



CITY OF PALO ALTO CITY COUNCIL MINUTES

Special Meeting
November 19, 2012

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:00 P.M.

Present: Burt, Espinosa, Holman, Klein, Price, Schmid, Shepherd, Yeh

Absent: Scharff

CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representatives: City Manager and his designees pursuant to Merit System Rules and Regulations (James Keene, Pamela Antil, Lalo Perez, Joe Saccio, Kathryn Shen, Sandra Blanch, Marcie Scott, Darrell Murray, Val Fong)

Employee Organization: Utilities Management and Professional Association of Palo Alto (UMPAPA)

Authority: Government Code Section 54957.6(a)

STUDY SESSION

2. Potential Topics of Discussion for the Joint Study Session with the Palo Alto Youth Council.

The Palo Alto Youth Council gave a brief overview of their accomplishments this year and presented their primary initiatives for the 2012/2013 school year. Some accomplishments thus far included participation in both the School Board and City Council candidate forums and being a part of a focus group for an in depth Palo Alto Weekly article on bullying. The Youth Council's primary initiatives for 2012/2013 are the creation of a Youth Friendly Business Plan and strengthening Youth relationships with City Council. The Youth Friendly Business Plan is aimed to celebrate local businesses that are designated to be "Youth Friendly" and to encourage communication between youth and the business community. The portion of the Youth Council's presentation that focused on Youth relationship with City Council underscored the importance of ongoing, intentional communication

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between Palo Alto Youth Council and Palo Alto City Council. Ideas such as designating a council member as a youth liaison and inviting more youth to present during open comment at Council Meetings were made. In addition, Youth Council committed to provide monthly reports to City Council that would highlight accomplishments, events and other items pertaining to youth as a further attempt to facilitate a strong relationship between both councils.

SPECIAL ORDERS OF THE DAY

3. Resolution 9298 of the Council Honoring Former Council Member Ellen Fletcher.

Fred Balin provided a brief history of the life of Ellen Fletcher during World War II in Nuremburg Germany where she experienced the Night of Broken Glass. England accepted Jewish children under the age of 17 as a safe haven. She spoke local to school children about her experiences. She became a humanizing force.

Jack Miller, board member of the Silicon Valley Bicycle Coalition and co-organizer of the Bicycle Exchange Program, stated Ms. Fletcher pursued social change for good causes. He applauded her long-time service to the community and her dedication to cycling for transportation. He encouraged the Council to rename the Alma Street Bridge in her honor. The Silicon Valley Bicycle Coalition wished to make her bicycle a permanent symbol of her work by making it available for display by the City. He requested donations in her memory be made to the Silicon Valley Bicycle Coalition.

Yoriko Kishimoto stated Ms. Fletcher was one of few Council Members who made a lasting impact on the livability of Palo Alto. Ms. Fletcher attended many meetings in the Bay Area via public transportation or bicycle. The best way to pay tribute to her was to build on her legacy. She thanked Ms. Fletcher for her work and the Council for continuing her legacy through the Bicycle and Pedestrian Transportation Master Plan and Safe Routes to School.

Stephanie Smith reported her cycling history in England was similar to Ms. Fletcher's. Ms. Fletcher saw a need for a computer users' group and served as president of Mucho.

Mayor Yeh introduced a slide show from Ms. Fletcher's memorial service.

Council Member Price read the Resolution into the record.

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MOTION: Council Member Price moved, seconded by Council Member Holman to pass the Resolution honoring former Council Member Ellen Fletcher.

Council Member Price indicated Ms. Fletcher was a person of conviction whose life combined many qualities. She knew how to get things done, and she made a difference in the City of Palo Alto.

Council Member Holman stated Ms. Fletcher was a giant who served the community. To honor her, the community could pay service and commitment forward.

Council Member Burt recalled his first memory of Palo Alto was the bicycle movement led by Ms. Fletcher. The Council's attempt to revitalize that movement would benefit from her early leadership.

Council Member Klein served on the Council with Ms. Fletcher in the early 1980s. She was a remarkably effective Council Member through clarity of vision, zeal and humility. She deserved immense credit for her participation in the bicycle movement and in the efforts to ban smoking. He was proud that she was a resident of Palo Alto.

Council Member Espinosa recalled the City proclaiming the year of the bike with many activities during his year as Mayor. Ms. Fletcher was his partner at every meeting and event. She wanted the Council to fund and implement the Bicycle and Pedestrian Transportation Master Plan. He asked the Council to ensure the Plan was funded and implemented in her honor.

Mayor Yeh indicated Ms. Fletcher's work for bicycle transportation would impact many generations. The Resolution was the work of many people in the community who wanted to share facts and memories regarding Ms. Fletcher.

