



CITY OF PALO ALTO CITY COUNCIL MINUTES

Special Meeting
January 22, 2013

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:00 P.M.

Present: Berman, Burt, Holman, Klein, Kniss, Price, Scharff, Schmid, Shepherd

Absent:

CITY MANAGER COMMENTS

James Keene, City Manager announced summer camps for Palo Alto residents were accepting registrations through February 7, 2013. Community Services and Library Departments would hold a summer camp registration and Lunar New Year celebration on February 2, 2013, from 11:00 A.M. to 1:00 P.M., at the Lucie Stern Community Center. On February 7, 2013, from 7:00 P.M. to 9:00 P.M. in the Council Chambers, the Palo Alto-Stanford Citizens Corps Council would host the annual Emergency Services Volunteer Awards. The Cubberley Community Advisory Committee would hold a community forum on Thursday, January 24, 2013, from 7:30 P.M. to 9:30 P.M.

ORAL COMMUNICATIONS

Tony Kramer hoped the Council realized noise sources could be located in front of residences. As more continuous noise sources occurred in residential areas, background ambient noise level would increase causing allowable noise levels to increase. Seven appeals had been filed against DAS approval. These appeals deserved more than being placed on the Consent Calendar.

Bonnie Bernstein spoke on behalf of Silicon Valley Community Against Gun Violence. Although California had restrictive gun laws, more could be done to make communities safer. She encouraged the Mayor to join Mayors

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Against Illegal Guns and the Council to support President Obama's policies against gun violence. More information would be presented to the Council.

CONSENT CALENDAR

6. Colleague's Memo From Mayor Scharff and Council Member Klein Regarding Council's Ad Hoc Committee on Infrastructure.

MOTION: Mayor Scharff moved, seconded by Council Member Shepherd to postpone Agenda Item Number 6 to the January 28, 2013 City Council Meeting Consent Agenda.

MOTION PASSED: 9-0

MOTION: Council Member Kniss moved, seconded by Vice Mayor Shepherd to approve Agenda Item Numbers 1-5.

1. Finance Committee Recommendation to Accept the Utilities Reserves Audit.
2. Policy and Services Committee Recommendation to Accept the Audit of Employee Health Benefits Administration.
3. Policy and Services Committee Recommendation to Accept the Contract Oversight Audit.
4. Policy and Services Committee Recommendation to Accept the Auditor's Office Quarterly Report as of September 30, 2012.
5. Appointment of 2013 Emergency Standby Council.

MOTION PASSED: 8-0 Holman absent

ACTION ITEMS

7. Public Hearing: Resolution 9316 entitled "Resolution of the Council of the City of Palo Alto Amending the Transportation Element of the Comprehensive Plan to Incorporate the Palo Alto Rail Corridor Study and Approval of a Negative Declaration".

Curtis Williams, Director of Planning of Community Environment noted the Palo Alto Rail Corridor Study was initiated more than two years previously with the purpose of generating a community vision for land use, transportation, and urban design throughout the Rail Corridor. Council

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direction was not to focus solely on the High Speed Rail (HSR) issue, but to consider the Rail Corridor between Alma Street and El Camino Real relative to potential uses and transportation connections. The process included a Citizen Task Force, community meetings, and meetings with the Architectural Review Board (ARB), Planning and Transportation Commission (PTC) and Palo Alto City Council Rail Committee (RC), and the City Council. The Council referred the project to the RC in September 2012, because of modifications to the Guiding Principles and to terminology. The RC voted on December 6, 2012 to adopt the Study Report as a vision document to guide and inform future Rail Corridor policy. Revisions reflected the most recent Guiding Principles, alignment with the City's position on Caltrain improvements, and rail crossings. The vision for the Rail Corridor was to create a vibrant, safe, attractive, and transit-rich area with mixed-use centers to provide walkable pedestrian and bicycle-friendly places to serve the community; and to connect the east and west portions of the City through an improved circulation network. Additional details were provided in the Council Packet. Staff's recommendation was to adopt the Resolution to approve the Study Report as a vision document with revisions as noted and to approve the Negative Declaration. The Study was not directly incorporated into the Comprehensive Plan, but it was referenced in the Vision Statement to be included in the Comprehensive Plan.

Council Member Klein reported as Chairman of the RC. The RC reviewed the Study carefully to harmonize statements in the Study with Guiding Principles. Grade crossings and separations would be a major issue for the Council to consider. This was a Vision Statement only and not binding.

MOTION: Council Member Klein moved, seconded by Council Member Price to adopt a Resolution approving the Rail Corridor Study Report, amending the Transportation Element of the Palo Alto Comprehensive Plan to incorporate the Vision Statement of the Study and to approve the Negative Declaration for the project.

Council Member Price stated the issue of grade separation had been the key to evolution of the document. The document would be helpful to the Council and to the community.

Council Member Schmid indicated mixed use was included in the Vision Statement but not in the Resolution in the Council Packet.

Mr. Williams explained mixed use should be included, and Staff would ensure it was included in the language of the Resolution.

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INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the words "mixed use" which were included in the Executive Summary of the Staff Report will be added to the language of the Resolution and to the Vision Statement.

Council Member Schmid expressed concern about the change in language from equal treatment to equal consideration to equal attention for all communities. He read definitions of consideration and attention. It would be appropriate to have a strategy statement that each neighborhood shall be treated equally. He requested Staff comment on the change in language.

Mr. Williams reported the issue was the differing proximities of neighborhoods to tracks and other physical characteristics. There should be equal attention to neighborhoods, but neighborhoods would not be treated the same. The RC discussed that and provided direction to Staff regarding the language.

Council Member Schmid noted a proposal had not been made for the mid-Peninsula area, and it was inappropriate to create policy regarding differentiations.

AMENDMENT: Council Member Schmid moved, seconded by XXX to change Goal 1.3, "When examining the potential impacts of vertical rail alignments equal attention shall be given to all Palo Alto neighborhoods. Adopted mitigation measures should be proportionate to the impacts identified in studies,"; to add that "all neighborhoods shall be treated equally."

AMENDMENT FAILED DUE TO THE LACK OF A SECOND

Council Member Burt noted the Agenda Item was slightly different from the recommendation in the Staff Report. The recommendation accurately reflected the issue before the Council. He inquired whether the Motion used the same language as the recommendation.

Council Member Klein responded yes.

