



COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: June 22, 2010
Staff Report #: 10-094

Agenda Item #: F1

REGULAR BUSINESS: (1) Waiver of the reading of Ordinances and adoption of Ordinances (a) Creating the M-3 (Commercial Business Park) Zoning District, (b) Rezoning property located at 101 to 155 Constitution Drive and 100 to 190 Independence Drive from M-2 (General Industrial) to M-3-X (Commercial Business Park, Conditional Development), and (c) Approving the Development Agreement for the Menlo Gateway (Bohannon Hotel & Office) Project; and (2) Consideration of a Resolution of the City Council of the City of Menlo Park calling and giving notice of a Municipal Election to be held November 2, 2010 as required by the provisions of the laws of the State of California relating to general law cities and for the submission to the voters of a proposition to approve an amendment to the General Plan of the City to add the Commercial Business Park land use designation and to change the land use designation for certain property at 100-190 Independence Drive and 101-155 Constitution Drive to such land use designation and thereby permitting the development of the Menlo Gateway Project; directing the City Attorney to prepare an Impartial Analysis and directing the City Attorney and City Clerk to prepare the necessary documents to place the proposition on the ballot; setting the dates for filing written arguments and authorizing designated members of the City Council to submit and sign an Argument in favor of the proposition; and requesting the Board of Supervisors of the County of San Mateo to consolidate a Municipal Election to be held with the Gubernatorial General Election on November 2, 2010 pursuant to §10403 of the election code.

RECOMMENDATION

Staff recommends that the City Council waive the full reading and adopt the following ordinances related to the Menlo Gateway (Bohannon Hotel & Office) project:

- Ordinance amending Title 16 of the Menlo Park Municipal Code, adding Chapter 16.47 M-3 Commercial Business Park and amending Chapter 16.08 Districts Established-General Regulations and Chapter 16.72 Off-Street Parking (Attachment A);
- Ordinance rezoning the properties located at 100-190 Independence Drive and 101-155 Constitution Drive from M-2 (General Industrial) to M-3-X (Commercial Business Park, Conditional Development) (Attachment B); and
- Ordinance approving the Development Agreement with Bohannon Development Company (Attachment C);

In addition, staff recommends approval of a Resolution of the City Council of the City of Menlo Park calling and giving notice of a Municipal Election to be held November 2, 2010 as required by the provisions of the laws of the State of California relating to general law cities and for the submission to the voters of a proposition to approve an amendment to the General Plan of the City to add the Commercial Business Park land use designation and to change the land use designation for certain property at 100-190 Independence Drive and 101-155 Constitution Drive to such land use designation and thereby permitting the development of the Menlo Gateway Project; directing the City Attorney to prepare an Impartial Analysis and directing the City Attorney and City Clerk to prepare the necessary documents to place the proposition on the ballot; setting the dates for filing written arguments and authorizing designated members of the City Council to submit and sign an Argument in favor of the proposition; and requesting the Board of Supervisors of the County of San Mateo to consolidate a Municipal Election to be held with the Gubernatorial General Election on November 2, 2010 pursuant to §10403 of the election code (Attachment D).

BACKGROUND

At the June 15, 2010 City Council meeting, the Council voted 4-1 (with Council Member Boyle opposed) to approve the Menlo Gateway project and adopt all of the listed findings and actions for approval as outlined in Attachment A of the June 15, 2010 staff report with the following modifications:

- Substitute the resolution that would require voter approval at the November 2, 2010 general municipal election, which was attached to the staff report as Attachment F for the resolution attached as Attachment E in number 5 of Attachment A under the heading General Plan Amendment;
- Amend the three ordinances which were Attachments G, H, and I of the staff report to include the ballot measure language appearing at the bottom of page 5 of 14 of the staff report; and

- Incorporate all of the items as outlined in the June 15, 2010 memo from the Development Services Manager to the Council into the Development Agreement and Conditional Development Permit and other documents as necessary, and renumbering sections and section references as necessary in the various documents to reflect the changes set forth in the memo.

The Council action on the following items related to the Menlo Gateway project is complete as of June 15, 2010:

- Certification of the Environmental Impact Report (EIR);
- General Plan Amendment;
- Conditional Development Permit;
- Tentative Parcel Maps;
- Below Market Rate Housing Agreement; and
- Heritage Tree Removal Permits.