MOTION PASSED: 8-0 Scharff absent

CITY MANAGER COMMENTS

James Keene, City Manager spoke regarding; 1) a \$50,000 grant from the Santa Clara County Board of Supervisor's Office of Liz Kniss was received to implement bicycle/pedestrian improvements that would close the bay-trail gap, 2) on November 20, 2012 the Santa Clara County Supervisors will consider the proposal to fund bicycle/pedestrian transportation projects, 3) He reminded Council about the upcoming annual Turkey Trot event.

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Wynn Grcich suggested the community post comments on the internet against fluoridation of water supplies. She noted radiation from nuclear power plants caused breast cancer.

Stephanie Munoz stated municipalities forced people out of their homes through zoning and permit processes. The Council should think about low-income housing.

Tony Kramer stated he had sent a letter to the City Manager regarding enforcement of the Palo Alto Noise Ordinance with respect to AT&T DAS equipment. There was some controversy as to the Noise Ordinance; therefore, he asked the City Manager to provide clarity.

Andrew Boone was impressed by Ms. Fletcher's comments at Bicycle Advisory Committee meetings. He interviewed Ms. Fletcher regarding the origins of bike lanes. She inspired him to make his voice heard. Her vision was a network of streets with bike lanes.

CONSENT CALENDAR

MOTION: Mayor Yeh moved, seconded by Council Member Shepherd to move Agenda Item Number 7 "Adoption of Resolution of Intent to Fix the Employer's Contribution Under the Public Employee's Medical and Hospital Care Act with Respect to Members of the Palo Alto Police Officers Association and Rescinding Resolution No. 8896" to be heard at a date uncertain.

7. Adoption of Resolution of Intent to Fix the Employer's Contribution Under the Public Employee's Medical and Hospital Care Act with Respect to Members of the Palo Alto Police Officers Association and Rescinding Resolution No. 8896.

MOTION PASSED: 8-0 Scharff Absent

MOTION: Council Member Espinosa moved, seconded by Council Member Shepherd to approve Agenda Item Numbers 4-6.

4. Approval of a Naming Recognition Plan for Designated Play Zones at the Magical Bridge Playground for Individuals or Businesses that Contribute at Least \$200,000 per Zone.
5. Approval of an Extension of the Term of Contract with SAIC Energy, Environment & Infrastructure, LLC to August 28, 2013.

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6. Approval of Contract with Sandis Engineers in an Amount Not to Exceed \$110,000 for Parking Garage Feasibility and Attendant Parking Study in Downtown Palo Alto.

MOTION PASSED: 8-0 Scharff Absent

ACTION ITEMS

8. Public Hearing: Consider Extending through December 29, 2013 a Moratorium on the Use of Certain Parking Exceptions contained in Section 18.52.060(c) of the Zoning Ordinance Related to the Downtown and California Avenue Parking Assessment Areas; and Considerations for Making Exceptions from the Moratorium for Proposed Projects at 135 Hamilton Avenue and 636 Waverley Street.

Curtis Williams, Planning and Community Environment Director asked the Council to extend the moratorium for an additional 30 days. The correct date was December 29, 2012, 30 days from the date that the current moratorium expired. Staff did not present exception issues for the two specific properties, because Staff had work to complete and all Council Members were not present. Staff was scheduled to present exception issues to the Council on December 10, 2012. Staff suggested the moratorium be extended to December 29, 2012, with a further extension of one year at that time. State law allowed one year for the final extension. Eight votes were needed to approve the extension of the moratorium.

Public Hearing opened at 8:00 P.M.

Robert Moss expected the moratorium to be extended for 10 1/2 months pursuant to State law. He recognized parking problems in Downtown and adjacent neighborhoods. There would be a lag in consideration of the moratorium, because of the incoming Council Members. He suggested extending the moratorium for six months for Staff to consider modification of the moratorium and changes to the requirement of on-site parking for new developments.

Herb Borock believed the standard of Ordinance 3575 should be restored. He suggested the Council direct Staff to present language for the current moratorium indicating that any project that had received a final recommendation from the Architectural Review Board (ARB) at the time the moratorium first appeared on the Agenda would be exempt.

Faith Bell stated her business would be significantly impacted by lack of

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parking at 135 Hamilton Avenue. She asked the Council to ensure that developers absorb the cost of providing parking for projects.

Public Hearing Closed at 8:05 P.M.

Mr. Williams clarified on December 10, 2012 Staff would discuss with the Council a longer extension of the moratorium and exceptions from the moratorium. It was important that the current Council consider this topic. The Council had the discretion to determine exceptions from the moratorium.

Council Member Schmid referenced page 3 of the Staff Report regarding the Council's discretion to determine exceptions. The next paragraph referenced Staff discussions with property owners, and he inquired about the nature of these discussions.

Mr. Williams reported Staff discussed and reviewed alternatives and options for recommendations with property owners and received input from property owners. Generally, property owners felt they should be exempted without conditions. Staff would make recommendations on December 10, 2012.

Council Member Schmid asked if Staff was preparing a recommendation or stating options for the Council.

