

TOWN OF PORTOLA VALLEY
Regular Meeting of the Town Council
Wednesday, December 14, 2022
7:00 P.M.

Craig Hughes, Mayor
Sarah Wernikoff, Vice Mayor
Jeff Aalfs, Councilmember
Maryann Derwin, Councilmember
John Richards, Councilmember

HYBRID MEETING

HISTORIC SCHOOLHOUSE - 765 Portola Road, Portola Valley, CA 94028

Remote Public Comments: Meeting participants are encouraged to submit public comments in writing in advance of the meeting. Please submit your comments using this [online form](#) by 1:00 PM on the day of the meeting. Time permitting, your correspondence will be uploaded to the website. All received questions will be forwarded to Council, Commission, or Committee members for consideration during the meeting and included in the public record. Additionally, the public body will take questions using the Raise Hand button for those who attend the meeting online or by phone. Phone callers may provide comments by pressing *9 on your phone to "raise your hand" and *6 to mute/unmute yourself. The meeting Chair will call on people to speak by the phone number calling in.

Assistance for People with Disabilities: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Town Clerk at (650) 851-1700 or by email at mthurman@portolavalley.net. Notification 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting.

Public Hearings: Public Hearings provide the general public and interested parties an opportunity to provide testimony on these items. If you challenge any proposed action(s) in court, you may be limited to raising only issues you or someone else raised at the Public Hearing(s) described in this agenda, or in written correspondence delivered to the Town Council at, or prior to, the Public Hearing(s).

VIRTUAL PARTICIPATION VIA ZOOM

To access the meeting by computer:

<https://us06web.zoom.us/j/8863671199?pwd=ejFRZGJyNHF1Q3BLNXMvbEoveWZnUT09>

Webinar ID: 886 3671 1199

Passcode: 539774

To access the meeting by phone:

1-669-900-6833 or

1-888-788-0099 (toll-free)

Mute/Unmute – Press *6 / Raise Hand – Press *9

Residents have asked if they are able to see a list of participants in Zoom webinar-meetings. Craig Hughes has put together a simple website integrated with Zoom data to provide this for Town webinars. You can visit the site at <https://pv-zooms.rungie.com/> which will show a list of meetings. Clicking on a meeting will then display all participants in the meeting, as well as those who had been in the meeting but have left. The site will only show meetings once they have started and the first participant has joined.

1. CALL TO ORDER

2. REPORT OUT OF CLOSED SESSION

3. ORAL COMMUNICATIONS

Persons wishing to address the Town Council on any subject may do so now. Please note, however, that the Council is not able to undertake extended discussion or action tonight on items, not on the agenda. Speakers' time is limited to three minutes.

4. CONSENT AGENDA

The following items are voted on at once by the body, unless a member of the body requests an item be considered separately. Members of the public are permitted to comment on any item on the consent calendar before the body votes on the consent agenda.

- a. **Approval** of Action Minutes for the Special and Regular Meetings of October 26, November 9 and November 30, 2022

- b. **Approval** of Warrant List
- c. **Adoption** of a Resolution Confirming the State of Emergency and Need to Continue Conducting Town Public Meetings Remotely (a) A Resolution of the Town Council of the Town of Portola Valley Confirming Existing State of Emergency and Authorizing Continued Remote Public Meetings Under AB 361
- d. **Approve** the Re-Appointment of Raymond Williams to Serve a Four-Year Term as the Portola Valley Representative to the San Mateo County Mosquito and Vector Control District
- e. **Approve** the Willow Commons Apartments' Request for Waiver of Town Fees for Affordable Supportive Housing Project
- f. **Approve** the Portola Valley ADU/JADU Survey
- g. **Adopt** a Resolution Declaring the Results of the General Municipal Election for the Town of Portola Valley held on November 8, 2022 as Provided by Law

5. TOWN COUNCIL REORGANIZATION

- a. **Swearing-In** of Newly Elected Town Councilmembers Judith A. Hasko, Craig S. Taylor and Mary Hufty
- b. **Town Council** Selection of Mayor and Vice Mayor

6. REGULAR AGENDA

- a. **Housing Element** Update and Discussion

7. COUNCIL LIAISON COMMITTEE AND REGIONAL AGENCIES REPORTS

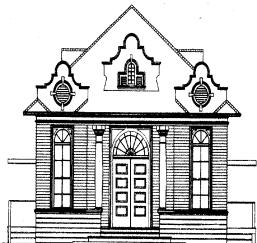
Oral reports arising out of liaison appointments to both in-town and regional committees and initiatives.
There are no written materials and the Town Council does not take action under this agenda item.

8. TOWN MANAGER REPORT

There are no written materials and the Town Council does not take action under this agenda item.

9. ADJOURNMENT

The next Regular Town Council meeting will be held on January 11, 2023 at 7:00 p.m.



TOWN OF PORTOLA VALLEY

Regular Meeting of the Town Council

Wednesday, October 26, 2022

7:00 P.M.

Craig Hughes, Mayor
Sarah Wernikoff, Vice Mayor
Jeff Aalfs, Councilmember
Maryann Derwin, Councilmember
John Richards, Councilmember

MINUTES

1. **CALL TO ORDER** – All Councilmembers were present.
2. **REPORT OUT OF CLOSED SESSION**
3. **ORAL COMMUNICATIONS**

The following members of the public spoke during Oral Communications:

- Caroline Vertongen
- Cindy
- Rita Comes
- Michael Schrader
- Kristi Corley
- Mary Hufty
- Wilson Farrar

4. CONSENT AGENDA

The Council agreed to pull items 5.c., 5.d. and 5.e. for further discussion and clarification.

M/S Derwin/Roberts to approve Items 5.a., 5.b. and 5.f. **Motion carried unanimously by roll call vote.**

The following members of the public spoke regarding all Consent Calendar items:

- | | |
|----------------------|-----------------|
| • Caroline Vertongen | • Dale Kane |
| • Rita Comes | • Nan Shostak |
| • Ellen Vernazza | • Leslie Kriese |
| • Bruce Naegel | • John |
| • John McKenna | • Kristi Corley |
| • Robert Whitehair | • Ellie Mertz |

Brandi de Garmeaux, Assistant to the Town Manager, presented a brief presentation on Item 5.c. and 5.d.

M/S Roberts/Aalfs to approve Item 5.c. **Motion carried 4-1 by roll call vote with Vice Mayor Wernikoff opposed.**

M/S Derwin/Aalfs to approve Item 5.d. **Motion carried unanimously by roll call vote.**

M/S Derwin/Wernikoff to approve Item 5.e., with the amendment to remove the requirement having all Committees read the prepared statement aloud at each meeting and instead place the statement on all town agendas. **Motion carried unanimously by roll call vote.**

- a. **Approval** of Warrant List
- b. **Adoption** of a Resolution Confirming the State of Emergency and Need to Continue Conducting Town Public Meetings Remotely (a) A Resolution of the Town Council of the Town of Portola Valley Confirming Existing State of Emergency and Authorizing Continued Remote Public Meetings Under AB 361
- c. **Waive** the Second Reading and Adopt an Ordinance Adopting the 2022 California Building Standards Code with Local Amendments to Those Codes and Direct the Sustainability Committee to Review, Analyze and Provide Recommendations on Updates to the Graywater “Ready” Infrastructure and Reduction of Potable Water Use on Turf Requirements with Their Review of MWELO and Other Water Conservation Measures

- d. **Waive** the Second Reading and Adopt an Ordinance Amending Chapter 18.04 [Definitions] and Sections 18.12.020 [R-E District – Principal Uses Permitted], 18.14.020 [R-1 DISTRICT – Principal Uses Permitted], AND 18.16.020 [M-R DISTRICT – Principal Uses Permitted] of Title 18 [Zoning] of the Portola Valley Municipal Code to Comply with State Law Regarding Supportive and Transitional Housing
- e. **Approve** the Land Acknowledgment Memo and Guidelines from the Race & Equity Committee
- f. **Approve** ADU Ambassador Program Changes Colleagues' memo from Vice Mayor Wernikoff.

5. REGULAR AGENDA

- a. **Receive** Evacuation Recommendations from the Emergency Preparedness Committee

Vic Schacter, Emergency Preparedness Committee Member, presented the recommendations.

The following members of the public spoke regarding the item:

- Rita Comes
- Nan Shostak

Discussion item only. No motion taken.

- b. **Discuss** the San Mateo County Sheriff's Contract

Jeremy Dennis, Town Manager, presented the report.

The following members of the public spoke regarding the item:

- Caroline Vertongen
- Ed Holland

Discussion item only. No motion taken.

- c. **Receive** Recommendation for a Sheriff Citizen Oversight Group for the Sheriff of San Mateo County from the Race & Equity Committee

Judith Murphy, Race & Equity Committee Member, presented the recommendation.

Christina Corpus, San Mateo County Sheriff Elect, spoke regarding the item.

The following members of the public spoke regarding the item:

- Jim Morris
- Mary Hufty

M/S Wernikoff/Richards to approve a letter from the Race & Equity Committee regarding an Sheriff Citizen Oversight Group for the Sheriff of San Mateo County, with amendments to the letter before being published. **Motion carried unanimously by roll call vote.**

- d. **Receive** Recommendation for Housing Inclusionary Fund Recommended Guidelines from the Race & Equity

Judith Murphy, Race & Equity Committee Member, presented the recommendation.

The following members of the public spoke regarding the item:

- Mary Hufty
- Kristi Corley

Discussion item only. No motion taken.

- e. **Receive** and Discuss the Quarterly Council Priorities Report

This item was continued to the meeting of November 9, 2022.

6. COUNCIL LIAISON COMMITTEE AND REGIONAL AGENCIES REPORTS

The Town Council reported out on attending the following committee and regional meetings:

- **Maryann Derwin:** Express Lanes; Resource Management Climate Protection; C/CAG
- **John Richards:** Conservation Committee
- **Jeff Aalfs:** ADU Ambassador; Planning Commission
- **Sarah Wernikoff:** Cultural Arts Committee; ADU Ambassador
- **Craig Hughes:** Parks & Recreation Committee

7. TOWN MANAGER REPORT

The Town Council does not take action under this agenda item.

- a. Town Attorney Summary of Builder's Remedy Under the Housing Accountability Act

Jeremy Dennis, Town Manager and Cara Silver, Town Attorney, presented the report verbally.

8. ADJOURNMENT – The meeting adjourned at 11:30 p.m.

The next Regular Town Council meeting will be held on November 9, 2022 at 7:00 p.m.

The meeting minutes were prepared by Melissa Thurman, Town Clerk, for approval at the regular meeting of November 9, 2022.



TOWN OF PORTOLA VALLEY

Regular Meeting of the Town Council

Wednesday, November 9, 2022

7:00 P.M.

Craig Hughes, Mayor
Sarah Wernikoff, Vice Mayor
Jeff Aalfs, Councilmember
Maryann Derwin, Councilmember
John Richards, Councilmember

MINUTES

1. **CALL TO ORDER** – All Councilmembers were present.
2. **REPORT OUT OF CLOSED SESSION** - None
3. **ORAL COMMUNICATIONS**

The following members of the public spoke during Oral Communications:

- Lindsay Raike
- Caroline Vertongen
- Rita Comes
- Jim Beam

4. **ANNOUNCEMENTS/PRESENTATIONS**

- a. Receive Annual Presentation from San Mateo County Libraries

Garrett Kuramoto, San Mateo County Library Manager, presented the update.

The following members of the public spoke regarding the update:

- Danna Breen

5. **CONSENT AGENDA**

The following members of the public spoke regarding the Consent Calendar:

- Rita Comes
- Caroline Vertongen

M/S Richards/Derwin to approve the Consent Agenda. **Motion carried unanimously by roll call vote.**

- a. **Approval** of Action Minutes for the Regular Meeting of October 12, 2022
- b. **Approval** of Warrant List
- c. **Adoption** of a Resolution Confirming the State of Emergency and Need to Continue Conducting Town Public Meetings Remotely (a) A Resolution of the Town Council of the Town of Portola Valley Confirming Existing State of Emergency and Authorizing Continued Remote Public Meetings Under AB 361

6. **STUDY SESSION**

- a. **Receive** Update from Town Lobbyist – Year Review and 2023 Discussion

Audrey Ratajczak, Town Lobbyist, presented the update.

The following members of the public spoke regarding the item:

- Caroline Vertongen
- David Cardinal

Discussion item only. No motion taken.

7. **REGULAR AGENDA**

- a. **Receive** and Discuss the Quarterly Council Priorities Report

Melvin Gaines, Assistant Town Manager, presented the item.

The following members of the public spoke regarding the item:

- David Cardinal
- Caroline Vertongen
- Betsy Morgenthaler

Discussion item only. No motion taken.

- b. **Receive** Presentation on Administration Department Overview

Jeremy Dennis, Town Manager, presented the overview.

The following members of the public spoke regarding the item:

- Caroline Vertongen
- Rita Comes

8. COUNCIL LIAISON COMMITTEE AND REGIONAL AGENCIES REPORTS

The Councilmembers below recently attended the following meetings:

Jeff Aalfs – Peninsula Clean Energy Board Meeting; Planning Commission Meeting

John Richards - Emergency Preparedness Committee Meeting

Maryann Derwin – Council of Cities in Burlingame; Resource Management Climate Protection Subcommittee; Stanford Global Energy Forum; Race & Equity Committee; San Mateo County Poet Laureate Project

Sarah Wernikoff – ADU Ambassador Subcommittee Meeting

Craig Hughes – Bicycle, Pedestrian & Traffic Safety Meeting; Wildfire Preparedness Committee Meeting

The following member of the public spoke regarding the item:

- Betsy Morgenthaler

9. TOWN MANAGER REPORT

Jeremy Dennis, Town Manager, presented the report verbally.

10. ADJOURNMENT – The meeting adjourned at 9:45 p.m.

The next Regular Town Council meeting will be held on December 14, 2022 at 7:00 p.m.

The meeting minutes were prepared by Melissa Thurman, Town Clerk for approval at the regular meeting of December 14, 2022.



TOWN OF PORTOLA VALLEY
Special Meeting of the Town Council
Wednesday November 30, 2022
2:00 P.M.

