fide Offer to Purchase. The Owner is not required to give the Rightsholder(s) an opportunity to purchase when the Owner has received an unsolicited offer unless the Owner takes any action to accept the unsolicited offer.

B. The priority order for Rightsholders for Tenant-Occupied Single-Family Dwellings and Condominiums from Absentee Owner(s) not maintaining a Principal Residence in City is Tenants, Qualified Non-Profits, and the City:

1. Notice of Intent to Sell. The Owner must provide all Rightsholders with a Notice of Intent to Sell, followed by a disclosure package as required in this Chapter.

2. Statement of Interest. All Rightsholders are allowed to submit a Statement of Interest to Purchase.

3. Right of First Offer.

    a. In the event a Tenant submits a Statement of Interest in response to the Notice of Intent to Sell, the statement shall be given priority over any Statement of Interest submitted by a Qualified Non-Profit or the City. Nothing prohibits the Tenant(s) from assigning their Right of First Offer to a Qualified Non-Profit during the Statement of Interest period. A Qualified Non-Profit may be conferred a Right of First Offer if a Tenant assigns in writing the Tenant's Right of First Offer, or executes a written waiver of the Tenant's Right of First Offer, or no Tenant submits a Statement of Interest.

    b. In the event no Tenant submits a Statement of Interest in response to the Notice of Intent to Sell, the statement(s) submitted by Qualified Non-Profit(s) shall be given priority over any statement submitted by the City.

    c. In the event no Tenant or Qualified Non-Profit submits a Statement of Interest in response to the Notice of Intent to Sell, any Statement of Interest submitted by the City shall be given priority.

C. The priority order for Rightsholders for Non-Tenant Occupied Single Family Dwellings and Condominiums is Qualified Non-Profits and the City.

1. Notice of Intent to Sell. The Owner is required to provide all Rightsholders with a Notice of Intent to Sell, followed by a disclosure package as required in this Chapter.

2. Statement of Interest. All Rightsholders are allowed to submit a Statement of Interest.

3. Right of First Offer.

    a. In the event any Qualified Non-Profit submits a Statement of Interest in response to the Notice of Intent to Sell, the statement(s) shall be given priority over any statement submitted by the City.

    b. In the event no Qualified Non-Profit submits a Statement of Interest, any Statement of Interest submitted by the City shall be considered, and the City may proceed with the Right of First Offer process.

14.26.090 Offer to Purchase

A. Submission of Offer to Purchase. The Rightsholder may deliver to the Owner of the Residential Property an offer to purchase the property at any time prior to the expiration of the Notice Period. The Owner may accept or reject any offer to purchase received from a Rightsholder subsequent to the steps set forth in Section 14.26.080.

Dwelling Type	Offer Period
Single Family / Condominium	30 calendar days

B. Acceptance of Offer to Purchase. Upon acceptance of an offer to purchase a Residential Property, the Rightsholder shall make reasonable and good faith efforts to close escrow on the transaction. The timeline for close of escrow is:

Dwelling Type	Close of Escrow	Extended Escrow Period
Single Family / Condominium	30 calendar days	60 calendar days* + any agreement between the parties

*If the Rightsholder provides written documentation that the lender requires a commercial loan for the purchase of the property.

C. Termination of Right of First Offer. Upon rejection of all offers to purchase made within the Notice Period, or the closure of the Notice Period by expiration or waiver of rights by all qualifying Rightsholders, the Owner may list and market for sale the Residential Property and may solicit and conditionally accept any Third-Party Offer, subject to the requirements of Section 14.26.100.

14.26.100 Closing

A. Time to Close Escrow. Upon acceptance of the Offer to Purchase, the Rightsholder shall have these minimum amounts of times to close escrow:

Dwelling Type	Close of Escrow	Extended Escrow Period
Single Family / Condominium	30 calendar days	60 calendar days* + any agreement between the parties

*If the Rightsholder provides written documentation the lender requires a commercial loan for the purchase of the property.

E. Rejection of Offer or Failure to Close. If each Rightsholder entitled to receive an Offer to Purchase rejects or fails to accept the Offer to Purchase within the time set forth in this section or if a Rightsholder that accepts an Offer to Purchase fails to close escrow within the time set forth in this section, the Owner may immediately proceed with the sale or transfer of the Residential Property to a Third-Party Purchaser.

F. Notwithstanding any other provision of this section, conditional sales agreements between an Owner and a Third-Party Purchaser are permitted so long as the agreement is subject to the contingency that no Rightsholder exercises a Right of First Refusal within the time periods specified in this Chapter.

14.26.110 Contract Negotiation

A. Bargaining in Good Faith. The Rightsholder and Owner shall bargain in good faith. The following constitute prima facie evidence of not bargaining in good faith:

1. The failure of an Owner to offer the Rightsholder a price or term substantially equivalent to that offered to a Third Party, without a reasonable justification for so doing;

2. The failure of an Owner to make a contract with the Rightsholder substantially equivalent to the price and terms of a Third-Party contract within the time periods specified in this Chapter, without a reasonable justification for so doing; or

3. The intentional failure of a Rightsholder or an Owner to comply with the provisions of this Chapter, including but not limited to Rightsholders making offers without intention to close, or Owners soliciting Third-Party Offers to disqualify the Right of First Refusal without the intention to close.

B. Reduced Price. If the Owner sells or contracts to sell the Residential Property to a Third-Party Purchaser for a price more than fifteen percent (15%) less than the price offered by the Rightsholder or for other terms which would constitute not bargaining in good faith, the sale or contract is void and the Owner shall comply anew with all requirements of this Chapter as applicable.

C. Financial Assurances. The Owner may not require the Rightsholder to prove financial ability to perform as a prerequisite to entering into a contract. The Owner may not require the Rightsholder to pay the purchase price in installments unless the Owner provides deferred purchase money financing on terms reasonably acceptable to the Rightsholder. The Owner may require the Rightsholder to prove that the Rightsholder, either alone or in conjunction with a Third-Party, has comparable financial ability to the Third-Party Purchaser before the Owner will be required to grant deferred purchase money financing to the Rightsholder on the same terms and conditions conditionally accepted between the Owner and the Third-Party Purchaser. If the Rightsholder can prove comparable financial ability alone, the Owner may not require the Rightsholder to secure a third-party guarantor. This proof cannot be required as a prerequisite to contracting. It may be required only as a prerequisite to the Owner granting deferred purchase money financing at settlement.

D. Transfers of Interest in a Partnership or Corporation and Master Leases. In the event of a transfer of interest in a partnership or corporation or in the event of a master lease or agreement that is considered a sale but which does not involve a transfer of record title to the real property, the Owner shall be bargaining in good faith if the Owner offers the Rightsholder the opportunity to acquire record title to the real property or offers the Rightsholder the opportunity to match the type of transfer or agreement entered into with the Third Party. With respect to either type of offer, all provisions of this Chapter apply.

E. Deposit. The Owner shall not require the Rightsholder to pay a deposit of more than three percent (3%) of the contract sales price to make a contract. The deposit is

refundable in the event of a good faith failure of the Rightsholder to perform under the contract unless otherwise provided in the contract.

14.26.120 Long-Term Affordability and Tenant Protections in Properties Purchased Pursuant to this Chapter

All Residential Properties purchased pursuant to this Chapter, except for Single-Family Dwellings purchased with no subsidy, shall be subject to rental affordability restrictions and restrictions on the resale value of a given property.

A. Subsidized Purchaser(s). In exchange for the rights conferred by this Chapter, Subsidized Purchasers shall sign and submit a Statement of Rights and Obligations, available on the City website, agreeing to maintain the Residential Property as permanently affordable. This Statement of Rights and Obligations shall be recorded.

B. Rental Units. If, upon purchase, the average rental rate of the units in the property, based on the existing tenancies of the non-purchasing Tenants exceeds a rent affordable to 50% AMI households, the new Owner shall rent each vacant unit to 50% AMI income households until the 50% AMI rental rate average is achieved. Future rental rates of any vacant units shall not exceed a rent affordable to Low-Income Households. These affordability levels may be amended by Council through resolution.

