



**CITY COUNCIL
SPECIAL AND REGULAR MEETING AGENDA**

Tuesday, September 11, 2012

5:15 p.m.

701 Laurel Street, Menlo Park, CA 94025

City Council Chambers

5:15 P.M. CLOSED SESSION (1st floor Council Conference Room, City Hall)

CL1. Closed Session with City Attorney regarding potential litigation pursuant to Government Code Section 54956.9 – One item

6:00 P.M. STUDY SESSION (City Council Chambers)

SS1. Update on Bedwell Bayfront Park funding status, operations, landfill regulatory compliance and tree planting grant (*Staff report #12-132*)

7:00 P.M. REGULAR SESSION

ROLL CALL – Cline, Cohen, Fergusson, Keith, Ohtaki

PLEDGE OF ALLEGIANCE

REPORT FROM CLOSED SESSION

ANNOUNCEMENTS

A. PRESENTATIONS AND PROCLAMATIONS

B. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS

B1. Environmental Quality Commission quarterly report on the status of their 2 Year Work Plan

B2. Transportation Commission quarterly report on the status of their 2 Year Work Plan

C. PUBLIC COMMENT #1 (Limited to 30 minutes)

Under “Public Comment #1”, the public may address the Council on any subject not listed on the agenda and items listed under the Consent Calendar. Each speaker may address the Council once under Public Comment for a limit of three minutes. Please clearly state your name and address or political jurisdiction in which you live. The Council cannot act on items not listed on the agenda and, therefore, the Council cannot respond to non-agenda issues brought up under Public Comment other than to provide general information.

D. CONSENT CALENDAR - None

E. PUBLIC HEARING - None

F. REGULAR BUSINESS

F1. Provide direction to staff regarding potential ordinance regulating payday lenders, auto title lenders and check cashing (*Staff report #12-133*)

F2. Consider state and federal legislative items, including decisions to support or oppose any such legislation, and items listed under Written Communication or Information Item – None

G. CITY MANAGER'S REPORT – None

H. WRITTEN COMMUNICATION – None

I. INFORMATIONAL ITEMS

- I1.** Overview of the proposed public meeting and Development Agreement negotiation process for the Facebook West Campus Project located at the intersection of Willow Road and Bayfront Expressway (*Staff report #12-134*)

J. COUNCILMEMBER REPORTS

K. PUBLIC COMMENT #2 (*Limited to 30 minutes*)

Under "Public Comment #2", the public if unable to address the Council on non-agenda items during Public Comment #1, may do so at this time. Each person is limited to three minutes. Please clearly state your name and address or jurisdiction in which you live.

L. ADJOURNMENT

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PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 11, 2012
Staff Report #:12-132

Agenda Item #: SS-1

STUDY SESSION: Update on Bedwell Bayfront Park Funding Status, Operations, Landfill Regulatory Compliance and Tree Planting Grant

The purpose of this Study Session is to update the City Council on Bedwell Bayfront Park Funding Status, Operations, Landfill Regulatory Compliance and Tree Planting Grant. No City Council action is required.

BACKGROUND

The City of Menlo Park owns and operates a closed municipal, non-hazardous solid waste disposal site known as Bedwell Bayfront Park (BBP). The park covers approximately 156 acres of a 160-acre parcel at the northeastern end of Marsh Road next to San Francisco Bay.

Landfill operations were originally established by San Mateo County at the site in 1957. In 1957, San Mateo County purchased 15-acres of the salt pond adjacent to the West Bay Sanitary District sewage treatment plant at the end of Marsh Road. The County originally operated a solid waste incinerator there, but the operation was unsuccessful and the plant was removed. The South County Garbage and Refuse Disposal District (SCGRDD or “the District”) took over the area and set up a conventional sanitary landfill using the fill and cover method of refuse disposal. A February 1960 map shows Belmont, San Carlos, Redwood City, Woodside, Atherton and Menlo Park within the then existing boundary of the SCGRDD. Between 1961 and 1976, additional parcels of land were acquired adjacent to the original 15 acres to create the 160 acre parcel in existence today.

In 1968, the City took over responsibility for the landfill in order to ensure high standards in landfill operation and eventually, the development of a park to meet the needs of the residents. The construction of BBP was initiated in 1982 and was completed in 1995. Currently, the park is designed as a passive open space area with minimal improvements, including bike/pedestrian trails and restrooms. In conjunction with the park construction, gas recovery and leachate control projects were also built to ensure that the closed landfill met all regulatory requirements.

FUNDING

Current funding for the BBP consists of two separate funds. The BBP Maintenance Fund is a sinking fund used for expenses related to the operations and maintenance of the park facilities. The BBP Maintenance Fund currently has a balance of \$780,000, with current annual expenses of \$108,000.

The BBP Landfill Fund is used for all regulatory compliance expenses related to the closed landfill. The BBP Landfill Fund receives revenue through the garbage fees collected as well as royalty payments from the gas lease discussed later in this report. The BPP Landfill Fund currently has a fund balance of \$2,960,000, with current annual expenses of \$330,000.

Funding Pre-2003

In 1971, in anticipation of the construction of the park, the City imposed fees on each ton of waste disposed of in the landfill to fund land acquisition, administration, operation and park development, as well as park maintenance. These fees were placed in the Bayfront Park Development Fund, and the Bayfront Park Maintenance fund, respectively. The Bayfront Park Maintenance fund was developed with the intent that the interest earned would pay for the ongoing maintenance of the park. Contributions to this fund ended when the landfill was closed in 1984.

In 1976 when the Environmental Impact Report for BBP was prepared, the annual cost to maintain the park was estimated at \$75,000. This estimate did not include the full cost of satisfying yet unknown regulatory requirements related to the ongoing environmental issues associated with closed landfills. By 2001 the annual cost of satisfying the landfill regulatory requirements was approximately \$290,000, and the park maintenance costs were approximately \$160,000. Between these two expenses, the maintenance fund was being depleted by \$450,000 annually.

In May 2001, the City Council discussed the need to develop a funding strategy to cover the ongoing maintenance costs of BBP, which was a mixture of park maintenance and landfill maintenance requirements. In May 2001, it was estimated that the maintenance fund would be depleted in FY 2005-06 resulting in a \$500,000 annual impact to the General Fund operating budget and an additional \$500,000 every three years to cover capital costs to address post-closure regulatory requirements. At this meeting the City Council directed staff to pursue the preparation of a feasibility study to look at revenue generating uses for BBP. In March 2002, the City Council decided not to proceed with a feasibility study looking at development options at BBP that may have generated revenue.

Funding 2003 and later

BPP Landfill Fund

In January 2003, the City Council approved the funding of landfill regulatory compliance requirements at BBP by increasing the solid waste fee. In FY 2003-04 the Bayfront Park Landfill Fund was created for this purpose. This action ensured that the regulatory

compliance activities associated with the landfill would be fully funded on an on-going basis, however park maintenance costs were still being funded out of the BBP Maintenance Fund. As of June 30, 2012, the BBP Landfill Fund had an estimated fund balance of approximately \$2,960,000. As these funds are collected through the solid waste fee program, their use is restricted to landfill related expenses and cannot be used for park operations.

BBP Maintenance Fund

In 2003 the funds remaining in the BBP Development Fund were moved to the BBP Maintenance Fund to cover park operating and maintenance related costs. The fund was still a sinking fund, with the revenue earned used to pay for ongoing maintenance. Between 2004 and 2006 the City explored the possibility of active recreational uses at the BBP which might generate income for BBP maintenance. An advisory ballot measure regarding active uses at the BBP was placed before the voters and it was voted down in 2006 and plans to develop the Park for active recreational uses was abandoned.

In 2011, because the BBP Maintenance Fund was being depleted and projected to run out of funds in the next 4-5 years, staff revised the scope of services provided at the park from park ranger service to park maintenance service. Staff evaluated the services and felt that it was not necessary to have ranger service all day and that the main service needed was to provide general cleaning of the restrooms and litter removal. Staff met with the Friends of Bayfront Park and presented the revised scope of services to the Parks and Recreation Commission who both supported the recommendation. The largest portion of the annual park maintenance cost was providing ranger service at an estimated annual cost of over \$130,000. The City Council approved the revised service in September 2011 which resulted in an annual savings of over \$100,000. Since the service change took effect, staff has not received any complaints regarding this change in service. Staff met with Friends of BBP earlier this year to review the change of service and they were generally satisfied. As of June 30, 2012, the BBP Maintenance Fund has an estimated fund balance of \$780,000. Staff estimates the fund to be depleted in seven to eight years based upon the current annual expenditure of \$108,000.

In addition to the on-going maintenance needs, there are significant capital investments needed at the park. The park was developed over a 13-year period, with the last phase occurring in 1995. The pathways and perimeter road have a useful life of 10 years and 15 years, respectively. The main entrance road has a 20-year life. In November 2005, staff anticipated the following capital costs for improvements of facilities and infrastructure at the park. These costs are over and above the annual maintenance cost.

Capital Project	Estimated Cost
Pathway Renovation (290,000 square feet - Bike/Pedestrian)	\$1,823,000
Perimeter Road Resurfacing (149,000 square feet)	\$464,000
Main Road Resurfacing (691,000 square feet)	\$2,229,000
Restroom Wall Replacement	\$48,000
Restrooms (Pump System Replacement)	\$18,000

Because of other City priorities and the limitations of the BBP Maintenance Fund, the City has not completed any of these projects. Currently, the only source of income for this fund is interest earned on the principle. Funding for these improvements needs to be determined. However, as part of the Development Agreement for the Menlo Gateway project, the Developer has agreed to provide a minimum of \$350,000, potentially up to \$500,000 in funding for capital improvements at Bedwell Bayfront Park if the project moves forward. Per the terms of the Development Agreement, the capital improvements to be made with these funds shall be determined by the City Council through a City public outreach process.

GAS RECOVERY SYSTEM

As the refuse in a landfill decomposes through biological, chemical and physical processes, it gives off gas that can seep to the surface. The City has responsibility to monitor, collect samples and dispose of the gas generated from the landfill.