Craig Hughes, Mayor
Sarah Wernikoff, Vice Mayor
Jeff Aalfs, Councilmember
Maryann Derwin, Councilmember
John Richards, Councilmember

MINUTES

- 1. CALL TO ORDER** – Councilmembers Derwin, Richards, Wernikoff and Mayor Hughes were present. Councilmember Aalfs was absent.
- 2. SPECIAL MEETING**
 - a. Approve Parks & Recreation Committee Charter Amendment

M/S Derwin/Richards to approve the Parks & Recreation Committee Charter Amendment. **Motion carried 4-0 by roll call vote with Councilmember Aalfs absent.**

- 3. CLOSED SESSION**
 - a. Public Employee Performance Evaluation Pursuant to Government Code Section §54957(b)(1)
Title – Town Manager

Closed Session item. No public discussion taken.

- 4. ADJOURNMENT** – The meeting adjourned at 4:15 p.m.

The next regularly scheduled meeting is December 14, 2022 at 7:00 p.m.

Check Register

Check Number	Vendor Number	Vendor Name	Check Amount	Check Date	BW	Check Type
Checks for Cash Account: 910-11011-000						
2683	34	ARC DOCUMENT SOLUTIONS LLC	91.41	11/23/22		
2684	41	AT&T	324.33	11/23/22		
2685	55	BILL HAMILTON ROOFING	1,000.00	11/23/22		
2686	60	BONNIE CRATER	590.80	11/23/22		
2687	78	CALIFORNIA WATER SERVICE CO	5,091.06	11/23/22		
2688	80	CALPERS	34,330.72	11/23/22		
2689	107	CITY OF BELMONT	60.00	11/23/22		
2690	108	CITY OF BRISBANE	465.00	11/23/22		
2691	109	CITY OF BURLINGAME	60.00	11/23/22		
2692	121	SCA OF CA, LLC	1,782.06	11/23/22		
2693	124	COMCAST	276.29	11/23/22		
2694	125	CONNIE STACK	1,022.40	11/23/22		
2695	129	COTTON SHIRES & ASSOC. INC.	4,947.75	11/23/22		
2696	195	GOOD CITY COMPANY	38,692.50	11/23/22		
2697	213	HILLYARD INC	250.66	11/23/22		
2698	218	MISSIONSQUARE RETIREMENT	501.71	11/23/22		
2699	262	JORGENSEN SIEGEL MCCLURE & FLE	55,151.25	11/23/22		
2700	265	JUSTIN BIXBY	229.69	11/23/22		
2701	274	KPMG LLP	10,527.00	11/23/22		
2702	290	LOS GATOS ROOFING	1,000.00	11/23/22		
2703	364	PERS HEALTH	14,319.09	11/23/22		
2704	367	PG&E	1,440.39	11/23/22		
2705	368	PG&E	358.00	11/23/22		
2706	373	PITNEY BOWES INC.	483.35	11/23/22		
2707	413	SANGINI MAJMUDAR BEDNER	3,728.00	11/23/22		
2708	429	SHELLY SWEENEY	1,412.00	11/23/22		
2709	431	SIERRA PACIFIC TURF SUPPLY INC	7,498.63	11/23/22		
2710	437	SMALL BUSINESS BENEFIT PLAN TR	2,575.30	11/23/22		
2711	447	STAPLES CREDIT PLAN	290.57	11/23/22		
2712	457	SUSTAINABLE SM COUNTY	2,500.00	11/23/22		
2713	476	TOTLCOM INC.	862.00	11/23/22		
2714	482	TURF & INDUSTRIAL EQUIPMENT CO	7,428.34	11/23/22		
2715	484	TYLER TECHNOLOGIES INC	400.00	11/23/22		
2716	489	VERIZON WIRELESS	441.92	11/23/22		
2717	511	COUNTY OF SAN MATEO - HR DEPT	210.00	11/23/22		
2718	557	JSD CONSTRUCTION	2,700.00	11/23/22		
2719	571	SAVIANO COMPANY INC.	3,100.00	11/23/22		
2720	697	CYNTHIA ROWE	720.00	11/23/22		
2721	698	MIA DIGIOVANNI	720.00	11/23/22		
2722	713	COSMOS ROOFING	1,000.00	11/23/22		
2723	716	JAMES ASHFORD	1,170.00	11/23/22		
2724	740	ALESSANDRO MORUZZI	320.00	11/23/22		
2725	745	HEIDI KENDALL	465.00	11/23/22		
2726	846	CITIZEN COMMUNICATIONS LLC	300.00	11/23/22		
2727	860	STEPFORD	3,920.00	11/23/22		

Check Register

Check Number	Vendor Number	Vendor Name	Check Amount	Check Date	BW	Check Type
2728	865	MID PENINSULA ROOFING	1,000.00	11/23/22		
2729	879	ELIZABETH HOLMES	627.50	11/23/22		
2730	904	THE BACKFLOW GUY INC	2,764.00	11/23/22		
2731	912	ELIZABETH BABB	440.00	11/23/22		
2732	917	PULIDO CONCRETE	1,216.00	11/23/22		
2733	918	ERAN SHTIEGMAN	1,391.11	11/23/22		
2734	919	PHIL BARTH	1,764.73	11/23/22		
2735	920	WILLIAM CLOPTON III	1,000.00	11/23/22		
2736	921	DONALD TURNQUIST	1,790.00	11/23/22		
2737	922	HANIWAY INC	1,000.00	11/23/22		
2738	923	MELVIN GAINES	879.47	11/23/22		
2739	924	JIM LIPMAN	29.95	11/23/22		
2740	925	SUPERB BUILDERS INC	1,000.00	11/23/22		
2741	926	SCOTT SWEET	361.00	11/23/22		
Check totals:						230,020.98
ACH totals:						
EFTPS totals:						
Wire transfer totals:						
Payment Manager totals:						
GRAND TOTALS						230,020.98
Check totals:						230,020.98
ACH totals:						
EFTPS totals:						
Wire transfer totals:						
Payment Manager totals:						
GRAND TOTALS						230,020.98

Check Date	Check Number	Specified Information	Net check Amount	Total Invoices Paid	Invoice Number
11/23/22	2683	Vendor: 34 ARC DOCUMENT SOLUTIONS LLC Document Scanning	91.41	91.41	2629168
	2684	Vendor: 41 AT&T October Statement	324.33	51.39	000019023722
		October Statement		51.39	000019023720
		October Statement		221.55	000019023721
	2685	Vendor: 55 BILL HAMILTON ROOFING Deposit Refund, 190 Golden Oak	1,000.00	1,000.00	BLDR0116-2022
	2686	Vendor: 60 BONNIE CRATER Reimbursement, Star Party '22 Banner	590.80	590.80	FRRC-22-8
	2687	Vendor: 78 CALIFORNIA WATER SERVICE CO Water Service 10/12/22 - 11/8/22	5,091.06	5,091.06	OCT-2022
	2688	Vendor: 80 CALPERS November Unfunded Liability	34,330.72	8,931.67	100000016982005
		September Retirement- CLASSIC		18,352.65	100000016902581
		September Retirement- PEPPRA		7,046.40	100000016902607
	2689	Vendor: 107 CITY OF BELMONT November '22 Council of Cities Meeting, Maryann	60.00	60.00	11182022
	2690	Vendor: 108 CITY OF BRISBANE FY22 -23 SMC Training Consortium Membership Dues	465.00	465.00	INV00416
	2691	Vendor: 109 CITY OF BURLINGAME Council of Cities Dinner/Meeting, M. Derwin	60.00	60.00	10282022
	2692	Vendor: 121 SCA OF CA, LLC October Litter/Street Clean	1,782.06	1,782.06	104453CS
	2693	Vendor: 124 COMCAST WIFI 11.16.22 - 12.15.22	276.29	276.29	7290-NOV22
	2694	Vendor: 125 CONNIE STACK Fall 2022 Classes	1,022.40	1,022.40	FALL-2022
	2695	Vendor: 129 COTTON SHIRES & ASSOC. INC. August Applicant Charges & PV Safety Element	4,947.75	4,947.75	2022-AUGUST
	195	Vendor: 195 GOOD CITY COMPANY			

Check Date	Check Number	Specified Information	Net check Amount	Total Invoices	Invoice Number
				Paid	
11/23/22	2696	Planning Consultant Svcs - September	38,692.50	38,692.50	2842
Vendor:	213	HILLYARD INC			
	2697	Janitorial Supplies	250.66	250.66	604939638
Vendor:	218	MISSIONSQUARE RETIREMENT			
	2698	S. Hanlon Additional Deferred Compensation Interest	501.71	501.71	11232022
Vendor:	262	JORGENSEN SIEGEL MCCLURE & FLE			
	2699	August Statement September Statement	55,151.25	35,431.25 19,720.00	AUG-2022 SEPT-2022
Vendor:	265	JUSTIN BIXBY			
	2700	Expense Reimbursement - Boots	229.69	229.69	FRRS-22-12
Vendor:	274	KPMG LLP			
	2701	Progress Billing: DEO Assistance, 12/2020 - 07/2022	10,527.00	10,527.00	8004347509
Vendor:	290	LOS GATOS ROOFING			
	2702	Deposit Refund, 3 Tynan	1,000.00	1,000.00	BLDR0082-2022
Vendor:	364	PERS HEALTH			
	2703	December Health	14,319.09	14,319.09	100000017000926
Vendor:	367	PG&E			
	2704	October Statements	1,440.39	1,440.39	OCT-2022
Vendor:	368	PG&E			
	2705	Deposit Refund, 145 Canyon	358.00	358.00	PW0012-2020
Vendor:	373	PITNEY BOWES INC.			
	2706	Postage Meter Rental, Equipment & Svc 11/29/21 - 11/28/2022	483.35	483.35	1021889040
Vendor:	413	SANGINI MAJMUDAR BEDNER			
	2707	Fall 2022 Classes	3,728.00	3,728.00	FALL-2022
Vendor:	429	SHELLY SWEENEY			
	2708	Fall 2022 Classes	1,412.00	1,412.00	FALL-2022
Vendor:	431	SIERRA PACIFIC TURF SUPPLY INC			
	2709		7,498.63	7,498.63	0632157-IN
Vendor:	437	SMALL BUSINESS BENEFIT PLAN TR			
	2710	December Dental/Vision	2,575.30	2,575.30	DEC-2022

Check Date	Check Number	Specified Information	Net check Amount	Total Invoices Paid	Invoice Number
Vendor: 447 2711	October Statement	STAPLES CREDIT PLAN	290.57	290.57	2814-OCT22
Vendor: 457 2712		SUSTAINABLE SM COUNTY Reissue for Clk#2411, FY 2022-2023 Annual Contribution	2,500.00	2,500.00	V2022-118
Vendor: 476 2713		TOTLCOM INC. Annual Service Contract FY 2022-2023	862.00	862.00	318425
Vendor: 482 2714		TURF & INDUSTRIAL EQUIPMENT CO Backpack Blower Cables Tractor Repairs	7,428.34	252.48 7,175.86	IV44137 R030340
Vendor: 484 2715		TYLER TECHNOLOGIES INC Tyler University 10/2022 - 09/2023	400.00	400.00	025-390208
Vendor: 489 2716		VERIZON WIRELESS October Cellular	441.92	441.92	9919054794
Vendor: 511 2717		COUNTY OF SAN MATEO - HR DEPT Staff Training - J.Bixby/ S.Weber	210.00	210.00	CT22-014
Vendor: 557 2718		JSD CONSTRUCTION Deposit Refund, 88 Hillbrook Deposit Refund, 987 Westridge	2,700.00	1,000.00 1,700.00	BLDR0026-2021 BLDR0039-2021
Vendor: 571 2719		SAVIANO COMPANY INC. TC Tennis Court Repair	3,100.00	3,100.00	8643-01
Vendor: 697 2720		CYNTHIA ROWE Fall 2022 Classes	720.00	720.00	FALL-2022
Vendor: 698 2721		MIA DIGIOVANNI Fall 2022 Classes	720.00	720.00	FALL-2022
Vendor: 713 2722		COSMOS ROOFING Deposit Refund, 135 Wyndham	1,000.00	1,000.00	BLDR0112-2022
Vendor: 716 2723		JAMES ASHFORD Deposit Refund, 1330 Westridge	1,170.00	1,170.00	BLDR0125-2021
Vendor: 740 2724		ALESSANDRO MORUZZI Fall 2022 Classes	320.00	320.00	FALL-2022

Check Date	Check Number	Specified Information	Net check Amount	Total Invoices Paid	Invoice Number
Vendor:	745 2725	HEIDI KENDALL Movie License - Kids Movie Night 10/14	465.00	465.00	FRRC-22-7
Vendor:	846 2726	CITIZEN COMMUNICATIONS LLC Recyclist Program Tracker: Data Import Fee	300.00	300.00	INV-2607
Vendor:	860 2727	STEPFORD October IT Support	3,920.00	3,920.00	2201515
Vendor:	865 2728	MID PENINSULA ROOFING Deposit Refund, 171 Crescent	1,000.00	1,000.00	BLDR0062-2022
Vendor:	879 2729	ELIZABETH HOLMES Deposit Refund, 214 Grove Deposit Refund, 214 Grove	627.50 87.50	540.00 87.50	BLDM0002-2022-2 BLPR0001-2022
Vendor:	904 2730	THE BACKFLOW GUY INC Backflow Repairs	2,764.00	2,764.00	19793
Vendor:	912 2731	ELIZABETH BABB Fall 2022 Classes	440.00	440.00	FALL-2022
Vendor:	917 2732	PULIDO CONCRETE Deposit Refund, 10 Peak	1,216.00	1,216.00	PW0036-2022
Vendor:	918 2733	ERAN SHTIEGMAN Permit Deposit Refund Permit Deposit Refund C&D Deposit Refund	1,391.11 297.36 1,000.00	93.75 297.36 1,000.00	PLN_PAR0010-20 PLN_ARCH0017-20 BLDR0092-2021
Vendor:	919 2734	PHIL BARTH Expense Reimbursement - PV Palooza Expense Reimbursement - Summer 2022 Concert Series	1,764.73	810.65 954.08	FRRC-22-9 FRRC-22-10
Vendor:	920 2735	WILLIAM CLOPTON III Deposit Refund, 6 Sandstone	1,000.00	1,000.00	BLDR0014-2022
Vendor:	921 2736	DONALD TURNQUIST Deposit Refund, 4 Navajo Place Deposit Refund, 4 Navajo Place	1,790.00	1,000.00 790.00	BLDR0144-2021 BLDM0010-2021
Vendor:	922 2737	HANDWAY INC Deposit Refund, 142 Crescent	1,000.00	1,000.00	BLDR0014-2018

Check Date	Check Number	Specified Information	Net check Amount	Total Invoices	Invoice Number
Vendor:	923 2738	MELVIN GAINES Expense Reimbursement - Conference, Miscellaneous	879.47	879.47	FRRS-22-11
Vendor:	924 2739	JIM LIPMAN Expense Reimbursement - Software	29.95	29.95	FRRC-22-4
Vendor:	925 2740	SUPERB BUILDERS INC Deposit Refund, 658 Westridge	1,000.00	1,000.00	BLDR0134-2021
Vendor:	926 2741	SCOTT SWEET Deposit Refund, 243 Canyon	361.00	361.00	Pw0014-2022
Check Date Totals			230,020.98		
		Grand Total	230,020.98		

TOWN OF PORTOLA VALLEY
Warrant Disbursement Journal
November 23, 2022

Claims totaling \$230,020.98 having been duly examined by me and found to be correct are hereby approved and verified by me as due bills against the Town of Portola Valley.

