



CITY OF PALO ALTO CITY COUNCIL MINUTES

Special Meeting
December 9, 2013

The City Council of the City of Palo Alto met on this date in the Council Conference Room at 4:03 P.M.

Present: Berman, Burt arrived @ 5:05 P.M., Holman, Klein, Kniss, Price, Scharff, Schmid, Shepherd

Absent:

CLOSED SESSION

Aram James spoke regarding Agenda Item Number 3, the potential litigation.

1. CONFERENCE WITH CITY ATTORNEY/LEGAL COUNSEL
Potential Litigation (as plaintiff/defendant) – One Matter
Subject: Construction of the Mitchell Park Library and Community Center
Authority: Government Code Section 54956.9
2. CONFERENCE WITH CITY ATTORNEY/LEGAL COUNSEL
Potential Litigation (as plaintiff) – One Matter
Subject: Senate Bill No. 7 – State interference with Constitutional power of Charter Cities to direct municipal affairs
Authority: Government Code Section 54956.9
3. CONFERENCE WITH CITY ATTORNEY/LEGAL COUNSEL
Potential Litigation (as defendant) – One Matter
Subject: Potential Challenge to Municipal Code Section 9.06.010 (Human Habitation of Vehicles Prohibited)
Authority: Government Code Section 54956.9

The City Council returned from the Closed Sessions at 5:42 P.M. Mayor Scharff announced there was no reportable action.

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STUDY SESSION

4. Transportation Demand Management Study Session.

Aaron Aknin, Assistant Director of Planning and Community Environment, reported the top two issues voiced by the community were traffic and parking. Staff received a Colleagues' Memo and a follow-up memo requesting Staff consider a comprehensive strategy for transportation issues. The Council directed Staff to schedule a Study Session with Transportation Demand Management (TDM) experts. A TDM Program could be defined as coordinated policies and programs that either required or provided incentives for taking transit, carpooling, biking, or walking. In other words, the primary goal of a TDM Program was to reduce solo driving. Most traffic congestion was caused by single-occupancy drivers. Benefits of a TDM Program were an easing of traffic and parking concerns, decreased environmental and air quality impacts, and overall improved quality of life. The City had a number of existing TDM-related policies and programs. Staff would continue to implement those to determine how they integrated into a comprehensive program. In February 2014, Staff would return with a presentation on incentives, funding sources, an overall structure, and potential TDM district boundaries. Staff talked with East Palo Alto Staff regarding their shuttle system. Ms. Tanner-Busby created innovative TDM Programs that reduced single-occupancy vehicle trips to the Contra Costa Centre by approximately 30-35 percent. The John Muir Health Center participated in the TDM network and experienced similar returns.

Lynnette Tanner-Busby, Contra Costa Centre Transit Village Executive Director, indicated the Contra Costa Centre (Centre) was a 125-acre development of 2 million square feet of office space. Fourteen private property owners were involved in the Centre. The Centre had 7,000 employees, 6,000 residents, and 6,000 Bay Area Rapid Transit (BART) riders per day. The Centre began in 1988 with a primary function to build a transit village around a BART station. One of the biggest pieces of the Centre, excluding BART, was the TDM Program. Centre property owners voted to form an assessment district, which collected approximately \$270,000 per year devoted specifically to TDM. TDM strategies were developed to reduce traffic coming into the Centre. The TDM Program offered ease of participation, accessibility, and meaningful incentives for employees. The Program began with vanpooling and progressed to carpooling. The TDM Program provided personal commute planning, discounted BART tickets, ride sharing incentives, bike to work, guaranteed ride home, midday shuttle, and a green fleet. The success of programs could be attributed to the ease with which employees paid transit fares. The John Muir system had approximately 100 carpools and the Centre had approximately 50 carpools.

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The guaranteed ride home program was one of the most successful and low cost programs. A noontime shuttle was provided to two shopping areas. If an employee used alternative transit to the Centre, then he could reserve and use either a Smart car or a Nissan Leaf. The Centre provided nine Segways and eight bikes for use during the day. The Centre reported to Contra Costa County, the City of Walnut Creek, the City of Pleasant Hill, and the City of Concord. Approximately 30-35 percent of employees utilized alternative transportation. The TDM Program received numerous awards. With expansion, John Muir Hospital needed a TDM Program and chose to partner with the Centre's TDM Program. The use of cabs as shuttles to the nearby BART station was more economical than vans. The Centre provided cash incentives to employees for use of alternative transportation. The TDM program was successful because Centre staff was hands on, participation was easy and simple, projects were modified and added, and incentives were meaningful. Charging stations at the Centre and John Muir Hospital were hugely popular with employees.

Mr. Aknin stated Kevin Mathy developed, implemented, and managed transportation programs at Google since 2007. Prior to working at Google, Mr. Mathy spent 20 years managing transportation and parking programs at Cal and Stanford Universities.

Kevin Mathy, Google Transportation Manager, reported the Mountain View campus of Google housed 20,000-25,000 employees, contractors, and vendors. Google leadership supported and promoted TDM efforts. TDM efforts could be categorized by shuttles, bikes, car sharing, and alternatives. The shuttle program was the flagship TDM Program. One key to success was the many amenities located on campus, including 40 cafes for employees. Google operated a traditional carpool program with an incentive of parking adjacent to buildings. Vanpools were fully subsidized and utilized 7-passenger minivans for safety reasons. Vanpools operated in areas where shuttles did not operate. As an incentive, employees were allowed to use vans for personal use in the evening and on weekends. The GRide service was primarily dedicated to employees with temporary disabilities or walking impairments. Employees could text, email, or call the service center for a ride. An emergency ride home program was provided for employees who elected to use alternative transportation. Employees were offered pretax benefits for mass transit tickets and services. The self-powered commute program was dedicated to people who did not use any form of internal combustion power. Google donated to the person's favorite charity and provided a free locker in one of the fitness centers. Having bicycles around campus buildings was the most efficient form of transportation for employees traveling between buildings. A conference bicycle seated seven people and allowed people to hold a meeting while riding. The shuttle

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system utilized 122 buses and carried more than 6,000 employees into Mountain View daily. Slightly more than 35 percent of the campus population utilized shuttles. The shuttle system saved 17,000 metric tons of CO2 annually, removed more than 4,000 vehicles from roads, and saved 70 million miles of vehicle miles traveled. The single-occupancy vehicle rate was 45 percent with an incentive base. Google developed a muni first policy for buses serving San Francisco. Keys to success were the Google culture, responding to feedback, working with local agencies, and monitoring of services. Scheduling could be changed on an hourly basis. All information was shared with employees. The Google campus had 640 Level 2 charging stations. An electric car share fleet was loaned to employees who utilized alternative transportation. Google provided employees with free membership in the Zipcar program. Challenges were scalability, data management, vendor management, management of employee expectations, and lost and found.

Mr. Aknin noted that Mr. Hamilton supervised the parking, shuttle, charter bus, bicycle, and TDM Program at Stanford University.

Brodie Hamilton, Stanford University Transportation Director, explained that Stanford University implemented a TDM Program for community relations, traffic mitigation, environmental sustainability, employee well-being, and reduced investment in parking. In 2002, Stanford enhanced its TDM Program to address employees' concerns. Some of the bigger aspects of the TDM Program were the Eco Pass/Go Pass, car sharing, partnerships with Santa Clara Valley Transportation Authority (VTA), Caltrain, and AC Transit, personal outreach, and an extensive website. The Commute Club was comprised of everyone on campus who committed not to drive alone to campus. Commute Club members were rewarded with up to \$300 per year and a variety of other benefits. Promotional activities included two prize drawings per year, transportation love stories, and Picture My Commute. The Marguerite fleet was expanded to 60 buses including hybrid and electric buses. Promoting programs and educating people about programs were important. The TDM Program was promoted based on health, financial, and environmental benefits. Each year a considerable amount of data was collected regarding the TDM Program. Participation increased from 4 percent in 2002 to 20 percent at the current time. Approximately 9,000 employees were regular alternative transportation users and members of the Commute Club. Parking permits peaked in 2004 at 23,000. The number of parking permits decreased by 3,000 even though the campus population increased. If the drive-alone rate had not decreased, the campus would have needed 3,000 additional parking spaces at a cost of \$40,000-\$50,000.

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Council Member Kniss noted the Centre was privately owned but utilized public transportation. Google was impressive. The City would need an extraordinary commitment and incentives to have a successful TDM Program. Google employees searched for homes located close to Google transportation.

Vice Mayor Shepherd indicated the Stanford TDM Program was an important model for the City. She asked if Google employees could use Zipcars for personal trips.

Mr. Mathy answered yes. Google provided shuttles for employees from San Francisco to Mountain View and the Zipcar program for employees' personal activities.

Vice Mayor Shepherd remarked that the Centre was intentionally under-built by 30 percent; therefore, a comprehensive TDM Program was essential. She valued the exchange of information regarding use of different public transportation systems.

Council Member Klein inquired about the governance of the Contra Costa Centre.

