



# City of East Palo Alto

## CITY COUNCIL MEETING AGENDA

TUESDAY, April 1, 2014

CLOSED SESSION 6:30 P.M.

CITY COUNCIL OPEN MEETING 7:30 P.M.

EPA Government Center

2415 University Ave - First Floor - City Council Chamber

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

**Community Forum and Special presentations:** Members of the audience may address the City Council on any agenda item or on any item of interest to the public within the Council's purview, before or during the Council's consideration of the item. If you wish to address the City Council, please fill out a Speaker Sheet and give it to the City Clerk. When your name is called, step to the podium and address the City Council. Speakers are limited to two minutes each, and presentations are limited to 10 minutes. The Mayor has the discretion to lengthen or shorten the allotted times.



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

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### CALL AND NOTICE OF SPECIAL MEETING AT 6:30 P.M. OF THE EAST PALO ALTO CITY COUNCIL

TO THE MEMBERS OF THE EAST PALO ALTO CITY COUNCIL:

You are hereby notified that I do hereby call the East Palo Alto City Council in special session to consider only the matters stated on the agenda listed below.

**Notice to the Public:** Members of the public shall have the opportunity to address the City Council concerning any item listed on the agenda before or during consideration of that item. No other items may be discussed at this special meeting

1. CALL TO ORDER AND ROLL CALL
2. APPROVAL OF THE CLOSED SESSION AGENDA (*Government Code § 54957.7(a)*)
3. PUBLIC COMMENT ON CLOSED SESSION ITEM(S)

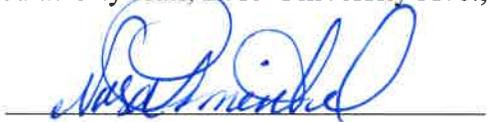
4. **ADJOURNMENT INTO CLOSED SESSION**
5. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**  
*(Government Code §54956.9)(John A. Nagel, City Attorney)*  
Significant exposure to litigation pursuant to subdivision (d)(2) of Government Code §54956.9:  
In re: Claim of Jose Arroyo-Bazan
6. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION** *(Government Code §54957)*  
**Title: City Attorney**
7. **CONFERENCE WITH LABOR NEGOTIATORS** *(Government Code § 54957.6)*  
Negotiators: Charles Sakai, Renne Sloan Holtzman Sakai LLP,  
Magda González, City Manager, and John Nagel, City Attorney  
Employee Organization: Service Employees International Union. Local 521
8. **ADJOURNMENT**

Dated: March 27, 2014

  
\_\_\_\_\_  
Laura Martinez, Mayor

I, Nora Pimentel, Deputy City Clerk do hereby certify that I have caused a true copy of the above notice and agenda to be delivered to each of the members of the City Council, at the time and in the manner prescribed by law and that this agenda was posted at City Hall, 2415 University Ave., East Palo Alto, CA at 3:10 p.m., Thursday, March 27, 2014.

Dated: March 27, 2014

  
\_\_\_\_\_  
Nora Pimentel, CMC Deputy City Clerk

**1. CALL TO ORDER AND ROLL CALL****2. APPROVAL OF THE AGENDA****3. PUBLIC COMMENT REGARDING CONSENT CALENDAR ITEMS**

**Notice to the public:** *Members of the public wishing to address the Council on Consent Calendar Items are requested to submit a completed speaker sheet to the City Clerk. Each speaker is limited to two minutes. The Mayor has the discretion to lengthen or shorten allotted times. There will be no separate discussion of Consent Calendar items as they are considered to be routine by the City Council and will be adopted by one motion. If a member of the City Council, staff, or public requests discussion on a particular item, that item may be removed from the Consent Calendar and considered separately.*

**4. APPROVAL OF CONSENT CALENDAR**

**City Council Ordinances, Resolutions/Informational Reports/Approval of Actions and Motions**

**Recommendation: That the City Council Adopt the Consent Calendar as indicated below.**

**A. Claims** *(John A. Nagel, City Attorney)***Recommendation:**

Reject the claim of Manuel Sandoval filed on December 23, 2013

**B. Minutes** *(Nora Pimentel, Deputy City Clerk)***1. February 18, 2014 Regular City Council Action Minutes****C. Waive first reading and introduce the ordinance revising Chapter 13.12 of the East Palo Alto Municipal Code pertaining to Stormwater Management and Discharge.**

*(John Doughty, Community Development)*

**D. Proclamation**

1. Honoring Beverly Beasely Johnson on her retirement

**E. Written Communications: None****5. SPECIAL PRESENTATIONS (Government Code §54954.3(b)):**

*Presentations are limited to 10 minutes. The Mayor has the discretion to lengthen or shorten the allotted times.*

**None**

**6. ORAL REPORTS****A. Report Out of Special Meeting Closed Session****B. Staff Reports**

**C. City Council Reports**

**7. COMMUNITY FORUM**

**Notice to the public:** *Anyone wishing to address the Council on any matter for which another opportunity to speak is not provided on the Agenda, and which is within the Council's purview, is requested to submit a completed Speaker Sheet to the City Clerk. When your name is called, step to the podium and address the Council. Each speaker is limited to two minutes. The Mayor has the discretion to lengthen or shorten allotted times.*

**8. PUBLIC HEARINGS**

None

**9. POLICY AND ACTION ORDINANCES, RESOLUTIONS, INFORMATIONAL REPORTS**

**A. Tenant Protection Ordinances** *(Valerie J. Armento, Special Counsel)*

*Continued from January 21, 2014*

**Recommendation**

Waive reading and introduce:

1. Ordinance enacting Municipal Code Chapter 14.02 providing a variety of general tenant protection measures.
2. Ordinance amending Section 6121 of the Zoning Ordinance adding provisions related to tenant parking.
3. Ordinance revising provisions of the City's Ellis Act Ordinance, Municipal Code Chapter 14.08 related to the demolition and replacement of rent stabilized units.

**10. ADJOURNMENT**

**Mission Statement**

*The City of East Palo Alto provides responsive, respectful, and efficient public services to enhance the quality of life and safety for its multi-cultural community.*



**CITY OF EAST PALO ALTO  
OFFICE OF THE CITY ATTORNEY**

**Administrative Report**

Date: April 1, 2014  
To: Honorable Mayor and Members of the East Palo Alto City Council  
From: John A. Nagel, City Attorney  
Re: Claim of Manuel Sandoval

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**Recommendation**

By motion, reject the claim of Manuel Sandoval.

**Discussion**

Loss Date: 11-22-13  
Amount of Claim: \$823 (tow fees)

Claimant alleges that on November 22, 2013, EPAPD arrived at his house and towed his car saying it was stolen. He claims \$823 in impound costs. San Mateo County Communications system reported the vehicle status stolen. Because EPAPD followed the correct procedure when towing this vehicle, it is my recommendation that the City Council reject this claim.

The purpose of this rejection is to comply with our responsibilities under the California Government Code, which establishes procedures for the processing of claims. Failure to provide a claimant written notice of our action may result in extension of the statutory period during which a claimant may pursue his/her cause of action.

The claimant has six months after the date of rejection to file a court action on the claim.

**Fiscal Impact**

There is not fiscal impact associated with this report.



# City of East Palo Alto

**CITY COUNCIL MEETING  
ACTION MINUTES  
TUESDAY, February 18, 2014  
CITY COUNCIL OPEN MEETING 7:30 P.M.  
EPA Government Center  
2415 University Ave - First Floor - City Council Chamber**

**1. CALL TO ORDER 7:32 P.M.**

**ROLL CALL:**

PRESENT                      Abrica, Gauthier, Moody  
ABSENT                        Rutherford, Martinez

**2. APPROVAL OF THE CLOSED SESSION AGENDA (*Government Code § 54957.7(a)*)**

Action: Upon motion by Council Member Abrica, seconded by Council Member Moody. The City Council voted to approve the Closed Session agenda absent Item 6 (Public Employee Performance Evaluation) to be continued to March 4, 2014.

**3. PUBLIC COMMENT ON CLOSED SESSION ITEM(S)**

**4. ADJOURNMENT INTO CLOSED SESSION**

**5. CONFERENCE WITH LEGAL COUNSEL – Existing Litigation: Guadalupe Zamora Medina and Gabriel Torres Aguilar v. City of East Palo Alto, et al.; San Mateo County Superior Court, Case No. 513550, pursuant to paragraph 1 of subdivision (d) of Government Code Section 54956.9**

**6. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (*Government Code § 54957*)  
Title: City Attorney**

**7. ADJOURNMENT**

The City Council adjourned into Closed Session at 7:48 p.m.

**REGULAR CITY COUNCIL MEETING                      7:30 p.m.**

**1. CALL TO ORDER 7:52 P.M.**

**ROLL CALL:**

PRESENT                      Abrica, Gauthier, Moody  
ABSENT                        Rutherford, Martinez

**2. APPROVAL OF THE AGENDA**

Vice Mayor Gauthier requested to continue items 9B (General Fund Mid-Year 2013-2014 Budget Review and City Council Travel and Training Budget allocation), 9C (Update on Affordable Housing Funds and Prioritization) and 9D (Request for Funding –EPA Can Do/Mid Pen Housing) to the March 4, 2014 City Council Meeting.

Action: Upon motion by Council Member Moody, seconded by Council Member Abrica. The City Council approved the City Council Agenda and continued items 9B, C and D to March 4, 2014. Vote: 3-0-1 (Martinez, Rutherford-Absent)

**3. PUBLIC COMMENT REGARDING CONSENT CALENDAR ITEMS**

There were 2 speakers who spoke on this item.

**4. CONSENT CALENDAR**

**City Council Ordinances, Resolutions/Informational Reports/Approval of Actions and Motions**

**A. Approval of Consent Calendar**

Action: Upon motion by Council Member Moody, and seconded by Council Member Abrica. The City Council approved the consent calendar absent item 4F.

**B. Claims** (*City Attorney*)

None

**C. Minutes** (*City Clerk*)

None

**D. Authorize the City Manager to dispose of twenty six (26) police department vehicles designated for surplus through donation and salvage.**

(*Police Department*)

**Adopted Resolution 4495**

**E. Approve the selection of Bartle Wells Associates to prepare the Water Rate and Financial Model Study, and adopt a resolution authorizing the City Manager to execute an agreement with Bartle Wells Associates for professional services, in an amount not to exceed \$81,600, and approve an interfund loan to the Water Fund from the General Fund in an amount not to exceed \$81,600 to pay for the professional services of Bartle Wells Associates.**

(*Community Development Director*)

**Adopted Resolution 4496**

**F. Adopt a resolution appointing Lee Violet as Interim Police Chief pursuant to Government Code Section 21221(h).**  
*(City Manager's Office, City Attorney's Office)*  
**Adopted Resolution 4497**

Council Member Abrica pulled item 4F for questions and further discussion. He noted that the contract which was entered with Mr. Violet was not included in the packet and requested a copy to be part of the record since the City Council is approving his contract. City Attorney John Nagel clarified that there is no contract rather an offer letter of appointment as a retired annuitant. Council Member Abrica also noted that he would like to know what the hourly rate is going to be as the City Council is approving that as well. City Manager Magda Gonzalez noted for the record that the letter provided to the City Council has not yet been seen by Mr. Lee Violet. Mr. Abrica also requested an outline related to the process in terms of the search for the permanent Police Chief to be provided to the City Council as soon as possible which should also include a timeline. Council Member Abrica mentioned that the City Council needs to be involved in the discussion of how the City Council and the community will be involved in the process. He would like to know when the City Council should expect this information.

There was one speaker who spoke on this item.

Action: Upon motion by Council Member Moody, and seconded by Council Member Abrica. The City Council adopted a resolution appointing Lee Violet as Interim Police Chief pursuant to Government Code Section 21221 (h) with additional language regarding pay schedule as discussed. Vote 3-0-2 (Martinez, Rutherford-absent)

**G. Written Communications: None**

- 5. SPECIAL PRESENTATIONS (*Government Code §54954.3(b)*):**  
*Presentations are limited to 10 minutes. The Mayor has the discretion to lengthen or shorten the allotted times.*  
**None**

**6. ORAL REPORTS**

**A. Report Out of Closed Session**

City Attorney John Nagel reported that there was nothing to report out of closed session.

**B. Staff Reports**

John Doughty, Community Development Director announced an upcoming Newell Road San Francisquito Creek Bridge Project community meeting to be held at the Palo Alto City Hall Chambers on February 27, 2014 at 7:00 p.m. Mr. Doughty reported that there will be significant road maintenance for paving beginning February 20 through mid-March. There

will be periodic closures at Woodland Avenue between Newell Road and West Bayshore Road; as well as Daphne Court and Daphne Way. Dates and times will be posted. John Doughty provided a storm update from two weeks ago, although the major rains went north and there was no significant impact staff was well prepared, the sand bags station was open and staff was ready to assist, it was encouraging to see the community come together.

### **C. City Council Reports**

Council Member Abrica reported that he attended the East Palo Alto boxing club event and that it was a nice event. He also reported that on April 19 which is Earth Day there are a couple of networks of organizations planning to do a volunteer day. He and the Mayor will bring forward a presentation in the near future to discuss how the City can become involved. Council Member Abrica confirmed March 5 as the follow up retreat date to continue discussion on core services with additional financial information to be received from staff. He invited the public to attend as it is an opportunity to share their suggestions and concerns. He mentioned one of the concerns he heard from the Rent Board during their presentation in November was related to their budget and administrative cost.

Council Member Moody commended Community Development Director, John Doughty and his team as well as City Manager Magda González for having the community in a good place in anticipation of the rain; there was a sense of calm throughout the City of certainty of the due diligence and preparation for the rain season. Mr. Moody acknowledged Reverend Floyd Purdy of Faith Missionary Church for hosting a luncheon discussion with 35 members of the faith community to encourage them in ways the churches may become involved with civic government. He also acknowledged County Supervisor Warren Slocum, Dr. Faye McNair Knox and Beverly Beasley Johnson for keeping the agenda of the San Mateo County and EPA community partnership moving. To celebrate Black History month he announced that the Backyard Gardens Collective Roots group will be hosting a soul food junkies movie at the East Palo Alto YMCA from 5:30 p.m. to 7:30 p.m. Mr. Moody concluded by announcing a message on behalf of Father Larry Goody of Saint Francis of Assisi Church which will be hosting a prayer walk on March 8<sup>th</sup> for peace in EPA to the location of the most recent tragedy at Dumbarton and Bell Street, the march begins at 9:00 am.

Vice Mayor Gauthier thanked Ebony Black for hosting a Black History program for the community this past Saturday at the Women's Club. She not only shared with the children the black history but also acknowledged and recognized leaders and business owners who have been in this community for a long time. This coming Saturday Mid Pen will be hosting a Black History program at Cooley Landing from 1:00 p.m. to 3:00 p.m. She also announced that she will be reading to children at the Library from 10:30 a.m. to 11:30 a.m. In conclusion she encouraged the community to stop by the Dominic Hoskins Black History Museum and Learning Center located at 190 Independence Street in Menlo Park between February 8 and the 28, it is something to witness!

Council Member Moody added that on February 28 from 2:30 p.m. to 5:00 p.m. in the community room the sixth annual Black History Month Summit sponsored by the African American community initiative of San Mateo County will be there in honor of Nelson Mandela and it is open to the public.

7. **COMMUNITY FORUM**

There were four speakers who spoke on various subject matters.

8. **PUBLIC HEARINGS**

None

9. **POLICY AND ACTION ORDINANCES, RESOLUTIONS, INFORMATIONAL REPORTS**

A. **Report on the City of East Palo Alto Water System**

*(Community Development Department)*

**Recommendation**

Accept the report and information provided in the presentation regarding the City of East Palo Alto Water System, including Financial Review and Operational Analysis Reports.

Community Development Director John Doughty presented a brief water system update presentation with Randy Jones from American Water Enterprises. City Council comments and questions followed.

There were three speakers who spoke on this item.

B. **General Fund Mid-Year 2013-2014 Budget Review and City Council Travel and Training Budget Allocation** *(Finance Department)*

Item was continued to March 4, 2014

**Recommendation**

1. By Motion, accept and file the General Fund Mid-Year 2013-2014 Budget Review
2. Provide direction to staff regarding City Council Travel and Training Budget Allocation

C. **Update on Affordable Housing Funds and Prioritization**

*(Community Development Department)*

Item was continued to March 4, 2014

**Recommendation**

Direct staff to return to the City Council within 90-days with a draft Affordable Housing Funding Strategy.

D. **Request for Funding – EPA Can Do/MidPen Housing**

*(Community Development Department)*

Item was continued to March 4, 2014

**Recommendation**

Adopt a resolution appropriating \$300,000 in Transient Occupancy Tax (TOT) Housing Funds to the EPA Can Do/MidPen Housing Senior Project on University Avenue with distribution of the funds, subject to the following conditions: a) receipt of a formal

application from the developer allowing the City Manager to evaluate the financial feasibility of the project; b) issuance of planning entitlements by the City; c) City Council approval of an affordable housing agreement with the developer; and d) the commitment of at least \$300,000 from San Mateo County from recycled (boomerang) redevelopment funds.

## **10. ADJOURNMENT**

The City Council of the City of East Palo Alto adjourned at 9:22 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,  
Nora Pimentel, CMC,  
Deputy City Clerk



**CITY OF EAST PALO ALTO**  
**OFFICE OF THE CITY MANAGER**  
2415 UNIVERSITY AVENUE  
EAST PALO ALTO, CA 94303

Consent Calendar  
Item: #4C

### **City Council Agenda Report**

**Date:** April 1, 2014  
**To:** Honorable Mayor and Members of the City Council  
**Via:** Magda A. González, City Manager  
**From:** Valerie J. Armento, Special Counsel  
**Subject:** Update NPDES Ordinance to Incorporate Changes to Comply with Municipal Regional Permit

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#### **Recommendation**

Waive first reading and introduce the ordinance revising Chapter 13.12 of the East Palo Alto Municipal Code pertaining to Stormwater Management and 'Discharge.

#### **Alignment with City Council Strategic Plan**

This recommendation is primarily aligned with:

- Priority #2: Enhance Economic Vitality
- Priority #4: Improve Public Facilities and Infrastructure
- Priority #6: Create a Healthy and Safe Community

#### **Background**

The Clean Water Act requires that all operators of municipal separate storm sewer systems obtain National Pollution Discharge Elimination System (NPDES) permits to regulate the discharge of stormwater, and develop stormwater management plans to prevent waterway contamination. The goal of the Clean Water Act is to restore beneficial uses of waterways to ensure that one day all waterways will be swimmable and fishable, and not endanger the viability of plants and animals.

In California, the requirements are promulgated by the San Francisco Regional Water Quality Control Board (RWQCB). Initially, each entity dealing with stormwater was issued a separate NPDES permit; however, in 2009 the RWQCB for the San Francisco Region issued a joint permit for the entire region, which is comprised of all Bay Area counties.

