

CC 12-05-2023

Special Meeting  
# 1

Revenue Tax Measure  
Options

Supplemental Report



## ADMINISTRATIVE SERVICES DEPARTMENT

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
TELEPHONE: (408) 777-3220 • FAX: (408) 777-3109  
CUPERTINO.ORG

### CITY COUNCIL STAFF REPORT

#### SUPPLEMENTAL 1

Meeting: December 5, 2023

#### Agenda Item #1

#### Subject

*Receive presentation regarding revenue tax measure options for the City's General Fund and provide direction to staff on which revenue tax measure(s), if any, to explore for feasibility through opinion research for the November 2024 election.*

#### Recommended Action

*Provide direction to staff regarding exploring the feasibility of one or more potential revenue tax measures—Transaction and Use Tax, Transient Occupancy Tax, Parcel Tax, and/or Business Operations Tax—through opinion research for the November 2024 election.*

#### Background:

**Staff's responses to questions received from councilmember are shown in italics.**

Q1: Business Operations Tax: Palo Alto, Mountain View, Santa Clara, and Sunnyvale each receive a significant amount of annual revenue from this source and have large business presences in their cities. Could there be more explanation for why this is not a recommended strategy when 95% of cities impose one or more of these taxes, and what are the special purposes the local and statewide cities are using these funds for?

**(Councilmember Moore)**

*Staff response:*

*The business tax based on employee count was ranked last based on the tax principles applied to all four tax revenue options. The primary reasons for its low ranking are as follows:*

- *Who Bears Tax Burden/Equity*
  - *Tax burden borne exclusively by local businesses compared to other tax revenue options that spread burden to non-residents (TOT) and/or daytime working population (TUT).*
  - *80% of the tax revenue generated comes from one business, making the tax revenue stream highly vulnerable to the business operations decisions of one taxpayer.*

- *Competitiveness/Equity/Adequacy*
  - *City currently has a very low business license tax rate compared to surrounding cities as measured on a per capita basis. If an employee count tax is set at top rate in the region (\$75 per capita), the annual tax revenue generated is significantly less than the 0.25% TUT and it likely requires shifting tax burden to a few very large businesses.*
  - *There is an unknown potential impact on locational choices of existing and future businesses that could erode the annual tax revenues.*
- *The following links provide information on examples of business taxes in neighboring jurisdictions:*
  - *Mountain View*  
([https://library.municode.com/ca/mountain\\_view/codes/code\\_of\\_ordinances?nodeId=PTIITHCO\\_CH18LI\\_ARTIBULI](https://library.municode.com/ca/mountain_view/codes/code_of_ordinances?nodeId=PTIITHCO_CH18LI_ARTIBULI)). See Chapter 19, Article I, section 18.16 (License tax imposed; method of calculation)
  - *Palo Alto* ([https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto\\_ca/0-0-0-92047](https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto_ca/0-0-0-92047)). See Chapter 2.37 (Business Tax), section 2.37.040 (Imposition of business tax).
  - *Santa Clara*  
(<https://www.codepublishing.com/CA/SantaClara/#!/SantaClara03/SantaClara0340.html#3.40.350>). See Chapter 3.40 (Business Tax), sections 3.40.350 to 3.40.370 (Business taxed)
  - *Sunnyvale* (<https://ecode360.com/42711162#42711162>). See Chapter 5.04 (Business License Tax), section 5.04.110 (License tax – Imposed).
  - *Los Gatos* (<https://losgatosca.gov/2800/Business-License-Modernization-2022-Ball>)

Q2: With regards to the Vallco/Rise Plan check fee estimate, how much of the \$30M estimate is a pass through to the plan check contractor who would be responsible for that work, how much would go to funding City Staff, and what would be the left-over portion? Is it General Fund or assigned? When the Development Impact Fees are deposited with the City for this project, those funds are restricted to their various accounts, is that correct? For instance, Transportation Impact Fees must be used for transportation impact and cannot be reallocated to salaries as these are AB 1600 funds.  
(**Councilmember Moore**)

*Staff response:*

*The question is not germane to the agenda item.*

Q3: In FY 21-22 the TUT increase was estimated at \$4M and this year it is estimated at \$5.4M when the total Sales Tax is estimated at \$9M. I suggest that this estimate be reviewed and revised significantly downward, and please provide the calculation assumptions. If we are currently at \$9M, receiving 1%, increasing to .25% will not bring in over 50% more sales tax revenue (the \$5.4M). Please also explain what purchases we make which will have this increase (when we buy online, in person in Cupertino, etc.).  
(**Councilmember Moore**)