C. Permanent affordability standards shall remain in force in perpetuity or for no less than ninety-nine (99) years and be renewable. The standards shall be evidenced by one of the following:

    1. A restrictive covenant placed on the deed to the Residential Property that runs with the land and is enforceable by the City against the purchasers and their successors;

    2. A Community Land Trust lease, which is a ninety-nine (99)-year renewable land lease with affordability and Owner-occupancy restrictions; or

    3. Affordability covenants in land leases or other recorded documents which run with the land and are enforceable.

E. The sale of a Residential Property pursuant to this Chapter shall not impair the rights of any Tenant under Chapter 14.04 of the East Palo Alto Municipal Code or any

other applicable state law or local law. Further, any Tenant who resides in any unit at the time of the sale of a Residential Property under this Chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this section.

F. All covenants created in accordance with this section shall be recorded with the San Mateo County's Recorder's Office.

G. Required Filing to Certify Compliance with Affordability Restrictions. In the case that permanent affordability restrictions materialize as a covenant enforceable by the City, the Owner(s) of the Residential Property shall file a document every three (3) years with the City in which the Owner(s) affirmatively state the rents for each unit in the Residential Property.

14.26.130 Conduct

A. The sale or transfer of any Residential Property subject to this Chapter is prohibited unless an exemption applies and the Owner complies with Section 14.26.040. Any change of ownership of real property as defined in Revenue & Taxation Code § 64(c) shall be considered a sale or transfer of Real Property for purposes of this Chapter.

B. A Tenant or Rightsholder is prohibited from receiving any consideration in exchange for foregoing any right afforded to them under this Chapter or sell a waiver of any such right.

C. An Owner shall not coerce a Rightsholder to waive their rights, retaliate against or harass a Tenant seeking to exercise their rights, or engage in conduct intended to prevent a Tenant from exercising their rights under this Chapter.

D. Any agreement between the Owner and a Rightsholder to shorten the time periods provided for exercise of any right afforded under this Chapter is prohibited unless all other Rightsholders have waived their rights under this Chapter. Notwithstanding the foregoing, any Rightsholder may affirmatively indicate they have no interest in a Residential Property prior to the expiration of any deadlines and in accordance with the Administrative Guidelines. Nothing in this section shall prohibit an agreement to extend the deadlines set forth herein.

E. Any Rightsholder that Purchases a Residential Building under the right of first offer set forth in Section 14.26.090 shall, to the maximum extent permitted by law and otherwise feasible, be obliged to work with the Owner in good faith to

facilitate an exchange of real property of the kind described in 26 US. C. § 1031, for the purpose of facilitating the Owner's realization of any federal tax benefits available under that section of the Internal Revenue Code.

14.26.150 Confidentiality

Any information exchanged between Owner(s) and Rightsholders intended to facilitate the sale of property including, but not limited to, disclosures, any intent to sell, and terms and conditions of an offer of sale, shall be kept confidential to the greatest extent permitted by law. This section shall not prohibit disclosure of information necessary to effectuate the purpose of this Chapter to any Owner, Tenant, Qualified Non-Profit, or to the City or its agents or contractors, nor shall this Chapter be construed to limit disclosure of information in response to a lawfully issued subpoena or court order.

14.26.160 Enforcement

A. Owner Certification. No later than thirty (30) days after any sale, the Owner(s) shall record with the San Mateo County's Recorder's Office, through the escrow company that facilitates the sale of the property, a signed declaration, under penalty of perjury, affirming that the sale of that property substantially complied with the requirements of this Chapter. Owner shall instruct the escrow company to file a copy of the Owner Certification with the City. The City will publish addresses of all such sales on its website.

B. The City Attorney, any non-exempt Owner subject to the provisions of this Chapter, and/or any Rightsholder may bring a civil action to enforce this Chapter and shall be entitled to the remedies set forth in this section to the greatest extent permitted by law.

C. A prevailing party in any action to enforce this Chapter shall be entitled to civil damages according to proof and reasonable attorneys' fees and costs. Any court of competent jurisdiction may enforce the affordability requirements of this Chapter, when applicable. Any court of competent jurisdiction may enjoin a transfer or sale of Property, or rescind a sale of Property, where the Owner failed to comply with requirements of this Chapter, and may order that an Owner comply with the requirements of this Chapter.

D. Penalties for violation of this Chapter:

1. Any violation shall be subject to a civil penalty not to exceed $1,000 per day of violation. Each failure to provide the required notice or disclosure shall be considered a separate violation for each unit on a Property.

2. If the Owner's violation was knowing or willful, mandatory civil penalties equal to ten percent (10%) of the sale price for a first violation; twenty percent (20%) for the second, and thirty percent (30%) for each violation thereafter.

E. Suspension or Disqualification of Qualified Non-Profits. The City shall promptly investigate any complaint alleging that a Qualified Non-Profit has failed to comply with this Chapter. If, after providing the Qualified Non-Profit with notice and opportunity to be heard, the City determines that a Qualified Non-Profit has failed to comply with this Chapter, the City may suspend or revoke a Qualified Non-Profit's certification.

14.26.170 Financial Assistance

A. The City Manager or designee shall develop guidelines, which shall be subject to approval by the City Council, for providing financial assistance to allow for the acquisition of Residential Property. Financial assistance may be provided to Rightsholders. Nothing in this section commits the City Council to providing a specified level of funding for the acquisition of Residential Property under this Chapter.

B. The provision of financial assistance to any Tenant who acquires an interest in a Residential Property pursuant to this Chapter must be conditioned on the Tenant's agreement to reside at the Residential Property for at least three (3) years. The City Manager or designee is authorized to impose a lien on the Residential Property to enforce the requirements of this section.

14.26.180 Implementation

A. The City Council shall initially approve the Administrative Guidelines necessary to implement the requirements of this Chapter. Thereafter, the City Manager is authorized to amend the Administrative Guidelines as needed.

B. The City shall annually post and update the City's website with information on the East Palo Alto Opportunity to Purchase Act process, including information about rights and sales.

C. The City Manager or designee shall develop online and printed forms and databases Qualified Non-Profit list and registry, and other administrative services to ensure efficient management of the program.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This Ordinance is not subject to CEQA because it is not a “project” which would have a direct physical change or a reasonably foreseeable indirect physical change on the environment pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15378. Even if it were a project subject to CEQA review, this project would be exempt from CEQA Guideline Section 15378 (regulatory actions), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning).

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect and be in full force on _____.

SECTION 6. PUBLICATION.

The City Clerk is hereby directed to cause publication of this Ordinance as required by Government Code Section 36933.

This Ordinance was introduced at the_____ meeting of the City Council of the City of East Palo Alto.

PASSED AND ADOPTED this _____ day of _____, 2023 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Lisa Gauthier, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
John D. Lê, City Attorney

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO

ADDING CHAPTER 14.27 TO THE EAST PALO ALTO MUNICIPAL CODE ENTITLED THE EAST PALO ALTO COMMUNITY OPPORTUNITY TO PURCHASE ACT

WHEREAS, the City Council finds that East Palo Alto is experiencing a shortage of affordable housing, especially for extremely low-income, very low-income, low-income and moderate-income residents, and a displacement crisis; and

WHEREAS, rapid displacement is evidenced in East Palo Alto by high rates of eviction, increasing rents, and increasing home values; and

WHEREAS, there is a disproportionate impact of displacement, homelessness, and unmet affordable housing and homeownership needs in East Palo Alto borne by African American, Latinx, and Pacific Islander communities of color; and

WHEREAS, sixty percent (60%) of East Palo Alto's population are renters, and over half of these renters are cost-burdened, meaning they spend over thirty percent (30%) of their monthly income on rent; and

WHEREAS, according to the Bay Area Equity Atlas and the Urban Displacement Project, seventy-two percent (72%) of low-income households in East Palo Alto live in gentrifying neighborhoods; and

WHEREAS, due to state law, tenants living in single-family homes and tenants living in buildings built after 1988 are not protected by rent stabilization (although the Just Cause for Eviction provision applies); tenants in rent-stabilized units are not protected from displacement by owner-move in; and when a tenant moves out, the rent for that unit can be raised to market value; and

WHEREAS, according to the American Community Survey (2015-2019) and San Mateo County Income Limits, the median household income in East Palo Alto of $67,087 is less than half the county's median household income, and most East Palo Alto households fall into the "extremely low-income" to "very low-income" category, or 30-50% AMI, making residents highly susceptible to dramatic shifts in the housing market; and

WHEREAS, according to the Center for Responsible Lending, during the foreclosure crisis from 2004-2008, African Americans and Latinxs in California were more than twice as likely as non-Hispanic Whites to lose their homes to foreclosure; and