Ms. Tanner-Busby explained the Centre reported to the Contra Costa County Board of Supervisors. The Centre itself had a Board of Directors comprised of the 14 property owners.

Council Member Klein asked if the 14 Directors had equal votes, such that the largest landowner had no more input than the smallest landowner.

Ms. Tanner-Busby answered yes. The TDM Program budget was divided among the property owners according to the amount of square footage each owned.

Council Member Klein inquired about the budget for the TDM program.

Ms. Tanner-Busby reported the budget was approximately \$275,000.

Council Member Klein requested clarification of the \$275,000 amount.

Ms. Tanner-Busby indicated the TDM Program collected \$275,000 divided among ongoing projects. She also applied for grants to support projects.

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Council Member Klein explained that the City wanted to create a TDM Program for the Downtown area with hundreds of landowners. He requested advice on how to do that.

Mr. Hamilton felt any expert would need to discuss the situation in Palo Alto before providing any advice or direction. The situation for a local jurisdiction would be quite different from the situation at a university.

Council Member Klein inquired whether any of the three speakers had learned of another city considering a TDM Program.

Mr. Hamilton was not familiar with a city creating a TDM Program.

Mr. Mathy reported the City of Mountain View was considering creation of a Transportation Management Association (TMA), wherein an outside entity would manage a TDM Program for a group of businesses. The businesses were required to meet targets and contributed to a general fund to support TDM efforts.

Council Member Klein asked if Google was participating in the TMA.

Mr. Mathy answered yes. Google was a founding participant in the TMA for Mountain View. The City of Mountain View was determining whether to have one TMA for the entire city or TMAs for each business district.

Council Member Klein inquired about the number of businesses in Google's TMA.

Mr. Mathy explained that the TMA was comprised of businesses in the North Bayshore area.

Council Member Klein asked about the total number of participants.

Mr. Mathy did not know. The TMA was in the process of being formed. Any property owner in North Bayshore would be required to be a member of the TMA.

Ms. Tanner-Busby added that the Contra Costa Centre was a TMA. She suggested the Council begin with one project all participants could agree on.

Council Member Burt inquired about the reasons for a lower cost per parking space utilized by Stanford University.

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Mr. Hamilton explained the figure was based on the cost of a parking structured completed a few years ago. The figure did not include land costs. At the current time, the cost would be closer to \$40,000-\$45,000 per space.

Council Member Burt inquired about the annual cost of the program. He wanted to understand the approximate cost per trip avoidance.

Mr. Hamilton reported the cost of programs could range from \$600 per person per year down to \$20-\$30 per person per year.

Council Member Burt noted the Centre had a budget of \$275,000, 6,000 employees, and a participation rate of approximately 30 percent.

Ms. Tanner-Busby indicated Centre staff determined how to spend funds. Sometimes BART subsidies were limited to 100 participants. Centre staff attempted to spread the budget over as many participants as possible. John Muir Hospital's TDM budget had fewer limitations. Because the Centre was privately owned and an assessment district, the TDM budget was monitored closely.

Council Member Burt was impressed by the management of the Centre's TDM budget. He asked if the speakers achieved tremendous impacts by providing attractive incentives.

Mr. Hamilton agreed.

Mr. Mathy agreed.

Ms. Tanner-Busby agreed.

Council Member Burt felt the Council would benefit from an expert advisory committee. He inquired about cost-effective successful programs that could be applied to a city.

Mr. Mathy reported 45 percent of Google employees lived within 10 miles of the Mountain View campus. Bicycles were the lowest-cost solution for Google. Connectivity among communities was lacking. A focus on improved connectivity in the region would result in safer biking and increased participation.

Mr. Hamilton suggested the City determine where potential participants were located and then determine opportunities to include those potential participants. Most likely many people lived within biking distance; therefore, that would be one opportunity to consider. Most Stanford participants lived

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within a mile of Caltrain stations; consequently, the Caltrain program worked well for Stanford University.

Council Member Burt learned that VTA passes for a group of 100 residents or employees along El Camino Real cost \$30 per year per resident or employee. The Council would have to create a governing body for participation. The speakers provided valuable information. Unfortunately their successes could not be applied directly in Palo Alto.

Council Member Berman felt the speakers' TDM strategies could be used in Palo Alto. Using alternative transportation was logical from a health standpoint, from an environmental standpoint, and from a productivity standpoint. Participation would need to be as easy as possible. A Zipcar program would provide participants with flexibility. He inquired about the use of cabs rather than shuttles at the Centre.

Ms. Tanner-Busby tried shuttles from the BART station to John Muir Hospital.

Council Member Berman asked the distance from the BART station to the hospital.

Ms. Tanner-Busby responded 4 miles. A contract with a cab company was more cost beneficial than shuttles running constantly.

Council Member Berman asked if the Centre received a favorable contract with a cab company.

Ms. Tanner-Busby replied yes.

Council Member Berman believed regional connectivity was desperately needed.

Council Member Price noted many cities and counties utilized TDM Programs effectively, providing the Council with models to review. The US Green Building Council had a TDM element giving developers points for incorporating TDM Programs. There was a robust residential TDM process in place, but she could not remember the name. She spoke with the City of Mountain View Planning Director regarding TMAs. Moffett Park had an interesting and vigorous TDM Program. She inquired whether any of the speakers utilized peer-to-peer programs for users.

Mr. Hamilton indicated Stanford had a number of groups approach it to partner with them. Stanford did not want to encourage that type of program

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on the campus when there was no method to ensure the vehicles were in good operating order.

Council Member Price agreed that mobility throughout the region was a key part of economic development. She inquired about the biggest challenge for each of the speakers.

Mr. Mathy reporting scaling the TDM Program was the biggest challenge. Managing bus delivery for employee arrival was sometimes difficult. Growth in general was the biggest challenge.

Ms. Tanner-Busby indicated ease of access to the website for information was the biggest challenge. Providing information to new employees was another concern.

Mr. Hamilton remarked that challenges were changing behavior and making users aware of programs.

Council Member Holman concurred with Council Member Burt regarding an advisory committee. She was interested in synergies with Stanford University and Google. She requested Ms. Tanner-Busby suggest small projects with which the Council could begin a TDM Program.

Ms. Tanner-Busby suggested neighborhood shuttles bringing people into public transit worked better than providing buses.

Council Member Holman was interested in moving people from Downtown to shopping areas to reduce traffic and parking problems. She inquired about methods to determine whether participants were abusing the system.

Mr. Mathy explained that Google employees had to swipe their badges to ride a shuttle. Swiping the badge provided the employee's name and location and time of getting on the shuttle.

Mr. Hamilton believed some users did abuse the system. When they were discovered, they were removed from the Program. His impression based on surveys was that only a small number of users abused the system.

Ms. Tanner-Busby agreed it was only a small number. The new Clipper card system allowed her to determine whether participants used public transit. With respect to gas cards, both car riders had to verify participation to receive the next gas card. In addition, employees and friends would report abusers.

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Council Member Holman expressed interest in working with Stanford, Menlo Park, Mountain View, and East Palo Alto. A business registry would be helpful in providing information about employees within Palo Alto and in tracking utilization of a TDM Program.

Council Member Schmid remarked that the three speakers implemented high-density solutions in low-density areas with respect to transportation. Contra Costa Centre, Google, and Stanford built density that enhanced the value of the business. He expected the three areas were 12-hour spaces, with little going on after business hours. Palo Alto was in a transitional mode as it built density and moved toward larger enterprises. Palo Alto could go in two different ways. One way was larger, enhanced businesses with fewer mixed-use areas. If the City fostered concentrated, high-value businesses as opposed to mixed use, then Downtown would suffer from less mixed use.

Mayor Scharff indicated the City could implement a pilot program or a TMA in Downtown, California Avenue, Stanford Research Park, or East Meadow Circle. Each area could be an individual TMA, or there could be a Citywide TMA. He inquired whether Stanford had a TDM Program at Stanford Research Park.

Mr. Hamilton reported one Stanford staff member provided assistance to employers in Stanford Research Park regarding transit, commute planning, and shuttle information.

Mayor Scharff requested suggestions for how the City could proceed with a TDM Program.

Mr. Mathy suggested the City utilize a parent TMA for the entire City with sub-TMAs for each district. The parent TMA could govern all districts with smaller TMAs working directly on TDM Programs.

Ms. Tanner-Busby concurred because of the different sizes of businesses in each area.

Mayor Scharff inquired about a method for obtaining good data.

Mr. Mathy explained that Google plotted each employee's home location and BART, Caltrain, park and ride lots, churches, and schools to create park and ride lots, bus routes, and routes to BART and Caltrain. That information allowed routes to be specific to target populations. Because of Google's badging system, he could determine trends with respect to employee arrival and departure times.

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Mayor Scharff wondered whether corporations located in Downtown would provide that type of information.

Ms. Tanner-Busby reported she utilized employee ZIP codes to determine their locations. She contacted Human Resource Departments in companies locating in the Contra Costa Centre to determine their needs and wants.

