

FULL TEXT OF MEASURE M

AN INITIATIVE MEASURE PROPOSING AMENDMENTS TO THE CITY OF MENLO PARK GENERAL PLAN AND MENLO PARK 2012 EL CAMINO REAL/DOWNTOWN SPECIFIC PLAN LIMITING OFFICE DEVELOPMENT, MODIFYING OPEN SPACE REQUIREMENTS, AND REQUIRING VOTER APPROVAL FOR NEW NON-RESIDENTIAL PROJECTS THAT EXCEED SPECIFIED DEVELOPMENT LIMITS

THE PEOPLE OF THE CITY OF MENLO PARK DO ORDAIN AS FOLLOWS:

Section 1. **TITLE.**

- 1.1. This initiative measure shall be known and cited as the "El Camino Real/ Downtown Specific Plan Area Livable, Walkable Community Development Standards Act."

Section 2. **PLANNING POLICY DOCUMENTS COVERED.**

- 2.1. This initiative measure enacts certain development definitions and standards within the City of Menlo Park General Plan and the Menlo Park El Camino Real/Downtown Specific Plan ("ECR Specific Plan").
- 2.2. **In this initiative measure the above two documents are referred to collectively as the "Planning Policy Documents."**
- 2.3. Within 30 days of this measure's effective date, the City shall cause the entire text of this measure to be incorporated into the electronic version of each of the Planning Policy Documents posted at the City's website, and all subsequently distributed electronic or printed copies of the Planning Policy Documents, which incorporation shall appear immediately following the table of contents of each such document.

Section 3. **ECR SPECIFIC PLAN AREA VOTER-ADOPTED DEVELOPMENT DEFINITIONS AND STANDARDS.**

- 3.1. **ECR SPECIFIC PLAN AREA DEFINED.** When referring to the "ECR Specific Plan Area," this initiative measure is referring to the bounded area within the Vision Plan Area Map located at Page 2, Figure I, of the El Camino Real/Downtown Vision Plan, accepted by the Menlo Park city Council on July 15, 2008, which is attached as Exhibit 1 to this measure and hereby adopted by the voters as an integral part of this initiative measure.

3.2. OPEN SPACE DEFINITIONS AND STANDARDS; ABOVE GROUND LEVEL OPEN SPACE EXCLUDED FROM CALCULATIONS OF MINIMUM OPEN SPACE REQUIREMENTS FOR DEVELOPMENT PROJECTS WITHIN THE ECR SPECIFIC PLAN AREA.

3.2.1. As adopted on July 12, 2012, the ECR Specific Plan's Appendix includes the following definition of "Open Space": "The portion of the building site that is open, unobstructed and unoccupied, and otherwise preserved from development, and used for public or private use, including plazas, parks, walkways, landscaping, patios and balconies. It is inclusive of Common Outdoor Open Space, Private Open Space and Public Open Space as defined in this glossary. It is typically located at ground level, though it includes open space atop a podium, if provided, and upper story balconies. Open space is also land that is essentially unimproved and devoted to the conservation of natural resources." The foregoing definition is hereby amended, restated and adopted by the voters to instead read: "The portion of the building site that is open, unobstructed and unoccupied, and otherwise preserved from development, and used for public or private use, including plazas, parks, walkways, landscaping, patios, balconies, and roof decks. It is inclusive of Common Outdoor Open Space, Private Open Space and Public Open Space as defined in this glossary. Open space up to 4 feet in height associated with ground floor level development or atop a podium up to 4 feet high, if provided, shall count toward the minimum open space requirement for proposed development. Open space greater than 4 feet in height, whether associated with upper story balconies, patios or roof decks, or atop a podium, if provided, shall not count toward the minimum open space requirement for proposed development. Open space is also land that is essentially unimproved and devoted to the conservation of natural resources."

3.2.2. As adopted on July 12, 2012, the ECR Specific Plan's Appendix includes the following definition of "Private Open Space": "An area connected or immediately adjacent to a dwelling unit. The space can be a balcony, porch, ground or above grade patio or roof deck used exclusively by the occupants of the dwelling unit and their guests." The foregoing definition is hereby adopted by the voters.