In 2011, the Clean City, Clean Bay Program was created to ensure full NPDES compliance. As a result, all bay area cities are facing the same requirements for stormwater management. The 2009 NPDES Regional Municipal Permit (MRP), includes changes and expansion of requirements for the treatment and management of stormwater beyond the requirements imposed in 1994, when the current (now outdated) East Palo Alto ordinance was adopted. (The entire text of the permit can be found at

[http://www.waterboards.ca.gov/sanfranciscobay/board\\_decisions/adopted\\_orders/2009/R2-2009-0074.pdf](http://www.waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2009/R2-2009-0074.pdf)

## **Analysis**

Regulations have changed substantially since 1994, when the present ordinance was adopted. The City's ordinance must be updated to ensure compliance with the MRP. The changes proposed to East Palo Alto Municipal Code (EPAMC) Chapter 13.12 are detailed in Attachment A, and the proposed ordinance is set forth in Attachment B. The changes address new or expanded requirements for developers or those redeveloping properties to manage stormwater runoff from their site, by providing treatment, implementing best management practices, and in some cases reducing or eliminating the runoff from their site by infiltrating it into the ground. Undisturbed or undeveloped land provides natural pollution treatment while reducing high-flow damage to San Francisquito Creek. In contrast, developed land with significant amounts of impervious surface causes much higher flows of stormwater to run off more quickly, carrying pollutants directly to storm drains and waterways without any treatment, and causing an increased likelihood of flooding and damage to San Francisquito Creek.

Another major new component of the MRP is the requirement to achieve reductions in trash loads to San Francisquito Creek and the San Francisco Bay. Trash in waterways negatively impacts wildlife and their habitat. As noted in the Long Term Trash Load Reduction Plan (Feb. 2014), trash must be eliminated from City streets and prevented from entering waterways. One of the ordinance changes proposed is to require new development to install full capture trash devices at their site before their storm drain collection system connects to the City's system. This update will help insure that, going forward, the City does not receive additional trash from stormdrain systems on newly developed or re-developed private properties.

The primary impact of the proposed code changes will be to developers, expanding requirements for treatment/retention of stormwater onsite, and placing requirements for smaller projects (5,000 sq ft of impervious surface added or replaced for certain land uses and project types) than was previously required (10,000 sq ft of impervious surface added or replaced). Developers have been dealing with some of these requirements for a decade, since certain requirements for stormwater treatment went into effect in 2003. The Ordinance will be used to ensure the City is in full compliance with the MRP.

## **Fiscal Impact**

The cost to developers of implementing the new and expanded requirements is expected to be 2% or less of overall project costs, based on earlier estimates and work by the RWQCB to determine costs for these measures. City capital projects are also regulated by the same criteria and costs are similarly expected to be 2% or less of overall project costs.

## **Attachments**

- A. Redlined current code provisions
- B. Proposed Ordinance

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO AMENDING CHAPTER 13.12 “STORMWATER MANAGEMENT AND DISCHARGE” OF THE EAST PALO ALTO MUNICIPAL CODE**

**WHEREAS**, the City of East Palo Alto is responsible for the discharges of stormwater which occur within its boundaries and is one of the San Mateo Permittees covered by the Municipal Regional Permit (MRP) for the San Francisco Bay Region, and

**WHEREAS**, the City Council of East Palo Alto wishes to update its Municipal Code provisions dealing with issues that have or may arise related to stormwater in the conjunction with land use development,

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO ORDAINS AS FOLLOWS:**

**SECTION 1. MUNICIPAL CODE CHAPTER 13.12 AMENDED.** Chapter 13.12 of the East Palo Alto Municipal Code entitled “Stormwater Management and Discharge” is hereby amended to read as set forth in Exhibit 1, attached and incorporated by reference.

**SECTION 2. CONSTITUTIONALITY; SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid or ineffective by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

**SECTION 3. CEQA EXEMPTION.** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the San Mateo County Clerk.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall take effect thirty (30) days from and after the date of its adoption.

**SECTION 5. PUBLICATION.** The City Clerk is directed to cause publication of this Ordinance as required by law.

\* \* \*

Introduced at a regular City Council meeting held \_\_\_\_\_, 2014, and  
adopted at a regular City Council meeting held \_\_\_\_\_, 2014, by the  
following vote:

**AYES:**

**NOES:**

**ABSTENTIONS:**

**ABSENT:**

\_\_\_\_\_  
Laura Martinez, Mayor

**ATTEST:**

\_\_\_\_\_  
Nora Pimentel, Deputy City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
John A. Nagel, City Attorney

**Chapter 13.12 STORMWATER MANAGEMENT AND DISCHARGE**

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**13.12.010 Title.**

The ordinance codified in this chapter shall be known as the "City of East Palo Alto Stormwater Management and Discharge Control Ordinance" and may be so cited.

**13.12.020 Purpose and intent.**

The purpose of this chapter is to ensure the future health, safety and general welfare of the city citizens by:

- A.  
Reducing to the maximum extent practicable nonstormwater discharges to the storm water drainage system;
- B.  
Controlling the discharge to the storm water drainage system from spills, dumping or disposal of materials other than stormwater;
- C.

The intent of this chapter is to protect and enhance the water quality of watercourses; water bodies and wetlands in a manner pursuant to and consistent with the Clean Water Act (33 U.S.C. Sections 1251 et seq.).

To the extent there is any conflict between the provisions of this chapter and any of the provisions found in chapters in Title 8 of this Code, the provisions of this chapter shall apply.

**13.12.030 Definitions.**

- A.  
Any terms defined in the federal Clean Water Act, as amended or supplemented, and/or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency on November 16, 1990 (as may be amended) as used in this chapter shall have the same meaning as in that statute or regulations.
- B.  
Specifically, the definitions of the following terms included in that statute or regulations are incorporated by reference, as now applicable or as may hereafter be amended: discharge, illicit discharge, pollutant, pollution and stormwater. These terms presently are defined as follows:

(1) "Discharge" means (1) any addition of any pollutant to navigable waters from any point source, (2) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft, or (3) any supplemental runoff which increases the total volume or rate of stormwater runoff from any activity or development. Consider dropping supplemental water until after MRP update

(2) "Illicit discharge" means any discharge to the city storm drain system that is not composed entirely of stormwater except discharges pursuant to a NPDES permit and discharges resulting from fire fighting activities or exempted under Section 13.12.090, Exceptions to discharge prohibitions.

(3) "Pollutant" means dredged soil, solid waste, concrete, incinerator residue, sewage, **garbage**litter, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, **heat**,automotive-related wastes, wrecked or discarded equipment, rock, sand, cellar dirt or industrial, municipal or agricultural waste, air conditioning condensate, copper, mercury, or other metals, pesticides, trash, chemically treated drinking water, or any other non-stormwater material being discharged<sub>[va1]</sub>.. <sub>[MD2]</sub>

(4) "Pollution" means the man-made or man-induced alteration of the chemical, physiological, biological or radiological integrity of the water.

(5) "Stormwater" means stormwater runoff, snow melt runoff and surface runoff and drainage, excluding supplemental runoff.

(6) "Supplemental runoff" means any increment of increase in the total volume or rate of stormwater runoff resulting from any activity or development occurring after the effective date of the ordinance codified in this chapter.

C.

When used in this chapter, the following words shall have the meanings ascribed to them in this section.

(1) "Authorized enforcement official" means the city manager or designee who is authorized to enforce the provisions of this chapter.

(2) "Best management practices" (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention practices, maintenance procedures or other management practices to prevent or reduce the discharge of pollutants or supplemental runoff directly or indirectly to waters of the United States. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

(3) "City" means the city of East Palo Alto.

(4) "City storm drain system" means and includes but is not limited to those facilities within the city by which stormwater may be conveyed to waters of the United States, including any roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains, which are not part of a publicly owned treatment works (POTW) as defined at 40 CFR Section 122.2.

(5) "Nonstormwater discharge" means any discharge including supplemental runoff that is not entirely composed of stormwater.

(6) "Premises" means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(7) "Watercourse" means a natural stream, creek or man-made uncovered channel through which water flows continuously or intermittently.

#### **13.12.040 Responsibility for administration.**

Water in the city drains into watercourses that are owned and operated by other jurisdictions, such as the San Francisquito Creek Joint Powers Authority and the Santa Clara Valley Water District<sup>[VA3]</sup>. This chapter shall be administered for the city by the city manager or designee. Storm drain facilities and/or watercourses which are owned, operated or maintained by a separate public agency are the legal responsibility of that agency for such facilities and watercourses bear the responsibility for enforcing the provisions of this chapter with respect to those facilities and watercourses. <sup>[MD4]</sup>

#### **13.12.050 Construction and application.**

This chapter shall be construed to assure consistency with the requirements of the fFederal Clean Water Act, as amended or supplemented, applicable implementing regulations and whatever is the most current NPDES Permit applicable to the city.No. CA 0029921 and any amendment, revision or reissuance of i

#### **13.12.060 Waiver procedures.**

A.

It is the intent of this chapter to protect and enhance water quality while respecting the rights of private property owners to economically viable use of land. It is not the intent of this chapter to prohibit all economically viable uses of any private lands, nor to result in a confiscatory impact. Accordingly, the purpose of this section is to provide for an administrative procedure for a waiver or modification of a particular provision of this chapter in the event the strict application of this chapter would result in the denial of all economically viable use of real property.

B.

An applicant for a waiver of a provision of this chapter shall file a waiver application with the director of community development on a form provided by the director identifying the provision sought to be waived or modified. The applicant shall file a complete form and shall provide all documentation and information required by the director to determine whether application of the provision in question will prohibit any economically confiscatory result.

C.

The **director** **city manager or designee** [MD5] may approve, deny or conditionally approve a waiver application upon making all of the following written findings:

1.

That the strict application of the provision for which a waiver or modification is sought would result in the denial of all economically viable use of the real property in question;

2.

To the maximum extent feasible, conditions have been placed upon such a waiver or modification in order to achieve the goals of this chapter as closely as possible while still allowing economically viable use of the real property in question; and

3.

Approval of such a waiver will not result in a public nuisance which would constitute a significant and direct threat to public health or safety.

**13.12.070 Illicit discharge **prohibited**** [VA6].

A. It is unlawful to cause, allow, or permit to be discharged, any discharge not composed entirely of stormwater to the storm drain system or to surface waters or to any location where it would contact or eventually be transported to surface waters, including flood plain areas, unless specifically called out in the Municipal Regional Permit as an exempt or conditionally exempt discharge.

B. It is unlawful to cause or allow discharges including, but not limited to pool water, carwash water, ongoing and large-volume landscape irrigation water, sediment, stockpiled material, rubbish, refuse, bark, sawdust, solid wastes or hazardous materials to be deposited in such a manner or location as to constitute a threatened discharge into storm drains, gutters, or watercourses.

C. It is unlawful to throw, deposit, leave, abandon, maintain or keep materials or wastes on public or private lands in a manner and place where they may result in an illicit discharge.

D. The discharge of nonstormwater discharges to the city storm drainage system is prohibited. All discharges of material other than stormwater must be in compliance with a NPDES permit issued for the discharge (other than NPDES permit No. CA 0029921) and this chapter. Any nonstormwater discharge that is not allowed under a NPDES permit or this chapter is in illicit discharge. It is prohibited to commence or continue any illicit discharges to the city storm drain system. Establishment, maintenance or continuation of any illicit discharge and appurtenant connection to the city storm drain system is prohibited. This prohibition is expressly retroactive and applies to connections made in the past, regardless of whether made under a permit or other authorization or whether permissible under the law or practices applicable or prevailing at the time of the connection.

E. Allowable discharges to the storm drain system shall not cause any impairment in the beneficial uses or quality of water of the state as defined in the California Water Code or any special requirements of the Regional Water Quality Control Board, San Francisco Bay Region or to injure or interfere with the operation of the State's watercourses. City may, from time to time, by resolution of the City Council adopt supplementary policies, rules and regulations on discharge into any storm drain or watercourse which shall have the same force and effect as if set forth herein and for which the remedies herein for violation shall be applicable.

F. Separately Permitted Discharges regulated under a valid facility-specific NPDES permit or facility-specific Regional Water Quality Control Board waste discharge requirements permit, not including a state general permit, shall be regulated exclusively by the Regional Water Quality Control Board and are exempt from discharge prohibitions established by this chapter, provided compliance with all relevant permit conditions is maintained to the satisfaction of the Board. Stormwater discharges at a facility with a facility specific permit which only addresses process discharges or non-stormwater discharges are not exempted

### 13.12.080 Exceptions to discharge prohibition.

The following discharges are exempt from the prohibition set forth in Section 13.12.070 above.

A.

Any discharge regulated under a National Pollutant Discharge Elimination System (NPDES) permit issued to the discharger and administered by the state under authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.

B.

Discharges from the following activities will not be considered a source of pollutants or supplemental runoff to waters of the United States when properly managed: water line flushing and flushing and other discharges from

untreated groundwater, potable water sources, [MD7] diverted stream flows [MD8], rising groundwaters, groundwater infiltration into separate storm drains, uncontaminated pumped groundwater, foundation and footing drains, water from crawl space pumps, air conditioning condensation, natural springs, individual residential car washings, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from fire fighting and other emergency response activity. Accordingly these activities are not subject to the prohibition on discharges, unless determined to be a nuisance pursuant to Chapter 8.08 of the East Palo Alto Municipal Code or other applicable law.

C. Exemptions Not Absolute. Any discharge category (exempt or conditionally exempt) that is a significant source of pollutant to waters of the United States shall be prohibited from entering the storm drain system, or shall be subjected to a requirement to implement additional best management practices to reduce pollutants in the discharge to the maximum extent practicable. Such prohibitions shall be effective on a schedule specified by an authorized enforcement official in a written notice to the discharger. The schedule may take into account the nature and severity of any effects caused by the discharge; and the time required to design, engineer, fund, procure, construct and make appropriate best management practices operational.

D. Non-Stormwater Discharge. This prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the state of California under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations. The authorized enforcement official may exempt in writing other non-stormwater discharges which are not a source of pollutants to the storm drain system upon approval by the Executive Officer of the San Francisco Bay Regional Water Quality Control Board.

### 13.12.090 Discharge in violation of permit.

Any discharge that would result in or contribute to a violation of the applicable NPDES Permit No. CA 0029921 [MD9], the terms of which are incorporated by reference and which is on file in the office of the city clerk, and any amendment, revision or reissuance of it, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify and hold harmless the city in any administrative or judicial enforcement action relating to such discharge.

### 13.12.100 Reduction of pollutants and supplemental runoff **drop** in stormwater.

All persons shall provide protection from accidental discharge of non-stormwater into any storm drain or watercourse. Measures to prevent accidental discharge of prohibited materials shall be provided and maintained at the user's or property owner's expense. Any person engaged in activities which will or may result in pollutants or supplemental runoff entering the city storm drain system shall undertake all practicable measures to reduce such pollutants or supplemental runoff. Examples of such activities include ownership and use of facilities which may be a source, of such as parking lots, gasoline stations, industrial facilities, commercial facilities, stores fronting city streets, etc. Examples of supplemental runoff include calculated hydrologic increases in stormwater runoff resulting from an increase in impervious surfaces due to construction or development, diversion of stormwater runoff from naturally occurring tributaries, discharge of stormwater detained through the use of detention facilities designed to change the rate of stormwater flow from a development, or alteration of site runoff characteristics due to impervious pavements, structural modifications or landscaping alterations. The following minimal requirements shall apply:

#### A.

Littering. No person shall throw, deposit, leave, maintain, keep or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles or accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, watercourse, business place or upon any public or private lot of land in the city, so that the same might be or become a pollutant, except in a manner lawfully established for the disposal of garbage, refuse and recyclables.

The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee or proprietor of any real property in the city in front of which there is a paved sidewalk shall maintain the sidewalk free of dirt or litter to the maximum extent practicable. as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants or supplemental runoff to the city storm drain system. Sweepings from the sidewalk shall not be swept or otherwise made or allowed to go into the gutter or street, but shall be disposed of in a receptacle maintained on the property as required for the disposal of garbage, refuse or recyclables.

No person shall throw or deposit litter in any fountain, pond, lake, stream or any other body of water in a park or elsewhere in the city.

The city manager may authorize the disposal of organic or nonorganic waste as permitted by general law. What is this for?

- B. Standard for Parking Lots and Similar Structures. Persons owning or operating a parking lot, gas station pavement or similar structure having impermeable surfaces shall clean those structures as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants or supplemental runoff to the city storm drain system.
- C. Best Management Practices for Development and Construction. Any construction contractor performing work in the city shall endeavor, whenever possible, to provide filter materials at the catch basin to retain any debris and direct flowing into the city's storm drain system implement CASQA or Caltrans best management practices to ensure stormwater protection. The city may be required to establish controls on the volume and rate of stormwater runoff from new developments and redevelopments as may be appropriate necessary to minimize the discharge and transport of pollutants or supplemental runoff.
- D. Compliance with Best Management Practices. When best management practices, plans, programs, guidelines or requirements have been adopted by any federal, state, regional entity or the city for any activity, operation or facility which may cause or contribute to stormwater pollution or contamination and/or discharge of non-stormwater or supplemental runoff drop to the stormwater system, every person undertaking such activity or operation, or owning or operating such facility shall comply with such plans, programs, guidelines or requirements as may be identified by the city.
- E. Compliance with General Permits. Each industrial discharger, discharger associated with construction activity, or other discharger, described in any general stormwater permit addressing such discharges as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the San Francisco Bay Regional Water Quality Control Board, shall provide notice of intent, comply with, and undertake all activities required by any general stormwater permit applicable to such discharges. Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by such permit.

### 13.12.105 Development design requirements.

New and in-fill projects shall incorporate stormwater treatment measures and site design techniques to minimize stormwater runoff pollution. New and in-fill redevelopment projects shall conform to the following:

A. Best Management Practices (BMPs) for New Developments and In-Fill Projects.

Any construction contractor performing work in the city shall implement erosion control measures on site to retain all debris, dirt and pollutants, and prevent the pollutants from flowing into the city's storm drain system. The city manager or designee may adopt regulations establishing controls on the volume and rate of stormwater runoff from new developments and in-fill projects as appropriate to minimize the discharge and transport of pollutants.

B. Impervious Areas. Parking [lots](#) and other impervious areas shall be designed to drain stormwater runoff to vegetated draining swales, filter strips, [landscaping](#) or other approved treatment devices prior to the discharge into the storm drain systems.

FC. Surfacing. Off-street parking, loading and driveway areas: (1) shall be paved with permeable material, asphalt, or Portland cement, or permeable material, and (2) except for single-family and two-family developments on individual lots, shall be bounded by concrete curb six inches in height. The area shall be graded and drained to dispose of all surface water accumulated within the area. Guidance regarding to where surface water shall drain may be found in the city's urban runoff standard conditions of approval. Directly connected impervious surfaces shall be minimized.<sup>[MD10]</sup>

CD. Operation and Maintenance Agreements. All projects incorporating post-construction stormwater treatment controls (e.g., vegetated swales, filter strips, detention ponds, etc.) shall develop, execute and record an operation and maintenance plan for each type of control measure or device that outlines specific maintenance activities, including vector control, required for optimal performance of said post-construction stormwater treatment control. The operation and maintenance agreement shall run with the land, and shall be recorded in the office of the San Mateo County clerk-recorder.

**DE.** Pedestrian Networks. The use of alternative materials for on-site walkways such as pervious concrete, decomposed granite, etc., rather than conventional walkways shall be encouraged for pedestrian networks.

**EF.** Rooftop Runoff. Runoff areas shall drain through disconnected roof leaders and/or front yard bubblers that discharge to landscaped, vegetated or other runoff treatment areas and are properly located to prevent erosion of landscaped materials.