Date _____

Jeremy Dennis, Treasurer

Motion having been duly made and seconded, the above claims are hereby approved and allowed for payment.

Signed and sealed this (Date) _____

Melissa Thurman, Town Clerk

Mayor

Check Register

Check Number	Vendor Number	Vendor Name	Check Amount	Check Date	BW	Check Type
Checks for Cash Account: 910-11011-000						
2742	21	ALMANAC	790.00	12/14/22		
2743	34	ARC DOCUMENT SOLUTIONS LLC	432.90	12/14/22		
2744	48	BARTLETT TREE EXPERTS	2,250.00	12/14/22		
2745	49	BAY AREA GEOTECH GROUP	7,460.00	12/14/22		
2746	124	COMCAST	188.17	12/14/22		
2747	127	CONTEMPORARY ENGRAVING CO.	190.88	12/14/22		
2748	202	GRASSROOTS ECOLOGY	5,000.00	12/14/22		
2749	234	J. W. ENTERPRISES	542.88	12/14/22		
2750	375	PLATINUM FACILITY SERVICES	4,936.68	12/14/22		
2751	376	PORTOLA VALLEY HARDWARE	288.58	12/14/22		
2752	403	RON RAMIES AUTOMOTIVE INC.	785.25	12/14/22		
2753	406	RR DONNELLEY	107.11	12/14/22		
2754	411	SAN MATEO LAWNMOWER	666.15	12/14/22		
2755	434	SITEIMPROVE	3,551.02	12/14/22		
2756	445	STANDARD INSURANCE CO.	572.52	12/14/22		
2757	448	STATE COMP INSURANCE FUND	5,315.25	12/14/22		
2758	482	TURF & INDUSTRIAL EQUIPMENT CO	66.43	12/14/22		
2759	642	CYBERTARY.COM	608.65	12/14/22		
2760	730	URBAN PLANNING PARTNERS INC	20,404.58	12/14/22		
2761	752	FEHR & PEERS	6,985.13	12/14/22		
2762	847	LISA WISE CONSULTING	29,382.50	12/14/22		
2763	860	STEPFORD	6,413.74	12/14/22		
Check totals:						96,938.42
ACH totals:						
EFTPS totals:						
Wire transfer totals:						
Payment Manager totals:						
GRAND TOTALS						96,938.42
Check totals:						96,938.42
ACH totals:						
EFTPS totals:						
Wire transfer totals:						
Payment Manager totals:						
GRAND TOTALS						96,938.42

Check Date	Check Number	Vendor Information	Net check Amount	Total Invoices Paid	Invoice Number
12/14/22	2742	Vendor: 21 ALMANAC October Publishing	790.00	790.00	77206
	2743	Vendor: 34 ARC DOCUMENT SOLUTIONS LLC Document Printing Printed Drainage Maps for Maintenance Crew Printed Drainage Maps for Maintenance Crew	432.90	155.08 142.19 135.63	2635786 2636561 2636560
	2744	Vendor: 48 BARTLETT TREE EXPERTS Town Center Tree Work	2,250.00	2,250.00	40541488-0
	2745	Vendor: 49 BAY AREA GEOTECH GROUP 2022-2023 Street Resurfacing - Field Density Testing 2022-2023 Street Resurfacing - Field Density Testing	7,460.00	5,940.00 1,520.00	54743 54898
	2746	Vendor: 124 COMCAST WIFI 11.21.22 - 12.20.22	188.17	188.17	1945-DEC22
	2747	Vendor: 127 CONTEMPORARY ENGRAVING CO. Council Dats Nameplates Council/Committee Dats Signs	190.88	120.54 70.34	5077 6126
	2748	Vendor: 202 GRASSROOTS ECOLOGY SFC Program Support FY22-23	5,000.00	5,000.00	PVSFC1122
	2749	Vendor: 234 J. W. ENTERPRISES Portable Lavs 10/20/22 - 11/16/22 Portable Lavs 10/20/22 - 11/16/22	542.88	313.44 229.44	246039 246040
	2750	Vendor: 375 PLATINUM FACILITY SERVICES November Friday Disinfection Svcs- COVID19 November Janitorial Svcs	4,936.68	448.01 4,488.67	45298 45297
	2751	Vendor: 376 PORTOLA VALLEY HARDWARE October Statement	288.58	288.58	193-OCT22
	2752	Vendor: 403 RON RAMIES AUTOMOTIVE INC. October Fuel Statement	785.25	785.25	G20221031-5
	2753	Vendor: 406 RR DONNELLEY Business Cards - T. Geisler	107.11	107.11	011569487
	2754	Vendor: 411 SAN MATEO LAWNMOWER Tool/Equipment Repair	666.15	119.87	224485

Check Date	Check Number	Specified Information	Net check Amount	Total Invoices Paid	Invoice Number
12/14/22	2754	Tool/Equipment Repair	666.15	546.28	224486
Vendor:	434	SITEIMPROVE			
	2755	Subscription Service Fee, 01/15/2023 - 01/14/2024	3,551.02	3,551.02	US-10280
Vendor:	445	STANDARD INSURANCE CO.			
	2756	LTD/Life Premium	572.52	572.52	2022-NOV
Vendor:	448	STATE COMP INSURANCE FUND			
	2757	WC Premium, 11/19/2022 - 12/19/2022	5,315.25	5,315.25	1000669676
Vendor:	482	TURF & INDUSTRIAL EQUIPMENT CO			
	2758	Parts	66.43	66.43	IV/44642
Vendor:	642	CYBERTARY.COM			
	2759	October Transcription Svcs	608.65	608.65	4630
Vendor:	730	URBAN PLANNING PARTNERS INC			
	2760	PV Housing/Safety Element IS/MND Update - August/September	20,404.58	20,404.58	22008-220930
Vendor:	752	FEHR & PEERS			
	2761	PV Evacuation Study 10/01/22 - 10/28/22	6,985.13	6,985.13	159672
Vendor:	847	LISA WISE CONSULTING			
	2762	Phase 2 Conceptual Site Plan - October	29,382.50	29,382.50	4382
Vendor:	860	STEPFORD			
	2763	Onsite - After Hours Wildcard SSL Certificate - 1 Yr Duration November IT Support	6,413.74 449.99 3,920.00	2,043.75 2201706 2201580	
Check Date Totals			96,938.42		
Grand Total			96,938.42		

TOWN OF PORTOLA VALLEY
Warrant Disbursement Journal
December 14, 2022

Claims totaling \$96,938.42 having been duly examined by me and found to be correct are hereby approved and verified by me as due bills against the Town of Portola Valley.

Date _____

Jeremy Dennis, Treasurer

Motion having been duly made and seconded, the above claims are hereby approved and allowed for payment.

Signed and sealed this (Date) _____

Melissa Thurman, Town Clerk

Mayor



TOWN OF PORTOLA VALLEY STAFF REPORT

TO: Mayor and Members of the Town Council

FROM: Cara Silver, Town Attorney

DATE: December 14, 2022

RE: Adoption of Resolution Confirming the State of Emergency and Need to Continue Conducting Town Public Meetings Remotely

RECOMMENDATION

Staff recommends that the Town Council adopt the attached Resolution Confirming the State of Emergency and Need to Continue Conducting Town Public Meetings Remotely.

BACKGROUND

On September 16, the Governor signed AB 361, amending the Ralph M. Brown Act (Brown Act) to allow legislative bodies to continue to meet virtually during the present public health emergency. AB 361 is an urgency bill which goes into effect on October 1, 2021 and expires on January 1, 2024 (portions of the bill applying to the State legislature and school districts expire earlier). The bill extends the teleconference procedures authorized in Executive Order N-29-20 (set to expire September 30, 2021) during the current COVID-19 pandemic and allows future teleconference procedures under limited circumstances defined in the bill. Effective October 1, 2021, cities must comply with AB 361 if they want to conduct remote meetings.

AB 361 applies to meetings during a proclaimed state of emergency and the legislative body has made a finding that meeting in person would "present an imminent risk to the health or safety of attendees". "State of emergency" is defined as a state of emergency declared by the Governor under Government Code Section 8625.

AB 361 requires several procedural safeguards, such as giving the public ability to address the legislative body directly, providing information on how to address the body, providing either a call-in or internet-based service option, requirement to stop meeting if call-in or internet-based option fails due to measures under the control of the Town, comments may not be required to be submitted in advance, and pre-registrations (except as required by call-in or internet platform) are prohibited.

Public members must be given a reasonable time to register to provide public comment and agencies that provide a timed public comment period shall not close the public comment period until that timed period has expired.

If the legislative body desires to continue using the teleconference exception, it must confirm the circumstances of the state of emergency 30 days after the first teleconference meeting and every 30 days thereafter.

DISCUSSION

Town staff has installed a new system in the Schoolhouse to accommodate hybrid remote meetings. This system has also been installed in the Community Hall. On April 27, 2022, the Council conducted its first hybrid meeting and plans to continue meeting this way. However, some members of the Council, its commissions/committees, staff and the public may want to continue attending remotely. Given the continued presence of COVID-19 in the community, in person meetings would present an imminent risk to the health or safety of certain attendees.

AB 361 requires the Council to make a regular finding confirming the state of emergency and the need for continued remote meetings. Staff will therefore be agendizing this finding on every Council meeting agenda until a decision to transition to completely in person meetings has been made. Council will also be requested to make these findings on behalf of its commissions and committees as well, so there is a uniform policy on public meetings.

FISCAL IMPACT

There is no fiscal impact associated with continued remote meetings.

ATTACHMENT

1. Resolution

RESOLUTION NO. ____

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PORTOLA
VALLEY CONFIRMING EXISTING STATE EMERGENCY AND AUTHORIZING
CONTINUED REMOTE PUBLIC MEETINGS UNDER AB 361**

The Town Council of the Town of Portola Valley does RESOLVE as follows:

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency, as defined under the California Emergency Services Act, due to the COVID-19 pandemic and the State of Emergency remains in effect;

WHEREAS, beginning in March 2020, the Governor's Executive Order N-29-20 suspended Brown Act requirements related to teleconferencing during the COVID-19 pandemic provided that notice, accessibility, and other requirements were met, and the public was allowed to observe and address the legislative body at the meeting;

WHEREAS, Executive Order N-08-21 extended the previous order until September 30, 2021;

WHEREAS, the Town Council and the Town's boards, commissions, and committees have conducted their meetings virtually, as authorized by the Executive Order, since March 17, 2020;

WHEREAS, on September 16, 2021, Governor Newsom signed into law Assembly Bill 361 ("AB 361"), which provides that a local agency legislative body may continue to meet remotely without complying with otherwise-applicable requirements in the Brown Act related to remote/teleconference meetings by local agency legislative bodies, provided that a state of emergency has been declared and the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees, and provided that the legislative body continues to make such findings at least every 30 days during the term of the declared state of emergency;

WHEREAS, Cal/OSHA COVID-19 Emergency Temporary Standards ("ETS") require certain employers to implement social distancing requirements in the work place during the current COVID-19 pandemic; and effective February 14, 2022, the Town Manager issued updated work place guidelines imposing safety protocols on persons attending Town Hall facilities;

WHEREAS, in the last few months, while hospitalizations and severe illnesses have gone down, new COVID-19 variants have emerged and continued to impact the County's hospital capacity;

WHEREAS, these variants are believed by medical experts to be even more contagious as previous variants, and data has shown the variant has increased transmissibility even among some vaccinated people;

WHEREAS, due to uncertainty and concerns about the continuing presence of COVID-19 variants, many workplaces that had announced a return to regular in-person operations have pushed back the full return date until later in the year or next year;

WHEREAS, virtual meetings have not diminished the public's ability to observe and participate and have expanded opportunities to do so for some communities; and

WHEREAS, given the heightened risks of the predominant variant of COVID-19 in the community, holding meetings with all members of the legislative body, staff, and the public in attendance in person in a shared indoor meeting space would pose an unnecessary and immediate risk to the attendees.

WHEREAS, the Council has again reconsidered the circumstances of the state of emergency and finds that the state of emergency continues to impact the ability of members of the Town Council, commissions and committees and public to meet in person because there is a continuing threat of COVID19 to the community, and because Town meetings have characteristics that give rise to risks to health and safety of meeting participants (such as the increased mixing associated with bringing together people from across the community, the need to enable those who are immunocompromised or unvaccinated to be able to safely continue to participate fully in public governmental meetings, and the challenges with fully ascertaining and ensuring compliance with vaccination and other safety recommendations at such meetings);

WHEREAS, persons experiencing any potential symptoms of COVID-19, or who test positive but are asymptomatic, or who are exposed to someone with COVID19, should follow medical advice regarding self-isolation or self-quarantine, avoiding public gatherings such as in-person meetings of public agencies, and should be able to do so without sacrificing their right to participate in public business during periods of self-isolation or self-quarantine;

WHEREAS, the onset of symptoms of COVID-19 or a positive test may occur too close to the start of a meeting for alternative arrangements for attendance to be made consistently with the Brown Act, such that a remote attendance option for public meetings should be maintained for as long as COVID transmission remains a potential risk of in-person meetings;

WHEREAS, the Town Council has an important interest in protecting the health and safety of those who participate in public Town meetings; and

WHEREAS, the Town Council finds that this state of emergency continues to directly impact the ability of members of the Town Council and its commissions and committees to meet safely in person and that meeting in person would present imminent risks to the health or safety of attendees, and the Council will therefore continue to invoke the provisions of AB 361 related to teleconferencing for meetings of the Town Council and its commissions and committees in order to provide its members as well as staff and members of the public with

the option of participating in its meetings remotely whenever necessary or advisable for them to do so.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Portola Valley that:

1. The Town Council adopts the recitals set forth above as findings of fact.
2. The Town Council hereby determines that, as a result of the emergency, meeting in person presents imminent risks to the health or safety of attendees.
3. In accordance with AB 361, based on the findings and determinations herein, meetings of the Town Council and Town commissions and committees will be held virtually or in a hybrid format allowing officials and the public to attend virtually or in person, with Brown Act teleconferencing rules suspended. Public meetings conducted outside may be conducted in person.
4. This resolution shall be effective upon adoption and remain in effect so long as the Council confirms the continuing state of emergency and need for remote meetings as required under AB 361.

