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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 arrived at 6:07 p.m., Price, Scharff, Schmid, Shepherd

Absent:

CLOSED SESSION

1. CONFERENCE WITH CITY ATTORNEY
Potential Litigation Relating to Retiree Health Benefits
Section 54956.9 - Significant Exposure to Litigation

Council returned from the Closed Session at 7:02 P.M. The Mayor stated there was no reportable action.

SPECIAL ORDERS OF THE DAY

2. Abilities United for a Public/Private Community Partnership Presentation.

The Betty Wright Swim Center, as part of Abilities United, originated as a public/private partnership in the 1960s, and had strong partnerships with organizations in San Mateo and Santa Clara Counties. Abilities United serviced people from 6 months to 100 years of age. He welcomed everyone to an open house on March 27, 2013 from 6:00 P.M. to 9:00 P.M. The Betty Wright Swim Center was the first indoor therapeutic center in the western U.S.A., and the innovator of a new therapy for people with neuro-degenerative conditions. The City of Palo Alto contributed 3 percent to the operating budget. The Betty Wright Swim Center was not large enough to handle the number of participants. He proposed an integrative wellness center to house all leading tertiary care and wellness organizations in Palo Alto.

Council Member Kniss indicated the program was known throughout the County, especially for its hydrotherapy facilities. The program managed its expenses well. Palo Alto was proud to have the facility.

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CITY MANAGER COMMENTS

James Keene, City Manager noted new art located in the Council Chambers. City Staff and the Parks and Recreation Commission would hold a community meeting on March 12, 2013, at 7:00 P.M. at the Lucie Stern Community Center to discuss recommended revisions to the athletic field policy. Waste Management paid the City \$268,000 for remediation of the former Palo Alto Sanitation Company property. The County determined contamination was minor, such that the site could continue to be used as offices. The City of Palo Alto won the California Society of Municipal Finance Officers 2013 Innovation Award for its open budget application. On March 1, 2013, the City launched its new social collaboration platform, Chatter. The City would release a Request for Proposal for an energy compost facility for the City's biosolids, food scraps, and yard trimmings on March 5, 2013. The Mayor had a Proclamation for Arbor Day 2013, which would be celebrated on March 7, 2013, from 3:30 P.M. to 5:00 P.M. at El Palo Alto. The Santa Clara County Superior Court was recruiting citizens for the 2013-2014 Civil Grand Jury. As part of the open data website, the City posted 2011 and 2012 data for employees' total compensation.

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Catherine Martineau, Canopy Executive Director invited the public to celebrate Arbor Week beginning on March 7, 2013 at El Palo Alto. Activities were suitable for children, and included tree plantings and a tree walk.

Rick Toker supported residents of Buena Vista Mobile Home Park and the recommendations of the Human Rights Commission. Many of the residents worked in the service industries in the City.

Wynn Grcich met Jackie Speier, who wrote the bill in 1995 to fluoridate California's water supply. Ms. Speier disagreed with Ms. Grcich's claims regarding fluoridation's harmful effects. Fluoridation was poison, not medicine.

Beth Bunnenberg requested the Council consider leaving the Hostess House in place as part of the 27 University Avenue project. The site was important because the Hostess House became the first municipally owned community center in the U.S.

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Robert Moss reported the cost for fiber to the premises would be approximately \$12 million to \$13 million. The current fiber system generated more than \$12 million in assets. Benefits of fiber to the premises were residents working from home, fewer cars on the road, lower carbon emissions, and a means to attract businesses to the area.

Herb Borock reported the U.S. Postal Service was soliciting input regarding the sale of the Post Office at 380 Hamilton Avenue to a private party. The sale would not have an adverse historic effect if there was an adequate and legally binding preservation covenant as part of the sale. The appropriate party to hold such a covenant was the City of Palo Alto.

Stephanie Munoz did not support eviction of Buena Vista Mobile Home Park residents. The City had reduced low-income housing. Working class people were losing their jobs and homes. The lack of good schools was a problem.

Litsie Indergand stated Buena Vista Mobile Home Park was home to more than 175 people, many of whom were low income, elderly, or disabled. Palo Alto could not afford to lose affordable housing units. There was no comparable housing in a comparable community for these residents. She encouraged the Council not to deprive the residents of their homes.

MINUTES APPROVAL

MOTION: Council Member Kniss moved, seconded by Council Member Price to approve the minutes of January 14, January 22, and January 28, 2013.

MOTION PASSED: 9-0

CONSENT CALENDAR

MOTION: Council Member Schmid moved, seconded by Council Member Holman and Mayor Scharff to remove Agenda Item Number 7 from the Consent Calendar to become Agenda Item Number 14a.

MOTION: Vice Mayor Shepherd moved, seconded by Council Member Kniss to approve Agenda Item Numbers 3-6 and 8-14.

3. Resolution 9322 entitled "Resolution of the Council of the City of Palo Alto Approving a Carbon Neutral Plan for the Electric Supply Portfolio to Achieve Carbon Neutrality by 2013".