To comply with Bay Area Air Quality Management District (BAAQMD) regulatory requirements, as part of the landfill closure plan, the City covered the refuse with clay. This clay cap provides a seal to prevent gas from leaking to the atmosphere and from water infiltrating the landfill. A network of pipes and gas wells were embedded just beneath the surface to vacuum the gases and direct them to the flare where they are incinerated. Fortistar, the company who the City contracted with for gas collection and flare maintenance at the park, expanded the existing gas collection system and installed a power generation plant which was completed in 1987. The City of Menlo Park was one of the first to install such a system. The gas now flows from the pipe network to the on-site gas-burning power generation plant where combustion occurs, producing

electricity which is sold to PG&E. This prevents the formation of pockets of methane gas which create a fire hazard underground or on the surface.

The current gas recovery and power generation system uses four thirty-year old generators. Only one or two operate at any given time due to the reduced quantity of methane gas being generated by the landfill. These old generators are near the end of their lifecycle, are difficult to maintain and repair, and are inefficient and noisy. As a result of increasingly stringent air quality standards, the latest of which took effect January 1, 2012, the generators are now considered to be operating above the nitrogen oxides (NOx) limits allowable by California Air Quality Standards. In 2011, the California Air Resources Board granted Fortistar a two-year extension to continue to operate the generators.

Fortistar has two separate agreements with the City: one agreement is to operate and maintain the gas recovery system and flare for regulatory compliance; and the second agreement is a lease for the gas recovery operations used to generate electricity.

Maintenance Agreement

Fortistar owns the power generation plant and about two-thirds of the gas collection system. The City owns the land, the flare and the other one-third of the collection system. The flare at the plant is rarely used since the power plant has the capacity to burn all the gas produced by the landfill. Since Fortistar owns the plant and most of the collection system, the City has continued to allow them to operate the flare and City system.

The current Fortistar maintenance contract was signed on May 18, 2005 and lasted through December 31, 2010 with the option for the City to renew annually, for up to five more years. This agreement is for Fortistar to monitor the collection system and flare station to insure performance of the entire system and to meet BAAQMD regulatory requirements. The City pays Fortistar a monthly fee of \$4,230.47 to perform this service. This fee adjusts annually based upon the San Francisco Bay Area Consumer Price Index. The City's current contract for regulatory compliance with Fortistar expires on December 31, 2012. Fortistar has been performing their duties satisfactorily, as required by the operation and maintenance agreement and Staff has been renewing the contract annually.

Lease Agreement

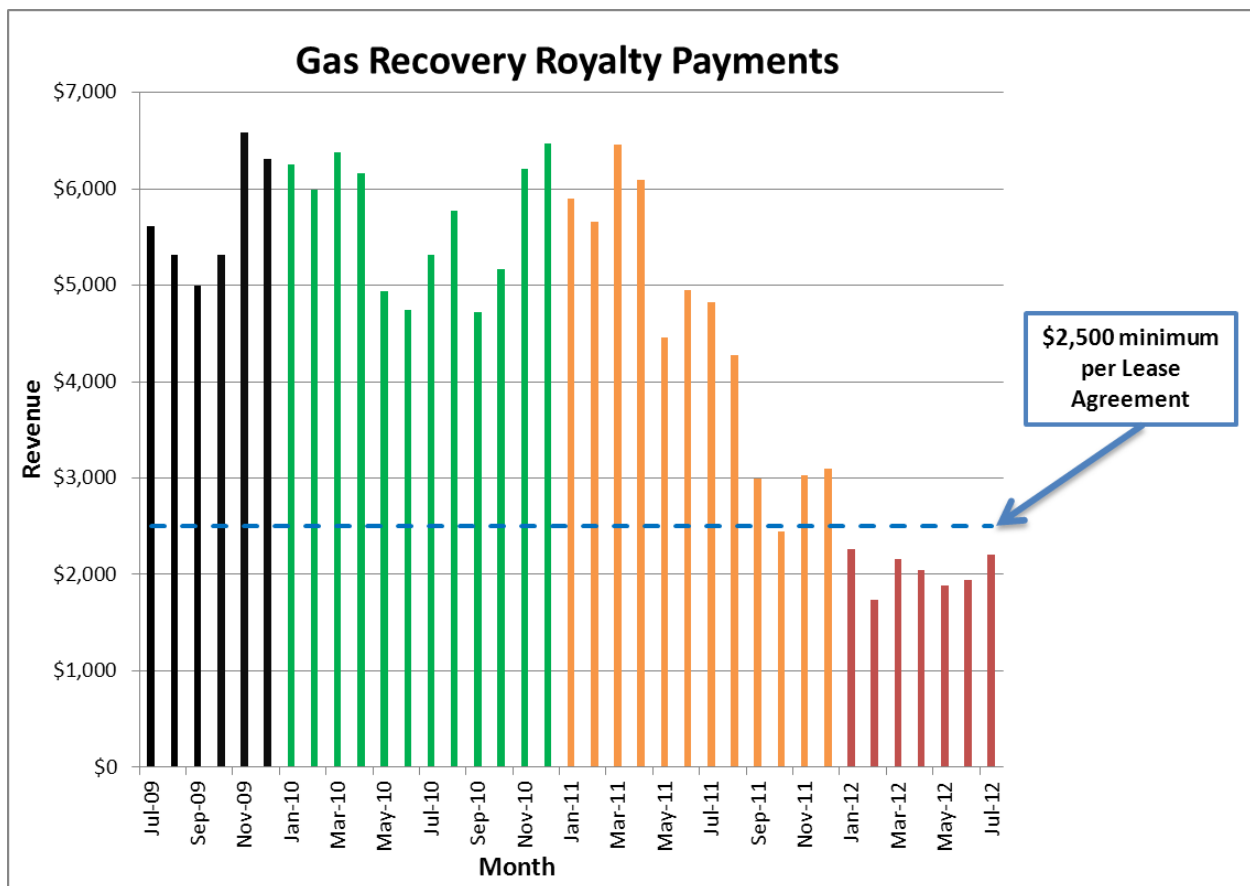
The lease agreement for the gas recovery with Fortistar was entered into in 1982 and was an initial 20 year gas lease. Per Article IV of the lease:

“4.1 This Lease shall become effective on the date hereof and shall remain in force for a primary term of twenty (20) years and as long thereafter as Refuse Gas/or Constituent Products are produced in paying quantities (or while such obligation is excused pursuant to Article X), but in no event shall this Lease remain in force for longer that the maximum period allowed by law. As used herein “produced in paying

quantities” shall mean that royalties received by Lessor from the sale of said Refuse Gas and/or Constituent Products shall equal at least \$2,500 per month.”

The royalty payments received from Fortistar as part of the lease are deposited into the BBP Landfill Fund. Over the last 3 years, royalty payments received from Fortistar have been decreasing due to a reduction in methane, which could be a result of the condensate building up in the gas wells, or an increase in leachate within the landfill. The royalty payment received from Fortistar for October 2011 was \$2,445.32, the first time it had dropped below the \$2,500 level identified in the Lease agreement. While royalty payments bounced back above the \$2,500 level for the months of November and December, they have dropped and stayed below \$2,500 for the entire calendar year of 2012. While the City now has the option of canceling the gas lease, staff does not recommend that option as there are no contingency plans in place to deal with the operation of the gas collection system. If the City cancels the lease at this time, the gas would need to be burned using the old flare station, which itself is in need of significant repair or replacement.

The chart below shows the royalties the City has received over the last three years.



Looking ahead, there are a number of different scenarios for the methane recovery system as follows:

- Given the drop in royalty payments, both the City and Fortistar have the option of cancelling the Lease. If the gas lease is terminated, the City would have the option to contract with another company to recover the gas, to feed the landfill gas to the flare once it is repaired, or to install some other gas recovery technology. Feeding the gas to the flare would end the revenue stream from the electricity sales to PG&E. Installing an alternative gas recovery technology might require a significant capital investment which may not be warranted due to the decreasing levels of methane.
- Fortistar has the option to request another time extension from the BAAQMD between now and December 31, 2013 to continue operating the old generators and maintain the status quo.
- Fortistar may decide to replace its old generators with newer, more efficient ones that will operate in compliance with current air regulations. This would require a significant capital investment on their part and would occur only if Fortistar's return on the investment can occur within a reasonable timeframe.

In FY 2011-12 the CIP program had funds to perform a Gas Collection System Improvements Study and Conceptual Design Project. This project will look into alternative design options for enhancing the gas collection system. Because an increase in leachate within the landfill is believed to be impacting the methane gas, this effort has been moved back until after the existing leachate system is analyzed and upgraded starting in FY13-14. In the interim, Staff has been working with Fortistar to address gas condensate (liquid) that is filling up their wells and lowering methane collection. The plan is to remove the liquid from the wells and pipe it to a nearby leachate sump pump for disposal in the sanitary sewer system. It is anticipated that these improvements will be on-line by October of this year and hopefully reverse some of the decline in methane available for power generation.

LEACHATE RECOVERY SYSTEM

Another waste product generated as the refuse in a landfill decomposes through biological, chemical and physical processes, is an acidic liquid called leachate. The City has responsibility to monitor, collect samples and dispose of the leachate generated from the landfill. The leachate is captured through a system of pipes and sumps and removed to a wastewater treatment plant for treatment and disposal. If not captured, it can enter and contaminate the ground water and the Bay.

As with the gas recovery system, City staff did not have the expertise to capture and dispose of the leachate. In the late 1980's, seven sump pumps were installed along the perimeter of the landfill for manual extraction of the leachate. In 1990, the State Water Quality Control Board (SWQCB) required this system to be upgraded to ensure that leachate would not contaminate the adjacent slough, salt ponds or the Bay. The City contracted with Shaw Environmental Inc. (formerly EMCON) to design a leachate

control system for the landfill. In 1991, this larger leachate monitoring and collection system was installed consisting of nine wells and the existing extraction sumps. The system was designed to discharge leachate into the West Bay Sanitary District (WBSD) sewer main for ultimate treatment and disposal at the South Bayside System Authority (SBSA) wastewater treatment facility in Redwood City. Shaw Environmental, Inc. has monitored and operated the leachate pumping system, collected and analyzed leachate samples, and prepared monitoring and analysis reports for regulatory agencies and the City since 1991.

In 1994, the City sent requests for proposals (RFPs) to local area consulting firms to determine whether a more cost effective arrangement for maintenance of the leachate system could be arranged. Shaw Environmental Inc.'s proposal was the most thorough and cost-effective because of their long involvement and expertise in monitoring and reporting on the site. On October 8, 2008, the Council decided again to continue the City's arrangement with Shaw Environmental, Inc. and authorized a contract for one year with the option to extend for four additional years. It has been extended annually and is due for renewal on November 30, 2012. Staff is satisfied with their work and plans to renew the contract for another year, putting the expiration date at October 8, 2013.