PASSED AND ADOPTED this 14th day of December 2022.

By: _____
Craig Hughes, Mayor

ATTEST:

Melissa Thurman, MMC
Town Clerk



TOWN OF PORTOLA VALLEY STAFF REPORT

TO: Mayor and Members of the Town Council

FROM: Melissa Thurman, Town Clerk 

DATE: December 14, 2022

RE: Approve the Re-Appointment of Raymond Williams to Serve a Four-Year Term as the Portola Valley Representative to the San Mateo County Mosquito and Vector Control District

RECOMMENDATION

Staff recommends that the Town Council approve the re-appointment of Raymond Williams to serve a four-year term as the Portola Valley Representative to the San Mateo County Mosquito and Vector Control District

DISCUSSION

On December 1, 2022, the San Mateo County Mosquito and Vector Control District notified town staff that the current appointment of Raymond Williams as Portola Valley Representative would expire on December 31, 2022.

Staff reached out to Mr. Williams who expressed interest in continuing to serve another four-year term as Portola Valley Representative.

Approval by the Town Council is required for the re-appointment to begin, and staff will notify the District of the re-appointment once the approval is granted.

FISCAL IMPACT

There is no fiscal impact for this re-appointment to be approved.

ATTACHMENT

None



TOWN OF PORTOLA VALLEY

STAFF REPORT

TO: Mayor and Members of the Town Council

FROM: Jeremy Dennis, Town Manager
Cara Silver, Town Attorney 

DATE: December 14, 2022

RE: Approval of Willow Commons Apartments' Request for Waiver of Town Fees for Affordable Supportive Housing Project

RECOMMENDATION

Staff recommends that the Town Council waive the Town processing fees in the amount of \$186,890.37 to support the affordable housing development project known as Willow Commons Apartments.

BACKGROUND

A. Inclusionary Housing Fund

Like many cities in California, Portola Valley utilizes the concept of inclusionary lots/in lieu fees to support affordable housing development. The “Inclusionary Housing Requirement” is a program of the Town’s Housing Element since 1991 and is also contained in the Town’s Municipal Code. The Inclusionary Housing Program includes three major elements: (1) new residential subdivisions shall set aside 15% of the lots for affordable units; (2) fractional lots pay in lieu housing fees and (3) applicants may receive a 10% density bonus if they comply with this requirement.

B. Use of In Lieu Housing Funds

Program 7 of the Town’s current Housing Element states that the Town should consider the use of the money in the Town’s in-lieu housing fund, including the money from the sale of the Blue Oaks below-market-rate (BMR) lots, to meet identified local affordable housing needs and provide affordable housing. The Inclusionary Housing ordinance provides: “The in-lieu fees shall be placed in a special housing fund for use solely for affordable housing.” (Portola Valley Municipal Code Section 17.20.215.)

On September 22, 2021, staff brought a study session to the Town Council to discuss whether to develop guidelines to administer the fund. Given the number of other initiatives and projects, the Council did not see an immediate need to develop guidelines and instead directed staff to fold this into the ongoing Housing Element update process, including seeking input from the Race and Equity Committee on spending priorities. On October 26, 2022, the Council received a report from the Race and Equity Committee that the fund be used, in part, for fee waivers for all affordable housing projects that satisfy the Town's Regional Housing Needs Allocation (RHNA).

Following adoption of the 6th Cycle Housing Element, staff will bring back some additional recommendations on the use of the Housing Funds that will best support the new housing programs.

C. Willow Commons Apartments

On October 4, 2021, Jim and Patty White ("applicant") submitted an application to construct an affordable permanent supportive housing project for adults with intellectual or developmental delays ("IDD") to be located at 4388 Alpine Road, referred to as Willow Commons Apartments. The project consists of 11 one-bedroom apartments deed restricted for low income qualifying residents and 2 ADUs for program managing staff to live on site. On December 13, 2021, the Architectural & Site Control Commission (ASCC) conducted a hearing and approved the project. Additional information about the project is available on the [Town's website](#). The project was submitted under the supportive housing law (AB 2162) and density bonus law. Under the density bonus law, in addition to the requested zoning and land use concessions and waivers, the project requested financial assistance from the Town.

On January 12, 2022, the Town Council discussed Willow Commons' request to use the Town's Inclusionary Housing Funds. The Town Council noted that the applicant's request for a loan/grant for development costs should be deferred until the Town had finalized its Housing Trust Fund Guidelines. The Town Council left open the possibility that the Willow Commons project could later reapply for funds that would be tied to deed-restricting the seven units to a lower affordability level. The Town Council also agreed that the project should receive a local permit fee waiver.

DISCUSSION

The Inclusionary Housing Fund's current balance is \$4,815,359.00.

The applicant has requested a waiver of Town fees in the amount of \$186,890.37 in Town planning and building fees and \$1,550 in Woodside Fire Protection District (WFPD) fees. Per Council's earlier direction, Staff is recommending a fee waiver of Town fees only. Since the Town is a separate legal entity from the WFPD and the Town Council has not approved WFPD fee waivers in the past, staff recommends that the Town Council not waive the applicant's WFPD fees.

The amount of the requested fee waiver is nominal compared to the size of the Inclusionary Housing Fund, and there would be no impact on current programs by granting the request. The request is also consistent with the recommendations of the Race and Equity Committee. Therefore, staff recommends a fee waiver in the specific amount of \$186,890.37.

ENVIRONMENTAL REVIEW

The waiver of fees is not considered a project under the California Environmental Quality Act (CEQA).

ATTACHMENTS

1. Willow Commons Request for Fee Waiver

ATTACHMENT 1

From: Jim White <jwhite@shv.com>
Sent: Thursday, September 29, 2022 10:35 AM
To: Cara E. Silver <ces@jsmf.com>
Subject: Fwd: Willow Commons Portola Valley Project Fees

Cara - The Willow Commons Project at 4399 Alpine Rd would like to request a reimbursement for the fees expended to date to enable the financial viability of the Willow Commons Permanent Supported Housing for adults with disabilities. Below are a listing of the fees paid to date and if needed we can provide the supporting documentation. Please let me know if you need any additional information. I'm happy to talk live if you want to call my mobile, feel free to call me. Jim

----- Forwarded message -----

From: Jason Raser <jason@shv.com>
Date: Wed, Sep 28, 2022 at 10:54 AM
Subject: Re: Willow Commons Portola Valley Project Fees
To: Jim White <jwhite@shv.com>
Cc: Carter Warr <carter@cjwarchitecture.com>, Kevin Schwarckopf <kevin@cjwarchitecture.com>

Hi Jim

As we discussed yesterday, I have updated the google doc that contains the listing of all expenses paid to Town of Portola Valley to date. I have underlying invoices/support and can add more details on the specifics of each expense if that's helpful. The google sheet is called "Willow Commons cost impacts". I have included the many checks written to the Woodside Fire Protection District since I believe those were mandated by the Town of PV.

Snapshot of the sheet below:

Fees and other costs (Asked Jason and Carter/Kevin):

Fees and other costs (Asked Jason and Carter/Kevin):		
8,230.00	8/10/2021	Town of PV
100.00	8/18/2021	Woodside Fire Protection District
17,724.00	9/22/2021	Town of PV
100.00	9/22/2021	Woodside Fire Protection District
5,355.00	3/9/2022	Town of PV
225.00	4/18/2022	Woodside Fire Protection District
225.00	4/18/2022	Woodside Fire Protection District
225.00	4/18/2022	Woodside Fire Protection District
225.00	4/18/2022	Woodside Fire Protection District
225.00	4/18/2022	Woodside Fire Protection District
143,248.97	4/18/2022	Town of PV
12,332.40	9/7/2022	Town of PV
188,440.37		

—



ADU SURVEY

Take it today!

Portola Valley ADU/JADU Survey

The ADU Team needs your help! Portola Valley is required by California to create 253 housing units by 2031. Accessory Dwelling Units (ADUs) and Junior ADUs are one of our best options for new housing, and they form a significant component of the Town's Housing Element plan.

This survey is:

- Resident driven – A group of your neighbors put it together
- Town run – PV will use the results to support our Housing Element and plan programs
- Commitment-free – You always have zero obligation to build or rent

Please spend just **5 minutes** to complete the survey by **1/18** (with one response per PV address). We encourage you to answer the questions based on your current understanding, but if you do want to learn more, we have organized some information at www.portolavalley.net/ADUinfo.

For questions about the survey itself email pv.ADU.survey@gmail.com.

Quick Tips:

- ADU: Accessory dwelling unit, aka in-law unit, can be attached or detached from house.
- JADU: Junior ADU, a room in a house with a kitchenette and exterior door, <500 sq. ft.
- In most cases properties can have both an ADU and a JADU, but fire safety and geological issues may limit.
- There is no minimum lot size to build an ADU.
- A new, detached ADU can exceed a property's maximum floor area limit up to 800 sq. ft.
- In most cases properties with a pool or guest house can convert it to an ADU or add an ADU.
- Converting an existing space into an ADU/JADU could be done at relatively low cost.

Your Email (required) _____

What is your address? (required) _____

One survey per Portola Valley address

1. Do you have an existing ADU or JADU on your property that went through the Town's permitting process, to the best of your knowledge? (If more than one, add the number of ADUs under Other).

- Yes
- No
- Other:

2. Are you interested in BUILDING a new ADU and/or a new JADU during this 8-year Housing Element cycle (2023-2031)?

- | | |
|---|--|
| <ul style="list-style-type: none"><input type="radio"/> Not interested<input type="radio"/> ADU: Very interested (in 1-2 years)<input type="radio"/> ADU: Very interested (in 3-8 years)<input type="radio"/> ADU: Somewhat interested | <ul style="list-style-type: none"><input type="radio"/> JADU: Very interested (in 1-2 years)<input type="radio"/> JADU: Very interested (in 3-8 years)<input type="radio"/> JADU: Somewhat interested<input type="radio"/> Other: |
|---|--|

3. Are you interested in CONVERTING an existing space into an ADU or JADU? This might be as simple as adding a kitchenette or an external door.

- | | |
|---|--|
| <ul style="list-style-type: none"><input type="radio"/> Not interested<input type="radio"/> ADU: Very interested (in 1-2 years)<input type="radio"/> ADU: Very interested (in 3-8 years)<input type="radio"/> ADU: Somewhat interested | <ul style="list-style-type: none"><input type="radio"/> JADU: Very interested (in 1-2 years)<input type="radio"/> JADU: Very interested (in 3-8 years)<input type="radio"/> JADU: Somewhat interested<input type="radio"/> Other: |
|---|--|

4. Are you interested in renting out a current or future ADU/JADU?

Long term occupancy by household employees, local teachers, students, or family who would otherwise be in the rental market all count. Using an ADU/JADU as temporary space for your immediate family would not count. (There are no requirements to rent your ADU/JADU.)

- I currently have someone renting my ADU/JADU
- I am very interested in renting my current or future ADU/JADU
- I am somewhat interested in renting my current or future ADU/JADU
- No, I don't plan to rent my current or future ADU/JADU
- Other:

5. If you are interested in renting your unit, would you be willing to rent at these monthly rates (inclusive of utilities)?

Owners determine their own tenants and lease requirements (within the extent of the law).

- Up to \$1000 for a one-person household
- \$1000 to \$1600 for a one-person household
- \$1600 to \$2600 for a one-person household
- Up to \$1100 for a two-person household
- \$1100 to \$1900 for a two-person household
- \$1900 to \$3000 for a two-person household
- Up to \$1400 for a four-person household
- \$1400 to \$2300 for a four-person household
- \$2300 to \$3700 for a four-person household
- Market rates
- Other:

6. What barriers exist for you to build or convert an ADU/JADU on your property? Choose up to 5.

- No interest in adding or converting an ADU/JADU
- Financial (available money, cost of construction, permit fees)
- Concern about an increase to my property tax
- Safety issues (slope, fire, geologic, flood, ingress/egress constraints, etc.)
- Property constraints (size, existing accessory buildings, space)
- Sewer/septic tank issues
- Electrical panel upgrade or undergrounding issues
- Building code issues (e.g., fire sprinklers, windows)
- Parking or garage requirements or issues
- Allowable Maximum Floor Area limits for the parcel (ADUs can be added above the limit.)
- Zoning code issues (setbacks, height limits, etc.)
- HOA restrictions
- Project difficulty (effort, stress, problems, risk)
- Process issues (permits, timeline, etc.)
- Rental management
- Neighbors and privacy issues
- Other:

7. What could the Town do to encourage you to build or convert an ADU/JADU on your property and/or rent it?

- Establish ADU dedicated planning staff and consultant in-person and online office hours
- Provide pre-approved ADU/JADU plans (including modular units) that require minimal additional engineering
- Establish a clear approval and permitting process for modular and manufactured homes
- Connect owners to programs for applicants looking for affordable housing
- Provide training and lease templates to support rental management
- Subsidize or waive permit fees for JADUs/conversions in exchange for affordable rent
- Create a no-penalty Amnesty Program for existing unpermitted ADUs/JADUs
- Other:

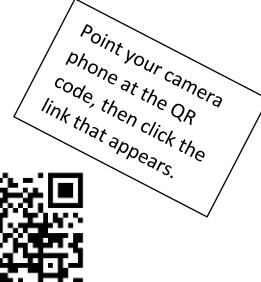
8. Do you have any other comments you would like to share?

9. Would you be willing to discuss your existing or potential plans or questions with one of your neighbors on the ADU Team? Please provide your name and phone number below.