Mayor Scharff inquired about the number of Zipcars that would be located at the Gateway Building.

Mr. Aknin did not know the exact number. He could provide the information at a later time.

Mayor Scharff reiterated that Zipcars would be located Downtown.

Mr. Aknin added that Staff was releasing a Request for Proposal (RFP) related to a car sharing program within the Downtown area.

Mayor Scharff recalled Council Member Berman's point that cabs were more efficient than shuttles.

Ms. Tanner-Busby indicated cabs provided more efficient and effective transportation for users. Upper management users were not inclined to wait for shuttles.

Mayor Scharff inquired about other atypical projects utilized in TDM Programs.

Ms. Tanner-Busby stated the newest project was CARMA, an online car matching program. That program would take time to fully implement. She was always searching for new programs that would encourage participation.

Mayor Scharff felt a 15-20 percent reduction in traffic would make a difference in Palo Alto.

Chop Keenan indicated a Residential Parking Permit (RPP) Program was a critical piece of the parking and traffic puzzle. An RPP Program was a cost-effective approach to alternatives. Discussions of a TDM program should involve stakeholders, Staff, experts, and a few Council Members.

Adina Levin, Friends of Caltrain, was excited to see Palo Alto learn about TDMs. Two examples of TDMs in mixed-use areas were the City of Boulder

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and the City of Santa Monica. Recurring themes in the discussion were participant location and incentives, accountability, goals, and economics.

Herb Borock remarked that a TDM Program should relate to policies and programs contained in the Comprehensive Plan, which was under discussion. Free parking in neighborhoods was an incentive not to take transit or park in commercial areas. An RPP Program would provide an incentive to implement TDM Programs.

Stephanie Munoz did not favor the Council granting parking exemptions for developments. Every development should be fully parked.

James Keene, City Manager, believed the main problem with traffic was too many cars. The simple thing to think about was fewer cars, certainly fewer single-occupant vehicles. Palo Alto was experiencing growth as a result of a strong economy and building demographic changes occurring over generations. Two-income families were comprised typically of two or more working and driving people in a household. Staff was in the process of redesigning and improving the transit system. The answer would come in how the Council experimented with altering behavior and maximizing existing infrastructure. The Council had to make both system changes and individual and communal behavioral changes. Staff would present to the Council a Go Pass Program for review and action. Also Staff would present a pilot program regarding a mobile app to crowd source ride sharing. Part of starting small was a willingness to experiment and modify projects if they did not work.

No Action Taken

AGENDA CHANGES, ADDITIONS AND DELETIONS

MOTION: Council Member Kniss moved, seconded by Vice Mayor Shepherd to pull Agenda Item Number 7: "Approval of Contract Number C14152214 in the Amount of \$2,000,000 with Toubar Equipment Company Inc. for Soil Brokering and Closure Maintenance Assistance Services at the Palo Alto Landfill and Adoption of a Resolution Approving the Third Amendment of Lease PRC 7348.9 with the California State Lands Commission for Additional Use of Lands Claimed by the State", per Staff request to be scheduled to a date uncertain.

MOTION PASSED: 9-0

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CITY MANAGER COMMENTS

James Keene, City Manager, announced Caltrain would work within its right-of-way December 10-14 and December 17-21, 2013, between the hours of 8:00 P.M. and 6:00 A.M. Through the Community Development Block Grant (CDBG) Program, Staff was launching a pilot Microenterprise Assistance Program to award grants to income eligible entrepreneurs. The Council's and community donations supplied food, water, and medicine to thousands of people in Palo, Philippines. On December 12, 2013, a group of physicians would meet at the Gunn High School gym to pack medical supplies. Gil Friend, the City's first Sustainability Officer, founded Natural Logic and was a founding member of many organizations. He began his sustainability career in 1972.

Gil Friend, Director of Sustainability, looked forward to making Palo Alto the greenest city in America; however, there was no standard for being the greenest city. Work would begin with a broad and engaging conversation. Sustainability concerned design and innovation. The challenge of sustainability was people. Better environmental performance, better sustainability, better quality of life could mesh with better economics.

COUNCIL MEMBER QUESTIONS, COMMENTS AND ANNOUNCEMENTS

Council Member Berman hosted the Cub Scout Troop from Duveneck Elementary School for a tour of the Council Chambers. On December 14 and 19, 2013, the Palo Alto Unified School District (PAUSD) and PTA Council in conjunction with Covered California were hosting sessions regarding health insurance registration under the Affordable Care Act.

Council Member Klein recalled comments at the December 2, 2013 meeting regarding traffic data provided in the Staff Report. Staff had a professional obligation to present information they determined was accurate. Public perception was not always accurate. Staff should not be discouraged from presenting data to the Council. Adina Levin's email pointed out that the data was in some ways consistent with national data.

Council Member Holman, along with Council Members Berman and Kniss and Vice Mayor Shepherd, met with Senator Jerry Hill to discuss local control. The conversation was ongoing. She encouraged the community to make donations to reliable nonprofit and faith organizations for clothing and lodging due to the recent cold weather.

Council Member Burt reported the Peninsula Cities Consortium (PCC) discussed the pending issue of Caltrain capacity limitations. Awareness of

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the problem was escalating. The PCC also discussed strengthening the role of the Local Policymaker Working Group. The San Francisquito Creek Joint Power Authority (JPA) held its retreat, where it discussed a funding gap and regulatory agency review of the 101 to Bay Project. The JPA and the executives of participating agencies made significant progress with respect to funding. The JPA continued to work on environmental agency review.

Vice Mayor Shepherd attended the Public Officials lunch where she received information regarding Valley Transportation Authority (VTA) updates. She learned that San Jose had its own guidelines for traffic, and she wanted to understand the reasons for San Jose being allowed to utilize a different model for traffic impacts.

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Steve Eittreim felt undergrounding Caltrain would enhance the City and Peninsula. The City's study of undergrounding would provide approximate costs for undergrounding. A deep tunnel was a more viable option to undergrounding. After deep discussion, the community could support a bond measure to underground the rail line.

Cheryl Lilienstein, President of Palo Altans to Preserve Neighborhood Zoning, announced the political action committee changed its name to Palo Altans for Sensible Zoning. Residents objected to the City's orientation towards dense projects that worsened traffic and parking problems.

Tom DuBois, Palo Altans for Sensible Zoning, advocated for database decisions and systems to provide data. He supported implementation of a business registry to measure the daytime working population. Technology could be utilized to provide valid, real-time, continuous, and ongoing data to facilitate better decision making.

Stephanie Munoz indicated residents wanted less density. The density of the Maybell Avenue Project was the important consideration for residents. Zoning was not necessarily the most desirable means to achieving low density. The Council should recognize that Buena Vista Mobile Home Park should be zoned trailer park.

Adina Levin reported the Caltrain spokesperson confirmed Caltrain made an offer for additional cars that would increase the number of cars on the bullet train. The conflict in data with respect to traffic could indicate that the intersections were the cause of congestion. She hoped the Council would discuss findings from the pending traffic study. She suggested traffic studies count pedestrians, cyclists, and transit users in addition to cars.

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CONSENT CALENDAR

MOTION: Vice Mayor Shepherd moved, seconded by Council Member Holman to approve Agenda Item Numbers 5-6.

5. Approval of Banking Services Contract Extension with Wells Fargo for One Year in a Not to Exceed Amount of \$120,000.
6. Approval Of The Agreement Between The City Of Palo Alto And The Friends Of The Palo Alto Junior Museum & Zoo For Mutual Cooperation And Support.

MOTION PASSED: 9-0

ACTION ITEMS

8. Review Infrastructure Survey Findings and Recommendations and Provide Direction to Staff on Next Steps.

James Keene, City Manager, suggested Council decisions be referred to the Infrastructure Committee in the interest of time. Ms. Tucker would address next steps. Ms. Tucker would be leaving the City's employ for a position with the City of Santa Clara.

