

Special City Council Questions

August 30, 2022 Council Meeting

ITEM 3.1 Affordable Housing Strategic Plan

1. Does Table 1 on page 5 include rental and ownership units? If not, can it be updated to include both?

Table 1 includes both rental and ownership units based on information about each development.

2. What is the role of the NOFA committee?

The purpose of the NOFA Review Committee is to review all affordable housing NOFA funding applications, and determine the funding level and whether the proposals should move forward to the full Council for consideration.

3. Are decisions being made on which projects to fund and which not to fund?

The NOFA process has been operated on an “over the counter” basis since 2014, which means projects can apply for funding on a continuous basis. Projects are brought to the NOFA Committee for consideration when they are ready for review. Staff work with applicants to bring projects to be considered that staff think meet the City’s goals and have reasonable funding requests.

4. Are decisions being made on how much city funding will be allocated to a given project?

Yes, the NOFA committee makes a recommendation to the full Council whether to support funding for a project and the amount. Staff provides information to the NOFA Committee regarding the proposed project, target population, and unit mix/affordability levels, current housing fund balance, and future funding needs. When staff bring forward a funding recommendation, staff typically look for it to be 1) no greater than 20% of project funding needs, and 2) accounts for as many other funding sources as possible to support the project.

5. What decisions or recommendations are being made by the committee?

The NOFA committee reviews funding proposals and makes recommendations as to whether the funding proposal should be recommended to the City Council.

6. Is there evidence that permanent supportive housing is successful?

Permanent supportive housing is part of the “housing first” model, where unhoused households are offered housing as a primary intervention, as opposed to waiting for households to complete other programs first. Permanent supportive housing is specifically designated for households who have disabling conditions that would prevent them from otherwise exiting homelessness and maintaining permanent housing on their own. National studies show that permanent supportive housing helps households maintain housing and helps municipalities lower costs for other services, compared to other interventions (like case management and shelter, for example), and is the most effective housing strategy to respond to homelessness. More locally, the Santa Clara County housing system frequently shows that over 96% of permanent supportive housing clients remain housed year over year.

7. What parties might fund the acquisition/preservation of naturally affordable middle-income units?

The potential funding options that staff will evaluate for the City's affordable housing pipeline would be the same for an acquisition/preservation program, including other public agencies, the private sector, and philanthropy. Additionally, should a regional funding measure from BAHFA pass, there would be a requirement to set aside a portion of the funding for preservation.

8. Hasn't the city already done some (preliminary) checking to see if there are additional funding sources for support of affordable housing, down payment assistance, etc.? What are the preliminary findings?

Yes – staff have been continuously working to seek additional funding sources, and continue to do so. Preliminarily, staff have found the following:

- Affordable housing: Staff continues to work with several public agencies to secure future funding for affordable housing, including the County, the Bay Area Housing Finance Authority, and have had some initial discussions with the Housing Authority. Staff have also reached out to the housing/philanthropic arms of several local companies. While all parties have expressed interest in further discussions with the City. There have been no commitments yet at this time.
- Down payment assistance: Staff has been working with the County on some options for down payment assistance for BMR units. Staff will also be applying for some state funds that can be used for this purpose.

9. It is my understanding that there are annual income checks to ensure residents in affordable/BMR units continue to stay within the income restrictions. I understand how this works for rental units. How does it work for ownership units?

For ownership units, income is only assessed for initial eligibility to purchase the unit. After the household purchases the unit, their income is not assessed. This is standard practice for homeownership programs in general. In the City's BMR homeownership program, residents do have to abide by City rules meant to preserve the units for the BMR program long-term. In general, owners may not sub-let their units, unless in situations of financial hardship with approval from the Community Development Director, and they cannot profit from the sub-let. They also must resell their unit based on resale restrictions that require the unit be sold at an affordable price to a household that is approved through the City's BMR program.

10. Can staff provide the pipeline of office projects and anticipated housing impact fee revenue?

See the chart below for staff's current fee projections for commercial projects over the next three fiscal years – FY 22-23, FY 23-24, and FY 24-25. Note that the chart includes several projects still under review (in blue). In addition to these projected commercial impact fees, staff anticipate approximately \$16.7 million in residential in-lieu fees over the same time period – several of these projects were approved before the 2019 BMR change.

In the Council report, staff estimated \$10 million/year for years four and five of the projection (FY25-26 and FY26-27), inclusive of anticipated fees from Google's North Bayshore and Middlefield Park master plans to be received in that timeframe.

1255	Pear Ave	\$	3,124,683.60
600	Ellis St	\$	5,138,233.05
2300	El Camino W	\$	104,315.22
756	California St	\$	40,474.84
1057	El Monte	\$	70,287.40
590	Castro Street	\$	2,458,162.00
747	West Dana	\$	102,511.98
601	Escuela Ave	\$	44,550.00
701	W Evelyn Ave	\$	586,265.75
2400-2700	Charleston Rd	\$	91,878.64
301	East Evelyn	\$	3,498,050.00
2110	Old Middlefield	\$	3,234.20
500-550	Ellis St	\$	570,759.36
1155-1185	Terra Bella Ave	\$	435,813.35
189	N. Bernardo	\$	2,295,612.50
365-405	San Antonio Rd.	\$	5,025,107.74
749	W. El Camino Real	\$	36,996.30
	Total:	\$	23,626,935.93

11. Approximately when will the City control the dedicated sites in North Bayshore and East Whisman?

Staff anticipates the East Whisman sites to be delivered to the City in FY25-26, as well as the Sobrato North Bayshore and Google North Bayshore Phase I sites.

12. When would the RFQ/RFP for the City-controlled/dedicated sites begin? What is the anticipated timeframe for project approval and construction?

Upon the delivery of the sites, staff anticipates the following timeline:

- Year 1: Developer Selection
- Years 2-3: Design, entitlements, and funding
- Years 4-5: Construction

13. Please explain how the math works to figure out the number of replacement units on a particular project. Are the requirements from various sources (ex. SB330 & State Density Bonus) overlapping or additive?

The requirements for City BMR units, SB 330 replacement and State Density Bonus are overlapping and not additive based on state law. In other words, cities are required to allow units to be counted towards meeting all three requirements as long as they meet the most restrictive requirement (for affordability/time, etc.).

- Units are assessed for compliance with all three programs (City BMR, SB 330 replacement units and Density Bonus) to ensure that the most restrictive requirements are met.

- Under SB 330, if a project is demolishing units and building new residential units, the demolished units must be replaced. If the demolished units are “protected units,” as defined below, they generally (with some exceptions) must be replaced to be affordable to the prior tenant. In the case of demolished CSFRA units, this means that often nearly all of the units will be replaced as affordable deed-restricted units, which “count” towards the projects BMR requirements and Density Bonus qualifications. The main exception is that SB 330 lets the jurisdiction decide whether protected units formerly occupied by above-lower-income tenants must be replaced as deed-restricted affordable units, or as rent stabilized units. This issue will come before Council on September 13th.

SB 330 defines a “protected unit” as one of the following:

- Residential dwelling units that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years.
- Residential dwelling units that are or were subject to any form of rent or price control through a public entity’s valid exercise of its police power within the past five years.
- Residential dwelling units that are or were occupied by lower or very low-income households within the past five years.
- Residential dwelling units that were withdrawn from rent or lease in accordance with Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 within the past 10 years.

ITEM 4.4 Clarification of the Employer Contribution for Employees and Retired Annuitants Under the Public Employees’ Medical and Hospital Care Act with Respect to the Mountain View Professional Firefighters and Police Officers Association

1. In the resolutions (Attachments 2 and 3) section a is missing. Is there a section a or is the first Whereas considered to be section a?

The language without the “(a)” is as it was approved by CalPERS in 2021 for the current year premiums and the City received direction from CalPERS to use the same language. However, in an effort to ensure clarity, the resolutions have been revised and will be posted to the Agenda as updated to include the “(a)” as follows:

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain View (a) that the employer contribution for each employee or annuitant shall be the amount necessary to pay the full cost of their enrollment, including the enrollment of family members, in a health benefit plan up to the maximum of:

ITEM 4.8 Miramonte Water and Sewer Main Replacement, Projects 21-21 and 21-22-Amend Project Budgets, Approve Plans and Specifications/Authorize Bidding

1. How was the sewer main damaged during the bike lane project?

The description in the Council report regarding the damage to the water main was mischaracterized. Prior to construction of the bike path, the contractor discovered a leak on the existing 8-inch water main. After investigation, staff confirmed the leak and identified the cause was likely due to the age of the water main. Taking into consideration the previous water main breaks as identified in the Council report, this new leak further reinforced that this water main, constructed in the 1950s, is nearing the end of its useful life. Staff repaired the leak and further analyzed the operational needs of this water main, leading to the recommendation to abandon it.

ITEM 6.1 Introduce Ordinances to Add Article III, Responsible Construction, and Article IV, Wage Theft, to Chapter 42 of the Mountain View City Code and Adopt a Resolution Amending the Master Fee Schedule

1. I was under the impression that council wanted to include worker’s compensation insurance coverage in both the wage theft ordinance as well as the responsible construction ordinance. Did staff look at including it in the wage theft ordinance? If so, what was the result?

Staff understood Council’s direction regarding workers’ compensation insurance as limited to inclusion within the Responsible Construction Ordinance and therefore, did not evaluate it as part of the Wage Theft Ordinance.

Requiring the submittal of workers’ compensation insurance as part of the Wage Theft affidavit submitted during the business license process for all 4,500 businesses that require a business license would place a significant administrative burden on staff and is not recommended.

The City verifies insurance coverage (including workers compensation) for mobile vending businesses (i.e., food trucks), but does not confirm insurance coverage for any other businesses as part of the business license application process.

2. Did the BIA representative indicate why the responsible construction ordinance would be a constraint if according to BIA wage theft is not prevalent in construction projects?

No. The BIA representative indicated that any addition to project application and completion requirements could make the process more burdensome. Furthermore, he asked if the Responsible Construction ordinance would be included in the Housing Element as a potential constraint to meeting housing production goals.

Staff reviewed the question and determined that it is unlikely the Responsible Construction Ordinance would be considered a constraint in the Housing Element given that the ordinance is simply a mechanism to enforce pre-existing laws and is based on submitting acknowledgment/attestation forms. Further, building permits and certificates of occupancy would not be withheld unless claims of unpaid judgements were substantiated.

Staff would need to monitor the program to see how many projects are affected by the ordinance. If only one or two projects are affected by delays or increased costs, and there are similar projects that do not have those issues, the ordinance would not be considered a constraint because it would be due to specific developers who are not complying with state wage and hour laws. If it is determined that the ordinance creates an expansive and complex new bureaucracy that subjects many projects to unreasonable delays, then it might be considered a constraint.

3. The staff report says the proposed ordinances are based on similar ordinances in Milpitas and Sunnyvale. Do the proposed ordinances for Mountain View differ in any way from those in these two cities? If so, in what ways?

A summary table comparing the Responsible Construction Ordinances in Milpitas and Sunnyvale to Mountain View’s proposed ordinance is provided below.

	Milpitas	Sunnyvale	Mountain View
Covered Projects	<ul style="list-style-type: none"> • Over 15,000 sq. ft. • New construction • Exempts projects already covered by prevailing wage requirements • Applies to the owner, contractor, and subcontractors over \$100,000 or 1% of construction value 	<ul style="list-style-type: none"> • Over 15,000 sq. ft. • New construction, additions, remodeling • Exempts projects already covered by prevailing wage requirements • Exempts contractors and subcontractors that are subject to a project labor agreement or community workforce agreement • Applies to the owner, contractor, and subcontractors over \$100,000 or 1% of construction value 	<ul style="list-style-type: none"> • Over 15,000 sq. ft. • Commercial and residential • New construction, significant additions/modifications • Exempts projects already covered by prevailing wage requirements • Applies to the owner, contractor, and subcontractors over \$100,000 or 1% of construction value
Requirements	<ul style="list-style-type: none"> • Pay Acknowledgement <u>at the beginning</u> as a condition of the Building Permit • Pay Transparency Certification <u>at the end</u> as a condition of Certificate of Occupancy • Attestation that the business does not have unpaid wage theft judgments 	<ul style="list-style-type: none"> • Pay Acknowledgement <u>at the beginning</u> as a condition of the Building Permit • Post notice of employee rights at the project site • Pay Transparency Certification <u>at the end</u> as a condition of Certificate of Occupancy • Attestation that the business does not have unpaid wage theft judgments 	<ul style="list-style-type: none"> • Pay Acknowledgement <u>at the beginning</u> as a condition of the Building Permit • Post notice of employee rights at the project site • Pay Transparency Certification <u>at the end</u> as a condition of Certificate of Occupancy • Attestation that the business does not have unpaid wage theft judgments
Enforcement	<ul style="list-style-type: none"> • Compliance finding before issuance of a certificate of occupancy, which includes a review 	<ul style="list-style-type: none"> • Certificate of Occupancy may be withheld for failure to submit a form or a sustained 	<ul style="list-style-type: none"> • Certificate of Occupancy may be withheld for failure to submit a form or a sustained complaint of

	Milpitas	Sunnyvale	Mountain View
	<p>of the Pay Transparency Certification for compliance with the ordinance and that the City of Milpitas has not received any information that the DLSE has found violations for construction work performed on the project.</p> <ul style="list-style-type: none"> • Owner or Contractor can provide evidence of the existence of a labor payment and/or lien release bond, in a form and amount sufficient to ensure that any wage claims and penalties can be fully paid 	<p>complaint of an unpaid wage theft judgment</p> <ul style="list-style-type: none"> • Complaint-driven; process for review of complaints received before issuance of Certificate of Occupancy • Owner can appeal or cure (through paying the judgment or posting a bond) 	<p>an unpaid wage theft judgment</p> <ul style="list-style-type: none"> • Complaint-driven; process for review of complaints received before issuance of Certificate of Occupancy • Owner, contractor or subcontractor aggrieved by decision can appeal or cure (through paying the judgment, in-lieu notarized accord under State law, or posting a bond) • Violation to submit a false, or reasonably known to be false, certification

Wage Theft Ordinance

The proposed Wage Theft Ordinance is consistent with Milpitas’ and Sunnyvale’s as all require the business to submit an affidavit regarding any unsatisfied wage theft court order or action.

However, Milpitas and Sunnyvale implemented their ordinances differently. Milpitas’ remedies include the suspension or revocation of a *business license* for unsatisfied orders or actions. Sunnyvale’s remedies include denial, suspension or revocation of the *applicable permit or license* for which the wage theft affidavit is required (for example, massage establishment permits or taxicab franchises). Mountain View’s business license operates as a tax, rather than as a permit.

Mountain View’s proposed Wage Theft Ordinance includes administrative remedies and criminal penalties as an infraction. The proposed ordinance adds as an additional violation the submittal of an affidavit that is known, or reasonably should have been known, to be false. The proposed ordinance also exempts business operators without employees. These remedies are consistent with those discussed at the Council Study Session and with direction received.

4. When enforcing the Responsible Construction Ordinance, approximately how long would it take to review a complaint? If an appeal is filed, how long would it take to review the appeal?

Within ten business days of receipt of a complaint, the City will notify the owner, contractor and/or subcontractor of the complaint. The owner, contractor and/or subcontractor may provide a written response to the complaint within 30 business days. The City Manager or designee would then review the complaint.

Staff does not have a sense of approximately how long it would take to review a complaint of an unpaid wage theft judgment against an owner, contractor, or subcontractor since there are limited examples of other cities with adopted ordinances whose experience we can use as a gauge. For example, Sunnyvale is the only city staff is aware of that has a Responsible Construction Ordinance with a similar enforcement provision and their ordinance has only been in effect since July 1, 2022.

Staff's conversations with the California Division of Labor Standards Enforcement (DLSE) and review of their data base indicate that staff will need to contact the DLSE to ascertain the existence and status of unpaid wage judgements for each claim received by the City. It is not known how quickly DLSE will be able to respond and what follow up by staff may be needed in order to find the claim either sustained or not sustained.

For unsustained claims, staff will process the proper documentation and coordination to enable the Chief Building Official to issue the building permit or certificate of occupancy. For sustained claims, the applicant will have the option to appeal. The steps in the event of an appeal require submittal within 10 business days of the mailing of the decision to sustain the complaint and a hearing by an external hearing officer secured by the City within 30 business days of the notice of appeal (or a date otherwise agreed to by the parties). The hearing officer will issue a written decision within 10 business days of the hearing.

Staff will assess the staffing and contracting needs to administer the ordinance and the appeal process and return to Council with a budget proposal, if necessary.

5. How would staff handle a frivolous complaint?

The City will not be making a substantive determination of whether wage theft has occurred. The State of California Division of Labor Standards Enforcement (DLSE) Labor Commissioner's Office investigates claims of nonpayment of wages, overtime, or vacation pay to determine if any wages or benefits are owed. In most cases, a settlement conference between the employee and employer is scheduled to resolve the issues. If a matter cannot be resolved at the settlement conference, an administrative hearing is held for a hearing officer to review the evidence and make a final decision on the wage theft claim.

Under the Responsible Construction Ordinance, any complaints received by the City from a person who is legally entitled to a payment of an unpaid wage theft judgment against an owner, contractor, or subcontractor on a project, the complaint must include: (1) a copy of the wage judgment order, decision or award, (2) a copy of the judgment entered by the superior court, and (3) a signed declaration under penalty of perjury that the specified contractor or subcontractor is the subject of an unpaid wage theft Judgment that is owed to the complaining party.

For the Wage Theft Ordinance, businesses will be required to sign an affidavit attesting that the business operator has not been found to be in violation of any federal, state, or local wage and hour laws, and that they are in compliance with or have satisfied any final wage judgment, order, or administrative decision issued against the business operator for violation of wage and hour laws. If the business operator fails to submit the affidavit or submits a false affidavit, they may be subject to administrative citations, fines and penalties and may be punishable as a criminal infraction. In these instances, staff would review the complaint and treat the complaint as we would other aspects of our code for compliance.

6. Who will the hearing officers be?

Staff will assess the options for hiring a hearing officer to administer the hearing and appeal process and will return to Council with a recommendation.

7. How many complaints do we expect to receive per year? How do we know this?

Staff can not estimate how many complaints the City expects to receive per year from people who are legally entitled to a payment of unpaid wage theft judgments issued by the State of California Division of Labor Standards Enforcement (DLSE).

In 2021, to learn more about wage theft claims in Mountain View, staff submitted a public records request to the DLSE to obtain data for wage theft claims filed from 2011 through 2020. The report highlighted that 101 wage theft claims were filed in the nearly 4-year period from 2017 through November 2020. In 51 instances, the claims were settled, or final judgments had been issued. As of November 2020, 50 cases were open, of which 22 were filed in 2020.

Staff also asked the Day Workers Center Mountain View (DWCMV) for data on the number of wage theft complaints made by day laborers. DWCMV shared that in the last 3 years, the DWCMV encountered 60 wage theft claims. Of these claims, there are various cases still pending, or in current litigation, as well as claims that have been settled or received a judgement in favor of the claimant.

8. How do we make people feel safe making complaints under this system—especially non-English speakers?

The City will be conducting extensive outreach in multiple languages and working with our community partners to help workers know their rights. The intent will be to provide information and encouragement for workers to submit wage theft claims to the DLSE. In the event that a worker claims there is an unpaid DLSE judgment owed to them by a Mountain View business license holder or project owner, contractor, or subcontractor on wages owed them, the City's outreach will seek to make the process of the City's ordinances as clear and accessible as possible.

The City will not be making a substantive determination of whether wage theft has occurred. Such judgments are typically issued by the State of California Division of Labor Standards Enforcement (DLSE). The City will only receive complaints by a person who is legally entitled to a payment of an unpaid wage theft judgment. A complaint must be accompanied by a wage judgment order, decision or award as discussed in response to Question 2 above.

Workers who experience wage theft can file an online wage claim with the Labor Commissioner's Office. A wage claim starts the process to collect on unpaid wages or benefits. The DLSE investigates claims of nonpayment of wages or benefits and works with employers and employees to resolve wage disputes and makes a final decision on the claim.