~~F. Surfacing. Off street parking, loading and driveway areas: (1) shall be paved with asphalt, Portland cement, or permeable material, and (2) except for single family and two family developments on individual lots, shall be bounded by concrete curb six inches in height. The area shall be graded and drained to dispose of all surface water accumulated within the area. Guidance regarding to where surface water shall drain may be found in the city's urban runoff standard conditions of approval. Directly connected impervious surfaces shall be minimized. [MD11]~~

**G.** Hydrograph Modification Management Plan (HMP). Post-construction flow shall not exceed predevelopment discharge, as required by the NPDES permit and to the extent practicable.

**H.** Stenciling. All storm drain inlets shall be stenciled "No Dumping – Drains to Bay" using thermoplastic. Alternative inlet stencils or marking may be permitted, subject to city approval during plan check review.

### 13.12.105 Stormwater management plan requirements

**A.** All applications for any city permit or approval required for land disturbance activities, construction, or development for any regulated project subject to this chapter must include a stormwater management plan.

**B.** The stormwater management plan shall be accompanied by plans and related documentation demonstrating how the requirements of this chapter will be met, and the permit or approval shall not be granted unless the authorized enforcement official determines that the plan complies with the requirements of this chapter.

**C.** At the discretion of the authorized enforcement official, the stormwater management plan shall include, but is not limited to, the following:

- (1) Name and address of regulated project;

(2) Responsible operator(s) of each treatment system and hydromodification (HM) control (if any);

(3) A description of activities and pollutant sources;

(4) Specific descriptions of the locations (or a map showing locations) of the installed stormwater treatment system(s) and HM controls (if any);

(5) Description of the type and size of the installed stormwater treatment systems and HM controls, if applicable;

(6) Description of applicable operation and maintenance procedures, including recommended inspections, for all structural best management practices/installed stormwater treatment systems, as recommended by the manufacturer or as referenced in the CASQA Stormwater Best Management Practice Handbook;

(7) Description of record keeping and internal procedures to ensure documentation and verification of applicable operational maintenance procedures. These records shall remain available for a period of at least three years;

(8) A completed stormwater management plan data form;

(9) A copy of the required third party certification for the regulated projects adherence to the numeric sizing criteria for stormwater treatment systems; and

(10) Property owners shall ensure that onsite, joint, or offsite stormwater treatment system(s) and HM controls installed to meet the requirements for regulated projects are properly operated and maintained for the life of the project.

D. In cases where the property owner for a stormwater treatment system or HM control has worked diligently and in good faith with the appropriate state and federal agencies to obtain approvals necessary to complete maintenance activities for the treatment system or HM control, but the approvals are not granted, the property owner will be considered to be in compliance with subsection C.(10).

E. Constructed wetlands installed by regulated projects for urban runoff treatment shall abide by the San Francisco Bay Regional Water Quality Control Board's Resolution No. 94-102: Policy on the Use of Constructed Wetlands for Urban Runoff Pollution Control and the operations and maintenance requirements contained therein.

F. An authorized enforcement official may require a discharger who has previously received approval of a stormwater management plan, to prepare and submit a revised stormwater management plan for approval if any of the following occurs:

(1) the project was not constructed according to the approved plans; or

(2) the plan as constructed is not adequate for the site; or

(3) the site is not adequately maintained; or

(4) is a significant source of contaminants to the storm drain system.

G. The revised stormwater management plan shall identify the stormwater treatment controls, best management practices, and/or HM controls that will be used by the discharger to prevent or control pollution of stormwater to the maximum extent practicable.

H. If the activity at issue is a construction or land disturbance activity, the revised plan submitted to the city shall at a minimum meet the requirements of the Statewide NPDES Construction General Permit Order 2009-0009 DWQ.

I. Whenever submission of a stormwater management plan or a revised stormwater management plan is required pursuant to this chapter, any authorized enforcement staff may use the CASQA Stormwater BMP Handbook to assess the adequacy of the proposed plan.

### 13.12.110 Watercourse protection.

Except as modified or improved by the city, watercourses shall be maintained by adjacent property owners in a manner consistent with this chapter such that stormwater flow is allowed to pass freely through a watercourse without obstruction. Watercourses shall include the entire riparian area of annual and ephemeral creeks, streams, channels and drainage ditches. The following provisions shall apply to protection of watercourses:

A.

Every person owning property through which a watercourse passes, or such person's lessee or tenant, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation and other materials which would pollute, contaminate, obstruct or significantly retard the flow of water through the watercourse. Any structures that are privately owned within or adjacent to a watercourse shall be maintained by the property owner so that the function and physical integrity of the watercourse is maintained and so that the structures do not become a hazard to the use of the watercourse.

B.

Healthy bank vegetation shall not be removed beyond that necessary for routine maintenance. Watercourse vegetation and erosion control facilities shall be maintained to prevent erosion of the watercourse and sedimentation of downstream portions of the watercourse.

C.

Any person planning a construction or maintenance activity that has the potential to cause erosion and sedimentation of a watercourse shall first apply for and be granted a grading permit from the city pursuant to the city grading ordinance at [Chapter 15.48](#) of the East Palo Alto Municipal Code. Specific best management practices shall be applied to any such activity

which mitigates the potential for erosion and sedimentation in accordance with policies and practices established by the department of public works.

D.

It shall be a violation of this chapter for any person to engage in any of the following activities without first having obtained an approved grading permit from the city pursuant to the city grading ordinance (Chapter 15.48):

1. Construct, alter, dam, divert or bridge any watercourses within the city; or
2. Damage, remove, disturb or destroy any improvements, structures, erosion control or sedimentation facilities within a watercourse; or
3. Remove, mine, dredge or excavate any sand, gravel, soil or material of any kind from any watercourse. Any person desiring to remove an accumulation of sediment from a watercourse shall obtain a grading permit in accordance with the provisions of this chapter and the East Palo Alto grading ordinance.

#### **13.12.115. Trash load reductions.**

A. All projects must install full trash capture devices to collect litter and debris from their project site, prior to connecting to the storm drain collection system. Full trash capture devices that have been approved as meeting the standards set by the San Francisco Bay Regional Water Quality Control Board will be deemed as satisfactory for meeting this requirement.

B. Installed full capture trash devices must be maintained by the property owner for the life of the project, following the manufacturer's recommendations for maintenance.

C. It is a violation of this chapter for any land owner to fail to properly operate and maintain any full capture trash device installed on the owner's property.

#### **13.12.117. Litter prevention and enforcement.**

##### **A. Violations**

1. It is unlawful for any person to sweep, throw, deposit, place, or drop without picking up, any litter into or upon any public street, way, sidewalk, parking lot or other public place, or in or upon private property in the City into or upon which the public is admitted by easement or license.

2. It is unlawful for any person to throw or deposit litter in any fountain, pond, creek, stream or other body of water in a park or elsewhere within the City.

3. It is unlawful for any person to collect any garbage, mixed recyclables, or other materials from public or privately authorized outdoor receptacles, kept or accumulated within the City, unless

such person is an agent or employee of the City acting within the course and scope of his or her employment, or is acting pursuant to a franchise awarded by the City to act as garbage collector.

4. It is unlawful for any person to throw or deposit litter on any occupied private property within the City, whether owned by such person or not.

5. It is unlawful for any person to throw or deposit litter on any open or vacant private property within the City whether or not the property is owned by such person.

6. It is unlawful for any person to drive or move any open vehicle or trailer within the City unless there is a tarp over the contents or the material is constructed and loaded so as to ensure that all litter is prevented from being blown or deposited upon any street, alley or other public or private place.

#### B. Collection and Maintenance

1. Persons placing material intended for disposal or recycling in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being scattered, carried or deposited by the elements or animal scavengers upon any street, sidewalk, parking lot, creek, park or other public or private place.

2. Persons placing material intended for disposal or recycling in any public or privately authorized outdoor receptacle shall ensure that the lid is left completely closed. The over-filling of any outdoor receptacle intended for, but not limited to, trash, compostable organics and recyclables, in a manner that does not allow the lid to be completely closed is prohibited. The lid of a residential yard waste bin may be left partially open so long as the greater part of the yard and tree trimmings are contained if it is necessary to leave the lid partially open due to the branches or limbs not fitting completely into the bin with the lid closed. Yard waste bins containing food waste must be left with lids completely closed when not being serviced.

3. Uncontained large items originating from single-family homes that will not fit into a receptacle may be placed at the curb for scheduled collection within 24 hours of such collection by an agent or employee of the City or by the awardee of a franchise by the City to act as garbage and recycling collector.

4. Persons owning or occupying property shall maintain the premises, including the perimeter and the sidewalk in front of their premises, free of loose litter.

5. Persons sharing receptacles placed outside of retail areas for public use, must also share equally in the responsibility of emptying the receptacles so that they do not overflow and maintaining the area around the receptacles so that it is free of loose litter.

#### C. Exceptions

The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers of general circulation as defined by general law, nor any periodical or current magazine regularly published; provided, however, that no newspaper shall be thrown, deposited or distributed upon any premises where the owner or inhabitant thereof shall have previously advised, in writing, the publisher or distributor of such newspaper not to do so; and no newspaper shall be thrown, deposited or distributed upon any premises where two (2) or more editions of the same newspaper remain unclaimed by the owner or occupant thereof.

**13.12.120 Authority to inspect. Should this section use the same language about community development director or designee?**

A. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized enforcement official has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this chapter, the official may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the official by this chapter; provided that (1) if such building or premises is occupied, he or she shall first present proper credentials and request entry; and (2) if such building or premises is unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

B. Any such request for entry and inspection shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate except as permitted for emergency or [open space](#) inspections. What is the open space inspection all about? In the event the owner and/or occupant refuses entry after such request has been made, the official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

C. In any circumstance where there appears an immediate threat to the public health or safety, any authorized [enforcement officer](#) may enter any [structure](#) or [premises](#) without the consent of any person or [court](#) process.

D. In any circumstances when it is necessary for the purposes of investigating or enforcing the provisions of this chapter, any authorized [enforcement officer](#) may enter [open space](#) areas without forcing entry. The officer may enter such [premises](#) at any time to inspect them, or to perform any duty imposed by law.

Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of stormwater contamination, discharge of nonstormwater to the stormwater system or similar factors.

1..

Authority to Sample and Establish Sampling Devices. The city shall have the right to establish on any property such devices as are necessary to conduct sampling or metering operations with the consent of the owner or occupant or pursuant to a search warrant. Emergency or [open space](#) inspections same

question and samplings may be conducted by any authorized [enforcement officer](#) without the consent of the owner or occupant and without a search warrant. During all inspections, the official may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on-site. Unauthorized tampering, destruction or other interference with a sampling or monitoring device shall constitute a misdemeanor.

2..

Notification of Spills. As soon as any person in charge of a facility or responsible for emergency response for a facility has knowledge of any confirmed or unconfirmed release of materials, pollutants or waste that may result in pollutants or nonstormwater discharges entering the city storm drain system, such person shall take all necessary steps to ensure the discovery, containment and clean up of such release and shall immediately notify the department of community development by telephone and East Palo Alto dispatch at 911 followed by a written confirmation of the notification within five days to the "City of East Palo Alto, Department of Community Development, 2415 University Avenue, East Palo Alto, CA 94303, Attention: Director of Community Development ."

3..

Requirement to Test or Monitor. Any authorized enforcement official may request that any person engaged in any activity and/or owning or operating any facility, which may cause or contribute to an illicit discharge and/or discharge of nonstormwater to the stormwater system undertake such monitoring activities and/or analyses and furnish such reports as the official may specify. The recipient of such request shall undertake and provide the monitoring, analyses and/or reports requested and shall bear all related costs. The burden, including costs, of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained.

4. In the event the owner or operator of a facility subject to a testing or monitoring order fails to conduct required monitoring, analyses and reports in the form required, the authorized [enforcement officer](#) may cause such testing, monitoring and analyses to be performed and the cost thereof, including the reasonable additional administrative costs incurred by city shall be the obligation of the owner or operator and may be recovered by the city.

### **13.12.130 Violations constituting misdemeanors.**

A. Unless otherwise specified by ordinance, it is a misdemeanor for any person to wilfully and knowingly violate any provision of this chapter or fail to comply with any of the mandatory requirements of this chapter. However, notwithstanding any other provisions of

this chapter, any such violation constituting a misdemeanor under this chapter may, in the discretion of the enforcing authority, be charged and prosecuted as an infraction.

B. Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in Cal. Gov't Code § [36901](#).

C. Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in Cal. Gov't Code § [36900](#)<sup>[va12]</sup><sub>[MD13]</sub>

#### **13.12.140 Continuing violation.**

Unless otherwise provided, a person, firm, corporation or organization shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person, firm corporation or organization and shall be punishable accordingly as provided in this chapter.

#### **13.12.150 Actions constituting violation.**

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of such provision. Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the federal Clean Water Act and/or Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalty.

#### **13.12.160 Violations deemed a public nuisance.**

In addition to the penalties provided above, if any condition caused or permitted to exist in violation of any of the provisions of this chapter or orders of the authorized enforcement official is a threat to the public health, safety and welfare and is declared and deemed a nuisance that may be summarily abated and/or restored by any authorized enforcement official, then the city attorney may take civil action to abate, enjoin or otherwise compel the cessation of such nuisance in accordance with [Chapter 8.08](#).

#### **13.12.170 Civil actions.**

In addition to any other remedies provided in the East Palo Alto Municipal Code, any violation of the provisions of this chapter may be enforced by civil action brought by the city, including any or all of the following remedies:

- A.
- A temporary and/or permanent injunction;
- B.

Assessment of the violator for the costs of any investigation, inspection or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this section;

C.

Costs incurred in removing, correcting or terminating the adverse effects resulting from the violation, including reasonable attorney's fees and court costs;

D.

Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. Assessments under this section shall be paid to the city to be used exclusively for costs associated with monitoring and establishing stormwater discharge pollution control systems and/or implementing or enforcing the provisions of this chapter.

### **13.12.180 Administrative enforcement powers.**

In addition to the other enforcement powers and remedies established by this chapter, any authorized enforcement official who determines a violation exists has the authority to utilize administrative remedies, including issuing a notice to abate that will describe the actions that must be taken in order to comply with this chapter.

### **13.12.190 Notice to abate.**

A. Whenever an authorized enforcement official finds any material of any kind in or upon the sidewalk abutting or adjoining any parcel of land or upon any parcel of land that may result in an increase of pollutants in the storm sewer system or nonstormwater discharges, the official may issue a notice to abate for removal of the pollutant in a manner that the official may reasonably require. The recipient of such notice shall undertake the activities as described in the notice.

B. The notice shall specify the East Palo Alto Municipal Code section or state or federal statute violated and state the facts constituting the nuisance. The notice shall specify the corrective action required, including temporary corrective actions when appropriate. The notice shall advise the property owner that failure to correct the nuisance will result in the city's abating the nuisance and collecting the charges by billing or by lien on the property. The notice shall advise the owner and operator he/she must either correct the nuisance or request a hearing in order to avoid city abatement and liability for costs of abatement. The notice shall advise the owner and operator that failure to appeal shall constitute a waiver of the right to administrative hearing to contest the existence of the nuisance.

C. The authorized [enforcement officer](#) may, as necessary, cause at least one copy of the notice bearing title letters at least one inch high reading “NOTICE TO ABATE NUISANCE” to be conspicuously posted on the property.

D. Any nuisance which the authorized [enforcement officer](#) determines is imminently dangerous to the life, limb, health, or safety of the occupants of the property or to the public in general may be summarily abated. Actions taken to abate imminently dangerous property nuisances may include but are not limited to correction or removal of the condition creating the danger and/or the restriction from use of the property on which the dangerous condition exists or any other abatement action determined by the authorized [enforcement officer](#) to be necessary. Summary abatement actions taken by the authorized [enforcement officer](#) shall be fully documented prior to or contemporaneously with abatement. Documentation shall include photograph and/or drawings of the condition and a written statement by the authorized [enforcement officer](#) or other first-hand witnesses as to the circumstance, condition, or occurrence constituting the nuisance.

E. Whenever the authorized [enforcement officer](#) determines that summary abatement is justified by an imminently dangerous condition, circumstance, or occurrence, the authorized [enforcement officer](#) shall give immediate written notice to the property owner and personal notice to the occupant of the [premises](#) as to the nuisance. If the property owner fails to take prompt appropriate action to abate the nuisance, the authorized [enforcement officer](#) may proceed to take abatement action authorized in this chapter to the extent necessary to remedy the immediate danger without further notice or right to a prior hearing. Once summary abatement action has been completed, the property owner may contest the need for and cost of abatement action.

### **13.12.200 Remedies not exclusive.**

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for in this chapter shall be cumulative and not exclusive.

### **13.12.210 Coordination with hazardous materials inventory and response program.**

The first revision of the business plan for any facility subject to the city's hazardous materials inventory and response program shall include a program for compliance with this

chapter and other applicable laws, including the prohibitions on nonstormwater discharges and the requirement to reduce stormwater pollutants to the maximum extent practicable.

**13.12.220 Establishment of fees.**

The city council may adopt, establish and provide for the collection of fees, charges and assessments to defray the cost of the stormwater management program and its enforcement including but not limited to:

- A. Fees for the reimbursement of the costs to establish, operate and conduct stormwater inspection, monitoring and compliance with this chapter;
- B. Fees for NPDES permit applications and compliance with NPDES program requirements including the filing of appeals related to this chapter;
- C. Fees for stormwater discharges into the city storm drain system;
- D. Fees for city functions consistent with NPDES requirements including street sweeping, capital improvements, storm drain system clean up and maintenance;
- E. Administrative, engineering and public service fees related to the management, operation and execution of NPDES permit and program requirements; and
- F. Development fees for compliance with construction and development best management practices.

These fees relate solely to the matters covered by this chapter and are separate from all other fees, fines and penalties which may be charged by the city.

## Chapter 13.12 STORMWATER MANAGEMENT AND DISCHARGE

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### **13.12.010. Title.**

The ordinance codified in this chapter shall be known as the "City of East Palo Alto Stormwater Management and Discharge Control Ordinance" and may be so cited.

### **13.12.020. Purpose and intent.**

The purpose of this chapter is to ensure the future health, safety and general welfare of the city citizens by:

- A. Reducing to the maximum extent practicable nonstormwater discharges to the storm water drainage system;
- B. Controlling the discharge to the storm water drainage system from spills, dumping or disposal of materials other than stormwater;
- C. Enhancing the water quality of watercourses; water bodies and wetlands in a manner pursuant to and consistent with the Clean Water Act (33 U.S.C. Sections 1251 et seq.).

To the extent there is any conflict between the provisions of this chapter and any of the provisions found in chapters in Title 8 of this Code, the provisions of this chapter shall apply.