Dave Metz, Fairbank, Maslin, Maullin, Metz & Associates (FM3), reported the current survey was the second in a series of planned surveys to assess options for funding infrastructure needs. The survey was designed to assess voter support for five potential funding options and to understand which ones seemed to have the broadest and least public support. FM3 tested a 3 percent and a 2 percent increase in the Transient Occupancy Tax (TOT); a 1/4 percent and 1/8 percent increase in the sales tax rate; two General Obligation (GO) Bond measures, one in the amount of \$66 million for transportation and one in the amount of \$71 million for public safety; and the idea of establishing a Community Facilities District (CFD) to fund parking improvements. The goal of the survey was to narrow the range of options that the City might wish to subject to additional research. Based on data collected by the League of California Cities over the last decade, majority vote measures, similar to those under consideration, passed at roughly a 2-to-1 margin. Approximately 45 percent of measures requiring a two-thirds supermajority vote was passed. Generally, the strongest support had been for GO Bonds; although, they required a higher threshold of support for approval. FM3 conducted 600 interviews with randomly selected, likely voters in the City of Palo Alto in the middle of November 2013. FM3 strove

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to give equal weight to each of the five funding mechanisms tested in the survey. Essentially FM3 split the sample of 600 voters into five groups and then rotated the order in which each of the ballot measure concepts was presented. For each ballot measure concept, interviewers read language that was close to exact ballot language; asked respondents an open-ended question about why they would support or oppose a measure; posed follow-up questions that varied the structure of the measure in a few cases; and then tested pro and con arguments in each case to understand the fluidity of public support. The two measures that received the highest level of support when presented first in the sequence of measures were the TOT and the transportation bond. The bond would require two-thirds support, and it achieved that at 73 percent. The TOT could be put forward as either a general tax or a special tax, and it received support from roughly 4 of 5 voters, thus meeting either vote threshold. The public safety bond received majority support but fell short initially of the two-thirds vote required for approval. The sales tax increase received support as a majority vote but not as a two-thirds vote. The parking assessment through a CFD received support from only 45 percent of voters. The survey contained a margin of error of approximately 7 percent for each item when asked first in the rotation. FM3 treated undecided responses as if they would vote no. The degree to which support varied over the course of the survey was as important as the initial support for each measure. Generally support for measures tended to rise as voters heard the positive arguments and then drop after voters heard negative arguments. The TOT and transportation bond measures were most highly supported initially. Support then dropped somewhat after the positive arguments. Important to remember was that voters heard four alternative measures in addition to the positive arguments. Ultimately that did not change the overall assessment of the viability of measures for a TOT increase and a transportation bond. The CFD for parking started at 45 percent support, gained 10 points after the positive argument, but then lost 15 points after the negative arguments. Of the measures tested, three met the threshold required for approval after the positive arguments were presented, a TOT increase, a sales tax increase, and a transportation bond. The public safety bond fell within the margin of error for two-thirds approval. A measure to increase the TOT was viable. The level of initial support for a TOT increase was impressive, which was fairly standard in many communities as it taxed visitors rather than residents. 70 percent of respondents said they would support a TOT increase of 3 percent, and 77 percent would support a TOT increase of 2 percent. Substantively that was not terribly significant given the initial level of support. FM3 also tested pro and con arguments unique to the funding mechanism. Support decreased slightly after the positive message, because respondents heard four other potential funding mechanisms in the interim. Support dropped to 65 percent after respondents heard the negative

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message, but remained right around the two-thirds level required for approval especially if one factored in the 8 percent of undecided respondents.

Mayor Scharff inquired whether a 50 percent approval was required for a general tax.

Mr. Metz answered yes. The TOT could be a general or specific tax. Support for an increase in the TOT as a general tax was 15 points over the required majority. The next measure in the sequence was the transportation bond measure, which was also likely viable. Over the course of each survey, the level of support was right around the two-thirds level required for approval. Notable were the identical results obtained with detailed language presented as the first option and with the conceptual description tested in April 2013. FM3 tested pro and con arguments on the measure as well. In the opposition argument, interviewers specified the tax impact that the measure would have on a typical property owner, \$116 per year, as well as the aggregate cost when interest was factored in. Again support declined as interviewers presented additional measures and information. Support remained at the two-thirds level after the positive message and after the other measures were presented. After the negative message, support decreased to 61 percent. The level of fluidity in support was one factor that led FM3 to recommend additional research, given the different ways a transportation bond could be packaged. The third measure was a sales tax increase. FM3 also believed a sales tax increase was viable; although, the margins were closer. All variations of questions over the three surveys received majority support. In presenting findings from the April 2013 survey, FM3 noted the language used in the survey significantly understated the potential support. The current survey showed that with a more detailed description support reached the majority level required for approval. The level of support for a 1/4 percent increase in the sales tax was 52 percent. Reducing the increase to 1/8 percent resulted in a 9-point gain in support. That was a notable level of increase, and moved support from a slim majority to a more substantial majority. The intensity of support remained approximately the same with 1 in 5 voters indicating they would definitely vote yes. Support remained fairly steady at the 57 percent level when respondents heard the initial positive messaging; however, support dropped to 51 percent after the negative message. A sales tax measure may require more detailed exploration if the City chose to proceed with further research. FM3 assessed the public safety bond measure as not viable. In April 2013, conceptual support for a bond measure reached 68 percent. When interviewers did not mention a specific price point or specify that bonding would be the funding mechanism, support dropped to the low 60s in the current poll. There was no real difference in support if a public safety bond

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measure was mentioned first or later in the sequence of ballot measures. FM3 tested the concept of reducing the amount of the bond, noting that the reduction would lead to a lower cost to the City but that there might be other mechanisms found to finance the \$20 million increment. That change yielded roughly a 5 point increase in support to 69 percent, which reached the two-thirds level of support needed for approval. At the same time, however, the overall level of support remained soft at 19 percent. The level of support remained within the survey's margin of error for the two-thirds vote required for approval. Typically this structure provided a high-end estimate of the increase that might be gained by reducing that amount. FM3 was not confident a public safety bond measure would reach the two-thirds margin of support. That assessment was also borne out when reviewing respondents' reactions to pro and con arguments. After negative messaging, the level of support decreased to 55 percent, well below the two-thirds margin. When presented as the first in the series of measure concepts, the bond measure did not move over that two-thirds level of support. Until the Council developed a package containing more specific amount and costs, it was difficult to see the measure winning two-thirds voter support. The last option tested and the least viable option was a CFD to fund parking improvements in the City. FM3 did not test the mechanism specifically in prior surveys; although, it did test the idea of aggregate investments in parking garages in prior surveys. Overall the level of support for a CFD in each survey was shy of a majority, let alone the two-thirds supermajority required to approve the formation of a CFD. FM3 also tested a variety of price points, lower than the initial \$24 per year presented to respondents. While support increased by reducing the per household cost to \$9 per year, support remained at 55 percent, well short of the two-thirds required for supermajority approval. FM3 did test pro and con arguments on the CFD measure as well. The negative message had a significant impact in that it moved a majority support to a majority in opposition. When the concept was changed to using a CFD not only to fund parking garages but also to fund a variety of other forms of Transportation Demand Management (TDM), support rose to 64 percent, just short of the two-thirds supermajority level. Funding parking garages and additional services would likely require a tax impact higher than the levels tested in the prior question. Given all of that and the supermajority two-thirds requirement, FM3 did not believe the approach was viable at the current time. FM3's task was to report findings to the Council and then provide a recommendation. The TOT measure was clearly viable either as a special tax or general tax. FM3 did not believe additional research was needed for a TOT measure. FM3 recommend the CFD measure be set aside, and it did not merit further research. While the public safety building was clearly a major priority for the City's infrastructure improvements, the funding options tested in the survey suggested it was still well short of two-thirds support. While there may be an ability to reach two-

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thirds support, FM3 did not believe further research was merited until the Council determined a concrete plan for testing. Both a transportation bond and a sales tax increase seemed to have viability in the poll; however, they also showed highly fluid support. Given the different ways the measures could be constructed and the different kinds of information that could be provided to voters about impacts, FM3 felt additional research could be helpful. The survey did not test another ballot measure that the City was considering, a Utility Users Tax (UUT) modernization measure. Based on the fact that the vast majority of UUT measures won approval, FM3 did not test a UUT measure in the current survey. FM3 could certainly test it as context for other ballot measures if the City conducted an additional refinement survey. Placing multiple measures on a ballot at the same time could impact public support. Because a TOT increase was a distinct funding mechanism and seemed to have the most robust and durable support throughout the survey, it might bear having a second measure on the ballot at the same time. Support for the other four measures seemed to be fluid enough and seemed to decrease when voters heard them in the context of additional measures led FM3 to recommend that those measures only be placed on the ballot one at a time.

Sheila Tucker, Assistant to the City Manager, noted both a TOT measure and a sales tax measure could be structured as either a general or a special tax. For a general tax, the City could pass an expenditure plan that would state the intent for using those funds. Prior discussions covered total project costs of \$180 million, currently available resources, total expected ongoing revenues, and total potential ongoing rental revenues. Depending on Council action, Staff anticipated returning in January 2014 with a communication plan and strategy. If the Council wished, a Phase 2 survey could be conducted January 2014 with recommendations provided to the Infrastructure Committee and the Council in February 2014. Outreach could occur in March and April 2014. Staff anticipated mailing the first informational brochure in May 2014 and conducting a final tracking survey towards the end of May 2014. In June 2014, the Council could review the final survey results and make a final decision on whether to place a measure on the November 2014 ballot. If the Council chose to refer the item to the Infrastructure Committee, then the schedule would be delayed approximately one month, which would condense the time for communication and outreach. If the Council wished to proceed with additional work on a TOT measure, then no additional survey was recommended and Staff would begin developing a communication and outreach plan for a TOT measure. A final decision with respect to placing a measure on the November 2014 ballot would be made later in 2014. At some point, the Council would need to consider a 2 percent or 3 percent TOT increase. If the Council wished to conduct a follow-up survey on a sales tax

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increase and/or a GO Bond for transportation, then it would be conducted in January 2014. Staff requested direction regarding further information or areas of additional study.

