



# CITY OF PALO ALTO CITY COUNCIL MINUTES

Special Meeting  
December 10, 2012

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:02 P.M.

Present: Burt, Espinosa, Holman, Klein, Price, Scharff, Schmid arrived at 6:05 p.m., Shepherd, Yeh

Absent:

## CLOSED SESSION

1. CONFERENCE WITH CITY ATTORNEY  
Potential Litigation Relating to 2012 Audit of Software End-User License Agreement with SAP Public Services, Inc.  
Government Code Section 54956.9(b)-Significant Exposure to Litigation- 1 Case

Council returned from the Closed Session at 6:33 P.M. and took a break until 6:57 P.M.

Mayor Yeh reported that the Council voted 9-0 to approve a settlement with SAP Public Services Inc. in the amount of \$333,481, including an amendment of the parties' contract to add user licenses to conform to Palo Alto's increased use of SAP enterprise software.

## CITY MANAGER COMMENTS

James Keene, City Manager spoke regarding the completion of the paving part of the storm drain project on Channing Avenue and the final striping is underway. The annual toy's for kids drive has begun. Each year the City receives approximately 2700 toys, clothes, gift cards, stocking stuffers, books, and CD's that are distributed to local agencies.

## COUNCIL MEMBER QUESTIONS, COMMENTS AND ANNOUNCEMENTS

Vice Mayor Scharff announced that he attended the Cities Association Holiday Dinner.

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Council Member Shepherd reported that she also attended the Cities Association Holiday Dinner along with Council Members Burt and Price. A new President was introduced for the upcoming year.

## SPECIAL ORDERS OF THE DAY

### 2. Proclamation Honoring John Tuomy.

Council Member Price read the Proclamation honoring John Tuomy into the record and discussed her appreciation for Mr. Tuomy's participation in city activities.

Council Member Schmid spoke regarding Mr. Tuomy's impact in the community through his work with the School Board.

Mayor Yeh spoke regarding Mr. Tuomy's efforts to keep Gunn High School open.

## ORAL COMMUNICATIONS

Wynn Grcich spoke about the causes and effects of radiation. Radiation lowered children's IQs. Dental fillings and phosphate fertilizer were radioactive, and fracking released radiation. Water fluoridation caused Down's syndrome. The radiation plume from Fukushima was moving towards the U.S. Mammograms caused breast cancer.

Mike Francois shared information from safe space protection, ssp.com. Cell phones emitted electromagnetic radiation which penetrated the adult brain. A Harvard study indicated fluoridation lowered IQs.

Rita Vrhel provided an update on the 1095 Channing Avenue project. Almost all issues had been resolved. She reviewed information from the packet she provided the Council. The current issue was whether the fence was located on church property. She hoped the Council would continue the matter from the December 17, 2012 meeting.

## CONSENT CALENDAR

Robert Moss noted errors in the Staff report for Agenda Item Number 3. The total cost was expected to be \$550,455 plus \$41,000 for contingencies. The \$41,000 amount was included in the \$550,455 amount. The Council was being asked to approve the contract, but not the project including the \$100,000. Finally in Exhibit C, the estimated sales tax amount would

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increase in three weeks' time. He asked who held the contingency of 5 percent, or slightly more than \$19,000.

Council Member Holman requested Staff respond to Mr. Moss' comments.

James Keene, City Manager explained the body of the report did not express the correct dollar amount; however, the recommendation and Motion were accurate.

Mayor Yeh noted additional discussion of Item Number 3 would require its removal from the Consent Calendar.

**MOTION:** Council Member Shepherd moved, seconded by Council Member Espinosa to approve Agenda Item Numbers 3-13.

3. Finance Committee Recommendation to Approve the Residential CustomerConnect Pilot Program, Approve a Contract with Elster Solutions LLC for up to \$450,455, and Adopt a Resolution 9302 Approving Pilot-Scale Time-of-Use Electric Rate for Residential Customers.
4. Finance Committee Recommendation to Adopt a Resolution 9307 Approving the Cap-and-Trade Revenue Utilization Policy for the Use of Revenues from the Sale of Allocated Allowances in California's Greenhouse Gas Cap-and-Trade Auctions.
5. Resolution 9303 entitled "Resolution of the Council of the City of Palo Alto Declaring Weeds to be a Public Nuisance and Setting January 14, 2013 for a Public Hearing for Objections to Proposed Weed Abatement".
6. Approval of a Wastewater Treatment Enterprise Fund Contract to Join the Bay Area Biosolids to Energy Coalition in the Total Amount of \$151,553 for Membership in a Regional Coalition Exploring Biosolids to Energy Projects that Benefit the Regional Water Quality Control Plant.
7. Resolution 9304 entitled "Resolution of the Council of the City of Palo Alto Authorizing the Making of a Prepayment Under the City's Water Supply Agreement with the City and County of San Francisco and Authorizing the City's Participation in a Bond Issuance by the Bay Area Water Supply and Conservation Agency to Finance the Prepayment".

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8. Approval of the Renewal of a Public-Private Partnership Agreement Between the City of Palo Alto and TheatreWorks for the use of the Lucie Stern Community Theatre.
9. Approval of the Renewal of a Public-Private Partnership Agreement Between the City of Palo Alto and the Palo Alto Players for the use of the Lucie Stern Community Theatre.
10. Approval of the Renewal of a Public-Private Partnership Agreement between the City of Palo Alto and the West Bay Opera for the use of the Lucie Stern Community Theatre.
11. Approval of an Agreement with the Santa Clara Valley Water District for the Installation and Maintenance of Two Trash Booms at Creek Locations in Palo Alto.
12. Resolution 9305 entitled "Resolution of the Council of the City of Palo Alto Notice of Intent to Set 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".
13. Submittal of Mitchell Park Library and Community Center Bi-Monthly Construction Contract Report.

**MOTION PASSED:** 9-0

## ACTION ITEMS

14. Public Hearing: Adoption of an Ordinance Establishing Underground Utility District No. 47 (Middlefield Road/Addison Avenue/Cowper Street/Homer Avenue) by Amending Section 12.16.02 of the Palo Alto Municipal Code.

Council Member Holman recused herself from participation in Item Number 14, because her home address was located within 500 feet of the subject area.

James Keene, City Manager noted AT&T would pay a portion of costs for undergrounding utilities in the area.

Tom Ting, Engineering Manager in the Utilities Department reported in September 2012, the Council approved a Resolution of intent to establish

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the Underground District and scheduled the current meeting as a public hearing on the topic.

Public Hearing opened and closed at 7:25 P.M. without public comment.

Council Member Schmid recalled the telecom companies were reducing their contributions to the cost of undergrounding utilities. A prior discussion indicated undergrounding utilities throughout the City would take approximately 80 years; therefore, residents would subsidize undergrounding utilities in other parts of the City without receiving any benefit. He believed the Council would have a discussion of the issues prior to additional Districts being proposed. He inquired about the process for choosing Districts.

Mr. Ting reported the District was established in negotiations with AT&T approximately five years ago. Since that time, AT&T had changed its position with regard to areas it would contribute to. In December 2011, Staff presented options for undergrounding utilities in the remainder of the City. Staff also presented options to the Utilities Advisory Commission (UAC) in September 2012 and would present the same information to the Finance Committee the following week.

