

Town of Los Altos Hills

City Council Regular Meeting Minutes

Thursday, November 18, 2021 – 6:00 p.m.

Council Chambers, 26379 Fremont Road, Los Altos Hills, California

Via teleconference according Assembly Bill 361, **Mayor Tankha** called the City Council Regular Meeting to order at 5:30 p.m.

Present: Mayor Tankha, Vice Mayor Tyson, Councilmember Mok, Councilmember Schmidt, Councilmember Swan
Absent: None
Staff: City Manager Peter Pirnejad, City Attorney Steve Mattas, Planning/Building Director Sofia Mangalam, Public Works Director Oscar Antillon, Administrative Services Director Sarina Revillar, Principal Planner Steve Padovan, Associate Planner Jeremy Loh, Management Analyst II Cody Einfalt, City Clerk Deborah Padovan

CALL TO ORDER (5:30 P.M.)

A. Roll Call

B. Pledge of Allegiance

1. CLOSED SESSION TO DISCUSS THE FOLLOWING: PUBLIC COMMENT (PUBLIC COMMENT IS LIMITED TO ITEMS WHICH ARE THE SUBJECT OF THE SPECIAL MEETING)

There was no public comment. Council adjourned to Closed Session at 5:31 p.m.

A. CLOSED SESSION: PUBLIC EMPLOYEE PERFORMANCE EVALUATION
(Pursuant to Government Code Section 54957
Unrepresented Employee: City Attorney

2. ADJOURN CLOSED SESSION

3. OPEN SESSION (6:00 P.M.)

Open session was called to order at 6:00 p.m.

A. Pledge of Allegiance

4. AGENDA REVIEW AND REPORT OUT OF CLOSED SESSION

There was no reportable action as a result of the closed session.

5. **PRESENTATIONS AND APPOINTMENTS**

A. Introduction of New Los Altos Hills Staff Members

City Manager Peter Pirnejad introduced new Los Altos Hills Employees:

Sofia Mangalam, Planning/Building Director
Daniel Liang, Utility Engineering Manager
Mike Schloetter, Maintenance Superintendent

They all introduced themselves to the City Council.

B. Appointment to the Los Altos Hills Public Art Committee

City Clerk Deborah Padovan presented the application of **Vicki Oldberg**.

Ms. Oldberg introduced herself to the City Council and expressed an interest in serving on the Public Art Committee.

MOTION MADE AND SECONDED: Councilmember **Swan** moved to appoint **Victoria Oldberg** to the Los Altos Hills Public Art Committee for a four-year term. The motion was seconded by Councilmember **Schmidt**.

MOTION PASSED 5-0:

AYES: Tankha, Tyson, Mok, Schmidt, Swan
NOES: None
ABSTAIN: None
RECUSE: None
ABSENT: None

C. Reappointment to the Los Altos Hills Public Art Committee

City Clerk Padovan presented the reappointment request of **Diane Brauch**.

MOTION MADE AND SECONDED: Mayor Tankha moved to reappoint **Diane Brauch** to the Los Altos Hills Public Art Committee for a second four-year term. The motion was seconded by Councilmember **Swan**.

MOTION PASSED 5-0:

AYES: Tankha, Tyson, Mok, Schmidt, Swan
NOES: None
ABSTAIN: None
RECUSE: None
ABSENT: None

D. Annual Report of the Los Altos Hills Youth Commission

Youth Commissioners Mir Bhari and Anika Sikka co-presented the annual report of the Youth Commission.

The Council accepted the report and thanked the commissioners for all of their hard work and their role in bringing the community together. No action was taken.

6. PRESENTATIONS FROM THE FLOOR

*Persons wishing to address the Council on any subject **not** on the agenda may do so now. Please complete a Speaker Card located on the back table of the Council Chambers and submit it to the City Clerk. Comments are limited to two (2) minutes per speaker. California law prohibits the Council from acting on items that do not appear on the agenda. Under a Resolution previously adopted by the Council, such items can be referred to staff for appropriate action, which may include placement on the next available agenda.*

There was no public comment.

7. CONSENT CALENDAR

Mayor Tankha announced that staff had asked to remove **Item 7.I** from the Consent Calendar.

MOTION MADE AND SECONDED: Vice Mayor **Tyson** moved to approve the Consent Calendar with the removal of **Item 7.I**. The motion was seconded by Councilmember **Swan**.