WHEREAS, there is a concentration of properties in East Palo Alto owned by individual and entity investors and the majority of these investors are not residents of the City of East Palo Alto; and

WHEREAS, historically, East Palo Alto residents, both owners and renters, have been denied opportunities to build wealth through property ownership due to discriminatory housing policies, including the practice of redlining that impacted longer term residents and continues to impact successive generations of East Palo Alto residents; and

WHEREAS, it is a necessary and important public purpose to provide relief for these economic and social ills arising from the housing challenges facing East Palo Alto residents; and

WHEREAS, approximately 5.8% of properties in East Palo Alto are owned by East Palo Alto residents with a primary residence elsewhere in the city; and

WHEREAS, a limited exemption for these local residents who own other properties within East Palo Alto will promote the purpose of providing relief for these economic and social ills experienced by residents of East Palo Alto; and

WHEREAS, Tenant and Community Opportunity to Purchase Act programs have been adopted in a number of jurisdictions including Washington, D.C. and San Francisco to protect residents' ability to stay in a neighborhood in a cost-effective manner; and

WHEREAS, the City Council desires to prevent further displacement of East Palo Alto households, to supply a variety of affordable rental and ownership housing options, and to protect the health, safety and general welfare of the public through an opportunity to purchase program; and

WHEREAS, this action is exempt from the California Environmental Quality Act ("CEQA"), each as a separate and independent basis, including but not limited to, the following: CEQA Guidelines Section 15378 (regulatory actions). Section 15061 (b) (3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning.)

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT TO THE EAST PALO ALTO MUNICIPAL CODE

The City Council hereby adds Chapter 14.27 ("East Palo Alto Community Opportunity to Purchase Act") to the East Palo Alto Municipal Code to read as follows:

Chapter 14.27
East Palo Alto Community Opportunity to Purchase Act

14.27.010 Title and Purpose

A. This Chapter may be referred to as the "East Palo Alto Community Opportunity to Purchase Act" or "EPA COPA" program.

B. The purpose of this Chapter is to confer upon Qualified Non-Profit Housing Organizations, and the City of East Palo Alto an opportunity to purchase upon the transfer or sale of Residential Property to prevent displacement of lower-income tenants, to facilitate ownership for residents, and to create more affordable housing opportunities in East Palo Alto.

14.27.020 Definitions

"Absentee Owner(s)" means an owner (or owners) of a residential property who do not occupy the residential property as the owner's (or owners') principal residence.

"Accessory Dwelling Unit (ADU)" means a separate dwelling unit providing complete independent living facilities for one or more persons containing living, sleeping, kitchen and sanitation facilities as defined in and subject to the provisions in Chapter 18.96.

"Administrative Guidelines" means any requirements for implementation and administration of this Chapter adopted by the City.

"50% AMI Income Household" means households whose income does not exceed fifty percent (50%) of the Area Median Income, adjusted for family size and as published annually by the City.

"Bona Fide Offer to Purchase" means an offer to purchase a property or the interest in the property that is either:

(1) In cases in which a First Offer made by a Rightsholder is acceptable to an Owner, an offer with a price and other material terms at which a willing Owner would sell and a willing Buyer would purchase the property, or the appraised value; or,

(2) In cases following the expiration of marketing prohibition in which a Third-Party Offer is acceptable, an offer with a price and other material terms at which a willing Owner would sell and a willing Buyer would purchase the property, or the appraised value; or,

(3) In cases involving the exercise of the Right of First Refusal, an offer to purchase for the Rightsholder at a price and other material terms that are substantially equivalent to those accepted by an Owner in an arm's length Third-Party Offer.

"City" means the City of East Palo Alto, including any departments within the City that are assigned any responsibilities under this Chapter.

"Condominium" means an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property, together with a separate interest in space in a residential structure located on the real property in compliance with Civil Code Section 783. A condominium may include, in addition, a separate interest in other portions of the real property.

"Day or Days" means calendar day(s) unless otherwise stated.

"Dwelling Unit" means a structure or the part of a structure that is used as a residence that provides complete, independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation.

"Duplex" means a single building that contains two dwelling units or two dwelling units on a single parcel. Duplex does not include accessory residential units.

"First Offer" means an offer made by a Rightsholder (Tenant, Qualified Non-Profit Housing Organization, or the City).

"Junior Accessory Dwelling Unit (JADU)" means a dwelling unit that is no more than 500 square feet in size and contained entirely within a single-family residence, as defined in Chapter 18.96.

“Low-Income Households” are households whose income does not exceed sixty percent (60%) of the Area Median Income, adjusted for family size and as published annually by the City.

“Listing or Marketing” means adding the property to the Multiple Listing Service (MLS) or any other private or public online database, or adding or disseminating information about the property, with the intent of informing Third-Parties or their representatives about the opportunity to purchase, promoting the property, or any actions that promote or facilitate communications from prospective buyers.

“Median-Income Households” are households whose income does not exceed eighty percent (80%) of the Area Median Income, adjusted for family size and as published annually by the City.

“Moderate-Income Households” are households whose income does not exceed one hundred and twenty percent (120%) of the Area Median Income, adjusted for family size and as published annually by the City.

“Multiple-Family Dwelling” means any property with two or more dwelling units.

“Non-Exempt” means a residential property or a transfer that is not exempt under provisions of this Chapter.

“Notice of Intent to Sell” means a required notice from a non-exempt residential property owner of their intent to sell a residential property, to be provided to the Rightsholders prior to listing or marketing the residential property for sale.

“Offer Period” means the time allotted, as varied by building type following the timely submittal of a Statement of Interest by a Rightsholder, during which Rightsholders may make competitive offers to purchase the property.

“Owner” means any natural person, corporation, association, partnership, joint venture, limited liability company, trustee, business entity and its respective agents, or any other entity, who is the owner of record of a residential property.

“Owner-Occupied Duplex” means a duplex in which at least one unit is occupied by the owner(s) as the owner’s or owners’ principal residence.

“Owner-Occupied Triplex” means a triplex in which at least one unit is occupied by the owner(s) as the owner’s or owners’ principal residence.

“Pre-Marketing Period” means the time before a non-exempt residential property owner may list or market the residential property to prospective Third-Party Purchasers, which may include the Statement of Interest Period and/or the Offer Period.

“Principal Residence” means a residential dwelling that is occupied and is the usual place of return of a natural person. A dwelling qualifies as a primary residence when the person has lived in the dwelling for more than fifty percent (50%) of the time in the year prior to the proposed sale; and the person acknowledges the dwelling as the person’s primary residence by voter registration, address on tax returns, homeowner’s exemption, and/or mailing address.

“Rightsholder Purchaser(s)” or “Rightsholding Purchaser(s)” means Tenants, Qualified Non-Profits, or the City who are purchasing a Residential Property.

“Qualified Non-Profit” or “Qualified Non-Profit Housing Organization” means an organization that is exempt from Federal Income Tax under 26 USC Section 501(c)(3), or a California cooperative corporation that has the capacity to acquire, provide and manage affordable housing for low, very low, and extremely low income households as defined by the City’s annual Area Median Income calculations, has a commitment to prevent displacement, has a demonstrated commitment to community engagement, and is certified by the City through an application process.

“Rent” means the consideration, including security deposit, cleaning deposit and any other deposits, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Rent includes monies and the fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

“Residential Property” within this chapter means any property containing two or more dwelling units and located in the City, excluding Single Family Homes and Condominiums, with or without ADUs.

“Right of First Offer” means the Rightsholder's right to make a first offer to purchase a residential property, during the Offer Period following timely submittal of a Statement of Interest, prior to its listing or marketing to a broader audience by the Owner.

“Right of First Refusal” means the Rightsholder’s right to match a Third-Party Purchaser Bona Fide Offer to Purchase.

“Rightsholder” means Tenant, Qualified Non-Profit Housing Organization, or the City in reference to the Right of First Offer and Right of First Refusal as conferred in this Chapter.

“Statement of Rights and Obligations” means a statement provided by a Qualified Non-Profit to a Tenant that assigns their rights under this Chapter, or by a Qualified Non-Profit that purchases a residential property under this Chapter, outlining its responsibilities as the Rightsholder and/or Subsidized Purchaser.

“Subsidized Purchaser” is any Rightsholder (Tenant, Qualified Non-Profit, or City) receiving public or private subsidy to support a purchase.

“Tenant” means a renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

"Third Party” means any person or entity that is not a Rightsholder and not the Owner/Seller of the property.