- 3.2.3. As adopted on July 12, 2012, the ECR Specific Plan's Appendix includes the following definition of "Common Outdoor Open Space": "Usable outdoor space commonly accessible to all residents and users of the building for the purpose of passive or active recreation." The foregoing definition is hereby adopted by the voters.
- 3.2.4. As adopted on July 12, 2012, ECR Specific Plan Standard E.3.6.01 states: "Residential developments or Mixed Use developments with residential use shall have a minimum of 100 square feet of open space per unit created as common open space or a minimum of 80 square feet of open space per unit created as private open space, where private open space shall have a minimum dimension of 6 feet by 6 feet. In case of a mix of private and common open space, such common open space shall be provided at a ratio equal to 1.25 square feet for each one square foot of private open space that is not provided." The foregoing standard is hereby adopted by the voters.
- 3.2.5. As adopted on July 12, 2012, ECR Specific Plan Standard E.3.6.02 states: "Residential open space (whether in common or private areas) and accessible open space above parking podiums up to 16 feet high shall count towards the minimum open space requirement for the development." The foregoing Standard is hereby amended, restated and adopted by the voters to instead read: "Ground floor open space up to 4 feet high (whether in common or private areas) and accessible open space above parking podiums up to 4 feet high shall count towards the minimum open space requirement for the development. Open space exceeding 4 feet in height (regardless of whether in common or private areas or associated with podiums) shall not count towards the minimum open space requirement for the development."
- 3.2.6. After this measure becomes effective, Tables E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, in the ECR Specific Plan, which, as adopted on July 12, 2012, state that "residential open space, whether in common or private areas, shall count toward the minimum open space requirement for the development" are each hereby amended, restated and adopted by the voters to instead read at the places where the foregoing statement appears: "only ground floor level residential open space in common or private areas up to 4 feet high and accessible open space above parking podiums up to 4 feet high shall count toward the minimum open space requirement for the

development; residential open space in common or private areas exceeding 4 feet in height and open space above parking podiums exceeding 4 feet in height shall not."

- 3.3. OFFICE SPACE DEFINED; MAXIMUM OFFICE SPACE ALLOWED FOR INDIVIDUAL OR PHASED DEVELOPMENT PROJECTS WITHIN THE ECR SPECIFIC PLAN AREA.
- 3.3.1. As adopted on July 12, 2012, the ECR Specific Plan's Appendix includes the following Commercial Use Classification for "Offices, Business and Professional": "Offices of firms or organizations providing professional, executive, management, or administrative services, such as accounting, advertising, architectural, computer software design, engineering, graphic design, insurance, interior design, investment, and legal offices. This classification excludes hospitals, banks, and savings and loan associations." The foregoing Commercial Use Classification is hereby adopted by the voters.
- 3.3.2. As adopted on July 12, 2012, the ECR Specific Plan's Appendix includes the following Commercial Use Classification for "Offices, Medical and Dental": "Offices for a physician, dentist, or chiropractor, including medical/dental laboratories incidental to the medical office use. This classification excludes medical marijuana dispensing facilities, as defined in the California Health and Safety Code." The foregoing Commercial Use Classification is hereby adopted by the voters.
- 3.3.3. As adopted on July 12, 2012, the ECR Specific Plan's Appendix includes the following Commercial Use Classification for "Banks and Other Financial Institutions": "Financial institutions providing retail banking services. This classification includes only those institutions engaged in the on-site circulation of money, including credit unions." The foregoing Commercial Use Classification is hereby adopted by the voters.
- 3.3.4. The foregoing, voter-adopted Commercial Use Classifications are hereby collectively referred to in this measure as "Office Space."
- 3.3.5. After this measure becomes effective, the maximum amount of Office Space that any individual development project

proposal within the ECR Specific Plan area may contain is 100,000 square feet. No City elected or appointed official or body, agency, staff member or officer may take, or permit to be taken, any action to permit any individual development project proposal located within the ECR Specific Plan area that would exceed the foregoing limit.

3.3.6. For purposes of this provision, all phases of a multi-phased project proposal shall be collectively considered an individual project.

3.3.7. The foregoing limitation is in addition to applicable Floor Area Ratio (FAR) limitations, including Public Benefit Bonuses, that may apply to a proposed development project.

3.3.8. Any authorization, permit, entitlement or other approval issued for a proposed development project by the City after the effective date of this measure is limited by the foregoing provisions, and any claimed "vested right" to develop under any such authorization, permit, entitlement or other approval shall be and is conditioned on the foregoing 100,000 square foot limitation on Office Space, whether or not such condition is expressly called out or stated in the authorization, permit, entitlement or other approval.

3.4. ECR SPECIFIC PLAN AREA MAXIMUM TOTAL NON- RESIDENTIAL AND OFFICE SPACE DEVELOPMENT ALLOWED.

3.4.1. This Section 3.4 of this measure hereby incorporates the voter adopted Commercial Use Classifications and definition of "Office Space" stated within Section 3.3 above.