MOTION PASSED 5-0:

AYES: Tankha, Tyson, Mok, Schmidt, Swan
NOES: None
ABSTAIN: None
RECUSE: None
ABSENT: None

- A. Approval of City Council Regular Meeting Minutes: October 21, 2021
- B. Review of Disbursements: October 1-31, 2021 \$1,226,635.94
- C. Motion to Re-Authorize Remote Teleconference Meetings of the Town of Los Altos Hills, Including the Planning Commission and Committees, due to the Imminent Risks to the Health and Safety of Attendees and Making Related Findings Pursuant to AB 361 (Staff: S. Mattas)
- D. Approve the Change in Regular Meeting Schedule for the Public Art Committee (Staff: D. Padovan)

- E. Request by the Open Space Committee to Hold and Advertise a Forum on Native Plants for Healthy Ecosystems (Open Space Committee)
- F. **Resolution 79-21** Authorizing the City Manager to Execute an Agreement with MissionSquare Retirement (formerly known as ICMA-RC) to Establish a 401A Employer Contribution for the City Manager Group (Staff: S. Revillar)
- G. Receive Quarterly Investment Portfolio Report – Quarter Ending September 30, 2021 (Staff: S. Revillar)
- H. **Resolution 80-21** Accepting The Town of Los Altos Hills Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2021 (Staff: S. Revillar)
- I. ~~Annual Report on Development Impact Fees for Fiscal Year Ended June 30, 2021 (Staff: S. Revillar) - Removed from agenda and not considered~~
- J. **Resolution 81-21** Approving the Plans and Specifications for the 2021 Sanitary Sewer Repair and Replacement Project and Authorize Staff to Advertise the Project and Inspection Services for Bids (Staff: O. Antillon)

8. ONGOING BUSINESS

- A. **Resolution 82-21** Updating the Transfer of Unclaimed Funds to Originating Fund (Staff: S. Revillar)

Administrative Services Director Sarina Revillar presented the staff report.

Council asked questions of staff and received responses.

Public Comment

Susan Mason, Los Altos Hills, said the Finance and Investment Committee reviewed the information and all the work done by staff and are in support of staff’s recommendation on having the funds returned to the originating fund.

MOTION MADE AND SECONDED: Councilmember **Swan** moved to adopt **Resolution 82-21** transferring the remaining unclaimed funds to the originating fund and in the future collect social security numbers and EINs. The motion was seconded by Councilmember **Mok**.

MOTION PASSED 5-0:

AYES: Tankha, Tyson, Mok, Schmidt, Swan
 NOES: None
 ABSTAIN: None
 RECUSE: None

ABSENT: None

Item 10.A was heard next.

10. NEW BUSINESS

- A. Consideration of Request from GreenWaste Recovery, Inc. for Consent to Sale and Approving the Second Amendment to the Franchise Agreement with GreenWaste Recovery, Inc for Collection and Processing of Mixed Compostable Materials, Recyclable Materials, and Yard Trimmings (Staff: S. Mattas)

Management Analyst II Cody Einfalt presented the staff report.

There were no public comments.

The Council thanked the negotiating committee in working with Greenwaste and applauded the compromise.

MOTION MADE AND SECONDED: Councilmember **Swan** moved to approve the Second Amendment to the Franchise Agreement with GreenWaste Recovery, Inc for Collection and Processing of Mixed Compostable Materials, Recyclable Materials, and Yard Trimming. The motion was seconded by Vice Mayor **Tyson**.

MOTION PASSED 5-0:

AYES: Tankha, Tyson, Mok, Schmidt, Swan
NOES: None
ABSTAIN: None
RECUSE: None
ABSENT: None

9. PUBLIC HEARINGS

► City Council Ex Parte Contacts Policy Disclosure

- A. **Resolution 83-21** Approving a Map Adjustment Request to Approve a Certificate of Correction to Parcel Map 609 M31 Removing a Recorded 25-foot wide Human Habitation Setback from Lots 1 and 2 at 12354 Priscilla Lane. (Staff: J. Loh)

Ex Parte Communications: **Councilmember Swan** reported that she spoke with **Birgitta Indaco**; **Councilmember Mok** spoke with **Jitze Couperus** and **Birgitta Indaco**; **Mayor Tankha** spoke with **Birgitta Indaco** and **Rajiv Patel**; **Vice Mayor Tyson** exchanged emails with **Rajiv Patel**.