Herb Borock encouraged the Council to obtain data necessary to make a decision regarding an amendment to the UUT. Residential users paid a flat 5 percent UUT while commercial users paid a tiered rate. A UUT ballot measure would not decrease support for a TOT measure.

Council Member Price referenced Mr. Metz's statement regarding placing only one measure on a ballot, in which case the Council needed to determine which of the measures to place on a ballot. She inquired whether current survey results could be utilized for a ballot measure in 2016.

Mr. Metz recommended the Council keep in mind that a TOT measure was the only measure that FM3 was confident would withstand being paired with another measure. If other measures were paired on a ballot, their support might decrease. The City had ballots planned for June and November 2014 and again in 2016. In terms of durability of data over a longer timeframe, the 2016 electorate would be very different from the electorate polled in 2013. Changes in political and economic circumstances between 2013 and 2016 could shift support. He would recommend subsequent polling if the Council decided to postpone a ballot measure to 2016. When FM3 compared survey results from 2013 with survey results from five years ago, the results were remarkably consistent.

Council Member Price assumed placing a measure on the June 2014 ballot was improbable given the timeline outlined by Staff.

Mr. Metz agreed. Given the relatively uncertain level of support for some of the measures, the higher voter turnout in November 2014 would probably be beneficial.

Council Member Berman felt the Council was on schedule with the original timeline of determining a ballot measure. He was happy to learn a public safety building received 69 percent support. Survey results for the transportation GO Bond and sales tax were good. He inquired about the potential level of support for a sales tax used for parking and transportation.

Mr. Metz explained that the funding mechanism mattered most if a measure required a two-thirds supermajority vote. There were only a few funding mechanisms, regardless of their use, that reached that level of support, with the possible exception of schools. TOT increases and GO Bonds tended to receive higher support and moved closer to the two-thirds level of support.

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A sales tax dedicated to transportation might poll higher than a general tax, but would probably be short of two-thirds support. The Council could propose a general sales tax, and then as a policy dedicate those funds to transportation. That would likely be appealing to the public.

Council Member Berman did not wish to propose a sales tax requiring two-thirds approval if it was not necessary. Residents would spend much less money on a 1/4 percent sales tax increase than on a GO Bond. Funds from a sales tax increase, a TOT tax increase, the Infrastructure Reserve, the Fiscal Year 2013 surplus, and Certificates of Participation (COP) would total \$142.5 million.

MOTION: Council Member Klein moved, seconded by Mayor Scharff that the City Council refer this item to the Infrastructure Committee.

Council Member Klein explained a Committee approach was appropriate for the complicated issue. The Council had not determined precisely which infrastructure projects to fund or their priority. The purpose of presenting survey results to the Council before the Infrastructure Committee was to receive Council comments to inform the Infrastructure Committee discussion. The Infrastructure Committee would then provide a recommendation or recommendations to the Council. Attempting to craft a proposal during a Council discussion would not be an effective use of time.

Mayor Scharff agreed that the number of variables such as pairing measures, determining the use of sales tax revenues, matching funds to projects, and polling on the interaction of measures would require an extensive amount of time.

Council Member Burt requested clarification regarding the pairing of an advisory measure with any general tax measure. He wanted to see that type of discussion.

Mayor Scharff indicated the Infrastructure Committee had not discussed that topic.

Council Member Burt encouraged Colleagues to provide input. With the proposed timeline, the Council did not have sufficient time to change Infrastructure Committee recommendations. He wished to communicate to the public that if a measure was proposed for infrastructure projects, then the Council would add an advisory measure and commit to doing that.

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the Infrastructure Committee would include an accompanying advisory measure explaining the use of the funds.

Council Member Burt did not believe a pairing of measures was central to survey questions. He assumed pairing two tax measures would have a significant impact on support.

Mr. Metz reported the only measure he was confident could withstand being paired with another measure was the TOT measure. If a ballot contained both a TOT measure and a second measure, then the TOT measure would probably be approved.

Council Member Burt inquired whether the survey included any questions that demonstrated the sensitivity to pairing.

Mr. Metz did not directly ask questions that invited respondents to consider two measures on a ballot at the same time. The decrease in support once respondents were aware of other options confirmed that the appeal of one measure on its own was likely greater than when paired with a second measure.

Council Member Burt felt the Council was aligned regarding placing two measures on the same ballot. He suggested the next survey provide details about pairing measures on one ballot.

Council Member Klein disagreed with Council Member Burt's suggestion as he was not persuaded that additional surveys were needed.

Council Member Burt was attempting to determine whether other Council Members were also concerned about the prospect of two measures being considered on the same ballot.

Council Member Klein stated once the Infrastructure Committee reviewed the matter, if it was determined two measures were to be placed on the same ballot he would be open to adding a provision they would immediately seek Council guidance.

Council Member Burt inquired whether Staff considered possible impacts of a 1/4 percent sales tax increase on any large sales tax generators.

Mr. Keene reported Staff had not performed any analysis regarding that issue.

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Council Member Burt wished to ensure that would be part of any sales tax consideration. He asked if Staff knew the amount of funds that would be collected if large utility users paid the same UUT rates as other users.

Joe Saccio, Assistant Director of Administrative Services, indicated the amount would probably be close to \$500,000.

Mr. Keene added that total UUT collections were approximately \$10 million annually; therefore, \$500,000 would be the likely change.

Council Member Burt noted the thresholds for those percentages were fixed on dollar amounts and did not contain an inflation escalator. Smaller companies were benefiting from the discount now more than when it was adopted. Because changing the UUT would require a vote, he was hesitant to add it to the discussion. He requested the Infrastructure Committee and Staff review that concept. At the prior Council meeting, he raised the issue of a future business license tax to fund a TDM Program. If pairing of tax measures was not feasible on a 2014 ballot, then prospective funding for a TDM would be postponed until 2016. He requested the Committee and Staff consider that issue as well.

Council Member Berman inquired about outreach to the business community regarding any of the proposed measures.

Ms. Tucker reported no outreach to the business community had been conducted. Staff anticipated beginning outreach in the early part of 2014.

Council Member Berman preferred to engage the business community prior to narrowing funding measures.

Mr. Keene believed hoteliers were aware of the TOT conversation. The issue of a possible sales tax increase was just now emerging.

Council Member Schmid requested clarification of why support decreased after respondents heard the positive message and further decreased after they heard the negative message. He assumed they would offset.

Mr. Metz explained that respondents were given the positive message along with the four alternative ballot measures between the first and second numbers. By the time interviewers reached the positive message, respondents were aware of alternative possibilities.

Council Member Schmid asked about the negative message.

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Mr. Metz indicated the negative message was designed to further drive down support. Nothing intervened between the positive and negative messages.

Council Member Schmid felt the negative message was more articulate than the positive message.

Mr. Keene agreed the negative aspect received more attention.

Council Member Schmid noted the pro and con arguments for the TOT included a description of services that would benefit from TOT revenue. He inquired whether revenue from a general tax could be utilized for COPs.

Mr. Keene was not aware of an issue with dedicating a revenue stream from a general tax to support COPs.

Mr. Saccio indicated any general tax revenue could be used for a COP.

Mr. Metz clarified that supporters of the measure might make that particular statement. The language used to describe a potential ballot measure was careful to state that "the measure would provide funding for general City services such as"

Council Member Schmid asked if the Council could vote to utilize proceeds of that tax for one specific capital investment.

Molly Stump, City Attorney, reported once a revenue was received into the City's general revenue for general municipal purposes, the Council had discretion to decide its use. COPs could be structured in a manner that allowed them to accept those general proceeds. Council Member Schmid's question concerned transparency in terms of ensuring ballot statements were straightforward.

Council Member Holman was not committed to a tax, but wanted to hear the Committee's comments. She was committed to a business registry. If a tax was the primary method to support a TDM program, she requested the Infrastructure Committee state that. She was concerned that the Council would have to accept the Infrastructure Committee's recommendation because of time constraints.

MOTION PASSED: 9-0

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9. Public Hearing: Recommendation from Policy and Services Committee for Council to Adopt an Ordinance for Electric Vehicles Supply Equipment Requirement for all New Single Family Residential Constructions.

Peter Pirnejad, Director of Development Services, reported the Policy and Services Committee (Committee) supported a policy to require installation of circuitry for Electric Vehicle (EV) charging in all new single-family home construction. The Committee discussion included estimated costs, the number of new homes constructed per year, and future review of the policy. In early 2014, Staff would present to the Council information regarding installation of EV charging in existing construction.

Jessica Sullivan, Parking Manager, indicated the Committee expressed concern about cars exceeding the time limit for utilizing EV charging stations. Signage for EV stations would be changed to clearly state the three-hour time limit.

Public Hearing opened at 9:20 P.M.