Mr. Williams indicated Staff would make a recommendation to the Council and outline alternatives.

Council Member Schmid stated one of the base reasons for the emergency Ordinance was that Council and Staff felt there was a shortage of parking spaces in the Downtown and surrounding areas and, thus, economic impacts on a number of property owners in the area. Exceptions would have an impact on the economic choices and to a number of property owners. He inquired whether discussions should include all businesses and residents rather than just property owners who would have a shortage of parking spaces.

Mr. Williams reported Staff had not reached out to all businesses and residents. Staff believed this was primarily an issue of addressing equity concerns and the element of good faith investment in the development process. Staff was attempting to understand the implications for projects in the development process, and felt this was an appropriate way to proceed.

Council Member Schmid expressed concern that Staff appeared to negotiate with one party while the Council had identified a number of at-risk parties.

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For the purpose of equity, these discussions should be held in public.

James Keene, City Manager, explained that the moratorium being proposed did not apply to all development. It was a moratorium on the use of some exceptions currently existing in the Code. The Council recognized this as an important issue and indicated that Staff's engagement with applicants on the equity and fairness issue should be reviewed. Staff was not negotiating a solution with the two applicants, but performing due diligence in relation to making a recommendation and presenting options to the Council. The issue was managing Staff's work load. Staff would present a recommendation and options by December 10, 2012.

Council Member Holman asked Staff to review and comment on the Ordinance presented by Mr. Borock. She also asked the City Clerk to read the Motion from the October 15, 2012 meeting.

Donna Grider, City Clerk stated Vice Mayor Scharff moved, seconded by Council Member Shepherd to adopt the interim Urgency Ordinance establishing a moratorium on the use of the exempt floor area parking exception set forth in Section 18.52.06(c) of the Palo Alto Municipal Code in connection with any permit, entitlement, or development project pending further study of Downtown and California Avenue parking issues; return to Council within 45 days regarding the potential exceptions; incorporated into the Motion with the consent of the maker and seconder that the Staff Report in 45 days would contain a proposal for the exceptions to include the preparation of a robust transportation demand management program for the projects.

Council Member Holman asked the City Attorney to comment.

Molly Stump, City Attorney stated the Ordinance appeared to have been adopted a number of years ago. If she understood Mr. Borock's comments, it had been repealed or replaced in the Code. It was a permissible approach. The Ordinance appeared to address total moratoria on construction or the processing of applications for building permits, which was not the issue before the Council. The Ordinance currently before the Council was more of a limited moratorium. It was possible to create exceptions to moratoria, either not at all or along a range of how far projects had progressed in the planning process. The Staff Report was clear that the Council had full discretion to decide actions, because a legal vested right did not attach until a building permit was issued and substantial work was performed in reliance on the building permit. There were no projects in that situation. This was an area of discretion for the Council.

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Council Member Klein referenced the statement on page 121 of the Packet regarding the need for eight votes for any exception, and inquired whether that statement was accurate and the result if eight votes were not cast for an exception.

Ms. Stump explained the Council could adopt a moratorium containing exceptions, and that action would require a 4/5 vote or eight votes. Alternatively, if the Council adopted a moratorium without exceptions, it retained the ability to consider later a particularized Ordinance applying to individual projects. The latter option would be an ordinary Ordinance requiring a simple majority.

Council Member Klein inquired whether the second alternative could be done at the same meeting as the first action.

Ms. Stump reported the Council would customarily fold the two actions together, because they were on the same topic. She was unsure if that was a requirement. Addressing the two projects did not necessarily need to be an urgency Ordinance. The Council could enact those separately.

Council Member Klein asked if it was not correct that an exception would need eight votes. It could be achieved by a 5-4 vote.

Ms. Stump felt Staff worked under the assumption that the Council wished to address the issue comprehensively in one Ordinance. One Ordinance would require eight votes. Particularized Ordinances for projects were an unusual alternative and not the custom and practice in Palo Alto; however, the Council had that ability in cases it deemed appropriate.

Mayor Yeh indicated if the Council continued the Item and accepted Staff's recommendation, the Item would return to the City Council at the December 10, 2012 meeting for a more comprehensive discussion.

MOTION: Mayor Yeh moved, seconded by Council Member Shepherd to; 1) adopt the extension of the Interim Urgency Ordinance (Interim Ordinance) establishing a moratorium on the use of the Exempt Floor Area parking exception set forth in Section 18.52.060(c) of the Palo Alto Municipal Code in connection with any permit, entitlement or development project, pending further study of Downtown and California Avenue parking issues for a period of thirty (30) days through December 29, 2012; and 2) Direct staff to return prior to further extension of the ordinance with proposed language related to potential exceptions for properties at 135 Hamilton Avenue and 636 Waverley Street.

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Mayor Yeh felt the City Attorney's explanation of voting requirements was helpful. To ensure Staff had sufficient time to gather information for a full discussion, the current discussion should be a ministerial process.

INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER to change number two to read "to direct Staff to return at the time of consideration of further extension of the ordinance with options for Council to consider related to potential exceptions for properties at 135 Hamilton Avenue and 636 Waverley Street."

Mayor Yeh felt the proposed language was consistent with Mr. Williams' comments.

Mr. Williams stated Staff could outline options when they presented exceptions.

Mr. Keene believed a discussion of exceptions should include options, because the moratorium could be acted on before the exceptions.

Ms. Stump reported if the Council had both an urgency Ordinance and a non-urgency Ordinance on the same topic, the non-urgency Ordinance needed to follow all of the regular procedures in terms of timing, notice, and public hearing.

Council Member Shepherd inquired whether the language reflected Staff's original intentions.

Mr. Williams answered yes. The language was more explicit for Staff to outline options.

Council Member Holman suggested "proposed language" was redundant.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to remove "proposed language" from Staff Recommendation Number 2: Direct Staff to return prior to further extension of the Ordinance with ~~proposed language~~ related to potential exceptions for properties at 135 Hamilton Avenue and 636 Waverley Street.

Council Member Holman requested Staff, in the name of equity and fairness, hold at least one meeting with others in the area that would be impacted by exceptions.

MOTION PASSED AS AMENDED: 8-0 Scharff absent

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9. Adoption of Budget Amendment Ordinance 5171 and Approval of a Loan Request from Palo Alto Housing Corporation in the Amount of \$3,220,220 for the Acquisition of 567-595 Maybell Avenue and Provide Direction to Staff to Extend a \$2.6 Million Short Term Loan (continued from November 13, 2012).

Curtis Williams, Planning and Community Environment Director, reported the Palo Alto Housing Corporation (PAHC) requested a loan of \$3,220,220 for acquisition of a 2.46 acre parcel on Maybell Avenue. The overall sales price was approximately \$16 million. The City would be one of the funding sources for the land acquisition, along with some private lenders and Santa Clara County. The Council saw an initial draft of the project at the September 2012 study session. Council comments were incorporated into the design plans and submitted for review. The initial proposal included 60 affordable senior rental housing units and 15 market rate units. Affordable units were affordable to low, very low and extremely low income households. The market rate units would be used to help buy down other development costs. The total development costs were estimated at \$21.2 million. Loan terms were the standard 3 percent, 55-year, residual receipts. Funds for the City's loan of more than \$3 million would be comprised of \$1 million from the Residential Housing Fund, \$1.5 million from the Commercial Housing Fund, and more than \$700,000 from the Infrastructure, Sustainable Neighborhoods and Communities and Affordable Housing Fund of the Stanford University Medical Center Development Agreement. Of the amount submitted, \$1.7 million was dedicated to affordable housing funding. Staff recommended the Council adopt the Budget Amendment Ordinance (BAO) to support the loan and authorize the City Manager to execute the development agreements and other documents. In the future, Staff would return with the regulatory agreement associated with the project. The Council, the Planning and Transportation Commission (P&TC) and Architectural Review Board (ARB) would review the project through the rezoning process and site and design process. Staff originally hoped to fund the entire \$5.8 million request for the project; however, some funding was not available. Staff requested Council direction regarding a BAO to use \$2.5 million from the Stanford Infrastructure, Sustainable Neighborhoods and Communities and Affordable Housing Fund as a short-term loan for two years with a one-year extension option to help meet the funding commitments for PAHC. PAHC possibly could obtain funding elsewhere; however, that action would probably jeopardize its chances to receive tax credit financing from the State. Over the next few years, the City would receive funds either from the settlement of litigation or through project fees sufficient to cover that amount and would reimburse the Stanford funds. If the Council approved, Staff would return with a short-term loan agreement for funding, and later return with the regulatory agreement to be executed before construction.

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Candice Gonzalez, Palo Alto Housing Corporation reported PAHC had leveraged several funding sources.

Herb Borock requested the Council not act on the Item, because the requested actions did not abide by the law. This project was subject to the California Environmental Quality Act (CEQA), and an application had been submitted. Council action at the current time would preclude it from imposing alternatives or mitigations resulting from the CEQA process. Funding approval could be made as part of or after project approval.

Mayor Yeh asked the City Attorney to address CEQA issues raised by Mr. Borock.

Molly Stump, City Attorney explained the loan was for site acquisition, which was time sensitive. The loan documents made clear that the project was in the planning stages and subject to environmental review. There were no approvals of the specific project before the Council, nor could there be, because the environmental review process needed to be completed.

Council Member Schmid indicated the Stanford Agreement allowed the Council to take a short-term loan for 2-3 years to cover the City's contribution. He inquired whether Staff expected the Housing Fund to generate funds to repay the loan within that 2-3 year period without action by the Federal Government or other levels of government.

Mr. Williams responded yes.

Council Member Schmid inquired whether local developments that would contribute to the Housing Fund were in the process or whether they were merely expected to happen.