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4. Staff Recommends Approval of an Agreement with Palo Alto Unified School District (PAUSD) under which the City of Palo Alto (City) will Provide the District with Fiscal Services as part of the PAUSD 2013 Summer Enrichment Program and Provide Collaborative After-School Summer Programs.
5. Budget Amendment Ordinance 5187 in the Amount of \$468,283.19 to Fund the Purchase and Make Ready Costs of up to 17 Honda Civic Natural Gas Vehicles and Approval of a Purchase Order with Stevens Creek Honda in an Amount of \$459,783.19 to Purchase up to 17 Compressed Natural Gas Honda Civics.
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10. Approval of On-Call Transportation Consultant Contract with TJKM Transportation Consultants for a Total of \$281,820 to Implement Bicycle & Pedestrian Transportation Plan and to Provide Project Support Services.
11. Request for Authorization to (1) Increase the Contract with Moscone Emblidge Sater & Otis in the Amount of \$220,000 for a Total Not to Exceed Amount of \$455,000 for Legal Services and

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- (2) Enter into Contracts with Project Controls and Forensics, LLC in an amount not to exceed \$100,000 and with David Neagley, AIA in an amount not to exceed \$275,000 for Expert Consultant Services Related to Public Works Construction Matters.
12. Staff Recommends That Council Approve the Short Form Agreement for Revenue Contracts (Attachment A) Extending the Joint Venture Between the City of Palo Alto and the Cardiac Therapy Foundation of the Mid-Peninsula, Inc. (CTF) through December 31, 2014.
 13. Adoption of an Ordinance Reducing the Size of the Library Advisory Commission from Seven to Five Commissioners and Amending the Frequency of Regular Meetings to Bi-Monthly.
 14. Approval of the Mutual Cooperation and Support Agreement between the City of Palo Alto and the Friends of Palo Alto Children's Theatre.

MOTION PASSED for Agenda Item Numbers 3-6 and 8-14: 9-0

Mayor Scharff noted that he had speaker cards for Agenda Item Number 3. They should have been able to speak before the vote. He would let the public speak and call for a revote on the Consent Calendar.

Bruce Hodge, Carbon Free Palo Alto reported Palo Alto was one of the few cities in the nation to have carbon-free electricity. With this improvement, Palo Alto's rates remained substantially below PG&E's rates. Carbon Free Palo Alto called for a goal of reducing carbon emissions by 60 percent in ten years.

Walt Hays hoped the Council would continue to aggressively promote energy conservation, refocus and retain PaloAltoGreen, and lobby for legislative change.

Sudhanshu Jain felt Agenda Item 3 was a historic opportunity to make Palo Alto's electric supply carbon free. He applauded Palo Alto for completing its climate protection plan in 2007.

Michael Closson, Acterra Executive Director supported the Council's adoption of Agenda Item 3. He noted Mr. Hodge's leadership in moving forward this initiative. This could be an important test bed for a variety of innovative approaches to reducing carbon emissions.

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David Coale thanked the Council, the Utilities Advisory Commission, and Staff for adopting the plan to achieve carbon neutrality. The Bicycle and Pedestrian Transportation Plan was another good means to reduce emissions. He supported retaining PaloAltoGreen and proceeding with a green gas program.

Council Member Burt stated Palo Alto proved that inexpensive, 100 percent clean electricity, and a dynamic economy were possible. The measure was a reflection of Palo Alto community values. The next challenges were moving people from natural gas to electricity and from gasoline-powered vehicles to electric vehicles. This was a transformative event.

REVOTE CONSENT CALENDAR PASSED: 9-0

14a. (Former Agenda Item Number 7) Approval of a Water Enterprise Fund Contract with RMC Water and Environment, Inc. for a Total Not to Exceed Amount of \$193,914 to Complete the Environmental Analysis of Expanding the City's Recycled Water Delivery System.

MOTION: Council Member Schmid moved, seconded by Council Member Kniss to move Agenda Item Number 14a to a date uncertain.

Council Member Klein requested a reason for removing the Agenda Item from the Consent Calendar.

Council Member Schmid indicated the environmental analysis was important for determining the quality of recycled water, how it was used, and impacts on the environment. He questioned whether the study covered the full impacts. Environmental findings from the study could be important in developing a Master Plan for the Water Quality Treatment Plant.

Council Member Klein inquired whether Council Member Schmid was satisfied with Staff's written response.

Council Member Schmid answered no.

MOTION PASSED: 9-0

ACTION ITEMS

15. Public Hearing: Adoption of Finding that the Main Library Expansion and Renovation Project (CIP PE-11000) is "Substantially Complex" under Public Contract Code Section 7201 and Direction to Increase the Retention Schedule from 5% to 10%.

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Brad Eggleston, Assistant Director of Public Works recommended the Council adopt a finding that the Main Library Renovation Project was a substantially complex project. With that designation, Staff could include in the invitation for bid and construction contract documents a 10 percent retention requirement rather than a 5 percent retention requirement. The retention amount ensured that contractors successfully completed jobs. SB293 changed the Public Contracts Code to allow a maximum 5 percent retention unless the governing body made the finding of substantial complexity. Design and construction documents were complete; bids were due in early April; and the Main Library would close on April 30, 2013. Staff would return to the Council in early May to award the construction contract. Construction would begin in June 2013, with a completion date of Fall 2014.

Public hearing opened and closed at 8:06 P.M. without public comment.

MOTION: Council Member Kniss moved, seconded by Vice Mayor Shepherd to find the proposed Main Library Expansion and Renovation Project "substantially complex" under Public Contract Code Section 7201, and to allow this project to be advertised with a retention amount of ten (10) percent.

MOTION PASSED: 9-0

16. Update and Direction to Staff Regarding Development Process for Edgewood Plaza.

Curtis Williams, Director of Planning and Community Environment reported Edgewood Plaza was a combination shopping center and housing Planned Community (PC) zone. The Project included a grocery store, two historically designated buildings, and ten single family homes. Building 1 was demolished in violation of the Planned Community Ordinance and contrary to a mitigation measure in the Environmental Impact Report (EIR) certified for the Project. Because of environmental law, the EIR needed to be revised to account for the loss of the historic structure. The grocery store and other commercial development was critical to this Project and a public benefit. It was important to proceed with the grocery store and to ensure Building 2 was not demolished. Among Staff's recommendations were performing a Supplemental EIR (SEIR), amending the PC Ordinance, allowing construction of the grocery building and related improvements, relocating the historic sign on the site, hiring a third-party historic consultant to monitor rehabilitation of Building 2, and prohibiting the construction of Building 1 and housing until the SEIR and the PC amendment process was complete. Building 1 required historic and environmental analysis to determine how it