“Third-Party Offer” means any offer made by a person or entity for a Residential Property other than a Rightsholder.

“Third-Party Purchaser” means any person or entity that has entered into a bona fide contract of sale for a Residential Property prior to an Owner giving the Rightsholder(s) an opportunity to purchase at a price and terms that represent a Bona Fide Offer to Purchase.

“Triplex” means a single building that contains three dwelling units or three dwelling units on a single parcel. Triplex does not include accessory dwelling units.

14.27.030 Applicability

This Chapter applies to the sale or transfer of all Residential Property in the City unless otherwise exempted.

14.27.040 Exemptions

A. Exempt Residential Property. Residential Property not subject to the requirements of this Chapter:

1. Non-Owner-Occupied Residential Property owned by an East Palo Alto resident, when the Owner has occupied a Residential Property within East Palo Alto as the Owner's Principal Residence for at least one (1) year or more. This exemption shall not apply to any Residential Property owned by:

    a. A real estate investment trust, as defined in Section 856 of the Internal Revenue Code;

    b. A corporation; or

    c. A limited liability company in which at least one member is a corporation.

2. Any Owner-Occupied Duplex with or without any Accessory Dwelling Unit(s) (inclusive of any Junior Accessory Dwelling Unit) when the Owner has occupied any Dwelling Unit on the property as the Owner's Principal Residence for at least one (1) year or more.

3. Any Owner-Occupied Triplex with or without any Accessory Dwelling Unit(s) (inclusive of any Junior Accessory Dwelling Unit) when the Owner has occupied any Dwelling Unit on the property as the Owner's Principal Residence for at least one (1) year or more.

4. Residential Property owned by the local, state, or federal government.

5. Residential Property subject to resale price control under Chapter 18.37 of East Palo Alto's Municipal Code.

6. Residential Property owned by and operated as a hospital, convent, monastery, extended care facility, convalescent home, or dormitories owned by educational institutions.

B. Exempt Transfers. Transfers of Residential Property not subject to the requirements of this Chapter:

1. An inter vivos transfer, whether or not for consideration, between spouses, domestic partners, parents and children, siblings, nieces and nephews, and/or grandparents and grandchildren.

2. A transfer for consideration by a decedent's estate if the consideration arising from the transfer will pass from the decedent's estate to, or solely for the benefit of, charity.

3. A transfer of legal title or an interest in an entity holding legal title to a Residential Property pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage. This exemption does not supersede any rights to purchase afforded to Rightsholders under California Civil Code Sections 2924(f)-(h), 2924(m)-(n), or 2929.3.

4. A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where one or more transferors is a current beneficiary of the trust.

5. A transfer by devise, descent, or operation of the law upon the death of a natural person.

6. A transfer pursuant to court order or court-approved settlement.

7. Any transfer to a public agency, including but not limited to a transfer by eminent domain or under threat of eminent domain.

8. Any transfer of a fractional interest in a Residential Property that is less than fifty percent (50%) of an undivided interest in the Residential Property.

9. Any transfer in which the transferee receives a low-income housing credit pursuant to 28 U.S.C. § 42.

10. A transfer of a Residential Property with no more than four (4) Dwelling Units made for the purpose of either: (a) paying for imminently necessary health care expenses of an Owner of the Residential Property, or (b) an emergency circumstance placing the Owner in financial hardship and at imminent risk of foreclosure or bankruptcy and the Owner has occupied the Residential Property as the Owner's Principal Residence for at least one (1) year or more. For purposes of this subsection only, "Owner" shall be limited to a natural person having an undivided interest in the Residential Property of at least fifty percent (50%). An Owner may claim this Exempt Transfer within one (1) year of having vacated the Residential Property where the Owner demonstrates the existence of the conditions set forth in this subsection.

C. Transfer Exemption Procedures. The Owner shall submit a Certificate of Exemption signed under penalty of perjury to the City after deciding to sell and before marketing the property, self-certifying one of the exemptions described in subsection B. A Certificate of Exemption must be accompanied by supporting documents as set forth in the Administrative Guidelines. The City shall make the template Certificate of Exemption publicly available, including on the City website. This section shall not be construed to or used in a manner that unreasonably delays an Owner's valid and lawful transfer of a real property interest under Exempt Transfers.

14.27.050 Qualified Non-Profits

A. Certification, Term, and Renewal. The City Council shall certify and recertify Qualified Non-Profits through the Administrative Guidelines which establish the application process. A Non-Profit organization's certification as a Qualified Non-Profit shall be valid for five (5) years. The City Manager or designee shall solicit new applications for Qualified Non-Profit status at least once each calendar year, at which time existing Qualified Non-Profits shall be eligible to apply for renewed certification. A list of Qualifying Non-Profits shall be published on the City's website.

B. Disqualification of Qualified Non-Profits. The City Manager or designee shall promptly investigate any complaint alleging that a Qualified Non-Profit has failed to comply with this Chapter. If after providing the Qualified Non-Profit with notice and opportunity to respond, the City Manager or designee determines that an organization listed as a Qualified Non-Profit has failed to comply with the requirements of this Chapter, the City Manager or designee may decide whether to exercise their discretion to recommend to City Council to limit, suspend, or revoke that organization's certification as a Qualified Non-Profit.

14.27.060 Assignment of Rights

A. A Tenant living in a Non-Exempt Duplex or Triplex with Absentee Owner(s) may assign rights to a Qualified Non-Profit.

B. A Qualified Non-Profit assignee shall sign and submit a "Statement of Rights and Obligations" to the Tenant. The content of the statement shall be set forth in the Administrative Guidelines.

C. The assignment of rights may occur at any time during the Notice Period no later than the end of the Offer to Purchase period.

D. Neither Qualified Non-Profit assignees nor the assignor shall accept any payment or reward in exchange for the assignment of rights under this section. An offer to rent (or continue renting) units in the property at terms favorable to a Tenant or Qualified Non-Profit assignee, including at an affordable rate, shall not be considered payment or reward.

14.27.070 Notice of Intent to Sell; Statement of Interest

A. Notice of Intent to Sell. An Owner of a Non-Exempt Residential Property shall provide all Rightsholders a Notice of Intent to Sell prior to listing or marketing a Residential Property for sale. The City shall make the template Notice of Intent to Sell available on the City website. The Notice of Intent to Sell shall be sent to each Rightsholder as set forth in the Administrative Guidelines, and shall include the following:

1. A statement that the Owner intends to sell the Residential Property.

2. A statement describing the rights of Rightsholders and stating the deadlines for exercising those rights.

3. Instructions for submitting a Statement of Interest, including the address and email address where a Statement of Interest may be sent.

B. Statement of Interest. A Rightsholder may respond to the Notice of Intent to Sell by submitting a Statement of Interest during the thirty (30) day Statement of Interest Period. The purpose of the Statement of Interest is to notify the Owner of the Rightsholder's interest in exercising the Right of First Offer and/or Right of First Refusal. To be eligible to submit a Statement of Interest, within the first fifteen (15) days of receiving the Owner's Notice of Intent to Sell, a Rightsholder shall notify the Owner by reliable means of communication (established by Administrative Guidelines) of the Rightsholder's intent to submit a Statement of Interest. A Rightsholder subsequently has the remainder of the thirty (30) day Statement of Interest Period to deliver the Statement of Interest to the Owner of the Residential Property. The template Statement of Interest shall be available on the City website.

Dwelling Type	**Statement of Interest Period**
Multiple 2-3 Units	30 calendar days
Multiple 4+ Units	30 calendar days

C. Disclosure Package. Within five (5) days of sending a Notice of Intent to Sell to Rightsholder, the Owner must provide a disclosure package that includes documents and information set forth in the Administrative Guidelines, and at minimum, an itemized list of annual income and expenses, including but not limited to rent and other income collected, and costs of management, insurance, utilities, maintenance, and repairs.

D. Effect of Statement of Interest. Receipt of a timely Statement of Interest by the Owner and transmission of a disclosure package to the Rightsholders shall start the Offer Period as follows:

Dwelling Type	**Offer Period**
Multiple 2-3 Units	60 calendar days
Multiple 4+ Units	60 calendar days

During the Offer Period, Rightsholders may submit an offer to purchase the property pursuant to Section 14.27.090.