Please return the survey to the PV Town Hall.

If you are interested in providing feedback on a potential amnesty program, there is an optional, anonymous survey available at this link or QR Code:

<https://tinyurl.com/pvamnesty>



PV Anonymous Amnesty Program Survey

This survey is being conducted anonymously. No identifiable information is collected. Any information you share will be used only in aggregate.

The Town is actively considering offering a new amnesty program to enable residents to formalize an unpermitted structure on their property with no penalty from the Town. Any units, however, would be required to make basic life safety improvements as part of the process. There would be some tax assessment consequences.

1. Do you have an existing ADU or JADU at your property that was constructed without a Town permit, to the best of your knowledge?

- Yes, a detached ADU
- Yes, an attached ADU (sharing a wall)
- Yes, an internal ADU (within the structure of the main house)
- Yes, a Junior ADU (maximum 500 sf)
- No
- Other:

2. Approximately what year was the unit constructed? _____

3. Approximately how big is the unit in square feet? _____

4. How many bedrooms? _____

5. Do you currently rent out the unit?

- Yes
- No
- Other:

6. Would you be interested in an Amnesty Program that would create opportunities to formalize the unit without any penalty from the Town? This would include a requirement to make basic life safety improvements as part of the process, if necessary. There would be some tax assessment consequences.

- Yes, I would definitely like to do this
- No
- I'm interested but it would depend on the details of the program
- Other:

7. What features would you like to see in an Amnesty Program?

8. Any additional comments?



TOWN OF PORTOLA VALLEY STAFF REPORT

TO: Mayor and Members of the Town Council

FROM: Melissa Thurman, Town Clerk 

DATE: December 14, 2022

RE: Adopt a Resolution Declaring the Results of the General Municipal Election for the Town of Portola Valley held on November 8, 2022 as Provided by Law

RECOMMENDATION

Staff recommends that the Town Council adopt a resolution declaring the results of the General Municipal Election for the Town of Portola Valley held on November 8, 2022 as provided by law.

DISCUSSION

The Town of Portola Valley held a General Municipal Election, in consolidation with the County of San Mateo Elections Division on Tuesday November 8, 2022, wherein three Town Council seats were proposed to all registered voters in Portola Valley. There are currently 3,616 registered voters in Portola Valley. The final results for the Town of Portola Valley indicate the following votes for the five candidates running for the three open seats:

Judith A. Hasko	2,108 votes or 29.60%
Craig S. Taylor	1,532 votes or 21.51%
Mary Hufty	1,285 votes or 18.04%
Craig R. Hughes	1,247 votes or 17.51%
Dale Pfau	950 votes or 13.34%

Based on these results, the newly elected Town Councilmembers are Judith A. Hasko, Craig S. Taylor and Mary Hufty.

On December 8, 2022 San Mateo Chief Elections Officer Mark Church certified the election by producing the [Statement of the Vote](#) for November 8, 2022.

The Town Council is required to adopt a resolution (Attachment 1) in accordance with California Elections Code Section 10263, reciting the fact of the election.

FISCAL IMPACT

In June 2022, the San Mateo County Elections Office provided a predicted quote for costs for the November 2022 election for the Town of Portola Valley of \$14,300. This amount may be raised or lowered, after the County has calculated their total services rendered.

ATTACHMENT

1. Resolution

RESOLUTION NO. ____

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PORTOLA
VALLEY RECITING THE FACTS OF THE GENERAL MUNICIPAL ELECTION HELD
ON NOVEMBER 8, 2022, DECLARING THE RESULTS AND SUCH OTHER
MATTERS AS PROVIDED BY LAW**

The Town Council of the Town of Portola Valley does RESOLVE as follows:

WHEREAS, a General Municipal Election was held and conducted in the Town of Portola Valley on Tuesday, November 8, 2022; and

WHEREAS, notice of the election was given in time, form and manner as provided by law; that the Town voting center was properly established; that election officers were appointed and that in all respects the election was held and conducted and the votes were cast, received and canvassed and the returns made and declared in time, form and manner as required by the provisions of the Elections Code of the State of California for the holding of elections in general law cities; and

WHEREAS, pursuant to Resolution 2900-2022, adopted on July 13, 2022, the County Elections Division canvassed the returns of the election and has certified the results to the Town Council, the results are received, attached and made as part hereof as "Exhibit A";

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PORTOLA
VALLEY DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

SECTION 1. That the number of registered voters in Portola Valley is 3,616.

SECTION 2. That the whole number of votes cast by registered voters in The Town of Portola Valley was 1,658.

SECTION 3. That the names of persons voted for at the election for the position of Town Councilmember are Judith A. Hasko, Craig S. Taylor and Mary Hufty.

SECTION 4. That the Town Council does declare and determine that Judith A. Hasko, Craig S. Taylor and Mary Hufty were elected as Town Councilmembers for a term of four (4) years.

SECTION 5. That the Town Clerk shall enter on the records of the Town Council of the Town, a statement of the result of the election, showing: (1) The whole number of votes cast in the Town; (2) The names of the persons voted for; (3) For what office each person was voted for; (4) The number of votes given at each precinct to each person; (5) The total number of votes given to each person.

SECTION 6. That the Town Clerk shall make and deliver to each of the persons elected, a Certificate of Election, signed by the Town Clerk and authenticated; that the Town

Clerk shall also administer to each person elected the Oath of Office prescribed in the Constitution of the State of California and shall have them subscribe to it and file it in the office of the Town Clerk. Each and all persons so elected shall then be inducted into the respective office to which they have been elected.

WHEREAS, persons experiencing any potential symptoms of COVID-19, or who test positive but are asymptomatic, or who are exposed to someone with COVID19, should follow medical advice regarding self-isolation or self-quarantine, avoiding public gatherings such as in-person meetings of public agencies, and should be able to do so without sacrificing their right to participate in public business during periods of self-isolation or self-quarantine;

I hereby certify that the foregoing **Resolution No.** was adopted by the Portola Valley Town Council at a regular meeting of December 14, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

Melissa Thurman, MMC
Town Clerk

**There are no written materials for
Items 5a and 5b**



TOWN OF PORTOLA VALLEY

STAFF REPORT

TO: Mayor and Town Council

FROM: Laura Russell, Planning & Building Director
Cara Silver, Town Attorney

DATE: December 14, 2022

RE: Housing Element Update and Discussion

RECOMMENDATION

Staff recommends that the Town Council receive a report, take public comment, and provide any feedback on the Housing Element Update, schedule and associated actions.

MEETING PURPOSE

The Town Council last reviewed the Housing Element on [July 13, 2022](#). This staff report provides a summary of Housing Element update activities that have occurred since then, followed by a summary of legal issues that have emerged since previous Town Council review to ensure the Town Council and members of the public have easy access to the latest information.

BACKGROUND

The Housing Element is part of Portola Valley's General Plan and identifies policies and programs to meet the housing needs of the Town's current and future residents. State law (Government Code Sections 65580-65589.8) requires that every city/town and county in California adopt a Housing Element approximately every eight years. Portola Valley's current Housing Element covers the planning period from 2014-2022 and was adopted in 2015. The new Housing Element will cover 2023-2031 and is called the 6th Cycle. In addition, the State Department of Housing and Community Development (HCD) reviews and certifies that each jurisdiction's Housing Element meets all the requirements of the law.

Every jurisdiction in California receives a target number of homes to plan for. This is called the Regional Housing Needs Allocation or RHNA (pronounced 'ree-nuh'). Cities/towns do not need to build the housing, but do need to put in place the proper zoning and address constraints so the private sector can build the housing. The RHNA is broken down by income category. Portola Valley's income specific RHNA is:

Income Level	Number of Units
Very Low Income (<50% of Area Median Income)	73
Low Income (80% of Area Median Income)	42
Moderate Income (80-120% of Area Median Income)	39
Above Moderate Income (>120% of Area Median Income)	99
Total	253

Consistent with statutory requirements, the Housing Element must be adopted by the Town and certified by HCD by January 2023. After that, there is a 120-day period for the Town to work with HCD on certification; however, it should not be thought of as a “grace period” or extra time for the Town. Rather, it is an opportunity to resolve any final issues with HCD.

Ad Hoc Housing Element Committee and Community Engagement

The Ad Hoc Housing Element Committee (AHHEC) was formed to provide recommendations to the Town Council on the Housing Element Update, explore options to minimize the impacts of additional housing units, maximize public participation, and communicate information on the Committee’s progress and recommendations to residents. AHHEC members included representatives from the Town Council; Planning Commission; Race and Equity Committee; Architectural and Site Control Commission; and community members.

The AHHEC met 15 times since August 2021 to advance its charge to develop a Housing Element that complies with State law and will be certified, while maintaining Town values. Agendas, staff reports, zoom recordings, and presentation materials are available on the [Committee's webpage](#). The AHHEC meetings were extremely well attended with typical attendance about 40-50 and the key meetings about housing sites having over 150 attendees.

As the Town Council is aware, the Town does not currently have any zoning districts that allow multifamily housing. Historically, the Town has met its RHNA obligations primarily through ADUs and a few Affiliated Housing units. Given the increase in the RHNA allocation with Cycle 6 and the changes to State law, the AHHEC needed to consider different options for meeting the Town’s RHNA. The Committee decided on a patchwork approach that includes multiple strategies to develop housing. The AHHEC considered safety first, through hazard constraint mapping, then expressed a preference that new housing be distributed throughout the community to the extent feasible.

In June 2022, the Town released the Public Review Draft Housing Element. It was made available online at www.portolavalley.net/housingelement, distributed to the community through the Town’s website, eNotification (over 450 members), PV Forum, social media, and direct email to the Town’s committee members, businesses, and institutions. Town committees were invited to discuss the Housing Element. Public comments were received from June 8th to July 13th and forwarded to the Town Council for review.

Draft Housing Element

After Town Council review on July 13th and final revisions at the direction of a Council Subcommittee, the [Initial HCD Draft Housing Element](#) was sent to the State for review. After completion of the 90-day review period, the Town received the official [HCD Comment Letter](#) on November 9th. The Ad Hoc Housing Element Committee met on November 10th to discuss how to implement the comments.

DISCUSSION

On [March 23, 2022](#), Town Council received a staff report on the status of the Housing Element Update process, consequences of non-certification, the work plan, and timing. At that time, the Town Council directed staff to complete the Housing Element, zoning code amendments, environmental analysis, conforming General Plan amendments and associated work prior to January 31, 2023. There was acknowledgement that it would be very challenging to meet that timeline but that every effort should be made. In response to that direction, the staff/consultant team have been developing technical work and bringing it through a public review process with the Planning Commission.

Current Status

Key elements of the Housing Element Update and associated work are as follows:

- **Review under the California Environmental Quality Act (CEQA)** – An [Initial Study / Mitigated Negative Declaration](#) (IS/MND) has been prepared. [Public comments](#) were received from October 28 to November 29, 2022. The Planning Commission held a public meeting on [November 16](#) to receive public comments. A Response to Comments document is being prepared and will be released to the public when complete.
- **Housing Element Update** – Staff and consultants are updating the Housing Element in response to HCD comments. The Planning Commission has reviewed the revised approach to the Voluntary Upzoning (Opt In) program and Section 7 Programs. Other amendments are well underway.
- **Conforming General Plan Amendments** - Each element of the General Plan (sometimes called chapters) must be consistent, so when one chapter is updated, it may trigger minor conforming amendments to other chapters, as is the case with the Housing Element update. Materials related to the conforming General Plan Amendments were released to the community with a cover memo in advance of the Planning Commission meetings to allow additional time for review and consideration.
- **Zoning Code amendments** to implement the policies in the General Plan including three new zoning districts with basic development standards: 1) a new multi-family district allowing up to four dwelling units per acre; 2) a new multi-family district allowing 20 dwelling units per acre; and 3) a mixed-use district allowing residential uses up to six dwelling units per acre. Additionally, the amendments would codify the Affiliated Housing Program and update the zoning map.

Relationship between Housing Element and Safety Element

State law now requires Housing Elements to be updated concurrently with Safety Elements. Logically it makes sense for the Safety Element to be prepared before the Housing Element, as many residents have urged. However, in Portola Valley the Safety Element is largely dependent on current fire mapping and, unfortunately, neither the State nor the Woodside Fire Protection District have completed their mapping. Accordingly, the major Housing Element sites were chosen based on (1) locations with low or moderate fire hazard and (2) adjacency to evacuation routes. When selecting these sites the following sources were consulted: the 2008 Moritz Vegetation map, the 2008 Cal Fire Fire Severity Zone Map, Zeke Lunder's 2022 analysis and WFPD's Flame Mapper preliminary model results. (See Attachment 1.)

Emerging Legal Issues

In the past few years, the State Legislature has passed a series of new laws requiring the Housing Element to incorporate additional information and analysis (e.g. no net loss, Affirmatively Furthering Fair Housing, requirements for special needs housing). While previous housing element cycles had few consequences for towns failing to adopt compliant housing elements, that is not the case anymore. Further, at one time there was no consequence if the units of the inventory did not actually get built. However, new laws now wrestle away local zoning control away from towns that do not see projects materialize. Finally, the State has created and funded a Housing Enforcement Unit which scrutinizes housing element compliance throughout the full cycle.¹ Finally, multiple State laws have been adopted recently in a continuing attempt by the Legislature to take away local zoning control in the area of housing development.

Consequences for Non-Compliant Housing Elements

As discussed above, state law requires jurisdictions to submit draft and adopted Housing Elements to HCD for review. Although HCD is required to make a determination regarding whether a Housing Element substantially complies with state law, in the event of a disagreement between a jurisdiction and HCD regarding substantial compliance, the issue is ultimately left to the courts to decide.

The potential consequences of a court determination of non-compliance are severe. Litigation may be brought by any interested party (Gov. Code 65587(b)) or the office of the Attorney General (Gov. Code 65585). If a court finds that the jurisdiction's Housing Element is inadequate, it must include one or more of the following remedies in its order:

- Suspension of the jurisdiction's authority to issue building permits or related permits while permits are outstanding for housing projects;
- Suspension of the jurisdiction's authority to grant zoning changes, variances, and map approvals;
- Mandated approval of residential housing projects (Gov. Code 65755). Essentially, until the jurisdiction adopts a compliant Housing Element, a court is empowered to

¹ A recent example of the Enforcement Unit's work is the California Attorney General's immediate reaction when the Town of Woodside characterized its entire Town as a wildlife corridor in order to avoid the application of SB 9. The Woodside Town Council promptly rescinded that action upon the Attorney General's actions.

halt all building permits (including remodels and additions) in the jurisdiction other than permits for new housing projects.