Council Member Burt felt there were three parts to the Motion: approval of the Study, amendment of the Transportation Element of the Comprehensive Plan to incorporate the Vision Statement, and approval of the Negative Declaration.

Mayor Scharff indicated those three actions were included in the Motion.

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Council Member Burt inquired whether this action prescribed a particular design outcome.

Mr. Williams answered no. The most prescriptive language concerned the elevated rail alternative not being acceptable to the City.

Council Member Burt asked if the Motion would preclude a breezeway at the Intermodal Transit Center if tracks were slightly elevated.

Mr. Williams stated the document was not that specific.

Council Member Burt requested the approximate cost estimate for undergrounding the system throughout Palo Alto.

Richard Hackmann, Management Analyst reported the lowest cost for construction only was in the range of \$500 million. There were no estimates for other costs.

Council Member Kniss inquired whether it was appropriate for her to ask about grade separations.

Molly Stump, City Attorney answered yes.

Council Member Kniss asked if Staff had approached groups in the Bay Area about grade crossings. Many cities north of Palo Alto had obtained funding for grade crossings.

Mr. Williams was unsure whether Staff had pursued funding for crossings. The RC had discussed funding in conjunction with HSR and Caltrain modernization.

Council Member Kniss suggested the Council and Staff review other cities' methods for obtaining funding.

James Keene, City Manager indicated the Council could direct Staff to return with additional information for discussion or action at a future meeting.

Council Member Kniss asked Council Member Klein whether he agreed with the City pursuing avenues to allow grade crossings to occur.

Council Member Klein explained the Council had not determined that grade separations were desirable. The Council discussed the negative impacts of grade separations on the community. Jaime Rodriguez, Chief Transportation Officer, worked with Caltrain and HSR to obtain analysis of impacts of grade

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separations and the effects on traffic. Having a grade separation at a particular location was a major decision for the Council; therefore, searching for funding was premature. The cost estimates for grade separations in Palo Alto were significant, approximately \$50 million each.

Council Member Kniss inquired whether the City had a policy concerning the acceptability of grade separations.

Mr. Williams stated the City did not have a formal policy regarding grade separations. The Study contained language concerning evaluation of grade separations and at-grade crossings.

Council Member Kniss wanted to refer the issue of funding grade separations to Staff at a later date. Caltrain was proceeding with electrification, and the City had to consider that.

Council Member Holman noted the Negative Declaration did not change with regard to potential impacts to both aesthetics and cultural resources, and inquired why those topics were not updated.

Mr. Williams explained those specific impacts would be evaluated when a proposal was made. Staff discussed cultural issues associated with future construction. The current evaluation concerned the nature of the impact of the Report as opposed to a specific project, which would have a potential significant impact on certain resources.

Council Member Holman indicated the Study stated in a number of places less than significant impact, and inquired why the Study would not consider potential impacts.

Mr. Williams explained the checklist provided multiple choices: no impact, less than significant impact, and potentially significant impact unless mitigation was incorporated. The Council could not adopt mitigation measures without a specific project to mitigate. Less than significant impact was the best choice of the three.

Council Member Holman felt the Study should state no impact if it was the impact of a study, or possible mitigations if there was potential for significant impact.

Mr. Williams explained if there was not a clear relationship between the Study and the issue, then there was no impact. If there was some relationship between the Study and the issue, then there was a less than

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significant impact with the recognition of impacts that a specific project would have to mitigate later.

Vice Mayor Shepherd supported having a discussion regarding grade separations. She suggested Council Member Kniss submit her issue for inclusion on the RC Agenda.

Council Member Burt stated the elimination of elevated tracks left at-grade or below-grade tracks. At-grade tracks under a four track system would take roughly 100 homes for grade separations. Only below-grade tracks did not have negative impacts on the community; however, the cost was tremendous. Certain grade separations would be negatively impacted at six trains per hour, but the impact would be less than originally anticipated. The RC would continue to review grade separations as more information became available. It would be a contentious community discussion.

Council Member Klein read Item 15 of the RC Guiding Principles. Grade separation was a contentious issue, and the public would participate in the discussion. The cost of undergrounding was unknown.

MOTION PASSED: 9-0

8. Review and Approval of the Palo Alto City Council Rail Committee Guiding Principles.

Aaron Akin, Assistant Director of Planning and Community Environment reported the Guiding Principles were used to guide decisions and recommendations of the Palo Alto City Council Rail Committee (CCRC). The document contained two sections: Background and Guiding Principles. Because the CCRC continued to review High Speed Rail (HSR) and Caltrain modernization, the CCRC requested the Background section be updated to be succinct and relevant to the status of both projects. Many Guiding Principles remained the same; however, four changed significantly. Guiding Principle Number 3 was updated to clarify that during the environmental review stage, equal attention would be given to all Palo Alto neighborhoods; however, the adopted mitigation measures should be proportionate to the impacts identified in the studies. Guiding Principle Number 12 stated the City supported Caltrain modernization; however, the City's position on electrification could not be determined until environmental impacts were studied, identified and mitigation measures proposed. Guiding Principle Number 16 was modified regarding the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) review processes. Guiding Principle Number 17 was added, stating that the overall environmental review process should be separated into two reports; the first

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concerning Caltrain modernization improvements and the second regarding subsequent improvements related to HSR.

Mayor Scharff noted CCRC Guiding Principle Number 16 amendments were at places, because Staff had concerns regarding the language.

MOTION: Council Member Klein moved, seconded by Council Member Burt to approve the revisions to the Rail Committee Guiding Principles, as follows:

- Guiding Principle No. 3 was updated to clarify that during the environmental review stage, equal attention shall be given to all Palo Alto neighborhoods. Adopted mitigation measures should be proportionate to the impacts identified in the studies.
- Guiding Principle No. 12 now states that while the City supports Caltrain Modernization, the City's position of electrification cannot be determined until the environmental impacts are studied, identified and suitable mitigation measures are implemented.
- Guiding Principle No. 16 language was strengthened, stating that the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) shall not be modified in any way that affects the HSR or Caltrain Corridor environmental review process as currently required by law.
- Guiding Principle No. 17 was added, stating that the overall environmental review process should be comprised of two separate Environmental Impact Reports. The first EIR should be for the Caltrain Modernization Project. The second EIR should address any subsequent improvements proposed or necessary for HSR operation in the corridor.
- Minor language changes and clarifications were made throughout the document, all of which are shown in the attached redlined document.