3.4.2. The Final Environmental Impact Report (EIR) for the ECR Specific Plan, as certified by the City on June 5, 2012, at page 3-11, states that it conceptually analyzes net, new development of 240,820 square feet of Commercial Space. After this measure becomes effective, the maximum square footage of all net, new Office Space that may be approved, entitled, permitted or otherwise authorized by the City in the aggregate

within the ECR Specific Plan Area after the ECR Specific Plan's adoption on July 12, 2012 shall not exceed the 240,820 square feet of Commercial Space disclosed and analyzed in the ECR Specific Plan EIR.

3.4.3. As adopted on July 12, 2012, the ECR Specific Plan at page G16, states as follows:

“The Specific Plan establishes the maximum allowable net new development as follows:

- Residential uses: 680 units; and
- Non-residential uses, including retail, office and hotel: 474,000 Square Feet.

The Specific Plan divides the maximum allowable development between residential and non-residential uses as shown, recognizing the particular impacts from residential development (e.g., on schools and parks) while otherwise allowing market forces to determine the final combination of development types over time.

The Planning Division shall at all times maintain a publicly available record of:

- The total amount of allowable residential units and non-residential square footage under the Specific Plan, as provided above;
- The total number of residential units and nonresidential square footage for which entitlements and building permits have been granted;
- The total number of residential units and nonresidential square footage removed due to building demolition; and
- The total allowable number of residential units and non-residential square footage remaining available.”

The foregoing passage of the Specific Plan is hereby amended, restated and adopted by the voters to instead read as follows:

“The Specific Plan establishes the maximum allowable net new development as follows:

- Residential uses: 680 units; and
- Non-residential uses, including retail, office and hotel: 474,000 Square Feet, with uses qualifying as Office Space under Section 3.3, above, constituting no more than 240,820 Square Feet.

The Specific Plan divides the maximum allowable development between residential and non-residential uses as shown, recognizing the particular impacts from residential development (e.g., on schools and parks) while otherwise allowing market forces to determine the final combination of development types over time, subject to the Square Footage limitations stated above.

The Planning Division shall at all times maintain a publicly available record of:

- The total amount of allowable residential units, non-residential square footage, and Office Space square footage allowed under the Specific Plan, as provided above;
- The total number of residential units for which any vesting entitlement or building permit has been granted after the ECR Specific Plan's adoption on July 12, 2012;
- The total nonresidential square footage for which any vesting entitlement or building permit has been granted after the ECR Specific Plan's adoption on July 12, 2012;
- The total Office Space square footage for which any vesting entitlement or building permit has been granted after the ECR Specific Plan's adoption on July 12, 2012;

- The total number of unconstructed residential units, nonresidential square footage, or Office Space square footage for which any vesting entitlement or building permit has been issued after the ECR Specific Plan's adoption on July 12, 2012, but that have subsequently been credited back toward the calculation due to the irrevocable expiration, abandonment, rescission or invalidation of such vesting entitlement or building permit prior to construction;
- The total number of residential units, nonresidential square footage, or Office Space square footage that have been credited back toward the net calculation due to building demolition completed after the ECR Specific Plan's adoption on July 12, 2012; and
- The total allowable number of residential units, non-residential square footage, and Office Space square footage remaining available.

For purposes of the foregoing provisions 'vesting entitlement' means any ministerial or discretionary action, decision, agreement, approval or other affirmative action of any City elected or appointed official or body, agency, staff member or officer (including, but not limited to, the adoption of a development agreement or approval of a vesting tentative map), that confers a vested right upon the developer to proceed with the development project."

- 3.4.4. As adopted on July 12, 2012, The ECR Specific Plan, at page G16, states: "Any development proposal that would result in either more residences or more commercial development than permitted by the Specific Plan would be required to apply for an amendment to the Specific Plan and complete the necessary environmental review." The foregoing passage of the Specific Plan is hereby amended, restated and adopted by the voters to instead read as follows: "Any development proposal that would result in more net, new residential units, non-residential square footage (474,000 square feet maximum) or Office Space square footage (240,820 square

feet maximum) than permitted by the Specific Plan as restated and amended at Section 3.4.3, above, would be required to apply for an amendment to the Specific Plan and complete the necessary environmental review. Voter approval shall not be required to amend the Specific Plan to increase the number of net, new residential units allowed beyond the limit stated in this measure. Voter approval shall be required to increase the amount of net, new non-residential or Office Space square footage allowed beyond the limits stated in this measure."