Sven Thesen stated the total cost of ownership for an EV was less than a conventional vehicle. Approximately 1.5 million EVs were anticipated to be in use by 2025. The San Diego city gas and electric utility had a pilot program with electric rates for charging EVs considerably lower during the night hours. The cost structure resulted in over 80 percent of the people charging their EVs during the night hours. Palo Alto's permitting fee for installing an EV charging station was \$249 while the permitting fee for a dryer outlet was \$5.

Council Member Burt asked if Mr. Thesen was stating the City's fee structure for the same 208 volt outlet was significantly less than for a dryer connection.

Mr. Thesen indicated the purchase of an EV included portable charging equipment which could be easily modified to utilize a 208v dryer outlet.

Richard Cassel supported adoption of the proposed Ordinance. Because raceways would cost more to install, the proposed Ordinance would discourage installation of EV charging stations. A 50 amp feeder would require installation of 200 amp service, which would use more electricity.

Stephanie Munoz suggested homeowners might prefer to install solar power sources rather than EV charging stations. In addition, installation of

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charging stations would incentivize use of vehicles rather than bikes or walking.

Public Hearing closed at 9:36 P.M.

Council Member Kniss noted the Committee discussed the raceway. If necessary the Ordinance could be amended regarding installation of a raceway.

MOTION: Council Member Kniss moved, seconded by Council Member Klein to adopt the Ordinance, along with the necessary findings to require that all new construction of single family housing install the necessary circuitry for EV chargers.

Molly Stump, City Attorney, reported the website linked to an older version of the proposed Ordinance. For public notice purposes, Staff wished to summarize the proposed Ordinance.

Albert Yang, Deputy City Attorney, indicated the correct proposed Ordinance required a 50 amp circuit and a raceway sufficient to accommodate a 100 amp circuit.

Council Member Kniss requested Staff review the requirement of a raceway.

Council Member Burt inquired whether the public should be allowed to speak regarding the correct proposed Ordinance.

Ms. Stump suggested the two versions were sufficiently similar not to require additional public comment.

Mayor Scharff would allow public speakers additional comment.

Sven Thesen preferred the Ordinance require a 240 volt wire rated at 100 amps, a panel rated at 50 amps, and installation of a receptacle, but not require a raceway.

Council Member Burt inquired about the process for revising the proposed Ordinance.

Ms. Stump explained that minor amendments could be presented at a second reading. In the packet for the second reading, the Clerk's Office would include a short report providing the changes and the new version of the Ordinance. If significant changes required additional public notice, she

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recommended the Council schedule a new first reading of the proposed Ordinance.

James Keene, City Manager, clarified that if Staff determined amendments should be made to the Ordinance after its adoption, then there would be a first and second reading of the amended Ordinance.

Council Member Burt wanted to understand whether the Ordinance would require 200 amp service to homes. He expressed concern about the permit fee amounts and attempts to streamline the permitting process.

Council Member Kniss felt the important aspect of the proposed Ordinance was the requirement for installation of EV charging stations in new construction and remodels.

Mr. Pirnejad noted the Ordinance addressed new construction only.

Council Member Kniss indicated Staff referenced tear-downs in their presentation.

Council Member Burt requested Staff provide an analysis of the circumstances, other than a complete tear-down, that would trigger an upgrade for EV wiring.

Mr. Pirnejad would provide that information.

SUBSTITUTE MOTION: Council Member Holman moved, seconded by Council Member XX to continue this item until the issues in question could be addressed.

SUBSTITUTE MOTION FAILED DUE TO THE LACK OF A SECOND

MOTION PASSED: 9-0

10. Public Hearing: Recommendation From the Policy and Services Committee to Adopt an Ordinance for Penalties on Expired Permit Enforcement for Residential Projects.

Peter Pirnejad, Director of Development Services, reported the Council directed Staff to prepare an Ordinance that would impose penalties and fines on expired permits. Staff incorporated Policy and Services Committee (Committee) recommendations and provided a proposed Ordinance that required all residential projects with expired permits be subject to potential fines and fees. Staff reported to the Committee that since 2003

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approximately 11 commercial projects were not completed. Residents had not complained about any of those commercial projects, and Staff did not believe action was necessary regarding commercial projects. The Building Code required the expiration of all building permits after 180 days, and provided the Chief Building Official with the ability to extend permits once and a second time only with consideration. Under the proposed Ordinance, the Chief Building Official could extend an expired permit three times before it moved to Council review. If fines exceeded \$10,000, then Staff would seek Council review and approval. After the permit had been expired for more than 31 days, the Chief Building Official had the right to impose fees up to \$200 per day. From the 61st day through the 120th day, the Chief Building Official had the right to impose fees up to \$400 per day. After the 121st day, fees would increase to \$800 per day. Language allowed the Chief Building Official flexibility regarding circumstances beyond the owner's control and contractor delays. Staff would utilize discretion to ensure that flexibility was not abused.

Albert Yang, Deputy City Attorney, indicated the correct version of the proposed Ordinance incorporated the direction of the Committee. Under Section 2 of the proposed Ordinance, the Chief Building Official was limited to granting three extensions of permits with additional extensions requiring Council review. In Section 3, the Chief Building Official was limited to waivers up to \$10,000 with larger waivers requiring Council review.

Public Hearing opened at 9:46 P.M.

Stephanie Munoz suggested the Council limit the amount of time in which residential projects could degrade. The need to renew a building permit was a disincentive.

Joe Hirsch provided pictures of a home that remained partially completed after approximately 8-10 years. The proposed Ordinance was needed for situations such as that.

Public Hearing closed at 9:52 P.M.

MOTION: Council Member Kniss moved, seconded by Council Member Holman to adopt the Ordinance, adopting penalties for maintenance of expired residential building permits.

Council Member Kniss noted the proposed Ordinance would impose time limits. The Committee discussed various circumstances which could delay construction. The intent of the proposed Ordinance was not to burden the property owner, but to protect surrounding property owners.

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Vice Mayor Shepherd did not believe the proposed Ordinance would apply retroactively. The proposed Ordinance would relieve neighbors of the need to push for completion of construction projects.

Council Member Price indicated incomplete construction projects were health and safety hazards.

MOTION PASSED: 9-0

11. Public Hearing: Council Review of an Appealed Architectural Review Approval of a Four Story, 15,000 s.f. Mixed Use Building Replacing a Two Story, 7,000 s.f. Commercial Building at 240 Hamilton, a CD-C(GF)(P) Zoned Parcel; Council Adoption of the Mitigated Negative Declaration and Approval of a Record of Land Use Action for the Project. (A related Variance for Encroachment Into Special Setbacks on Hamilton Avenue and Ramona Street Was Not Appealed) (Continued from November 12, 2013).

Hillary Gitelman, Director of Planning and Community Environment, reviewed Code sections regarding Context Based Design Criteria and compatibility. One basis of the appellant's appeal was the review process. A desire to re-examine the process was not a valid reason for upholding the appeal of a specific project. She requested an opportunity to respond to public comment regarding California Environmental Quality Act (CEQA) issues.

Jason Nortz, Planning Manager, reported the 240 Hamilton Avenue Project was originally approved by the Director of Planning in July 2013 and appealed in August 2013. The Project was a four-story, 50-foot, mixed-used building located at the corner of Hamilton Avenue and Ramona Street. The 15,000-square-foot building would replace an existing 7,000-square-foot building. The Project included ground floor retail, two floors of office space, and two residential units on the fourth floor. A recessed ground floor provided pedestrian friendly features. Parking was provided through a combination of four onsite spaces, Transfers of Development Rights (TDR), and in-lieu payments. Architectural Review Board (ARB) hearings were held in June and July 2013. The Planning Director granted approval on July 23, 2013. The Project was placed on the City Council's Consent Calendar on September 9, 2013. On December 5, 2013, the Council adopted a new Parking Ordinance, which eliminated two parking exemptions previously applied to the Project. Mr. Douglas Smith and 23 cosigners appealed based on three grounds: aesthetic quality and impact on nearby heritage buildings; Staff's analysis of parking requirements and the Project's

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contribution to parking deficiencies; and the review process. Staff and the ARB utilized Context Based Design Criteria and the Downtown Urban Design Guide to review projects. The existing building contained 7,000 square feet but provided no onsite parking spaces. Six parking spaces were located on the street. Twenty parking spaces were provided as part of the assessment. The Project provided 4 residential parking spaces, 11 parking spaces through in-lieu payments and TDR transfers, 20 assessed parking spaces, and 4 on-street parking spaces. Historic resources, including the Ramona Historic District, and non-historic resources were located near the Project. The Project replaced one non-historic building with another non-historic building.

Ms. Gitelman indicated the Code stated criteria for projects that were entitled to utilize the in-lieu parking fee within the District. Once a developer met the criteria, it was allowed to utilize the in-lieu fee. The Project met the criteria of site size.

Lee Lippert, Chair, Architectural Review Board, noted the ARB was composed of only three members during review of the Project. All of the seated ARB members recommended approval of the Project. The ARB made recommendations regarding the quality and character of development to the Director of Planning and Community Environment. The ARB utilized Context Based Design Criteria in reviewing compatibility of a building with the surrounding neighborhood. No ARB or City standard required a particular architectural style or limited new buildings to a particular architectural style. Context Based Design Criteria encouraged buildings of multiple stories on street corners.