Mr. Williams reported developments typically were approved but did not pay a housing fee until a building permit was obtained or until the sale of residential units in ownership housing cases.

Council Member Schmid asked if this action would increase pressure on the Council to approve developments.

Mr. Williams responded no.

Council Member Holman noted constraints were identified in the funding plan, and inquired about Council latitude to protect itself against environmental impacts and to accomplish best design.

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Ms. Stump explained the project would need to move through the City's regular processes for approval as a Planned Community (PC). The Council retained its full discretion to address the project on its merits, including any environmental concerns. It was a question for PAHC regarding how it would respond to project changes that altered the financial arrangement anticipated by the financing documents.

Ms. Gonzalez understood and expected changes as the project moved through the entitlement process. PAHC's plan, including financing, was a conservative approach that would allow for some flexibility.

Council Member Holman inquired whether PAHC's approach included possible changes in land configurations.

Ms. Gonzalez replied yes. PAHC reviewed and considered various scenarios, and was conservative in those numbers as well.

Mayor Yeh understood the Council was considering a loan agreement tonight with the future opportunity to enter into a regulatory agreement with PAHC for this project. He asked if there would be multiple agreements for Council consideration.

Ms. Gonzalez answered yes.

Mayor Yeh recalled discussions with Staff and PAHC regarding Buena Vista Mobile Home Park, and inquired how PAHC would prioritize residents.

Ms. Gonzalez reported PAHC provided a live-work preference for tax credit properties. A live-work preference meant that residents currently living or working in Palo Alto received a preference on the waiting list and moved up faster. On average, approximately 75 percent of new residents received a live-work preference. PAHC was reviewing whether or not it could narrow the live-work preference by neighborhood, ZIP Code, or displaced tenants.

Mayor Yeh asked if PAHC had held discussions with neighbors and residents of Buena Vista Mobile Home Park.

Ms. Gonzalez stated PAHC had talked with neighbors and residents regarding a preference or priority for the Maybell Avenue property, when construction would begin, and how PAHC could help them.

Mayor Yeh indicated community members had worked with residents of Buena Vista Mobile Home Park. Twenty residents were over 60 years old

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and 25-30 residents between 50 and 60 years old.

MOTION: Council Member Klein moved, seconded by Council Member Holman to: 1) adopt the attached Budget Amendment Ordinance (BAO) increasing the Fiscal Year 2013 Grants and Subsidies budget of the Commercial Housing In-Lieu Fund by \$400,000, transferring \$720,220 from the Stanford University Medical Center (SUMC) Infrastructure, Sustainable Neighborhoods and Communities and Affordable Housing Fund to the Residential Housing In-Lieu Fund, and increasing the Grants and Subsidies budget of the Residential Housing In-Lieu Fund by \$720,220, 2) approve and authorize the City Manager or designee to execute in substantially identical form the attached Acquisition and Development Agreement (ADA) (with attached form of promissory note, deed of trust and security agreement) with Palo Alto Housing Corporation (PAHC) to provide a loan of \$3,220,220, 3) authorize the City Manager or designee to execute all other documents required to implement the Agreements, including escrow instructions and to approve all necessary subordination agreements and direct the City Manager or designee to administer the provisions of the Agreements, 4) provide direction to staff whether to authorize an additional, short term (2-3 year) loan to PAHC in the amount of \$2,600,000, to be funded by the SUMC Infrastructure, Sustainable Neighborhoods and Communities and Affordable Housing Fund and, if so, to return with that loan agreement and budget amendment as a future Consent Calendar item.

Council Member Klein felt the project was an excellent use of the property, and supported the proposal while recognizing some risk existed. The number of housing units to be created was worth the relatively small risk.

Council Member Holman supported the Motion, because possible adjustments to satisfy CEQA and best design reviews could happen.

Council Member Shepherd requested the City Manager agendaize a study session of the Stanford University Medical Center funding.

James Keene, City Manager recalled a prior information report regarding Stanford's report on hospital projects and Staff's response. The information report identified the status of funds. He understood Council Member Shepherd was requesting a Council discussion regarding parameters and policies.

Council Member Shepherd wanted to understand how funds were identified and how the Council could utilize those funds.

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INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER to direct Staff to explore a preference in the regulatory agreement for seniors displaced due to loss of low-income housing elsewhere in Palo Alto, to the extent feasible and consistent with legal requirements and if approved by other funding sources.

Council Member Klein inquired whether the proposed language would impact other funding sources.

Ms. Stump did not believe a definitive answer could be given. The language included discretion for negotiations.

Ms. Gonzalez suggested language of "consistent with legal requirements and other funding sources."

Mayor Yeh indicated the Motion was not an approval of the project. The partnership with PAHC was essential to providing affordable housing. The project could meet shifting demographics within the community and the demand for affordable senior housing.