- 3.4.5. The foregoing limitations are in addition to applicable Floor Area Ratio (FAR) limitations, including Public Benefit Bonuses, that may apply to a proposed development project.
- 3.4.6. Any authorization, permit, entitlement or other approval issued for a proposed development project by the City after the effective date of this measure is limited by the foregoing provisions, and any claimed "vested right" to develop under any such authorization, permit, entitlement or other approval shall be and is conditioned on the foregoing aggregate limits on net, new residential, non- residential and Office Space development, whether or not such condition is expressly called out or stated in the authorization, permit, entitlement or other approval.

Section 4. **NO AMENDMENTS OR REPEAL WITHOUT VOTER APPROVAL.**

- 4.1. Except for as provided at Section 3.4.4 above regarding the City's ability to approve without voter ratification an amendment to the Specific Plan to accommodate development proposals that would call for an increase in the allowable number of residential units under the Specific Plan, the voter- adopted development standards and definitions set forth in Section 3, above, may be repealed or amended only by a majority vote of the electorate of the City of Menlo Park voting "YES" on a ballot measure proposing such repeal or amendment at a regular or special election. The entire text of the proposed definition or standard to be repealed, or the amendment proposed to any such definition or standard, shall be included in the sample ballot materials mailed to registered voters prior to any such election.

4.2. Consistent with the Planning and Zoning Law and applicable case law, the City shall not adopt any other new provisions or amendments to the Policy Planning Documents that would be inconsistent with or frustrate the implementation of the voter-adopted development standards and definitions set forth in Section 3, above, absent voter approval of a conforming amendment to those voter-adopted provisions.

Section 5. **PRIORITY.**

5.1. After this measure becomes effective, its provision shall prevail over and supersede all provisions of the municipal code, ordinances, resolutions, and administrative policies of the City of Menlo Park which are inferior to the Planning Policy Documents and in conflict with any provisions of this measure.

Section 6. **SEVERABILITY.**

6.1. In the event a final judgment of a court of proper jurisdiction determines that any provision, phrase or word of this initiative measure, or a particular application of any such provision, phrase or word, is invalid or unenforceable pursuant to state or federal law, the invalid or unenforceable provision, phrase, word or particular application shall be severed from the remainder of this measure, and the remaining portions of this measure shall remain in full force and effect without the invalid or unenforceable provision, phrase, word or particular application.

Section 7. **CONFLICT WITH OTHER BALLOT MEASURES.**

7.1. In the event that any other ballot measure is proposed for voter approval on the same election ballot as this initiative measure, and that other measure contains provisions which deal with the same or similar subjects, it is the intent of the voters in adopting this measure that this measure shall prevail over any such other ballot measure in its entirety to the extent that this measure is approved and receives a greater number of votes for approval than the other measure. In such case, the other measure is null and void and no provision of the other measure shall become effective.

Section 8. **EXEMPTION FOR CERTAIN PROJECTS.**

8.1. To the extent any particular development project or other ongoing activity has, prior to the effective date of this measure, obtained a

legally valid, vested right under state or local law to proceed in a manner inconsistent with one or more of the voter-adopted development definitions and standards at Section 3 of this measure, the specific, inconsistent definitions and standards shall not be interpreted as applying to or affecting the project or activity. If other definitions or standards in Section 3 are not inconsistent with such vested rights, those other definitions or standards shall continue to apply to the project or activity. Projects or activities that may, themselves, be exempt from Section 3.4 of this measure by virtue of the foregoing provision, shall, to the extent the building permit for the project post-dates the ECR Specific Plan's adoption on July 12, 2012, still be counted toward the calculation of net, new amount of pre-existing approved residential units, non-residential square footage or Office Space square footage within the ECR Specific Plan area called for by Section 3.4.3, above, when assessing whether the City may approve, entitle, permit or otherwise authorize a different project or proposal to proceed under Section 3.4 of this measure.

- 8.2. To the extent that one or more of the development definitions and standards in Section 3 of this measure, if applied to any particular land use or development project or proposal would, under state or federal law, be beyond the initiative powers of the City's voters under the California Constitution, the specific, inconsistent definitions and standards shall not be interpreted as applying to that particular project or proposal. If other definitions or standards in Section 3, as applied to any such project or proposal, would not be beyond the initiative powers of the City's voters under the California Constitution, those definitions or standards shall continue to apply to the project or proposal. Projects or activities that may, themselves, be exempt from Section 3.4 of this measure by virtue of the foregoing provision, shall, to the extent the building permit for the project post-dates the ECR Specific Plan's adoption on July 12, 2012, still be counted toward the calculation of net, new amount of pre-existing approved residential units, non-residential square footage or Office Space square footage within the ECR Specific Plan area called for by Section 3.4.3, above, when assessing whether the City may approve, entitle, permit or otherwise authorize a different project or proposal to proceed under Section 3.4 of this measure.