Adina Levin stated under the blended system, Palo Alto would likely have two tracks or possibly three tracks. The impacts of grade separating two tracks were fewer. She encouraged the Council to review the benefits of Caltrain electrification to address traffic and parking problems, and to review various realistic options for grade separations and funding.

Herb Borock understood Council Member Klein's Motion was to adopt the CCRC's recommendation; however, the current recommendation was provided by Staff. The Council should adopt the recommendation for Item Number 16 in the Staff Report, because it included the judicial process.

Council Member Klein expressed concern about language in Item Number 16. The primary difference from the CCRC's language concerned the environmental review process as currently required by law. That language could mean the City would be opposed to a law that made CEQA stricter.

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Staff's language considered that possibility by stating not less than the level currently required by law. He was troubled by the changes and the process. He was tempted to send the Item back to the CCRC.

Mayor Scharff asked if Council Member Klein meant returning Guiding Principle Number 16 only to the CCRC.

Council Member Klein wanted to send all Guiding Principles to the CCRC.

MOTION WITHDRAWN

MOTION: Council Member Klein moved, seconded by Council Member Price to return Agenda Item Number 8, "Review and Approval of the Palo Alto City Council Rail Committee Guiding Principles," to the City Council Rail Committee.

Council Member Holman supported the Motion. She noted some language was removed from Item Number 15 regarding funding. She requested the RC clarify the intent of Item Number 17 regarding two separate reports, *i.e.*, two Environmental Impact Reports (EIR) as opposed to an amended EIR.

Council Member Klein felt the CCRC would not change the language in Item Number 17. The RC accepted the position supported by most environmental organizations. Caltrain's current EIR would provide advance approval for the High Speed Rail Authority (HSRA) without the need for an EIR for HSRA.

Council Member Holman suggested the RC discuss the issue with the City Attorney.

Council Member Klein recalled the protocol for placing items unanimously supported by a Committee on the Consent Calendar, and the three purposes of the pre-Council meeting. The purpose of the pre-Council meeting was not to work on policy issues.

Mayor Scharff clarified the pre-Council meeting did not include policy issues. The issue of Item Number 16 was raised during Staff preparation, and Staff decided to draft the language.

Council Member Klein was uncomfortable with the process.

Council Member Kniss noted Item Number 18 regarding revisions to the Joint Powers Board. She felt Item Number 18 needed careful thought, because representation on the Joint Powers Board was structured in a complex manner.

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MOTION PASSED: 9-0

9. Response to Colleague's Memo on Employee Benefits: Pension.

James Keene, City Manager reported the Council adopted the Colleagues Memo as a whole and as a three-part conversation regarding benefits strategy. The topic came forward because of the significant pension enhancements over the prior 10-15 years in California cities, the rising costs of pensions and healthcare, financial concerns created by the recession, and public concerns and understanding. The Council wanted to inform the community and employees about actions taken by the City, and actions the City could and could not perform as a California Public Employees' Retirement System (CalPERS) participant. The California Public Employees' Pension Reform Act (PEPRA) informed pension law and practices for CalPERS agencies. The presentation would provide background and report on the issue of pension benefits under PEPRA and the implications for cities, with the understanding that not all interpretations and applications were known. California placed great restrictions on the flexibility of local governments relating to home rule and autonomy.

Kathy Shen, Chief People Officer agreed CalPERS placed many restrictions on what the City could and could not do in terms of pensions. The concept of retirement had changed since the inception of public pensions. The CalPERS Board was independent, because of an early attempt to use pension funds for other government projects.

Mr. Keene added Board independence prevented the State Legislature from raiding pension funds to balance the budget.

Ms. Shen stated the City did not have sufficient pension contributions. The City needed to contribute more, review costs, and adjust its business model. If the City hired employees from other cities that did not have a second pension tier, the City would be at a disadvantage because the employee would come into a lower pension tier. The City would have to seek younger hires or hire from private business, resulting in upward pressure on salaries. The City suffered from investment losses, increasing payroll costs, and rapid growth of benefits. She wanted to address the six questions regarding pensions as provided in the Staff Report.

Mr. Keene indicated the third installment of the benefits discussion would relate to health benefits, and would occur February 4, 2013.

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Ms. Shen reported the City held two employee forums, open to all benefited employees, to present information about current benefits and total compensation, and to gather feedback. Participants discussed benefits, voted on benefits important to employees, and prioritized benefits.

Mr. Keene stated the voting was not statistically significant, and could not be used to draw conclusions. The discussion was simply a way to engage employees about the relative importance of benefits.

Ms. Shen noted employees overwhelmingly supported the retirement program and post-retirement health benefits.

Mr. Keene said the report and any Council action would be reported on the Staff intranet.

Ms. Shen reported there were two kinds of retirement plans; defined benefit plans and defined contribution plans. If employees did not contribute the maximum amount annually, they would not be able to retire comfortably on that pension amount even with Social Security benefits. A defined benefit plan, such as the CalPERS plan, specified the amount of pension benefits to be provided at a future date. A CalPERS allowance was calculated on three factors: 1) service credit, 2) benefit factor, and 3) final compensation. Staff had just learned of a CalPERS Circular Memo that listed the types of special pay that would probably be included in compensation.

Marcie Scott, Senior Human Relations Administrator explained the City had two pension tiers. For Non-Safety Employees, the 2.7 percent at age 55 formula went into effect in 2007 and covered more than 600 employees. In 2010, the Council established a new tier of 2 percent at age 60, which covered 133 employees hired after July 2010. Established under PEPR, the 2 percent at age 62 formula covered one employee. For Public Safety Employees, the 3 percent at age 50 formula covered 174 employees and was established for Fire Employees in late 2001 and for Police Employees in 2002. The new tier of 3 percent at age 55 became effective in June 2012 for Fire Employees and December 2012 for Police Employees. The third tier, established by PEPR, was 2.7 percent at age 57. The City did not have any Public Safety Employees covered by the third tier.