The existing leachate collection system is in need of replacement. Parts of the system are over twenty years old. Shaw Environmental is responsible for only minor repairs and improvements on an ongoing basis as part of their maintenance contract with the City. Included in the City's 5-year CIP plan for FY 2013-14 is the upgrade to the existing Leachate collection system. A significant challenge in upgrading the existing leachate collection system is the anticipated additional requirements by regulatory agencies. The existing system was constructed based on older standards, and the newer standards will most likely generate a significant increase in the amount of leachate collected, with a corresponding significant increase in treatment/disposal costs paid to WBSD and SBSA. However, as more leachate is removed from the landfill, it potentially could improve the amount of gas generated and collected through the gas recovery system.

TREE AND SHRUB PLANTING PROJECT GRANT

In March 2011, the City was awarded a \$350,000 grant from the California State Resource Agency to plant 1,000 native trees and shrubs at BBP. Currently, there are 3,000 trees and shrubs established at the park, and many of these species are not native to California. The park also provides valuable habitat for wildlife and migratory birds.

The tree and shrub planting project concept was approved by Council in September 2010, and a mitigated negative declaration for the project was approved by Council in January 2011. The mitigated negative declaration included specific measures to protect wildlife species and migratory birds, such as maintaining a "tree free" 500 foot wide buffer around the edge of the park. Both Council meetings included numerous

comments against planting trees and shrubs at the park from residents and users of the park. At the January 2011 Council meeting, staff was directed to:

1. Measure soil depth during the planting design phase.
2. Proceed with public outreach to include expertise from the community and involve the Environmental Quality Commission and the Parks and Recreation Commission.
3. Bring a draft plan to the City Council prior to going forward with implementation.

To date, staff has continued to work on the Tree and Shrub Planting Project by meeting with the Friends of BBP and conducting soil depth measurements in preparation for developing a design plan. Staff will be issuing a request for proposal this fall to hire an environmental restoration and enhancement firm to plan and design the tree and shrub planting project. The conceptual plan will be presented to the Friends of BBP, Environmental Quality Commission, and Parks and Recreation Commission for input before bringing the plan to Council early next year. Staff will also conduct a survey of park users to gain additional feedback about the tree and shrub planting project.

CONCLUSION

Efforts are being made on multiple fronts to address the challenges identified in this report. While new funding for the operation and maintenance of the park has yet to be identified, there are a few years left before the existing fund is depleted. Projects have been programmed into the Five-Year Capital Improvement Program to address the gas and leachate collection systems, however the current gas recovery arrangement with Fortistar and their aging generators still needs to be addressed. Finally, the tree and shrub planting project is on schedule and moving forward.

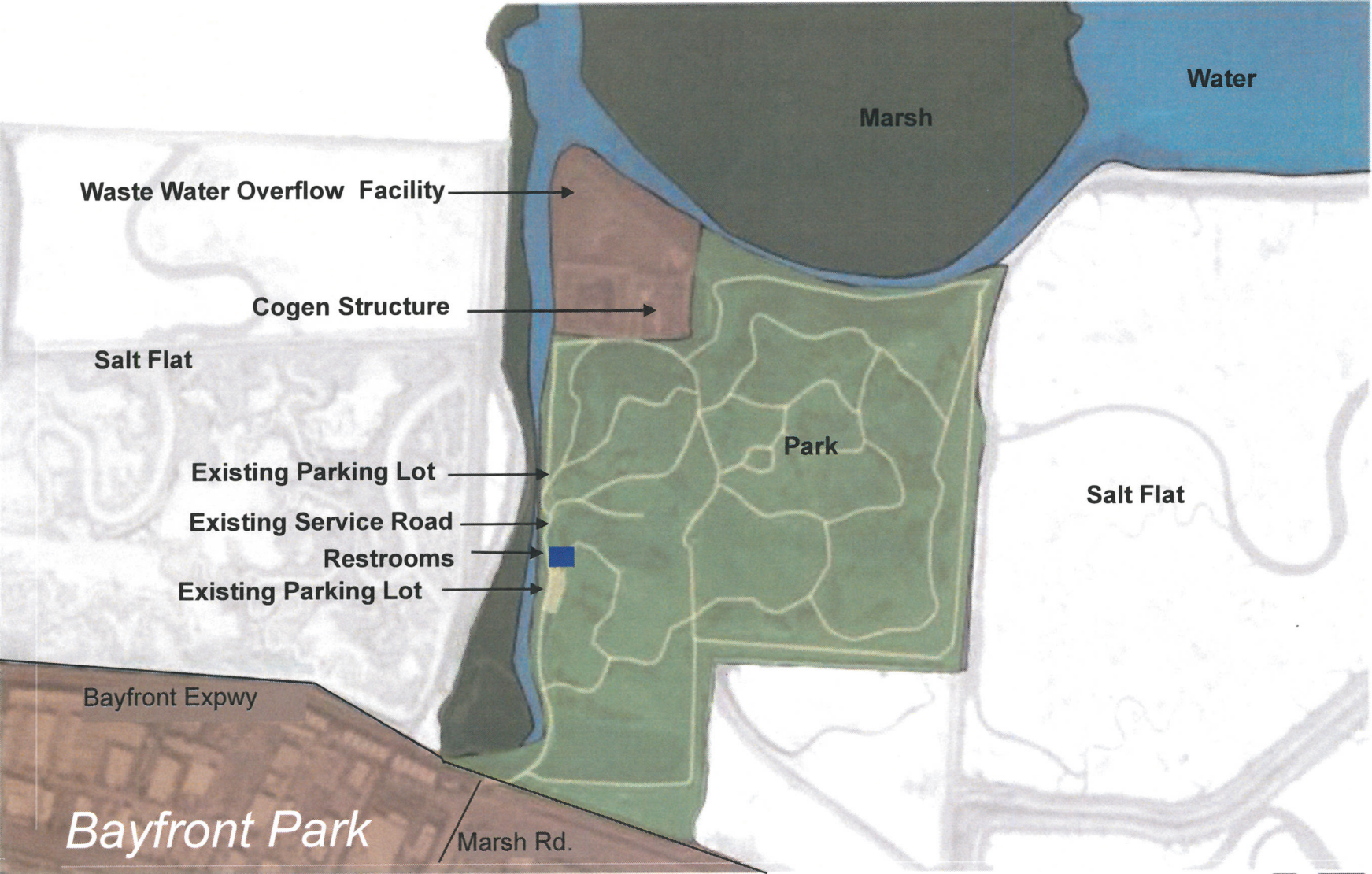
Signature on File
Roger Storz
Senior Civil Engineer

Signature on File
Charles Taylor
Public Works Director

PUBLIC NOTICE: Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS:

A. Aerial Map Bedwell Bayfront Park





POLICE DEPARTMENT

Council Meeting Date: September 11, 2012
Staff Report #: 12-133

Agenda Item #: F-1

REGULAR BUSINESS: Provide Direction to Staff Regarding Possible Ordinance Regulating Payday Lenders, Auto Title Lenders and Check Cashing

RECOMMENDATION

Staff recommends the Council provide direction to staff regarding pursuing a possible ban or regulation on payday lending establishments, auto title lenders as well as a possible update on current check cashing regulations.

BACKGROUND

The Police Department has been approached by Community Legal Services in East Palo Alto regarding payday lenders and possible ordinances either banning or regulating them.

The inability of low-income consumers with poor credit history to obtain certain services from federally insured banks has resulted in a two-tiered financial services industry. More affluent, financially stable consumers are generally able to use traditional banks which charge lower fees for checking and issue loans regulated by the federal government, while lower-income, financially vulnerable consumers often rely on the alternative financial services (AFS) industry for the same services. Payday and auto title lenders, along with check cashing businesses are part of the growing AFS industry.

Auto title lenders are businesses that give loans against a borrower's title to their vehicle. Typically, a borrower would bring their vehicle to a lender, who would inspect it, and provide a loan for up to half the value of the vehicle. If the loan amount is under \$2500, there exists interest rate caps and regulations that would apply. In the event that the loan is greater than \$2500, there is no cap on the annualized interest rate and interest rates can range from 6.5% to 15% per month. If a loan is defaulted on, the borrower's vehicle is forfeited.

Payday lenders often offer borrowers short-term loans in which the lender provides immediate cash to the borrower in exchange for a post-dated check (to be cashed on the borrower's next payday). In addition to the principal amount advanced to the borrower, the value of the borrower's check includes the fee charged by the lender for the loan. Under California law, payday loans, also referred to as cash advances or deferred deposit transactions, have a \$300 limit on the face value of the check and a 15% fee cap. Thus, a borrower who wishes to borrow the maximum amount would write a check for \$300 to a payday lender in exchange for \$255 in immediate cash. As

an example, the borrower would pay \$45 to receive \$255 a few weeks before their next payday. This 15% fee for a loan over a few weeks works out to a very high interest rate. In 2010, the average APR (annual percentage rate) for payday loans in California was 414%.

Studies have shown that most payday loan borrowers are not one-time customers. In 2010, more than 12 million payday loans were made to 1.6 million Californians, equating to an average of seven payday loans per borrower, per year. A 2007 study by the Department of Corporations found that more than one third of borrowers took out payday loans from multiple lenders at the same time. Studies have also shown that most of these types of businesses operate in low-income neighborhoods and target the most financially vulnerable consumers.

ANALYSIS

There is limited state and federal legislation restricting payday lending. Local governments in California are preempted by state law from regulating the *fees* and *structure* of payday loans. Due to this quandary, many cities and counties have opted to limit the proliferation of payday lenders through prohibition, temporary moratoriums, zoning restrictions, operation requirements and permit requirements. Recently, several local governments have acted to curb payday lending, due to the negative effects on the most vulnerable of their populations. These jurisdictions include: San Mateo County, Santa Clara County, and the cities of San Jose, Los Altos, Pacifica and East Palo Alto.

The ordinances already enacted in other jurisdictions typically are codified in the zoning code. They also typically regulate two other types of alternative financial services (AFS), check cashing operations and auto title lenders, in addition to payday lenders. It should be noted that the City of Menlo Park currently regulates check cashing activities in Chapter 5.42 of the Menlo Park Municipal Code. They also limit such institutions to commercial zones, and require them to be a certain distance from each other and/or residential zones. Some ordinances strictly prohibit the establishment of payday lenders within their jurisdictions. Other ordinances require special permits, adherence to specific operational requirements, and require these establishments to be a certain distance from schools, religious institutions, banks and liquor stores.