Associate Planner Jeremy Loh presented the staff report.

Mayor Tankha opened the Public Hearing.

There were no public comments.

Mayor Tankha closed the Public Hearing.

MOTION MADE AND SECONDED: Councilmember **Schmidt** moved to adopt **Resolution 83-21** Approving a Map Adjustment Request to Approve a Certificate of Correction to Parcel Map 609 M31 Removing a Recorded 25-foot wide Human Habitation Setback from Lots 1 and 2 at 12354 Priscilla Lane. The motion was seconded by Vice Mayor **Tyson**.

MOTION PASSED 5-0:

AYES: Tankha, Tyson, Mok, Schmidt, Swan

NOES: None

ABSTAIN: None

RECUSE: None

ABSENT: None

- B. Adoption of an Urgency Ordinance 598 to add Article 15 (Objective Standards for Qualified SB9 Subdivisions and Development Projects) to Title 10, Chapter 1 (Zoning and Site Development) of the Los Altos Hills Municipal Code regulating the subdivision and development of qualified Senate Bill 9 properties in the Town of Los Altos Hills (Staff: S. Padovan) – Motion to Waive Reading and Adopt the Urgency Ordinance

Principal Planner Steve Padovan presented the staff report.

Council discussion ensued.

Vice Mayor Tyson said that we recognize housing is a serious issue in this state. We need to protect a community that is not close to transit and has potential fire dangers. It's a priority that we find a way to address this. He asked about the fire maps being developed now, including high wind maps. Are we anticipating what those new maps might look like?

Principal Planner Padovan replied that the changes to the fire maps will be much more accurate now. Taking into consideration the distance that fires can jump, the types of fuels and how they are situated on the terrain and they are also looking at home building materials. We don't have the maps at this time. We can still look at fire hazard concerns.

Councilmember Schmidt asked about drafting a more permanent ordinance.

City Attorney Mattas replied that the urgency ordinance is intended to put in place temporary regulations for the Town while permanent regulations are drafted. If Council chooses to adopt a permanent ordinance, it would go through the typical

zoning amendment process that the Town follows, including noticed public hearings before the Planning Commission and City Council.

Councilmember Schmidt asked how long the interim ordinance could be in effect before a permanent ordinance would have to be adopted.

City Attorney Mattas explained that the interim ordinance would be in effect for 45 days but could be extended for up to 2 years by making specific findings. He wanted to be very clear that the interim ordinance was not reducing the density of the potential development on the properties in terms of number of units.

Councilmember Swan asked about 1,600 square feet for an SB9 on a parcel that is not subdivided. By keeping them all one story it seems like you are covering a lot of the lot with structures, which might increase rain run off. That might have an unintended consequence. On the deed restrictions, what are the penalties and how would they be enforced?

City Attorney Mattas replied that this is an interim ordinance. The Council will be able to adopt a permanent ordinance. The deed restrictions would be enforceable by the Town.

Principal Planner Padovan explained that the increased rain run off from an 800 square foot unit was not significant and easily mitigated.

Councilmember Swan asked how the “intent to occupy” provision would be enforced.

City Attorney Mattas stated that this is a weakness in SB9, but it is not one that the Town can address through more stringent regulations.

Councilmember Schmidt asked “What do we give up if we don’t adopt this urgency ordinance tonight?”

City Attorney Mattas replied that the law specifically allows the application of objective design standards and subdivision standards as long as those standards do not effectively prohibit the construction of a minimum of 800 square foot unit. If the Town does not adopt such standards, it will only be possible to apply the minimal standards specified in SB9.

Councilmember Swan expressed confusion about the deed restrictions on the low and very low income units. What are the penalties for renting to someone who doesn’t meet those requirements and how will that be enforced? What happens if a tenant who met the requirements when they moved in gets a higher-paying job? Do they have to move out?

City Attorney Mattas said those will have to be developed with the permanent ordinance. What typically happens with deed-restricted affordable units when tenants' income rises to a level ineligible for low or very low-income housing, they are not forced to move out. When the unit becomes available again, the new tenants must meet the requirements. As far as enforcement is concerned, there might be a reporting requirement, perhaps on an annual basis. If a property owner continuously rents the unit to tenants who do not meet the low to very low-income requirements, the Town can seek a court order directing that the unit be rented at the appropriate level.