*Staff response:*

*A Transaction and Use Tax (TUT) is similar to the normal local agency 1% Bradley-Burns sales tax, in that it is an additive sales tax, and the same goods are taxed. However, unlike the Bradley-Burns sales tax which is allocated to the jurisdiction where a sale is negotiated, a TUT is instead allocated to the location where a purchase is delivered or first put into use. This is a very important distinction because this difference may significantly impact the amount of revenue that a TUT may generate.*

*The City can expect to receive transactions tax revenue from normal sales tax-generating businesses like retail stores and restaurants in the City. Both residents and visitors alike will pay the transactions tax on purchases they consume or take possession of at the place of business in the City.*

*Moreover, the transactions tax revenue will also be generated from any purchases shipped or delivered into the City from other places (business, medical and industrial supplies, construction materials, catalog and internet purchases, furniture, appliances, etc.). Notably, this transactions tax encompasses vehicle purchases. Specifically, when a Cupertino resident buys a vehicle from a dealership located outside the city, the dealership is responsible for collecting and remitting the transaction tax related to registered vehicle purchases. Consequently, Cupertino residents are subject to this tax, regardless of where the vehicle purchase occurs.*

*The transactions tax doesn't apply to goods bought within Cupertino but shipped to users outside the city, The city's business-and-industry sales tax revenue predominantly stems from companies serving customers statewide, mostly non-Cupertino residents. Therefore, the California Department of Tax and Fee Administration audit of a Cupertino taxpayer has a minimal impact on the TUT estimate.*

**Q4:** At the previous Council meeting, the 4<sup>th</sup> of July fireworks were canceled to save approximately \$140k without looking at Budget-Balancing Strategies as a whole which would be a combination of Revenue and Expenditure modifications. This Study Session contemplates only taxing the community. Are we going to have a meeting discussing a more holistic approach to Budget Balancing and/or provide a recap of what has been done so far? (**Councilmember Moore**)

*Staff response:*

*Yes, this is one part of multiple conversations that will come together as a budget discussion as shown in the Budget Roadmap graphic presented to the City Council as part of the FY 2023-24 First Quarter Financial Report. Based on that graphic, two meetings will be scheduled for late January 2024 and April 2024. These meetings assume that the Council will have already been presented with the Service Level Reductions (potential expenditure reductions), Fee Study (potential revenue enhancement), and Revenue Tax Measures (potential revenue enhancement) and thus will provide a more holistic approach and budget balancing recap.*

**Q5:** What calculations have been made with regards to square footage parcel tax? Specifically, please show the assumptions (\$/sf, square footage) and calculations. It is my

understanding that all properties are treated equally when applying a square footage parcel tax, whether commercial or residential, is that correct? (**Councilmember Moore**)

*Staff response:*

*For purposes of comparing tax revenue options, a parcel tax of \$250 per parcel was used. This amount was selected based on a balance among three factors:*

- 1. Prior voter approval. Voters approved a \$250 per parcel tax for Cupertino Union School District that expired in 2021. Voters also rejected a reauthorization and increase to \$398 per parcel in 2021.*
- 2. Total revenue generation. \$250 per parcel generates estimated revenue (\$3.4 million) that is generally comparable to the other taxes being considered.*
- 3. Comparison to parcel taxes in surrounding jurisdictions. While there are not many non-school parcel taxes in surrounding communities, \$250 puts Cupertino substantially above several communities while still below the top non-school parcel taxes in the region.*

*For purposes of considering a parcel tax that avoids a flat per parcel rate of \$250, the total revenue generated by the \$250 per parcel rate was translated into a per square foot (sf) rate based on the acreage of all parcels within the city (from the County Assessor roll data). The per sf tax rate that generates the approximately same amount of revenue was \$0.021 per sf.*

*The above assumptions and calculations are contained on Slide 13 of the presentation.*

*Parcel taxes that have applied different variable rates across differing types of uses (residential, commercial, industrial, etc.) have been subject to legal challenge. Uniform rates keep the city within legal “safe harbor.”*

**Attachments Provided with Original Staff Report:**

*A. Presentation*

CC 12-05-2023

#6

Recology Rates

Supplemental Report



## PUBLIC WORKS DEPARTMENT

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333  
CUPERTINO.ORG

### CITY COUNCIL STAFF REPORT SUPPLEMENTAL 1

Meeting: December 5, 2023

#### Agenda Item #6

##### Subject

Adopt a maximum rate schedule for Rate Period Four for Recology to provide recycling, organics, and solid waste collection, recycling and organics processing services, and transport for disposal as calculated using the allowed and approved methodology in the Franchise Agreement.