Council Member Price supported the Incorporation. A mixture of affordable and market-rate housing had been successful in other communities. The project provided a variety of housing, which was needed in the community. The sensitivity to the issues of seniors seeking housing was critical. The modification to the original Motion was appropriate considering the issues facing residents of Buena Vista Mobile Home Park.

Council Member Burt agreed with the intent of the Motion and Incorporation; however, specifically addressing the Buena Vista Mobile Home Park issue could indicate the Council's intent of an outcome on a project it had not reviewed. He would be more comfortable with broader language.

Council Member Holman agreed with Council Member Burt's comment.

Council Member Schmid supported Council Member Burt's comment. He understood the Council had the option of discussing the future of the Buena Vista Mobile Home Park.

Council Member Price inquired whether the Incorporation achieved the original concept of considering geographic preference, neighborhood preference, or ZIP Code preference in addition to the live-work preference with regard to eligibility on a waiting list. Including the reference to Buena Vista Mobile Home Park was illustrative without being prescriptive. It provided an awareness of a neighborhood preference as a criteria to become

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eligible for a waiting list.

Council Member Klein believed the Amendment had been incorporated into the Motion as he and the seconder had accepted it.

Mayor Yeh inquired whether the City Attorney could suggest illustrative language regarding a neighborhood preference.

Ms. Stump explained these details would be worked out among the attorneys, and the Council would receive a well-articulated proposal when the regulatory agreement was presented. The Council was providing a general direction. Aspects included in the regulatory agreement had to comply with Fair Housing law and other legal requirements. The Council should not attempt to provide that amount of detail in the current Motion.

Mayor Yeh wanted to express his opinion on this particular issue as he would not be a part of the Council when the issue returned.

Council Member Burt suggested substituting "geographic preference" for the deleted reference to Buena Vista Mobile Home Park. The Council was directing Staff to explore it and it had to be consistent with legal requirements. He offered that language to the maker and seconder as a way to capture the intent without a narrow definition.

Council Member Klein referenced the City Attorney's comments and noted the project would return to the Council. He did not accept the proposed language.

MOTION AS AMENDED PASSED: 8-0 Scharff absent

Ms. Gonzalez looked forward to the continuing partnership with the City.

10. Recommendation of the Parks and Recreation Commission Concerning Amendment of Section 22.04.180 of Chapter 24.04 of Title 22 [Park And Recreation Building Use And Regulations] of the Palo Alto Municipal Code and Amendment of Park and Open Space Regulations R1-4, R1-5a, R1-5b, and R1-10b to Impose Time Use Limitations on Sound Amplification Equipment at Lytton Plaza.

Darren Anderson, Open Space Parks and Golf Division Manager reported Staff and the Parks and Recreation Commission (Commission) recommended the Council adopt amendments to the Palo Alto Municipal Code and Open Space Rules and Regulations to impose limitations on amplified sound at Lytton Plaza. When Lytton Plaza was renovated in 2009, electrical outlets

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were added to allow electrical access for City-sponsored events. Musicians who originally performed at the Farmers Market began performing without any type of control or permitting. People also used the electrical outlets to power other electrical equipment. The Police Department and City Staff received complaints from the business community and local residents. Businesses surrounding Lytton Plaza felt it was no longer a clean and welcoming environment. Staff attempted to resolve the issue utilizing existing Municipal Code sections and Park rules and regulations. The existing Noise Ordinance prohibited noise levels higher than 15 decibels above ambient at a distance of 25 feet or more; however, not all Police Officers were equipped with noise reading devices to enforce the Ordinance. Staff needed a tool to resolve these issues. Staff attempted to work with musicians directly and received a small level of cooperation. Staff presented a recommendation to the Commission on October 25, 2011 to prohibit all amplified sound without a permit. The Commission did not support the recommendation, because amplified sound and live music were part of a vibrant Downtown area. A subcommittee of the Commission met with musicians, advocates, and stakeholders from the business community. The musicians wanted as much unfettered access as possible to perform in Lytton Plaza. Youth advocates wanted a place for teens to perform without cost. The business stakeholders indicated amplified sound during business hours (morning until 5:00 P.M.) was the problem. On March 27, 2012, the Commission reviewed a draft plan to manage amplified sound at Lytton Plaza. The Commission directed Staff to perform additional outreach and to keep the permit fee as low as possible. The plan recommended by the Commission stated amplified sound was allowed on a first-come-first-serve basis Monday through Thursday from 5:00 P.M. to 10:00 P.M., Friday from 5:00 P.M. to 11:00 P.M., Saturday from noon to 11:00 P.M., and Sunday from noon to 10:00 P.M. There would not be a permit or fees. A group could reserve a time period by submitting a request through the City's Special Events Team, and the permit fee would be \$90. On June 22, 2012, Staff began testing the recommended plan. Electrical power was connected to the irrigation system to allow Staff to turn on and off power remotely. There had been no reports of problems from the business community or users. On August 28, 2012 the Commission voted 5-1 to recommend to the Council the proposed amendments to the Municipal Code and Park Rules and Regulations. Commissioner Walsh dissented, because she felt the music was still too loud at Lytton Plaza. Staff received general support and no complaints from stakeholders during the five-month trial.