- If the lawsuit is brought by a housing advocate or developer, the town is also responsible for the plaintiff's attorney's fees.

In addition, recent legislation expanded the authority of the Office of the Attorney General to enforce housing element law. In suits brought by the Office of the Attorney General, a court is required to impose fines on jurisdictions that consistently refuse to adopt a compliant Housing Element. The fines range from a minimum of \$10,000 per month, up to \$600,000 per month. If a jurisdiction has not adopted a compliant Housing Element within 18 months following a court order, the court may appoint a receiver to take all governmental actions necessary to bring the jurisdiction's Housing Element into compliance (Gov. Code 65585). In addition, the Town may not be eligible for State housing funds. The State has made a "compliant Housing Element" an eligibility requirement for State housing funds. There have also been discussions of having a compliant Housing Element as an eligibility requirement for State transportation funds.

And most recently, there has been statewide discussions about a "builder's remedy" in the Housing Accountability Act (HAA) and jurisdictions with non-compliant Housing Elements. In short, the builder's remedy refers to a provision of the Housing Accountability Act (HAA) that obligates a jurisdiction that does not have a compliant housing element to approve certain affordable housing projects even if the projects are inconsistent with local zoning or general plan regulations. A memo outlining builder's remedy is included in Attachment 2.

Finally, and perhaps most significantly, if the Town is late in submitting its Housing Element and does not complete the rezonings needed to accommodate the full RHNA allocation within one year of the Housing Element due date, the Town loses local control over the following:

- Sites needed to accommodate any unaccommodated **low or very low income** housing must be zoned with minimum density of 20 units/acre and development standards that permit at least 16 units per site at a density of at least 16 units. (§ 65583.2(h).)
- Sites accommodating **low or very low income** housing must provide for "by right" approval of projects with at least 20 percent of the units affordable to low or very low income.²

² "By right" approval means review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary review that would constitute a "project" under CEQA. to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that "use by right" does not exempt the use from design review. However, that design review shall not constitute a "project" under CEQA. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5 (objective criteria). (§ 65583.2(i).)

NEXT STEPS

The tentative upcoming schedule is as follows:

- January 4, 2023 – Planning Commission public hearing on the Housing Element and all associated work. The Commission will make a formal recommendation to the Town Council
- January 11, 2023 – Town Council Public Hearing to consider the Housing Element and all associated work
- January 18, 2023 – Special Meeting if Needed – Continue discussion of Housing Element and all related work
- January 25, 2023 – Second reading of ordinance to adopt zoning code amendments
- Resubmittal to HCD

ATTACHMENTS

1. December 7, 2022 Memo regarding Housing Inventory Sites and Updated Fire Information
2. October 18, 2022 Memo from Town Attorney re Builder's Remedy

Additional information is available online at www.portolavalley.net/housingelement.



TOWN OF PORTOLA VALLEY STAFF MEMO

TO: Planning Commission

FROM: Laura Russell, Planning & Building Director

DATE: December 7, 2022

RE: Supplemental Information regarding Fire Maps

At the Planning Commission meetings held in November, the Commission requested additional information regarding fire mapping in Town and what maps are being used. In particular, there was a question as to why the 2008 Cal Fire Map was included in the Housing Element rather than the 2008 Moritz Map. As background, the 2008 Cal Fire Map shows the very high fire severity zones in Portola Valley. These maps are created based on fire risk factors established and modeled by Cal Fire. The 2008 Moritz report was commissioned by the Town to survey the existing vegetation on both private property and right of way to assist in a comprehensive vegetation management program. The Town incorporated the Moritz Map into the 2010 version of the Safety Element.

State General Plan law mandates the contents of each element/chapter of the General Plan and requires these chapters to be consistent with one another. General plan law requires fire hazards to be discussed in the Safety Element and requires towns to include fire maps on file with the Office of the State Fire Marshal in their Safety Elements ([Government Code 65302](#)):

- (3) Upon the next revision of the housing element on or after January 1, 2014, the safety element shall be reviewed and updated as necessary to address the risk of fire for land classified as state responsibility areas, as defined in Section 4102 of the Public Resources Code, and land classified as very high fire hazard severity zones, as defined in Section 51177. This review shall consider the advice included in the Office of Planning and Research's most recent publication of "Fire Hazard Planning, General Plan Technical Advice Series" and shall also include all of the following:
- (A) Information regarding fire hazards, including, but not limited to, all of the following:

- (i) Fire hazard severity zone maps available from the Office of the State Fire Marshal.**
- (ii) Any historical data on wildfires available from local agencies or a reference to where the data can be found.
- (iii) Information about wildfire hazard areas that may be available from the United States Geological Survey.
- (iv) General location and distribution of existing and planned uses of land in very high fire hazard severity zones and in state responsibility areas, including structures, roads, utilities, and essential public facilities. The location and distribution of planned uses of land shall not require defensible space compliance measures required by state law or local ordinance to occur on publicly owned lands or open space designations of homeowner associations.
- (v) Local, state, and federal agencies with responsibility for fire protection, including special districts and local offices of emergency services.

The 2008 map was prepared by Cal Fire and is the official map on file with the State Fire Marshal. Therefore, it must be included in the Safety Element. In addition, the currently proposed draft of the Safety Element also includes the 2008 Moritz Fuel Hazard Assessment Report and builds off of the 2022 fire memo prepared by the Town's fire hazard consultant Zeke Lunder of Deer Creek Resources. The Town's current fire consultant Zeke Lunder, cautions against relying on the Moritz Map beyond its stated purpose of vegetative management:

"The 'Moritz Map', created by Ray Moritz, does a decent job of characterizing the highest hazard areas within the Town. However, the initial map is nearly 15 years old, and it appears to miss several areas with Very High hazards in steep canyon areas. Also, by calling almost the entire town 'high' hazard, Moritz's map lacks subtlety. There is a wide variety of conditions within the areas Moritz paints broadly as 'high' hazard, and in many of these areas, concerted vegetation management could greatly reduce hazards. Since vegetation can be managed, especially on areas of milder slope, it is not reasonable to exert there is nowhere safe in town to build higher-density developments. Thorough and well-designed wildfire mitigations are possible, wildfire hazard is not chiseled in stone." (Exhibit 2.)

Both the 2008 Cal Fire Map and 2008 Moritz Report are now outdated. Accordingly, the Woodside Fire Protection District (WFPD) is currently preparing a state of the art fire hazard map. Once the WFPD map is finalized it will be considered by the Town for incorporation into the Safety Element. Meanwhile, other available fire mapping resources (such as the 2008 Moritz Fuel Hazard Assessment Report and the 2022 fire memo prepared by the Town's consultant Deer Creek Resources) have all been incorporated into the Safety Element. The available fire maps were shared with the Ad Hoc Housing Element Committee, as well as a presentation by Zeke Lunder, prior to their selection of housing sites. The key elements of all those fire resources are shown in Figures 4-5 through 4-7 of the Draft

Housing Element. In addition, the Draft Housing Element references the Safety Element which also discusses the Moritz Map.

Given community interest, the Town has mapped the Housing Sites on the Moritz Map (see Exhibit 1). Below is a table showing the types of vegetation existing as of 2008 as depicted in the Moritz Map.

PVHE HOUSING SITES BY VEGETATION

Housing Site	Type of Vegetation
The Sequoias	Fire-Prone Oak Woodland (highest)/Fire-Prone Urban Forest (high)
Christ Church	Mowed grass (low)/Fire-Prone Urban Forest (high)
4394 Alpine	Fire-Prone Urban Forest (high)
Willow Commons Pipeline Project	Fire-Prone Urban Forest (high)
4370 Alpine	Fire-Prone Urban Forest (high)
Ladera Church	Fire-Prone Urban Forest (high)
Vacant portion of the Ford Field	Fire-Prone Urban Forest (high)
Glen Oaks	Mowed Grass (low)/ Fire-Prone Oak Woodland (highest)
Stanford Wedge Pending Project	Fire-Prone Urban Forest (highest)/Chaparral (highest)

As both the Cal Fire and Moritz Maps are outdated, staff coordinated with the WFPD for their review of the sites based on the best information available today. On December 1, 2022, the Fire Marshal reported that he had asked the District's current mapping consultant, Flame Mapper, to assess the five housing inventory sites on Alpine. Flame Mapper concluded that all of the parcels, except the Stanford site, would be Moderate. The sites are not in the Very High or High areas. Once the sites are built, then the moderate would be reduced to low. In regard to the Stanford site, with no building the site would be considered high, but as with the others, once built out, it would be reduced to a moderate. (See Exhibit 3.)

Exhibits

1. Housing Element Sites Plotted on 2008 Moritz Map
2. Updated December 2, 2022 Deer Creek Memo
3. Emails between Laura Russell and Fire Marshal Don Bullard





Deer Creek Resources - 2 Crusader Ct # 2, Chico, CA 95973 - (530) 891-0471

MEMO

TO: Carla Violet, Urban Planning Partners
FROM: Zeke Lunder, Wildfire Analyst at Deer Creek Resources
SUBJECT: Portola Valley Potential Housing Sites and Wildfire Hazard
DATE: 12/02/2022

Carla,

I have reviewed the June 2022 draft maps for potential new housing sites in Portola Valley. DCR was involved in the initial vetting of potential project sites for wildfire hazards, the sites identified in these maps appear to follow the guidance we provided in our earlier memo (attached below) on wildfire issues as related to residential development.

The selected sites appear consistent with the direction we provided in our earlier memo, and we feel that the sites identified in this map are the best available sites in the overall context of the Portola Valley community. The proximity of these sites to major thoroughfares and their location on fairly-flat ground make them more defensible from wildfire than other sites on steep ground, in heavier fuels, or with poorer access. These sites are also located in close proximity to the Woodside Fire Protection District's Station 8. Their proximity to both Alpine and Portola Road make them preferable from an evacuation standpoint. With respect to the projects fronting the Alpine corridor, future development may allow for the construction of a wider evacuation lane benefiting the entire community. Also, the proposed housing sites located close to Highway 280 have the least likelihood of increasing the evacuation time of other residents in the case of a larger fire. As with any development in fire-prone areas like Portola Valley, the buildings and grounds will need to be designed with wildfire safety in mind.

The Town of Portola Valley faces potential wildfire evacuation challenges *with or without* new development, and should prioritize vegetation management to the maximum extent possible within the right-of-way of Alpine Road and Portola Valley Road.

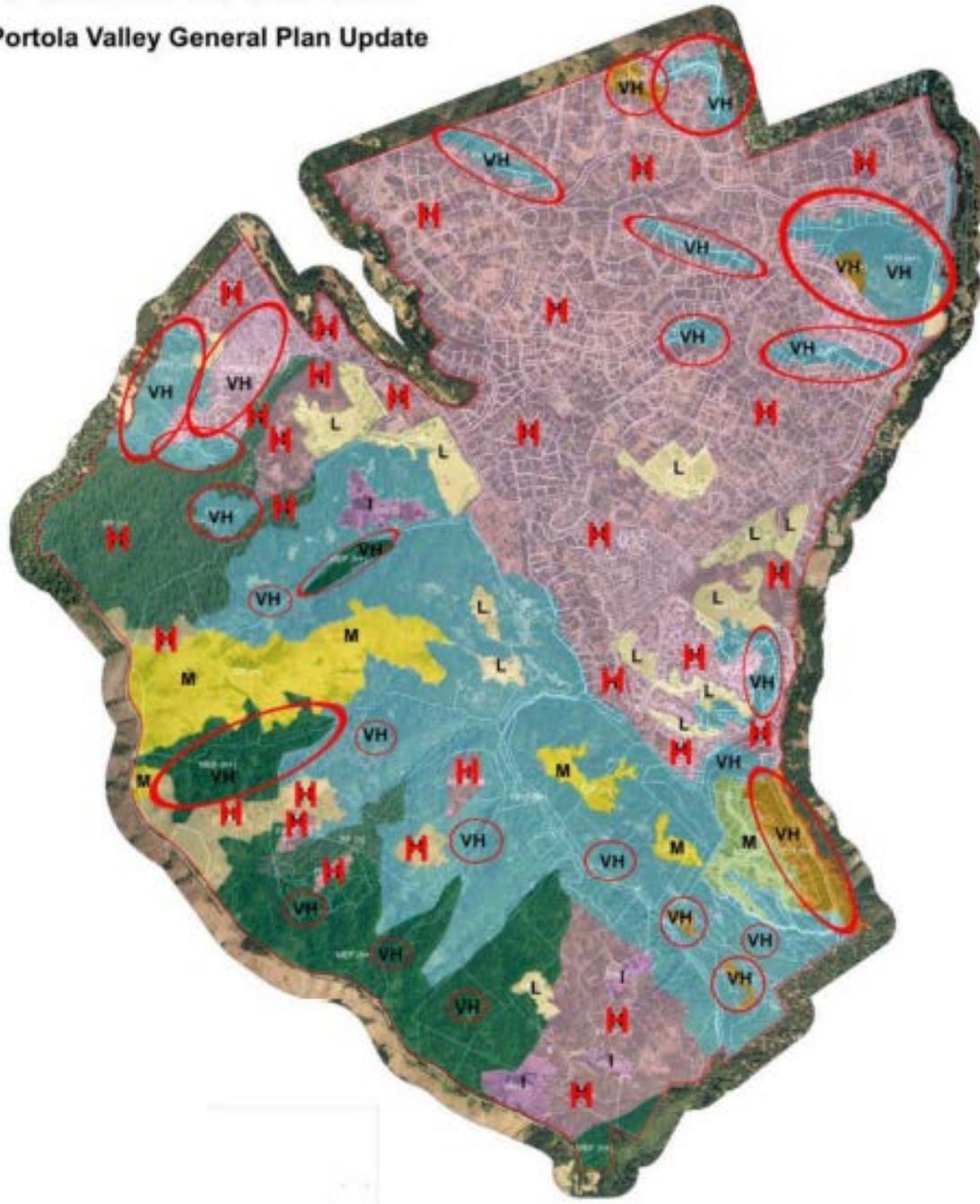
Moritz Map

The 'Moritz Map', created by Ray Moritz, does a decent job of characterizing the highest hazard areas within the Town. However, the initial map is nearly 15 years old, and it appears to miss several areas with Very High hazards in steep canyon areas. Also, by calling almost the entire town 'high' hazard, Moritz's map lacks subtlety. There is a wide variety of conditions within the areas Moritz paints broadly as 'high' hazard, and in many of these areas, concerted vegetation management could greatly reduce hazards.