### **13.12.030. Definitions.**

- A. Any terms defined in the federal Clean Water Act, as amended or supplemented, and/or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency on November 16, 1990 (as may be amended) as used in this chapter shall have the same meaning as in that statute or regulations.
- B. Specifically, the definitions of the following terms included in that statute or regulations are incorporated by reference, as now applicable or as may hereafter be amended: discharge, illicit discharge, pollutant, pollution and stormwater. These terms presently are defined as follows:
  - 1. "Discharge" means (1) any addition of any pollutant to navigable waters from any point source, (2) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or

- other floating craft, or (3) any supplemental runoff which increases the total volume or rate of stormwater runoff from any activity or development.  
Consider dropping supplemental water until after MRP update.
2. "Illicit discharge" means any discharge to the city storm drain system that is not composed entirely of stormwater except discharges pursuant to a NPDES permit and discharges resulting from fire fighting activities or exempted under Section 13.12.090, Exceptions to discharge prohibitions.
  3. "Pollutant" means dredged soil, solid waste, concrete, incinerator residue, sewage, litter, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, automotive-related wastes, wrecked or discarded equipment, rock, sand, cellar dirt or industrial, municipal or agricultural waste, air conditioning condensate, copper, mercury, or other metals, pesticides, trash, chemically treated drinking water, or any other material other than stormwater being discharged.
  4. "Pollution" means the man-made or man-induced alteration of the chemical, physiological, biological or radiological integrity of the water.
  5. "Stormwater" means stormwater runoff, snow melt runoff and surface runoff and drainage, excluding supplemental runoff.
  6. "Supplemental runoff" means any increment of increase in the total volume or rate of stormwater runoff resulting from any activity or development occurring after the effective date of the ordinance codified in this chapter.
- C. When used in this chapter, the following words shall have the meanings ascribed to them in this section.
1. "Authorized enforcement official" means the city manager or designee who is authorized to enforce the provisions of this chapter.
  2. "Best management practices" (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention practices, maintenance procedures or other management practices to prevent or reduce the discharge of pollutants or supplemental runoff directly or indirectly to waters of the United States. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.
  3. "City" means the city of East Palo Alto.
  4. "City storm drain system" means and includes but is not limited to those facilities within the city by which stormwater may be conveyed to waters of the

United States, including any roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains, which are not part of a publicly owned treatment works (POTW) as defined at 40 CFR Section 122.2.

5. "Nonstormwater discharge" means any discharge including supplemental runoff that is not entirely composed of stormwater.
6. "Premises" means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
7. "Watercourse" means a natural stream, creek or man-made uncovered channel through which water flows continuously or intermittently.

#### **13.12.040. Responsibility for administration.**

Water from city drains flows into watercourses, such as the San Francisquito Creek. This chapter shall be administered for the city by the city manager or designee. Storm drain facilities and/or watercourses which are owned, operated or maintained by a public agency other than the city are the legal responsibility of such agency and that agency bears the responsibility for enforcing the provisions of this chapter with respect to those facilities and watercourses. Pollution sources which originate within the boundaries of the City of East Palo Alto are within the jurisdiction of the city to address.

#### **13.12.050. Construction and application.**

This chapter shall be construed to assure consistency with the requirements of the Federal Clean Water Act, as amended or supplemented, applicable implementing regulations and whatever is the most current NPDES Permit applicable to the city.

#### **13.12.060. Waiver procedures.**

- A. It is the intent of this chapter to protect and enhance water quality while respecting the rights of private property owners to economically viable use of land. It is not the intent of this chapter to prohibit all economically viable uses of any private lands, nor to result in a confiscatory impact. Accordingly, the purpose of this section is to provide for an administrative procedure for a waiver or modification of a particular provision of this chapter in the event the strict application of this chapter would result in the denial of all economically viable use of real property.

- B. An applicant for a waiver of a provision of this chapter shall file a waiver application with the director of community development on a form provided by the director identifying the provision sought to be waived or modified. The applicant shall file a complete form and shall provide all documentation and information required by the director to determine whether application of the provision in question will prohibit any economically confiscatory result.
- C. The city manager or designee may approve, deny or conditionally approve a waiver application upon making all of the following written findings:
  - 1. That the strict application of the provision for which a waiver or modification is sought would result in the denial of all economically viable use of the real property in question;
  - 2. To the maximum extent feasible, conditions have been placed upon such a waiver or modification in order to achieve the goals of this chapter as closely as possible while still allowing economically viable use of the real property in question; and
  - 3. Approval of such a waiver will not result in a public nuisance which would constitute a significant and direct threat to public health or safety.

**13.12.070. Illicit discharge prohibited.**

- A. It is unlawful to cause, allow, or permit to be discharged, any discharge not composed entirely of stormwater to the storm drain system or to surface waters or to any location where it would contact or eventually be transported to surface waters, including flood plain areas, unless specifically called out in the Municipal Regional Permit as an exempt or conditionally exempt discharge.
- B. It is unlawful to cause or allow discharges including, but not limited to pool water, carwash water, ongoing and large-volume landscape irrigation water, sediment, stockpiled material, rubbish, refuse, bark, sawdust, solid wastes or hazardous materials to be deposited in such a manner or location as to constitute a threatened discharge into storm drains, gutters, or watercourses.
- C. It is unlawful to throw, deposit, leave, abandon, maintain or keep materials or wastes on public or private lands in a manner and place where they may result in an illicit discharge.

- D. The discharge of nonstormwater discharges to the city storm drainage system is prohibited. All discharges of material other than stormwater must be in compliance with a NPDES permit issued for the discharge and this chapter. Any nonstormwater discharge that is not allowed under a NPDES permit or this chapter is in illicit discharge. It is prohibited to commence or continue any illicit discharges to the city storm drain system. Establishment, maintenance or continuation of any illicit discharge and appurtenant connection to the city storm drain system is prohibited. This prohibition is expressly retroactive and applies to connections made in the past, regardless of whether made under a permit or other authorization or whether permissible under the law or practices applicable or prevailing at the time of the connection.
- E. Allowable discharges to the storm drain system shall not cause any impairment in the beneficial uses or quality of water of the state as defined in the California Water Code or any special requirements of the Regional Water Quality Control Board, San Francisco Bay Region or to injure or interfere with the operation of the State's watercourses. City may, from time to time, by resolution of the City Council adopt supplementary policies, rules and regulations on discharge into any storm drain or watercourse which shall have the same force and effect as if set forth herein and for which the remedies herein for violation shall be applicable.
- F. Separately Permitted Discharges regulated under a valid facility-specific NPDES permit or facility-specific Regional Water Quality Control Board waste discharge requirements permit, not including a state general permit, shall be regulated exclusively by the Regional Water Quality Control Board and are exempt from discharge prohibitions established by this chapter, provided compliance with all relevant permit conditions is maintained to the satisfaction of the Board. Stormwater discharges at a facility with a facility specific permit which only addresses process discharges or non-stormwater discharges are not exempted

### **13.12.080. Exceptions to discharge prohibition.**

The following discharges are exempt from the prohibition set forth in Section 13.12.070 above.

- A. Any discharge regulated under a National Pollutant Discharge Elimination System (NPDES) permit issued to the discharger and administered by the state under authority of the United States Environmental Protection Agency, provided

that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.

- B. Discharges from the following activities will not be considered a source of pollutants or supplemental runoff to waters of the United States when properly managed: water line flushing and other discharges from untreated groundwater sources, , rising groundwaters, groundwater infiltration into separate storm drains, uncontaminated pumped groundwater, foundation and footing drains, water from crawl space pumps, air conditioning condensation, natural springs, individual residential car washings, flows from riparian habitats and wetlands, or flows from fire fighting and other emergency response activity. Accordingly these activities are not subject to the prohibition on discharges, unless determined to be a nuisance pursuant to Chapter 8.08 of the East Palo Alto Municipal Code or other applicable law.
- C. Exemptions Not Absolute. Any discharge category (exempt or conditionally exempt) that is a significant source of pollutant to waters of the United States shall be prohibited from entering the storm drain system, or shall be subjected to a requirement to implement additional best management practices to reduce pollutants in the discharge to the maximum extent practicable. Such prohibitions shall be effective on a schedule specified by an authorized enforcement official in a written notice to the discharger. The schedule may take into account the nature and severity of any effects caused by the discharge; and the time required to design, engineer, fund, procure, construct and make appropriate best management practices operational.
- D. Non-Stormwater Discharge. This prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the state of California under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations. The authorized enforcement official may exempt in writing other non-stormwater discharges which are not a source of pollutants to the storm drain system upon approval by the Executive Officer of the San Francisco Bay Regional Water Quality Control Board.

**13.12.090. Discharge in violation of permit.**

Any discharge that would result in or contribute to a violation of the applicable NPDES Permit , the terms of which are incorporated by reference and which is on file in the office of the city clerk, and any amendment, revision or reissuance of it, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify and hold harmless the city in any administrative or judicial enforcement action relating to such discharge.

**13.12.100. Reduction of pollutants and supplemental runoff in stormwater.**

All persons shall provide protection from accidental discharge of non-stormwater into any storm drain or watercourse. Measures to prevent accidental discharge of prohibited materials shall be provided and maintained at the user's or property owner's expense. Any person engaged in activities which will or may result in pollutants or supplemental runoff entering the city storm drain system shall undertake all practicable measures to reduce such pollutants or supplemental runoff. Examples of such activities include ownership and use of facilities which may be a source, such as parking lots, gasoline stations, industrial facilities, commercial facilities, stores fronting city streets, etc. Examples of supplemental runoff include calculated hydrologic increases in stormwater runoff resulting from an increase in impervious surfaces due to construction or development, diversion of stormwater runoff from naturally occurring tributaries, discharge of stormwater detained through the use of detention facilities designed to change the rate of stormwater flow from a development, or alteration of site runoff characteristics due to impervious pavements, structural modifications or landscaping alterations. The following minimal requirements shall apply:

- A. Littering. No person shall throw, deposit, leave, maintain, keep or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles or accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, watercourse, business place or upon any public or private lot of land in the city, so that the same might be or become a pollutant, except in a manner lawfully established for the disposal of garbage, refuse and recyclables.

1. The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee or proprietor of any real property in the city in front of which there is a paved sidewalk shall maintain the sidewalk free of dirt or litter as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants or supplemental runoff to the city storm drain system. Sweepings from the sidewalk shall not be swept or otherwise made or allowed to go into the gutter or street, but shall be disposed of in a receptacle maintained on the property as required for the disposal of garbage, refuse or recyclables.
  2. No person shall throw or deposit litter in any fountain, pond, lake, stream or any other body of water in a park or elsewhere in the city.
  3. The city manager may authorize the disposal of organic or nonorganic waste as permitted by general law. What is this for?
- B. Standard for Parking Lots and Similar Structures. Persons owning or operating a parking lot, gas station pavement or similar structure having impermeable surfaces shall clean those structures as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants or supplemental runoff to the city storm drain system.
- C. Best Management Practices for Development and Construction. Any construction contractor performing work in the city shall implement CASQA or Caltrans best management practices to ensure stormwater protection. The city is required to establish controls on the volume and rate of stormwater runoff from new developments and redevelopments as necessary to minimize the discharge and transport of pollutants or supplemental runoff.
- D. Compliance with Best Management Practices. When best management practices, plans, programs, guidelines or requirements have been adopted by any federal, state, regional entity or the city for any activity, operation or facility which may cause or contribute to stormwater pollution or contamination and/or discharge of non-stormwater or supplemental runoff drop to the stormwater system, every person undertaking such activity or operation, or owning or operating such facility shall comply with such plans, programs, guidelines or requirements as may be identified by the city.
- E. Compliance with General Permits. Each industrial discharger, discharger associated with construction activity, or other discharger, described in any general stormwater permit addressing such discharges as may be adopted by

the United States Environmental Protection Agency, the State Water Resources Control Board, or the San Francisco Bay Regional Water Quality Control Board, shall provide notice of intent, comply with, and undertake all activities required by any general stormwater permit applicable to such discharges. Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by such permit.

### **13.12.105. Development design requirements.**

New and in-fill projects shall incorporate stormwater treatment measures and site design techniques to minimize stormwater runoff pollution. New and in-fill redevelopment projects shall conform to the following:

- A. Best Management Practices (BMPs) for New Developments and In-Fill Projects. Any construction contractor performing work in the city shall implement erosion control measures on site to retain all debris, dirt and pollutants, and prevent the pollutants from flowing into the city's storm drain system. The city manager or designee may adopt regulations establishing controls on the volume and rate of stormwater runoff from new developments and in-fill projects as appropriate to minimize the discharge and transport of pollutants.
- B. Impervious Areas. Parking lots and other impervious areas shall be designed to drain stormwater runoff to vegetated draining swales, filter strips, landscaping or other approved treatment devices prior to the discharge into the storm drain systems.
- C. Surfacing. Off-street parking, loading and driveway areas: (1) shall be paved with permeable material, asphalt or Portland cement, and (2) except for single-family and two-family developments on individual lots, shall be bounded by concrete curb six inches in height. The area shall be graded and drained to dispose of all surface water accumulated within the area. Guidance regarding to where surface water shall drain may be found in the city's urban runoff standard conditions of approval. Directly connected impervious surfaces shall be minimized.

- D. Operation and Maintenance Agreements. All projects incorporating post-construction stormwater treatment controls (e.g., vegetated swales, filter strips, detention ponds, etc.) shall develop, execute and record an operation and maintenance plan for each type of control measure or device that outlines specific maintenance activities, including vector control, required for optimal performance of said post-construction stormwater treatment control. The operation and maintenance agreement shall run with the land, and shall be recorded in the office of the San Mateo County clerk-recorder.
- E. Pedestrian Networks. The use of alternative materials for on-site walkways such as pervious concrete, decomposed granite, etc., rather than conventional walkways shall be encouraged for pedestrian networks, provided they meet disabled access requirements.
- F. Rooftop Runoff. Runoff areas shall drain through disconnected roof leaders and/or front yard bubblers that discharge to landscaped, vegetated or other runoff treatment areas and are properly located to prevent erosion of landscaped materials.
- G. Hydrograph Modification Management Plan (HMP). Post-construction flow shall not exceed predevelopment discharge, as required by the NPDES permit and to the extent practicable.
- H. Stenciling. All storm drain inlets shall be stenciled “No Dumping – Drains to Bay” using thermoplastic. Alternative inlet stencils or marking may be permitted, subject to city approval during plan check review.

### **13.12.107. Stormwater management plan requirements**

- A. All applications for any city permit or approval required for land disturbance activities, construction, or development for any regulated project subject to this chapter must include a stormwater management plan.
- B. The stormwater management plan shall be accompanied by plans and related documentation demonstrating how the requirements of this chapter will be met, and the permit or approval shall not be granted unless the authorized enforcement official determines that the plan complies with the requirements of this chapter.

- C. At the discretion of the authorized enforcement official, the stormwater management plan shall include, but is not limited to, the following:
1. Name and address of regulated project;
  2. Responsible operator(s) of each treatment system and hydromodification (HM) control (if any);
  3. A description of activities and pollutant sources;
  4. Specific descriptions of the locations (or a map showing locations) of the installed stormwater treatment system(s) and HM controls (if any);
  5. Description of the type and size of the installed stormwater treatment systems and HM controls, if applicable;
  6. Description of applicable operation and maintenance procedures, including recommended inspections, for all structural best management practices/installed stormwater treatment systems, as recommended by the manufacturer or as referenced in the CASQA Stormwater Best Management Practice Handbook;
  7. Description of record keeping and internal procedures to ensure documentation and verification of applicable operational maintenance procedures. These records shall remain available for a period of at least three years;
  8. A completed stormwater management plan data form;
  9. A copy of the required third party certification for the regulated projects adherence to the numeric sizing criteria for stormwater treatment systems; and
  10. Property owners shall ensure that onsite, joint, or offsite stormwater treatment system(s) and HM controls installed to meet the requirements for regulated projects are properly operated and maintained for the life of the project.
- D. In cases where the property owner for a stormwater treatment system or HM control has worked diligently and in good faith with the appropriate state and federal agencies to obtain approvals necessary to complete maintenance activities for the treatment system or HM control, but the approvals are not granted, the property owner will be considered to be in compliance with subsection C.(10).
- E. Constructed wetlands installed by regulated projects for urban runoff treatment shall abide by the San Francisco Bay Regional Water Quality Control Board's Resolution No. 94-102: Policy on the Use of Constructed Wetlands for Urban

Runoff Pollution Control and the operations and maintenance requirements contained therein.

- F. An authorized enforcement official may require a discharger who has previously received approval of a stormwater management plan, to prepare and submit a revised stormwater management plan for approval if any of the following occurs:
  - 1. the project was not constructed according to the approved plans; or
  - 2. the plan as constructed is not adequate for the site; or
  - 3. the site is not adequately maintained; or
  - 4. is a significant source of contaminants to the storm drain system.
  
- G. The revised stormwater management plan shall identify the stormwater treatment controls, best management practices, and/or HM controls that will be used by the discharger to prevent or control pollution of stormwater to the maximum extent practicable.
  
- H. If the activity at issue is a construction or land disturbance activity, the revised plan submitted to the city shall at a minimum meet the requirements of the Statewide NPDES Construction General Permit Order 2009-0009 DWQ.
  
- I. Whenever submission of a stormwater management plan or a revised stormwater management plan is required pursuant to this chapter, any authorized enforcement staff may use the CASQA Stormwater BMP Handbook to assess the adequacy of the proposed plan.

### **13.12.110. Watercourse protection.**

Except as modified or improved by the city, watercourses shall be maintained by adjacent property owners in a manner consistent with this chapter such that stormwater flow is allowed to pass freely through a watercourse without obstruction. Watercourses shall include the entire riparian area of annual and ephemeral creeks, streams, channels and drainage ditches. The following provisions shall apply to protection of watercourses:

- A. Every person owning property through which a watercourse passes, or such person's lessee or tenant, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation and other materials which would pollute, contaminate, obstruct or significantly retard the flow of water through the watercourse. Any structures that are privately owned within or

adjacent to a watercourse shall be maintained by the property owner so that the function and physical integrity of the watercourse is maintained and so that the structures do not become a hazard to the use of the watercourse.

- B. Healthy bank vegetation shall not be removed beyond that necessary for routine maintenance. Watercourse vegetation and erosion control facilities shall be maintained to prevent erosion of the watercourse and sedimentation of downstream portions of the watercourse.
- C. Any person planning a construction or maintenance activity that has the potential to cause erosion and sedimentation of a watercourse shall first apply for and be granted a grading permit from the city pursuant to the city grading ordinance at Chapter 15.48 of the East Palo Alto Municipal Code. Specific best management practices shall be applied to any such activity which mitigates the potential for erosion and sedimentation in accordance with policies and practices established by the department of public works.
- D. It shall be a violation of this chapter for any person to engage in any of the following activities without first having obtained an approved grading permit from the city pursuant to the city grading ordinance (Chapter [15.48](#)):
  - 1. Construct, alter, dam, divert or bridge any watercourses within the city; or
  - 2. Damage, remove, disturb or destroy any improvements, structures, erosion control or sedimentation facilities within a watercourse; or
  - 3. Remove, mine, dredge or excavate any sand, gravel, soil or material of any kind from any watercourse. Any person desiring to remove an accumulation of sediment from a watercourse shall obtain a grading permit in accordance with the provisions of this chapter and the East Palo Alto grading ordinance.

### **13.12.115. Trash load reductions.**

- A. All projects must install full trash capture devices to collect litter and debris from their project site, prior to connecting to the storm drain collection system. Full trash capture devices that have been approved as meeting the standards set by the San Francisco Bay Regional Water Quality Control Board will be deemed as satisfactory for meeting this requirement.

- B. Installed full capture trash devices must be maintained by the property owner for the life of the project, following the manufacturer's recommendations for maintenance.
- C. It is a violation of this chapter for any land owner to fail to properly operate and maintain any full capture trash device installed on the owner's property.