Below is a table which summarizes and compares the latest eight jurisdictions to enact payday lending ordinances:

City / County	Ban, Moratorium or Cap	Permit Required	Distance Required (Distance From)	Hours
Santa Clara County	Permanent Ban	N/A	N/A	N/A
San Mateo County	No	Yes	<i>Each other: 1,000 feet Residential: 500 feet School: 500 feet Religious Institution: 500 feet Liquor store: 500 feet Bank: 500 feet</i>	0700-1900 hours

San Jose	Cap of 39 payday lenders	Yes	<i>Each other: 1,320 feet Low Income Census Tract: 1,320 ft</i>	N/A
East Palo Alto	No	No	<i>Each other: 1,000 feet Residential: 500 feet School: 1,000 feet Religious Institution: 1,000 feet Liquor store: 1,000 feet</i>	N/A
Sacramento	No	Yes	<i>Each other: 1,000 feet Residential: 500 feet School: 1,000 feet Religious Institution: 1,000 feet Bank: 500 feet</i>	0700-1900
Los Altos	Temporary Moratorium	N/A	N/A	N/A
Pacifica	Temporary Moratorium	N/A	N/A	N/A
Tucson, AZ	No	No	<i>Each other: 1,320 feet Residential: 500 feet</i>	N/A

The City of Menlo Park currently does not have any payday lending or auto title lending businesses within its borders; making this an opportune time to regulate these types of businesses if the City Council deems it necessary. Staff recommends that the Council give direction to pursue an ordinance banning the establishment of payday and/or motor vehicle title lending businesses, or regulating these fringe financial types of business within the City of Menlo Park.

If Council wishes to pursue banning fringe financial activities, staff will need direction regarding which types of fringe financial institutions it wishes to consider for evaluation. Before deciding on the regulatory scheme best suited for Menlo Park, the City Council should define the types of “fringe financial institutions” it seeks to regulate, if any. According to a memo dated July 16, 2012 from Community Legal Services in East Palo Alto, cities typically regulate three types of fringe financial institutions: payday lenders, auto title lenders and check cashing. The City Council will need to provide direction whether their policy direction is to regulate one, two or all three types of “institutions”. More detailed analysis is provided in the attached memo from Community Legal Service in East Palo Alto.

IMPACT TO CITY RESOURCES

There is no fiscal impact for the proposed action, other than the staff time to investigate, develop, and process such an ordinance for consideration. Any regulation through the City’s zoning code would have to be considered by the Planning Commission before returning to the City Council.

POLICY ISSUES

Investigating a possible new ordinance does not present a change to existing policy.

ENVIRONMENTAL REVIEW

The proposed action does not require environmental review.

Signature on File

Dave Bertini
Police Commander

Signature on File

Lee Violet
Interim Chief of Police

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ATTACHMENTS:

- A. Letter from Community Legal Service in East Palo Alto



COMMUNITY
LEGAL SERVICES IN
EAST PALO ALTO

To: Commander Dave Bertini, Menlo Park Police Department
701 Laurel Street
Menlo Park, CA 94025

From: Community Legal Services of East Palo Alto
2117-B University Avenue
East Palo Alto, CA 94303

Re: Payday Lending Ordinance

Date: July 16, 2012

Introduction¹

This memorandum provides background information about payday lending and details the policy options available to Menlo Park to regulate payday lenders within its borders. Based on analysis of several other city and county payday lending ordinances, the memorandum summarizes the different kinds of regulatory schemes the City could enact and where in the City codes such limits could be codified. Regulation of this industry would likely involve amending both the Zoning Ordinance and the Municipal Code of Menlo Park.

Several neighboring jurisdictions have already passed payday lending ordinances, and, while multiple regulatory schemes are available to Menlo Park, we recommend that the City regulate and restrict payday lenders to the fullest extent possible, thereby denying payday lenders a haven in Menlo Park.

What is Payday Lending?

Payday lenders offer borrowers short-term loans in which the lender provides immediate cash to the borrower in exchange for a post-dated check (to be cashed on the borrower's next payday). In addition to the principal amount advanced to the borrower, the value of the borrower's check includes the fee charged by the lender for the loan. Under California law, payday loans, also referred to as cash advances or deferred deposit transactions, have a \$300 limit on the face value of the check and a fifteen percent fee cap.² Thus, a borrower who wishes to borrow the maximum amount would write a check for \$300 to a payday lender in exchange for \$255 in immediate cash. Put another way, the borrower pays \$45 to receive \$255 a few weeks before his

¹ This memorandum has drawn from the research, analysis and phrasing of two prior payday lending memorandums: Memorandum from Stanford Community Law Clinic and Community Legal Services of East Palo Alto for Valerie Armento, East Palo Alto City Attorney (Nov. 4, 2011) (on file with Community Legal Services), and Memorandum from Public Interest Law Firm, Law Foundation of Silicon Valley, for Ash Kalra, San José City Council (July 16, 2010) (on file with Community Legal Services).

² Deferred Deposit Transactions Law, Cal. Fin. Code §§ 23035(a), 36(a). The law also limits the duration of the loan to 31 days. § 23035(a).

or her next payday. This fifteen percent fee for a loan over a few weeks works out to an astronomically high annual percentage rate (“APR”): the average APR for payday loans in California in 2010 was 414%.³

Unfortunately, most payday loan borrowers are not one-time customers. In 2010, more than 12 million payday loans were made to more than 1.6 million Californians, meaning that the average borrower took out more than seven payday loans per year.⁴ A 2007 study by the Department of Corporations found that more than one third of borrowers took out payday loans from multiple lenders at the same time.⁵ Additionally, almost twenty percent of payday lenders’ business came from repeat customers who had taken out more than fifteen loans during an eighteen-month period.⁶

Payday lenders comprise only part of the spectrum of “fringe financial institutions,” which offer alternative forms of credit at often oppressive rates. Other fringe financial institutions include check cashers, auto title lenders, pawn shops and rent-to-own stores. Many local jurisdictions, in regulating payday lenders, also opted to regulate other fringe financial institutions, especially check cashers and auto title lenders.⁷

Other Cities and Counties

Local governments in California are preempted by state law from regulating the fees and structure of payday loans. Many jurisdictions have opted to limit the proliferation of payday lenders through prohibition, temporary moratoriums, zoning restrictions, operational requirements and permit requirements. Several local governments throughout the Bay Area have acted recently to curb payday lending, with San Mateo County, Santa Clara County, San José and Los Altos enacting ordinances in just the last three months.

The ordinances studied typically:

- Are codified within the land use or zoning code,
- Regulate two other types of “fringe financial institutions” – check cashing operations and auto title lenders – in addition to payday lenders,
- Limit such institutions to commercial zones, and
- Require that such institutions be at least 1,000 feet away from each other and 500 feet from residential zones.

Some ordinances also or alternatively:

³ Business, Transportation and Housing Agency, Department of Corporations, State of California, 2010 Report: Operation of Deferred Deposit Originators under the California Deferred Deposit Transaction Law (2011), 3, available at http://www.corp.ca.gov/Laws/Payday_Lenders/pdfs/CDDTL2010ARC.pdf.

⁴ Id. at 2.

⁵ Department of Corporations, State of California, 2007 Payday Loan Study (Updated June 2008), 49, available at http://www.corp.ca.gov/Laws/Payday_Lenders/Archives/pdfs/PDLStudy07.pdf.

⁶ Id. at 27.

⁷ While this memo does not discuss the dangers of check cashers and auto title lenders or the manner in which municipalities have sought to restrict them, we would be happy to supply an additional memo on that subject.

- Prohibit outright the establishment of payday lenders and check cashing operations,
- Require special permits for covered entities,
- Require adherence to specific operational requirements (e.g., restrictions and requirement as to hours, lighting, signage, etc.), and
- Require fringe financial institutions to be a certain number of feet away from schools, religious institutions, banks, and/or liquor stores.

Table: Comparison of Payday Lending Regulations

The table below summarizes the regulations that eight cities and counties have recently enacted.

City/ County	Ban, Moratorium or Cap	Permit required	Distance Requirements (Distance From)	Hours
Santa Clara County ⁸	Permanent Ban	N/A	N/A	N/A
San Mateo County ⁹	No	Yes	<i>Each other:</i> 1,000 ft. <i>Residential:</i> 500 ft. <i>School:</i> 500 ft. <i>Religious institution:</i> 500 ft. <i>Liquor store:</i> 500 ft. <i>Bank:</i> 500 ft.	7-7
San José ¹⁰	Cap of 39 payday lenders	Yes	<i>Each other:</i> 1,320 ft. <i>Very Low Income Census Tract:</i> 1,320 ft. ¹¹	N/A
East Palo Alto ¹²	No	No	<i>Each other:</i> 1,000 ft. <i>Residential:</i> 500 ft. <i>School:</i> 1,000 ft. <i>Religious institution:</i> 1,000 ft. <i>Liquor store:</i> 1,000 ft.	7-7
Sacramento ¹³	No	Yes	<i>Each other:</i> 1,000 ft. <i>Residential:</i> 500 ft. <i>School:</i> 1,000 ft. <i>Religious institution:</i> 1,000 ft. <i>Bank:</i> 500 ft.	7-7

⁸ Santa Clara County, Cal., Ordinance No. NS-1200.333 (May 1, 2012). The ordinance affects only those parts of the county that are unincorporated.

⁹ San Mateo County, Cal., Ordinance No. 64621 (June 26, 2012). As with the Santa Clara County ordinance, it affects only those parts of the county that are unincorporated.

¹⁰ San José, Cal., Ordinance No. 29089 (June 5, 2012).

¹¹ The San José Ordinance prohibits payday lenders in and within 1,320 ft. of a "census tract identified by the most recently available census data from the U.S. Census Bureau's American Community Survey as having a median household income below that defined by the U.S. Department of Housing and Urban development as 'very low income' for a two-person household." San José, Ordinance No. 29089 § 3.

¹² East Palo Alto, Cal., Ordinance No. ##### (Nov. 2011).

¹³ Sacramento, Cal., Zoning Code §§17.16.010, 17.24.050.