##### Recommended Action

Adopt Resolution No. 23-XXX (Attachment A) to:

- 1) Adopt a maximum rate schedule for Rate Period Four for Recology to provide recycling, organics, and solid waste collection, recycling and organics processing services, and transport for disposal pursuant to the franchise agreement (Attachment B; (FA Exhibit E2)), and
- 2) Authorize the use of \$547,800 of restricted-use enterprise funds to smooth and mitigate the Rate Period Four adjustment.

**Staff's responses to questions received from councilmember are shown in italics.**

Q1: What is the new annual expected Franchise Fee amount? Is this still going to be calculated at 12% (Gross Receipts – Solid Waste Fund Operations Fee)?  
**(Moore)**

*Staff response: Per the Franchise Agreement (section 7.1) the Franchise Fee will remain the same for the term of the agreement at 12% of Recology's gross receipts less the Solid Waste Fund Operations Fee.*

Q2:

- Our city has a significant number of recyclables and food waste mixed in with our trash which does not get sorted and goes directly to the landfill.

- San Jose has a higher cost, but their waste is sorted and diverted without the customer having to separate food waste out.
- Sunnyvale requires food and recyclables to be sorted out, but the trash is further sorted to increase the diversion.
- To have our trash sorted and diverted, Cupertino residential rate increases would be estimated at \$5-8/month.

Please add the information about what the customers in each city are provided with their solid waste services and a note about the cost to sort if Cupertino were to add that so that we can make a fairer comparison.

For example: Does the customer at City X pre-sort food waste and recyclables? Is there post-pickup waste diversion or is misplaced waste sent to the landfill as is done in Cupertino? **(Moore)**

*Staff response:*

*There are multiple inputs to determine waste material collection and handling rates for a jurisdiction that go beyond the difference in the type of pre-collection sorting requested of customers and post-collection processing provided. That said, below is a color key of the 5 categories of pre- and post-collection waste sorting and processing and a table showing the jurisdictions coded appropriately.*

#### Color-key to explain different pre-sorting and post-collection protocols

|   |
|---|
| 3-category pre-sort:<br>-garbage<br>-yard waste and food scraps together<br>-recyclable containers and paper together<br>NO post-collection processing of garbage.<br>Anything placed in garbage container goes directly to landfill.                                   |
| 3-category pre-sort:<br>-garbage with food scraps<br>-yard waste<br>-recyclable containers and paper together<br>Post-collection processing of garbage.<br>Recyclable and compostable material sorted out of garbage before remaining amount sent to landfill.          |
| 3-category pre-sort:<br>-garbage<br>-food scraps together with yard waste<br>-recyclable containers and paper together<br>Post-collection processing of garbage.<br>Recyclable and compostable material sorted out of garbage before remaining amount sent to landfill. |

4-category pre-sort:

- garbage
- food scraps together with yard waste
- recyclable containers
- paper

Post-collection processing of garbage.

Recyclable and compostable material sorted out of garbage before remaining amount sent to landfill.

5-category pre-sort:

- garbage
- food scraps
- yard waste
- recyclable containers
- paper

Post-collection processing of garbage.

Recyclable and compostable material sorted out of garbage before remaining amount sent to landfill.

| City          | 20 or 24<br>gallon cart | 32 or 35<br>gallon cart |             | Extra per month |
|---------------|-------------------------|-------------------------|-------------|-----------------|
| Milpitas      | \$36.46                 | \$39.63                 |             |                 |
| Cupertino     | \$37.78                 | \$40.18                 | Current     |                 |
| Mountain View | \$28.90                 | \$42.10                 |             |                 |
| Cupertino     | \$39.67                 | \$42.19                 | 5% increase | \$2.01          |
| Campbell      | \$34.51                 | \$42.74                 |             |                 |
| Sunnyvale     | \$38.46                 | \$44.64                 |             |                 |
| Los Gatos     | \$36.73                 | \$45.74                 |             |                 |
| Saratoga      | \$37.38                 | \$46.40                 |             |                 |
| Los Altos     | \$44.98                 | \$48.45                 |             |                 |
| Santa Clara   | \$41.41                 | \$49.12                 |             |                 |
| Palo Alto     | \$27.81                 | \$50.07                 |             |                 |
| San Jose      | n/a                     | \$51.40                 |             |                 |