Council Member Schmid inquired whether the proposed District was an interim District while the Council had a general discussion of strategy.

Mr. Ting stated the proposed District was one of the Districts for which AT&T agreed to contribute to the costs of undergrounding. Three other areas would have underground utilities in the upcoming years with AT&T's cooperation. AT&T was holding back on the residential areas the City needed to complete.

Council Member Schmid noted the residential areas were subsidizing the program.

Mr. Ting indicated undergrounding costs were funded by rates, and commercial customers were paying a majority of the rates and a large portion of the undergrounding costs.

Council Member Schmid suggested deterioration of underground lines occurred over time, and the cost of repair was much higher.

Mr. Ting stated that was correct. The maintenance and operation of underground areas was much more expensive.

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Council Member Schmid felt this might not be an economic option in the long term.

Mr. Ting reported it was not a totally economic decision as aesthetic values were involved in undergrounding facilities.

Council Member Schmid inquired whether Staff was asking the Council to approve the District before it held a general, strategic discussion.

Mr. Ting indicated Staff wanted to proceed with the District, because AT&T had agreed to contribute to the costs of undergrounding facilities in the District.

Council Member Schmid asked if AT&T was contributing approximately 35 percent of the cost.

Mr. Ting answered yes.

Council Member Burt inquired if underground utilities were generally more secure and resilient than above-ground utilities.

Mr. Ting replied yes in terms of storm damage, especially in an area such as Palo Alto with many trees. Underground facilities were designed to be submerged; however, water deteriorated some of the underground facilities and required more maintenance and operations. In order to repair equipment, water had to be pumped from the vault, increasing the amount of time required to perform repairs.

Vice Mayor Scharff asked whether AT&T had agreed to subsidize 35 percent of costs.

Mr. Ting reported AT&T would pay its portion of installing the underground boxes and conduits required for its facilities.

Vice Mayor Scharff inquired whether AT&T would agree to pay 35 percent under current policies.

Mr. Ting indicated under current rules AT&T would contribute to the cost of undergrounding facilities in certain areas, such as commercial areas and main thoroughfares. Residential areas did not fall within AT&T's rules.

Vice Mayor Scharff asked if the proposed District would fall within AT&T's current rules.

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Mr. Ting responded yes.

Vice Mayor Scharff inquired whether the agreement was negotiated five years ago.

Mr. Ting stated the agreement was negotiated approximately five years ago when the City established the boundaries of the District.

**MOTION:** Vice Mayor Scharff moved, seconded by Council Member Shepherd to adopt an Ordinance establishing Underground Utility District 47 including portions of Homer, Cowper, Addison, Middlefield, Channing, and Webster) by amending Section 12.16.020 of the Palo Alto Municipal Code.

Vice Mayor Scharff was happy more utilities would be underground, because undergrounding made an aesthetic difference. He wished utilities could be undergrounded in more areas of the City, but it would be a slow process because of the costs.

Council Member Shepherd felt the issue confused the community, and hoped to provide explanations while finding a way to move forward with undergrounding all of Palo Alto. The issue would need a period of public comment and discussion regarding funding.

Mayor Yeh supported the Motion and agreed with Council Member Schmid's comments regarding higher maintenance costs. Benefits of undergrounding were emergency preparedness and aesthetics. Public understanding could inform decisions for future Underground Utility Districts. He reminded Council colleagues that the UAC was tasked with the responsibility of public discussion.

**MOTION PASSED:** 8-0 Holman not participating

15. Public Hearing: Adoption of an Ordinance Rezoning a 0.6-acre Site from Single Family Residential (R-1) to Service Commercial (CS), Adoption of a Resolution 9306 Amending the Comprehensive Plan Land Use Designation from Single Family Residential to Service Commercial, and Approval of the Negative Declaration for the Properties located at 423-451 Page Mill Road (Continued from 12/3/12.).

Amy French, Chief Planning Official reported the project site of 0.68 acres was comprised of four residential parcels on Page Mill Road, a busy arterial roadway located near the corner of El Camino Real. The adjacent Page Mill Road sites were zoned Neighborhood Commercial (CN) and General Manufacturing. The properties to the rear were zoned Single Family

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Residential (R-1) and had frontage on Pepper Avenue. The applicant had not submitted a development proposal. The project was a rezoning and a land use re-designation. Staff and the Planning and Transportation Commission (PTC) recommended three actions: 1) approve the negative declaration; 2) approve the Resolution approving the change to the site's Comprehensive Plan land use designation from Single Family Residential to Service Commercial (CS); and 3) approve the Ordinance approving a rezoning of the site from R-1 to CS. Staff received and answered questions from two Council Members. Council Member Holman questioned the discretion available to Council with respect to CS Zone development standards, how the public interest would be served by rezoning, why an all residential project was not considered, and environmental review. Council Member Schmid requested a PTC representative explain the Commissioners' concerns and responses at the current Council meeting. PTC Vice Chairman Michael was unable to attend, but provided summary statements. The PTC was initially concerned about the lack of public speakers, and continued the project to a second hearing to allow the applicant to conduct neighborhood outreach. The PTC was also initially concerned about the lack of clarity provided as to why CS zoning was selected rather than CN. There was also a concern that no concept plans were available for PTC review as part of the request for recommendation. The October 3, 2012 PTC meeting was not well recorded and no transcript was available. Two neighbors attended and raised concerns about the 395 Page Mill Road project. The other speaker was concerned about the underground plume and measures needed eventually for development on the site. The applicant told the PTC that there was no intention to build a hotel on the site. A mixed-use development concept with more than four residential units was being considered such that the Site and Design Review process was the most likely process to be followed after completion of the rezoning. The applicant described why the CS Zone was preferred over the CN Zone as noted in the project description letter, Attachment F. Staff noted that the ground floor could not be office use on a CS Zone site, because the ground floor was currently housing. Retail, restaurant or personal service uses were the most likely ground-floor uses for commercial as long as it was not a parking facility. Staff had not received a project application for development.

Mayor Yeh noted PTC Vice Chairman Michael's unavailability to comment at the meeting.

John Northway, Stoecker and Northway Architects stated the PTC thoroughly reviewed the project. It was a straightforward land use change request supported by policies in the Comprehensive Plan. The applicant would present the project for Site and Design Review, because the project would have more than four residential units. The applicant was working with

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neighbors and promised to show the design to neighbors first. Neighbors' comments would be solicited before finalizing and submitting the design for review. The land use zoning needed to be finalized prior to finalizing the design.

Norman Schwab, Property Owner and Project Developer stated the PTC indicated the use of residential units on Page Mill Road did not fit well with the amount of traffic. The request for CS zoning would allow mixed use, which was a transition from a busy street to probably retail, office, and definitely residential use. Residential units on the lower floors were not practical because of the busy street. He wanted to build a project to enhance the neighborhood. The current homes were blight to the neighborhood. Having residential units on the upper levels would be a better fit. Neighbors would have input as to how the project would look from their properties. He welcomed suggestions and wished to create a better residential and commercial location.

Mr. Northway was aware of the groundwater plume and would take every measure to ensure it was safe.