Los Altos ¹⁴	Temporary Moratorium	N/A	N/A	N/A
Pacifica ¹⁵	Temporary Moratorium	N/A	N/A	N/A
Tucson ¹⁶	No	No	<i>Each other: 1,320 ft. Residential: 500 ft.</i>	N/A

Defining “Fringe Financial Institutions”

Before deciding on the regulatory scheme best for Menlo Park, the City Council should define the types of “fringe financial institutions” it seeks to regulate. Typically, cities regulate three types of fringe financial institutions: payday lenders, check cashers and auto title lenders. Menlo Park would have to decide whether to regulate one, two, or all three. If Menlo Park chooses to regulate check cashing businesses as “fringe financial institutions,” the City Council would need to revisit the operational and permit requirements already required of check cashing businesses under the Municipal Code check cashing chapter.¹⁷ The definition of fringe financial institutions or payday lending businesses would be codified within the Zoning Ordinance’s definition section, Chapter 16.04.

Other cities have defined “fringe financial institutions” to include:¹⁸

- 1) “deferred deposit transaction (payday loan) businesses that make loans upon assignment of wages received,”
- 2) “check cashing businesses that charge a percentage fee for cashing a check or negotiable instrument,”
- 3) and “motor vehicle title lenders who offer a short-term loan secured by the title to a motor vehicle.”

Alternatively, if the City of Menlo Park regulates payday lenders exclusively, it could define “payday loan businesses” as “businesses that make loans upon assignment of wages received,” or, reflecting the language found within state law, as “retail businesses owned or operated by a ‘licensee’ as that term is defined in California Financial Code section 23001(d).”¹⁹

¹⁴ Los Altos, Cal., Ordinance No. 2012-380 (May 8, 2012).

¹⁵ Pacifica, Cal., Ordinance 781-C.S. (Jan. 24, 2011).

¹⁶ Tucson, Ariz., Land Use Code §3.5.4.5.

¹⁷ Menlo Park, Municipal Code Chapter 5.42: Check Cashing Activity.

¹⁸ San Mateo County, Ordinance No. 64621; East Palo Alto, Ordinance No. ##### (Nov. 2011). These definitions are identical to those in the San Mateo County and East Palo Alto ordinances. Tucson also regulates all three entities. Tucson, Land Use Code §3.5.4.5. Santa Clara County and Sacramento regulate check cashing and payday lending businesses. Santa Clara County, Ordinance No. NS-1200.333; Sacramento, Zoning Code §17.16.010. San José regulates only payday lending businesses. San José, Ordinance No. 29089.

¹⁹ The second definition is used in Santa Clara County, Ordinance No. NS-1200.333, which prohibited the establishment of payday lending businesses in any unincorporated part of the county. Sections 23000 – 23106 of the California Financial Code are collectively the California Deferred Deposit Transaction Law, which governs payday lending businesses in California.

Whether Menlo Park decides to restrict only payday lenders or all three types of fringe financial institutions, the City should consider including an exemption for “nonprofit fringe financial institutions,” explicitly exempting any potential non-profit or credit union that makes similar loans.²⁰ If Menlo Park defines payday lenders with reference to California Financial Code section 23001(d), then a non-profit exemption is unnecessary, because the proposed ordinance would prohibit or restrict only lenders operating as “licensees” under the Deferred Deposit Transaction Law.

Implementation of a Prohibition of Payday Lending Businesses

If the Menlo Park City Council wants to enact a prohibition of payday lenders or fringe financial institutions, similar to the ordinance passed by Santa Clara County, it can do so by adding a definition of permitted “financial institutions” to the Zoning Ordinance’s definitions section (Chapter 16.04), and excluding by definition the prohibited fringe financial institutions. This definition of “financial institutions” would include state and federally chartered banks, thrifts, savings associations, industrial loan companies, credit unions, realty agencies, and insurers,²¹ while specifically excluding “fringe financial institutions” as defined above.²²

To make the prohibition of payday lenders or fringe financial institutions effective and to promote cohesiveness and clarity within the Menlo Park Zoning Ordinance, it is recommended that the City Council change all references to “financial services,” “financial establishments,” and related terms within the zoning ordinance to “financial institutions.” This would ensure that fringe financial institutions are properly excluded from every zoning district that permits financial institutions.²³

Potential Challenges to a Prohibition

A prohibitory payday lending ordinance may be subject to legal challenge. A challenger could argue that the law has been preempted by the Deferred Deposit Transactions Law (“DDTL”) and

²⁰ An exemption for a “nonprofit fringe financial service” is part of San Francisco’s regulation of payday lenders. San Francisco, Cal., Planning Code §249.35(d)(1).

²¹ The language here is meant to reflect the different terms used throughout the Menlo Park Zoning Ordinance in describing business that offer financial services.

²² The Santa Clara County ordinance defines “financial institutions” and excludes payday lenders and check cashers, reading in relevant part: “This classification does not include payday lending businesses or check cashing business, and as a result, the establishment, expansion, or relocation of such businesses is prohibited.” Santa Clara County, Ordinance No. NS-1200.333.

²³ Currently, the Menlo Park Zoning Ordinance uses inconsistent language to identify financial institutions as permitted or conditional uses within specific zones. These references can (and should) be made uniform without affecting the substantive meaning of the permitted and conditional uses. The following sections of the Zoning Ordinance should be changed: R-C Mixed Use District § 16.27.020(b)(7); C-1-A Administrative and Professional District § 16.32.020(2); C-1-B Administrative, Professional and Service District § 16.34.020(3); C-2-S Neighborhood Commercial District, Special § 16.37.010(2); C-2 Neighborhood Shopping District § 16.38.010(2); C-2-A Neighborhood Shopping District, Restrictive §§ 16.39.010(2), .015(1); C-2-B Neighborhood Commercial District, Restrictive §§ 16.40.010(2), .015(1); C-3 Central Commercial District § 16.41.020(2); C-4 General Commercial District (Other Than El Camino Real) §16.42.010(2), .015(1); C-4 General Commercial District (Applicable to El Camino Real) §16.43.010(2), .015(3); M-3 Commercial Business Park § 16.46.030(1).

Civil Code section 3482.²⁴ The strength of such a preemption challenge is unclear, especially as the California Supreme Court is presently reviewing a case involving a similar preemption challenge: whether the local prohibition of medical marijuana dispensaries is preempted by the Compassionate Use act and the Medical Marijuana Program Act.²⁵ Federal Constitutional challenges, under either the Takings Clause or the Equal Protection Clause, are unlikely to succeed.²⁶

Implementation of Restrictive Zoning, Operational Requirements and Permit Scheme

If the Menlo Park City Council would prefer to enact a payday lending regulatory scheme based on exclusion from specific zones, operational requirements and permit requirements, changes would need to be made in both the Municipal and Zoning Codes.

Municipal Code

The City Council may want to add a sub-chapter for payday lending to Title 5 of the Municipal Code (“Business Licenses and Regulations”). A governing subsection within this chapter might impose a cap on the number of payday lenders, require permits, establish permit fees and lay out application procedures for covered institutions. If the City wishes to impose operational requirements such as hours of operation, lighting, and good neighbor policies (as have East Palo Alto, and Sacramento), this is the place where such regulations would be codified.

Zoning Ordinance

²⁴ Challengers to a prohibitory ordinance have two different preemption arguments available to them. First, they can argue that the DDTL fully occupies the field of “regulating the conduct” of payday lenders, and that a local prohibitory use ordinance, by completely prohibiting payday lending businesses, in fact “regulates the conduct” of payday lenders, and is thereby preempted by the DDTL. See Big Creek Lumber Co. v. County of Santa Cruz, 136 P.3d 821, 829 (Cal. 2006). Second, they can argue that a prohibitory ordinance contradicts the DDTL, Cal. Fin. Code §§23000-23106, and Civil Code section 3482, which exempts every statutorily authorized use from nuisance abatement. Civ. Code § 3482. The enforcement mechanism of the Menlo Park Zoning Ordinance, like many zoning ordinances throughout the state, declares any prohibited land use to be a public nuisance subject to abatement. § 16.06.020. Therefore, a challenger could argue that the prohibitory zoning ordinance, through its enforcement mechanism, inherently contradicts the combined effect of the DDTL and section 3482. See City of Lake Forest v. Evergreen Holistic Collective, 138 Cal. Rptr. 3d 332, 356-57 (Cal. Ct. App. 2012) review granted 275 P.3d 1266 (Cal. 2012).

²⁵ The California Supreme Court is currently reviewing the decision in City of Riverside v. Inland Empire Patient’s Health and Wellness Center, Inc., 133 Cal. Rptr. 3d 363 (Cal. Ct. App. 2011) review granted 268 P.3d 1065 (Cal. 2012), in which the appeals court held that prohibitory medical marijuana dispensary ordinances were not preempted. The appeal of a contrary appellate court decision, City of Lake Forest v. Evergreen Holistic Collective, 138 Cal. Rptr. 3d 332 (Cal. Ct. App. 2012) review granted 275 P.3d 1266 (Cal. 2012), has been deferred until resolution of Inland Empire.

²⁶ Under the Takings Clause, regulations which operate prospectively and partially, denying the owner the opportunity to exploit an interest in the property without denying all future beneficial uses, are not considered compensable takings. Hansen Brothers Enterprises, Inc. v. Board of Supervisors, 12 Cal. 4th 533, 551 (Cal. 1996). Under the Equal Protection Clause, payday lending is subject only to rational basis review, which requires that a governing authority have “any ‘conceivable basis’” for a classification to be constitutional. Payday Loan Store of Wisconsin, Inc. v. City of Madison, 333 F. Supp. 2d 800, 804 (W.D. Wis. 2004) (citing Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364 (1973)).

Restricting payday lending businesses or fringe financial institutions to specified zones would require several changes to the zoning ordinance. Because the zoning ordinance is exclusive, only specifically enumerated permitted and conditional uses are allowed within any particular district.²⁷ Therefore, if the City Council wishes to amend the Zoning Ordinance, the most efficient way to do so is to define “payday lending businesses” as a unique use and to amend the code specifically in those zones that the City Council wishes to permit the operation of payday lending businesses. Briefly summarized, the following changes should be made to the zoning ordinance to ensure effective regulation:

- 1) Adding a “financial institutions” definition²⁸
- 2) Adding a “fringe financial institutions” or “payday lending business” definition²⁹
- 3) Changing all existing “financial services” and “financial establishments” references to “financial institutions”
- 4) Adding “fringe financial institutions” or “payday lending businesses” as permitted or conditional uses in select districts

Chapter 16.04: Definitions

A restrictive ordinance requires that two distinct and separate definitions be added to the definitions section: (1) a “financial institutions” definition that includes banks, credit unions and all other financial establishments already included throughout the code, and (2) a “fringe financial institutions” or “payday lending businesses” institution that reflects the types of fringe financial institutions that Menlo Park chooses to regulate. The definitions included in a proposed restrictive ordinance must be distinct, to reflect the fact that “financial institutions” and “fringe financial institutions” or “payday lending businesses” are unique uses that will be treated differently throughout the Zoning Ordinance.