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should be restored. The housing required a subdivision map that Staff did not believe could be separated from the environmental review and PC Ordinance. Staff believed that the housing could not proceed as currently proposed. If the Council did not object, the Applicant could grade the housing site and lay out driveways and building foundations. Staff proposed three alternatives: 1) stop all work; 2) stop all work except for the grocery store; and 3) continue construction including housing with a fine of slightly more than \$10,000. The City Attorney advised that continuing construction of housing would be a high risk situation for the City in the event someone challenged the EIR and review. Staff believed a substantially higher fine could be imposed as the Council had a great deal of discretion with regard to PC zones. Discussion of increasing the fine would be appropriate when Staff presented the PC amendment.

John Tze, Applicant stated neither he nor the City authorized the demolition of Building 1. It occurred through a failure in his organization, and he accepted full responsibility. The Fresh Market's proposed opening was scheduled for May 2013. Following the process that was in place, he wished to continue work in order to welcome The Fresh Market and finish Edgewood.

J. Turnbull, Page & Turnbull Architect indicated the main component of the Project was the grocery building. The building did not have historic value, because too much change had occurred. During construction, much of the character of the Eichler aesthetic returned. The Structural Engineer and the Architect reviewed a number of materials in Building 1, and found them to be substandard or structurally unsound. That was the reason that the contractor decided to demolish Building 1. Salvage was required under plans, permits, and EIR. Building 1 needed to be held until the SEIR was certified; however, Mr. Tze hoped the remaining work could proceed.

Council Member Kniss felt the public was frustrated by the lack of a grocery store on the site, and asked how long the site had been without a grocery store.

Mr. Williams reported there had not been a grocery store at the site for more than seven years.

Council Member Kniss stated it was time something happened at the site. The Applicant addressed the trust issue well. The public felt a deficit in not having something of this nature at the location.

Council Member Price inquired about the estimated cost to replicate Building 1.

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Mr. Williams indicated the building file estimated \$600,000 to relocate and rehabilitate Building 1. He did not know if the estimate would change without relocation costs, but suggested it would be approximately the same.

Council Member Price requested Staff comment on the rationale for a higher fine for demolishing Building 1.

Mr. Williams explained that penalties as stated in the Municipal Code were not extensive. Staff calculated the fine to be approximately \$11,000. Staff believed imposing a substantially greater fine was a component of the Council's discretion regarding PC zoning. The Council did not have all the details before it to consider PC zoning. The Council could instruct Staff to propose a penalty when they returned with the PC zoning discussion.

Council Member Price inquired whether the Council should discuss an increased fine when it discussed the SEIR.

Mr. Williams answered yes. During a discussion of the SEIR, the Council could amend the PC zoning for the site. In conjunction with that amendment, the Council could require substantially more as a penalty.

Council Member Klein referenced the procedures outlined on page 390 regarding proceeding with construction of housing, and inquired whether those procedures would provide as much protection for the City as possible.

Molly Stump, City Attorney explained that those procedures still contained some risk if they occurred prior to the Council hearing and adopting the SEIR. Although the procedures contained elements to protect the City from risk, that kind of construction normally did not occur prior to the EIR being adopted.

Council Member Klein asked if someone could still sue the City.

Ms. Stump stated that was correct.

Council Member Klein suggested adding a third element to the procedures to state that the Applicant would be obligated to defend resulting litigation.

Ms. Stump believed a defense indemnification obligation was in place. The concern was how to proceed expeditiously. The possibility of litigation had the potential to create delay and to generate costs. It made more sense to move forward without those risks.

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Council Member Klein felt the risk of litigation was minor compared to the risk of extensive delays to the neighborhood. Staff recommended the Council not specify a penalty amount at the current time; however, adopting Staff's recommendations would specify a penalty.

Mr. Williams explained the Municipal Code specified penalties, and those penalties were before the Council at the current time. To recommend a higher penalty without having the PC zoning discussion, where the Council had broader authority, did not seem to be appropriate.

Council Member Klein asked if Staff was not recommending a penalty of \$10,000.

Mr. Williams stated Staff was not recommending a penalty of \$10,000 as a final answer.

Council Member Klein believed discussing the penalty with the SEIR would only delay the process. He inquired whether the Council could create a framework for determining the penalty in the current discussion, and include that framework within Motions.

Ms. Stump indicated the Council could provide general direction to Staff at the current time, if that was what he meant by framework. If the Council wanted to make that part of the PC Ordinance, then it was best to resolve and impose a penalty as part of the amendment to the PC Ordinance.

Council Member Berman stated the community was frustrated by and distrusted the PC process. The Council was obligated to ensure these types of violations were not taken lightly. He wanted to understand how the demolition of Building 1 occurred after years of negotiating the Project.

Mr. Tze hired a Construction Manager with experience in saving historic buildings, and relied on the Construction Manager to supervise the Project. Once the buildings were opened, they discovered many unexpected and extensive problems. Beyond that, he was unclear why Building 1 was demolished.

Council Member Holman referenced Staff Report page 384 regarding the stop work order being issued on September 9; however, neighbors provided photographs the day or the day after that the building had been demolished. She expressed concerns that proceeding with construction of more than the grocery store would foreclose some options and alternatives for Building 1, Building 2, and other site improvements. The recommendations seemed to be out of sequence.

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Mr. Williams stated there could be changes to the construction of Building 1, and that was the problem. Continuing work on Building 2 and housing would preclude some options. If the Council wanted more options for the next discussion, then it should not allow construction to proceed on more than the grocery store. Staff felt this was an appropriate response given the nature of what happened and the realistic options that were available.