The Council introduced the Ordinances for the Zoning Ordinance Amendment, Rezoning and Development Agreement, but Ordinances require a second step for adoption as discussed below in the Analysis section. Based on the interrelationship of the various items, all of the actions referenced above, with the exception of the certification of the EIR, would wait to become effective until voter approval of the General Plan Amendment. Preparing the ballot measure also requires Council action as discussed below in the Analysis section.

ANALYSIS

Ordinances

Staff has prepared the final version of the Ordinances pertaining to the Zoning Ordinance Amendment (Attachment A), Rezoning (Attachment B), and Development Agreement (Attachment C) consistent with the Council's motion on June 15, 2010. The following language has been inserted into the three Ordinances to reflect the fact that the Ordinances are contingent upon voter approval of the General Plan Amendment:

This Ordinance shall only take effect if Resolution No. 5932 adopted by the City Council on June 15, 2010, entitled "Resolution of the City Council of the City of Menlo Park Amending the General Plan to Add the Commercial Business Park Land Use Designation, to Change the Land Use Designation for Property Located at 100-190 Independence Drive and 101-155 Constitution Drive and Giving Notice that the Resolution Will Be Placed On the Ballot at the Regular Municipal Election to be Held November 2, 2010", is approved by a majority of voters voting on the Resolution at the November 2, 2010 regular municipal election.

If the Council takes action to adopt the ordinances, each will become effective if the General Plan Amendment is approved by a majority of voters voting on the General Plan Amendment at the November 2, 2010 regular municipal election.

Ballot Resolution

Elections Code section 9222 allows the City Council to place a ballot proposition approving a legislative action on the ballot for approval of the voters at any election. Attachment D is a draft Resolution to submit the approval of the General Plan Amendment for the Menlo Gateway project to the voters for approval at the Regular Municipal Election to be held November 2, 2010.

The Resolution must specify the wording of the question to be submitted to the voters. The following are two alternative forms of the ballot question for consideration by the Council:

Alternative 1: To generate new revenues for city services, create jobs and provide money for neighborhood and park improvements, shall the City of Menlo Park General Plan be amended to create a Commercial Business Park land use designation and apply that designation to certain property located east of Highway 101 near Marsh Road to permit the Menlo Gateway project comprised of office, research and development space, and a hotel, health club and restaurant?

Alternative 2: Shall the City of Menlo Park General Plan be amended to add a Commercial Business Park land use designation category and change the land use designation for certain property located east of Highway 101 near Marsh Road at 100-190 Independence Drive and 101-155 Constitution Drive from Limited Industry to Commercial Business Park to permit the Menlo Gateway project comprised of office, research and development space, and a hotel, health club and restaurant?

To the extent the City Council is not satisfied with either of these alternatives, the Council may modify the wording of the ballot question, provided, however, it may not exceed a total of 75 words. For purposes of calculating the number of words, names of places such as "City of Menlo Park" and "Highway 101" each count as one word.

Elections Code section 9280 allows the City Council to direct the City Attorney to prepare an Impartial Analysis of the measure showing the effect of the measure on the existing law and on the operation of the measure. The Impartial Analysis would be printed preceding the arguments for and against the measure in the voter pamphlet and shall not exceed 500 words in length. The filing deadline for the impartial analysis is the same as the date for filing primary arguments.

In addition, Elections Code section 9282 provides for the submission of written arguments in favor of, and in opposition to, the measure. The City Council may authorize one or more of its members to submit an argument in favor of the ballot measure. Any voter or bona fide group of voters may also submit an argument in favor of or against the ballot measure. If more than one argument for or against any measure is submitted, the elections official shall select one of the arguments using specific criteria as outlined in Elections Code section 9287. The members authorized by the Council to submit an argument in favor of the ballot measure have priority over any other argument in favor of the measure. The authors of the argument in favor of the ballot measure are entitled to write a rebuttal to the argument against the measure, or to authorize someone else to write the rebuttal.