Chapters 16.10-16.47: Zoning Districts Generally

Each existing reference to “financial establishments” or “financial services” should be changed to “financial institutions” to reflect the new definition. Additionally, once “payday lending businesses” have been defined in Chapter 16.04, they are necessarily prohibited in any districts in which they are not listed as permitted or conditional uses.

Sections 16.27.020(b) (R-C Mixed Use District); 16.32.020 (C-1-A Administrative and Professional District); 16.34.020 (C-1-B Administrative, Professional and Service District)

Based on our interpretation, these districts appear to be the most restrictive districts which sanction “financial institutions,” allowing them as conditional uses. Once the changes above have been made, payday lending businesses will be prohibited in these districts.

²⁷ Menlo Park, Zoning Ordinance § 16.08.030.

²⁸ This definition should be identical to the “financial institutions” definition suggested above, except without the exclusory language regarding “payday lending businesses.”

²⁹ This definition should reflect the types of fringe financial institutions that the City Council desires to regulate.

Sections 16.37.010 (C-2-S Neighborhood Commercial District, Special); 16.38.010 (C-2 Neighborhood Shopping District); 16.39.010 (C-2-A Neighborhood Shopping District, Restrictive); 16.40.010 (C-2-B Neighborhood Commercial District, Restrictive)

These districts are moderately restrictive and allow financial institutions as permitted uses. If the City Council wants to allow payday lending in these districts, it should add “payday lending businesses” as a permitted use. Alternatively, if the City wants to require payday lenders to obtain a permit prior to operating in these districts, it can add “payday lending businesses” to the enumerated conditional uses for each district.

Sections 16.41.020 (C-3 Central Commercial District); 16.42.010 (C-4 General Commercial District (Other Than El Camino Real)); 16.43.010 (C-4 General Commercial District (Applicable To El Camino Real))

The C-3 and C-4 districts appear to be the most permissive districts which allow “financial institutions.” If Menlo Park pursues a regulatory ordinance, payday lending businesses should be allowed in at least one of these districts, as either a permitted or conditional use.

Section 16.47.030 (M-3 Commercial Business Park)

The M-3 district is a moderately restrictive district that presently allows financial institutions that “provide services to the surrounding business community.” It is recommended that payday lending businesses be prohibited in this district.

Chapter 16.92: Signs – Outdoor Advertising

Menlo Park may also wish to include signage regulations specific to payday lending businesses.³⁰ These can be codified here, with other signage regulations, or under the newly created payday lending subsection within Title 5 of the Municipal Code.

Options for Degrees of Restriction

If Menlo Park does not opt to enact a prohibitory payday lending ordinance, then its restrictive ordinance can incorporate any or all of the options discussed above and summarized in the following list. As more of these options are included in the potential ordinance, payday lending institutions will be increasingly restricted.

- Place a cap on the number of payday lending businesses permitted in the City
- Minimum distance between payday lenders
- Minimum distance between payday lenders and residential zones
- Minimum distance between payday lenders and religious institutions, schools, and liquor stores

³⁰ The San Mateo Ordinance contains the following signage regulation: “Storefronts shall have glass or transparent glazing in the windows and doors. No more than ten (10) percent of any window or door area shall be covered by signs, banners, or opaque coverings of any kind.” San Mateo County, Ordinance No. 64621.

- Create operational requirements that limit hours of operation, lighting, signage and security plans, and good neighbor policies
- Require use permits
- Charge fees for use permits
- Prohibit in R-C, C-1-A, C-1-B and M-3 districts
- Limit to C-2-S, C-2, C-2-A, C-2-B, C-3 and C-4 districts
- Limit to C-3 and C-4 districts only

Please refer to the table on page 3 to see what regulations specific cities and counties have enacted.

We would be happy to discuss our work with you. Please contact us if you have any questions.

The staff who worked on this memorandum are:

Keith Ogden, Esq.
David Frisof, Law Student

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COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: September 11, 2012
Staff Report #: 12-134

Agenda Item #: I-1

INFORMATION ITEM: Overview of the Proposed Public Meeting and Development Agreement Negotiation Process for the Facebook West Campus Project Located at the Intersection of Willow Road and Bayfront Expressway

This is an information item and does not require Council action.

OVERVIEW

Proposal

On June 28, 2012, the City received a preliminary application on behalf of Facebook Incorporated to initiate review of the Facebook West Campus, which is the second phase of the Facebook Campus project. Staff has been working with the applicant since that time to refine the project design and on August 27, 2012, the applicant submitted project plans and associated reports required for project analysis. Select plan sheets from this submittal are included as Attachment A. The project plans reflect the design of architect Frank Gehry, who is the architect of record for the project. His previous work includes many well-known buildings, including the Guggenheim Museum in Spain, the Experience Music Project in Seattle and the Walt Disney Concert Hall in Los Angeles.

The approximately 22-acre West Campus is located at the intersection of Willow Road and Bayfront Expressway. The site is currently addressed 312 and 313 Constitution Drive, with the anticipation that the address will be updated in the near future to better reflect the location of the project site. This second phase of the Project proposes demolition of the existing two buildings and associated site improvements. Subsequently, the applicant seeks to construct an approximately 433,555 square foot building on top of surface parking that would include approximately 1,540 parking spaces. The proposed project is consistent with the M-2 (General Industrial District) zone requirements, except for the height of the structure, which would exceed the 35-foot maximum height limit in the M-2 zone. As such, a rezone to M-2-X (General Industrial, Conditional Development) plus approval of a Conditional Development Permit (CDP) would be required to exceed the height limit. The entitlement process for the West Campus includes the following review and permit approvals:

- **Rezone from M-2 to M-2-X and Conditional Development Permit:** to permit the structure to exceed the 35-foot building height maximum in the M-2 zone;

- **Heritage Tree Removal Permits:** to permit the removal of heritage trees that are located within the development envelope of the proposed project;
- **Below Market Rate Housing Agreement:** per the requirements of the City's Municipal Code, a Below Market Rate (BMR) Housing Agreement is required, which would help increase the affordable housing supply by requiring the applicant to provide monies for the BMR fund;
- **Lot Merger:** to combine the two legal lots that make up the project site;
- **Development Agreement:** which results in the provision of overall benefits to the City and adequate development controls in exchange for vested rights in West Campus Project approvals;
- **Environmental Review:** An Environmental Impact Report (EIR) was prepared and certified by the City Council on May 29, 2012 that analyzed the potential environmental impacts associated with both the East Campus and West Campus components of the project. Given that there have been refinements to the project design since the environmental review was completed, additional environmental review will be conducted to confirm that the proposed project does not result in environmental impacts that were not already identified in the EIR. Staff anticipates that an addendum to the previously certified EIR will be required as part of the project review process; and
- **Adopt a the Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program:** which includes specific findings that the West Campus Project includes substantial benefits that outweigh its significant, and adverse environmental impacts, and establishes responsibility and timing for implementation of all required mitigation measures.

Activities to Date

As indicated previously, the Facebook Campus Project includes two project sites inclusive of the East Campus and West Campus. The Project is being processed in phases, with the East Campus entitlements approved by the City Council in May and June of 2012. The 56.9 acre East Campus is located at 1601 Willow Road and was previously occupied by Oracle (formally Sun Microsystems). The site is currently developed with nine buildings, which contain approximately 1,035,840 square feet. As part of the project approvals in May and June, the City Council took the following actions:

- **Approved an Amended and Restated Conditional Development Permit (CDP):** The Council approved an amended and restated CDP to convert the existing employee cap of 3,600 employees to a vehicular trip cap. The vehicular trip cap specifies a maximum of 2,600 trips during the AM Peak Period from 7:00 a.m. to 9:00 a.m. and the PM Peak Period from 4:00 p.m. to 6:00 p.m. and a maximum of 15,000 daily trips. The trip cap will allow approximately 6,600 employees to occupy the East Campus;
- **Approved Heritage Tree Removal Permits:** to authorize removal of one heritage tree on the East Campus and seven heritage trees on the West Campus

to facilitate construction of improvements to the existing undercrossing of Bayfront Expressway;

- **Approved a Development Agreement:** which results in the provision of overall benefits to the City and adequate development controls in exchange for vested rights in East Campus Project approvals;
- **Certified the Environmental Impact Report:** which analyzes the potential environmental impacts of the proposed Project inclusive of the East Campus and West Campus; and
- **Adopted the Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program:** which includes specific findings that the East Campus Project includes substantial benefits that outweigh its significant, and adverse environmental impacts, and establishes responsibility and timing for implementation of all required mitigation measures.

Council review and action on the East Campus entitlements is complete and subsequent project review will focus on the review and permit approvals required for the West Campus component of the Facebook Campus Project.

Detailed information regarding the Facebook Campus Project, including the EIR, Fiscal Impact Analysis (FIA) and all staff reports is provided on the Facebook Campus Project page, which is available at:

http://www.menlopark.org/projects/comdev_fb.htm

The Facebook Campus Project page will continue to be updated as project review associated with the Facebook West Campus progresses.

Proposed Process

Attachment B is the Facebook West Campus Preliminary Draft Permitting Schedule, which is generally based on the process that was used for the Facebook East Campus project. However, some refinements have been made based upon the fact that the East Campus review process included preparation of both an EIR and FIA, which analyzed the impacts of both phases of the Facebook Campus Project, and also included the appointment of a Council Development Agreement sub-committee.

The schedule is relatively aggressive, targeting completion of land use entitlements for the West Campus by the end of March 2013. This preliminary draft schedule reflects the opportunity to leverage work and public outreach already completed as part of the East Campus project review process, as well as a staff recommendation to utilize the same Council Development Agreement sub-committee members for negotiation of the West Campus Development Agreement to streamline the process. The City's negotiating team would be comprised of the City Manager, City Attorney, Public Works Director, and Development Services Manager. The City Attorney and the City Manager would

consult with the Council Subcommittee, comprised of Mayor Keith and Council Member Cline, at key junctures in the negotiation process.