Mayor Scharff inquired about the time limit for applicant comments.

Cara Silver, Senior Assistant City Attorney, reported Council protocols allowed 10 minutes for appellant comments and 3 minutes for appellant rebuttal. The applicant also received 10 minutes for comments. The appellant was allowed to make comments prior to the applicant.

Public Hearing opened at 10:15 P.M.

Douglas Smith indicated the fundamental question was orderly or haphazard development. He filed the appeal to interpret the vision found in the Comprehensive Plan and the Municipal Code. If the Comprehensive Plan and Municipal Code easily yielded opposing interpretations, then the Council must utilize its collective wisdom to clarify the vision. The Comprehensive Plan presented a vision to promote high quality creative design, and site planning compatible with surrounding development and public spaces. Compatibility should ensure architectural harmony. The word "area" in

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statutes applied to a section such as a neighborhood, rather than to adjacent structures. The Project incorporated huge expanses of glass unlike any building in the area worth emulating. The window layout did not mirror the punched windows on the Cardinal Hotel. The doors of the Project were indistinguishable and did not cater to pedestrians. The Project should be compatible with the Ramona Historic District. He polled 145 architects regarding the Project, and 56 percent thought the Project design was incompatible with historic neighbors. When combined with non-architect respondents, 75 percent believed the Project was incompatible. The current review process did not address issues of aesthetics until late in the process. He suggested changes to the design review process.

Mayor Scharff announced that appeal cosigners could speak as part of public comment or as part of the appellant's rebuttal.

Ken Hayes, Hayes Group Architects, stated the architectural goals of the Project were to create a building placed in the current time while respecting the past, to increase the height at the corner, to respond to the immediate context of the tree canopy and views, and to create a vibrant, highly visible frontage. The ARB unanimously approved the Project design at its second hearing. The Project was a high-quality modern design, responded to the needs of the time, was differentiated by style but was compatible to Downtown. Compatibility rather than style was the standard. Compatibility could be considered at urban, architectural, and historic levels. He explained elements of the Project, from sidewalks to rooflines and from architectural details to views, that provided compatibility on all three levels.

Council Member Berman disclosed that he met with the applicant.

Vice Mayor Shepherd disclosed that she met with Mr. Hayes and the applicant. She was exposed to the Downtown Urban Design Guide from 1994, which was provided to the Council.

Council Member Klein disclosed that he met with the applicant, Mr. Hayes, a few months previously. His office was located in the area of the Project; consequently, he was familiar with the neighborhood.

Council Member Schmid disclosed that he met with the applicant and reviewed material presented during the meeting.

Council Member Kniss disclosed that she met with the applicant regarding this Project and at other times.

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Council Member Holman disclosed that she held conversations with a few members of the public.

Council Member Price disclosed that she met with Mr. Hayes but did not receive any new information.

Mayor Scharff disclosed that he met with Mr. Smith, Mr. Elmore, Mr. Hayes, and the tenant.

Michael Hodos indicated the Project required 46 parking spaces; 20 of which were assessed, 20 were covered by TDRs, and 6 were covered by in-lieu payments. However, the Project would not provide 28 parking spaces.

John Lindon did not believe the large expanse of glass in the Project would enhance the area at night.

Judith Wasserman understood the appellant objected to the decisions and the makers of the decisions. The Comprehensive Plan and the Municipal Code did not favor traditional buildings.

Paula Shaviv supported denial of the appeal. The appeal was not legitimate under the current Municipal Code. The City's architectural design environment should be allowed to flourish, evolve, and inspire.

Kent Mather agreed with many community concerns regarding parking, zoning and building design. The appeal represented the appellant's opinions. He recommended the Council deny the appeal on the basis of aesthetics.

Robert Peterson supported the Project and the ARB's recommendation.

Poul J. Andersen stated the building was not compatible with the area, and interiors would be visible from the sidewalk.

Marion Odell expressed parking and traffic concerns.

Paul Karol indicated the office space in the Project would contribute to the parking problems in Downtown.

William Ross reported Staff noted that the procedures for parking computations changed on December 11, 2013; however, the Project description did not change. There was no supporting substantial evidence for the Traffic Intrusion to Residential Environment (TIRE) analysis in the

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initial study. The Mitigation Monitoring Plan was not circulated with the original proposed Negative Declaration.

Robert Moss did not support the TDR policy. Parking for the Project was grossly underestimated. The building was not well designed.

Paul Machado felt the Project was under-parked. The Project contributed to parking and traffic issues.

Chris Donlay supported the appeal and urged the Council to return the Project to the ARB and Staff for major revision. Findings for the Project were based on false data.

Arthur Liberman stated the Comprehensive Plan should inform land-use decisions, not justify them. Only elements of the Comprehensive Plan that supported the Project were addressed in the Staff Report. The cumulative assessment of traffic should also be addressed.

Rob Steinberg felt it would be a shame to limit architecture to its lowest common denominator.

E. Filseth provided photos of parking near his residence. On-street and illegal parking created traffic and safety problems.

Sally-Ann Rudd indicated the Project was inadequately parked, and the traffic analysis was inadequate. Development projects should be required to provide a cumulative traffic analysis.

Janice Berman remarked that people avoided Downtown because of the lack of parking. Downtown companies would eventually leave the area.

Richard Brand could accept retail space rather than office space in the Project. Office space would create more parking problems.

Tom DuBois shared personal observations regarding the review and notification process. The report was not objective. The Council should maximize opportunities for citizen participation.

Elaine Meyer did not believe the Project was compatible with the surrounding area. It appeared that the ARB deferred to the Project architect.

Alex Giovannotto as developer of the Project wished to transform a lifeless street corner into a lively and beautiful area. The Project was sized and proportioned for retail use.

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Dan Hattis favored the Project and was surprised by opposition to the Project. A beautiful, modern building could enhance the park.

Todd Simon felt the building was attractive and would complement the historical nature of the Cardinal Hotel.

Kristin Hayes liked the proposed building.

Ethan Gui felt the Project would be attractive to shoppers, office workers, and residents. He liked the proposed building.

Ashly Huntington indicated a town and its architecture should reflect its people. In Palo Alto, too much uniformity was alienating; whereas, diversity was unifying. A progressive building design supported those concepts.

Peter Giovannotto believed the Project widened the space and provided a sense of progress.

Doria Summa reported the Staff Report provided confusing information.

Jeff Levinsky clarified that the Project had space between the ceiling and roof, but no true mezzanine or office space. For the Project to be legal, it needed at least 1,327 square feet of grandfathered upper-stair space.

Martin Bernstein referenced the non-binding nature of the Urban Design Guidelines. Mimicking historical architectural styles was a weak, cultural response. Compatibility was based on texture, harmony, balance, rhythm, contract, proportion, and massing. The modernity of the Project completed the urban space around King Plaza.

Neilson Buchannan indicated the Project was one of several that outpaced the supply of parking spaces.

Joe Hirsch felt a sense of history in Palo Alto. The Project was a modern building that would not reflect history in 20-30 years. He supported the appeal and objected to the modern design of the Project.

Brad Ehikian remarked that the City identified and incentivized the preservation of historic properties. Non-historic buildings should not be subject to stringent, historical design criteria. Mr. Hayes designed a cutting-edge, high tech and beautiful building.

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Andrew Wong commented that the ARB did an excellent job of evaluating the compatibility requirements of the Project. The Project presented ground-floor retail in a modern and fresh way that would attract people to the City.

Mr. Smith stated architects seemed to have gained control of the review process; therefore, they knew how to obtain approval of abstract designs. Mr. Hayes did not appear to recognize the character difference between arched recesses and abstract recesses. Staff Reports and ARB deliberations did not support the findings of quality and compatibility with an objective rationale. Compatibility and high quality must be clarified by the City Council. Ignoring or misunderstanding those terms led to a long stream of controversial projects.

Mr. Hayes noted that parking issues were debated and decisions made on October 21, 2013. The Project complied with the new rules resulting from the October 21, 2013 meeting. Diversity of architectural styles provided the City with life. Palo Alto was recognized for its entrepreneurial environment, innovation, technology, and environmental concerns. Historic styles should not be enthroned in the architectural future.

Public Hearing closed at 11:29 P.M.

MOTION: Council Member Kniss moved, seconded by Council Member Klein that Council take the following actions: 1) adopt the Mitigated Negative Declaration and Mitigation and Monitoring Report for the project; and 2) deny the appeal of the Director's Decision and adopt the attached Record of Land Use Action approving the Architectural Review of the project with revised approval conditions to reflect Council's adoption of an interim Ordinance eliminating certain parking exemptions.

Council Member Kniss felt the heart of the issue was design. Younger adults appeared to be enthusiastic about the Downtown area. The City made decisions to have diversity.

Council Member Klein inquired whether the issue of parking was a part of the Agenda Item.