Public Hearing opened at 7:47 P.M.

Robert Moss agreed that the current rental homes were not the best use. Rezoning to CS or CN was appropriate. The allowable levels of TCE for indoor air had been reduced twice in the past 18 months. The best way to avoid TCE exposure was not to have an underground garage. If an underground garage was proposed, the Council could require the garage be 5-6 feet deep with an exposed area around the perimeter so that air could escape from the soil and out the garage, and by having vapor barriers and sub-slab ventilation. With both mediations, the building should be safe to occupy.

Public Hearing closed at 7:51 P.M.

Council Member Holman noted the Staff Report mentioned that the applicant was considering a single-story underground garage. She inquired whether underground parking on the site was a good idea.

Curtis Williams, Director of Planning and Community Environment could not express any reason not to consider an underground garage. If an underground garage could be mitigated, then it was an option. When information was presented, Staff would evaluate it. If the Council eliminated an underground garage, then it would need to eliminate them in that part of the City, which would be quite problematic. Technical solutions were

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available in most instances. Staff did not consider potential environmental hazards a reason to preclude an underground garage.

Council Member Holman inquired how an underground garage might affect adjacent properties.

Mr. Williams indicated a thorough analysis of potential impacts would be part of the environmental review for the specific project.

Council Member Holman asked if Council approval of the zoning change would commit the Council to any particular direction.

Mr. Williams reported it would not.

Council Member Burt noted the applicant purchased a fifth parcel at 430 Pepper Avenue to maintain the character of the low-density neighborhood. He requested Staff provide the zoning status of the other properties on Pepper Avenue. He believed some of the properties were commercial uses in former single family residences.

Ms. French stated the applicant sold the fifth parcel, the R-1 zoned parcel on Pepper Avenue. One parcel along Pepper Avenue, the art studio, was listed as a non-conforming site.

Council Member Burt inquired whether there were other residential parcels between 420 and 460 Pepper Avenue.

Ms. French indicated on Pepper Avenue there were only R-1 sites except for the art studio.

Council Member Burt inquired how purchasing the one property addressed the problem of the other ones.

Ms. French explained those properties were sold as a package by the previous owner. Staff and the applicant discussed the fact that the Pepper Avenue property would best be left in an R-1 use and residential situation.

Mr. Williams indicated the five parcels were together.

Council Member Burt stated one of the properties at 420, 440, 450, or 460 was a non-conforming commercial use, and asked if the other properties were all residences.

Ms. French responded yes.

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Council Member Burt felt having a CS Zone immediately abutting an R-1 Zone was not the usual transition. He recalled the applicant mentioned Site and Design Review, and inquired whether the Council should have something in the record to state Site and Design Review would be part of the review process when a project was presented.

Ms. French explained a CS zoned commercial site next to an R-1 Zone had height limit and daylight plane requirements, because of the adjacency issue. Those would not be required if the R-1 use and zoning did not abut the commercial property. The applicant's intention to have more than four residential units was in the PTC record. Having more than four residential units required Site and Design Review once rezoning was finalized. The applicant stated his intention again in the current discussion.

Council Member Burt inquired whether it would be within Council discretion to require Site and Design Review for these parcels either way.

Mr. Williams did not believe Site and Design Review could be conditioned on a rezoning request. The Council had required Site and Design Review in a few instances by applying the "D" overlay Site and Design Review on projects. Staff expressed some concern about utilizing a "D" overlay in random areas of the City.

Council Member Burt noted Staff's concern of utilizing a "D" overlay in a patchwork manner; however, the applicant's stated intentions were not requirements.

Mr. Northway reiterated the applicant's intention was a residential mixed-use project. The project would be subject to Site and Design Review. Protections for the interface between residential and commercial uses were built into the zoning. Neighbors would have a great deal of input into the interface between uses. The Council as protectors would have the final word.

Council Member Burt stated the zoning did not follow the applicant; it followed the parcel.

Mr. Northway indicated the Council's implementing a "D" overlay would not change the project.

Council Member Burt inquired whether Staff had considered the need for easements. For instance, there was an interest in extending the right-turn lane traveling southbound on Page Mill Road.

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Mr. Williams spoke with Jaime Rodriguez, Chief Transportation Official, who did not feel the City needed any right-of-way or easement on this side of the street. The County talked with the City about extending the second left-turn lane, and there would be adequate width for that to occur without taking any additional property.

Council Member Burt asked if the double left-turn lane currently extended to these properties.

Mr. Williams believed one of the turn lanes did, but the other did not.

Council Member Burt inquired whether there was sufficient room to have a double left-turn lane beyond these parcels.

Mr. Williams indicated Mr. Rodriguez had reviewed the proposal and believed that would work without any change to the proposal. He would confirm that with Mr. Rodriguez.

Council Member Burt wanted to ensure the City did not lose the opportunity for an easement.

Mr. Williams was happy to confirm that with Mr. Rodriguez.

Council Member Burt was surprised the City would not need additional width to accommodate an extension of the double left-turn lane.

Mr. Williams was unsure whether an extension of the double left-turn lane would affect these parcels.

**MOTION:** Council Member Price moved, seconded by Council Member Shepherd to approve the Negative Declaration, adopt an Ordinance rezoning a 0.6-acre site at 423-451 Page Mill Road from Single Family Residential (R-1) to Service Commercial (CS), and adopt a Resolution amending the Comprehensive Plan Land Use Designation of 423-451 Page Mill Road from Single Family Residential to Service Commercial.

Council Member Price believed this was a straightforward application. She expected the public would have many questions about the Site and Design Review process and other issues related to a potential mixed use and transition project. She was comfortable that development standards within the CS Zone were sufficient to make a good transition and allow opportunities for redevelopment of these properties. She did not believe the Council needed to make additional points to the Motion, other than the fact

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that it was a rezoning and that the Site and Design Review process was required. The issue of access and egress was critical. The Council needed to be creative with respect to setbacks from Page Mill Road for pedestrian access.

Council Member Shepherd agreed with Council Member Price's comments regarding parcels along Page Mill Road, and inquired whether the rezoning proposal would return to the Council on the Consent Calendar.

Mr. Williams reported the proposal would return to the Council at the first meeting in January 2013, because of the need to have ten days between readings.

Council Member Shepherd requested Mr. Rodriguez explain whether an easement was needed for an extension of the double turn lanes.

Mr. Williams agreed and suggested Mr. Rodriguez could provide information in the Council Packet for a second reading, if the proposal was on the Consent Calendar. If the Council did not approve the proposal at the first reading, then Staff would need to re-notice it and return to the Council with an Action Item.

Vice Mayor Scharff supported rezoning the parcels. He had concerns similar to Council Members Burt and Holman regarding an easement. Staff recommended the Council approve the proposal with Mr. Rodriguez providing additional information before a second reading. He inquired about the process should Mr. Rodriguez determine an easement was needed.

Mr. Williams explained the Ordinance would be an Action Item with that additional condition, because the Consent Item would be the Ordinance as it currently existed.

Vice Mayor Scharff inquired whether the Council's vote on the first reading would become ineffective should the Council not approve the Ordinance on a second reading.