Ms. Shen indicated the highest benefit factor for all plans went above the formula, such that retirement income could exceed previous salary income. The City could not change the benefit schedules. PEPR applied mainly to new employees, defined as employees who had never worked in a California public agency or who had a six-month break in service. Classic employees who transferred to Palo Alto from another agency might get a lesser

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pension, resulting in a competitive disadvantage. Equal sharing of normal costs was different from sharing the cost equally; the total costs for Miscellaneous Employees were 32.6 percent. PEPRRA did not require new employees to pay half of that percentage. The employee contribution was capped under PEPRRA at 8 percent for Miscellaneous Employees and 11 percent for Public Safety Employees. PEPRRA prohibited air time; however, employees could purchase service credit if they converted from hourly to a regular employee or if they had military leave. PEPRRA prohibited a pension holiday and provided restrictions on retirees returning to work. Under PEPRRA, the City could bargain cost sharing after 2018. Felons were not allowed to receive pensions. The ten-year trend in pensions was \$2.4 million in costs from 2003 to \$23.37 million in 2012. The combined pension cost was 32.6 percent for Miscellaneous Employees, and 42.4% for Public Safety Employees. The City covered 2,940 active employees, former employees and retirees under pensions. Leaving CalPERS would cost the City between \$600 million and \$1 billion, as estimated by CalPERS. The pressure was on the size of the work force, the right numbers of employees, other benefits and salaries, and prioritizing services. The next steps for PEPRRA were closing loopholes, defining compensation, eliminating windfalls, and applying regulations. Most changes would require further legislation. Staff would seek clarification of how the rules would impact Palo Alto. The Council could direct Staff to work with other cities and neighboring agencies regarding new legislation.

Mr. Keene noted PEPRRA made benefits and pension tiers for new employees the same for all jurisdictions. Negatively, most changes were prospective relating to new employees. The cost savings would unfold slowly over time. The problem arose when recruiting new talent, in that PEPRRA precluded the City from offering alternative benefit packages.

Council Member Klein inquired whether Staff had an estimate of the cost to the City of the CalPERS Board's definition of special compensation.

Lalo Perez, Chief Financial Officer explained Staff had learned of this proposed provision in the last few days, and they were reviewing the list of special compensation. The one benefit was a cap or limit. The special compensation provision did not apply to transfer employees.

Council Member Klein questioned whether the provision would cost the City \$1 million or more annually.

Mr. Perez did not know. Staff would note all questions and provide the Council with additional information.

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Council Member Klein inquired about the City's legal remedies.

Molly Stump, City Attorney explained the special pay item was a proposed or interim rule that CalPERS announced on December 27, 2012. Initially, the City should correspond with CalPERS questioning how they arrived at that interpretation of the statute. There could be some grounds for questioning the proposed administrative action. If the provision was issued as a final rule, the Legislature could clarify their intentions with regard to special pay, or the City could challenge through the courts the discretion of CalPERS to choose that interpretation.

Council Member Klein suggested Staff copy State Legislators on any correspondence to CalPERS. He requested Staff comment on the letter dated January 17, 2013 from the unions.

Ms. Shen stated the two forums were not meant to be a bargaining situation. The letter put forth a position that some of the unions wanted to get on the record. Staff responded to employee questions regarding retiree medical. Employees with longer service wanted a guarantee similar to the 20-year vesting plan. That would be a significant issue needing more discussion, and was a bargainable issue. The introductory forums were not the place to resolve that type of issue.

Council Member Klein asked if any of the seven signatories attended the forums.

Mr. Keene stated a number of the signatories were present at the forum he attended.

Ms. Shen believed three signatories were present at the first or second forum.

Council Member Klein inquired whether the City would have an official response to the letter.

Mr. Keene felt the City would be compelled to respond, because Staff disagreed with several inferences made in the letter.

Council Member Berman requested the report be placed on the City website. He asked for clarification of Actuarial Value of Assets (AVA) versus Market Value of Assets (MVA) on page 6 of the Report.

Mr. Perez explained AVA meant gains or losses were amortized over a period of time. Losses were typically adjusted, causing the value to change.

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Market value meant the current value of a portfolio versus liability. He suggested using market value if one wanted to fund the trust today. The AVA would be useful for a long-term view.

Council Member Berman asked whether the goal of the funded ratio was 100 percent funding.

Mr. Perez indicated the typical goal was 80 percent and higher.

Council Member Berman inquired whether that applied to both AVA and MVA.

Mr. Perez indicated the focus was on AVA. The funded ratio was debated across different sectors. The Council should watch that and be concerned about it. CalPERS would be reviewing the issue of smoothing and whether to stop smoothing. High returns meant the payment amount would decrease faster, and low returns meant the payment amount would increase higher.

Council Member Berman requested a comparison of benefits among similar cities.

Ms. Scott reported Staff had a chart they would provide the Council. Of 12 cities around the Bay Area, 41 percent established second pension tiers for Non-Safety Employees and 50 percent for Public Safety Employees before PEPRA was enacted. Three of 12 cities paid some portion of the Miscellaneous Employee contribution to CalPERS, and only one city paid some portion of the Public Safety Employee contribution.

Mr. Keene believed the City compared more favorably when total compensation was considered rather than one component of compensation.

Ms. Shen added retiree medical for the retiree and his family was a real draw to the City.

Council Member Schmid was disappointed with the Report in that the intent of the original Colleagues Memo was to explore options and alternatives that might be available to the City. CalPERS was acting to maximize payouts, not to assure that each city was being run in a responsible manner. Employees had the biggest interest in the system, yet CalPERS did not accept the actuarial recommendations for a prudent reserve number. The risk was being placed on cities, and he questioned who the partners were in the risk. The most realistic alternative that was in the best of interest of

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employees was to move into the Social Security System. He wanted to see alternatives to CalPERS.

Vice Mayor Shepherd asked Staff to define the bargaining table, and explain how the bargaining process worked.

Mr. Keene explained the Council made decisions on behalf of the City, approved transactions, and set policy. The majority of that work did not translate to informing specific actions for bargaining with labor unions. The Council's primary responsibility was to set the direction for the community and to act on issues. State and federal laws governed bargaining and communications with unions relating to conditions of employment.

Vice Mayor Shepherd noted the City could not influence CalPERS investment strategies. She was surprised by the rules that constrained the Council from setting policy for labor bargaining. She asked Staff to explain the rules for implementing pension tiers.

Ms. Shen reported the tier established by PEPRA was 2 percent at age 62 for Non-Safety Employees.

Vice Mayor Shepherd inquired whether the City could implement another tier.