Councilmember Mok said that we should pass the ordinance and asked about the procedure of the ordinance.

City Attorney Mattas reiterated that the ordinance tonight can be extended for up to two years. Every extension requires a 4/5 majority vote of the City Council. Ultimately, the Town would consider permanent regulations that will presumably be done next year. The purpose of an urgency ordinance is to allow the Town time to adopt permanent regulations. The permanent regulations could be similar to tonight's ordinance or different, but they cannot violate the restrictions of SB9. He suggested that the real question is "Do we want affordability?" and if so, "How do we impose that?" The number of units that can be created is already controlled by SB9. The affordability of any SB9 units is what the Council can control.

Mayor Tankha open the Public Hearing.

Public Comments

Sasha Zbrozek, Los Altos Hills, said the three year "intent to occupy" starts when the lot splits.

Birgitta Indaco, Chair, Los Altos Hills Planning Commission, said the Planning Commission thought any SB9 application, be it via lot split or not, should be affordable. Deed restrictions are allowed by SB9 for affordability. They can be restricted in perpetuity.

Salim Damerджи said that in 1973 there was a lawsuit against the Town in the U.S. District Court. Single-family zoning and lot size made it impossible to build middle-class housing. The Town stipulated that it would be very difficult if not impossible for persons with low income to obtain housing in Los Altos Hills. The Town has done nothing to prevent exclusionary housing.

Rafa Sonnenfeld expressed concern that the proposed urgency ordinance will violate state law. The Town has the right to impose objective standards; the process is problematic. He urged the Council to adopt a permanent ordinance through the regular process instead of an urgency ordinance.

Ann Duwe, Los Altos Hills, would like to see pathway easements included on the list

of ineligible properties. She would like to see the clock start running on the affidavit of intent to occupy after the certificate of occupancy.

Sue Welch, Los Altos Hills, asked if the designated conservation open space would be ineligible for SB9 lot splits.

Anne Paulson, Los Altos Affordable Housing Alliance, was glad to hear the Town is so concerned about affordable housing. If you are really concerned, it would be a great idea to impose a fee that would enable you to build some affordable housing.

Anand Ranganathan, Los Altos Hills, said we are discouraging SB9 actions. She suggested waiting to see how things go before jumping the gun. Those who live here are very lucky. Housing is in demand in the valley. Let's let SB9 run its course and see what happens.

Mayor Tankha closed the Public Hearing.

Council discussion ensued.

Councilmember Swan said that avoiding lot splits is important.

Councilmember Mok noted that in San Francisco, a good sized lot would be 3,000 square feet. San Francisco has a median price of \$1.6 million and in no way does that make it affordable. It is not incumbent upon us as homeowners to say that our lots would be in the position to be made affordable. People come to Los Altos Hills for the privacy and open space. He does think the urgency ordinance should be adopted today to prevent SB9 coming down on Town in full force.

Councilmember Swan agrees with **Councilmember Mok** that something needs to be done tonight. If we wait to see what happens, we can't go back.

Mayor Tankha said we are aware we need more affordable housing. We are only adopting this ordinance as we need to have rules in place.

At 8:44 p.m., Council took a break. At 8:56 p.m. the meeting resumed.

City Attorney Mattas addressed the letter sent by YIMBY Law. The first issue is with regard to the lots that are exempt from SB9 relating to earthquake faults. SB9 has specific language about exemptions on faults. SB9 itself exempts the ability to subdivide or add additional units on lots that the state geologist has identified as having certain earthquake characteristics. The ordinance before the Council mirrors a lot of that language but also refers to any parcel located in Zone F or Zone L Hazard Zone, which is a Los Altos Hills standard. The Council should be aware that even if a lot is in an earthquake zone, if the building is built to appropriate seismic standards, under the building code, you can still proceed with SB9.

He recommended that Council

Remove the exemption in 10-1.1503 and we would instead rely on state law requirements.