Mr. Williams indicated the second reading was the final reading if there were no changes. If the Council made a change, then the Ordinance would change and would need to return to the Council for a new first reading.

Council Member Holman agreed that many of the "D" overlay properties were in the Baylands and the Foothills. There were also a number of properties on El Camino Real with a D overlay. Some of those properties went through Site and Design Review, because they became mixed-use

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projects. Placing a "D" overlay on this project would not be inconsistent with prior projects. A "D" overlay was appropriate given connectivity and sensitivity to R-1 Zones. She suggested a friendly amendment to add a "D" overlay to the Motion.

Council Member Price would not accept the friendly amendment.

**AMENDMENT TO MOTION:** Council Member Holman moved, seconded by Council Member Burt to add a "D" (site and design) overlay to the Main Motion.

Council Member Holman indicated the Council did not know what the final project would be, given site constraints. The project might not have more than four residential units. It would be prudent to place a "D" overlay on the zoning.

Council Member Burt believed an overlay was appropriate in the circumstances. The Council did not know whether a project would proceed with a given applicant, and had to adopt the underlying zoning. The overlay was an insurance policy that would apply to any project for the site.

Council Member Shepherd asked Staff to explain a "D" overlay.

Mr. Williams reported the Zoning Code provided a site and design overlay. It could be applied to any section plan or any zoning category, and required Site and Design Review. Rather than solely an architectural review process, the Architectural Review Board, PTC and Council would review the site plan for that project. Basically, the Baylands, many public sites, and all land zoned for open space had a "D" overlay.

Council Member Shepherd asked why Staff did not incorporate a "D" overlay into the recommendation.

Mr. Williams explained Staff did not generally apply that on a parcel-by-parcel basis. Staff felt the special criteria that applied to parcels adjacent to residential zoning would cover the issue. Also, Staff believed the intent was a mixed-use project that would require Site and Design Review in any event.

Council Member Shepherd expressed concern that placing a "D" overlay would set a precedent for Council action.

Mr. Williams stated the City did not have many zoning changes without a Planned Community (PC) Zone. The PC Zone required a full review and

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more. He was not concerned that there would be a rash of individual properties with "D" overlays.

Vice Mayor Scharff supported the Amendment and agreed with Council Member Burt's comments. The unusual circumstance was the zoning change request without a project. The "D" overlay was the perfect tool to protect the neighborhoods. Since the applicant had no concern with a "D" overlay, it was important to include it.

Mayor Yeh supported the Amendment as it was prudent. He could not imagine future applicants requesting additional Site and Design Review. It was a Council decision to require this additional review.

Council Member Burt noted the applicant's and architect's intentions to present a project that would have the exact same process as required by the "D" overlay. Including a "D" overlay in the zoning would require the same process for any other project on the same property.

**AMENDMENT PASSED:** 8-1 Price no

**MOTION AS AMENDED PASSED:** 9-0

16. Public Hearing: Approval of a Record of Land Use Action for a Preliminary Parcel Map with Exceptions to Subdivide an oversized Single Family Residential lot into two lots, resulting in parcels having a width of 55.845 feet where the R-1 Zone standard minimum width is 60 feet; and Approval of a Negative Declaration located at 827 Chimalus Drive.

Council Member Holman recused herself from participation in the Item, because of the unknown potential for financial gain.

Council Member Burt recused himself from the Item, because of a personal relationship with the applicant's family.

Amy French, Chief Planning Official reported the project site was a non-conforming parcel located in a Single Family Residential (R-1) Zone District. The existing lot was approximately 112-feet wide by 113-feet deep. The parcel was non-conforming in that the lot area exceeded the R-1 Zone's maximum lot size of 9,999 square feet. The proposal was to subdivide the parcel into two equally sized parcels of 63.33 square feet, which would meet the minimum site area, not exceed the maximum site area, and eliminate the non-conforming maximum lot size. Subdivision of the parcel would result in lot widths approximately 4.15 feet smaller than the minimum

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required lot width. Staff believed the project was consistent with the required findings, because it would correct a non-conforming maximum lot size and would be consistent with the existing pattern in the neighborhood. The lot depth would remain 113 feet, consistent with the six adjacent properties. The allowable floor area ratio that could be built on these lots would be more compatible with the existing neighborhood than would be allowed on the larger 12,666 square foot lot.

Mayor Yeh noted Planning and Transportation Commission (PTC) Vice Chairman Michael was not present to comment.

Samir Tuma, Applicant asked for subdivision of a 12,666 square foot lot into two identical lots, which would be approximately 63.33 square feet each. The only concern was the width of the subdivided lots being slightly smaller than required. Adjoining parcels and many parcels in the immediate area were approximately 55-feet wide. His request was to bring the lot in line with the remaining neighborhood and adjoining neighbors. The application was consistent with the Comprehensive Plan and met the requirements for the findings in order for the Council to grant the exemption. In 2004 an identical situation was approved by the PTC and Council. He met with neighbors and received support from those he spoke with. He asked that the application be granted.

Public Hearing opened and closed at 8:28 P.M. with no public speakers.

Council Member Espinosa asked Staff whether this type of situation presented any concerns as a precedent.

Ms. French indicated the 2004 application was presented prior to the establishment of the maximum lot size. The current application had a new set of findings that reduced the non-conforming maximum lot size. With the City's policy of not having lots exceed the maximum lot size, the Council could see similar applications in the future; however Staff was not aware of other applications from the neighborhood. The project would increase the potential number of housing units.

Council Member Espinosa inquired whether Staff was not concerned about the number of other non-conforming lots or about the impacts of subdividing lots.

Ms. French stated the number of these situations was not many in the neighborhood.

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**MOTION:** Council Member Espinosa moved, seconded by Council Member Klein to; 1) approve the Negative Declaration, with a finding that the project will not result in significant environmental impacts; and (2) approve a Record of Land Use Action approving the Preliminary Parcel Map with exceptions for 827 Chimalus Drive, based on the stated findings and conditions.

Council Member Espinosa said subdividing the lot was logical and fit the neighborhood. Because of the small number of non-conforming lots in the neighborhood, the Council did not need to worry about an increase in density or traffic.

Council Member Klein inquired when the Council adopted the R-1 maximum size.

Ms. French answered 2005.

Council Member Klein felt subdividing the lot would not have a significant impact on the density of the community.

Council Member Shepherd agreed with previous comments.

Council Member Price supported the Motion. She was more concerned about the issue of people merging parcels, and was delighted to hear about the maximum parcel size.

Mayor Yeh supported the Motion. He appreciated the applicant speaking with neighbors.

**MOTION PASSED:** 7-0 Burt, Holman not participating

17. Public Hearing: Consider Extending up to December 28, 2013 a Moratorium on the Use of Certain Parking Exemptions contained in Section 18.52.060(c) of the Zoning Ordinance Related to the Downtown and California Avenue Parking Assessment Areas; and Adopt a Resolution Providing Exceptions to the Moratorium for "Pipeline Projects" at 135 Hamilton Avenue and 636 Waverley Street.