As reflected in the Facebook West Campus Preliminary Draft Permitting Schedule included as Attachment B, the processing of the West Campus proposal is anticipated to take approximately 30 weeks. This draft schedule includes nine public meetings, inclusive of five City Council meetings. If needed, additional meetings could be added to this framework, but the goal would be that additional meetings would be special meetings of the body and would not extend the overall timeline. It should be noted that all proposed meetings in 2013 are tentative dates, as the Council will not adopt the 2013 meetings calendar until December 2012.

If the City Council believes that the preliminary draft schedule, as proposed, is generally acceptable, then the next step for the Council would be to provide direction on the Development Agreement parameters at its meeting on October 30, 2012. The October 30, 2012 meeting was previously not included on the Council's calendar and would have to be added. Addition of this meeting is critical in order to maintain the schedule as currently proposed. If the Council would like to discuss the draft process in more detail to consider major changes, then the Council could agendaize this topic as a regular business item at its September 18, 2012 meeting.

IMPACT ON CITY RESOURCES

The applicant is required to pay planning permit fees, based on the City's Master Fee Schedule, to fully cover the cost of staff time spent on the review of the project. The applicant is also required to bear the cost of the associated environmental review. For the environmental review, the applicant deposits money with the City and the City pays the consultants. In addition, public benefits negotiated as part of the Development Agreement would serve to help offset any potential impacts of the Project.

POLICY ISSUES

The proposed project will ultimately require the Council to consider certain land use entitlements. Staff will be identifying policy issues during the Council's review of the project such as public benefit related to the Development Agreement. The negotiation of the Development Agreement is projected to commence after the Council discusses Development Agreement parameters, which is anticipated to occur at its meeting on October 30, 2012.

ENVIRONMENTAL REVIEW

An Environmental Impact Report (EIR) was prepared and certified by the City Council on May 29, 2012 that analyzed the potential environmental impacts associated with both the East Campus and West Campus components of the project. Given that there have been refinements to the project design since the environmental review was completed, additional environmental review will be conducted to confirm that the

proposed project does not result in environmental impacts that were not already identified in the EIR. Staff anticipates that an addendum to the previously certified EIR will be required as part of the project review process.

Signature on file

Rachel Grossman
Associate Planner
Report Author

Signature on file

Justin Murphy
Development Services Manager

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting. In addition, the City has prepared a project page for the proposal, which is available at the following address:

http://www.menlopark.org/projects/comdev_fb.htm. This page provides up-to-date information about the project, allowing interested parties to stay informed of its progress. The page allows users to sign up for automatic email bulletins, notifying them when content is updated.

ATTACHMENTS

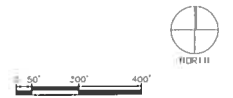
- A. Facebook West Campus Plan Submission , Select Plan Sheets, August 27, 2012
- B. Facebook West Campus, Preliminary Draft Permitting Schedule

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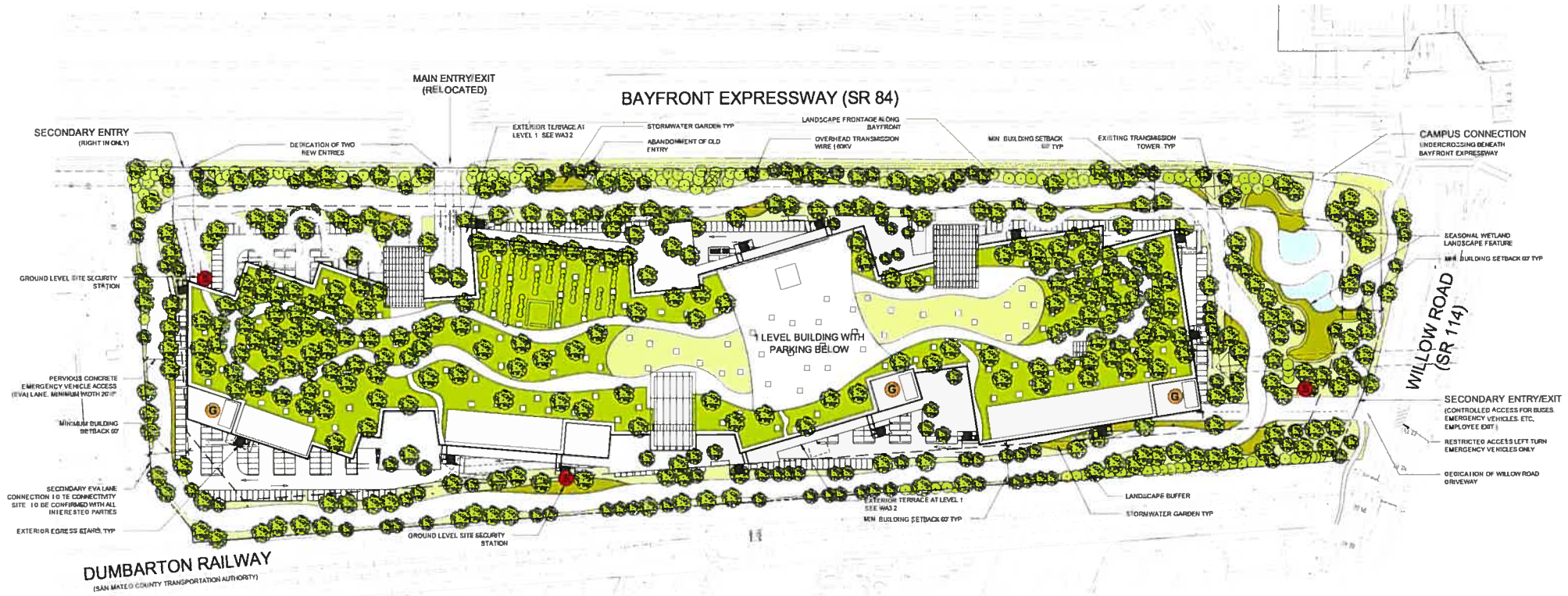


facebook west campus plan
submission
august 27, 2012

RECEIVED
AUG 27 2012
BY PLANNING



NOTE: THE EXISTING LOT LINE WILL BE ELIMINATED THROUGH A LOT MERGER OR OTHER INSTRUMENT.



MINIMUM LIGHTING STANDARD

The lighting standards for the West Campus shall comply with LEED & CALGreen performance standards designed to minimize light trespass from the buildings and site. The standard set by LEED, below, reflects the intent of the minimum lighting standard for the West campus site lighting.

*Light areas only as required for safety and comfort. Lighting power densities must not exceed ANSI/ASHRAE/IESNA Standard 90.1-2010 (with or without addenda) for classified zone

Design exterior lighting so that all site and building-mounted luminaires produce a maximum initial luminaire value no greater than 0.20 horizontal and vertical footcandles at the site boundary and no greater than 0.01 horizontal footcandles 15 feet beyond the site.

Document that no more than 5% of the total installed luminaire lumens (sum total of all fixtures on site) are emitted at an angle of 90 degrees or higher from nadir (straight down).*

The design will also comply with CalGreen Light Pollution Reduction Standards noted below.

Outdoor lighting systems shall be designed and installed to comply with the following:

1. The minimum requirements in the California Energy Code for Lighting Zones 1-4 as defined in Chapter 10 of the California Administrative Code, and
2. Backlight, Uplight and Glare (BUG) ratings as defined in IESNA TM-15-11, and
3. Allowable BUG ratings not exceeding those shown in Table A5.109.8, or
4. Comply with a local ordinance (lawfully enacted pursuant to Section 101.7, whichever is more stringent).





Exceptions:

1. Luminaires that qualify as exceptions in Section 141 of the California Energy Code
2. Emergency lighting

The design will also comply with the San Francisco Planning Department Standards for Bird-Safe Buildings

1. Interior lighting will be on motion sensors as much as possible
2. Perimeter interior lighting to be minimized
3. Rooms used regularly at night to have window coverings
4. Exterior light fixtures to be designed to minimize light escaping upwards.

LEGEND

-  EMERGENCY GENERATOR
-  SITE SECURITY CONTROL STATION (ALSO SEE WA.3.1)
-  TRASH ENCLOSURE (SEE WA.3.1)
-  EXISTING TRANSMISSION TOWER



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WA.2.0: PROPOSED SITE PLAN
 SCALE: 1"=75'
 11X17 SCALE IS 1"=150'
 AUGUST 27 2012



	WEST LOT	EAST LOT	TOTAL
REGULAR STALLS 8'-6" x 18'-0"	357	1,032	1389
ENERGY EFFICIENT VEHICLE STALLS (EEV) 8'-6" x 16'-0"	34	91	125*
ADA COMPLIANT VEHICLE STALLS 8'-0" x 18'-0" (W/ 5'-0" ACCESS AISLE)	10	10	20
ADA COMPLIANT VAN STALLS 8'-0" x 18'-0" (W/ 8'-0" ACCESS AISLE)	2	4	6
TOTAL VEHICLE PARKING			1540
BICYCLE PARKING	40	48	88

* 8% OF TOTAL PARKING (APPROX 123 SPACES) SHALL BE DESIGNATED PARKING FOR LOW-EMISSION, FUEL EFFICIENT AND CARPOOL/VAN POOL VEHICLES. OF THIS TOTAL, UP TO 4 SPACES ARE ELECTRIC VEHICLE SPACES WITH CHARGING STATIONS, CONSISTENT WITH CALGREEN REQUIREMENTS.
WEST CAMPUS TO PROVIDE BICYCLE PARKING FOR A MINIMUM OF 5% OF TOTAL MOTORIZED VEHICLE PARKING CAPACITY (7). SHORT TERM BIKE RACKS SHALL BE PROVIDED WITHIN 200' OF MAIN ENTRANCES (CONSISTENT WITH CAL-GREEN 391) TO FACILITATE ON-CAMPUS BIKE SHARE.