Council Member Holman was concerned that possibilities for a higher level of restoration or preservation of Building 2 as compensation to the community were foreclosed by proceeding with the approved plans for Building 2. If the Council decided the public should be compensated by additional public benefits, proceeding with Building 2 or housing seemed to foreclose additional public benefit options.

Mr. Williams indicated many public benefits could be achieved outside the specifics of Building 2 and/or housing. Staff provided an option to omit housing in order to provide more flexibility. A range of potential public benefits could be considered outside the context of how Building 2 would be redone. If the Council wished to apply extensive public benefits to either housing or Building 2, then construction should not proceed on those elements of the Project.

Council Member Holman noted the Applicant violated the California Environmental Quality Act (CEQA), the public benefits portion of the PC Ordinance, the PC Ordinance, and approved plans in demolishing Building 1. She inquired whether Staff had any experience with that level of violation.

Mr. Williams had not experienced that level of violation in his employment with the City of Palo Alto. In other cities where he was employed, there were substantial fines for associated violations.

Council Member Burt agreed with having an active, vital shopping center operating at the site; yet, this was a severe violation of the terms of the adopted PC agreement. Fines as stated in the Municipal Code were not commensurate with the violation of the PC agreement. He asked if the Applicant would conform with the terms of the PC agreement.

Mr. Williams reported the current PC could not be complied with given the action that occurred.

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Council Member Burt inquired whether Staff considered negotiating a fine that exceeded the Developer's economic benefit from demolishing rather than preserving Building 1, and dedicating that fine to the Historic Preservation Fund.

Mr. Williams answered yes. There was no reason the fine could not be devoted to that purpose. Staff could consider and return with that option.

Council Member Burt asked if the Council could allow the Project to proceed without determining the additional fine amount.

Mr. Williams responded yes.

Mayor Scharff noted the Applicant expressed interest in being allowed to process the final subdivision map, prepare the housing sites, and possibly construct some model homes. He asked if the Applicant preferred to complete that work now or after completion of the SEIR.

Mr. Tze wanted to proceed with anything the Council would allow.

Mayor Scharff inquired whether the Applicant understood that being allowed to proceed would not remove the possibility of an additional fine.

Mr. Tze stated demolishing Building 1 did not provide him with an economic benefit. Moving forward with the Project helped him. He did not want to see The Fresh Market open with the remaining construction site behind fences.

Mayor Scharff inquired whether not proceeding with housing would affect the market or retail elements of the Project.

Mr. Tze could only construct six of the homes at the current time, not all ten. He wished to proceed with those as soon as he could obtain permits.

Mayor Scharff asked if the City was locked into a fine of \$10,000, if the PC process was not considered.

Mr. Williams responded yes. The fine for cutting down a tree was higher than for tearing down a historic building relatively speaking. Staff and the Council should review the fine structure.

Mayor Scharff reiterated that the Council could review the fine structure in the future.

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Vice Mayor Shepherd noted the Applicant could have financial constraints if the Project was delayed, and inquired whether he was confident the Project could be completed.

Mr. Tze was confident another mistake would not occur. He and his wife were personally at risk on the Project, and he would be involved with the Project every day from this point forward.

Vice Mayor Shepherd was concerned that delaying construction of the Project would create even longer delays.

Mr. Tze stated there were unknown risks. He was uncertain of the effects of a delay on the market. He wished to minimize risks by proceeding as soon as possible.

Robert Smith felt many people did not like the shopping center, which resulted in closing of retail shops. He did not consider the site historic, and stated residents were punished by the blight and lack of facilities.

Robert Moss stated one of the major public benefits of the Project was destroyed. If the Applicant wanted another PC, there should be firm requirements including replicating Building 1 and a significant fine for historic preservation of other buildings. Delaying construction of housing would only benefit the Applicant as property values increased.

Elise DeMarzo understood the Applicant breached protocol and a penalty was needed. She did not understand how delaying construction would benefit the community. She asked the Council not to delay the Project.

Herb Borock believed the Council should issue a stop work order on the entire Project, because there was no valid building permit for the Project. The Project did not comply with the approved PC zone or the previous zoning. Building 1 could not be reconstructed to satisfy a historic requirement. Staff was asking the Council to ignore the Zoning Code and Building Code.

Jeff Levinsky stated much of the Project delay was caused by the Developer proposing configurations not acceptable to the community. The fine amount could be \$20,000 through use of a \$10,000 fine for demolition of significant historic structures outside the Downtown area. It would be appropriate to consider mitigations that benefited the neighborhood, who suffered the loss of a historic building. Buildings other than the grocery store deserved serious thought and consideration by the Council.

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Council Member Schmid did not believe the Council discussed the value of a public benefit. In this case, the Council was confronted with a need for the rebuilding of a store in a historical setting that had value to the community. The Council determined the public benefit was the store and the two historic buildings rehabilitated. The PC presented a private value for the ten houses of \$1.3 million to \$1.4 million. He felt the store had a public benefit value of a couple hundred thousand dollars, as did the historic buildings. He supported the incentive of building the grocery store. Staff working on the process should explicitly articulate the public benefit and the process for calculating the public benefit.

Vice Mayor Shepherd noted Staff's recommendation was to prohibit construction of Building 1 and housing until the SEIR and PC amendment process was complete, and asked what could be gained by postponing the construction of Building 1.

Mr. Williams reported the gain would be an analysis of what could be done with Building 1 to replicate the building with historic accuracy. That would be the result of the SEIR.

Vice Mayor Shepherd inquired whether the design would be the same whether construction continued or was delayed.

Mr. Williams explained the design would be the original proposal; however, the original proposal included elements from the other building. The EIR process would determine actions needed to make the building look more as it originally looked.