Curtis Williams, Director of Planning and Community Environment wished to discuss the moratorium on the parking exception previously adopted and extended once. Staff asked the Council to 1) further extend the parking moratorium for an additional year to allow for appropriate studies, responses, and actions to address the Downtown parking issues identified and presented in a previous report; and 2) consider exceptions to the

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moratorium for two projects currently pending in the development review process. The structure of the Ordinance provided that the Council could enact exceptions pursuant to Resolution adopted separately from the Ordinance. These were technically two separate actions. The Ordinance as an Urgency Ordinance required eight votes for adoption, and the Resolution required a majority vote for adoption. The most significant issue was the exceptions for the two projects in the development process. The 135 Hamilton Avenue project would be approximately 20,000 square feet of office development with two residential units. The applicant proposed 23 on-site parking spaces. Another 20 spaces would be exempt from parking, because of the use of Transferrable Development Rights (TAR). Forty spaces would be exempt due to the one-to-one floor area ratio (FAR) exemption, which was subject to the moratorium. Not providing an exemption would require the applicant to pay in-lieu fees for 40 spaces or provide 40 on-site parking spaces, which was not practical. The site was currently used as a parking lot and leased to nearby businesses and contained 20-23 parking spaces. The 636 Waverley Street project would be approximately 5,000 square feet of office space and two residential units. The Architectural Review Board (ARB) performed a preliminary review. The applicant was revising the plan to present to the ARB in early 2013. The one-to-one FAR exemption accounted for 15 spaces that would be exempt from parking. The number of parking spaces could change depending on the final project. The applicant would provide some on-site parking with the project. Transferrable Development Rights were not an issue for the project. The 135 Hamilton Avenue project had been to the ARB once for full review. The ARB suggested a number of revisions. The applicant submitted a revised project for an ARB study session, and the ARB suggested further changes. The project was scheduled for an ARB meeting in January 2013 for further review and possibly action. Staff outlined five options for Council consideration. The first option was not to allow exceptions. This would require the 135 Hamilton Avenue project be revised to provide 40 parking spaces or in-lieu fees for 40 parking spaces. The 636 Waverley Street project would have a similar requirement. It would be approximately \$900,000 to accomplish the 15 spaces for that project. A second option was to allow exceptions, recognizing that the applicants were well into the process, but require the applicants to pay into the Assessment District. Staff suggested an equivalent assessment payment based on the amounts the projects would have had to pay with the issuance of the 2001 bonds through 2030, including interest. Those numbers would be required in any kind of exemption proceeding. Staff suggested funds be paid into the Downtown Parking In-Lieu Fee Fund, to be used for construction of a parking garage. The amount of payments to the Assessment District was estimated at \$326,000 for 135 Hamilton Avenue and \$122,000 for 636 Waverley Street. A third option, which Staff recommended, was to require the projects to pay

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the assessment equivalent and to have the two properties share the cost of the Downtown Cap Study. Staff estimated the cost to the projects at \$150,000, and would apportion the \$150,000 amount between the two projects in the same ratio as their parking space exemptions. A fourth option was to allow the exemptions, but to require some measure of in-lieu parking funds. Option 4 was midway between Options 1 and 3. The fifth option was to allow an exception for 135 Hamilton Avenue, given its length of time in the process, but no exception for 636 Waverley Street, given it was not as invested in the process. The Resolution was written for Option 3. Staff recommended any option include a requirement for an aggressive Transportation Demand Management (TDM) plan to be incorporated. Staff recommended Option 3, because the projects had proceeded in good faith through the process; however, Staff recognized that was a policy decision for the Council to determine.

Council Member Burt asked Staff to compare the TDM requirement of a 20 percent mode split, as stated in Attachment B Number 6, with TDM requirements for other programs Downtown.

Mr. Williams indicated the requirement was the same as the requirement for the Lytton Gateway project. Around the City, the mode split was between 15 percent and 30-35 percent.

Council Member Burt inquired whether the higher percentages were achieved through firms having their own bus services.

Mr. Williams believed firms offering bus service tended to be at the highest range. Firms could not achieve more than 20 percent without bus service.

Council Member Burt felt development had to have minimal impact on the roadways and have mitigation of parking impacts, and asked if the Council should consider increasing the mode split percentage for future projects.

Mr. Williams stated Staff considered 20 percent as a standard throughout the City. He suggested the Council consider 25-30 percent as a goal, because the project was adjacent to transit, or 20 percent for the first few years and then 25-30 percent at five years.

Council Member Burt had not thought of a graduated program such as that.

Vice Mayor Scharff noted the projects together created a parking deficit of approximately 98 spaces, and inquired about the overall parking deficit in Downtown.

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Mr. Williams reported the annual Downtown monitoring report indicated a deficit of 722 spaces. He did not know the specifics of that number, but felt it was probably understated.

Vice Mayor Scharff stated these projects made the parking deficit worse by 10-15 percent.

Mr. Williams agreed.

Vice Mayor Scharff recalled Staff recommended the Council consider ground-floor retail if the applicant was asked for its input on how ground-floor retail would affect project plans. The projects were not Planned Communities (PC). He asked if the request on the exemption was addressed in fairness and equity.

Mr. Williams responded yes.

Vice Mayor Scharff stated the Council was not negotiating for public benefits, and asked why the Council would want to know the impact of ground-floor retail.

Mr. Williams explained Staff's intent in that response was not to suggest that the Council require ground-floor retail. It would be informative to know if there were implications for the project relative to a retail use. It was a courtesy to hear the implications for a project.

Vice Mayor Scharff inquired whether the 135 Hamilton Avenue project had been through ARB review.

Mr. Williams reported it had been to ARB twice. ARB had not recommended the project at the current time.

Vice Mayor Scharff inquired whether the project had been designed for ground-floor retail.

Mr. Williams replied yes. One of the major issues with the project had been the ground-floor.

Vice Mayor Scharff requested Staff suggest impacts of requiring ground-floor retail other than the economic aspect of retail versus office use.

James Keene, City Manager asked if Vice Mayor Scharff meant impacts related to parking specifically.

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Vice Mayor Scharff answered no. He wanted to know possible other impacts.

Mr. Williams felt economics was the primary impact and an alternative parking solution that might work better with retail than with office.

Vice Mayor Scharff inquired whether parking would work better with a retail use.

Mr. Williams responded yes.

Vice Mayor Scharff noted 60 parking spaces could be built for approximately \$2.4 million, yet Staff recommended the parking assessment for 135 Hamilton Avenue be \$326,000. He asked Staff to explain how the parking assessment was calculated.

Joe Saccio, Deputy Director of Administrative Services Department explained he was asked to treat the projects as though they were buying into the original Assessment District. The method was to use the original 9,122 spaces and add the required number of spaces (40 for the Hamilton project) to determine a ratio to apply to both the principle and the interest of the 30-year bonds. He applied the ratio of 40 to 9,122 plus 40 to the principle and interest from 2001 through 2030 to derive the assessment of \$326,000 for 135 Hamilton Avenue. A similar method was used for the project at 636 Waverley Street. It was one method for retroactively and prospectively charging without an inflation factor. Basically, the amount was the projects' prorated share of the annual debt service payments since the construction of the garages.

Vice Mayor Scharff inquired whether funds from the Assessment District were used to maintain the spaces in the garages or to build the garages.