Ms. Shen answered no. In 2018, the City could bargain and impose the cost sharing provisions of PEPRA.

MOTION: Vice Mayor Shepherd moved, seconded by Council Member Klein to direct Staff to: 1) explore additional pension legislation with our Legislators and other parties (such as the League of California Cities) to close remaining loopholes and to give cities broader decision making power in regards to their pension plans; and 2) continue to work with City employees and the public to fully understand the facts about pensions and the status of the City's efforts to manage costs and provision of benefits while maintaining a talented work force.

Vice Mayor Shepherd felt the Motion was the Council's only action, and was responsive to Council Member Schmid's comments.

Mr. Keene reiterated the cost estimate to leave CalPERS was \$600 million to \$1 billion. In addition, the City would have to capitalize any new pension plan. Any improvements or changes would require legislation or the ability to influence CalPERS rules and interpretations. It would be challenging to pursue changes.

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Vice Mayor Shepherd agreed that legislation was the only method to effect change.

Council Member Klein requested an update on the ongoing vesting issue.

Ms. Stump reported the vesting rules were set by the California Supreme Court in the 1930s and 1940s. Those decisions were not appropriate for the current types of pension programs and labor relation programs. The City of San Jose was pursuing litigation that could raise these issues. Under Measure B, San Jose implemented a lower pension tier and required current employees to pay up to half of the full cost of pensions. If employees did not wish to pay the increased pension cost, then they could participate in a lower pension tier prospectively. The litigation concerned whether the pension cost option violated vesting rights. Because the City was a CalPERS agency, it would need CalPERS to provide options.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add: 3) to direct Staff to write CalPERS to confirm our understanding of how regulations will apply to Palo Alto regarding the definition of income and advise CalPERS of our opposition to their present interpretation as we understand it, and to send copies of our correspondence to Legislators.

Council Member Klein did not oppose part 2 of the Motion, but felt it was innocuous. The primary benefit of the discussion was an education for the Council and the public. The City could achieve significant savings only through healthcare benefit costs.

Mr. Keene felt the way PEPPA legislation was explained or described was disingenuous. Pursuit of legislative change was necessary to highlight the provisions and lack of provisions in PEPPA.

Council Member Kniss noted Measure B in San Jose resulted in staff leaving and poor staff morale. Smoothing was an important aspect of how CalPERS operated. Healthcare coverage was important to employees. CalPERS meetings were open to the public. She requested Staff discuss smoothing.

Mr. Perez reported the CalPERS Chief Actuarial Officer was considering taking to the CalPERS Board a recommendation to remove the five-year smoothing. CalPERS smoothed a significant event, typically a downturn, over a five-year window. The estimated impact for Palo Alto was 1.5 percent of payroll for five years. A negative return would be reflected in the

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next actuarial report and immediately increase an agency's annual required contribution. A positive return would impact contributions sooner.

Council Member Kniss reiterated that elimination of smoothing could dramatically change the City's budget. Elimination of smoothing would alter the ability to predict a budget for the following year.

Mr. Perez agreed. The Finance Committee considered options to mitigate that impact, including a separate reserve and adjusting the current reserve level.

Council Member Price inquired whether the parts of the Motion would be performed simultaneously. A base understanding of CalPERS information was necessary before pursuing legislation and working with employees.

Ms. Shen felt the first action was to confirm with CalPERS how the interpretation of PEPRA would affect Palo Alto.

Council Member Price believed that understanding would define parameters. She inquired about the percentage of employees who participated in the 457 Plan.

Ms. Shen stated approximately 61 percent of employees participated. Employees were encouraged to participate in the 457 Plan through ICMA and The Hartford.

Mr. Perez added the City did not contribute to the 457 Plan. The Plan was fully funded by employees.

Ms. Shen corrected her previous statement in that 55 percent of employees participated in the 457 Plan.

Council Member Price asked if Staff had determined why more employees were not participating in the 457 Plan.

Mr. Keene did not know. He considered 55 percent participation quite high. It would be interesting to see if participation increased as the pension tiers went into effect.

Ms. Shen reported the City's participation rate was twice the national average.

Council Member Price inquired whether Staff periodically examined other vendors of 457 Plans, and how long the current vendor had been in place.

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Mr. Keene believed employees did not want to change vendors and move funds; therefore, the City would rather add vendors.

Sandra Blanch, Assistant Director of Human Resources reported the City had a Deferred Compensation Committee comprised of employee representatives to explore that type of decision. ICMA and The Hartford had been the primary providers for approximately 18 years. The City could offer more options; however, more administrative support would be required.

Council Member Price noted the City of San Jose had its own pension program. She inquired whether Staff was exploring ways to improve or enhance the quality of communication with the bargaining units.

Ms. Shen stated Staff was examining the employee forums and was committed to good communications. More information was provided on the intranet and through emails. Staff had to be careful about how the communication was structured.

Council Member Price asked if attempts to improve communications included employee groups' suggestions for productive communications.

Mr. Keene answered yes. The letter was not copied to any Staff; however, improvement would originate with Staff.

Council Member Holman asked when Staff would provide information regarding legislation to the Council.

Mr. Keene would begin that discussion in Agenda Item Number 10. The legislative program typically was presented to the Policy and Services Committee.

Council Member Holman clarified that some edification would be presented in Agenda Item Number 10; otherwise, correspondence to Legislators would be vetted by the Policy and Services Committee.

Mr. Keene stated the process would be discussed in Agenda Item Number 10.

Council Member Holman recalled the Council's previous discussion regarding direct communications with Staff, and inquired whether there had been further discussion of how that might happen.

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Mr. Keene noted Staff could participate in Council meetings through public comment; however, it was difficult for most Staff to remain in the evenings.

Council Member Holman believed the prior Council discussion included a request for alternatives for dialog with Staff.

Ms. Shen reported the forums were held in the afternoon at City Hall and at Cubberley.

Mr. Keene indicated the Council could direct Staff with specific ideas.

Council Member Holman suggested Council Members could attend, but not participate in, employee meetings if they knew about them.

Ms. Stump explained Staff could review methods for other opportunities. The Council's key responsibility was the collective bargaining process.

Mr. Keene wanted a specific request from the Council to establish the parameters for communications and to manage the Brown Act aspect of communications.

Council Member Holman suggested meetings similar to the recent Newell Bridge meeting.