The Moritz Map:

FUEL HAZARD MAP

Portola Valley General Plan Update



Since vegetation can be managed, especially on areas of milder slope, it is not reasonable to exert there is nowhere safe in town to build higher-density developments. Thorough and well-designed wildfire mitigations are possible, wildfire hazard is not chiseled in stone.

Note, the Moritz Map's characterization of "very high" and "high" hazard zones are based on vegetation fuel type (as described in the 2008 Fuel Hazard Assessment Study¹) whereas the CalFire's definition of Very High and High Fire Hazard Severity Zones are based on multiple factors. The Fire Hazard Severity Zone maps are developed using a science-based and field-tested model that assigns a hazard score based on the factors that influence fire likelihood and fire behavior. Many factors are considered such as fire history, existing and potential fuel (natural vegetation), predicted flame length, blowing embers, terrain, and typical fire weather for the area.²

Zeke Lunder

February 3, 2022 Memo:

In fall of 2021, Deer Creek Resources was contracted to conduct a cursory survey of wildfire hazards to inform the update of the Portola Valley General Plan's Housing and Hazard Elements. DCR Wildfire Analyst, Zeke Lunder, conducted a 2-day site survey of the community, and assessed existing vegetation, property ownership and building footprint maps, fire history, historic weather, and terrain mapping data. This document summarizes DCR's observations.

What Wildfire Hazards Exist in the Project Area?

Many areas of high and extreme wildfire hazard exist within the Portola Valley community. The highest-hazard areas are generally on steeper slopes of canyons or gullies, in difficult-to-access places where vegetation management is very difficult to accomplish. Hazards are amplified in east-west oriented canyon areas where the topography will funnel strong autumn winds, which tend to blow from the east or west.

¹ <https://www.portolavalley.net/home/showdocument?id=2420>

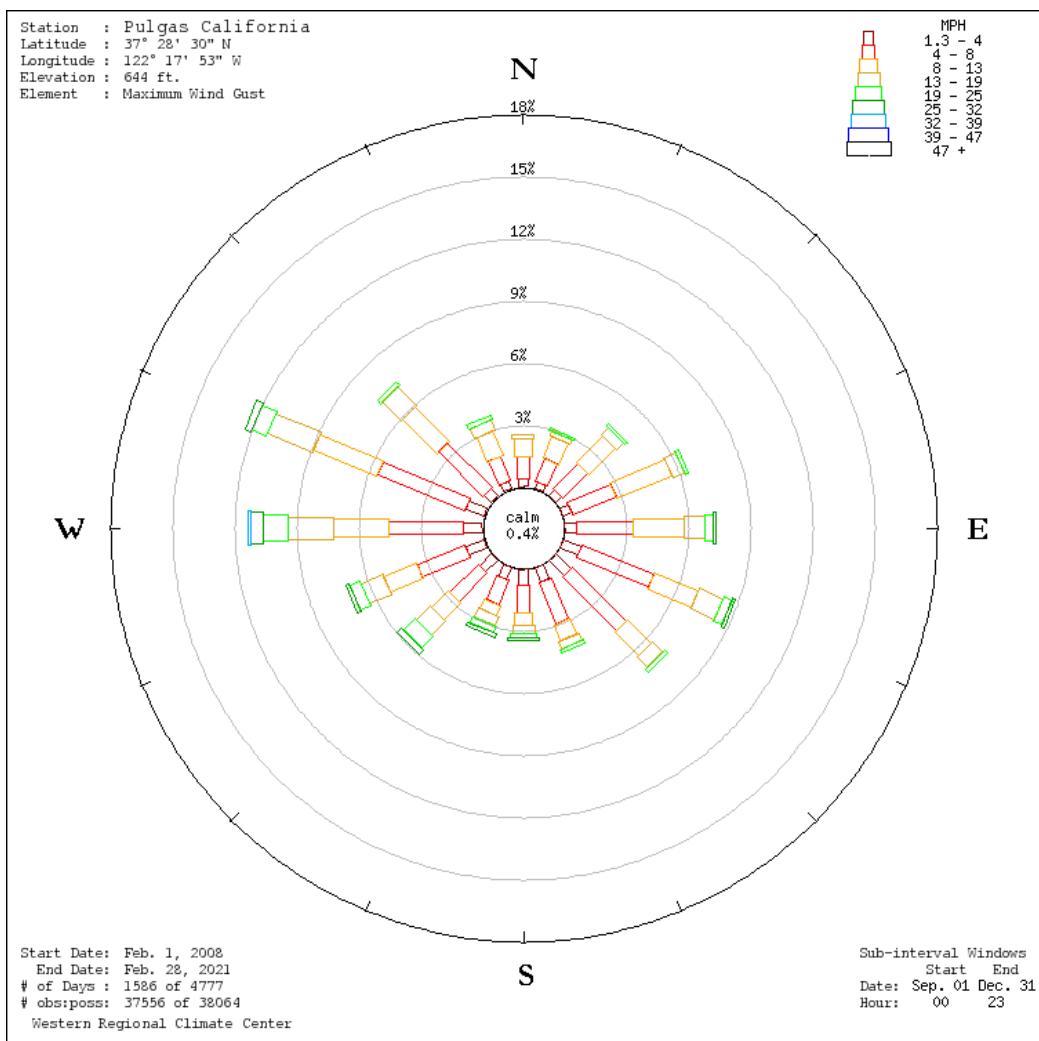
² <https://osfm.fire.ca.gov/divisions/community-wildfire-preparedness-and-mitigation/wildfire-preparedness/fire-hazard-severity-zones/>



Steep, inaccessible areas have some of the highest hazard. Slopes over 30% shown in red.

Wildfire Weather

While many firefighting resources are available to respond to fires starting in Portola Valley, the greatest threat to the community is not the typical roadside fire or structure fire which burns into the vegetation, rather, it is a wind-driven conflagration which occurs when weather conditions are so severe firefighting will be ineffective. This low-probability/high consequence event may only happen once in a century, but when it occurs, no amount of firefighting will stop it until the winds subside.



Wind rose for Pulgas weather station. Colors show peak gust, length of bar is frequency of occurrence.

Historic weather data suggests a catastrophic fire is most likely to burn into the area from the east, in the autumn. While less common than west winds, east winds are generally drier, and the strongest winds are often preceded by days of milder offshore winds, which can create critically-dry fuel moistures. As such, they bring the greatest wildfire threat. This increases the relative hazard to areas on the east side of town. Also, Alpine Road has heavy traffic loads and powerlines, both of which increase the likelihood of a wildfire ignition on the toe of the slope which could run uphill toward the west.

West Side of Town

Wayside Road, Santa Maria Ave, and Hayfields Road all have poor access, extremely heavy vegetative fuel loads, and exposure to east winds. As shown above, winds tend to come out of the west during the driest parts of the year, but these winds, coming off the ocean, are generally moister than the east winds. Fires burning from the west will be burning downhill into these areas, but under drought conditions, the recent CZU

Complex showed the potential for catastrophic fires in similar coastal forests. These areas west of Portola Road also have the potential for severe wildfire losses.



Steep, inaccessible areas have some of the highest hazard. Slopes over 30% shown in red.

Mapache/Westridge/Meadowood/Shawnee/Franklin Garden

While these areas still have high exposure to wildfire losses, they have a somewhat lower wildfire hazard than the steeper areas mentioned above. There are fewer deep gullies in this area, and generally safer access and better vegetation clearance along somewhat wider roads. Gentler slopes mean there is more developable land on each lot, and this may provide some opportunities for ADU development in these neighborhoods. Any future infill development in this area should be accompanied by improved vegetation management along main roads like Westridge (60-85 foot right-of-way) and Mapache (60 foot right-of-way).



Green areas are slopes less than 20%, possible ADU sites. Slopes over 20% shown in tan.



Which areas should PV avoid when siting new housing?

In general, the community should avoid building new dwellings on slopes over 20% where natural vegetation creates elevated wildfire hazards. 20% is not an absolute number. It may be possible to mitigate fire hazards on some slopes steeper than 20% where the dominant vegetation is grass or in areas with mature oaks with a grass understory.

The community should also avoid developing hillside areas where property lines, terrain, or other factors constrain access for vegetation management on slopes below a structure. Generally, this would mean the potentially developed property, at a minimum, should have roads or trails which make it possible to safely navigate a vehicle to the bottom of the property.

New multifamily housing should not be constructed on dead-end streets or in neighborhoods identified as having potential wildfire evacuation problems unless the developers create an actionable plan to mitigate known wildfire hazards, and Woodside Fire Protection District staff have reviewed and approved the plan. We recommend the Town maximize vegetation thinning within their right-of-way along major arterial travel routes.

Any development for which approval is contingent upon ongoing wildfire hazard mitigation vegetation management should require establishment of an endowment or special assessment which will fund vegetation maintenance in perpetuity.

From a wildfire perspective, areas along Alpine and Portola Roads are the safest option for new development. These areas are relatively flat, and will not be in the path of slope-driven wildfires. ADU development may be a good solution for increasing housing in areas less than 20% slope shown in figures, above.

Given high-hazard wildland fuels conditions and poor ingress and egress along narrow roads within the interior of the community, the proposed building sites identified in this plan are the safest options (from a wildfire standpoint) available. Vegetation along Alpine and Portola Roads creates wildfire hazards which could render both of these corridors dangerous during a wildfire evacuation event. Regardless of whether or not new development occurs within the Portola Valley community, thinning heavy vegetation and pruning up trees within the right-of-way of these two major travel routes should be undertaken as soon as possible.

Mapping Needs

Current wildfire hazard maps lack sufficient detail to be useful in developing site/project-specific wildfire hazard mitigation projects. However, more detailed mapping is not needed to identify many of the places with the most extreme wildfire hazards within Portola Valley. We (DCR) feel that we have sufficient data to support the recommendations stated in this report.

More detailed vegetation/fuels data would be helpful in triaging areas for wildfire hazard mitigation. This would be especially useful in developing mitigations for any new development within the community. A draft LiDAR-derived vegetation mapping dataset is nearly ready for release by San Mateo County. DCR reviewed this data and while it does an excellent job describing vegetative cover, it lacks detail for the understory vegetation which is the primary determinant of wildfire behavior. We suggest the Town of Portola Valley or Woodside Fire Protection District undertake detailed 3-dimensional mapping of the understory vegetation. This mapping should be done in consultation with wildfire behavior analysts so it is collected in a format which is compatible with predictive wildfire spread models.

From: [Laura Russell](#)
To: [Don Bullard](#)
Subject: Housing Element Sites
Date: Monday, November 14, 2022 5:04:00 PM

Hi Don,

Thanks for the update. Here are the housing element sites:

- Ford Field
- 4394 Alpine – vacant between Roberts and Willow Commons
- Glen Oaks equestrian center
- 4270 Alpine – corner of Nathorst
- Ladera Church – last parcel at the edge of Town going into Ladera

Laura

Laura C. Russell, AICP (she/her)
Planning & Building Director



Town of Portola Valley

650-851-1700 Ext. 218

www.portolavalley.net

Please visit www.portolavalley.net/virtualappointment for information on how to make an appointment for Planning and Building services.

From: Don Bullard <DJBullard@WoodsideFire.org>

Sent: Thursday, December 1, 2022 5:08 PM

To: Laura Russell <lrussell@portolavalley.net>

Subject: RE: Hosing Site Severity Zones

Laura,

I heard back today. As he ran the modeling for those five sites, he stated that as the parcels sit today, all of them, except the Stanford site, would be Moderate. Once the sites are built, then the moderate would then be reduced to low.

In regard to Stanford property, as it sits today with no building, the site is a high, but just as the others, once built out, it would be reduced to a moderate.

Best I can provide for now, hope this is helpful.

Don



Don Bullard

Battalion Chief/Fire Marshal / Fire Investigator

Woodside Fire Protection District | 808 Portola Road | Portola Valley, CA 94028

(650) 851-1594 | (650) 851-3960 FAX

djbullard@woodsidefire.org | www.woodsidefire.org

Mission Statement: To protect life, property and the environment through prevention, education, preparedness, and emergency response.

From: Laura Russell <lrussell@portolavalley.net>

Sent: Thursday, December 1, 2022 1:03 PM

To: Don Bullard <DJBullard@WoodsideFire.org>

Subject: RE: Hosing Site Severity Zones

Hi Don,

Thanks for the update. Time is tight, so please let me know when you hear something. Call any time.



MEMORANDUM

TOWN OF PORTOLA VALLEY

TO: Mayor and Town Council

CC: Jeremy Dennis, Town Manager
Laura Russell, Planning and Building Director

FROM: Cara Silver, Town Attorney

DATE: October 18, 2022

RE: Summary of Builder's Remedy Under the Housing Accountability Act

Several council members have recently asked about the potential use in Portola Valley of a new legal theory referred to as the “builder’s remedy.” This memo (1) summarizes the components of the “builder’s remedy” under the State Housing Accountability Act (HAA)¹; (2) discusses its burgeoning use in Southern California in the Regional Housing Needs Allocation (RHNA), Cycle 6 and (3) highlights some uncertainties in using this un-tested theory in Portola Valley and elsewhere. Given the strong community interest in housing issues, this memo is also being released to the public.

I. Builder's Remedy

The builder’s remedy is based on a 1990 provision in the HAA² which allows developers to bypass certain local zoning and general plan requirements as long as: (1) the project has a sufficient percentage of affordable units, as defined below; (2) the local jurisdiction does not have a certified Housing Element or identified sufficient sites on its

¹ Cal. Gov’t Code § 65589.5.

² Cal. Gov’t Code § 65589.5(d)(5) (B) provides:

If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction’s share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency’s share of the regional housing need for the very low, low-, and moderate-income categories.

operative Housing Element inventory to meet its current RHNA and (3) the project is located in a residential or commercial zone that permits some type of residential use.

To satisfy the affordability requirement, the project must provide either: (1) 20% of the units affordable to lower-income households; or (2) 100% of the units affordable to moderate-income households.