Mr. Saccio reported that money was used to build the garages. Under Proposition 218, an assessment engineer determined an equitable allocation of costs to each property owner within the defined Assessment District. At that time, the formula adopted by the Council was 1 space per 250 square feet. If a 1,000 square foot building provided only 1 space, then they were assessed for 3 spaces. The costs of principle and interest for the bond were allocated according to each property's proportional share of the overall spaces.

Vice Mayor Scharff asked how many parking spaces were built.

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Mr. Saccio did not remember the exact number of spaces in existence at the time, because garages were built on surface lots. To the best of his recollection, more than 700 spaces were built.

Vice Mayor Scharff asked why the formula related to the full 9,000 spaces rather than 800 spaces. Using 800 spaces would seem to provide a truer picture of the cost of buying into the Assessment District.

Mr. Saccio explained the allocation methodology was based on need rather than the number of spaces being constructed. The number of additional spaces due to each property could not be determined. The methodology was the net need in the District based on the square footage of property not being supplied with parking spaces.

Vice Mayor Scharff inquired whether the methodology was calculated on the need to build "X" number of parking spaces and, therefore, the need to raise "X" amount of funds.

Mr. Saccio stated the methodology was not based on the incremental number of spaces that could be built. It was based on the number of spaces that were not supplied.

Vice Mayor Scharff asked if Staff could calculate an assessment amount including inflation.

Mr. Saccio indicated Staff could certainly calculate that, but it was not incorporated into the current assessment amount. Only the interest was charged.

Vice Mayor Scharff inquired about the interest rate used for the calculation.

Mr. Saccio believed the interest rate was 5 percent on the original bonds, and a lower rate when the bonds were refinanced in 2012.

Vice Mayor Scharff asked if Staff used 5 percent as if it were on the bonds.

Mr. Saccio reported the amount was the interest the City was paying on the bonds, and did not include inflation.

Council Member Schmid believed the original Urgency Ordinance concerned the issue of parking and parking exemptions, because of the parking shortage and parking overflow into neighborhoods. The Council did not know the size of the shortage. He inquired whether the Urgency Ordinance

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was passed because of a perceived lack of parking spaces, and a moratorium was affected in order to prevent exacerbation of the shortage.

Mr. Williams stated that was an interpretation of what happened. Staff initiated the original request for an Urgency Ordinance out of concern that a few projects were taking advantage of parking exemptions, and wanted to ensure that additional projects were not able to do that. Staff recognized that these projects would exacerbate the problem to some extent.

Council Member Schmid said parking was becoming increasingly expensive and had an economic value. In granting parking exemptions, the Council passed the cost on to someone else, whether it was retailers, employers, or visitors. The Council should consider those property owners asking for exemptions and those who might bear the economic cost. One of the reasons for passing the Urgency Ordinance was to have a study to determine the shortage. He asked how the Council should balance a new exemption with who paid for it.

Mr. Williams reported balancing those was the Council's policy determination. The moratorium balanced future projects against the amount of exacerbation that occurred.

Public Hearing opened at 9:09 P.M.

Chop Keenan would not have pursued the 135 Hamilton Avenue project if the moratorium had been in place when he first considered the project. He expended time and funds in reliance on the Council's rules and regulations. He would absorb the \$326,000 parking assessment if it was imposed. Ground-floor retail would be a fatal flaw if that was the only option for him.

David Kleiman proposed a small mixed-use development consisting of two office spaces and two apartments at 636 Waverley Street. When he submitted plans for ARB consideration, he rightly assumed that the Zoning Ordinance in effect at that time would apply to his building program. In the past, pipeline projects were allowed to use existing Ordinances. If this precedent was applied, he would only have to provide parking for new spaces. He was willing to pay the parking assessment and towards the Downtown Cap Study. The Staff recommendation was reasonable. He hoped the Council would consider his situation, the large dollar amounts being requested, and approve Staff's recommendation.

Ken Alzman reported the Downtown area provided 1,700 employee parking spaces for more than 6,000 existing employees. With the proposed exceptions, the 135 Hamilton Avenue project would provide no new parking

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while replacing the existing 23 parking spaces with 23 underground stacking machines and the 636 Waverley Street project provided 4 new parking spaces and needed 16 more spaces. Granting the exceptions was contrary to the basic precepts of the Palo Alto Comprehensive Plan, good planning practice, and common sense. If the Council was obligated to approve the exceptions, it should require the developers to pay the full in-lieu fee for parking lost and parking not provided.

Neilson Buchanan related a conversation with a developer regarding parking. He supported the moratorium and the two exceptions with two provisions: 1) the City Council settle future requests for exceptions, and 2) Staff and the City Council determine where employees would park.

Marion Odell indicated parking density had increased significantly despite the construction of two large parking structures. Staff did not have a saturation metric or standard for neighborhood parking. Metrics existed for business parking; however, the Council probably had not adopted them. She hoped the scope of the upcoming parking study would include definitions and standards for saturation. She expressed concern about safety issues. People avoided shopping and dining Downtown, because of traffic and the lack of parking.

Karen Dreyfus disagreed with Staff's recommendation. It did not include other equitable factors the Council should consider in exercising its discretion in this decision. A parking shortfall of 100 spaces was significant. Parking analyses did not mention public safety hazards. Each homeowner would suffer a decrease in home value of at least several hundred thousand dollars.

Herb Borock supported extending the moratorium and opposed any exceptions. The 135 Hamilton Avenue project had not gone through the ARB process in that the ARB had not provided a final recommendation. The 636 Waverley Street project did not satisfy Staff's draft Ordinance. The developers of 135 Hamilton Avenue previously operated under another moratorium. Although he opposed any exceptions, an exception should be adopted by Ordinance not Resolution.

Robert Moss supported the moratorium. There was no justification for considering an exception for 636 Waverley Street, because it was not a project in terms of any Board or Commission review. The 135 Hamilton Avenue project was entitled to something, but not total elimination of requirements. He expressed concern that the City received funds for parking garages rather than parking spaces. If the Council allowed exceptions, it should limit the number of exemptions from parking; the

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owners or employers should be required to pay for parking; and there should be penalties for employees parking in neighborhoods. He suggested the Council adopt Option Number 1 and require payment for any exceptions.

Sally-Ann Rudd supported extending the moratorium without exceptions. The moratorium was introduced to stop developers from putting cars into Downtown without building parking spaces. She suggested the Downtown Cap Study have a metric for measuring saturation of residential neighborhoods and propose a level at which a neighborhood was unsatisfactorily saturated with cars.

Public Hearing closed at 9:35 P.M.

Mayor Yeh recommended splitting the two Items.

**MOTION:** Mayor Yeh moved, seconded by Vice Mayor Scharff to adopt the extension of the Interim Urgency Ordinance establishing a moratorium on the use of the Exempt Floor Area parking exemption 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 one year through December 28, 2013, and allowing for exceptions for certain projects by separate Council Action.

Mayor Yeh stated this was an important step to ensure other actions such as the Downtown Cap Study and parking analysis. Like Mr. Borock, he questioned the need for a Resolution versus an Ordinance.

Vice Mayor Scharff felt this should not have been operable for the prior ten years. There were serious parking problems in Downtown and adjacent neighborhoods.