E. Prohibition on Listing or Marketing Property During Statement of Interest Period and Offer Period. Before the Owner of a Residential Property may offer, list, market, or solicit offers for that property for sale to any purchaser other than a Rightsholder, the Owner shall notify each Rightsholder of the intent to sell the property. The Owner is prohibited from offering, listing, marketing, or soliciting offers until the Right of First Offer has been exercised or waived by each of the Rightsholders.

14.27.080 Rightsholders and Priority Order

A. Before the Owner of a Residential Property may list or market that property for sale to any purchaser, the Owner shall give all Rightsholder(s) an opportunity to purchase at a price and terms that represent a Bona Fide Offer to Purchase. The Owner is not required to give the Rightsholder(s) an opportunity to purchase when the Owner has received an unsolicited offer unless the Owner takes any action to accept the unsolicited offer.

B. The priority order for Rightsholders for Duplexes and Triplexes (with or without tenants) and Multiple-Family Dwellings, with four (4) or more units (with or without

tenants), from Absentee Owner(s) not maintaining a Principal Residence in City is Qualified Non-Profits and the City.

1. Notice of Intent to Sell. The Owner is required to provide all Rightsholders with a Notice of Intent to Sell, followed by a disclosure package as required in this Chapter.

2. Statement of Interest. All Rightsholders are allowed to submit a Statement of Interest.

3. Right of First Offer.

    a. In the event any Qualified Non-Profit submits a Statement of Interest in response to the Notice of Intent to Sell, the statement(s) shall be given priority over any statement submitted by the City.

    b. In the event no Qualified Non-Profit submits a Statement of Interest, any Statement of Interest submitted by the City shall be considered, and the City may proceed with the Right of First Offer process.

4. Right of First Refusal.

    a. The Right of First Refusal is applicable for Duplexes and Triplexes (with or without tenants) and Multiple-Family Dwellings, with four (4) or more units (with or without tenants), from Absentee Owner(s) not maintaining a Principal Residence in City.

    b. In the event the Owner rejects the offer(s) submitted by all Rightsholders and takes any action to move forward with a qualifying Third-Party Offer, the Owner must notify all the Rightsholders, who timely submitted a Statement of Interest and an offer, and give priority in the order described for the exercise of Right of First Refusal.

5. In the event the Qualified Non-Profits do not submit a match to the Offer to Purchase, the City's offer will stand.

14.27.090 Offer to Purchase

A. Submission of Offer to Purchase. The Rightsholder may deliver to the Owner of the Residential Property an offer to purchase the property at any time prior to the

expiration of the Notice Period. The Owner may accept or reject any offer to purchase received from a Rightsholder subsequent to the steps set forth in Section 14.27.080.

B. Acceptance of Offer to Purchase. Upon acceptance of an offer to purchase a Residential Property, the Rightsholder shall make reasonable and good faith efforts to close escrow on the transaction. The timeline for close of escrow is:

Dwelling Type	Close of Escrow	Extended Escrow Period
Multiple 2-3 Units	90 calendar days	Any agreement between the parties
Multiple 4+ Units	90 calendar days	Any agreement between the parties

*If the Rightsholder provides written documentation that the lender requires a commercial loan for the purchase of the property.

C. Termination of Right of First Offer. Upon rejection of all offers to purchase made within the Notice Period, or the closure of the Notice Period by expiration or waiver of rights by all qualifying Rightsholders, the Owner may list and market for sale the Residential Property and may solicit and conditionally accept any Third-Party Offer, subject to the requirements of Section 14.27.100.

14.27.100 Exercise of Right of First Refusal

A. The Right of First Refusal is applicable for Duplexes and Triplexes (with or without tenants) and Multiple-Family Dwellings, with four (4) or more units (with or without tenants), from Absentee Owner(s) not maintaining a Principal Residence in City.

B. The Right of First Refusal is not applicable to accepted or conditionally accepted Third-Party Offers which exceed 115% of the highest rejected First Offer made by a Rightsholder.

C. Disclosure of Third-Party Offer to Purchase. An Owner interested in accepting a Third-Party Offer less than or equal to one hundred fifteen percent (115%) of the highest First Offer received, shall disclose terms of that Third Party Offer to any Rightsholder that submitted a First Offer. Within two (2) days of signaling intent and/or taking action to accept of the Third-Party Offer, the Owner shall disclose to

each Rightsholder that submitted a First Offer all material terms, together with all commercially reasonable disclosures, in substantially the same form and having substantially the same content as would be provided to any prospective Third-Party Purchaser; provided, however, that any confidential information not necessary to comply with the requirements of this section shall be redacted from such offers.

D. Right of First Refusal. Any Rightsholder that submitted a Statement of Interest and an Offer may have the Right of First Refusal. When an Owner takes action to accept a Third Party Offer at a price less than or equal to one hundred fifteen percent (115%) of the First Offer, the Rightsholder may exercise a Right of First Refusal and match the Third Party Offer within the time period set forth in this section. To exercise its Right of First Refusal, the Rightsholder must make an offer of substantially equivalent price and terms except for the time to close escrow as described in this section and the deposit amount as described in Section 14.27.110; provided, however, the financing of the Rightsholder's purchase shall not be considered a material term of the Offer to Purchase so long as it does not affect the net value of the Sale to the Owner.

E. Time to Exercise Right of First Refusal. Subsequent to accepting, conditionally accepting, or taking any action to accept a Third-Party Offer less than or equal to 115% of the highest rejected First Offer, the Owner shall disclose the terms of that offer and provide any Rightsholder that submitted a Statement of Interest and an Offer these minimum amounts of time to match the Third-Party Offer:

Dwelling Type	**Exercise of Right of First Refusal**
2-3 Units	20 calendar days
4+ Units	20 calendar days

The acceptance of an Offer to Purchase by any Rightsholder extinguishes any Right of First Refusal of other Rightsholders.

14.27.110 Closing

A. Time to Close Escrow. Upon acceptance of the Offer to Purchase, the Rightsholder shall have these minimum amounts of times to close escrow:

Dwelling Type	**Close of Escrow**	**Extended Escrow Period**

Multiple 2-3 Units	90 calendar days	Any agreement between the parties
Multiple 4+ Units	90 calendar days	Any agreement between the parties

*If the Rightsholder provides written documentation the lender requires a commercial loan for the purchase of the property.

E. Rejection of Offer or Failure to Close. If each Rightsholder entitled to receive an Offer to Purchase rejects or fails to accept the Offer to Purchase within the time set forth in this section or if a Rightsholder that accepts an Offer to Purchase fails to close escrow within the time set forth in this section, the Owner may immediately proceed with the sale or transfer of the Residential Property to a Third-Party Purchaser.

F. Notwithstanding any other provision of this section, conditional sales agreements between an Owner and a Third-Party Purchaser are permitted so long as the agreement is subject to the contingency that no Rightsholder exercises a Right of First Refusal within the time periods specified in this Chapter.

14.27.120 Contract Negotiation

A. Bargaining in Good Faith. The Rightsholder and Owner shall bargain in good faith. The following constitute prima facie evidence of not bargaining in good faith:

1. The failure of an Owner to offer the Rightsholder a price or term substantially equivalent to that offered to a Third Party, without a reasonable justification for so doing;

2. The failure of an Owner to make a contract with the Rightsholder substantially equivalent to the price and terms of a Third-Party contract within the time periods specified in this Chapter, without a reasonable justification for so doing; or

3. The intentional failure of a Rightsholder or an Owner to comply with the provisions of this Chapter, including but not limited to Rightsholders making offers without intention to close, or Owners soliciting Third-Party Offers to disqualify the Right of First Refusal without the intention to close.

B. Reduced Price. If the Owner sells or contracts to sell the Residential Property to a Third-Party Purchaser for a price more than fifteen percent (15%) less than the price offered by the Rightsholder or for other terms which would constitute not bargaining in

good faith, the sale or contract is void and the Owner shall comply anew with all requirements of this Chapter as applicable.

C. Financial Assurances. The Owner may not require the Rightsholder to prove financial ability to perform as a prerequisite to entering into a contract. The Owner may not require the Rightsholder to pay the purchase price in installments unless the Owner provides deferred purchase money financing on terms reasonably acceptable to the Rightsholder. The Owner may require the Rightsholder to prove that the Rightsholder, either alone or in conjunction with a Third-Party, has comparable financial ability to the Third-Party Purchaser before the Owner will be required to grant deferred purchase money financing to the Rightsholder on the same terms and conditions conditionally accepted between the Owner and the Third-Party Purchaser. If the Rightsholder can prove comparable financial ability alone, the Owner may not require the Rightsholder to secure a third-party guarantor. This proof cannot be required as a prerequisite to contracting. It may be required only as a prerequisite to the Owner granting deferred purchase money financing at settlement.