Q3: The Resource Recovery Fund (Solid Waste Fund Operations Fee) is approximately \$5.4 M as of October 31, 2023 and receives revenue ranging from a low of \$123,429 (the contracted amount) to over \$200k in a month, what accounts for the receipts over the contract amount? **(Moore)**

*Staff response:*

*To avoid confusion on terms, the Resource Recovery Fund is the City's Fund 520, and the \$5.4 M amount refers to the cash balance in the fund on October 31, 2023, which is not reflective of restricted funds or non-cash transactions. The Solid Waste Fund Operations Fee is the amount that the City's Environmental Programs division calculates annually based on projected need to run the division, which Recology then pays to us. Receipted funds also include revenues such as AB939 revenue (a per-ton fee assessed on all tons disposed of in Santa Clara County and then provided back to*

*the jurisdiction the tons came from), CalRecycle grant dollars, and Earth and Arbor Day Festival registration and sponsorship fees.*

Q4: The 2021 Contract with Recology does not appear to have language that the Solid Waste Fund Operations Fee/Resource Recovery Fund is to be used to subsidize residential charges. It also states that it would not have profit mark-up. How could this fund be used to subsidize residential charges if that would require there be excess charged? Wouldn't that be profit mark-up? **(Moore)**

*Staff response:*

*There may be confusion on terms:*

- 1. The Solid Waste Fund Operations Fee is the amount that the City's Environmental Programs division calculates based on projected need to run the division, which Recology then pays to the City. Per the Franchise Agreement section 7.2: "This fee shall be considered an allowable cost of business not subject to profit mark-up and may be included in the adjustment of Rates as described in Exhibit E."*
- 2. The "City Payment" as it is called in the Franchise Agreement is the amount that the City can elect to pay to smooth rates. "City Payments" is defined in Exhibit E to the Franchise Agreement (page E-2). (Snip below). Using the fund for smoothing is also discussed in section 8.2, line 2463 (snip below).*

|   |
|---|
| <p>C. "City Payments" means: 1) those annual amounts, payable by City to Contractor monthly, as are specified in Article 8.2 for Rate Periods One, Two and Three; and 2) for subsequent Rate Periods, such annual amounts payable by City to Contractor monthly as the City agrees to pay during the Rate adjustment process for such Rate Period, to reduce the Rate increase that would otherwise occur in that Rate Period. Such payments shall be effected by netting the monthly amount of the City Payment against the monthly amount of City Fees payable by Contractor to City.</p> |
|---|

2463 C. Contractor's Compensation for Subsequent Rate Periods. Contractor's Compensation for  
2464 subsequent Rate Periods, beginning with Rate Period Four, shall be adjusted annually in  
2465 accordance with this Section 8.2 and Exhibit E. For each subsequent Rate Period, calculation of  
2466 Contractor Compensation shall include City determination of whether a City Payment is  
2467 necessary, and as applicable, the annualized amount of such City Payment for the given Rate  
2468 Period. City shall pay the annualized amount of the City Payment to Contractor in equal monthly  
2469 installments throughout the given Rate Period, one-twelfth (1/12th) of the annual amount each  
2470 month, and such payments shall be effected by Contractor netting the monthly amount against

December 3, 2020

-62- City of Cupertino/Recology Franchise Agreement

2471 monthly payments of City Fees. Regardless of the Rate Period and whether the applicable Rate  
2472 adjustment is index-based or cost-based, Contractor may propose that the dollar value of the  
2473 calculated adjustment to Contractor's Compensation be adjusted among sector(s) and/or  
2474 material stream(s).

Q5: If we are currently subsidizing the residential costs with the Resource Recovery Fund, where is the language in a contract somewhere showing that the purpose of the fund includes that use? **(Moore)**

*Staff response:*

*There is no Contractual obligation to smooth rate increased with City funds; that is a policy decision made by City Council. During adoption of the Franchise Agreement at the December 15, 2020 Council meeting, the use of the fund for that purpose was authorized. (Snip below from page 11 of the 12/15/2020 staff report). Staff recommends continuing to implement the previously adopted Council policy.*

#### **Use of the Resource Recovery Enterprise Fund to smooth rates**

To smooth and mitigate the impact of the increased rates, staff is proposing use of the Resource Recovery Enterprise Fund for the first three years of the agreement (Rate Years). This reserve has been in place for over 20 years and is earmarked for uses that benefit solid waste rate payers, including smoothing of rate impacts. The proposed rates as presented in Exhibit G to the FA incorporate this use. The first three years of the agreement commit the City to this smoothing in a set amount; it is the intention of the City to continue strategic application of these funds for the benefit of rate payers past the third year but that determination will be based on analysis and future Council direction.