Council Member Klein clarified it was not a Downtown moratorium; it was a moratorium on the applicability of the exempt floor area parking exemption, which had been rarely used. He inquired whether most other projects could proceed in accordance with other sections of the Code.

Mr. Williams answered yes. A few developers had explored this exemption, but Staff informed them they could not use the exemption. Transfer development rights and in-lieu fees were other methods for projects to proceed on providing parking.

Council Member Klein stated projects in the past did provide parking, and this was not an overall Downtown moratorium.

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Council Member Holman wished to ensure the Motion language was consistent with the Motion provided in the Packet. She inquired if the maker intended to strike all language after December 28, 2013.

Mayor Yeh replied no. That language provided flexibility for the Council to discuss the second part of the recommendation.

Council Member Holman inquired whether the language "allowing for exceptions for certain projects by separate Council Action" meant the Council would allow exceptions.

Molly Stump, City Attorney explained that language and the Urgency Ordinance extension allowed the Council to provide for exceptions separately. It did not indicate that the Council would provide exceptions, what the exceptions would be, how exceptions would be framed, or any conditions. The first vote required 8 votes as it was an Urgency vote. The separate action would require a straight majority vote, or 5 members.

Council Member Holman asked if the language "allowing for exceptions for certain projects by separate Council Action" provided latitude for the Council to do one or the other.

Ms. Stump responded yes.

## **MOTION PASSED:** 9-0

Council Member Schmid indicated exceptions were allowed at the discretion of the Council based on rational and equitable bases. The number of exemptions would be approximately 100 spaces. The Council had to consider the cost of exemptions and passing the burden to others. The rational steps were to determine the benefits of exemptions and who paid for them.

**MOTION:** Council Member Schmid moved, seconded by Council Member Holman to allow no exceptions.

Council Member Holman stated the Council's responsibility was to work in the public's best interest. She appreciated the projects in the pipeline, but it was not fair to impose impacts on others. The public's best interest would be not to allow exceptions for the two pipeline projects.

Council Member Klein opposed the Motion. The Council's first obligation was to the people, but it had a higher obligation to act ethically. This was not an

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ethical Motion. The Council was free to set different limits that did not exceed court rulings and state law. When people relied on laws and expended significant sums of money, the Council had an obligation to allow them to proceed. Imposing an obligation to provide parking on projects would not solve the parking problem. He urged the Council to vote no, and to uphold Palo Alto's character and history of treating applicants fairly.

Council Member Burt was unsure why the Council was considering an extension of the moratorium rather than repealing the Ordinance. He inquired whether the projects would have a TDM requirement under the Motion.

Mr. Williams reported Staff attempted to apply some TDM measures to all projects, and suggested a requirement of not more than 20 percent. As far as penalties, Staff envisioned a condition similar to the one used in the Lytton Gateway project. Staff would require a TDM program to be developed and to identify goals which would probably be up to 20 percent.

Council Member Burt reiterated that the Council could ask for a TDM program, but could not require enforcement or increase it beyond current requirements.

Mr. Williams explained the Code authorized TDM programs when parking reductions were provided; therefore, a TDM program was justified in this instance.

Council Member Burt inquired whether the exemption as written would apply to the 636 Waverley Street project.

Mr. Williams believed it would. An application for preliminary review was submitted prior to October 15, 2012, which was a normal step in the architectural review process. Mr. Borock was correct in that a second application was associated with a formal review. A fair amount of information was required to apply for a preliminary review. The project did meet that criterion.

Council Member Espinosa opposed the Motion and agreed with Council Member Klein's comments. The Council had taken steps and was studying the parking issue to determine further steps. The Palo Alto process provided transparency and understanding of what to expect when doing business with the City.

Council Member Price opposed the Motion and agreed with comments of Council Members Klein and Espinosa.

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Vice Mayor Scharff wanted to treat people fairly, but questioned who would be treated fairly. Someone would have to pay for removing cars from neighborhoods. He preferred to continue the Item to obtain information from the Chief Transportation Official Jaime Rodriguez. Granting the exceptions would increase the pressure in neighborhoods, and that concerned him. If the Council granted the exceptions, it was compromising the quality of life in Palo Alto. The Council should consider the effect of the exemptions on the community.

Council Member Shepherd reported the Council was attempting to resolve the parking issues in Downtown neighborhoods. Continuing to improve Downtown was important. She associated her comments with those of Council Members Klein and Espinosa. The in-lieu fees of approximately \$4.5 million would be placed in the parking in-lieu fees fund, which totaled approximately \$3 million. She asked the cost to construct a new garage.

Mr. Williams believed a new garage would cost probably \$7-\$10 million.

Council Member Shepherd indicated the fund had almost half the amount needed.

Mr. Williams agreed.

Council Member Shepherd inquired whether the Council could reconfigure the Downtown Parking District or create a new one.

Mr. Williams reported the Parking District was a legal structure created with the Assessment District. Establishing a new structure of the District was not possible. The Council could modify color zones and parking requirements. The parking garage study would consider potential public-private partnerships. There were options that could possibly fill in some gaps.

Council Member Shepherd would not support the current Motion. She would support exceptions for the two pipeline projects which would provide in-lieu fees as well as pay for the Downtown Cap Study. Granting exceptions would allow the Council to utilize an aggressive TDM program.

Mayor Yeh appreciated the sensitivity of balancing interests. The Council had to utilize existing parking resources more efficiently. He inquired whether the Council could condition the Use and Occupancy Permits for these projects on certain outcomes relating to the parking process. Perhaps the developers could not be allowed to occupy the buildings until the Council could demonstrate an offset of the 100 new vehicles that would impact

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neighbors. The applications could move forward with the clear understanding that the applicants that could not move in until conditions were met.

Mr. Keene explained the projects could move forward even if exceptions were not granted. Without exceptions, the projects could proceed with the process if they provided parking. Practically, the Council would have to limit occupancy until the project was parked or a TDM program was in place.

Mr. Williams clarified that only 55 parking spaces were exempt without the moratorium. The rest of the project could be built without this moratorium in place.

Ms. Stump suggested Mayor Yeh's question suggested potential actions by the applicants as well as work by the City or third parties. Staff would need to consider the idea and its complexities. Staff suggested there were other ideas worth pursuing; however, the ideas were in the early stage and the parking study would discuss them. She expressed concern about conditioning occupancy on ideas in early planning stages.

Mayor Yeh proposed continuing the Item to a date after the Planning and Transportation Commission (PTC) had its scope study around the Downtown Cap Study.

Ms. Stump believed that was one option. This particular piece of Staff's recommendation did not have to go forward at the current time. The Council could take it up at a later date.

Mayor Yeh inquired whether an exception would best be codified in a Resolution or an Ordinance. If it were an Ordinance, the Council could not take action at the current time.

Ms. Stump explained both Ordinances and Resolutions were legislative actions of the Council. Staff believed the language allowed the Council to proceed. If the Council did not take action, Staff would review it. The two-step process contained a fair amount of complexity, and she could review it to ensure the Council acted correctly.

**SUBSTITUTE MOTION:** Mayor Yeh moved, seconded by Vice Mayor Scharff to continue the discussion regarding exceptions to the Moratorium to a date uncertain, Staff to return with additional analysis of means to reduce the parking impacts of these projects, as well as clarification of Resolution versus Ordinance as it pertains to moratorium exception.