Mr. Keene noted the Newell Bridge meeting was a public meeting.

Council Member Holman felt observing this type of exchange would be helpful.

Mr. Keene indicated meetings pushed the boundary between the Staff and the Council. Very clear parameters would be needed for meetings which Council Members attended.

Council Member Burt asked how part 2 of the Motion would be implemented. The Council needed a different form of communication at different levels. He suggested topics of problems the City faced, actions taken by the Council and the State, constraints to completing solutions, and actions to address those constraints. The public and the press did not understand the impacts of pension changes and the restraints placed on the Council. The public's political pressure on Legislators would be important to reform. He strongly recommended the Council revise its method of communication and different avenues for communication.

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Council Member Schmid felt the Social Security System offered benefits of diversifying assets, guaranty of funds, and portability.

AMENDMENT: Council Member Schmid moved, seconded by Council Member Burt to specifically work with employees and the League of California Cities to get Legislators to open participation into the Social Security System.

Council Member Burt felt this was a reasonable alternative to supplement existing systems. The Social Security System was worth pursuing as a future hybrid system.

Ms. Shen reported the 218 Plan under CalPERS offered a lower pension amount along with Social Security benefits. Employees had to voluntarily vote to enter that Plan. Public Safety Employees had to vote as a unit. Miscellaneous Employees could participate individually.

Council Member Burt indicated the hybrid system was not a foreign concept if some form was offered by CalPERS.

Mayor Scharff asked if the City could pay Miscellaneous Employees more, and then Miscellaneous Employees could opt into the 218 Plan.

Ms. Shen stated Staff needed to get more information about the 218 Plan. She could not say if it was viable for the City.

Mayor Scharff asked if the Amendment would include obtaining information about the 218 Plan.

Ms. Shen answered yes.

Council Member Kniss was not in favor of the Amendment.

Council Member Klein felt the Amendment would be a miscommunication. More information and study was needed.

AMENDMENT MODIFIED BY THE MAKER AND SECONDER to request Staff to return to Council on this subject prepared to have a discussion on the potential to open participation in the Social Security System for our employees as part of a hybrid pension system.

Mr. Keene felt the language of the Amendment allowed Staff to schedule the meeting when they had the necessary information.

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Council Member Burt asked when the next update meeting might occur.

Mr. Keene indicated a discussion at the Policy and Services Committee could occur as early as February 2013 relating to the overall legislative program.

Council Member Burt stated 90 days or less was acceptable.

Mayor Scharff supported the modified Amendment. The 218 Plan was an interesting possibility for the Council to explore. The City could take no further action with regard to CalPERS pensions. A hybrid system could give the City a competitive edge, and provide an option for employees.

Vice Mayor Shepherd indicated the Amendment was covered by Agenda Item Number 10. She would not support the current Amendment.

Council Member Burt felt this was a policy direction, and Agenda Item Number 10 was action for the lobbyist.

Council Member Kniss agreed with Vice Mayor Shepherd's comments.

AMENDMENT PASSED: 6-3 Kniss, Price, Shepherd, no

MOTION RECAPPED: Vice Mayor Shepherd moved, seconded by Council Member Klein to direct Staff to: 1) to explore additional pension legislation with our Legislators and other parties (such as the League of California Cities) to close remaining loopholes and to give cities broader decision making power in regards to their pension plans; 2) continue to work with City employees and the public to fully understand the facts about pensions and the status of the City's efforts to manage costs and provision of benefits while maintaining a talented work force; and 3) write CalPERS to confirm our understanding of how regulations will apply to Palo Alto regarding the definition of income and advise CalPERS of our opposition to their present interpretation as we understand it, and to send copies of our correspondence to Legislators. Staff is directed to return to Council on this subject prepared to have a discussion on the potential to open participation in the Social Security System for our employees as part of a hybrid pension system.

MOTION AS AMENDED PASSED: 9-0

10. 2013 State Legislative Priorities.

James Keene, City Manager reported the typical process was for the Policy and Services Committee to discuss federal and State Legislative strategy and priorities at the beginning of each year. However, the deadline for

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submission of legislation at the State level was January 25, 2013. Staff identified some potential issues as priorities and wished to discuss them with the Council. If the Council was interested, then Staff would meet with Assembly Member Gordon's staff before the January 25, 2013 deadline to determine his interest. Updated policies relating to rail informed the legislative strategy and approach, and Staff would incorporate them as part of the overall legislative strategy. Staff could respond to Guiding Principles of the Rail Committee in the interim period. This was a multi-step process, most of which would occur at the Policy and Services Committee. Because of the State Legislative deadline, Staff felt they had to come to the Council and identify and discuss these topics.

Vice Mayor Shepherd understood these topics were additions to the 2012 lobbying efforts. She requested Staff comment on sequencing the conversation regarding California Environmental Quality Act (CEQA) reform relating to High Speed Rail (HSR).

Mr. Keene stated the primary intent was to track legislation. After the next Rail Committee and Policy and Services Committee meetings, Staff would be prepared to answer the question in detail.

Vice Mayor Shepherd inquired about the City Attorney's position with the League of California Cities (League) Legislative Committee.

Molly Stump, City Attorney indicated she was the City Attorney Department's liaison to the Environmental Quality Committee of the League. Council Member Holman was the voting delegate on that committee.

Vice Mayor Shepherd stated the Environmental Quality Committee was the League's advocate for changes to CEQA. She requested Staff propose methods to streamline that issue.

Council Member Holman reported Senator Rubio had proposed changes to CEQA to remove the possibility of lawsuits when a project satisfied standards. The problem was who determined whether a project satisfied standards. She did not suggest the Council support this type of CEQA reform. The California Communities Environmental Health Screening Tool (CalEnviroScreen) a device used for existing environmental, health and socio-economic data to compare the cumulative impacts of environmental pollution on the State's communities was a scoring mechanism being established on how investment would be provided to local communities. The deadline for comments was January 25, 2013.

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Ms. Stump indicated CalEnviroScreen originated in California EPA's mandate to build tools to perform analytical work in the environmental justice area. It put together complex data on pollution and environmental impacts and social justice issues by ZIP code.

Council Member Holman explained CalEnviroScreen could determine which communities might be eligible for investment, and could detrimentally characterize communities.