The next two issues, which are challenges to 10-1.1505 and 10-1.1506, both relate to the requirement to have one parking space per each SB9 unit. We do not believe that the language as proposed by staff needs to be changed. The analysis behind this is that SB9 specifically defines a housing development as one that contains two residential units if the development proposes no more than two units or if it proposes to add one new unit to one existing unit. So, a housing development as defined under SB9 is either two new units or the addition of one unit to an existing unit.

The language that is cited in the two sections that YIMBY identifies imposes the requirement for one parking place per SB9 unit when you only have one unit added to an existing unit, so it doesn't assume a lot split. We believe that meets the definition in SB9 as SB9 defines a housing development. The requirement for one parking space per SB9 unit is nullified if the residential parcel on which the unit is built is within a certain distance of a high-quality transit stop or an available ride-share vehicle. The Town's ordinance that is before the Council tonight does not in any way modify those exemptions. We do have a minor wording change we would recommend to two of the definitions just to make sure our language is very consistent with state law.

The third portion of the letter from YIMBY is an analysis of SB8 and GC §65858. SB8 is a new law that will take effect January 1, 2022; SB 330 is an existing law. They both place restrictions on a Town's ability to adopt regulations that result in a less intensive use or reducing the intensity of land use within an existing general plan, zoning designations, specific plans, and zoning itself.

What the council is considering this evening is not reducing the development potential on the land. SB9 allows for the additional units. The ordinance before you does *not* say that while SB9 allows for two units, you're only going to get one; it *does* allow for the full complement of units that SB9 requires cities to allow.

Los Altos Hills is unique in a number of ways, one of which is the much larger lots and SB9 only requires the units be a minimum of 800 square feet. Towns and cities can impose other regulations for above 800 square feet, and so the ordinance that's before you will in all instances allow, if the lot is not split, the addition of one minimum 800 square foot unit. If the lot is split, on the newly created lot you would have to allow a minimum of two 800 square foot units. There isn't anything in the ordinance that's before Council tonight that in any way limits the development potential of the units. The ordinance has some incentives for trying to satisfy setback requirements that are larger than the 4 feet that's called for in SB9, but the Town has to waive its setback requirements in the case of SB9 units, allowing them to potentially be built on the property line.

The last issue raised is the appropriateness of using GC §65858. We believe findings in the ordinance support the use in this instance. State law supports the use of these objective standards. SB9 does. It also recognizes that there are properties that have inherent hazards. There are many properties in Los Altos Hills that have inherent hazards because of the high fire hazard dangers. So what Los Altos Hills is doing tonight is addressing, in part, those hazard issues you have in the lot while not in any way limiting what SB9 otherwise requires the Town to allow in terms of additional residential units. All the restrictions that are being proposed tonight do, in fact, meet the requirements of SB9.

Mayor Tankha stated that she believes that the Council does want to make affordable housing available. She asked Council what their feeling were about affordability and how they would like to move forward.

Councilmember Schmidt would like to see this urgency ordinance adopted tonight, with the City Attorney's changes. A great deal of work has been put into it. The affordability question is a long and difficult one she doesn't think could be adequately discussed tonight.

Councilmember Mok feels it is nearly impossible to provide affordable housing in Los Altos Hills. He would like to spend time in a separate meeting discussing below market rate housing but does not feel this is the time. He asked the City Attorney what he thinks is the Town's liability for a lawsuit if Council does enact the ordinance today, given the letter just received today from YIMBY Law.

City Attorney Mattas explained if a lawsuit were to be filed, the Council could agree to a stay on the effectiveness of ordinance and ask a judge if the interim ordinance should go into effect. The exposure to the Town would be for its own attorney's fees and if the Town lost the suit, there's potential exposure to attorney's fees for the YIMBY group, assuming they are entitled to them. There is potential exposure.

Vice Mayor Tyson wants to make a motion and move forward. He's hearing that this is a reasonable accommodation, and the affordability issue can be discussed with a little more time.

City Attorney Mattas clarified that the ordinance that's before Council tonight does impose affordability restrictions on SB9 units that are the result of a lot split. If there not four councilmembers who support affordability restrictions, then we need to modify the ordinance further.

Mayor Tankha believed that Council was in favor of affordability restrictions on lots that are split, but not on units built on existing parcels without a split.