Herb Borock recalled Staff's Reports at Commission meetings indicated complaints came from a single business person. He felt music from a business adjoining Lytton Plaza was most intrusive to those using the Plaza. Lytton Plaza had a history of being a free-speech area in the City, and there

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was no ownership of the Plaza.

Susan Webb organized the jam session held in Lytton Plaza. She supported Staff's recommendations. Only two businesses requested electrical power begin at 6:00 P.M. rather than 5:00 P.M. She suggested additional wording of "no musician or group shall be allowed to monopolize the Plaza power by showing up and planning to play every day but shall share available hours and days." This would be a self-enforced limit.

Russ Cohen, Executive Director of Palo Alto Downtown Association felt live music brought energy to Downtown and assisted with Downtown's success. The proposed amendments did not prevent musicians from playing at Lytton Plaza during the day as long as music was not amplified. He urged the Council to approve the amendments.

Barbara Gross, Friends of Lytton Plaza supported the proposed amendments. Retail, commercial, and public interests had to be balanced to maintain the vitality of Downtown.

Phyllis Munsey received complaints from tenants in her building adjoining Lytton Plaza regarding amplified music. She supported the proposed amendments, but suggested amplified music begin at 6:00 P.M.

Faith Bell believed the major problem was religious organizations protesting loudly in Lytton Plaza. She suggested keeping the noise at a moderate level and glazing or sealing the surface of the Plaza to prevent stains.

Council Member Klein asked Staff to comment on the 5:00 P.M. versus 6:00 P.M. start time for amplified music.

Mr. Anderson had not been notified of the business community's preference for a 6:00 P.M. start time prior to the Council meeting. Participants at a business stakeholders meeting indicated their preference for music beginning any time after 5:00 P.M. Perhaps some of them had changed their minds during the trial period.

Council Member Espinosa inquired whether Staff was recommending the start time be 6:00 P.M.

Mr. Anderson reported the proposal was a 5:00 P.M. start time Monday through Friday. If the Council chose, start times for weekdays could be changed to 6:00 P.M. Ms. Webb, a primary stakeholder representing musicians, was agreeable to 6:00 P.M. but preferred 5:00 P.M.

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Council Member Espinosa asked about the process for preventing musicians from monopolizing the stage and for removing people.

Mr. Anderson stated meetings with the Commission subcommittee initially suggested Staff monitor musicians; however, the City did not have enough Staff to do that. Limits would have to be imposed by the user groups and/or musicians.

Council Member Espinosa asked why Staff did not recommend permitting.

Mr. Anderson reported Staff initially proposed a permit costing \$300 for use of Lytton Plaza with the idea that the fee would constrain the number of requests to a manageable amount. However, the Commission felt a permit severely limited the opportunity for live music at Lytton Plaza.

Council Member Espinosa inquired about Staff's management of volume and decibel level.

Mr. Anderson indicated the Police Department, and to some degree musicians, managed the volume level. During jam sessions sponsored by Ms. Webb, she utilized a decibel meter to monitor the volume level and then to request musicians lower the volume. When music was performed outside specified hours, the Police Department could check for a permit rather than measuring the decibel level, which would reduce the amount of time required for the Police Department to respond to noise complaints.

Council Member Espinosa inquired about the process for providing electricity to Lytton Plaza.

Mr. Anderson explained Staff originally locked electrical outlets to prevent use of electricity by non-permitted users. However, locks were broken and protective covers removed. Currently, each outlet was connected to the irrigation control system and could be controlled and scheduled remotely from a Staff computer.

Council Member Espinosa asked whether Staff had reached out to the business adjoining Lytton Plaza regarding volume of piped-in music.

Mr. Anderson stated the business was responsive to musicians and Plaza users who requested the music be shut off or the volume decreased.

Council Member Espinosa encouraged free speech and live music; however, at times the music volume was excessive in adjoining office buildings. He favored amplified music beginning at 6:00 P.M., because the workday

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typically lasted until 6:00 P.M.

Council Member Holman noted 195 complaints in 2011 and 59 complaints in the first three months of 2012, and inquired about the source and/or proximity of the complaining parties.

Mr. Anderson did not have that information.

Council Member Holman supported music, the arts, and free speech, but felt that was not dependent on amplification. She would not approve amplified music prior to 6:00 P.M. If the Council approved the proposed amendments, Staff did not have the capability to monitor the noise level in Lytton Plaza. In her experience, the music was loud and not conducive to enjoyment of the Downtown area. Cooking implements should be banned from Lytton Plaza, because of safety issues and staining of the pavement.

MOTION: Council Member Holman moved, seconded by Council Member XXXX to disallow amplified music at Lytton Plaza.