### **13.12.117. Litter prevention and enforcement.**

#### A. Violations

1. It is unlawful for any person to sweep, throw, deposit, place, or drop without picking up, any litter into or upon any public street, way, sidewalk, parking lot or other public place, or in or upon private property in the city into or upon which the public is admitted by easement or license.
2. It is unlawful for any person to throw or deposit litter in any fountain, pond, creek, stream or other body of water in a park or elsewhere within the city.
3. It is unlawful for any person to collect any garbage, mixed recyclables, or other materials from public or privately authorized outdoor receptacles, kept or accumulated within the city, unless such person is an agent or employee of the city acting within the course and scope of his or her employment, or is acting pursuant to a franchise awarded by the city to act as garbage collector.
4. It is unlawful for any person to throw or deposit litter on any occupied private property within the city, whether owned by such person or not.
5. It is unlawful for any person to throw or deposit litter on any open or vacant private property within the city whether or not the property is owned by such person.
6. It is unlawful for any person to drive or move any open vehicle or trailer within the city unless there is a tarp over the contents or the material is constructed and loaded so as to ensure that all litter is prevented from being blown or deposited upon any street, alley or other public or private place.
7. It is unlawful for any person to park a vehicle or trailer or to place any equipment or other materials in the public right-of-way that blocks or impedes the ability of the city to sweep the street and gutter on the designated day.

#### B. Collection and Maintenance

1. Persons placing material intended for disposal or recycling in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being scattered, carried or deposited by the elements or

- animal scavengers upon any street, sidewalk, parking lot, creek, park or other public or private place.
2. Persons placing material intended for disposal or recycling in any public or privately authorized outdoor receptacle shall ensure that the lid is left completely closed. The over-filling of any outdoor receptacle intended for, but not limited to, trash, compostable organics and recyclables, in a manner that does not allow the lid to be completely closed is prohibited. The lid of a residential yard waste bin may be left partially open so long as the greater part of the yard and tree trimmings are contained if it is necessary to leave the lid partially open due to the branches or limbs not fitting completely into the bin with the lid closed. Yard waste bins containing food waste must be left with lids completely closed when not being serviced.
  3. Uncontained large items originating from single-family homes that will not fit into a receptacle may be placed at the curb for scheduled collection within 24 hours of such collection by an agent or employee of the city or by the awardee of a franchise by the city to act as garbage and recycling collector.
  4. Persons owning or occupying property shall maintain the premises, including the perimeter and the sidewalk in front of their premises, free of loose litter.
  5. Persons sharing receptacles placed outside of retail areas for public use, must also share equally in the responsibility of emptying the receptacles so that they do not overflow and maintaining the area around the receptacles so that it is free of loose litter.

#### C. Exceptions

The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers of general circulation as defined by general law, nor any periodical or current magazine regularly published; provided, however, that no newspaper shall be thrown, deposited or distributed upon any premises where the owner or inhabitant thereof shall have previously advised, in writing, the publisher or distributor of such newspaper not to do so; and no newspaper shall be thrown, deposited or distributed upon any premises where two (2) or more editions of the same newspaper remain unclaimed by the owner or occupant thereof.

### **13.12.120. Authority to inspect.**

- A. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized enforcement official has reasonable

cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this chapter, the official may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the official by this chapter; provided that (1) if such building or premises is occupied, he or she shall first present proper credentials and request entry; and (2) if such building or premises is unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

- B. Any such request for entry and inspection shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate except as permitted for emergency or open space inspections. In the event the owner and/or occupant refuses entry after such request has been made, the official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.
- C. In any circumstance where there appears an immediate threat to the public health or safety, any authorized enforcement officer may enter any structure or premises without the consent of any person or court process.
- D. In any circumstances when it is necessary for the purposes of investigating or enforcing the provisions of this chapter, any authorized enforcement officer may enter open space areas without forcing entry. The officer may enter such premises at any time to inspect them, or to perform any duty imposed by law.
- E. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of stormwater contamination, discharge of nonstormwater to the stormwater system or similar factors.
  - 1. Authority to Sample and Establish Sampling Devices. The city shall have the right to establish on any property such devices as are necessary to conduct sampling or metering operations with the consent of the owner or occupant or pursuant to a search warrant. Emergency or open space inspections same question and samplings may be conducted by any authorized enforcement officer without the consent of the owner or occupant and without a search warrant. During all inspections, the official may take any samples deemed

- necessary to aid in the pursuit of the inquiry or in the recordation of the activities on-site. Unauthorized tampering, destruction or other interference with a sampling or monitoring device shall constitute a misdemeanor.
2. Notification of Spills. As soon as any person in charge of a facility or responsible for emergency response for a facility has knowledge of any confirmed or unconfirmed release of materials, pollutants or waste that may result in pollutants or nonstormwater discharges entering the city storm drain system, such person shall take all necessary steps to ensure the discovery, containment and clean up of such release and shall immediately notify the department of community development by telephone and East Palo Alto dispatch at 911 followed by a written confirmation of the notification within five days to the "City of East Palo Alto, Department of Community Development, 2415 University Avenue, East Palo Alto, CA 94303, Attention: Director of Community Development ."
  3. Requirement to Test or Monitor. Any authorized enforcement official may request that any person engaged in any activity and/or owning or operating any facility, which may cause or contribute to an illicit discharge and/or discharge of nonstormwater to the stormwater system undertake such monitoring activities and/or analyses and furnish such reports as the official may specify. The recipient of such request shall undertake and provide the monitoring, analyses and/or reports requested and shall bear all related costs. The burden, including costs, of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained.
  4. In the event the owner or operator of a facility subject to a testing or monitoring order fails to conduct required monitoring, analyses and reports in the form required, the authorized enforcement officer may cause such testing, monitoring and analyses to be performed and the cost thereof, including the reasonable additional administrative costs incurred by city shall be the obligation of the owner or operator and may be recovered by the city.

### **13.12.130. Violations constituting misdemeanors.**

- A. Unless otherwise specified by ordinance, it is a misdemeanor for any person to wilfully and knowingly violate any provision of this chapter or fail to comply with any of the mandatory requirements of this chapter. However, notwithstanding any other provisions of this chapter, any such violation constituting a misdemeanor

under this chapter may, in the discretion of the enforcing authority, be charged and prosecuted as an infraction.

- B. Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in Cal. Gov't Code § 36901.
- C. Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in Cal. Gov't Code § 36900

#### **13.12.140. Continuing violation.**

Unless otherwise provided, a person, firm, corporation or organization shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person, firm corporation or organization and shall be punishable accordingly as provided in this chapter.

#### **13.12.150. Actions constituting violation.**

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of such provision. Any person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the federal Clean Water Act and/or Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalty.

#### **13.12.160. Violations deemed a public nuisance.**

In addition to the penalties provided above, if any condition caused or permitted to exist in violation of any of the provisions of this chapter or orders of the authorized enforcement official is a threat to the public health, safety and welfare and is declared and deemed a nuisance that may be summarily abated and/or restored by any authorized enforcement official, then the city attorney may take civil action to abate, enjoin or otherwise compel the cessation of such nuisance in accordance with Chapter 8.08.

**13.12.170. Civil actions.**

In addition to any other remedies provided in the East Palo Alto Municipal Code, any violation of the provisions of this chapter may be enforced by civil action brought by the city, including any or all of the following remedies:

- A. A temporary and/or permanent injunction;
- B. Assessment of the violator for the costs of any investigation, inspection or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this section;
- C. Costs incurred in removing, correcting or terminating the adverse effects resulting from the violation, including reasonable attorney's fees and court costs;
- D. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. Assessments under this section shall be paid to the city to be used exclusively for costs associated with monitoring and establishing stormwater discharge pollution control systems and/or implementing or enforcing the provisions of this chapter.

**13.12.180. Administrative enforcement powers.**

In addition to the other enforcement powers and remedies established by this chapter, any authorized enforcement official who determines a violation exists has the authority to utilize administrative remedies, including issuing a notice to abate that will describe the actions that must be taken in order to comply with this chapter.

**13.12.190. Notice to abate.**

- A. Whenever an authorized enforcement official finds any material, container, debris or equipment of any in or upon the street or sidewalk abutting or adjoining any parcel of land or upon any parcel of land that may result in an increase of pollutants in the storm sewer system or nonstormwater discharges, the official may issue a notice to abate for removal of the pollutant in a manner that the official may reasonably require. The recipient of such notice shall undertake the activities as described in the notice.
- B. The notice shall specify the East Palo Alto Municipal Code section or state or federal statute violated and state the facts constituting the nuisance. The notice

shall specify the corrective action required, including temporary corrective actions when appropriate. The notice shall advise the property owner that failure to correct the nuisance will result in the city's abating the nuisance and collecting the charges by billing or by lien on the property. The notice shall advise the owner and operator he/she must either correct the nuisance or request a hearing in order to avoid city abatement and liability for costs of abatement. The notice shall advise the owner and operator that failure to appeal shall constitute a waiver of the right to administrative hearing to contest the existence of the nuisance.

- C. The authorized enforcement officer may, as necessary, cause at least one copy of the notice bearing title letters at least one inch high reading "NOTICE TO ABATE NUISANCE" to be conspicuously posted on the property.
- D. Any nuisance which the authorized enforcement officer determines is imminently dangerous to the life, limb, health, or safety of the occupants of the property or to the public in general may be summarily abated. Actions taken to abate imminently dangerous property nuisances may include but are not limited to correction or removal of the condition creating the danger and/or the restriction from use of the property on which the dangerous condition exists or any other abatement action determined by the authorized enforcement officer to be necessary. Summary abatement actions taken by the authorized enforcement officer shall be fully documented prior to or contemporaneously with abatement. Documentation shall include photograph and/or drawings of the condition and a written statement by the authorized enforcement officer or other first-hand witnesses as to the circumstance, condition, or occurrence constituting the nuisance.
- E. Whenever the authorized enforcement officer determines that summary abatement is justified by an imminently dangerous condition, circumstance, or occurrence, the authorized enforcement officer shall give immediate written notice to the property owner and personal notice to the occupant of the premises as to the nuisance. If the property owner fails to take prompt appropriate action to abate the nuisance, the authorized enforcement officer may proceed to take abatement action authorized in this chapter to the extent necessary to remedy the immediate danger without further notice or right to a prior hearing. Once summary abatement action has been completed, the property owner may contest the need for and cost of abatement action.

**13.12.200. Remedies not exclusive.**

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for in this chapter shall be cumulative and not exclusive.

**13.12.210. Coordination with hazardous materials inventory and response program.**

The first revision of the business plan for any facility subject to the city's hazardous materials inventory and response program shall include a program for compliance with this chapter and other applicable laws, including the prohibitions on nonstormwater discharges and the requirement to reduce stormwater pollutants to the maximum extent practicable.

**13.12.220. Establishment of fees.**

The city council may adopt, establish and provide for the collection of fees, charges and assessments to defray the cost of the stormwater management program and its enforcement including but not limited to:

- A. Fees for the reimbursement of the costs to establish, operate and conduct stormwater inspection, monitoring and compliance with this chapter;
- B. Fees for NPDES permit applications and compliance with NPDES program requirements including the filing of appeals related to this chapter;
- C. Fees for stormwater discharges into the city storm drain system;
- D. Fees for city functions consistent with NPDES requirements including street sweeping, capital improvements, storm drain system clean up and maintenance;
- E. Administrative, engineering and public service fees related to the management, operation and execution of NPDES permit and program requirements; and
- F. Development fees for compliance with construction and development best management practices.

These fees relate solely to the matters covered by this chapter and are separate from all other fees, fines and penalties which may be charged by the city.

# PROCLAMATION

## ***A PROCLAMATION OF THE CITY OF EAST PALO ALTO HONORING BEVERLY BEASELY JOHNSON, J.D. ON HER RETIREMENT***

**Whereas**, Beverly Beasley Johnson J.D. brought a fresh, compassionate, visionary, collaborative and transformative brand of leadership to the East Palo Alto (EPA) community as both a resident and the San Mateo County executive assigned to be the Director of the Human Services Agency (HSA); and

**Whereas**, during her seven-year tenure as HSA Director, Ms. Johnson confidently took the helm of a challenging assignment, performing exemplary and effective work that transformed HSA policies and practices to ensure excellence in service provision to all of the San Mateo County communities she served, in general, and increased allocation of County resources to the East Palo Alto (EPA) community, in particular; and

**Whereas**, Ms. Johnson HSA Director accomplishments brought myriad benefits to EPA residents in greatest need and distinguished her as a shining star, a lovely gift and a formidable champion of quality of life improvement initiatives; and

**Whereas**, Beverly also partnered extensively with One East Palo Alto to facilitate efforts to achieve the goals of the East Palo Alto Crime Reduction Task Force as well as bring innovative subsidized employment opportunities to residents, such as the Sponsored Employment Program and the David E. Lewis Yes You Can Work program; and

**Whereas**, Beverly also partnered with other collaborative efforts in EPA to address the needs of the City's unhoused/homeless population and helped to garner San Mateo County funding to support establishment of Project WeHOPE's Shelter, the first of its kind in EPA; and

**Whereas**, Ms. Johnson has served as an active member of the East Palo Alto African American Leadership Summit (EPAAALS) for the last several years, making *priceless* contributions to numerous EPAAALS efforts to give voice to EPA African American residents' concerns; and

**Whereas**, Ms. Johnson demonstrated fearlessness in the face of formidable challenges and a relentless commitment to strive for excellence in working to achieve goals that would benefit all cultures, as she led by example, modeling a style generally acknowledged as classy, elegant, and professional.

***NOW, THEREFORE, BE IT RESOLVED*** that the City Council of East Palo Alto hereby honors Beverly Beasley Johnson, J.D. on her retirement, and commends her dedication and compassion to the people of East Palo Alto and San Mateo County and her 38 years of outstanding public service helping children, families, and adults.

*Signed April 1, 2014*

*Attested by:*

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Honorable Vice Mayor  
Lisa Gauthier




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Nora Pimentel Deputy City Clerk



**CITY OF EAST PALO ALTO**  
**OFFICE OF THE CITY MANAGER**  
2415 UNIVERSITY AVENUE  
EAST PALO ALTO, CA 94303

Policy and Action  
Item: #9A

### **City Council Agenda Report**

**Date:** April 1, 2014  
**To:** Honorable Mayor and Members of the City Council  
**Via:** Magda A. González, City Manager  
**From:** Valerie J. Armento, Special Counsel  
**Subject:** Ordinances Providing Tenant Protections

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#### **Recommendation**

Waive reading and introduce:

1. Ordinance enacting Municipal Code Chapter 14.02 providing a variety of general tenant protection measures.
2. Ordinance amending Section 6121 of the Zoning Ordinance adding provisions related to tenant parking.
3. Ordinance revising provisions of the City's Ellis Act Ordinance, Municipal Code Chapter 14.08 related to the demolition and replacement of rent stabilized units.

#### **Alignment with City Council Strategic Plan**

This recommendation is primarily aligned with:

- Priority #3: Increase Organizational Effectiveness and Efficiency
- Priority #5: Improve Communication and Enhance Community Engagement
- Priority #6: Create a Healthy and Safe Community

#### **Background**

In 2011, the City Council indicated an interest in adopting some tenant protection measures and in 2013 it renewed that interest. At the October 1, 2013 City Council meeting, direction was given to return to the Council with one or more ordinances covering a wide variety of tenant protection items previously identified as being of interest to the City Council. The tenant protection provisions are intended to apply to all residential tenants, not only tenants in rent stabilized units.

In 2011, the City Council revised the City's Ellis Act provisions; however several additional revisions would better address the subject of demolition and replacement of units subject to the Rent Stabilization Ordinance.

The City Council considered this subject at its January 21, 2014 meeting. At that time, both tenant representatives and landlord representatives expressed concerns about various aspects of what was being proposed. Since then, staff has conferred with representatives of both sets of interests and many areas have been worked out with relevant changes made to the draft ordinances. City staff also has provided input on aspects of certain proposals. On some points policy differences remain between landlord and tenant interests, however.

### **Analysis**

Three ordinances have been drafted.

The first ordinance, which is the major focus of this report, presents a completely new regulatory chapter and includes numerous provisions dealing with a range of topics that have been of concern to tenants and tenant advocates, although some issues are considered more critical than others. This ordinance would add a comprehensive chapter entitled "Tenant Protections" to the Municipal Code title on Housing.

The second ordinance is narrowly focused on the subject of tenant parking and is an addition to the Zoning Ordinance provisions concerning parking. The proposed provisions would apply to both residential and commercial parking. The new provisions are intended to assure that required parking is made available in the amounts and for the purposes required.

The third ordinance revises a portion of the City's Ellis Act to spell out in greater detail the requirements which apply if rent stabilized units are withdrawn from rental housing, and then re-rented within the two year, five year and ten year timeframes set forth in state law. The revisions are primarily a restatement of state law, but organized chronologically in an effort to be more orderly, consistent and clear.

The major differences between the tenant representatives and the landlord representatives are focused on a few topics. Attached to this report are letters from both the SSL law firm, which represents EQR, and Community Legal Services (CLS), which represents many tenants. The letters discuss the points on which the parties do not agree. After receiving the two letters, staff made additional revisions to the staff proposal. The ordinance presented with this report does not reflect wholly one side or the others suggested changes on the contested provisions.

The main topics in issue:

1. Tenant organizational rights and literature distribution

Staff has included a definition for "tenant organizer" but not identical to the one proposed by CLS, and has revised the provisions on organizational rights and literature distribution to address what appear to be the key concerns of both groups but does not reflect the exact language proposed by either.

2. Unilateral lease changes
3. Occupancy standards

Staff has not incorporated the proposed sections on unilateral lease changes or occupancy standards proposed by CLS. These topics are more appropriately governed by state law and are beyond the capacity of the City to enforce as proposed. Staff retained the references to the Uniform Housing Code in the section concerning minor children to emphasize that when a couple has a child it is not a basis for evicting them from a “two person” apartment. CLS raised a valid point with regard to a subsection in tenant harassment related to evictions being confusing and staff revised and relocated the sentence in question.

4. Demolition permits

In response to comments by SSL on demolition permits, staff has redrafted that section to better address both the City’s and SSL’s concerns. Staff believes the demolition permit requirements stated are consistent with state law and overall practice.

5. Temporary relocation
6. Permanent relocation

Relocation provisions, both in temporary and permanent situations, appear to be the area of greatest difference between the two groups. Staff has some difficulty agreeing with the premise underlying the provision proposed by CLS as articulated by CLS – that tenants are displaced because the landlord failed to maintain the unit – because there are a variety of reasons for displacement, not solely poor maintenance. Staff has revised the temporary relocation provisions in an effort to assure that a tenant is appropriately relocated and that reasonable expenses are covered. In addition, the relocation provisions need to be easily comprehensible by members of the public and not overly difficult to administer. With regard to permanent relocation, staff made some minor revisions to its prior proposal, but does not believe it is advisable to create a relocation payment system under the Tenant Protection ordinance which differs from the one that exists under the Ellis Act ordinance; administratively two systems would be unworkable as confusing to both landlords and tenants and an administrative burden for the City.

If there is a desire to alter the permanent relocation payment program, changes should be handled through the Ellis Act ordinance at another time. It is important to remember the City’s Ellis Act provisions include a built in escalator with regard to relocation payments.