MOTION MADE AND SECONDED: Vice Mayor **Tyson** moved to waive reading and adopt **Urgency Ordinance 598** to add Article 15 (Objective Standards for

Qualified SB9 Subdivisions and Development Projects) to Title 10, Chapter 1 (Zoning and Site Development) of the Los Altos Hills Municipal Code regulating the subdivision and development of qualified Senate Bill 9 properties in the Town of Los Altos Hills with the following amendments:

Addition of code section 10-1.1505 (o): “Notwithstanding the foregoing, no housing development projects shall be permitted on a site pursuant to this article if the underlying parcel falls within any provision under 10-1.1503(c) through (m).”

Addition of code section 10-1.1506 (p): “Notwithstanding the foregoing, no housing development projects shall be permitted on a site pursuant to this article if the underlying parcel falls within any provision under 10-1.1503 (c) through (m).”

Addition of a sentence to section 10-1.1505 (a) to read, “No more than three detached dwelling units are permitted per parcel.”

Deletion of section 10-1.1503 (e) from the ordinance.

In section 10-1.1505 (f), the third line, after the words “the LAHMC” add the words “or government code section 65852.21(c)(1)(A)(B).”

That same wording to be added to section 10-1.1506 (f) after “the LAHMC” in the third line.

The motion was seconded by Councilmember **Swan**.

MOTION PASSED 5-0:

AYES: Tankha, Tyson, Mok, Schmidt, Swan

NOES: None

ABSTAIN: None

RECUSE: None

ABSENT: None

11. REPORTS FROM COMMITTEES, SUB-COMMITTEES, AND COUNCILMEMBERS ON OUTSIDE AGENCIES

A. Report by the Undergrounding Subcommittee (Vice Mayor Tyson)

Vice Mayor Tyson presented the report.

Council received the report. No action was taken.

B. Report by the Fire Taskforce Subcommittee (Councilmember Schmidt)

Councilmember Schmidt presented the report from the fire taskforce subcommittee.

Council received the report. No action was taken.

C. Status Reports from All Councilmembers on Subcommittee and Outside Agencies Activities

Councilmember Mok reported that the SCSC Roundtable and it has been disbanded.

Councilmember Swan said the JVAC luncheon will be held on December 3rd. In addition the ad hoc Emerging Technologies Committee has identified swimming pools in town and provided the list to the fire district so there is a water source. They are also looking at wrapping building in foil to protect homes.

Management Analyst II Einfalt has been working with Flock on installing automatic license plate readers. None have been installed yet.

Councilmember Mok said they have been looking at microgrids to help people cut the cord with PG&E.

12. **STAFF REPORTS**

A. City Manager

- City Manager Pirnejad reported that we have been extremely hard at work trying to make sure that January is an opportunity to set forward a new era of leadership.
- December 10, 2021 is the staff retreat at Hidden Villa with a facilitator.
- January 10, 2022 is the tentative date for a meeting for committees to provide goals for 2022.
- January 25, 2022 is the Council policy priority setting with a new facilitator.

B. City Attorney

No report

C. City Clerk

City Clerk Padovan said there is a rededication ceremony scheduled for December 17, 2021 to rededicate a plaque at Chapel of the Hills.

D. Planning Director

No report.

E. Administrative Services Director

Administrative Services Director Sarina Revillar announced that the town has received the GFOA award.

F. Public Works Director - Update on Heritage Tree Action Protocol

Public Works Director Oscar Antillon reported that we are beginning to use the tree protocol.

13. COUNCIL INITIATED ITEMS

A. Consideration on Directing Staff to Prepare a Suicide Prevention Policy for the Town of Los Altos Hills (Mayor Tankha)

Mayor Tankha presented the topic. The idea behind the suicide prevention policy is awareness.

There was council consensus to direct staff to prepare such a policy.

B. Consideration and Possible Action on Applying for Hazard Mitigation Grant Program Funding Opportunities (Mayor Tankha) – added with Revision No. 1

Mayor Tankha presented the item. She has been talking with **Assemblymember Berman** about how to protect our homes from fire. There is a grant program that we can apply for.

There was Council consensus to explore and apply for the grant.

14. ADJOURN

The meeting adjourned at 9:56 p.m.

Respectfully submitted,

Deborah L. Padovan

Deborah Padovan
City Clerk

The minutes of the November 18 2021, regular City Council meeting were approved as presented at the December 16, 2021, regular City Council meeting.