Attachments Provided with Original Staff Report:

- A. Attachment A – Draft Resolution from published agenda
- B. Attachment B – Recology Franchise Agreement from published agenda

*C. Attachment C - HF&H Report – Review of Recology RP 4 Application from published agenda*

CC 12-05-2023

#8

SVCE Grant

Supplemental Report



## PUBLIC WORKS DEPARTMENT

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333  
CUPERTINO.ORG

### CITY COUNCIL STAFF REPORT SUPPLEMENTAL 1

Meeting: December 5, 2023

#### Agenda Item # 8

##### Subject

Accept Silicon Valley Clean Energy Community Resilience Grant in the amount of up to \$233,963 to purchase two (2) Electric Vehicle Autonomous Renewable Charger (EV ARC) portable solar-powered charging systems.

##### Recommended Action

1. Adopt Resolution No. 23-XXX accepting up to \$233,963 in Community Resilience Grant funding from Silicon Valley Clean Energy and approving budget modification #2324-316 increasing appropriation and estimated revenues by \$233,963 in 100-87-829 900-990 for procurement of Electric Vehicle Autonomous Renewable Charger units;
2. Authorize the City Manager to execute all documentation necessary to accept the grant fundings; and
3. Authorize the purchase of two (2) Electric Vehicle Autonomous Renewable Charger units, trailer and additional support and maintenance for a total cost of \$233,963 from Beam Global.

**Staff's responses to questions received from councilmembers are shown in italics.**

Q1: Attachment B states these units will be rotated every two months. Has Staff been trained on moving these units? **(Moore)**

*Staff response: Staff has yet to be trained on relocating the EV ARC unit but will receive training when the unit and trailer are on site.*

Q2: The report mentions these are designed for winds up to 160 mph, what features do they have with regards to their seismic design? **(Moore)**

*Staff response: See attached letter from independent structural engineering firm confirming the system's 160 MPH wind load certification and seismic design.*

Q3: What is the cost differential from installing a permanent solar charger station? An internet search of Solar Carport yields many options and styles. **(Moore)**

*Staff response: As the EV ARC procurement is fully grant funded, there are no direct costs to the City for the purchase. Cost analysis to install a permanent solar charger station was not evaluated. While a solar carport may provide different options and styles, the disadvantage of the solar carport is that it is fixed. The EV ARC unit is transportable and contains an electrical panel which can be relocated to any emergency locations to provide power for the public and first responders.*

Q4: What is the ongoing maintenance, expected useful life, and how is the assembly, especially the battery be disposed of? **(Moore)**

*Staff response: See attached O&M for the EV ARC unit. According to the manufacturer, the unit has a minimum 20-year lifespan from a structural perspective while the individual components lifespans will vary based on the part. The unit is delivered fully assembled. The lithium-ion batteries in the system can be recycled via Beam or via a third party.*

Q5: What Level Charger will this have? **(Moore)**

*Staff response: The EV ARC units will have a Level 2 charger.*

Q6: It appears that the EV ARC 2020 is specified as the charging system but the EV charger is selected by the City? Can that be competitively bid? For instance, can we specify we want a Level 3 charger and choose the lowest bid? **(Moore)**

*Staff response: The Level 2 Enel X Way Juicebox charging unit is preinstalled with the EV ARC unit. The solar array and battery are both insufficient to serve a Level 3 charger.*

Attachments Provided with Original Staff Report:

- A. Draft Resolution
- B. Grant Agreement
- C. Beam EV ARC Price Quote
- D. BEAM EV ARC Product Information
- E. State of California Agreement

Attachments Provided with Supplemental 1:

- F. Solar Array Seismic Design Letter
- G. EV ARC unit Operation & Maintenance

# Dodd Mossa & Associates, LLC

## Consulting Engineers

7490 Opportunity Rd. Suite 3500 San Diego, CA 92111  
(619)260-0057

June 09, 2023

Desmond Wheatley  
CEO Beam Global  
5660 Eastgate Dr.  
San Diego, CA 92121  
(858) 799-4583

[desmond.wheatley@beamforall.com](mailto:desmond.wheatley@beamforall.com)