MOTION: Vice Mayor Shepherd moved, seconded by Council Member Kniss to: 1) proceed with preparation of a Supplemental Environmental Impact Report (SEIR) to address Building #1 historic resources issues (at the Applicant's expense); 2) return to Council with the SEIR and an amendment to the PC zoning (including modification to the proposed "public benefits") following review by the Historic Resources Board and Planning and Transportation Commission; 3) prohibit any construction of Building #1 until the SEIR is completed and an amendment to the approved Planned Community (PC) zone is considered by the Council; 4) allow continued development of the grocery store (Building #3) as the remainder of the project moves forward; 5) allow the rehabilitation of Building #2 to commence subject to a City designated historic peer review and on-site monitor; 6) allow offsite improvements to proceed, including offsite traffic improvements;

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7) allow the installation of the historic sign and other incidental related work; and 8) allow the housing or a portion of the housing to proceed at Applicant's risk while the SEIR and PC amendment are under development. This would also allow for approval of the Final Map. a) No final inspection and issuance of a Certificate of Occupancy should be permitted until Council certification of the SEIR and approval of the PC amendment; b) Applicant proceeds at his own risk in the event the amended project is not approved by the Council; and c) a penalty should be assessed for the unpermitted demolition of Building #1.

Council Member Kniss did not believe a fine should be assessed at the current time. She referenced Council Member Klein's suggestion of a framework for discussion of a fine, and the City Attorney's response.

Vice Mayor Shepherd noted Building 1 was demolished and materials removed, and the community wanted the Project completed as soon as possible. The Project should proceed without jeopardizing a good design for Building 1. The neighborhood, the community, and the entrance to Palo Alto were hurt by the lack of progress. Proceeding with the Project would be in the best interest of Palo Alto.

Council Member Kniss suggested Staff review Federal standards for remodeling historic buildings if the Project proceeded.

Mr. Williams indicated that would be the criteria utilized in the SEIR.

Council Member Kniss felt the intertwining of a PC zone with historic preservation made the Project more complex.

Mayor Scharff believed the Council could not allow construction of Building 1 prior to completion of the SEIR.

Ms. Stump did not believe anyone was suggesting that Building 1 move forward before the SEIR.

Council Member Price was not comfortable including the housing component, because the Council was not taking any identifiable action to suggest it was concerned about the demolition of Building 1. The Council should allow Staff to decide if an enhanced rehabilitation of Building 2 was appropriate as a public benefit. As part of the SEIR, the Council should examine the public benefit issues as a means to compensate for the demolition of Building 1. She would not support the Motion as proposed, because the discussion of proceeding with housing was premature. She asked when the Council would have an opportunity to provide Staff with parameters for a fine.

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Mr. Williams anticipated the Council would provide some parameters for a fine in the current discussion.

AMENDMENT: Council Member Price moved, seconded by Council Member Schmid that the original language regarding housing be reintroduced so the housing portion of the PC would not proceed at this time (eliminate item 8 and replace it with the original language "Prohibit any construction of Building #1 and any development of housing (including site preparation for the housing) until the SEIR is completed and an amendment to the approved Planned Community (PC) zone is considered by the Council").

Council Member Price explained the Motion did not outline any consequences whatsoever for demolition of Building 1 and, thus, was not a sufficient response. The Amendment deferred the housing portion as originally recommended by Staff.

Council Member Schmid stated the critical part was delaying housing. The Amendment reiterated that losing a public benefit was an important issue. The Amendment also included language regarding modification to the proposed public benefits, which was a critical piece of the process.

Council Member Holman supported the Amendment.

Council Member Burt shared concerns that the provision allowing housing was weak and ambiguous regarding a fine; however, the correct course was not to prohibit construction of housing. He did not support the Amendment.

Council Member Klein agreed with Council Member Burt's comments. Item 8 of the Motion did not include all the language of the Staff recommendation. The controls were contained in Staff's recommendations. The most important concept was protecting the community, and the Amendment did not accomplish this protection. The Council could devise an appropriate penalty for the Developer's misdeed without bankrupting the Project.

AMENDMENT FAILED: 3-6 Holman, Price, Schmid, yes

Council Member Klein explained proceeding with the Project would allow the Developer to achieve some savings. The Council should utilize that amount of savings as the basis for an appropriate penalty.

Vice Mayor Shepherd preferred a third party valuation to determine the amount of savings.

MINUTES

Council Member Klein disagreed. This was a different type of PC in that the Developer did not receive extra square feet to develop.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add a number 9. When staff returns, they will recommend to Council an appropriate amount of the fine based on the amount of the savings likely to be achieved by the Developer from moving forward with construction of the housing, using actual numbers volunteered by the Developer or, if he is not willing to share such data, numbers obtained from knowledgeable people in the industry.

Vice Mayor Shepherd agreed with moving forward with the housing. She had concerns for the neighborhood with regard to stopping construction work.

Council Member Berman believed many residents of the community supported the Project. He appreciated the Applicant's comments, and hoped the Developer would provide numbers to determine the public benefit for the revised PC.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to permit only six units to move forward as soon as administratively possible, the two units directly behind Building 2 will be stayed pending further direction of Council through the amendment of the PC.

Vice Mayor Shepherd asked why Staff recommended housing proceed when the Applicant indicated only six units would be constructed.

Mr. Williams explained there was discussion at one point of the Developer constructing only four model homes.

Vice Mayor Shepherd asked the Applicant if he was planning on constructing only six homes.

Mr. Tze did not plan to construct all ten units at once. The first phase would be six units based on how quickly permits could be obtained.

Council Member Kniss accepted the language, but did not want to preclude the Developer from building ten units.