D. Transfers of Interest in a Partnership or Corporation and Master Leases. In the event of a transfer of interest in a partnership or corporation or in the event of a master lease or agreement that is considered a sale but which does not involve a transfer of record title to the real property, the Owner shall be bargaining in good faith if the Owner offers the Rightsholder the opportunity to acquire record title to the real property or offers the Rightsholder the opportunity to match the type of transfer or agreement entered into with the Third Party. With respect to either type of offer, all provisions of this Chapter apply.

E. Deposit. The Owner shall not require the Rightsholder to pay a deposit of more than three percent (3%) of the contract sales price to make a contract. The deposit is refundable in the event of a good faith failure of the Rightsholder to perform under the contract unless otherwise provided in the contract.

14.27.130 Long-Term Affordability and Tenant Protections in Properties Purchased Pursuant to this Chapter

All Residential Properties purchased pursuant to this Chapter shall be subject to rental affordability restrictions and restrictions on the resale value of a given property.

A. Subsidized Purchaser(s). In exchange for the rights conferred by this Chapter, Subsidized Purchasers shall sign and submit a Statement of Rights and Obligations, available on the City website, agreeing to maintain the Residential

Property as permanently affordable. This Statement of Rights and Obligations shall be recorded.

B. Rental Units. If, upon purchase, the average rental rate of the units in the property, based on the existing tenancies of the non-purchasing Tenants exceeds a rent affordable to 50% AMI households, the new Owner shall rent each vacant unit to 50% AMI income households until the 50% AMI rental rate average is achieved. Future rental rates of any vacant units shall not exceed a rent affordable to Low-Income Households. These affordability levels may be amended by Council through resolution.

C. Owned Multiple-Family Units. The sales price shall be calculated based on Chapter 18.37 of the East Palo Alto Municipal Code and the inclusionary housing guidelines. The sales price for any vacant units shall be set at an affordable price to Median Income Households and to Moderate Income Households, with the first vacant unit restricted to Median Income Households. The resale or transfer of ownership units shall be subject to long-term affordability covenants consistent with Section 18.37.100 of the East Palo Alto Municipal Code.

D. Permanent affordability standards shall remain in force in perpetuity or for no less than ninety-nine (99) years and be renewable. The standards shall be evidenced by one of the following:

1. A restrictive covenant placed on the deed to the Residential Property that runs with the land and is enforceable by the City against the purchasers and their successors;

2. A Community Land Trust lease, which is a ninety-nine (99)-year renewable land lease with affordability and Owner-occupancy restrictions; or

3. Affordability covenants in land leases or other recorded documents which run with the land and are enforceable.

E. The sale of a Residential Property pursuant to this Chapter shall not impair the rights of any Tenant under Chapter 14.04 of the East Palo Alto Municipal Code or any other applicable state law or local law. Further, any Tenant who resides in any unit at the time of the sale of a Residential Property under this Chapter shall not be subject to eviction based on their failure to meet income restrictions or other eligibility requirements imposed by this section.

F. All covenants created in accordance with this section shall be recorded with the San Mateo County's Recorder's Office.

G. Required Filing to Certify Compliance with Affordability Restrictions. In the case that permanent affordability restrictions materialize as a covenant enforceable by the City, the Owner(s) of the Residential Property shall file a document every three (3) years with the City in which the Owner(s) affirmatively state the rents for each unit in the Residential Property.

14.27.140 Conduct

A. The sale or transfer of any Residential Property subject to this Chapter is prohibited unless an exemption applies and the Owner complies with Section 14.27.040. Any change of ownership of real property as defined in Revenue & Taxation Code § 64(c) shall be considered a sale or transfer of Real Property for purposes of this Chapter.

B. A Tenant or Rightsholder is prohibited from receiving any consideration in exchange for foregoing any right afforded to them under this Chapter or sell a waiver of any such right.

C. An Owner shall not coerce a Rightsholder to waive their rights, retaliate against or harass a Tenant seeking to exercise their rights, or engage in conduct intended to prevent a Tenant from exercising their rights under this Chapter.

D. Any agreement between the Owner and a Rightsholder to shorten the time periods provided for exercise of any right afforded under this Chapter is prohibited unless all other Rightsholders have waived their rights under this Chapter. Notwithstanding the foregoing, any Rightsholder may affirmatively indicate they have no interest in a Residential Property prior to the expiration of any deadlines and in accordance with the Administrative Guidelines. Nothing in this section shall prohibit an agreement to extend the deadlines set forth herein.

E. Any Rightsholder that Purchases a Residential Building under the right of first offer set forth in Section 14.27.090 shall, to the maximum extent permitted by law and otherwise feasible, be obliged to work with the Owner in good faith to facilitate an exchange of real property of the kind described in 26 US. C. § 1031, for the purpose of facilitating the Owner's realization of any federal tax benefits available under that section of the Internal Revenue Code.

14.27.150 Confidentiality

Any information exchanged between Owner(s) and Rightsholders intended to facilitate the sale of property including, but not limited to, disclosures, any intent to sell, and terms and conditions of an offer of sale, shall be kept confidential to the greatest extent permitted by law. This section shall not prohibit disclosure of information necessary to effectuate the purpose of this Chapter to any Owner, Tenant, Qualified Non-Profit, or to the City or its agents or contractors, nor shall this Chapter be construed to limit disclosure of information in response to a lawfully issued subpoena or court order.

14.27.160 Enforcement

A. Owner Certification. No later than thirty (30) days after any sale, the Owner(s) shall record with the San Mateo County's Recorder's Office, through the escrow company that facilitates the sale of the property, a signed declaration, under penalty of perjury, affirming that the sale of that property substantially complied with the requirements of this Chapter. Owner shall instruct the escrow company to file a copy of the Owner Certification with the City. The City will publish addresses of all such sales on its website.

B. The City Attorney, any non-exempt Owner subject to the provisions of this Chapter, and/or any Rightsholder may bring a civil action to enforce this Chapter and shall be entitled to the remedies set forth in this section to the greatest extent permitted by law.

C. A prevailing party in any action to enforce this Chapter shall be entitled to civil damages according to proof and reasonable attorneys' fees and costs. Any court of competent jurisdiction may enforce the affordability requirements of this Chapter, when applicable. Any court of competent jurisdiction may enjoin a transfer or sale of Property, or rescind a sale of Property, where the Owner failed to comply with requirements of this Chapter, and may order that an Owner comply with the requirements of this Chapter.

D. Penalties for violation of this Chapter:

1. Any violation shall be subject to a civil penalty not to exceed $1,000 per day of violation. Each failure to provide the required notice or disclosure shall be considered a separate violation for each unit on a Property.

2. If the Owner's violation was knowing or willful, mandatory civil penalties equal to ten percent (10%) of the sale price for a first violation; twenty percent (20%) for the second, and thirty percent (30%) for each violation thereafter.

E. Suspension or Disqualification of Qualified Non-Profits. The City shall promptly investigate any complaint alleging that a Qualified Non-Profit has failed to comply with this Chapter. If, after providing the Qualified Non-Profit with notice and opportunity to be heard, the City determines that a Qualified Non-Profit has failed to comply with this Chapter, the City may suspend or revoke a Qualified Non-Profit's certification.

14.27.170 Financial Assistance

A. The City Manager or designee shall develop guidelines, which shall be subject to approval by the City Council, for providing financial assistance to allow for the acquisition of Residential Property. Financial assistance may be provided to Rightsholders. Nothing in this section commits the City Council to providing a specified level of funding for the acquisition of Residential Property under this Chapter.

B. The provision of financial assistance to any Tenant who acquires an interest in a Residential Property pursuant to this Chapter must be conditioned on the Tenant's agreement to reside at the Residential Property for at least three (3) years. The City Manager or designee is authorized to impose a lien on the Residential Property to enforce the requirements of this section.

14.27.180 Implementation

A. The City Council shall initially approve the Administrative Guidelines necessary to implement the requirements of this Chapter. Thereafter, the City Manager is authorized to amend the Administrative Guidelines as needed.

B. The City shall annually post and update the City's website with information on the East Palo Alto Opportunity to Purchase Act process, including information about rights and sales.