Council Member Burt noted Senator Hill's possible sponsorship of clean-up legislation regarding HSR was not listed in the Staff Report. He requested that be added to the list. He asked why Staff did not consider the items at the bottom of page 2 as important as the preceding items.

Mr. Keene stated the list was not meant to be the entire legislative strategy for the year. Because the items at the bottom of page 2 were topics at the Rail Committee and the Rail Committee's lobbyist, they needed to be part of the overall strategy but not the main focus.

Council Member Burt inquired whether Staff wanted the Council to provide direction and approve priority issues.

Mr. Keene indicated Staff's intention was to meet with Assemblyman Gordon to determine whether the City needed to have legislative action on these topics prior to the January 25, 2013 deadline. Staff needed the Council's feedback on whether or not the topics were ready for legislative action.

MOTION: Council Member Burt moved, seconded by Vice Mayor Shepherd to direct Staff to explore potential legislation including: 1) requiring CalPERS to offer a wider range of health care options and flexibility to local governments, 2) extend the three year highest average for calculation of pension, 3) more flexibility for new hires to save money over the long term and tailor recruiting to a new generation who may prefer higher pay over benefits, 4) eliminate costly and punitive CalPERS rules that restrict cities from hiring some job candidates, 5) PEPR clean-up and clarification, and 6) landfill capping requirements. Additionally the following: 7) CEQA reform (particularly as it relates to High Speed Rail), 8) State's Housing Element Process and Allocation, 9) some form of dedicated funding for Caltrain, and 10) High Speed Rail clean up.

Vice Mayor Shepherd reported the Rail Committee had a conference call with the Rail Lobbyist, and would meet on January 31, 2013 to discuss rail legislation. She suggested the City Attorney attend the discussion with the Rail Lobbyist in order to incorporate Rail Committee actions into City policy.

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Council Member Klein noted the most recent contract with the Rail Lobbyist broadened the scope of his work to include work on CEQA. The Lobbyist met with Assemblyman Gordon's and Senator Hill's staff on the issue. The Rail Committee and the Council needed to coordinate legislative actions.

MOTION PASSED: 9-0

11. Library Advisory Commission Viability Report.

Monique LeConge, Director of Libraries stated the Library Advisory Commission (LAC) prepared a report regarding work to be done and obstacles to recruiting new members. The recommendations came from the LAC. She and Staff felt the LAC was useful. The LAC's primary role was advisory to the Council and to Staff. Commissioners were assigned to attend Friends of the Palo Alto Library Board meetings and the Palo Alto Library Foundation Board meetings. The original expectation was that the LAC would meet quarterly with special meetings as needed; however, the LAC typically met monthly or bimonthly. The LAC Bylaws were amended to allow for monthly meetings.

Robert Moss, Library Advisory Commissioner emphasized that libraries were the highest ranked service after Public Safety on City Services surveys. The community used and valued library services. The LAC acted as an intermediary among the community, Staff, and the Council to make libraries efficient and responsive. The LAC requested the Council retain seven Commissioners on the LAC.

Herb Borock indicated the LAC advised the Council on policy. He expressed concern over the misconception that Commissioners advised Staff. He suggested the LAC focus on policy issues. The proper method for changing membership was to amend the Municipal Code. Fundraising organizations should not have a designated seat on the LAC.

Council Member Schmid was impressed by the intense activity of citizens in libraries. The use of libraries was changing dramatically. The LAC helped work through current and future activities and programs of the libraries.

Council Member Price inquired whether monthly LAC meetings were necessary, or whether bimonthly meetings would suffice while reducing Staff workload.

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Ms. LeConge indicated work could be accomplished at bimonthly meetings. In terms of addressing policy issues and conveying those issues to the Council, monthly meetings were not necessary.

Council Member Price asked if the frequency of meetings had impacted recruitment or retention of Commissioners.

Ms. LeConge could not answer specifically. Monthly meetings could be a barrier to participation on the LAC.

Council Member Kniss asked for a recommendation on the number of Commissioners.

Ms. LeConge reported five Commissioners were a more manageable number in terms of managing Staff time.

Vice Mayor Shepherd recalled Ms. LeConge's comment that the final recommendation should come from the LAC.

Ms. LeConge clarified that the recommendations in the report came from the LAC.

MOTION: Vice Mayor Shepherd moved, seconded by Council Member Kniss to direct Staff to return with an Ordinance to reduce Commissioners to five members, extend current terms three months to provide for the recruitment process and incorporate a requirement that one or more seats are designated for individuals with certain qualifications such as membership on Friends of the Palo Alto Library and Palo Alto Library Palo Alto Library Foundation.

Molly Stump, City Attorney reported that the Council should direct Staff to return with an Ordinance to reduce the number of Commissioners to five and to make the other changes.

Vice Mayor Shepherd requested Staff provide wording that would allow replacement of Commissioners from Friends of the Palo Alto Library and Palo Alto Library Foundation if they no longer served on the Boards of Friends of the Palo Alto Library and Palo Alto Library Foundation.

Ms. Stump inquired whether the Motion required both organizations be Commissioners on the LAC.

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Vice Mayor Shepherd indicated two positions would have that requirement. The purpose was to incorporate Friends of the Palo Alto Library and Palo Alto Library Foundation and their missions in LAC discussions.

Ms. Stump asked if the LAC currently had sufficient vacancies to allow for reduction of the Commissioners.

Donna Grider, City Clerk reported the LAC had one vacancy, with three seats opening at the end of January 2013. If the number of Commissioners changed to five, Staff would recruit for two Commissioners.

Council Member Berman inquired whether any current Commissioners were affiliated with Friends of the Palo Alto Library and Palo Alto Library Foundation.

Ms. Grider was not aware of that.

Vice Mayor Shepherd felt the City needed an LAC. It was the opportune time to determine the correct number of Commissioners and to reiterate the LAC's purpose.

Council Member Klein inquired whether any incumbent LAC Commissioners would reapply for the vacant seats.

Ms. Grider did not know.

Council Member Klein supported reducing the size of the LAC, but did not support automatic inclusion of Friends of the Palo Alto Library and Palo Alto Library Foundation. Those organizations were not under the control of the City.

Council Member Klein hoped the LAC would reduce the number of meetings. He did not believe the issues facing the LAC warranted that many meetings. He was disturbed by the number of vacancies on the LAC, and hoped the number of meetings was not a factor. He supported continuing the LAC based on the enthusiasm of the Commissioners and upcoming issues.