The remedy acts as a potential check on local jurisdictions that fail to submit substantially compliant Housing Elements to the state. The significance of the builder's remedy is that it is self-executing.³ The more traditional remedies contained in the Housing Element statute require a civil lawsuit to enforce or a separate enforcement action brought by the California Department of Housing and Community Development (HCD) and/or the Attorney General.

The HAA contains limited grounds for denying or making "infeasible" a qualifying housing project. Specifically, local agencies may deny a 20% low-income or 100% moderate-income project only if the city proves that one of the following conditions is met:

- 1) The city has a "substantially compliant" housing element and has "met or exceeded" its share of regional housing need for the types of housing the project would provide.⁴
- 2) The project would have "a significant, quantifiable, direct, and unavoidable impact" on public health or safety, "based on objective, identified written...standards...as they existed on the date the [project] application was deemed complete."⁵
- 3) The project violates a "specific state or federal law" and there is "no feasible method" to comply without rendering the project "unaffordable to low- and moderate-income households."⁶
- 4) The project site is zoned for agricultural or resource preservation or lacks adequate water or wastewater service.⁷
- 5) The project is inconsistent with the city's zoning and the land-use designation of its general plan (as of the date the application was deemed complete), and the city "has adopted a revised housing element in accordance with [statutory deadlines] that is in substantial compliance with this article."⁸

³ In this respect it is similar to SB 35, a more recent amendment to Housing Element law which permits applicants to seek additional density for housing developments containing affordable housing in jurisdictions that have not permitted the required annual proportion of their RHNA allocation. On the other hand, the builder's remedy differs from SB 35 in that it does not require the project to be consistent with underlying zoning and development standards.

⁴ Gov't Code 65589.5(d)(1).

⁵ Gov't Code 65589.5(d)(2).

⁶ Gov't Code 65589.5(d)(3).

⁷ Gov't Code 65589.5(d)(4).

⁸ Gov't Code 65589.5(d)(5).

To date the builder's remedy has not been widely used. This legal theory appears to have first received traction in an academic article written by U.C. Davis School of Law Professor Christopher S. Elmendorf called [A Primer on California's "Builder's Remedy" for Housing-Element Noncompliance](#). (Attachment A.) According to Elmendorf, the negative implication of the fifth finding above is that if a town lacks a substantially compliant housing element, the town may not use its zoning code or general plan to deny or render infeasible an affordable housing project.

Though the article focuses on the ambiguities of the 1990 provision and concludes that "the HAA's builder's remedy is so poorly drafted and confusing that developers of ordinary prudence haven't been willing to chance it", recent factors in Southern California have shifted the landscape.⁹

II. Recent Use of Builder's Remedy in Southern California

Given the potential power of the builder's remedy, it may seem surprising that developers have not taken advantage of it more often. The reasons for this are likely a confluence of factors creating a "perfect storm" for its use in Southern California. These factors include: numerous new Housing Element requirements in the RHNA Cycle 6; the quadrupling (or more) of most local agencies' RHNA allocations; the short time frames for certifying Housing Elements; HCD's stepped up enforcement of housing laws; shrinking local resources and COVID-19's impacts on workforce; the State's growing housing deficit and continuation of the housing crisis; the lack of adequately zoned sites in most cities to accommodate the increased housing demand; the failure of most Southern California cities to have a certified Housing Element, despite the legislature's intervention to provide an unprecedented one-year extension to Southern California; HCD's extensive comments on housing element drafts; the implementation of new Affirmatively Furthering Fair Housing (AFFH) requirements; and HCD's general support for legislative interpretations favoring housing production.

Below are three examples of how developers are attempting to use this remedy in Southern California. Southern California is approximately one year ahead of Northern California in the RHNA 6 cycle. To date, applicants have only filed builder's remedy applications in Southern California cities that were late in adopting their Housing Elements. Thus, we wouldn't expect to see these applications in Northern California until at least January 31, 2023, the date Northern California cities must adopt their Housing Elements. However, San Mateo County cities report that housing advocates are beginning to raise builder's remedy arguments at their recent Housing Element hearings.

1. Santa Monica

In Santa Monica, the 2021 Housing Element update was delayed in part by resident opposition to increased density and a shift in City Council policy direction to encourage

⁹ Christopher S. Elmendorf, A Primer on California's "Builder's Remedy" for Housing-Element Noncompliance 1 (Mar. 29, 2022).

non-profits to develop affordable housing projects on city-owned land, rather than rely on private housing development.¹⁰ As a result, it took three years for Santa Monica to complete its Housing Element and environmental review and the City was without a certified Housing Element for approximately one year. In the weeks leading up to the final certification of the Housing Element (which just occurred on October 12, 2022), 14 housing applications not conforming to the underlying zoning density were filed under the builder's remedy.¹¹ These projects would yield more than 4,000 new units, including a 15-story residential tower at 330 Nebraska Avenue containing 1,600 market rate units and 400 affordable units.¹² These projects were filed, for the most part, by developers with a solid track record of building in Santa Monica.

2. Redondo Beach

Redondo Beach's RHNA Cycle 6 allocation was 2,500 new housing units. Redondo Beach has aggressively fought state mandates by appealing their RHNA allocation to HCD and by filing lawsuits against the State challenging the RHNA process, SB 9 and SB 10. The City Council's original Housing Element was rejected by the HCD for not realistically meeting its target. In particular, the department questioned the city's premise that existing offices and businesses would be shortly redeveloped into housing. The city revised and resubmitted its Housing Element, which was rejected by the HCD again in April 2022. During the period that Redondo Beach was out of compliance with Housing Element law, developer Leo Pustilnikov purchased a site containing an old power plant and filed a builder's remedy application to build a large development "featur[ing] residential towers up to 200 feet tall, containing a total of 2,290 units. . . . complemented by roughly 800,000 square feet of office, commercial, and hotel space, and over 5,000 parking spaces."¹³

When questioned why he had decided to pursue the builder's remedy, Pustilnikov stated that he had nothing to lose given Redondo Beach's rigid NIMBY stance and the lack of other opportunities to develop there. Therefore, while a developer would usually have concerns about staying on a friendly foot with the city officials who would be deciding the fate of the project, those concerns did not apply here.¹⁴

3. Anaheim

This month, the Attorney General and HCD also moved to intervene in a case brought by an Anaheim-based nonprofit attempting to build a homeless women's shelter in Anaheim. The city has refused to issue a conditional use permit for the shelter, and the state is arguing that the city's permitting requirements for transitional housing are noncompliant with state Housing Element and related mandates. Importantly for the

¹⁰ See [Housing Plan Delays Led to Loss of Local Control \(smdp.com\)](#) for a comprehensive history of Santa Monica's Housing Element process.

¹¹ The applicant also filed SB 330 pre-applications which serve to "vest" the zoning and development standards in place at the time of application.

¹² [Developers capitalize on Housing Element fiasco to force 3,968 undeniable units into the city's pipeline - Santa Monica Daily Press \(smdp.com\); Housing Plan Delays Led to Loss of Local Control \(smdp.com\)](#)

¹³ [Renegade California Developer Wants To Build Megaproject In NIMBY Stronghold \(reason.com\)](#)

¹⁴ [Renegade California Developer Wants To Build Megaproject In NIMBY Stronghold \(reason.com\)](#)

builder's remedy, the state is asking the court to find that Anaheim's Housing Element is not substantially compliant with state law. If the court agrees, this could open up Anaheim to builder's remedy claims.¹⁵ This particular application of the builder's remedy is significant because it involves non-compliance with an already-certified element.¹⁶

III. Legal Hurdles to Applying Builder's Remedy

In his article, Professor Elmendorf details five ambiguities and hurdles in the law that he believes may impact the effectiveness of this tool for developers. An applicant seeking to assert a builder's remedy application in Portola Valley (or elsewhere) would have to address these issues.

1. Savings Clause for "Development Standards"

First, Elmendorf discusses the HAA's "savings clause," which states that "nothing shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards" related to the jurisdiction meeting its regional housing needs.¹⁷ He points out that there is no judicial or administrative guidance on how the savings clause and the builder's remedy relate to each other and presents some hypothetical scenarios.

For example, could a city avoid the builder's remedy "by codifying in an ordinance labeled 'development standards' the very same restrictions that would normally be found in a zoning ordinance or general plan?" Or, on the other hand, might a city be obligated to waive any standard that would reduce a project's density "on the theory that the 'density permitted on the site' is unlimited"?

While Elmendorf argues that the notion of the savings clause negating the builder's remedy is "off the table," he acknowledges the uncertainty of which local development standards may apply to builder's remedy projects.¹⁸

2. Changing the Rule Mid-Process

Next, Elmendorf poses the question of what happens when a developer submits a qualifying project application when the city's Housing Element is non-compliant but then the city delays its decision on the project until it is compliant. Can the city find the developer to be in violation of the zoning code or general plan?

He argues that the answer is unclear and that the developer would have a strong argument that retroactive denial is unlawful. However, a locality could argue that its

¹⁵ [California A.G. Says Anaheim NIMBYs Can't Block Women's Group Home \(reason.com\)](https://reason.com/2018/03/27/california-a-g-says-anaheim-nimby-s-can-t-block-women-s-group-home/).

¹⁶ However, the HAA does have an express remedy for non-compliance with the Housing Element law's requirement to zone for "emergency shelters." Cal. Gov't Code § 65589.5(d)(5) (C). Given this specific remedy it is not clear a court would also allow a builder's remedy for other applicants seeking to "piggyback" on this single deficiency.

¹⁷ Gov't Code 65589.5(f)(1); Christopher S. Elmendorf, A Primer on California's "Builder's Remedy" for Housing-Element Noncompliance 3–4 (Mar. 29, 2022).

¹⁸ Christopher S. Elmendorf, A Primer on California's "Builder's Remedy" for Housing-Element Noncompliance 4 (Mar. 29, 2022).

zoning code and general plan were only temporarily inapplicable to affordable housing projects.¹⁹

3. CEQA Delay

Elmendorf also points out that the HAA does not exempt projects from the California Environmental Quality Act (“CEQA”), and any housing-related CEQA exemptions still require compliance with local zoning rules and the general plan. The result is that builder’s remedy projects would still be subject to environmental review.

Elmendorf poses a scenario where a city, unable to block a project because of the builder’s remedy, instead uses CEQA to create endless environmental reviews of the project. He cites HCD’s recent letter to San Francisco arguing that “strategic CEQA delays designed to kill or reduce the density of a housing project may violate the HAA.” However, Elmendorf concludes that courts have yet to weigh in on this issue.²⁰

4. Project Size Limits

Given the HAA’s lack of size or density requirements for builder’s remedy projects, Elmendorf then asks: “Does this mean that developers could build 20%-affordable apartment towers in neighborhoods of single-family homes?”

This answer is also unclear, but he cites both the Least Cost Zoning Law and the No Net Loss Law, both of which offer opportunities for cities to argue that the density of builder’s remedy projects must be limited. However, he also acknowledges that this perspective could conflict with the legislature’s underlying intent to promote housing development.²¹

5. Housing Element’s Substantial Compliance with State Law

Finally, Elmendorf finds ambiguity in how courts may interpret a city’s substantial compliance with the HAA. HCD may reject a city’s Housing Element as not substantially compliant, but courts may take a more conservative approach and defer to the city’s finding of compliance.

He cites *Fonseca v. City of Gilroy*²² for the proposition that a city’s bar for substantial compliance is relatively low. In particular, as long as a city’s Housing Element “checks all the statutory boxes,” then substantial compliance is met, even if the program fails to

¹⁹ Christopher S. Elmendorf, A Primer on California’s “Builder’s Remedy” for Housing-Element Noncompliance 4–5 (Mar. 29, 2022).

²⁰ Christopher S. Elmendorf, A Primer on California’s “Builder’s Remedy” for Housing-Element Noncompliance 5 (Mar. 29, 2022).

²¹ Christopher S. Elmendorf, A Primer on California’s “Builder’s Remedy” for Housing-Element Noncompliance 5–6 (Mar. 29, 2022).

²² *Fonseca v. City of Gilroy*, 148 Cal.App.4th 1174 (2007).

achieve its ends. On the other hand, he cites other legal scholars who have found that recent legislative reforms have abrogated this precedent.²³

6. Other Open Issues

In addition to the above issues, application of this builder's remedy raises many other questions, including:

- Is the use capped by the number of 6th cycle RHNA, unfulfilled RHNA or the annual pro-rated unit application?
- Is the remedy available if the legislature extends the time for filing the Housing Element or if the application is filed during the "grace period"?²⁴
- How is a pending builder's remedy application affected by a subsequent Housing Element certification? Does SB 330 sufficiently "vest" the application?
- Will wildfire risk and evacuation capacity satisfy the health and safety denial finding?
- How are CEQA issues, such as shade and shadow, land use, public services and wildfire, addressed?
- If CEQA finds a significant and unavoidable impact, is the local agency required to override?
- Who is the approving body?

IV. Conclusion

In one respect, use of the builder's remedy falls in line with the traditional remedies for housing element non-compliance: applicants clearly have the legal right to file a housing element compliance action and the courts have authority to appoint receivers to take over local land use authority, including the issuance of building permits for housing projects. On the other hand, a self-executing analogue of this remedy, without a civil lawsuit as a pre-requisite, is certainly a more powerful tool. Regardless of how the remedy is exercised, the recent applications filed in Southern California show that the potential loss of local control is not an idle threat. Failing to timely submit a Housing Element to HCD could expose Portola Valley to unwanted density in locations that are not zoned or planned for such density.

²³ Christopher S. Elmendorf, A Primer on California's "Builder's Remedy" for Housing-Element Noncompliance 6–7 (Mar. 29, 2022).

²⁴ Technically, Northern California cities must submit their Housing Element to HCD for final certification by January 31, 2023. Thereafter, HCD has 120 days to review and certify the element. In past cycles, HCD permitted cities to file their Housing Element during this 120-day review period without penalty. Thus, this 120-day period was commonly referred to as the "grace period." However, based on recent discussions staff has had with HCD, HCD no longer views this 120-day period as a "grace period" and will consider the element late if filed during this period. It appears that other larger Northern California cities may have been viewing this "grace period" in the old manner. See [S.F. got the state's housing deadline wrong — so did Berkeley, Oakland and San Jose](#) (San Francisco Business Times.)