MINUTES

Council Member Holman felt the Council was in a position of having to act in order to prevent loss of the Project and continued blight for the neighborhood. Should the Council impose fines that the Applicant could not afford, it again would be in a position of having to act. The City's consultant determined that moving Building 1 was a significant impact, because the site was important. It was important to hold open options until the SEIR could be completed.

AMENDMENT: Council Member Price, seconded by Council Member Holman to add to number 9 "The methodology for determining the fine for the unauthorized demolition should consider the practices used effectively in other communities."

Council Member Price stated the Council would benefit from consideration of effective practices in other communities in order to determine a fine amount.

Council Member Holman explained the Council could obtain benchmarks for comparison of the amount of fines charged in other communities.

Council Member Klein felt the Project was unique, and practices in other communities would not assist Staff in determining a fine. The Amendment conflicted with language in the Motion.

AMENDMENT FAILED: 3-6 Holman, Price, Schmid yes

Council Member Schmid noted the benefit calculation was based on housing, and the Motion reduced the benefit calculation by 40 percent. With housing being constructed in phases, the construction period would not be shortened.

Council Member Burt stated the construction period was moot, because the Developer could only build six units.

Mayor Scharff inquired whether the City Attorney could provide language with respect to protecting the City from risk.

Ms. Stump felt the language in the Staff Report was sufficient. If the Ordinance was not amended to reflect this structure, then all the buildings would have to be removed.

Mayor Scharff requested the City Attorney provide language regarding allowing six housing units to be constructed.

MINUTES

Ms. Stump understood the Council wanted six units to be constructed as soon as administratively possible. There were issues to be resolved at the administrative level before construction could occur.

Council Member Holman questioned the use of the term "assess" in Item 8c, because the Council asked Staff to return with recommendations for a fine amount.

Ms. Stump asked if the intention of the Motion was for the Item to return under the framework provided for final determination by the Council or that Staff apply the framework and assess a fine.

Vice Mayor Shepherd explained the penalty would be defined under Item 9, and return to the Council with the PC and the SEIR.

Mayor Scharff asked if Staff should present the Council with a fine or options.

Ms. Stump suggested Staff should apply the framework and return with a number for Council consideration.

Vice Mayor Shepherd suggested Item 8c was not needed, because it was addressed in Item 9.

Council Member Holman stated Item 9 did not appear to assess a penalty for the loss of the public benefit, because it did not mention the demolition of Building 1.

Council Member Klein disagreed. "The fine" as stated in Item 9 referred to language in Item 8c regarding an appropriate penalty for the demolition of Building 1.

Council Member Holman did not see the Items as related.

Council Member Klein reiterated that "the fine" referred to the last time it was used.

Vice Mayor Shepherd wanted Item 8c replaced in the Motion.

MOVE THE PREVIOUS QUESTION: Moved by Council Member Klein, seconded by Council Member Kniss.

MOVE THE PREVIOUS QUESTION PASSED: 8-1 Holman no

MINUTES

MOTION AS AMENDED PASSED: 6-3 Holman, Price, Schmid no

17. Update of California Avenue Transit Hub Corridor Streetscape Improvements Project Roadway Design and Consideration of Street Lighting Options.

Curtis Williams, Director of Planning and Community Environment indicated the discussion concerned potential design enhancements and cost implications for the design of the California Avenue Streetscape Project. Mr. Rodriguez would discuss the evolution of the Project and the request for street light upgrades. This Project was presented to the Council in mid-2011 with a cost estimate of \$1.8 million including construction costs, the Santa Clara Valley Transportation Authority (VTA) grant, and the City's cost share. In July 2012 Staff returned to discuss the widening of sidewalks and other streetscape enhancements. The additional cost for those improvements was \$700,000. Further modifications, amendments, and design costs resulted in additional costs of approximately \$500,000 with funding sources yet to be identified. The street light improvement would be an add-on for Council consideration.

David Gates, David Gates & Associates presented proposed streetscape improvements including bus stop reconfigurations, preservation of existing brick walls, creation of additional useable space, relocation of bike corrals, and additional tree and vegetation plantings. He met with merchants and the community to obtain input.

Jaime Rodriguez, Chief Transportation Officer reported extensive community outreach was held since July 2012. The community consistently requested a lighting element or enhancement to the Project. The Project as proposed did not contain a lighting element, because the original Project focused on improvements at intersections and roadway alignment. Staff proposed lighting improvements in an attempt to respond to community requests. The Architectural Review Board (ARB) directed Staff to finalize streetscape features and elements. The Council needed to decide on lighting in order to stay on schedule with awarding bids in the fall. The existing street lights were more than 40 years old, and did not meet current wind load design standards. The community was concerned that the lights were overpowering for the roadway and did not fit the pedestrian-scale environment. The City upgraded the luminaires on the street lights in 2012 and upgraded low pressure sodium lighting to LED lighting; however, the roadway still lacked illumination at the sidewalk level. Staff identified two options and shared those with the Planning and Transportation Commission (P&TC).

MINUTES

The P&TC supported a recommendation to include lighting as an element of the Project. The first option was retaining the existing poles, painting them to blend with the streetscape, and adding street lights. Replacing and repairing all underground conduits and adding new conductors would be major construction. Performing this work as part of the Project would provide a cost savings of \$800,000 over performing the same work after the Project was complete. The second option, at an estimated cost of \$1 million, was to replace existing poles with decorative poles having a luminaire over the roadway and over the sidewalk. If spacing between poles was decreased, the cost would increase to approximately \$1.2 million. The community was concerned that Option 1 would take away from the storefront views. Staff recommended Option 2 with the same pole spacing to effectively illuminate the roadway and sidewalk. The original Project had an estimated cost of \$1.8 million. Staff estimated costs for preliminary roadway alignments at \$700,000, and found a funding source for that amount. Since the Project was originally proposed, construction costs increased approximately \$300,000, and the VTA grant decreased by approximately \$100,000. Currently, the funding gap was approximately \$500,000. Lighting was included in the original design contract and amendment; therefore, there would not be an additional cost for lighting. Staff would return to the City Council in April 2013 to provide a final amendment to the RBF contract to allow completion of the design process on time. Staff contracted with Ghirardelli Construction to find cost savings in the Project. Staff would provide budget adjustments when they returned to the Council at award time. The CIP-Infrastructure Reserve Program provided for these types of cost impacts or overruns, and could be used to eliminate the funding gap. Staff wanted to find partnerships with the private sector to cover the cost of lighting. Staff recommended the Council direct Staff to include lighting as an element of the California Avenue Transit Hub Corridor Streetscape Project under the Option 2 design concept with a maximum budget of \$1 million.

James Keene, City Manager reiterated the original phase had a cost of \$1.8 million, and the second phase had a cost of \$700,000. Inflation estimates and redesign work contributed to the \$542,000 funding shortfall. The CIP-Infrastructure Reserve Program would have funds available above the required reserve amount. Depending on the Council's decision regarding lighting, Staff could provide options for funding lighting.

Terry Shuchat was a vocal opponent of California Avenue improvements. He encouraged the Council to include lighting as part of the Project.

MINUTES

Jessica Roth stressed the importance of completing the Project correctly the first time. The Project would impact a large amount of people and businesses. Lights would be located in the middle of the expanded sidewalk. Existing light posts were an eyesore. She recommended Option 2a, the most ideal design option.

Todd Burke preferred Option 2, because the street and sidewalk needed lighting and the existing fixtures were not attractive. Brighter lighting would provide a safer environment.

Fred Balin related the background of California Avenue improvements. He was concerned about the impact to trees in the line of street lights.

Robert Moss reported Staff's table of costs did not include \$1 million for lighting and the cost of reconfiguring the street. The actual cost of California Avenue improvements as proposed would be more than \$5 million. The total cost for the Project should be capped at \$2.5 million, and any elements over that amount should be eliminated.

Herb Borock recalled the proposed public benefits for the VTA parking lot project at 2755 El Camino Real included street lighting. The Council should postpone the discussion of street lighting until it received an application for the proposed Planned Community district at the corner of El Camino Real and Page Mill Road.

Cedric deLaBeaujardier supported updating street lighting now rather than later in order to save money. He hoped placement of lights would be coordinated with existing trees. He suggested adding compost bins to the trash and recycling bins.

Jack Morton, President of California Avenue Business Association and former Vice Mayor stated the Project would proceed without regard to businesses' concerns around widening sidewalks. Lighting should fit the new sidewalks and trees. Merchants suggested lighting be part of the upgrade.

Council Member Burt reiterated the cost of \$700,000 to widen sidewalks was in addition to the original estimate of \$1.4 million. He agreed with removing street repaving from the budget for the Project, and asked if paving would be coordinated with this Project.

Mr. Keene noted funds for repaving were set aside in a separate account.

MINUTES

Council Member Burt inquired how the cost estimate had increased to the amount stated in the Staff Report, and whether the RBF design cost of \$350,000 was included in the Staff Report.

Mr. Williams reported the \$1.4 million was intended to be the construction cost, which did not include the design cost. Under the resource impact section of the Staff Report, the Council approved the design phase and local match in the amount of \$550,000 plus the grant of \$1.175 million, for a total of \$1.725 million.

Council Member Burt noted on page 2 the \$700,000 was in addition to \$1.4 million.

Mr. Williams indicated the amount should have been specific to construction costs.

Council Member Burt advocated for this Project, but was concerned about increasing costs. He inquired whether Staff had calculated any economic benefits for the City from this Project.

Mr. Williams had not. Staff discussed documenting current revenues and measuring revenues again once the project was complete.

Mr. Keene reported Staff would track baseline sales tax and other revenues and, after the Project was complete, measure the increment.

Council Member Burt suggested Staff justify construction of the Project by stating the amenity and the economic return on investment. The Project was a considerable commitment to the community. He inquired about the net impact to on-street parking on California Avenue as a result of the Project.

Mr. Rodriguez indicated under the current configuration, California Avenue had plus 4 additional parking spaces.

Council Member Burt recalled Mr. Rodriguez's statement that construction expenses increased approximately \$300,000 as a result of the delay caused by lawsuits, and asked if that was correct.

Mr. Rodriguez stated the lawsuits had an impact of approximately \$75,000.

Council Member Burt indicated \$75,000 was removed from grant funds, and inquired about the cost of construction increases.

MINUTES

Mr. Rodriguez reiterated the total cost increase was \$300,000.

Council Member Burt asked if the \$300,000 increase resulted from costs of construction.

Mr. Rodriguez answered the cost of construction and the \$75,000 loss of grant funds.

Council Member Burt said grant funds were not costs of construction. He asked if the \$300,000 cost increase was comprised of \$225,000 additional costs of construction, \$75,000 loss of grant funding, plus whatever internal costs.

Mr. Rodriguez responded yes.

Council Member Burt felt the impact from lawsuits was probably \$350,000. He inquired whether Staff asked litigants to contribute to that difference. He noted Mr. Moss' claim regarding an additional \$800,000-\$900,000 for street impact on storm drains, and asked if the claim was valid.

Mr. Rodriguez reported the current \$1 million in additional amenities included everything for the Project. He did not know of a basis for Mr. Moss' claim.

Council Member Burt inquired whether Staff's figures included all costs.

Mr. Rodriguez replied yes.

Council Member Klein asked why Staff did not present a lighting element for the Project to the Council in 2012.

Mr. Rodriguez indicated the original project did not include any lighting. When Staff redesigned the Project to include sidewalk widening and additional amenities, they focused only on that additional element and did not recommend lighting to keep the costs down.

Council Member Klein inquired whether there was a particular proponent for the lighting element.

Mr. Rodriguez reported lighting was a consistent comment from the community, residents, and visitors. Widening the sidewalk provided an opportunity to include lighting. The estimated cost of \$1 million for lighting was for construction during the Project. If lighting was its own project, the cost would be approximately \$1.3 million.

MINUTES

Council Member Klein asked if any other expenses could be added to the Project budget.

Mr. Rodriguez stated Staff would not recommend anything else.

Mr. Keene did not foresee any other costs unless something occurred during the actual construction. The Project did not renovate every part of the sidewalks along the Corridor, and some sections of the Corridor may need future renovations to incorporate the pedestrian streetscape. Lighting down the avenue connected the reconstructed parts and completed the street. This Project would fulfill the Council priority of the future of California Avenue.

Council Member Klein referenced the early sidewalk widening estimate of \$700,000 and the revised sidewalk widening estimate of \$317,000, which was an increase of almost 50 percent. He did not believe construction inflation was 50 percent, and requested a breakdown of the costs.

Mr. Rodriguez explained Staff underestimated the cost of some items, specifically the drainage impact, as they refined the design. In addition \$75,000 in grant funds was lost.

Council Member Klein stated the \$75,000 was deducted elsewhere and could not be counted twice.

Mr. Rodriguez explained the shortfall resulted partially from construction inflation and partially from drainage construction.

Mr. Keene requested a division of inflation and redesign costs for the \$317,000.

Kandee Bahmani, RBF Consulting reported improvements to the Plaza area between Ash Street and Birch Street added approximately \$150,000 to \$200,000. Inflation was probably a 10 percent increase in unit prices. The Council wanted more improvements all along California Avenue, so they added some additional sidewalk widening.

Council Member Klein inquired whether the City could receive additional grant funds for the Project.

Mr. Rodriguez indicated there was no time to apply for grants, because construction would have to begin by Fall 2013 to take advantage of current grant funds.

MINUTES

MOTION: Council Member Kniss moved, seconded by Council Member Holman to approve new streetlight and poles construction as outlined in Option Two of the Staff Report: Option 2 includes removing and replacing all existing street lights with new decorative street light poles and replacing all underground conduits and wiring. A combination of standard-height roadway height poles and pedestrian-scaled light standards would be used. The total cost for this option is up \$1,200,000 depending on whether the existing street light spacing is maintained (\$1,000,000) or narrowed to better illuminate the street (\$1,200,000). Staff believes the existing spacing works best to meet the objectives of the improving sidewalk illumination but additional poles may be required to ensure a consistent illumination so a budget of up to \$1,200,000 should be specified if this option is desired by Council. This option includes elements for receptacles at all streetlight poles to accommodate festive lighting or special event uses. Proposed decorative street light standard types are provided in Attachment C.

Council Member Kniss preferred to retain the option for additional poles, because Lighting was important for ambience and safety.

Council Member Holman inquired whether the poles could be placed so as not to impact trees.

Mr. Rodriguez responded yes.

Council Member Holman asked if the existing spacing of poles would eliminate dark spots.

Mr. Rodriguez reported the street and sidewalk would be illuminated fairly well.

Council Member Schmid stated the Project met the vision statement of a vibrant, active locale, and meshed with other projects in the neighborhood. The City could meet the funding needs, because this Project was a priority. The Project was key to drawing people into the area.

Council Member Berman understood the concern about increased costs; however, the improvements added to the ambience of California Avenue.

Vice Mayor Shepherd expressed concerns that the Council was isolating the district to California Avenue. She asked if lighting along Park Boulevard in future projects would match lighting along California Avenue to create the ambience of a district.

MINUTES

Mr. Rodriguez answered yes. Staff was searching for opportunities within the area to propose projects beyond California Avenue.

Vice Mayor Shepherd inquired about a possible project regarding signage at the entryway to California Avenue.

Mr. Rodriguez explained this Project had a proposal to modify the California Avenue sign.

Vice Mayor Shepherd asked if signage would include merchants' names.

Mr. Rodriguez reported Staff was developing graphics for a business directory.

Council Member Shepherd felt lighting would be much nicer for the district.

Mr. Keene reiterated Staff's request was for Council approval to add street lighting to the Project. The cash flow issues would not arise until the following fiscal year, and Staff would return to the Council with funding sources for lighting and the gap of \$542,000.

Mayor Scharff explained the Motion proposed Option 2 and directed Staff to use existing pole spacing, unless decreased spacing was needed.

MOTION PASSED: 9-0

COUNCIL MEMBER QUESTIONS, COMMENTS AND ANNOUNCEMENTS

Council Member Price announced she was the new Chair of the Santa Clara Valley Transportation Authority Policy Advisory Committee for 2013. She would continue to monitor the One Bay Area Grant application process. On February 20, 2013 she attended the Project Safety Net meeting conducted by Compass Point and focused on managing funds provided by the City of Palo Alto.

Council Member Schmid discussed valuation of public benefits. He wanted to bring a discussion to Council within the next month.

Council Member Schmid and Vice Mayor Shepherd asked Staff to agendaize a discussion on the valuation of public benefits.

Council Member Berman attended the ribbon cutting at the new Weaver Bird House at the Junior Museum and Zoo, and encouraged everyone to visit the new addition.

MINUTES

Mayor Scharff announced he recently was appointed to the Association of Bay Area Governments Appeals Committee, and an alternate to the San Francisco Bay Conservation and Development Commission.

ADJOURNMENT: The meeting was adjourned in memory of Bob Sikora and Vince Larkin's father at 11:15 P.M.

ATTEST:

APPROVED:

City Clerk

Mayor

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.