C. The City Manager or designee shall develop online and printed forms and databases Qualified Non-Profit list and registry, and other administrative services to ensure efficient management of the program.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Adoption of this Ordinance is not subject to CEQA because it is not a "project" which would have a direct physical change or a reasonably foreseeable indirect physical change on the environment pursuant to California Environmental Quality Act ("CEQA") Guidelines section 15378(b)(4) in that it is a governmental fiscal, organizational or administrative activity that will not result in direct or indirect changes in the environment. Even if it were a project subject to CEQA review, this project would be exempt from CEQA Guideline Section 15378 (regulatory actions), Section 15061(b)(3) (no significant environmental impact), and Section 15183 (actions consistent with the general plan and zoning). The Council therefore directs that the Planning Division may file a Notice of Exemption with the San Mateo County Clerk.

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect and be in full force on _____.

SECTION 6. PUBLICATION.

The City Clerk is hereby directed to cause publication of this Ordinance as required by Government Code Section 36933.

This Ordinance was introduced at the_____ meeting of the City Council of the City of East Palo Alto.

PASSED AND ADOPTED this _____ day of _____, 2023 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Lisa Gauthier, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
John D. Lê, City Attorney

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City of East Palo Alto and MEA – Side Letter Negotiations
Tentative Agreement

ARTICLE 21: Contract Term (Agreed)
The term of the Side Letter shall be from Jan 1, 2024 to June 30, 2024 equivalent to six months.

ARTICLE 17: Wages (Agreed)

A. Employees in this unit will receive a salary increase of 2.5% (two and a half percent) effective the first full pay period of January 2024 (anticipated to be effective January 7, 2024).

ARTICLE 7.3: Benefits (Agreed)
The City shall make a semi-monthly contribution of $83.33 toward an HSA for employees that enroll in Kaiser Permanente HSA high deductible plan. Equivalent to approximately $2,000 annually.

The City and MEA have reached a Tentative Agreement as stated above on 10/31/23

Accepted by:

For the Management Employees' Association Union:	For the City of East Palo Alto:
DocuSigned by: Stanley Young D5C5F0D6C95E45E... Stanley Young, MEA Representative	DocuSigned by: Ana M Torres-Mondragon 14EC557863E547D... Ana M Torres-Mondragon, Human Resources Manager
DocuSigned by: Kevin Lewis 5CDCBC79EEA04BB... Kevin Lewis, MEA Member	DocuSigned by: Brenna Rowe CC82C5ADD43C4FC... Brenna Rowe, Chief Spokesperson Sloan Sakai Yeung & Wong LLP
	DocuSigned by: Melvin E Gaines 4A361DD749224BE... Melvin E. Gaines, City Manager

STATE OF CALIFORNIA

GRANT AGREEMENT

CEC-146 (Revised 3/2019)

CALIFORNIA ENERGY COMMISSION

RECIPIENT	AGREEMENT NUMBER
City of East Palo Alto	**APP-22-174**
ADDRESS 1960 Tate St. East Palo Alto CA, 92071	AGREEMENT TERM **04/21/2023 to 05/31/2027** The effective date of this Agreement is either the start date or the approval signature date by the California Energy Commission representative below, whichever is later. The California Energy Commission shall be the last party to sign. No work is authorized, nor shall any work begin, until on or after the effective date.

PROJECT DESCRIPTION

The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the agreement.

Exhibit A – Application with Scope of Work	Page(s): 4
Exhibit B – APP General Terms and Conditions	Page(s): 5
Exhibit C – Contact List	Page(s): 1

REIMBURSABLE AMOUNT	$ 40,000
MINIMUM MATCH SHARE REQUIRED	$ 0
TOTAL OF REIMBURSABLE AMOUNT AND MINIMUM MATCH	$ 40,000

The undersigned parties have read the attachments to this agreement and will comply with the standards and requirements contained therein.

CALIFORNIA ENERGY COMMISSION		CONTRACTOR	
AUTHORIZED SIGNATURE Adrienne Winuk	DATE 6/15/2023	AUTHORIZED SIGNATURE Romeo Herrera	DATE 6/15/2023
NAME Adrienne Winuk		NAME	
TITLE Contracts, Grants, and Loans Office Manager		TITLE Chief Building Official	
CALIFORNIA ENERGY COMMISSION ADDRESS 715 P Street, MS 18, Sacramento, CA 95814			

ATTACHMENT 01
Grant Application Form – EXHIBIT A

California Automated Permit Processing (CalAPP) Program

1. APPLICANT INFORMATION (REQUIRED)

Jurisdiction Name (please use full legal name as it would appear on the executed grant):

East Palo Alto

Jurisdiction Type (select one):

☒ City ☐ County ☐ City and County

Current Estimated Population State of California Department of Finance Demographics (https://dof.ca.gov/forecasting/Demographics/):

☒ Less than 50,000 ☐ From 100,000 to 200,000

☐ From 50,000 to 99,999 ☐ Greater than 200,000

Project Manager *(serves as point of contact for all communications)*	Name	Romeo Herrera
	Street Address	1960 Tate St
	City and Zip Code	East Palo Alto, 94303
	Phone Number	(650) 853-5908
	E-Mail Address	rherrera@cityofepa.org

2. FUNDING (REQUIRED)

Assigned Maximum Grant Amount (select ***one***)

☒ **Group 1 ($40,000):** Population less than 50,000

☐ **Group 2 ($60,000):** Population from 50,000 to 99,999

☐ **Group 3 ($80,000):** Population from 100,000 to 200,000

☐ **Group 4 ($100,000):** Population greater than 200,000

3. PROJECT INFORMATION (REQUIRED)

A. Online, automated solar permitting platform to be adopted:

☒ SolarAPP+

☐ Other. If selected, complete Section 4 ("Additional Information")

B. Please select allowable budget item(s) anticipated to be used (Select at least one):

☒ Ongoing in-house staff labor costs associated directly with adoption and maintenance of the platform

☒ Ongoing third-party or consultant time associated directly with adoption and maintenance of the platform

☒ Ongoing staff training and education, specific to the platform

☐ Ongoing training events for local installers, specific to the platform

☒ Essential hardware or equipment necessary to support adoption of the platform

☒ Maintenance, such as adding support for energy storage paired with solar energy system permitting, and subscription cost for permit tracking software in support of adopted permitting platform

C. Estimated Project Timeline*

*Enter actual dates if activities already began

Activity	Date (Month/Year)
Begin Development/Pilot	July 1, 2023
Full Adoption	June 30, 2027
Staff Training	June 30, 2027
Training for Local Installers	

4. ADDITIONAL INFORMATION (if applicable)

NOTE: Only complete this section if you implement a platform other than SolarAPP+

Please identify whether the following features are supported by the implemented platform. All features are required for the platform to qualify for funding. CEC staff will verify prior to payment approval.

Performs an automated plan review for residential solar energy systems that completes automatic code compliance checks based on user inputs (such as a contractor), thereby enabling or otherwise issuing permits instantly when the project is confirmed as code compliant, without the need for human review	☐ Yes	☐ No
Supports online, immediate fee payment once an application is complete, which may include auto-invoicing of permit fee costs	☐ Yes	☐ No
Supports immediate generation of a permit job card following payment confirmation	☐ Yes	☐ No
Blocks noncompliant applications from receiving a permit	☐ Yes	☐ No
EITHER: 1) Stand-alone permitting tool; **OR** 2) Integrates with current software and inspection platform already in use	☐ Yes	☐ No

5. REPORTING (REQUIRED)

Following adoption and verification of a qualifying platform, the Energy Commission may request, and the Recipient will provide if requested, annual data on the number of permits issued for solar energy systems and a solar energy system paired with an energy storage system including relevant characteristics of those systems, such as system capacity. Please indicate your acceptance of these terms.	☒ Yes	☐ No

6. CERTIFICATION (REQUIRED)

- I am authorized to complete and sign this form on behalf of the applicant.
- I authorize the California Energy Commission to make any inquiries necessary to verify the information presented in this application.
- I have read and understand the terms and conditions contained in this solicitation. I accept the terms and conditions contained in this solicitation on behalf of the applicant, and the applicant is willing to enter into an agreement with the Energy Commission to conduct the proposed project according to the terms and conditions without negotiation.
- I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Name of Authorized Representative:	Amy Chen
Title:	Director of Community and Economic Development
Phone Number:	(650) 853-3193
E-mail Address:	achen@cityofepa.org
Date:	April 20, 2023
Signature of Authorized Representative:	

NOTE: Do not overlap signature with surrounding border lines.