MOTION FAILED DUE TO LACK OF A SECOND

MOTION: Council Member Klein moved, seconded by Council Member Espinosa to: 1) adopt the amendment to Palo Alto Municipal Code 22.04.180 to Title 22 of the Palo Alto Municipal Code (Attachment A) to impose time and use limitations for sound amplification equipment at Lytton Plaza, and 2) approve the amendments to the Park and Open Space Rules and Regulations R1-4, R1-5A, R1-5B, and R1-10B (Attachment B) to establish the specific times frames for amplified sound and the rules for the management of amplified music at Lytton Plaza (Attachment B), 3) Change language in the Park and Open Space Regulations Section R1-10B Lytton Plaza Noise Regulation to reflect a Monday through Thursday start time of 6:00 P.M. instead of 5:00 P.M., and 4) Permit fee change to what staff determines to be full cost recovery not to exceed \$200.

Council Member Klein felt the Motion was an appropriate compromise. This procedure would require self-policing by musical groups. The workday in Palo Alto ended at 6:00 p.m. or later, and a start time of 6:00 P.M. was appropriate. Permit fees should provide cost recovery. He supported a ban on the use of electrical outlets for cooking.

Mr. Anderson reported the City had an existing Park regulation prohibiting cooking implements in parks. The issue appeared to be enforcement of the regulation.

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Council Member Klein suggested Staff provide signage regarding the ban on cooking implements.

Council Member Espinosa stated Lytton Plaza was located in a business district, and the later start time was logical. Adding programs without providing funding for Staff's additional work hindered the work of the City.

Council Member Burt inquired if Staff knew the recovery costs for the permit.

Mr. Anderson stated musicians performed in Lytton Plaza during the first-come-first-serve hours, and no one had requested a permit in the five-month trial period. Costs would include Staff time for review of permits by the Special Events Team and for resolution of electrical problems.

Council Member Burt asked if costs could total \$200.

Mr. Anderson responded yes.

Council Member Burt expressed concern that \$200 for a permit would be a significant amount for groups wishing to obtain a permit.

AMENDMENT TO MOTION: Council Member Burt moved, seconded by Mayor Yeh to retain permit fee at \$90 (delete #4 from Motion).

Mayor Yeh inquired about the current City practice for permitting events sponsored by the Youth Council.

Greg Betts, Community Services Director reported the City had a number of different mechanisms to accommodate events offered by the Teen Center at the Plaza. City-organized and co-sponsored events did not have to obtain a permit.

Council Member Burt asked if the City had the authority to waive the fee if the event was co-sponsored by the City.

Mr. Betts replied yes. For example, the chili cook-off event at Mitchell Park did not pay a fee for the use of the park.

Council Member Burt stated waiving the fee did not automatically occur, but perhaps the process was being put in place as the City supported these activities.

Mr. Betts indicated Staff had reviewed a number of venues for teen concerts, and supported opportunities for teen performances.

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Council Member Burt withdrew the Amendment with the understanding that the City had the authority to waive the fee for events co-sponsored by the City.

AMENDMENT WITHDRAWN

Council Member Schmid agreed with the business community's statement that live music energized an urban setting. A start time of 6:00 P.M. from Monday through Thursday was logical. He suggested Staff continue to monitor complaints regarding noise and cleanliness, and return to the Commission if an issue arose.

Council Member Holman referenced page 241 of the Packet and stated amplified music was not background music. She asked if there was an on-site means for self-monitoring of noise levels.

Mr. Anderson reported Staff had researched that issue. The challenge with Lytton Plaza was the amount of vandalism of City property. In addition, a Police Officer would need to witness the decibel level reading that caused a violation of the Noise Ordinance.

Council Member Holman felt amplified music provided an environment for vandalism.

Council Member Klein clarified that the start time for amplified music should be 6:00 P.M. Monday through Thursday in the Motion.

Mr. Anderson inquired whether Friday's start time was also 6:00 P.M.

Council Member Klein indicated the 6:00 P.M. start time would apply to Monday through Thursday.

Mayor Yeh felt the Motion addressed the musicians' and business community's wishes as well as cost recovery.

MOTION PASSED: 7-1 Holman no, Scharff absent

COUNCIL MEMBER QUESTIONS, COMMENTS AND ANNOUNCEMENTS

Council Member Klein said he attended the Bay Area Water Supply and Conservation Agency Board of Directors bi-monthly meeting. They discussed the progress of the water supply improvement project and an

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issuance of bonds.

Mayor Yeh discussed a city delegation that would be traveling to Shanghai to meet with key entities such as VMWare, Fodan University, and Finnegan Law Firm. He said the goal was to bring something back to the full Council addressing what they could accomplish.

Council Member Holman spoke regarding the passing of a community environmentalist, Philip LaRiviere.

ADJOURNMENT: The meeting was adjourned in memory of Philip LaRiviere at 10:04 P.M.