7. Retaliation

Lastly, with regard to retaliation, staff believes a straightforward but simple statement in the ordinance is best and that a determination as to whether retaliation has occurred is a matter to be determined by a hearing examiner or judge.

Although EQR is the City's largest landlord and CLS represents many tenants, it must be remembered the Tenant Protection ordinance will apply to landlords other than EQR and to tenants in all residential properties, not only those operated by EQR nor solely rental units regulated subject to rent stabilization.

Staff is proposing a Tenant Protection ordinance believed to be legally defensible and in the best interests of the City.

### **Fiscal Impact**

There is no fiscal impact to the General Fund or any other Fund as a result of this discussion and direction.

### **Attachments**

1. March 21, 2014 letter from SSL
2. March 21, 2014 letter from CLS

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO  
ADDING CHAPTER 14.02 “TENANT PROTECTIONS” TO TITLE 14 (HOUSING) OF  
THE EAST PALO ALTO MUNICIPAL CODE**

**WHEREAS**, the City of East Palo Alto has numerous rental housing units, some of which are subject to rent stabilization and some of which are not, and

**WHEREAS**, the City Council of East Palo Alto wishes to establish provisions dealing with issues that have or may arise between landlords and tenants in an effort to set forth City expectations; and

**WHEREAS**, the topic has been studied thoroughly by City staff and the City Council at multiple public meetings; and

**WHEREAS**, it is the intent of the City Council to reasonably regulate aspects of the landlord-tenant relationship in order to foster communication, maintain an adequate supply of a variety of rental housing options and protect the health, safety and general welfare of the public.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO ORDAINS AS FOLLOWS:**

**SECTION 1. MUNICIPAL CODE CHAPTER 14.02 ADDED.** Chapter 14.02 (Tenant Protections) is hereby added to Title 14 (Housing) of the East Palo Alto Municipal Code to read as set forth in Exhibit 1, attached and incorporated by reference.

**SECTION 2. CONSTITUTIONALITY; SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid or ineffective by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

**SECTION 3. CEQA EXEMPTION.** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the San Mateo County Clerk.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall take effect thirty (30) days from and after the date of its adoption.

**SECTION 5. PUBLICATION.** The City Clerk is directed to cause publication of this Ordinance as required by law.

\* \* \*

Introduced at a regular City Council meeting held \_\_\_\_\_, 2014, and adopted at a regular City Council meeting held \_\_\_\_\_, 2014, by the following vote:

**AYES:**  
**NAES:**  
**ABSENT:**  
**ABSTAIN:**

**SIGNED:**

\_\_\_\_\_  
Laura Martinez, Mayor

**ATTEST:**

\_\_\_\_\_  
Nora Pimentel, Deputy City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
John A. Nagel, City Attorney

## **Municipal Code Chapter 14.02**

### **Tenant Protections**

#### **14.02.010 Purpose.**

The purpose of this chapter is to set forth basic items which the City deems as fundamental with regard to governing the residential landlord-tenant relationship. This chapter is intended to work in harmony with Chapter 2.72 Regulation of Canvassing Activities in Multifamily Residential Structures. This chapter does not apply to transient occupancies such as hotels. To the extent a provision of this chapter conflicts with a provision of the 2010 Rent Stabilization and Just Cause for Eviction Ordinance, the provisions of the 2010 Ordinance shall apply to the residential units subject to that ordinance.

#### **14.02.020 Findings.**

The city council finds and declares as follows:

- A. There is an imbalance between the supply of and demand for rental housing in the City of East Palo Alto. The imbalance is the result of both a shortage of rental housing, an overwhelming market demand for affordable housing, and speculation in the housing market.
- B. The imbalance between supply and demand creates an imbalance of bargaining power between landlords and tenants.
- C. As a result of these market and bargaining power imbalances, East Palo Alto tenants may be unwilling or unable to assert their legal rights.
- D. The East Palo Alto rental housing market is less responsive to the needs of tenants because "customer service" is not needed to attract and retain tenants.
- E. The city council seeks to augment tenant rights since it believes the market and bargaining power imbalances are detrimental to the health, safety and general welfare of East Palo Alto and the surrounding region because the stability, security and quality of housing opportunities are reduced.
- F. Given the large number of rental units in the City, the city council desires to improve communications among tenants and between tenants and landlords as well as provide additional tenant protections.

- G. The city council further recognizes that displacement of tenants is a major concern in conjunction with the revitalization of the community and therefore desires to institute measures to ameliorate the impacts of displacement on tenants, particularly tenants of limited financial means.
- H. The city council recognizes that it is important to monitor and improve the processes established in this chapter on a periodic basis.

**14.02.030 Definitions.**

For the purposes of this chapter, the following definitions apply:

- A. “Disabled person” means a person with a disability, as defined in Section 12955.3 of the California Government Code.
- B. “Displaced tenant” means any tenant who permanently vacates a rental unit in the city as a result of demolition or removal of the rental unit, or a governmental order to vacate, or in order for the landlord to comply with housing, health, building or safety laws of the state, county or city.
- C. “Elderly” or “senior citizen” means a person who is sixty-two (62) years of age or older.
- D. “Housing services” include, but are not limited to repairs, , maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishings, parking and any other benefit privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.
- E. “Landlord” means an owner of record, lessor, sublessor, or any other person, entity, or non-natural person entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative, affiliate, member, shareholder, trustee, or successor of any of the foregoing. If an owner of a rental unit is other than a single natural person, then all entities and persons that share ownership and/or control (direct or indirect) of the units shall be considered one and the same landlord.
- F. "Minor child" means any natural person under the age of eighteen years.

- G. "Parent" means any person who has legal custody and control of a minor child, and with whom the minor child maintains his or her place of abode.
- H. "Person" means any individual, firm, partnership, joint venture, association, corporation, estate, or trust.
- I. "Rental unit" means any unit in any real property, including the land appurtenant thereto, rented or available for rent for residential use or occupancy, located in the City, together with all housing services connected with the use of occupancy of such property such as common areas and recreational facilities available for use by the tenant. Rental unit also includes mobile homes, whether rent is paid for the mobile homes and the land upon which the mobile home is located, or rent is paid for the land alone.

The term rental unit shall not include:

1. Housing in any hospital; state licensed community care facility; convent; monastery; extended medical care facility or housing accommodations owned, operated, leased or managed primarily for occupancy by its students by an educational institution.
  2. Housing designed and operated exclusively for senior citizens and their spouses, or as a retirement home.
  3. Housing which a government unit, agency or authority owns, operates, or manages, or which are specifically exempted from municipal regulation by state or federal law or administrative regulation.
- J. "Student" means any person enrolled in an institution of higher education, vocational school, high school, or elementary school.
  - K. "Tenant" means a renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.
  - L. "Tenant organizer" means any person who assists tenants in establishing or operating a tenant organization.

#### **14.02.040 Landlord and Tenant Rights Information Sheet.**

Landlords are required to provide to each tenant an information sheet, which outlines the provisions of this chapter. The information sheet must be provided in English and in

Spanish (may be separate documents) and in a language other than English if the tenant has been provided a copy of the lease in one of the languages specified in Civil Code section 1632. The sheet shall also include links to the City website and at least one local tenant legal services organization. The landlord may include other information it deems useful.

**14.02.050 Tenants' right to organize.**

- A. Tenants have the right to form, join and participate in the activities of a tenant organization for the purpose of addressing issues related to their living environment, including but not limited to rental rates, housing services, conditions of the premises and other terms and conditions of tenancy.
- B. Tenant organizers have the right to contact and communicate with tenants on the rental premises, including within a rental unit, or in a tenant common area such as a community room, to assist tenants in establishing and operating a tenant organization and participating in tenant organization activities.
- C. Tenants and tenant organizers have the right to use common area and community facilities on the property for tenant meetings, so long as they comply with any universally applicable use and reservation policies. No landlord or agent of a landlord may attend or make recordings of such meetings unless permitted to do so by the tenant organization.
- D. Tenants have the right to refuse to join or participate in the activities of tenant organizations and have the right to represent themselves individually in their tenancy relation with their landlord.

**14.02.060 Distribution of literature.**

A landlord may not prohibit a tenant or tenant organizer who resides in a building or residential complex from using common areas in that building or complex to distribute literature to other tenants, including literature distributed on behalf of a tenants' association or other tenant organization, where the literature relates to issues of common interest or concern to the tenants.

- A. Literature may be placed on the door of tenant units, or slipped under the door. Such literature must plainly include the name and telephone number and address of the distributor so that the affected tenant may contact to opt out of future doorway distributions of such literature.

- B. The landlord may establish reasonable requirements as to the time, place, manner, and volume of such literature distribution. The landlord may provide bulletin boards for tenant use, but may not post or remove posts from such bulletin boards.
- C. The provisions of this chapter are not applicable to purely commercial literature that is not directly related to issues of common interest or concern to tenants.
- D. The provisions of this chapter shall not be read to limit or replace residential tenant or landlord rights or remedies found in other provisions of the Municipal Code, or in state or federal statutes or constitutions.

**14.02.070 Keys and locks.**

- A. A landlord shall provide a minimum of one key or key-set per rental unit for each adult occupant, without charge. All keys are issued for the duration of a tenancy and must be returned upon vacating the unit.
- B. A tenant may request up to two additional keys/key-sets as are reasonably necessary for admitting a service provider, delivery person, caregiver, houseguest or relative. The request must be in writing and state the reason(s) for needing the additional keys. Requested additional keys/key-sets must be provided within 14 days of the tenant's written request, unless the landlord timely denies the request in writing stating the specific reason(s) for the denial. All keys are issued for the duration of the reasonable need for additional keys, and must be returned at the conclusion of the reasonable need. When providing requested additional keys/key-sets to a tenant, the landlord may charge only for the documented cost of replicating the additional keys/key-sets, which cost shall be paid by the tenant upon delivery of the requested additional keys/key-sets. Additional keys/key-sets shall be provided without requiring any other cost, fees, deposits, or terms or conditions of any kind whatsoever.
- C. When a rental unit is permanently vacated by all tenants, the landlord shall re-key or replace all door locks that are exclusive to that unit, including all entrance door locks on the vacated unit and any locks on separate entrance doors to any storage and/or garage facility exclusively used in connection with the use or occupancy of the vacating tenants. All of the following conditions apply:

1. If two or more locks on any one door are subject to the re-key and replacement provisions and open by different keys, the landlord must re-key or replace only one of the locks on the door.
2. If the same key opens two or more locks subject to the re-key and replacement provisions, the landlord must re-key or replace all locks opened by that key.
3. The re-key and lock replacement requirements do not apply to any door locks that are provided for use by two or more units.

**14.02.080 Prohibited activities related to minor children.**

A. It is unlawful for any person having a rental unit for rent or lease, or any agent or employee of such person, to do or attempt to do any of the following:

1. Refuse to rent or lease a rental unit, refuse to negotiate for the rental or lease of a rental unit, or otherwise deny to or withhold from any person or persons, a rental unit on the basis of age, parenthood, pregnancy, or the potential or actual tenancy of a minor child;
2. Discriminate against any person in the terms, conditions, or privileges of the rental or lease of a rental unit (including, but not limited to rental rates or security deposits), or in the provision of services, facilities or benefits, in connection therewith, on the basis of age, parenthood, pregnancy, or the potential or actual tenancy of a minor child. However, nothing in this chapter shall preclude any person from imposing reasonable restrictions on the use of common areas, facilities, and services which are necessary to protect the health and safety of a tenant, including a minor child;
3. Represent to any person on the basis of age, parenthood, pregnancy, or the potential or actual tenancy of a minor child that a rental unit is not available for inspection, rental, or lease when such housing unit is, in fact, available;
4. Make, print, or publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to a rental unit offered by that person that indicates any preference, limitation, or discrimination with respect to age, parenthood, pregnancy, or the potential or actual tenancy of a minor child;
5. Include in any rental agreement or lease for a rental unit, a clause or condition providing that as a condition of continued tenancy, the tenants shall remain childless or shall not bear children or otherwise not maintain a household with a person of a certain age;

6. Refuse to rent after making a bona fide offer, or to refuse to negotiate for the rental of, or otherwise make unavailable or deny, rental units to any person because of the potential tenancy of a minor child or children;
7. Limit occupancies to fewer than two natural persons per bedroom, unless that number exceeds the maximum allowed under the floor-space requirements of Section 503(b) of the Uniform Housing Code. All occupancy limitations shall be uniformly imposed and either conspicuously posted on the premises or contained in a written policy, rules or notice;
8. Evict or otherwise demand surrender of a rental unit from any person because of age, parenthood, pregnancy or presence of a minor child;
9. Charge additional rent for persons living in a rental unit on the basis of age, parenthood, pregnancy, or presence of a minor child.

B. The following are exempt from the prohibitions stated:

1. Any accommodation that satisfies the criteria in Government Code Section 12955.9.
2. Federally financed senior adults' housing units or affect a housing project or development owned by a nonprofit corporation during such period of time as it is operated exclusively for elderly persons and their spouses (including, but not limited to, housing accommodations subsidized under the Section 8 of the Housing Act of 1974 and Section 202 of the Housing Act of 1959 federal housing programs).
3. Selection of a roommate by one or more residents of a rental unit where such residents will continue to reside within the rental unit.
4. Requirements of a landlord requiring supervision of minors under fourteen years of age in the use of swimming pools, hot tubs, saunas, or similar facilities, provided that such requirements are reasonably related to health and safety.
5. Mobile homes in an adults only mobile home park established in accordance with state law.
6. Any state licensed nursing home, convalescent home, or community care facility.

C. This section shall not prohibit the person having the right to rent or lease the premises from requiring the same rent, deposits, fees or charges of prospective adult tenants with minor children as he or she may require of prospective adult tenants without children. However, no discrimination in the amount or manner of payment of the rent, deposits, fees or charges shall be permitted.

**14.02.090 Prohibited activities related to students or non-students.**

A. It is unlawful for any person having a rental unit for rent or lease, or any agent or employee of such person, to do or attempt to do any of the following:

1. Refuse to rent or lease a rental unit, refuse to negotiate for the rental or lease of a rental unit, evict from a rental unit, or otherwise deny to or withhold a rental unit from any person on the basis of the person's status as a student or on the basis of the fact that the person is not a student.
2. Rent or lease a rental unit on less favorable terms, conditions or privileges, or discriminate in the provision of housing services to any person on the basis of the person's status as a student or on the basis of the fact that the person is not a student.
3. Represent to any person that a rental unit is not available for inspection, rental or lease when such rental unit is, in fact, available on the basis of the person's status as a student or on the basis of the fact that the person is not a student.
4. Make, print, publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to a rental unit that indicates any preference, limitation, or discrimination with respect to a person's status as a student or on the basis of the fact that the person is not a student.

B. The sole exception to this provision is if the housing is sponsored by the educational institution at which the individual is enrolled as a student.

**14.02.100 Tenant harassment.**

No landlord, and no agent or employee of the landlord, shall do any of the following in bad faith.

1. Interrupt, terminate or fail to provide housing services or threaten to interrupt, terminate or fail to provide housing services required by contract or by state, county or local housing health or safety laws. Included in this prohibition are:
  - a. Curtailing any utility service furnished to the rental unit by any means whatsoever including, but not limited to, the cutting of wires, the removal of fuses, the switching of breakers, and the non-payment of utility bills. Utility service includes, but is not limited to, water, heat,

- light, electricity, gas, telephone, cable, internet, garbage and recycling collection, or sewage
- b. Impeding reasonable access to the rental unit by changing the locks or using a bootlock or by any other similar method or device.
  - c. Removing, without replacement within a reasonable time period, doors or windows of the rental unit.
2. Fail to perform repairs or maintenance, or threaten to fail to perform repairs or maintenance required by contract or by state, county or local housing, health or safety laws.
  3. Fail to exercise due diligence in completing repairs or maintenance once undertaken or fail to follow appropriate industry repair containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts.
  4. Abuse the landlord's right of access or threaten to abuse the landlord's right of access into a rental unit as that right is provided by law. No landlord shall remove from the rental unit personal property, furnishings, or any other items without the prior written consent of the tenant, except when done pursuant to the procedure set forth in Civil Code section 1980 et seq.
  5. Influence or attempt to influence a tenant to vacate a rental unit through threats, fraud, intimidation or coercion.
  6. Attempt to coerce the tenant to vacate with offer(s) of payments to vacate which are accompanied with threats or intimidation.
  7. Threaten the tenant, by word or gesture, with physical harm.
  8. Violate any law which prohibits discrimination based on actual or perceived race, gender, gender orientation, sexual orientation, ethnic background, nationality, place of birth, immigration or citizenship status, religion, age, parenthood, marriage, pregnancy, disability, AIDS or minor or student/nonstudent occupancy status.
  9. Interfere with a tenant's right to quiet use and enjoyment, or threaten to interfere with a tenant's right of quiet use and enjoyment, of a rental unit as that right is defined by California law.
  10. Refuse to accept or acknowledge receipt of a tenant's lawful rent payment.
  11. Refuse to cash a rent check for over 30 days.
  12. Call or threaten to call immigration authorities, except as otherwise required by law.

13. Request information or documentation that violates Civil Code section 1940.3, including but not limited to immigration or citizenship status. If such information or documentation is sought pursuant to Civil Code section 1940.3(c), and there exists an equivalent alternative to such information or documentation that does not concern immigration or citizenship status, the landlord shall request and accept the equivalent alternative.
14. Other repeated acts or omissions of such significance as to substantially interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such rental unit and that cause, are likely to cause, or are intended to cause any person lawfully entitled to occupancy of a rental unit to vacate such rental unit or to surrender or waive any rights in relation to such occupancy.
15. For any tenancies commencing after June 1, 2014, charge for the parking required by the City as a part of the development. If a landlord seeks to charge for parking, the burden shall be on the landlord to prove that any parking for which a landlord seeks to charge is parking in excess of the parking required for the site.

**14.02.110 Dispute resolution.**

- A. All persons (landlords and tenants) residing in, owning, or managing residential rental property to which this chapter applies are encouraged to participate in the conciliation and mediation of rental housing disputes provided for by Peninsula Conflict Resolution Center (PCRC), the San Mateo County Superior Court, JAMS or a similar entity.
- B. No party shall be obligated to reach any specific agreement, or to reach any agreement at all, as a result of participating in conciliation or mediation communications. If an agreement is reached, it will be stated in writing by the mediator or by the parties. Any such agreement shall be confidential and will not be enforceable or usable for any purpose outside the dispute resolution process, unless all signatories agree that the document can be disclosed or used in other proceedings.

**14.02.120 Construction plans.**

When applying for a permit to alter, repair, or rehabilitate any structure that contains one or more rental housing units or a mobilehome park, the applicant shall indicate on the building permit application whether the property is occupied by tenants. Any work

performed shall be in compliance with California Health and Safety Code section 17920 et seq., Title 24 of the California Code of Regulations, and all applicable building codes.

**14.02.130 Temporary relocation.**

- A. If a landlord is required to temporarily recover possession of a rental unit in order to comply with housing, health, building or safety laws of the state, county or city, or if a tenant is required to temporarily vacate a unit upon the order of any governmental officer or agency, the landlord shall provide temporary relocation benefits as provided for in this section.
- B. If possible, the landlord shall provide housing in an equivalent vacant apartment within a 15 mile radius, under terms and conditions as close as possible to the rental unit being temporarily vacated. If temporary residence in a hotel or motel is determined to be the most appropriate solution, the landlord shall be responsible for payment of the hotel charges directly to the hotel or motel.
- C. If the tenant is moved to a unit controlled by the landlord, the landlord shall not require that rent be paid on the rental unit during the time of temporary relocation. If the tenant is moved to a unit not controlled by the landlord, the tenant shall be paid a daily rate equal to two times the daily pro-rata portion of the rental rate of the rental unit or the difference between that amount and the rent charged for the unit, whichever is higher. The rent charged for such unit may not exceed the Market Average Rent for San Mateo County, as determined by the Department of Housing of San Mateo County.
- D. The landlord shall pay the actual costs of moving and storage if personal property must be removed from the rental unit. The landlord shall select a secure, weatherproof and well-maintained storage facility within a 15 mile radius of the rental unit and tenant(s) shall have sole access to the storage unit and the property contained therein.
- E. The landlord shall pay the actual costs for daily boarding of all pets lawfully occupying the unit from which the tenant was relocated, if the temporary accommodation does not accept pets.
- F. The displacement and relocation of a tenant pursuant to this section shall not terminate the tenancy of the displaced tenant, except as provided in subsection G. below. The displaced tenant shall have the right to reoccupy his/her unit upon the completion of the work necessary for the unit to comply with housing, health,

building or safety laws or any governmental order, and the tenant shall retain all rights of tenancy that existed prior to the displacement. The rent shall remain the same, subject to any lawful increases.

- G. Should temporary relocation exceed 30 days, the landlord may opt to terminate the tenancy in accordance with law. In such a situation, the landlord shall be required to comply with the provisions and pay all relocation fees as required when units are demolished or removed.

#### **14.02.140 Demolition permits.**

The Building Official shall not issue a demolition permit, or a building permit which includes demolition, for demolition of any residential rental structure containing three or more rental units or for a substantial remodel of such a structure unless:

- A. The application for a demolition permit is accompanied by complete plans for any proposed new construction on the site, in compliance with applicable provisions of the Municipal Code and Zoning Ordinance, as required for conformance with the definition of “project” under the California Environmental Quality Act Guidelines (Section 15378) and the holding in *Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, unless the demolition is exempt under subsection E. The application for a demolition permit shall be considered as part of the discretionary applications and shall not be approved until all discretionary permits for the proposed new project on the site have been approved; and
- B. In the event that the building to be demolished contains registered rent stabilized units, the tenant notice and relocation requirements of Chapter 14.08 have been met to the satisfaction of the City; and
- C. Regardless of the type of rental housing involved, the applicant has offered relocation assistance as required by this chapter and the right of first refusal to occupy any replacement housing to be constructed on the site to tenants displaced by the demolition; provided, however that occupancy of inclusionary units shall be governed by the provisions of Chapter 8.5 of the Zoning Ordinance.
- D. For the purposes of this section the term “substantial remodel” is defined as the removal of 50 percent or more of the exterior wall area (which includes walls, doors, and windows), or the removal of 50 percent or more of the supporting members of a structure (e.g., beams, bearing walls, columns, or girders).

- E. When the Building Official determines that a building or structure poses an imminent hazard and/or threat to public safety, the requirements of this section shall not apply and such building or structure may be demolished in accordance with procedures otherwise established by law.
- F. Accessory buildings of any size, including, but not limited to, garages, carports and sheds, but not including any structure containing a lawfully established dwelling unit, which serves and is located on the same lot as a residential rental use, are exempt from the requirements of this section, and may be demolished in accordance with established procedures.

**14.02.150 Tenant relocation assistance when units are to be demolished or removed.**

- A. The provisions of this section are intended to provide relocation assistance to tenants facing eviction due to demolition or removal of the rental unit and where a notice of intent to terminate the tenancy is given by either the landlord or the tenant as required by Civil Code section 1946.
- B. Any tenant residing in a rental unit of any type not stated as exempted herein, including any tenant residing in a mobilehome, on the date the tenant gives or receives a notice of termination, is a qualified tenant for the purposes of the relocation assistance required by this section. Housing units owned, operated or managed by an educational institution for occupancy by students; by a non-profit organization; by an extended medical care facility or by a government unit or agency or authority which are specifically exempted from municipal regulation pursuant to state or federal law are exempt from the provisions of this section.
- C. A landlord who intends to demolish or relocate a building with rental units subject to this section shall do all of the following:
  - 1. Make available to each tenant, at no cost, a reasonably complete and current list of vacant and available rental units which are comparable as to size and amenities to the rental unit occupied by the tenant, and
  - 2. Make a reasonable and good faith effort to assure that tenants without cars are driven, at no cost, and tenants with cars are assisted, in order to inspect replacement rental units, and

3. Take reasonable steps to assist any disabled or handicapped tenant with relocation-related activities, including hiring an appropriate vehicle to transport the tenant if needed.
- D. If the landlord is not willing or able to comply with the actions set forth in subsection C, the landlord shall pay the city a fee established by resolution of the city council for the purpose of retaining a third party to provide the specified relocation assistance to each tenant in accordance with this section. If a third party service is utilized by the city to assist with relocation issues, an additional fee per unit shall be imposed to pay for the administrative costs associated with the service.
  - E. Relocation assistance shall be provided in accordance with the procedures and amounts set forth in Chapter 14.08, except that the notice of intent to terminate tenancy shall function in the manner of the notice of intent to withdraw.
  - F. A demolition permit shall not be issued unless there is written proof the landlord has complied with the relocation assistance requirements of this section. The landlord shall provide proof of compliance with the relocation assistance requirements of this section to the community development department on a form provided by the department. The form shall be accompanied by a fee per unit set by resolution of the city council.
  - G. This section shall not apply if the building is to be demolished or relocated pursuant to a plan to construct on the site housing for low to moderate income households, which housing is to be developed, constructed, or acquired with federal, state or local government financial assistance.

**14.02.160 Retaliation prohibited.**

Retaliation against a tenant because of the tenant's exercise of rights under this chapter is prohibited. A hearing examiner or judge may consider the protections afforded by this chapter in evaluating a claim of retaliation. Nothing in this chapter shall be construed to prevent the lawful eviction of a tenant by appropriate legal means.

**14.02.170 Remedies.**

- A. Criminal. Depending upon the nature and severity of the violation, a violation of this chapter may, at the option of the city attorney, be treated as an infraction or a misdemeanor, and upon conviction the penalty shall be the maximum possible allowed under state law.

- B. Civil. Any aggrieved person, or the City, may enforce the provisions of this chapter by means of a civil action. The burden of proof in such cases shall be preponderance of the evidence. Any person who violates the provisions of this chapter shall be liable to each party injured by such violation for actual damages sustained by such person, costs and reasonable attorneys' fees as determined by the court. In addition, the court may award punitive damages in a proper case as defined by Civil Code section 3294.
- C. Defense to Action to Recover Possession. Failure of a landlord to comply with any of the provisions of this chapter shall provide the tenant with an affirmative defense in any legal action brought by the landlord to recover possession of the rental unit (unlawful detainer action). In any action to recover possession of a rental unit, the court shall award the tenant reasonable attorney fees and costs incurred in defending the action upon a finding that the tenant is the prevailing party under Code of Civil Procedure section 1032(a)(4).
- D. Defense to Action to Collect Rent. Failure of a landlord to comply with any of the provisions of this chapter shall provide the tenant with an affirmative defense or counterclaim, if available, in any legal action brought by the landlord to collect rent.
- E. Injunctive Relief.
1. Any person who commits, or proposes to commit, an act, or engages in any pattern and practice in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.
  2. Any action for injunctive relief under this chapter may be brought by the city attorney, by any aggrieved person, by other law enforcement agencies, by the district attorney or by any person or entity which will fairly and adequately represent the interests of a protected class under state or federal law.
  3. An aggrieved tenant may seek injunctive relief on his or her own behalf to enjoin the landlord's violation of this chapter.
- F. Remedies are Nonexclusive. Remedies provided in this section are in addition to any other existing legal remedies and are not intended to be exclusive of each other or any other existing legal remedies.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO AMENDING SECTION 6121 “PARKING AREAS, DEVELOPMENT AND MAINTENANCE” OF THE EAST PALO ALTO ZONING ORDINANCE TO ADDRESS PARKING SPACES FOR TENANTS**

**WHEREAS**, the Zoning Ordinance requires the provision of on-site parking for various uses; and

**WHEREAS**, issues have arisen related to availability of tenant parking; and

**WHEREAS**, the City Council desires to clarify its view on tenant parking and establish rules and regulations to govern the use of such parking facilities;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO ORDAINS AS FOLLOWS:**

**SECTION 1. ZONING ORDINANCE SECTION 6121 AMENDED.**

Section 6121 of the Zoning Ordinance pertaining to Parking Areas, Development and Maintenance is amended by adding a new subsection, subsection (b), to read as follows:

**SECTION 6121. PARKING AREAS, DEVELOPMENT AND MAINTENANCE**

(a) Unchanged

(b) Parking spaces for residential tenants.

- (1) Required parking spaces shall not be rented, leased or otherwise conveyed to or used by any person who is not a tenant of, visitor to, or employee for which the parking spaces are required. Parking spaces developed in excess of the minimum required for the use they are intended to serve may however be rented or leased to any other business or industry.
- (2) For tenancies beginning after June 1, 2014, it is unlawful for any manager or owner of any residential unit to separately charge, require or receive a fee, rent or other remuneration from a resident of

the residential unit for the use of the off-street parking required by this chapter (other than from the consideration received for the rent or lease of the dwelling and its appurtenant parking spaces). That parking space is considered an inseparable part of the rented premises.

- (3) Required covered and uncovered spaces for residential units shall be permanently maintained and shall not be used for the storage of boats or other similar recreational vehicles.
- (4) All on-site legal parking spaces in residential properties must be made available to the occupants of the property. For those properties developed after June 1, 2014, the occupants of each unit will have use of the parking that was developed for its unit. For those properties developed before June 1, 2014, and that have less than two covered parking spaces per unit and where the property owner lives at the multi-unit property, the property owner may reserve for his or her personal use two uncovered or covered legal parking spaces which must be contiguous if available. The remaining on-site legal parking spaces not utilized by the property owner must then be divided among the tenants.
- (5) If a landlord removes an on-site, off-street parking space housing service from a tenancy in violation of this section:
  - a. The tenant may apply for a rent decrease by an amount commensurate with the value of the removed parking space for the temporary period of time during which the space is removed;
  - b. The landlord shall be subject to criminal prosecution; and
  - c. The city may bring a civil action for injunctive relief.
- (6) Nothing in this section is intended to penalize a temporary removal of a parking space reasonably necessitated by required repair or maintenance.
- (7) Nothing in this section is intended to prohibit a landlord and tenant from voluntarily agreeing to the substitution of one parking space for another at the same property.

(c) Parking spaces for commercial tenants

- (1) Parking spaces for the automobiles of customers and employees for any business in any zone shall be permanently maintained and shall not be utilized for the storage of merchandise, materials or service vehicles specifically maintained for the business or for any other individual or business.
- (2) Required parking spaces shall not be rented, leased or otherwise conveyed or used by any person who is not a tenant of, visitor to, or employee which the parking spaces are required. No employee shall be restricted from using the parking spaces required for the use where he or she is employed. Parking spaces developed in excess of the minimum required for the use they are intended to serve may however be rented or leased to any other business or industry.

**SECTION 2. CONSTITUTIONALITY; SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid or ineffective by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

**SECTION 3. CEQA EXEMPTION.** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the San Mateo County Clerk.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall take effect on June 1, 2014.

**SECTION 5. PUBLICATION.** The City Clerk is directed to cause publication of this Ordinance as required by law.

\* \* \*

Introduced at a regular City Council meeting held \_\_\_\_\_, 2014, and adopted at a regular City Council meeting held \_\_\_\_\_, 2014, by the following vote:

**AYES:**

**NAES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_

Laura Martinez, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_

Nora Pimentel, Deputy City Clerk

\_\_\_\_\_

John A. Nagel, City Attorney

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO AMENDING SECTION 14.08.040 OF THE EAST PALO ALTO MUNICIPAL CODE PERTAINING TO DEMOLITION AND RECONSTRUCTION OF UNITS SUBJECT TO THE CITY'S ELLIS ACT**

**WHEREAS**, the City of East Palo Alto has numerous rental housing units, some of which are subject to rent stabilization and the provisions of the City's Ellis Act, and

**WHEREAS**, the City Council of East Palo Alto wishes to better define the City's expectations and requirements in those instances where an existing rent stabilized building is withdrawn from the rental market and new rental units later constructed;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO ORDAINS AS FOLLOWS:**

**SECTION 1. MUNICIPAL CODE SECTION 14.08.030 AMENDED.** Subsection 2. of Section 14.08.030 of the East Palo Alto Municipal Code is hereby amended to read:

**14.08.030 Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings set forth below:

2. "Tenant" means a renter, tenant, subtenant, lessee, or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit and includes a former tenant displaced by the withdrawal of an accommodation from rent or lease.

**SECTION 2. MUNICIPAL CODE SECTION 14.08.040 AMENDED.** Section 14.08.040 of the East Palo Alto Municipal Code is hereby amended to read:

**14.08.040 Restrictions and responsibilities concerning withdrawn accommodations.**

Any accommodations which have been withdrawn from rent or lease and which were subject to rent control at the time of withdrawal, consistent with the provisions of Government Code Section 7060 et seq. as they currently exist or

may be amended in the future, shall be subject to the following conditions and restrictions if the accommodation is again offered for rent or lease:

1. Two Year Period

If the accommodations are offered again for rent or lease for residential purposes within two years of the date the accommodations were withdrawn from rent or lease, the following provisions shall apply:

- a. The owner of the accommodations shall be liable to any tenant who was displaced from the property by the withdrawal for actual and exemplary damages. Any action by a tenant pursuant to this paragraph shall be brought within three years of the tenant's displacement. However, nothing in this section shall preclude a tenant from pursuing any additional or alternative remedy available under law.. Nothing in this section shall limit or otherwise affect any relocation benefits to which the tenant is entitled under any other law or ordinance.
- b. The city may institute a civil proceeding against any owner who has again offered accommodations for rent or lease subject to this section for exemplary damages for displacement of tenants. Any action brought by the city shall be brought within three years of the withdrawal of the accommodations. Nothing in this section shall be construed to limit any other powers of the city to pursue litigation in any way involving the subject property.
- c. Any owner who offers accommodations again for rent or lease shall first offer the unit for rent or lease to the tenant displaced from that unit by the withdrawal, if the tenant has advised the owner in writing within thirty (30) days of the displacement of his or her desire to consider an offer to renew the tenancy and has furnished the owner with an address to which that offer is to be directed. That tenant or former tenant may advise the owner at any time during the period of eligibility for renewed tenancy of any change in address to which the offer is to be directed. The owner shall also notify the city of the owner's intent to again offer the accommodations for rent or lease at the time the tenant is notified. In addition to the notice required to be given to the tenant, the city shall be deemed to be an agent of the tenant and may request that an offer to renew the tenancy be extended to the tenant. However, nothing in this

section shall be construed to relieve the owner of the obligation to directly contact the tenant or former tenant and to advise the tenant that the accommodations are again offered for rent or lease. Notice shall be on a form approved by the city.

- d. If the owner offers the accommodations for rent or lease pursuant to this subdivision, and the tenant has advised the owner of a desire to consider an offer to renew the tenancy, then the owner shall offer to reinstitute a rental agreement or lease on terms permitted by law to that displaced tenant. The terms shall be substantially equivalent to those formerly existing during the tenancy. This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced tenant at the address furnished to the owner as provided in this subsection, and shall describe the terms of the offer. A copy of the notice with proof that it has been mailed to the displaced tenant shall be filed with the city at the time notice is mailed to the tenant. The displaced tenant shall have thirty (30) days from the deposit of the offer in the mail to accept by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid. The city upon learning of the owner's intent to again offer the accommodation for rent or lease shall also attempt to notify each tenant by mail and may further publish notices or advertisements in newspapers or use other reasonable means to attempt to notify the tenants of the availability of the accommodations.
- e. The accommodations shall be subject to the 2010 Rent Stabilization and Just Cause for Eviction Ordinance

2. Five Year Period

- a. For all tenancies commenced during either of the time periods described in subsections (1) and (2) below, the notice provisions set forth with regard to the two year period shall apply and the accommodations shall be offered first to the previously displaced tenants, and rented or leased at the lawful rent in effect at the time any notice of intent to withdraw the accommodations was filed with the city, plus annual adjustments available under the rent control system.

(1) The five-year period after any notice of intent to withdraw the accommodations is filed with the city, whether or not the notice of intent is rescinded or the withdrawal of the accommodations is completed pursuant to the notice of intent.

(2) The five-year period after the accommodations are withdrawn.

- b. The accommodations shall be subject to the 2010 Rent Stabilization and Just Cause for Eviction Ordinance.
- c. This section shall prevail over any conflicting provision of law authorizing the landlord to establish the rental rate upon the initial rent or lease of the accommodations.
- d. A tenant or the city may bring a legal action as set forth with regard to the two year period within six years of the withdrawal of the accommodations. Nothing in this section shall preclude a tenant from pursuing any additional or alternative remedy available under law. Nothing in this section shall be construed to limit any other powers of the city to pursue litigation in any way involving the subject property.

### 3. Ten Year Period

An owner who offers accommodations again for rent or lease within ten years of the date on which they are withdrawn shall notify the city of an intention to offer the accommodations again for residential rent or lease. A copy of the notice served on the city shall also be mailed by the owner to each tenant at that tenant's last known address. The city may also attempt to notify each tenant by mail and may further publish notices or advertisements in newspapers or use other reasonable means to attempt to notify the tenants of the availability of the accommodations. If the displaced tenant so requests in writing within thirty (30) days after the owner has notified the city of the intent to again offer the premises for rent or lease, the owner shall offer to reinstitute a rental agreement or lease on terms permitted by law to that displaced tenant. In the event that the owner fails to comply with this subsection, the owner shall be liable to any affected tenant for general damages and punitive damages in an amount which does not exceed the contract rent for six months.

**SECTION 3. MUNICIPAL CODE SECTION 14.08.045 ADDED.** Section 14.08.045 of the East Palo Alto Municipal Code is hereby added to read:

**14.08.045 Restrictions and responsibilities concerning demolished accommodations**

If any accommodations which have been withdrawn from rent or lease were subject to the 2010 Rent Stabilization and Just Cause for Eviction Ordinance at the time of withdrawal are demolished, and new accommodations are constructed on the same property, and offered for rent or lease within five years of the date the accommodations were withdrawn from rent or lease, any displaced tenant shall have the right to return and all of the newly constructed accommodations shall be subject to the 2010 Rent Stabilization and Just Cause for Eviction Ordinance notwithstanding any provision of law which otherwise exempts newly constructed units. The city shall have the power to set rents which will provide a fair return and the landlord shall have the burden of establishing by competent evidence that the rent schedule proposed by the landlord is necessary to provide a fair return. If necessary, the city may establish an initial rent and graduated step increases to reach a fair return level. The fair return rent level shall thereafter become the base rent for the unit for all purposes, including but not limited to, the computation of all future rent adjustments. The landlord's right to set rent levels for subsequent tenancies is subject to Civil Code section 1954.50 et seq., (the Costa-Hawkins Rental Housing Act.)

**SECTION 4. CONSTITUTIONALITY; SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, invalid or ineffective by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

**SECTION 5. CEQA EXEMPTION.** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the San Mateo County Clerk.

**SECTION 6. EFFECTIVE DATE.** This Ordinance shall take effect thirty (30) days from and after the date of its adoption.

**SECTION 7. PUBLICATION.** The City Clerk is directed to cause publication of this Ordinance as required by law.

\* \* \*

Introduced at a regular City Council meeting held \_\_\_\_\_, 2014, and adopted at a regular City Council meeting held \_\_\_\_\_, 2014, by the following vote:

**AYES:**

**NAES:**

**ABSENT:**

**ABSTAIN:**

**SIGNED:**

\_\_\_\_\_  
Laura Martinez, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Nora Pimentel, Deputy City Clerk

\_\_\_\_\_  
John A. Nagel, City Attorney



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March 21, 2014

***VIA ELECTRONIC MAIL***

Valerie Armento  
City of East Palo Alto  
2415 University Avenue  
East Palo Alto, CA 94303

***Re: Draft Tenant Protection Ordinance***

Dear Ms. Armento:

We represent Equity Residential (“EQR”) and write today with regard to the draft Tenant Protection Ordinances. Thank you for circulating the drafts for review and comment. Your facilitation of this process has enabled us to work closely with the City of East Palo Alto (“City”) and Community Legal Services of East Palo Alto (“CLSEPA”) to reach a consensus on many issues raised in the ordinances. In fact, I believe that EQR and CLSEPA agree on all of the proposed language to amend Zoning Code Section 6121 regarding parking. With regard to the Ellis Act ordinance revisions, we have conveyed our minor text change proposals to you during discussions. This letter focuses on the new “Tenant Protection Ordinance” (“TPO”) that would be added to the Municipal Code as Section 14.02.

EQR supports the City’s efforts to adopt the TPO. The City has undertaken a thoughtful process to research other cities’ ordinances and to consider the changes necessary for its own community. Although we expressed concern about the TPO as proposed in January, it appears that ongoing discussions with community stakeholders have resolved many, if not all, of the fundamental problems with that draft, while still addressing the concerns of tenants and tenant advocates. We are optimistic that you will present a strong TPO to the City Council that fully addresses the community’s needs within the confines of state law.

You have asked that we provide a revised draft of the TPO and an explanation of any differences that may exist between our proposed changes and any that CLSEPA circulates. We have not seen CLSEPA’s final proposal, but, based on our discussion with CLSEPA representatives, we anticipate that it will differ from ours on the following topics. For the topics on which we differ from CLSEPA, we generally agree with the City’s language that was circulated on February 20, 2014.

This letter is organized by topic, in the order in which each topic appears in the TPO. We have not used section numbers because those numbers vary from draft to draft.

Definitions. We support the City's language.

- In the exemptions from definition of "rental unit," we agree with the City language that the ordinance should use the defined terms "elderly" and "senior citizen" for the purpose of clarity.
- The definition of tenant organizer provided by CLSEPA is too broad, and improperly excludes certain tenants who many have in interest in organizing (namely, employees of current or prospective landlords). The definition is unnecessary and should not be included.

Tenants' right to organize. We support the City's language. The City's draft is broad enough to provide wide free speech and organizing rights to tenants. Neither the City nor the tenants have identified any policy problem that currently exists or may exist that requires a solution here. Tenant rights to organize must be balanced with landlord obligations to provide, and other tenants' rights to experience, safe and secure housing and to protect the quiet enjoyment of all tenants. The CLSEPA language goes too far, and would jeopardize a landlord's ability to keep rental housing properties secure. CLSEPA's ordinance as drafted would prevent landlords from excluding anyone who calls themselves a tenant organizer, regardless of their actual intent, from the premises/common areas, even when that person jeopardizes the safety and security of the property or tenants. Similarly, the language would prevent a landlord from providing security (or sending security when called) at events taking place on rental housing property. Coupled with CLSEPA's broad definition of retaliation, the ordinance would prevent anyone who has attended a tenant meeting from ever experiencing a rent increase or being evicted, even when good cause exists.

Distribution of literature. We support the City's language. The City's language carefully balances the needs of tenants to distribute literature with the landlord's need to provide clean and orderly premises. Tenants should be able to distribute relevant literature, but the landlord must be able to regulate the time, place, manner, and volume of the literature in order to maintain clean, orderly, well-kept rental housing. In the past, there have been significant problems with unwanted literature being left on doorsteps for so long that it blows away and becomes litter. Therefore, we support the City's original language.

Unilateral changes to the lease. CLSEPA has added a new section. The provision suggested by CLSEPA is illogical and preempted by state law. Leases are contracts, which by their nature require bilateral consent to modification. *See, e.g., Douglas v. US District Court* (9th Cir. 2007) 495 F.3d 1062, 1066. Civil Code Section 827(a) provides that when a landlord notifies a tenant of a proposed change in the lease, the change becomes effective upon tenant's acceptance of the change by continuing to hold the premises. Therefore, there is no such thing as a unilateral change to a lease.

Even assuming that lease changes are somehow "unilateral," Civil Code Section 827 affirmatively permits landlords to make changes in lease provisions upon proper notice. Courts

have rejected local attempts to change the Civil Code notice requirements. See, e.g., *Tri-County Apartment Assn v. City of Mountain View* (1987) 196 CalApp.3d 1283, 1296-98. In particular, courts have rejected attempts to lengthen notice requirements beyond those provided in Section 827. *Id.* Under CLSEPA's proposed revision, no amount of notice is ever adequate. That provision would effectively extend the notice requirement from the Section 827 timeframes by preventing landlords from ever changing terms. Given that courts have rejected the notion that local agencies can require longer than 30 days' notice, they certainly would reject the notion of extending notice periods in perpetuity. CLSEPA's addition would nullify the rights conferred to landlords in Civil Code 827. Any such change is preempted by state law.

Finally, still assuming that lease changes are "unilateral," CLSEPA's provision as drafted would prevent landlords from increasing rents. This would conflict with the Rent Stabilization Ordinance and basic constitutional protections, which protect a landlord's right to increase rents.

Occupancy Standards. We support the City's language. The City's original occupancy standards should remain as written in the section regarding families with minor children because it reflects HUD guidelines regarding occupancy. The HUD guidelines were drafted with the health and safety of tenants in mind, as it relates to occupancy loads. In contrast, the Uniform Housing Code standards relate primarily to the construction of new residences.

Temporary relocation. EQR has voluntarily provided temporarily relocated tenants with relocation benefits and ensured that its tenants have a place to live. Therefore, it does not believe that the City needs to regulate this situation. If the City decides to regulate temporary relocation, then the temporary relocation benefits cannot "double dip" by eliminating any obligation to pay rent and requiring temporary relocation benefits. Either the tenant does not pay rent while they cannot occupy their unit, or they receive temporary relocation benefits, but it constitutes unjust enrichment if they receive money from the landlord while not paying rent for their tenancy. Note that the City of Berkeley, which East Palo Alto often turns to as an example, requires tenants to continue paying rent during short-term relocations.

CLSEPA's proposal is extreme. In addition to excusing the tenant from paying rent, they would require landlords to pay two times the daily pro-rata portion of the average San Mateo County rent, which is much higher than the average East Palo Alto rent. In the alternative, they would require the landlord to find replacement accommodations within 7 miles. This radius is so small that there are few temporary accommodations within such radius. It should be 15 miles in order to ensure that there are a reasonable number and type of available accommodations, and yet still ensure that tenants are proximate to their community, schools, jobs, and families. Furthermore, the payment of the GSA per diem allowance is too high—currently \$61 per day per person—which exceeds the actual daily costs of meals and incidentals. Finally, any required payments must be per rental unit rather than per tenant.

Demolition Permits. The state Ellis Act does not permit a local agency to impose undue conditions on landlords going out of the rental housing business, particularly where such special conditions are not specified in the Ellis Act itself. *Reidy v. City and County of San Francisco*

(2004) 123 Cal.App.4th 580, 592. CLSEPA and the City have proposed to impose special conditions (receipt of all discretionary approvals, full design review, proof of financing, and fully executed architectural, engineering, and construction contracts) on residential landlords who seek to go out of the rental housing business by demolishing their buildings. These conditions are not specified in the Ellis Act and may not be applied.

Relocation assistance payments. We support the City's language. The City's existing language conforms to state law and state standards and should be preserved. Moreover, its exemption for buildings demolished or relocated to construct rental units for low or very low income households is appropriate to incentivize the construction of such housing.

Retaliation. We support the City's language. The City's draft ordinance appropriately prohibited retaliation against tenants because of their exercise of rights under this chapter. This protection is sufficient. CLSEPA proposes to add an overly broad definition of "retaliation" that would include lawful activities that landlords may take under local and state law, including the right to raise rents and bring UD actions when warranted, like when a tenant fails to pay rent. This definition would immunize any tenant who attended a tenant meeting from ever having their rent raised or being evicted for non-payment of rent, particularly since CLSEPA says that the protection exists "regardless" of the time elapsed.

To the extent that the City wants to define retaliation, any such definition must include a limitation that the activity was done in bad faith with intent to retaliate for the protected activity. For example, a reasonable definition might read: "For the purposes of this ordinance, 'retaliation' shall mean the bad faith act of a landlord, in response to tenant's exercise of rights under this chapter, to threaten to bring, or bring, an action to recover possession; to cause the tenant to quit the rental unit involuntarily; to serve a notice to quit or notice of termination or tenancy; to decrease housing services, or to increase the rent in excess of any limitation imposed by law."

In conclusion, we appreciate your hard work on these ordinances and look forward to continuing to work with the City and CLSEPA on such endeavors in the future. We are optimistic that with this type of open exchange of ideas, we can build a community consensus on these important issues. Please do not hesitate to call if you would like to discuss any of these issues.

Sincerely,



Corinne I. Calfee



COMMUNITY  
LEGAL SERVICES IN  
EAST PALO ALTO

March 21, 2014

Valerie Armento  
Interim Deputy City Attorney  
City of East Palo Alto  
2415 University Avenue  
East Palo Alto, CA 94303

*Re: Proposed Tenant Protection Ordinance*

Dear Ms. Armento,

We write on behalf of Community Legal Services in East Palo Alto (“CLSEPA”). At your request, we have coordinated with attorneys representing Equity Residential—Woodland Park (“EQR”) regarding revisions to the proposed Tenant Protection Ordinance (“TPO”). We have reached agreement with EQR’s attorneys on a substantial number of the draft provisions. However, we maintain different positions on several other provisions. In this letter, we focus on the points of disagreement. Below please find our reasoning in support of the changes proposed by CLSEPA.

**14.02.050 & 14.02.060 – Tenants’ Right to Organize and Distribution of Literature**

Our proposed changes are intended to create broad protections for tenants’ First Amendment rights to association and free speech. Our changes are modeled on two key sets of legal protections for tenants’ rights to organize and distribute literature. The first are regulations issued by the United States Department of Housing and Urban Development (“HUD”), which safeguard organizing rights of tenants across the country who live in certain federally-subsidized housing projects. *See* 24 C.F.R. Part 245, Subpart B. The second are derived from Washington D.C.’s “Right of Tenants to Organize Act of 2006,” one of the leading municipal laws on the topic. *See* Washington, D.C. Official Code § 42-3505.06. East Palo Alto already secures the rights of tenants to political canvassing activities under Municipal Code Chapter 2.72; however, that Chapter only applies during the 60 days preceding an election. The changes to the TPO proposed by CLSEPA would build on Chapter 2.72 by ensuring that tenants have similarly strong organizing rights at all times, not just during election seasons.

EQR’s concerns about litter and potential abuse of this section are overblown. The language of the section reasonably limits the distribution of literature to taping documents on doors, slipping them under the door, or putting them in common areas or on bulletin boards provided by EQR. We note that EQR itself tapes hundreds of pre-eviction notices on residents’ doors every month and distributes other notices in common areas and posting boards. As to the potential for abuse of this section by problem tenants masquerading as organizers, the TPO will only protect the activities of bona fide organizers who “assist[] tenants in establishing or operating a tenant organization.” Conspiring or actually committing drug or gang activity on the

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property, for example, does not meet this qualification and the TPO does not restrict a landlord's ability to contact local law enforcement if such problems arise.

#### **14.08.080 Unilateral Changes to the Lease Prohibited**

CLSEPA's proposed addition of this section to the TPO would prohibit unilateral, material changes to lease terms that are currently unenforceable under the 2010 Rent Stabilization and Just Cause for Eviction Ordinance ("RSO"). In two separate provisions, the RSO limits landlords' ability to evict tenants based on new material terms of a lease that were unilaterally imposed by landlords. Under Section 16(A)(4) of the RSO, landlords may only evict tenants for refusing to agree to new lease terms if those new terms are "substantially identical" to the existing lease terms. In effect, this means that landlords are prohibited from forcing tenants to accept unilateral, material changes to their lease. This limitation is confirmed by Section 16(A)(2)(b)(i), which recognizes that tenants "need not accept" material changes to a lease after the start of their tenancies. The RSO, however, only addresses this issue in the context of evictions. The new Section 14.08.080 of the TPO would empower tenants to assert proactively their right under the RSO to reject unilateral, material changes to the lease without waiting for the situation to degenerate into an eviction case in Superior Court.

#### **14.02.090 Occupancy Standards**

Our suggestions build on the RSO's provisions that govern landlords' ability to evict tenants based on occupancy restrictions. Currently, the RSO prohibits landlords from evicting tenants who violate occupancy restrictions imposed by the landlord, so long as the occupants are qualifying family members and the total number of residents does not exceed the number permitted by the Uniform Housing Code. *See* RSO § 16(A)(2)(b)(ii)(2). Consequently, such occupancy restrictions are unenforceable for certain tenancies under the RSO. Similar to the proposed section that prohibits unilateral, material changes to a lease, the proposed section on occupancy standards would affirmatively prohibit restrictions that are currently unenforceable under East Palo Alto law.

#### **14.02.120 Tenant Harassment**

We propose deleting a subsection that would otherwise confuse the remedies available to tenants whose rights under the TPO have been violated. One of the most important remedies available to tenants pursuant to the TPO is the ability to defend eviction cases when landlords fail to comply with "any of the provisions" of the TPO. Tenants will bear the burden of proving that the landlord has violated the TPO, which in the harassment context includes proving that the landlord acted "in bad faith." Perplexingly, the prior version of section 14.02.120 was the *only* section of the TPO that created a caveat and stated that nothing "*in this section*" would be construed as to prevent a lawful eviction. CLSEPA is concerned that such a provision could be interpreted as creating a special exception to tenants' ability to assert violations of the TPO as affirmative defenses in eviction cases. We urge that the opposite should hold true; tenants who

can meet their burden to prove that a landlord harassed them in bad faith should be specially protected by the TPO. We understand the need to balance this interest against landlords' interest in lawfully evicting problem tenants, yet we believe that the balance is appropriately struck by requiring the tenant to bear the burden of proving bad faith as part of an affirmative defense in a court of law.

#### **14.02.150 Temporary Relocation**

Our proposed revisions to this section are designed to more adequately address the negative impact on tenants when a landlord has failed to maintain an apartment to such an extent that it requires temporarily displacing the tenants. At the same time, our suggestions provide landlords the flexibility to choose between two reasonable options for temporarily relocating residents, and, notably, the second option of arranging a hotel room for displaced tenants reflects EQR's current practice in these situations. In the first option, our proposal uses an objective measure—the county Market Average Rent—to determine the per diem amount a landlord would have to compensate tenants; this ensures that all temporarily displaced tenants will receive adequate compensation to secure alternative housing. Otherwise, under the prior formula that was calculated using a tenant's current rent, tenants with long-term, rent stabilized tenancies (and therefore lower current rents) would receive inadequate compensation.

EQR asserts that requiring compensation or providing tenants with a hotel room, while also relieving the tenants of their obligation to pay rent during the period of displacement, constitutes "double dipping." This assertion ignores the fact that the reason for the temporary displacement is the landlord's failure to properly maintain the unit. State law recognizes that tenants' obligation to pay rent is contingent upon landlords' providing a healthy and safe dwelling unit. *See, e.g., California Civil Code § 1942.4.* If tenants are temporarily displaced through no fault of their own, it is both reasonable and lawful to require the landlords to arrange alternative housing, and also to relieve tenants of their obligation to pay rent for a home in which they cannot live due to unsafe conditions.

#### **14.02.170 Permanent Relocation**

Similarly, our changes to the permanent relocation section seek to better address the actual impact of displacement on tenants in East Palo Alto. Clearly, the loss of one's home is profoundly disruptive for working families. This is particularly true for many tenants in East Palo Alto who have affordable rents due to the RSO; with rents skyrocketing throughout the region, these tenants will have nowhere else to go if forced from their homes in East Palo Alto. We have witnessed that displaced tenants are often forced to relocate to other regions, disrupting not only the stability of their housing, but also costing them their jobs, consistency in their children's education, and their social ties to the community. In light of these circumstances, we propose that tenants who are permanently displaced from their homes receive relocation benefits in an amount that accurately reflects the increased costs they will incur in securing new and safe housing for their families. Our proposed formula for calculating relocation benefits achieves this

goal by requiring compensation for the difference between the rent displaced tenants were paying for the old unit and the rent they will have to pay for new housing in the region, using the county's Market Average Rent as an objective measure.

The type of formula that we now propose is used widely throughout the nation, and particularly in California. It is modeled on relocation benefits required by the federal Uniform Relocation Act (*see* 42 U.S.C. §§ 4600 et seq.), the California Relocation Assistance Law (*see* Cal. Gov't Code §§ 7260 et seq.), and changes to San Francisco's relocation benefits for Ellis Act evictions recently proposed by four of the City's Supervisors. If tenants' family size and characteristics are such that they would be entitled to greater compensation pursuant to the formula initially proposed by the Deputy City Attorney (and based on the City of East Palo Alto's Ellis Implementation Act), then tenants would receive the greater amount, reflecting the increased challenges of relocating a large family or family members with special needs.

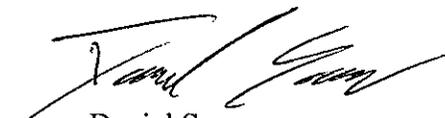
#### **14.02.180 Retaliation**

The changes we propose to the retaliation section are designed to create consistency between the TPO and the RSO. The examples of landlord conduct that may constitute retaliation in our proposed changes to the TPO, such as filing eviction actions or decreasing housing services, are specifically identified in the RSO. *See* RSO § 17(A). The same is true regarding our proposal to not limit the time period in which a tenant may assert retaliation. As in the context of the harassment section, this provision strikes an appropriate balance between landlords' legitimate interest in evicting problem tenants and tenants' interest in living free from retaliation by requiring that the tenant bear the burden of proving retaliation, either as a defense in an eviction case or in an affirmative lawsuit.

We respectfully request that our proposed changes to the TPO be adopted in the draft that will be presented to City Council. We greatly appreciate your willingness to engage with our office and other stakeholders in considering these important issues.

Sincerely,

  
Larisa Bowman  
Housing Attorney

  
Daniel Saver  
Housing Attorney