Re: Beam Global - Solar Array Seismic Design (EV-ARC 2020)

Dear Desmond,

Based on our structural calculations performed for the EV-ARC 2020 solar array, the system appears to not be overstressed under the design of 160mph under the ASCE 7-16. This wind speed is based on a nominal design speed for a 3 second gust as prescribed in the American Society of Civil Engineers (ASCE). Calculations were based on an assumption of a maximum Exposure category of C, the installation location not being atop an escarpment, or any type of hill, and with a maximum ground snow load of 0psf based on Sunnyvale, California installation location, as a high seismic risk region. Seismic load has been considered with a site specific Sds value of 1.2 for the proposed installation. It should be noted that no sliding occurs against a concrete surface, where the coefficient of friction was assumed as 0.55. Also, it should be noted that the structure is not embedded into soil and full seismic ground motions will not translate to the structure because of its construction type.

Please contact our office if you have any questions or concerns.

Sincerely,



Jerry Dodd, P.E.



# EV ARC™ 2020

## Operation & Maintenance

The EV ARC™ 2020 is a low maintenance product with the highest quality components on the market. Standard maintenance can easily be performed by the owner as outlined in the EV ARC™ Recommended Maintenance section below. Beam also offers a more comprehensive Annual Operation and Maintenance Plan that is performed by Beam technicians. Contact your Clean Mobility Expert at Beam if you would like to purchase an annual plan.

### EV ARC™ Recommended Maintenance

- Visually inspect structure, enclosure exterior, solar array, EV charger and charger outlet for normal functionality (monthly)
- Rinse and clear debris off solar array and structure (monthly)
- Grease slew drives (once every 1 to 2 years)

If remote technical support from a Beam technician is needed, please have a person onsite at the unit to ensure an effective support call.

### EV ARC™ Annual Operation and Maintenance Plan Overview

Beam offers a comprehensive Operation and Maintenance Plan to ensure the trouble-free operation of Beam's sustainable EV charging products. This plan can be purchased to cover one or multiple years. Integrated remote monitoring capability, responsive customer support and simple maintenance allow for most issues to be resolved or identified remotely. For annual onsite maintenance a Beam technician will be sent. Maintenance covered by the plan includes:

- Logon to view current system state and health (quarterly)
- Visual inspection of solar array, structure and enclosures (annually or whenever onsite)
- Visual Inspection of EV charger, cables and couplers (annually or whenever onsite)
- Visual inspection of internal components and wiring (annually)
- Perform inverter and charging system calibration check as applicable (annually)
- Grease slew drives and check BeamTrak™ calibration (annually)
- Update component firmware (annually)

CC 12-05-2023

#13

Update on Vallco SB 35  
Project

Supplemental Report



## CITY MANAGER'S OFFICE

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366  
CUPERTINO.ORG

### CITY COUNCIL STAFF REPORT SUPPLEMENTAL 1

Meeting: December 5, 2023

#### Agenda Item 13

#### Subject

Update regarding Vallco's SB 35 project approval

#### Recommended Action

*None*

#### Background:

**Staff's responses to questions received from Councilmember Moore are shown in italics.**

Q1: The soil vapor sampling appears to have been in a random pattern as opposed to a grid, how was this method selected? **(Moore)**

*Staff response: The soil vapor sampling locations are selected by the property owner's consultant under Santa Clara County Department of Environmental Health oversight. More information about the purpose of the soil vapor investigation is available on Geotracker ([Additional Expanded Soil Gas Investigation, Dec. 10, 2021](#)).*

Q2: The Construction Management Plan from February 22 indicates that the PCE (Tetrachloroethylene) found onsite at various locations is assumed to have come from offsite (not referring to the PCE at Sears Automotive). Is it reasonable to conclude that one of these offsite sources has released enough PCE to have contaminated the Vallco site (leaving aside the onsite sources of PCBs, PCE, Benzene, etc.) to the extent that it would be prudent for these sites, like the Holiday Cleaners (which also has an open remediation case), to begin an investigation? Is there something which would encourage the site or sites which have contaminated the Vallco site to begin mitigation? **(Moore)**

*Staff response: In the absence of a regulatory directive, offsite migration of contamination would typically be addressed by impacted private parties (e.g., property owners, tenants).*

---

Prepared by: Albert Salvador, Special Project Executive

Reviewed by: Matt Morley, Assistant City Manager  
Christopher D. Jensen, City Attorney

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – None