



# CITY OF PALO ALTO CITY COUNCIL MINUTES

Special Meeting  
November 12, 2013

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

Present: Berman, Holman, Klein, Kniss arrived at 6:15 P.M., Price, Scharff, Schmid, Shepherd arrived at 6:15 P.M.

Absent: Burt

## ~~CLOSED SESSION~~

1. CONFERENCE WITH LABOR NEGOTIATORS  
City Designated Representatives: City Manager and his designees pursuant to Merit System Rules and (James Keene, Pamela Antil, Lalo Perez, David Ramberg, Joe Saccio, Kathryn Shen, Sandra Blanch, Dania Torres Wong, Melissa Tronquet, Brenna Rowe, Molly Stump, Khashayar Alae) Employee Organization: Service Employees International Union, (SEIU) Local 521 Authority: Government Code Section 54957.6(a)

The Council returned from the Closed Session at 7:20 P.M., and Mayor Scharff announced there was no reportable action.

## ~~AGENDA CHANGES, ADDITIONS, AND DELETIONS~~

**MOTION:** Council Member Price moved, seconded by Council Member Holman to continue Agenda Item Number 8, "Public Hearing: Approval of a Mitigated Negative Declaration and Record of Land Use Action for an Architectural Review Approval for the Demolition of an Existing 7,000 square-foot, Two-story Commercial Building and the Construction of a four-story, 50-foot, Mixed-use Building with a New Floor Area of 15,000 square feet, Including a Non-appealed Variance to Encroach into the Required Seven-foot Special Setback along Hamilton Avenue and to Encroach into the Required Six-foot Special Setback along Ramona Street, on a Parcel Zoned CD-C(GF)(P) located at 240 Hamilton Avenue" to December 9, 2013.

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**MOTION PASSED:** 8-0 Burt absent

**MOTION:** Vice Mayor Shepherd moved, seconded by Council Member Price to Continue Agenda Item Number 12, "CONFERENCE WITH REAL PROPERTY NEGOTIATORS, CALIFORNIA, GOVERNMENT CODE SECTION 54956.8 *Property:* U.S. Post Office, 380 Hamilton Avenue, Palo Alto 94301 *Agency Negotiators:* James Keene, Lalo Perez, Hamid Ghaemmaghani, Joe Saccio, Hillary Gitelman, Aaron Aknin, Meg Monroe, Molly Stump, Cara Silver *Negotiating Parties:* City of Palo Alto and United States Post Office *Under Negotiation:* Purchase: Price and Terms of Payment " to a date uncertain.

**MOTION PASSED:** 8-0 Burt absent

Mayor Scharff announced that Agenda Item Number 9, "TEFRA Public Hearing Regarding Conduit Financing for the Gideon Hausner Jewish Day School Project Located at 450, 470, 490 And 560 San Antonio Road, Palo Alto, and Approving the Issuance of Revenue Bonds by the California Municipal Finance Authority for the Purpose of Financing and Refinancing the Acquisition, Construction, Improvement and Equipping of Various Educational Facilities and Certain Other Matters Relating Thereto" would be heard prior to Agenda Item Number 7.

## CITY MANAGER COMMENTS

James Keene, City Manager, reported that Palo Alto was named the Number 1 Digital City in America by the Center for Digital Government. *Aurora*, a life-size tree sculpture, would be unveiled at King Plaza on November 16, 2013. The Fiscal Year 2014 Asphalt Paving Project would repave 45 blocks as a result of increased funding.

## COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

Council Member Schmid hoped the Council would have a revision of the Palo Alto Traffic Model and an updated parking study prior to discussing the two large development projects noted on tentative Council Agendas.

Council Member Price, as co-chair of the Families, Adolescents and Children Committee of the Santa Clara County Mental Health Board, invited the public to attend a panel discussion regarding services for transitioning youth on November 14, 2013, in San Jose.

Vice Mayor Shepherd inquired about the procedure for addressing the Maybell Project after the Measure D election.

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Mr. Keene deferred his response until the Mayor commented on the topic.

Council Member Holman hoped the community would build a positive future now that Measure D had been determined. This was an opportunity for the Council to review its criteria for projects and work with the community to develop a positive approach with more positive outcomes.

Council Member Berman hosted a Cub Scout Troop in the Council Chambers. He invited scouts to contact the City Clerk's Office for tours.

Mayor Scharff reported Palo Alto's Sister City, Palo, Philippines, sustained catastrophic damage during the recent typhoon. The City would work with Neighbors Abroad to provide assistance and funds to Palo. He encouraged the entire community to send donations to Palo Alto Disaster Relief and the Red Cross. In response to Council Members' interest, a Study Session to launch a community dialog regarding planning for the community's future was scheduled for December 2, 2013. Council Members should submit topics for the Study Session to the City Manager as soon as possible. Topics could include Planned Community (PC) Zoning, the Comprehensive Plan, and traffic and parking policies. He and the City Manager removed from tentative Agendas the Arrillaga Project and the Jay Paul Company Project to allow a discussion of PC Zoning to occur prior to discussion of the two projects. The Council meeting on December 9, 2013, would include a separate Study Session regarding the next steps for the Maybell site following the Measure D election.

Mr. Keene indicated the Council would engage in a Study Session to identify issues and could request further information from Staff.

Vice Mayor Shepherd asked if the community could also provide input at the Study Sessions.

Mr. Keene felt residents could address the Council at the Study Sessions and utilize Council email. Council Members amongst themselves needed to identify issues and needed information. He hoped the Council would consider the magnitude of the variety of issues in comparison to the capacity of Staff.

Council Member Holman inquired about next steps following the Study Sessions as the Council did not provide Motions or directions to Staff during Study Sessions.

Mayor Scharff believed the Council would agendize an Action Item once Staff reviewed information from the Study Session.

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Council Member Holman stated the nature of Study Sessions often did not provide Staff with explicit directions as to what information was needed from them.

Council Member Kniss noted the City did not own the Maybell property. The Palo Alto Housing Corporation (PAHC) owned the property. PAHC had the right to determine the future of the property. The City loaned PAHC funds to assist with the purchase of the property.

## ORAL COMMUNICATIONS

Ken Horowitz was concerned about bicycle safety during darkness. The California Vehicle Code required bicycles operated on a public street during darkness to have a lamp and reflectors. Perhaps the City could emphasize bicycle safety in community communications.

Shari thanked the Mayor for acknowledging the devastation in the Philippines. She encouraged the City and community to provide aid and relief to victims of the typhoon. The City of Palo was completely destroyed.

Ruth Carleton, Vice President for the Sister City of Palo, urged the City and Council to help Palo, which was destroyed by the typhoon.

Winter Dellenbach advocated for a moratorium on Planned Community (PC) Zoning. Affordable housing was easily disregarded in the Measure D election. Most residents felt PC Zoning resulted in overdevelopment of the commercial nature of PC projects. Now was the time for PC Zoning reform.

Chris Donlay provided a parking density map of the Ventura neighborhood. Street parking density at midday was fairly heavy. Ten projects under review for the neighborhood were untenable. He requested the City include the neighborhoods of Ventura and Evergreen in the biennial parking study, and a pipeline report be made available on a regular basis.

John Guislin presented a parking saturation map for the Crescent Park area. Parking saturation reached 50-79 percent for 11 of the 29 blocks surveyed. He urged the Council to utilize a comprehensive approach in examining the impacts of increased traffic parking which would result from new developments.

Neilson Buchanan noted increased collaboration with respect to commuter parking in neighborhoods. Data regarding commuter intrusion was needed to further discussions.

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John Novitsky developed a solar-powered water purifier which was being provided to the Philippine Red Cross. He requested the Council provide assistance if possible.

Sunny Dykwel requested the City respond to the destruction in Palo by making a donation or organizing a fund raiser. Water, food, clothing, and shelter were needed.

Diana Cabcabin stated shelter, food, and water were needed desperately in the Philippines following the typhoon. The typhoon was a direct result of climate warming.

Ruth Lowy felt the outcome of Measure D was an expression of residents' displeasure with high-density rezoning. High-density rezoning resulted in the decline of quality of life for residents. The Council needed to understand the consequences of high-density zoning.

Stephanie Munoz urged the Council to continue building affordable housing to retain senior citizens in the community. The City needed land to construct affordable housing.

Joseph Hirsch, Palo Altans to Preserve Neighborhood Zoning, was gratified by the results of the Measure D election. Any new development seeking any significant increase in development must be based upon a comprehensive traffic study using current methodology. Mayor Scharff's proposal should be extended to all high-density projects. Residents needed to participate in a two-way conversation with the Council.

Council Member Holman requested by acclamation that the City Council authorize the City Manager to expend \$10,000 from the Council Contingency Fund as a relief donation to Palo, Philippines.

## CONSENT CALENDAR

**MOTION:** Vice Mayor Shepherd moved, seconded by Council Member Price to approve Agenda Item Numbers 2-6.

Council Member Holman registered a no vote on Agenda Item Number 6.

2. Approval of Construction Contract to D&M Traffic in the amount not to exceed \$180,000 for Safe Routes to School Intersection Improvements at Various Locations.

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3. Recommendation that the City Council Adopt a Resolution 9381 entitled "Resolution of the Council of the City of Palo Alto Amending the City's Renewable Energy Resources Procurement Plan in Compliance with the California Energy Commission's Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities."
4. Approval of a Contract with Granite Construction Company in the Amount of \$2,700,818 for the FY2014 Asphalt Paving Project, the 2nd of 2 Contracts in the FY 2014 Street Maintenance Program Project (CIP PE-86070).
5. Approval of Professional Services Contract with Coalfire Systems, Inc. for Information Security Risk Assessment in the Amount of \$200,448.
6. Second Reading of Ordinance 5215 entitled "Ordinance of the Council of the City of Palo Alto of the Council of the City of Palo Alto Adding Chapter 9.64 (Regulation of Community Facilities) of Title 9 (Public Peace, Morals, and Safety) to include Section 9.64.010 - Use of Community Facilities Prohibited from 10:30pm to Sunrise (First Reading; September 30, 2013, PASSED: 5-1-1 Holman no, Berman abstaining, Kniss, Price absent)."

**MOTION PASSED FOR AGENDA ITEM NUMBERS 2-5:** 8-0 Burt absent

**MOTION PASSED FOR AGENDA ITEM NUMBER 6:** 7-1 Holman no, Burt absent

## ACTION ITEMS

- 6a. (Former Agenda Item Number 9) Resolution 9382 entitled "Resolution of the Council of the City of Palo Alto TEFRA Public Hearing Regarding Conduit Financing for the Gideon Hausner Jewish Day School Project Located at 450, 470, 490 And 560 San Antonio Road, Palo Alto, and Approving the Issuance of Revenue Bonds by the California Municipal Finance Authority for the Purpose of Financing and Refinancing the Acquisition, Construction, Improvement and Equipping of Various Educational Facilities and Certain Other Matters Relating Thereto."

Joe Saccio, Assistant Director of Administrative Services, reported the Gideon Hausner Jewish Day School (School) requested a hearing and passage of a Resolution to allow the issuance of \$14 million in tax-exempt bonds. Bonds would be utilized to refinance bonds issued previously and to reimburse the School for prior costs. Pursuant to Tax Equity and Fiscal

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Responsibility Act (TEFRA) requirements, the petitioner requested the Council hold a public hearing in order to issue tax-exempt bonds. The School issued a public notice as required by TEFRA and the Internal Revenue Service Code.

Molly Stump, City Attorney, confirmed that the City's only role in the TEFRA process was to host a public hearing. The City was not obligated on the bonds, and issuance of the bonds would not affect the City's credit rating. Federal law allowed certain private entities to access the tax-exempt bond vehicle and required a sponsoring public agency to hold a public hearing such that the public could object to issuance of the bonds. The City's only responsibility was to allow public comment on the bonds.

Mr. Saccio noted the City would be reimbursed for administrative expenses.

Public Hearing opened and closed at 8:29 P.M. without public comments.

**MOTION:** Council Member Kniss moved, seconded by Council Member Price to: 1) conduct a public hearing under the requirements of the Tax Equity and Fiscal Responsibility Act of 1983 (TEFRA) and the Internal Revenue Code of 1986, as amended (Code); and 2) adopt a resolution (Attachment A) approving the issuance of the bonds by the California Municipal Finance Authority (CMFA) for the benefit of Gideon Hausner Jewish Day School, Inc.

Council Member Schmid inquired whether the Council was obligating the City in any way regarding future zoning by holding the public hearing.

Ms. Stump reported no zoning matter was contained within the Council Agenda, and no zoning matter was related to the issue. The City had no role as a party to the bonds and had no financial obligation. The City was providing a forum only for members of the public to speak to the issuance of bonds by a private entity.

James Keene, City Manager, explained that the public hearing was a routine approach to allow public comment within the public domain. There was no liability or implication for the City.

Council Member Holman asked if the \$7,000 amount to reimburse the City was a percentage of the bond amount.

Mr. Saccio answered yes. The conduit agency utilized a formula based on the amount of the bonds to determine the amount of reimbursement.

Council Member Holman inquired whether the \$7,000 amount was sufficient

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to adequately compensate the City for its expenses.

Mr. Saccio indicated the reimbursement amount was fair.

**MOTION PASSED:** 8-0 Burt absent

7. Policy and Services Committee Recommends Adoption of an Ordinance to Add Chapter 16.61 to the Municipal Code to Establish a Public Art Program for Private Development, and Policy Direction to Initiate a Public Art Master Planning Process.

Rhyena Halpern, Assistant Director Community Services, presented a proposal to expand the policy of 1 percent for public art to include private developments. On April 8, 2013, the Council directed Staff to explore the development of the 1 percent Ordinance for private developments. On October 8, 2013, the Policy and Services Committee (Committee) unanimously approved a recommendation for the Council. The intent of the Ordinance for public and private development was to reflect the creative and vibrant community that lived, worked, and visited Palo Alto and to encourage a variety of art experiences that enhanced the visual landscape. Approximately 50 cities in California had a public art policy for private development. A common practice was to offer an in-lieu fee option for developers, which allowed the financing of larger and more significant artworks. Most cities required artworks to be visible to the public at least 40 hours per week.

Elise DeMarzo, Management Specialist, indicated the Ordinance would apply to new commercial developments, additions, or reconstructions requiring architectural review both over 10,000 square feet and with a minimum construction valuation of \$200,000. The developer had the choice of commissioning artwork at the development site or paying an in-lieu fee to fund larger, more impactful artwork throughout the City. Developers wanted to ensure a clear process existed and to ensure the resources to implement a project were available. Staff worked to ensure the process was streamlined as much as possible. Additional project management assistance would be available to developers, with the cost of assistance being paid through the 1 percent allocation. Through the fall and winter of 2013, Staff would complete the approval process, refine the policy and documents for developers, create a pool of artists as a resource for developers, and begin the implementation of the Ordinance. In the fall of 2014, Staff anticipated engaging the public in the Public Art Master Planning process.

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Ms. Halpern stated Staff's recommendation was for the Council to adopt a Public Art Program for Private Development (Program) including adoption of an Ordinance establishing art requirements and other key provisions.

Ben Miyaji, Public Art Commissioner, urged the Council to adopt the proposed Ordinance to establish a Public Art Program for Private Development. Public art programs enhanced the enjoyment and understanding of communities. The Ordinance would be a catalyst to bring together the Urban Design and Planning Departments as well as artists and citizens in a Public Art Master Planning process. Public art played a powerful role in shaping the identity and experience of Palo Alto.

Stephanie Munoz felt the proposed Program could be a part of the City's discussion of Core Values. People of Palo Alto were more enriched and gratified by natural beauty than by artwork. The Council should consider Core Values prior to voting on the proposed Program.

**MOTION:** Council Member Kniss moved, seconded by Council Member Holman to: 1) adopt an Ordinance amending the Palo Alto Municipal Code to add Chapter 16.61 ("Public Art for Private Developments") for the purpose of establishing a public art requirement for new commercial and residential developments at the level of 1% of construction valuation; and 2) direct Staff to engage the community in a Public Art Master Planning Process, and return to Council at a later date with a staffing proposal to support enhanced art programs and services.

Council Member Kniss indicated the Committee discussed the percentage and reached an agreement. A city reflected its soul by its art. The Program would be a wonderful addition to the City and a great discussion point.

Council Member Holman was pleased by the comprehensive approach of the proposal and looked forward to the Public Art Master Planning process. Community involvement was key to a successful Program and Master Plan.

Council Member Price enthusiastically supported the proposal. The Program was a tremendous opportunity for residents to express themselves.

Vice Mayor Shepherd inquired about the stipend for maintenance of public art and the means to pay for expenses associated with public art. She wished to ensure that the Program would continue once it was implemented.

Molly Stump, City Attorney, reported the Ordinance allowed a developer, if he elected to build onsite art, to build art with the 1 percent allocation for the art itself. The developer was responsible for maintenance; however,

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maintenance expenses could not be charged against the 1 percent fee. The 1 percent fee paid for the initial acquisition of art. If a developer elected to pay the 1 percent fee into the in-lieu fund, then a mechanism allowed Staff to utilize those funds to acquire new art in other parts of the City and to maintain, conserve, and manage the art. The Council would need to budget for management and maintenance of the existing public art collection.

Vice Mayor Shepherd recalled \$30,000 was budgeted annually for public art, and asked if Staff considered a means to increase that amount.

Ms. Halpern clarified that maintenance of private developers' art was not part of the proposed Ordinance. The \$30,000 was utilized for the City's art collection.

Vice Mayor Shepherd understood the \$30,000 amount was barely adequate to maintain the artwork most in need of repair. Additional funding was needed to maintain the City's collection. She inquired with funds from the 1 percent fee could be utilized to maintain the City's art collection.

Ms. DeMarzo reported that in-lieu funds could be utilized for maintenance to newly commissioned artwork purchased with in-lieu funds. Artwork existing prior to implementation of the proposed Ordinance could not be maintained with in-lieu funds.

Vice Mayor Shepherd expressed concern about budgeting funds for maintenance artwork.

Council Member Schmid was concerned regarding discouraging landscape architecture and designs on buildings. Some of those elements could be effective in a space with intense ground-floor retail. He suggested different areas of Palo Alto have different requirements to allow flexibility. A developer could have a different sense of art than those moving into the development. Again, he suggested flexibility to allow residents to change or adapt artwork.

Ms. Halpern indicated the developer could provide landscape architecture and designs on buildings. The use of public art funds would be restricted. The program would be successful through rapport and communication. Staff hoped to create relationships with developers to assist them through the public art process.

Council Member Berman inquired whether project costs up to \$100 million would be assessed at 1 percent and costs over \$100 million assessed at 0.9 percent.

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Ms. Halpern responded yes.

Council Member Berman looked forward to conversations regarding proposed artworks.

Council Member Klein agreed with previous comments. Maintenance of existing art would have to be paid from amounts budgeted in the General Fund. Funds from the 1 percent fee could not be utilized for maintenance of existing art. The General Fund would not pay for maintenance of new art.

Mayor Scharff recalled the Council increased funding for maintenance of artwork from \$25,000 to \$50,000 and subsequently decreased the amount of \$30,000. He inquired about the amount needed to properly maintain the City's art collection.

Ms. Halpern reported Staff hoped to provide a conservation report on all art pieces for long-term planning of maintenance needs.

Ms. DeMarzo explained that a great deal of maintenance was needed three years previously when the first allocation of \$50,000 was provided. The amount of maintenance was leveling out because of ongoing funding. A concise conservation report could determine an accurate amount of funds needed.

Mayor Scharff asked if Staff was working to resolve the issue of funding.

Ms. Halpern replied yes. Staff would return within 24 months regarding results of the policy and any adjustments it might need.

Mayor Scharff read a letter from a resident regarding the proposed program.

**MOTION PASSED:** 8-0 Burt absent

8. ~~Public Hearing: Approval of a Mitigated Negative Declaration and Record of Land Use Action for an Architectural Review Approval for the Demolition of an Existing 7,000 square foot, Two story Commercial Building and the Construction of a four story, 50 foot, Mixed use Building with a New Floor Area of 15,000 square feet, Including a Non-appealed Variance to Encroach into the Required Seven foot Special Setback along Hamilton Avenue and to Encroach into the Required Six-foot Special Setback along Ramona Street, on a Parcel Zoned CD-C(GF)(P) located at 240 Hamilton Avenue~~ **(STAFF REQUESTS THIS ITEM BE CONTINUED TO A DATE UNCERTAIN)**

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Council Adjourned into the Closed Session at 9:02 P.M.

10. CONFERENCE WITH CITY ATTORNEY

Subject: Written liability claim against the City of Palo Alto by Chuck Fong & Grace Wood (Claim No. C12034)

Authority: Government Code section 54956.9

Mayor Scharff reported out from the Closed Session that there was a settlement of the claim of Chuck Fong & Grace Wood in the amount of \$313,000.

11. CONFERENCE WITH CITY ATTORNEY

Potential Litigation – One Matter

Subject: Construction of the Mitchell Park Library and Community Center

Authority: Government Code Section 54956.9

~~12. CONFERENCE WITH REAL PROPERTY NEGOTIATORS, CALIFORNIA,  
GOVERNMENT CODE SECTION 54956.8~~

~~Property: U.S. Post Office, 380 Hamilton Avenue, Palo Alto 94301~~

~~Agency Negotiators: James Keene, Lalo Perez, Hamid Ghaemmaghami,  
Joe Saccio, Hillary Gitelman, Aaron Aknin, Meg Monroe, Molly Stump,  
Cara Silver~~

~~Negotiating Parties: City of Palo Alto and United States Post Office~~

~~Under Negotiation: Purchase: Price and Terms of Payment~~

The Council returned from the Closed Session at 11:28 P.M., and Mayor Scharff advised no reportable action.

ADJOURNMENT: The meeting adjourned in honor of the City of Palo in the Philippines at 11:30 P.M.