ITEM 6.2 Mixed-Use Development at 590 Castro Street

1. How much do the new parking spaces for the Chamber encroach into Pioneer Park?

The proposed extension of public parking spaces would extend approximately 315 square feet into the park.

2. Is there a reason why trees planted around the perimeter of this development are not a mixture of species rather than all one species?

The City has a prescribed street tree list and the project proposes to plant the designated London Plane street tree along the Church Street frontage. Proposed on-site trees planted around the building include a variety of species appropriate to their planting area including Oaks, Horse Chestnut, Western Redbud, and Jacarandas in the plaza, and a columnar variety of Ginkgo trees in the narrow planting area facing Pioneer Park.

3. The applicant proposes to allow access to 61 parking spaces on the top floor of the underground garage for public parking outside of regular business hours. What type of stalls are included in the 61 spaces (e.g., ADA, EV, self-park, attendant assisted, retail, etc.)?

All publicly available spaces will be self-park spaces. Of the approximately 61 spaces, there are a mixture of EV charging enabled spaces, accessible spaces, and standard spaces.

4. Is the parking attendant available from 6 pm to 11 pm on weekdays, weekends, and Federal holidays 7 am to 11 pm? If not, why not?

The proposed publicly available spaces are self-park spaces which would not necessitate a parking attendant.

5. Will the movable furniture in the plaza close to the Castro side always be outside (it looks to be shown as white tables and chairs in the plans)?

The movable furniture shown in the renderings are conceptual. The specific programmatic and furnishing details in the plaza will be reviewed and finalized during the building permit review process. Staff typically reviews this information to ensure that the outdoor furniture is well designed and durable.

6. Who is reviewing/approving the lighting in the plaza area, specifically the lighting at the bottom and top of the wood seating? (It is shown Attachment 3, part 2, page 19, but I don't see it detailed on page 22).

The final proposed lighting for the plaza and the entire project will be reviewed by staff during the building permit process to ensure adequate safe lighting levels and no off-site lighting intrusion.

7. Will the plaza centerpiece light sculpture be reviewed by the Visual Arts Committee?

The Visual Arts Committee reviews art in City projects and will not review the art in this private development. Design features, including art in private development, are reviewed by the DRC as part of the development review process.

8. Conditions of approval 4 and 8 appear to be the same. Should one be eliminated?

Correct, condition #4 and 8 are duplicative and staff will recommend that #8 be removed.

9. Page 4 of the staff report says that the applicant will continue to work with staff on DRC recommended changes and that is included as Condition of Approval 17. I think it is Condition 18. Is that correct?

Yes, staff notes that correction.

10. Condition 20 states - To the extent possible, all goods, services, and events offered within the plaza shall be available and open to the public. [PROJECT SPECIFIC CONDITION] Why is this just to the extent possible?

The plaza is required to be publicly accessible. The condition is worded to provide flexibility in case public access needs to be restricted for safety reasons, such as construction/repairs, or if there is an occasional employee event where food is served to employees but not available to the public.

11. Where is the bicycle repair station discussed in Condition 31?

A bike repair station is proposed within the Bike Room on P1 level of the parking garage. Details of the repair facility would be finalized during building permit review.

12. In condition 49c, should it be marketing rather than marking?

Correct.

13. Why are the construction hours in the downtown area different than those in other parts of the city?

Construction hours are consistent City-wide and will apply to this project.

14. Is there really a roof deck? Or is the rooftop deck considered to be the area around the building on the 4th floor?

The roof deck refers to the 4th floor patio area facing Pioneer Park.

15. We are going to use some trees with this project. Is the City able to use some of the trees for future construction efforts particularly in parks? I understand there are portable mills that can be used to make lumber out of trees in place.

Trees removed from private development are not typically slated for City construction projects in parks due to the logistics in coordinating tree removals with City projects, storing material and suitability of the trees for lumber. However, it may be possible that if some of the logistics can be addressed, suitable lumber could be offered to members of the public or agencies for construction projects. The trees to be removed are not proposed to be milled for lumber by the applicant. Staff will convey question to the applicant who can respond at the meeting.