California Automated Permit Processing (CalAPP) Program
ATTACHMENT 2 – Terms and Conditions

Added language appears in **bold underlined** font and deleted language appears in strikethrough and within square brackets.

1. Background and Authority for this Grant

California Senate Bill 129 (2021) included an appropriation to the California Energy Commission (CEC) to support a grant program for cities, counties, or cities and counties to establish online solar permitting.

2. Documents Incorporated by Reference and Priority

Incorporated by reference into this agreement are the following documents:

A. Grant Funding Opportunity (GFO) 21-402.
B. Recipient's application to CalAPP.

As between and the incorporated documents and the remainder of this Agreement, the rest of this Agreement takes priority in case of a conflict.

3. Budget, Invoices, and Payments

a) The CEC is only obligated to reimburse the Recipient for paid costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) not more than this Agreement's budget; and (4) reasonable, actual, and allowable expenses under this Agreement.
b) Recipient acknowledges that the funds under this Agreement have a liquidation date of June 30, 2027, a legal timeframe after which the CEC has no authority to pay the funds. In addition, it takes the CEC administrative time to review, approve, work with the Recipient to correct any errors in, and request the State Controller's Office to pay invoices. Accordingly, Recipient acknowledges that if it does not submit accurate invoices by March 30, 2027, for all amounts due under the Agreement, it risks not receiving payment, and relinquishes all rights to such payments should the CEC not pay it by the liquidation date. Recipient acknowledges that time is of the essence in invoicing by March 30, 2027, for all amounts due under this Agreement.

The Recipient may request payment from the Energy Commission at any time during the term of this Agreement after successful adoption of a qualifying solar permitting platform as verified by the CEC, but no more frequently than monthly. Recipient must use the CAM provided template invoice spreadsheet.

c) If invoicing for in-house staff time, the template invoice spreadsheet must identify the employee's name, hours worked, and billing rate to be included as a reimbursable expense.

d) Unallowable costs include:
   - Software not related to the adoption of a qualifying online, automated permitting platform.

- Any costs incurred or activities conducted prior to entering into a grant agreement with the Energy Commission or incurred after the grant agreement has ended.
- Typically excluded items such as food and beverages.
- Advertising costs.
- Fines and penalties.
- Permit processing fees charged by operator of an online platform.
- All other costs not identified as allowable.
- Unreasonable amounts or rates.

4. Certification

By signing this Agreement, Recipient hereby certifies that all funds received pursuant to this Agreement shall be spent exclusively for its CalAPP project in compliance with this Agreement. The Recipient further certifies that it shall comply with all applicable laws in performing this Agreement.

5. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient and its subcontractors will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient and its subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient and its subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient shall include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

6. Drug-Free Workplace Certification

By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it will comply and will ensure its subcontractors will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.). In addition to any other rights and remedies available to the CEC, failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the CEC determines that any of the following

has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements of the Act.

[~~By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:~~

1) ~~Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).~~

2) ~~Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:~~

   - ~~The dangers of drug abuse in the workplace;~~
   - ~~The person's or organization's policy of maintaining a drug-free workplace;~~
   - ~~Any available counseling, rehabilitation, and employee assistance programs; and~~
   - ~~Penalties that may be imposed upon employees for drug abuse violations.~~

3) ~~Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:~~

   - ~~Will receive a copy of the company's drug-free policy statement; and~~
   - ~~Will agree to abide by the terms of the company's statement as a condition of employment on the project.~~]

~~In addition to any other rights and remedies available to the CEC, failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the CEC determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.~~

7. Americans With Disabilities Act

By signing this Agreement, the Recipient assures the CEC that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Section 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

8. Accounting and Audit

The Recipient will keep separate, complete, and correct accounting of the costs involved in completing the Agreement. The Recipient agrees that the CEC, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Recipient agrees to maintain such records for possible audit for a minimum of three (3) years after the Agreement ends in any way. The Recipient agrees to allow the auditor(s) access to such records during normal business hours and to allow

interviews of any employees who might reasonably have information related to such records. Further, the Recipient agrees to include a similar right of the CEC, the Bureau of State Audits, or their designated representative, to audit records and interview staff in any subcontract related to performance of this Agreement. These rights and responsibilities are in addition to and not restrictive of those in Section 16. Access to Sites and Records.

9. Public Works

The Recipient is responsible for complying with all applicable laws, which can include public works requirements under the Labor Code. Recipient acknowledges acceptance of Agreement funds may trigger public works laws (Labor Code Section 1720 et seq.), a requirement of which is to pay prevailing wages, applying to its entire project. If the project is public works then it is subject to compliance monitoring and enforcement by the Department of Industrial Relations. By signing this Agreement, Recipient certifies that it shall comply with all applicable Public Works laws and requirements.

10. Intellectual Property

As between the Recipient and the CEC, the Recipient owns all intellectual property it or its subcontractors create under this Agreement. The CEC has a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce all intellectual property, such as the products identified in Section 2. above, for governmental purposes the Recipient or its subcontractors create under this agreement. The Recipient shall include a provision securing these rights for the CEC in all of its subcontractor agreements related to performance of this Agreement.

11. Amendment

No amendment or variation of this Agreement shall be valid unless made in writing and signed by both the Recipient and CEC.

12. Governing Law

This Agreement is governed by the laws of the State of California as to interpretation and performance.

13. Independent Capacity

In the performance of this Agreement, Recipient and its agents, subcontractors, and employees will act in an independent capacity and not as officers, employees, or agents of the CEC or the State of California.

14. Severability

If any provision of this Agreement is unenforceable or held to be unenforceable, all other provisions of this Agreement will remain in full force and effect.

15. Waiver

No waiver of any breach of this Agreement constitutes waiver of any other breach. All remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other remedy provided in the Agreement or by law.

16. Access to Sites and Records

The Recipient shall provide during the Agreement and for at least 3 years after the Agreement ends in any way to the CEC or its representatives reasonable access to all project sites and to all records related to this Agreement. These rights and responsibilities are in addition to and not restrictive of those in Section 8. Accounting and Audit.

17. Termination Without Cause

The CEC may terminate this Agreement without cause upon giving written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

18. Third-Party Beneficiary

The Recipient shall in every subcontract under this Agreement include a provision indicating the CEC is a third-party beneficiary to the agreement.

19. Survival of Terms

The following terms survive this Agreement no matter how the agreement ends, such as by its own terms or via termination:

- 8. Accounting and Audit
- 9. Public Works
- 10. Intellectual Property
- 12. Governing Law
- 14. Severability
- 15. Waiver
- 16. Access to Sites and Records
- 18. Third-Party Beneficiary

Exhibit C
CONTACT LIST

California Energy Commission	Recipient
Commission Agreement Manager: Lucio Hernandez California Energy Commission 716 P Street, MS-45 Sacramento, CA 95814 Phone: (916) 477-1799 e-mail: lucio.hernandez@energy.ca.gov	**Project Manager:** Romeo Herrera Chief Building Official 1960 Tate St East Palo Alto, CA 94303 Phone: (650) 853-5908 e-mail: rherrera@cityofepa.org
Confidential Deliverables/Products California Energy Commission Contracts, Grants, and Loans Officer 715 P Street MS-18 Sacramento, CA 95814	**Administrator:** Amy Chen Director of Community and Economic Development 1960 Tate St East Palo Alto, CA 94303 Phone: (650) 853-3193 e-mail: achen@cityofepa.org
Invoices, Progress Reports and Non-Confidential Deliverables to: California Energy Commission Accounting Officer 715 P Street MS-2 Sacramento, CA 95814 Email PDF of Payment Request invoice packet to: invoices@energy.ca.gov	**Accounting Officer:** Tomohito Oku Finance Director 2415 University Ave East Palo Alto, CA 94303 Phone: (650) 853-3122 e-mail: toku@cityofepa.org
Legal Notices: Tatyana Yakshina Grants Manager 715 P Street MS-18 Sacramento, CA 95814 Phone: (916) 827-9294 e-mail: tatyana.yakshina@energy.ca.gov	**Recipient Legal Notices:** John Le City Attorney 2415 University Ave East Palo Alto, CA 94303 Phone: (650) 853-5921 e-mail: jle@cityofepa.org