If the City Council wants to submit an argument in favor of the ballot measure, the Council should decide which members would be authorized to write the argument by the Council. If a majority of the Council are authorized to sign the argument, to avoid a Brown Act violation the Council could appoint a subcommittee of the Council to write the ballot argument and then bring the draft to the Council as a consent agenda item for approval at the July 20, 2010 Council meeting.

The City must have the written Primary Arguments and the City Attorney's Impartial Analysis to San Mateo County Elections office by August 13, 2010 and the Rebuttal Arguments by August 23, 2010. With the deadline of August 13, 2010 to San Mateo County Elections office, staff is requesting the City Council set a submittal deadline to the City of Menlo Park for the Impartial Analysis and the Primary Arguments of July 29, 2010 and the Rebuttal Arguments by August 9, 2010. This will provide the City time to have the submittals translated into the required languages.

The attached resolution calls for an election and places the measure on the ballot. Further, it calls for the preparation of an Impartial Analysis and sets the dates for the filing of primary and rebuttal arguments related to the measure and specifies who is authorized to submit an argument in favor of the measure on behalf of the Council. Finally the resolution orders the measure be placed on the November 2, 2010 ballot.

IMPACT ON CITY RESOURCES

There is no direct impact on City resources associated with adoption of the three ordinances. The County estimates that the election will cost approximately \$9,750 to \$11,000. The County has indicated that actual costs may vary due to election supplies, paper costs, fuel costs, labor costs and the number of jurisdictions consolidating with the November election. The County elections official will bill the City for the actual costs of the election conducted, on a pro rated basis. In addition, the City will incur costs for preparation of the Impartial Analysis, administrative staff time, possible legal fees to address any challenges to the Impartial Analysis or ballot arguments, as well as costs of advertising and translation services.

POLICY ISSUES

The recommended action is consistent with the City Council's actions and approvals on the project at its meeting of June 15, 2010.

ENVIRONMENTAL REVIEW

On June 15, 2010, the City Council adopted findings in accordance with the California Environmental Quality Act and certified the Environmental Impact Report prepared for the project.

Justin Murphy
Development Services Manager

William L. McClure
City Attorney

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting. In addition, an email update was sent to subscribers to the project page for the proposal, which is available at the following address: http://www.menlopark.org/projects/comdev_iac.htm.

ATTACHMENTS

- A. [Ordinance amending Title 16 of the Menlo Park Municipal Code, adding Chapter 16.47 M-3 Commercial Business Park and amending Chapter 16.08 Districts Established-General Regulations and Chapter 16.72 Off-Street Parking](#)
- B. [Ordinance amending Title 16 of the Menlo Park Municipal Code, adding Chapter 16.47 M-3 Commercial Business Park and amending Chapter 16.08 Districts Established-General Regulations and Chapter 16.72 Off-Street Parking](#)
- C. [Ordinance approving the Development Agreement with Bohannon Development Company](#)
- D. [Draft Ballot Resolution](#)

DOCUMENTS AVAILABLE FOR REVIEW AT CITY OFFICES AND WEBSITE

- [Draft Environmental Impact Report prepared by PBS&J, dated July 2009](#)
- [Draft Fiscal Impact Analysis prepared by BAE, dated July 2009](#)
- [September 14, 2009 Planning Commission Staff Report on the Draft EIR](#)
- [October 5, 2009 Planning Commission Staff Report on the Draft FIA](#)

- [Final Environmental Impact Report \(EIR\), including Response to Comments, dated March 2010](#)
- [Final Fiscal Impact Analysis \(FIA\), dated March 2010](#)
- [FIA Response to Comments, dated March 2010](#)
- [Hotel Financial Analysis, dated March 2010](#)
- [Office Financial Analysis, dated March 2010](#)
- [April 6, 2010 City Council Staff Report on the Draft Term Sheet](#)
- [April 7, 2010 Housing Commission Staff Report](#)
- [April 19, 2010 Planning Commission Staff Report](#)
- [May 3, 2010 Planning Commission Staff Report](#)
- [May 11, 2010 City Council Staff Report on the Development Agreement](#)
- [May 25, 2010 City Council Staff Report](#)
- [June 15, 2010 City Council Staff Report](#)
- [June 15, 2010 City Council Memorandum](#)