Mayor Scharff asked Ms. LeConge to comment on staffing of meetings, possible financial burdens of meetings, and whether monthly meetings were acceptable.

Ms. LeConge reported she and one Administrative Assistant regularly attended meetings. The Administrative Assistant spent approximately 20

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hours per month in preparation for LAC meetings. Minutes were not taken in great detail.

Mayor Scharff inquired whether the benefits of monthly meetings outweighed the costs.

Ms. LeConge felt bimonthly meetings provided more continuity than quarterly meetings.

Council Member Holman inquired whether quarterly meetings were contained in the Municipal Code.

Ms. LeConge answered yes.

Council Member Holman agreed with Council Member Klein's comments regarding outside organizations holding seats on City Boards and Commissions. She suggested language regarding extension of current terms by three months belonged to the first part of the Motion.

Vice Mayor Shepherd agreed.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to change the Municipal Code to reflect bimonthly meetings instead of quarterly.

Ms. LeConge recommended quarterly meetings with the option of additional meetings if needed.

Council Member Holman preferred to state bimonthly meetings in order to set realistic expectations for participation.

Mayor Scharff inquired if the language should include the ability to have additional special meetings.

Council Member Holman wanted to set realistic expectations for applicants to the LAC.

Council Member Burt shared the concerns expressed by Council Member Klein. Rather than having designated seats on the LAC, Friends of the Palo Alto Library and Palo Alto Library Foundation could be offered liaison roles to the LAC. He inquired whether Staff attended Friends of the Palo Alto Library and Palo Alto Library Foundation Board meetings.

Ms. LeConge reported she attended both groups' Board meetings.

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Council Member Burt asked Ms. LeConge if she would continue to attend Friends of the Palo Alto Library and Palo Alto Library Foundation Board meetings if they had liaisons to the LAC.

Ms. LeConge felt attending Friends of the Palo Alto Library and Palo Alto Library Foundation Board meetings was valuable to ask questions and to have face-to-face contact.

SUBSTITUTE MOTION: Council Member Burt moved, seconded by XXX to remove "Incorporate a requirement that one or more seats are designated for individuals with certain qualifications such as membership on Friends of the Palo Alto Library and Palo Alto Library Foundation" and to add "Invite the Friends of the Palo Alto Library and Palo Alto Library Foundation to designate liaisons to the Library Advisory Commission."

SUBSTITUTE MOTION FAILED DUE TO LACK OF A SECOND

Council Member Price inquired whether the LAC had liaisons to Friends of the Palo Alto Library and Palo Alto Library Foundation.

Ms. LeConge answered yes.

Council Member Price asked if the liaison Commissioners shared information with the LAC regarding the organizations.

Ms. LeConge responded yes.

Vice Mayor Shepherd wanted Friends of the Palo Alto Library and Palo Alto Library Foundation to be voting members of the LAC. She wanted fundraising efforts to be part of the responsibilities of the LAC.

Ms. LeConge indicated each of the groups had an agenda regarding what they raised funds for and how they raised funds. The LAC encouraged Friends of the Palo Alto Library and Palo Alto Library Foundation to participate when a vacancy on the LAC occurred.

Vice Mayor Shepherd asked if the LAC commented on Friends of the Palo Alto Library and Palo Alto Library Foundation activities.

Ms. LeConge answered yes.

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Vice Mayor Shepherd inquired whether Ms. LeConge felt Friends of the Palo Alto Library and Palo Alto Library Foundation should have Commissioners on the LAC.

Ms. LeConge did not feel strongly about that, because the LAC had strong communications with both groups.

THE SECOND PART OF THE MOTION WITHDRAWN BY MAKER AND SECONDER

Council Member Berman supported five Commissioners for the LAC.

Council Member Holman suggested Staff utilize language for other Boards and Commissions regarding no requirement for a minimum number of meetings for the LAC Code changes.

Ms. Stump inquired about Council Member Holman's policy goal regarding meeting language.

Council Member Holman suggested Staff review language for other Boards and Commissions so that a minimum number of meetings for the LAC was not required.

Ms. Stump indicated there was a variety of language for the Boards and Commissions as each was enacted at different times. She asked what the language for the LAC should be.

Council Member Holman did not want a requirement for a minimum number of meetings.

Ms. Stump reported the Parks and Recreation Commission required at least one meeting quarterly and Utilities Commission required at least one meeting monthly.

MOTION AS AMENDED PASSED: 9-0

12. Colleague's Memo from Mayor Scharff and Council Members Klein and Price Regarding the Length of City Council Meetings.

Mayor Scharff indicated the topic was limited to the question of whether the Council should have an hour discussion at its Retreat.

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Council Member Klein reported the Motion included the issue of Council conduct at meetings as part of the Agenda for the Council Retreat on February 2, 2013. He prepared the numbers in the Colleagues Memo. The best forum for the discussion was the Retreat.

MOTION: Council Member Klein moved, seconded by Council Member Price to agendize a discussion for up to one hour regarding the length of City Council meetings at the City Council Retreat on February 2, 2013.

Council Member Kniss inquired whether the one hour time limit could be less.

Council Member Klein answered yes.

Council Member Price felt the Motion complemented efforts to manage Council meetings.

Council Member Holman inquired whether the discussion at the Retreat would include the reasons for longer meetings.

Mayor Scharff answered yes.

Council Member Klein indicated Council Members were free to discuss various reasons.

James Keene, City Manager clarified that the Motion was open-ended, while the recommendations were more narrowly constructed. The Council could take action at the Retreat. He wanted to ensure the Item was agendized to allow a wide-ranging discussion up to an hour in length regarding more effective Council meetings.

MOTION PASSED: 9-0

COUNCIL MEMBER QUESTIONS, COMMENTS AND ANNOUNCEMENTS

Council Member Klein reported from Bay Area Water Supply and Conservation Agency (BAWSCA) regarding the City of San Francisco election regarding the draining of the Hetch Hetchy Reservoir which was defeated. BAWSCA agencies were concerned that San Francisco was able to vote solely on the issue when the other agencies represented 2/3 of the system. Conversations were taking place to alter the law to allow all the agencies to have a vote.

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Council Member Kniss reported she was selected to return to the Bay Area Air Quality Management Board.

ADJOURNMENT: The meeting was adjourned at 10:40 P.M.