Ms. Silver answered no. The only issue subject to the appeal was the architectural review discretionary decision. Parking issues were not appealed and were not subject to the decision.

James Keene, City Manager, clarified that the Council contemplated parking in other contexts.

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Council Member Klein recalled Mr. Ross objected to the City's process, and requested the City Attorney comment on Mr. Ross' objections.

Ms. Silver did not believe the claim of insufficient findings was legally viable. Mr. Ross referred to the variance issued at a Planning Director level. The variance was not subject to the appeal and was not a legitimate claim. With respect to CEQA, Mr. Ross stated that there was not a description of potential subdivisions that could occur in the Project. Staff believed that the project description was adequate. A court decision stated a project description needed to inform the public of the general parameters of the overall project. Staff did not agree with Mr. Ross' contention that construction impacts were not identified in the Mitigated Negative Declaration (MND). The MND found that there would be no construction impacts given the City's standard mitigations for construction. He also talked about the cumulative impact of other projects. That cumulative impact was analyzed in the overall Comprehensive Plan Environmental Impact Report (EIR). The cumulative impact remained within the cap outlined in the Comprehensive Plan EIR. Staff did not believe that would be a legitimate claim either. Staff also disagreed with Mr. Ross' argument related to general plan consistency. The Record of Land Use Action found that the Project was consistent with the Comprehensive Plan. With respect to his procedural argument, the Council's protocols gave the Chair the ability to shorten public comment on items. Staff did not believe that was a legitimate comment as the appellant was given a full 10 minutes along with the ability to allocate time within the overall group. He also raised the issue of the project description not including additional parking fees that would be paid as a result of the Project. That did not need to be included in the project description. Finally Mr. Ross raised the issue that the MND did not measure the TIRE index. The MND addressed the TIRE index in the traffic impact section and stated that the TIRE Index was not triggered under the traffic analysis.

Ms. Gitelman added that parking was a policy issue and not an issue within the CEQA context. The MND made that very clear in its discussion of parking.

Council Member Klein understood that parking was not a legitimate concern for the Council at the current time.

Ms. Silver reiterated that parking was not an issue in terms of the number of spaces and architectural review. Ms. Gitelman mentioned parking in terms of the CEQA context. Under CEQA, parking was generally not considered an environmental impact, except to the extent that an under-parked project

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could create additional circulation thus creating additional greenhouse gas impacts. Staff did not believe the deficit of parking spaces rose to the level of an environmental impact.

Council Member Klein recalled three instances of architecture affecting him both positively and negatively. Palo Alto's image was cutting edge, innovative, and high tech. Downtown should reflect that image. Buildings adjacent to the Project were modern. The Project reflected the present time and culture of Palo Alto.

Council Member Price felt strongly that Palo Alto was known for innovation and creativity while being a city of diverse architectural styles. The views of aesthetics, art, and architecture were varied. The Project was well designed and provided the anchor to the street corner. Design elements were consistent with the Context Based Design Criteria and the Downtown Urban Design Guide. It was important to support a variety of architectural expression.

Council Member Holman requested Staff respond to her questions regarding the Record of Land Use Action.

Ms. Gitelman reported the size of the existing building was 5,000 square feet plus the 2,000 square foot mezzanine. Staff believed the mezzanine was built legally prior to August 28, 1986. It was not a grandfathered use but a grandfathered facility according to Section 18.18.120 of the Municipal Code. Replacement of the floor area was allowed.

Council Member Holman asked why the Project did not have 5,000 square feet of residential space if the mezzanine was not a grandfathered use.

Ms. Gitelman indicated that the mezzanine was a grandfathered facility; therefore, it was permitted to exist, to be counted, and to be replaced.

Council Member Holman inquired about the reason for allowing more Floor Area Ratio (FAR) in non-residential spaces than allowed by Code if the mezzanine was not a grandfathered use.

Aaron Akin, Assistant Director of Planning and Community Environment, explained that a grandfathered facility allowed a certain amount of commercial space. The addition of TDRs allowed an additional amount of commercial space.

Council Member Holman was not questioning TDRs. The Code allowed 5,000 square feet of non-residential space and 5,000 square feet of residential

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space. She questioned the reasons for allowing less than 5,000 square feet of residential space when the 2,000-square-foot mezzanine was not a grandfathered use.

Mr. Aknin requested additional clarification of the question.

Council Member Holman reiterated that the Code allowed 5,000 square feet of residential space and 5,000 square feet of non-residential space. The Project proposed approximately 3,400 square feet of residential space with remaining square footage allocated to commercial space. That was inconsistent with Code allowances. The use was not grandfathered, while the FAR was grandfathered. The Code and findings discussed compatibility. The criteria for compatibility were stated in the Code regarding the South of Forest Area (SOFA) II and the Downtown Urban Design Guide. When new construction shared general characteristics and established design linkages with the area, then it met the requirements for compatibility. The windows of the Project did not establish design linkages with buildings across the street. Finding Number 2 did not reference design compatibility. Finding Number 4 did not reference the design of the building. Finding Number 6 was a circuitous argument. Those findings were not adequate for approval of the Project.

Mr. Aknin explained that a TDR allowed the transfer of up to 1.0 FAR above that existing on the site. Since 7,000 square feet currently existed on a 5,000-square-foot lot, 12,000 square feet of commercial space was allowed on the site. The Project proposed 11,527 square feet of commercial space. The Project was allowed up to 3.0 FAR by having about 3,500 square feet of residential floor area on top of that.

Council Member Holman noted the applicant's use of a TDR for 4,327 square feet and a TDR parking exemption for 5,000 square feet. She asked how the applicant could use more parking exemptions than TDRs for the square footage.

Mr. Aknin clarified that the applicant currently would apply the entire 5,000 square feet on both the FAR and the parking.

Council Member Holman again requested clarification regarding the reason for allowing the applicant to utilize less residential space than was required by Code.

Mr. Aknin indicated that the base FAR was determined by the amount of space grandfathered in. At the current time, the Project proposed 7,000 square feet of grandfathered commercial space on a 5,000-square-foot lot.

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Council Member Holman stated the Director reiterated that the 2,000-square-foot mezzanine was not a grandfathered use.

Mr. Aknin noted the Project was a grandfathered facility of 7,000 square feet. The transfer of TDRs allowed an additional 5,000 square feet to reach the 12,000-square-foot cap.

Council Member Holman stated the consideration given historic buildings in terms of Area Potential Effect (APE) was inadequate. She strongly supported compatibility and consideration of historic buildings in the historic context. Differentiation standards did not require a proposed building be the exact opposite of adjacent buildings with respect to architectural style. She met long ago with Mr. Smith, but not about the Project.

SUBSTITUTE MOTION: Council Member Holman moved, seconded by Council Member Schmid that Council uphold the appeal due to not making the Architectural Review Board (ARB) findings.

Council Member Schmid understood parking, the mezzanine, and a variance were not subject to the appeal. However, the variance request was a discretionary decision that provided him with the discretion to discuss design compatibility. Ramona Street had a unified feel, look, and design characteristic. The Project did not fit that design characteristic.

Council Member Burt believed the Council's discussion should focus on whether the Project met findings including compliance with the Comprehensive Plan and Downtown Urban Design Guide. The most compelling case was made by Mr. Hayes' presentation on a number of the compatible projects built in Downtown. They were examples of the type of exceptional and compatible designs the community wanted in Downtown. However, he could not find compatibility in the Project. The buildings cited by the architect were three-story buildings and not glass-walled buildings. He could not find compatibility between the Project and adjacent buildings. The size, mass, and scale of the Project did not balance with the other prominent buildings on corners. The materials and predominance of glass were also inappropriate. He encouraged colleagues to consider the Council's obligations to review architectural findings.

Vice Mayor Shepherd reviewed the Downtown Urban Design Guide and understood they were not policies. Per the Guide, the building was flagged as a specific building or area that should be taller to create outdoor space. The Project was taller. The Guide called for a corner ground floor building to maintain zero setback lines. The first floor of the Project was pulled away

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from the setback to allow more sidewalk space, which complied with the Council's wishes. Compatibility did not mean the Project had to be traditional. She questioned whether the Council should discuss the concept of holding to certain square footage on a site. She preferred a more diverse design of modern buildings in Downtown.

Council Member Berman noted the appeal allowed the Council to update parking exemptions and apply them to the Project. New buildings did not need to look as though they were constructed in 1940. The site of the Project was a tricky location. The Project had some compatible features with other buildings. Increasing the width of sidewalks would make the site a more pleasurable pedestrian experience.

SUBSTITUTE MOTION FAILED: 3-6 Burt, Holman, Schmid yes

MOTION PASSED: 6-3 Burt, Holman, Schmid no

MOTION: Council Member Burt moved, seconded by Council Member Berman to continue Agenda Item Number 12 to December 16, 2013.

~~12. Council Discussion and Direction to Staff Regarding the 567-595 Maybell Avenue Site.~~

MOTION PASSED: 9-0

ADJOURNMENT: The meeting was adjourned at 12:28 A.M. in honor of Nelson Mandela.