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Mr. Keene felt the language should be changed if the Council wanted more time to direct or request analyses related to the project and its impacts. He wanted to ensure the Substitute Motion provided direction to Staff.

Council Member Burt suggested Staff return with additional analysis of means to reduce the parking impacts of these projects.

Mayor Yeh agreed with Council Member Burt's suggestion with the understanding that Staff would consider comments from the current discussion.

Council Member Burt would not list the examples in the Substitute Motion.

Vice Mayor Scharff could not vote to add 10-15 percent more cars to the neighborhoods. He preferred finding methods to reduce that impact.

Council Member Burt noted several issues as well as the City's commitment to reduce the problem. One consideration was whether projects would significantly worsen the problem. The projects could not be held in limbo forever. He asked when Staff could provide a draft of possible measures for greater utilization of parking lots.

Mr. Williams answered 90 days. He wanted to have a good basic data set to discuss parking saturation for neighborhoods and the options for supplying parking. In 3-6 months, Staff could return with other changes to zoning that needed to be implemented and that would assist with future projects.

Council Member Burt requested two pieces of information: 1) whether Mr. Rodriguez could identify additional parking spaces that could be generated Downtown before these projects came online; and 2) ways that these projects could reduce their parking impacts. A significant means would be a larger TDM program with enforcement measures. The future was aggressive programs, smart programs, and cost-effective programs to help achieve reduced parking and traffic demand.

Council Member Holman questioned whether the Substitute Motion allowed the Council not to grant exceptions.

Vice Mayor Scharff clarified that there could be no exceptions.

Council Member Holman felt the Substitute Motion suggested the Council was considering methods to reduce parking impacts without addressing the possibility of not reaching an acceptable level.

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Ms. Stump explained the Council had enacted the moratorium on the one-to-one exemption. That exemption did not exist unless the Council took an affirmative action to create an exception.

Mr. Keene stated there was no exception. The Council could direct Staff to return with additional analyses of means.

Council Member Holman noted the applicants could continue the application process if the Council continued the Item, and inquired whether the applicants continued at their own risk.

Mr. Williams reported continuing the applicant process was at the applicants' risk, because there was a moratorium on using that particular exemption. Unless some exception was provided, the applicants would need to comply with the current Ordinance under the moratorium.

Council Member Holman noted the parking impact was 78 spaces. The Council could not ignore the context and real impact.

Council Member Espinosa asked Staff to explain what work they would undertake in the 90 days prior to returning with possible methods to reduce parking impacts.

Mr. Williams reported Staff could produce short-term steps to provide additional parking in Downtown. However, he was unsure whether they could find 55 spaces or more, and how that related to other projects coming online or in the process. Staff could determine some ways to either increase supply or reduce demand, and would work with the applicants to determine what they could do with regard to TDM approaches or other ideas.

Council Member Espinosa understood from Mr. Rodriguez that good information about impacts would not be ready until the spring or summer 2013.

Mr. Williams agreed a meaningful comprehensive picture would not be available in 90 days. The Council was directing Staff to determine short-term methods to address most of the incremental deficiency for these projects such that the projects could move forward.

Council Member Espinosa inquired whether there would be additional costs for this type of analysis.

Mr. Williams explained Staff would engage in the analysis and some of the front work to compile good data in any event, because that was part of the

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contractual process with consultants. There would be an impact on Staff in terms of spending time on short-term steps rather than on the long-term study or some other component of their work program.

Mr. Keene appreciated the effort to find middle ground before making a decision. Performing this short-term work within the context of the large scale review of Downtown was not the best design for reviewing this. It would impact the larger study in time, work and consultant costs. This focused analysis could be utilized in the larger work. He preferred Staff consume as little time and effort as possible on the Substitute Motion. It would impact how Staff framed and worked on the larger analysis.

Council Member Klein did not support the Substitute Motion, because it made the problem worse. He wanted to make a decision tonight. Changing the rules would harm the Council with future partnerships. The Council should find a method to replace the shortage prior to the projects opening. The answer was not to impose the solution on two people who had acted fairly and honestly.

Council Member Price would not support the Substitute Motion and agreed with Council Member Klein's comments. She expressed concern about the public perception of the Council's ability to make decisions. Deferring a decision was not positive. She was unsure whether Staff would have time to provide information to address the complex problem. Staff's time would be better spent on the scope and implementation of the parking study and the Downtown Cap Study. A vigorous TDM component should be considered. She supported the original Staff recommendation as it would allow the Council and the applicants to move forward.

Council Member Schmid understood Mr. Williams' preference was to obtain the development cap and traffic saturation study in order to understand the context. Everyone agreed that was an essential step. He inquired whether the maker and seconder of the Substitute Motion did not want to interfere with generating the necessary data.

Vice Mayor Scharff explained the Substitute Motion would not interfere with the data being generated.

Mayor Yeh wanted the Item to return for discussion after the PTC Study Session on the scope of the Downtown Cap Study. That scope had to be defined to create a context for these projects.

Council Member Schmid felt Staff had articulated that.

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Council Member Shepherd indicated the Substitute Motion was moving this Item past the 45 days that the Council set for its resolution. She asked when the Council would have the information it needed to make a decision on allowing the pipeline projects to proceed.

Mr. Williams estimated Staff would return to the Council with information in March or April 2013. The Council would have to determine whether the information was sufficient to take action at that time.

Council Member Shepherd could not support the Substitute Motion. The Council needed to move forward with some certainty for the applicants.

Council Member Burt was concerned that the March or April timeframe was too long.

**INCORPORATED INTO THE SUBSTITUTE MOTION** to direct Staff to return within 60 days with whatever measures they are able to come up with at the time.

Council Member Holman was glad to have this incorporated. She asked what would happen if one of the projects received ARB approval before Staff returned with information in 60 days.

Ms. Stump explained developers under the law as approved had the option to proceed without the one-to-one exemption. The moratorium was in place. When Staff returned with additional information in 60 days, the Council could take action and provide for some exception.

Council Member Holman wanted to ensure that a project was not vested through the ARB process.

Ms. Stump stated a project could vest under the current law.

Mr. Keene added the project would have to meet the parking requirements without the exemption.

Council Member Espinosa expressed concern about the pressure placed by the 60-day timeframe on the Planning Department.

Mr. Keene felt the shorter timeframe would impact the resulting information rather than the larger issue.

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Mayor Yeh noted the PTC Study Session on the Downtown Cap Study would occur within those 60 days. That discussion would provide the context for the Council to understand solutions related to parking.

Mr. Williams agreed the Study Session would occur prior to Staff returning with additional information.

Mayor Yeh did not foresee much additional work being performed.

**SUBSTITUTE MOTION PASSED:** 5-4 Shepherd, Price, Klein, Espinosa no

Mayor Yeh reported Monday, December 17, 2012, at 6:00 P.M. in the Council Chambers, the Youth Video Corps would present two videos for different infrastructure projects for the City. The Corps was invited to participate in the Presidential Inauguration proceedings.

ADJOURNMENT: The meeting was adjourned at 10:58 P.M.