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WA.3.1: PARKING PLAN
SCALE: 1"=60'
11X17 SCALE IS 1"=120'
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BAYFRONT EXPRESSWAY



DRAWING LEGEND:

1 SMALL CONF RM	5 STORAGE ROOM	SHIPPING / RECEIVING	17 RESTROOM
2 MEDIUM CONF RM	6 PURPLE TIE LAUNDRY	IDF / MDF ROOM / VOIP	18 JANITOR'S CLOSETS
3 LARGE CONF RM	7 IT SUPPLY DEPOT / KIOSK	UPS	
4 SHARED PRIVATE OFFICE	8 POP-UPS	LIBRARY	
	9 MOTHER'S ROOM		
	10 MAIL / COPY / PRINT CENTER		
	11 MICRO KITCHEN	IT HELP DESK / IT STORAGE	CAFETERIA / CAFE
	12 GAME ROOM		

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WA.3.2: FIRST FLOOR PLAN

SCALE: 1"=60'
 11X17 SCALE IS 1"=120'
 AUGUST 27 2012

DEVELOPMENT STANDARDS	PROPOSED PROJECT	M-2 ZONING ORDINANCE
LOT AREA	963,684 SF	25,000 SF MIN.
AVERAGE LOT WIDTH	500.75 FT	100 FT MIN.
AVERAGE LOT DEPTH	1846.4 FT	100 FT MIN.
SETBACKS		
FRONT	219 FT	20 FT
REAR	60 FT	0 FT
SIDE (LEFT)	60 FT	10 FT
SIDE (RIGHT)	60 FT	10 FT
BUILDING COVERAGE		
COVERAGE; (INCLUDES BUILDING ENCLOSURE, EXTERIOR TERRACES, SECURITY STATIONS)	480,904 SF	481842 SF
	49.90 %	50 %
FAR (FLOOR AREA RATIO)	433,555 SF / 963,684 SF	433,657 SF / 963,684 SF
	44.99 %	45 %
SQUARE FOOTAGE BY FLOOR		
GROUND FLOOR	14,218 SF	
FIRST FLOOR	413,690 SF	
ROOF LEVEL	5,197 SF	
ACCESSORY BUILDING (SECURITY STATIONS)	450 SF	
TOTAL SQUARE FOOTAGE	433,555 SF	433,657 SF
BUILDING HEIGHT ABOVE AVG. NATURAL GRADE		
	73 FT	35 FT
PARKING		
PARKING PROVIDED ONSITE	1,540 SPACES	
CALCULATED BASIS: 1 SPACE / 300 SF		1,446 SPACES

PERVIOUS / IMPERVIOUS SURFACES	
GROUND FLOOR	
PERVIOUS LANDSCAPE (OUTSIDE BUILDING FOOTPRINT)	245,125 SF
PERVIOUS EMERGENCY VEHICLE ACCESS LANE	125,048 SF
IMPERVIOUS PAVING (OUTSIDE BUILDING FOOTPRINT)	113,800 SF
ACCESSORY BUILDING ROOFS (IMPERVIOUS AREA)	461 SF
FIRST FLOOR	
IMPERVIOUS TERRACE	63,573 SF
ROOF LEVEL*	
PERVIOUS GREEN ROOF LANDSCAPE	236,531 SF
PERVIOUS GREEN ROOF PATH	52,934 SF
IMPERVIOUS ROOF	126,212 SF
TOTAL PERVIOUS SURFACE WITH GREEN ROOF	659,638 SF
	68 %
TOTAL IMPERVIOUS SURFACE WITH GREEN ROOF	304,046 SF
	32 %
TOTAL PERVIOUS SURFACE EXCLUDING GREEN ROOF	370,173 SF
	38 %
TOTAL IMPERVIOUS SURFACE EXCLUDING GREEN ROOF	593,511 SF
	62 %

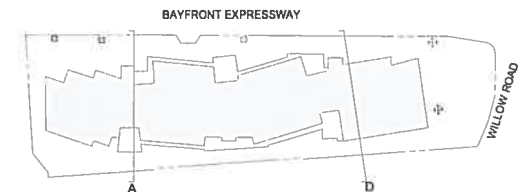
*POTENTIAL GREEN ROOF AREA REPORTED IS SUBJECT TO REFINEMENT

TREES*	
NUMBER OF EXISTING HERITAGE TREES	73
NUMBER OF EXISTING HERITAGE TREES TO REMAIN	39
NUMBER OF EXISTING HERITAGE TREES REMOVED	34
NUMBER OF EXISTING HERITAGE TREES IN POOR HEALTH	160
NUMBER OF EXISTING HERITAGE TREES IN POOR HEALTH TO REMAIN	53
NUMBER OF EXISTING HERITAGE TREES IN POOR HEALTH REMOVED	107
NUMBER OF EXISTING NON-HERITAGE TREES	392
NUMBER OF EXISTING NON-HERITAGE TREES TO REMAIN	25
NUMBER OF EXISTING NON-HERITAGE TREES REMOVED	367
NUMBER OF NEW TREES	
GROUND LEVEL SITE TREES	254
TERRACE TREES (POTENTIAL)	24
ROOF GARDEN LEVEL TREES (POTENTIAL)	148
TOTAL NUMBER OF SITE TREES (NEW SITE TREES PLUS EXISTING TREES TO REMAIN)	371

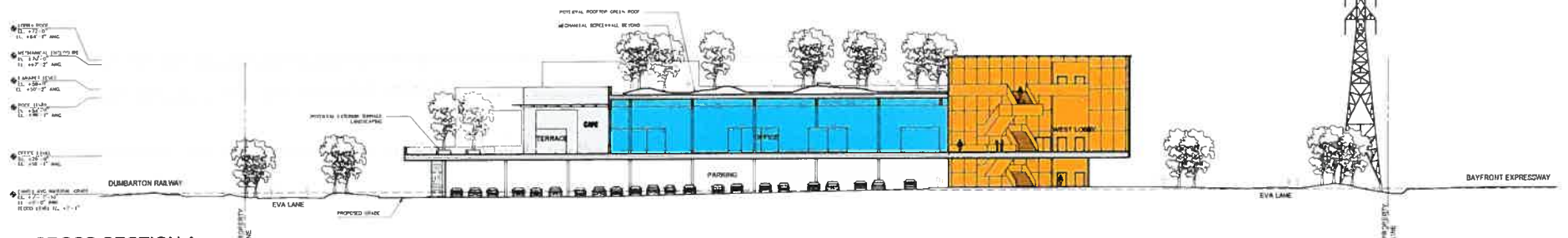
*TREE DISPOSITION REPORTED ABOVE IS BASED ON AVAILABLE LOCATION DATA AND IS SUBJECT TO REVISION BASED ON ACTUAL TREE SITE LOCATION RELATIVE TO PROPOSED PROJECT DEVELOPMENT.

LEGEND

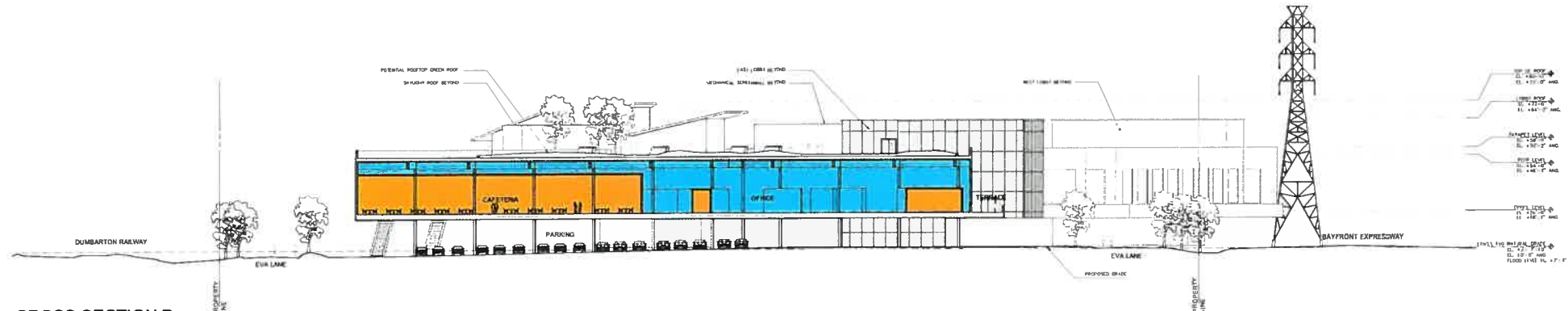
- OFFICE
- NON OFFICE - AMENITIES/MEETING ROOMS
- EXTERIOR TERRACE
- EXTERIOR STAIRS
- INTERIOR CORE/STAIR



KEY PLAN
SCALE 1/8" = 1'-0"



CROSS SECTION A
SCALE: 1" = 25'-0"



CROSS SECTION D
SCALE: 1" = 25'-0"

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WA.5.5: SITE SECTION
SCALE: 1" = 25'-0"
AUGUST 27 2012

Facebook West Campus
Preliminary DRAFT Permitting Schedule*

Number	Task	Time Required	Target Completion Date
1	<i>Submittal</i>		<i>August 27, 2012</i>
2	Council Meeting - Info item on proposed process		September 11, 2012
4	Planning Commission - Study Session		September 24, 2012
5	Public Outreach Meeting in Belle Haven		October 18, 2012
6	City Council Meeting - Regular Business Item DA Parameters		October 30, 2012
7	<i>Prepare and complete Addendum - will be released as part of February PC hearing</i>	<i>90 days**</i>	<i>December 25, 2012</i>
8	<i>Negotiations</i>	<i>75 days***</i>	<i>January 14, 2013</i>
9	City Council Meeting - Regular Business Item for Term Sheet Review		February 5, 2013
10	Housing Commission - BMR Agreement		February 13, 2013
11	Planning Commission - Public Hearing on Project Proposal, including review of addendum, rezoning, CDP, lot merger, heritage tree removal permits, BMR Agreement, Development Agreement, SOC, and MMRP		February 25, 2013
12	City Council - Public Hearing on Project Proposal, including review of addendum, rezoning, CDP, lot merger, heritage tree removal permits, BMR Agreement, Development Agreement, SOC, and MMRP		March 19, 2013
13	City Council - second reading of rezoning and DA ordinances		March 26, 2013
Total Weeks		31	
<p>* To maintain these timelines, the applicant shall provide project resubmittals, inclusive of required plan sets and reports in a timely fashion. All 2013 dates are estimates, as the Council and Planning Commission schedules have not been adopted. Demolition of the remaining two buildings and grading for new construction is part of this submittal, therefore, these actions cannot occur until after completion of the environmental review process. The West Campus Remediation Project, under the purview of the Department of Toxic Substance Control (DTSC), is a distinct project.</p>			
<p>** Preparation period begins on anticipated approval date for scope amendment which is expected on September 26, 2012</p>			
<p>***Negotiations period begins on anticipated Council meeting date to discuss the DA Parameters and Process, which is anticipated on October 30</p>			