



CITY OF PALO ALTO CITY COUNCIL FINAL MINUTES

Regular Meeting
October 6, 2014

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

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

Absent: Klein

Mayor Shepherd announced the upcoming retirement of Donna Grider, City Clerk, in November 2014.

Donna Grider, City Clerk, was privileged to have worked with the City Council and public.

Mayor Shepherd thanked Ms. Grider for her service to the City.

STUDY SESSION

1. City Council Study Session with Senator Jerry Hill.

Mayor Shepherd thanked Senator Hill for authoring Senate Bill (SB) 1064 regarding rail transportation of oil, and for supporting SB 270 prohibiting single-use plastic bags at retail locations and Assembly Bill (AB) 1014, AB 1594, AB 1826, AB 2328, AB 2577, and SB 1014. Senator Hill was responsive to the interests of Palo Alto.

Senator Jerry Hill was pleased the Governor signed into law SB 270. The City's advocacy and activism were appreciated in Sacramento. The State completed the prior fiscal year with approximately \$4 billion in excess of expenditures. Senator Pavley's bill placed limitations and requirements on fracking in California. Rail transportation of oil to the Bay area was a concern. SB 1064 required more oversight and disclosure of trains carrying oil. First responders could not adequately respond to a train derailment that involved oil. In the upcoming year, he wished to create funding to assist first responders with handling train derailments. He was disappointed by the Governor's veto of three bills that would have increased transparency of, provided greater oversight of, and implemented more restrictions on the use of campaign funds. His office had contacted the State Water Board in

MINUTES

relation to the City's difficulty in obtaining permits for the Golf Course Reconfiguration Project. The problem should be solved through the State Water Board or legislatively.

Richard Brand was concerned by the Metropolitan Transportation Commission's (MTC) reallocation of Dumbarton rail funds to San Jose. He requested Senator Hill work on returning those funds to Dumbarton rail and proceeding with the project.

Senator Hill was also concerned by the reallocation of those funds. He had been waiting for Dumbarton rail to be the link across the Bay. He had a meeting scheduled with the Director of MTC on this topic and others.

Aram James inquired about Senator Hill's position on Initiative 47. He read headlines regarding Senator Hill's jail bill for San Mateo County. He did not support expansion of the State's prison-industrial complex. Funds should be allocated to universities, medical care, drug rehabilitation, and other human needs.

Senator Hill supported Initiative 47. Jail construction in San Mateo County was related to a new women's jail. The current jail was in deplorable condition. The purpose of the new jail was to rehabilitate inmates.

Elizabeth Alexis, Californians Advocating Responsible Rail Design (CARRD), appreciated Senator Hill's support for access to public records. Caltrain provided a worthwhile service to communities and offered incredible possibilities.

Adina Levin, Friends of Caltrain, advised that Caltrain leadership would need to elevate commute service to transit service, to integrate train service with other transit services in the region, and to establish stable funding. Those criteria were critical in the next generation of Caltrain leadership.

Sea Reddy questioned the need for airplane flight paths over Palo Alto. He requested Senator Hill's aid with the issue. He suggested temporary shelters for the homeless be opened in unrented commercial space.

Thida Corns could use only Caltrain during a recent period of disability. Public transit services needed better integration. Caltrain services were good, but could be better. All modes of public transportation should be affordable for the poor.

Roland LeBrun suggested Senator Hill introduce legislation to mandate uniform platform heights and reintroduce legislation to mandate searchable PDF documents held by any public agency.

MINUTES

Vice Mayor Kniss requested Senator Hill comment on the economic turnaround of the State from 2010 to 2014.

Senator Hill reported the Assembly in 2008 cut \$28 billion from the budget approved in June 2008. The State now had a \$4 billion surplus. The Governor recognized the cyclical nature of the economy and supported instituting a Rainy Day Fund which would include some funds from capital gains. The Governor's budgets had been restrained in spending levels. New legislative term limits and an open primary would make a difference in future governance of the State.

Council Member Schmid thanked Senator Hill for his work on SB 498 regarding conversion technologies. That legislation would have a positive, long-term effect on sustainability. SB 375 shifted the housing mandate model from population growth to job growth. As a result of that and Proposition 13, the share of property taxes paid by commercial enterprises declined 1 percent annually. SB 375 incentivized and spent money on the richest areas with the least affordable homes. He requested Senator Hill follow those issues of concern.

Senator Hill advised that a coalition of commercial property owners supported legislation to review corporate transfers of property and to include modifications in the Proposition 13 reassessment. However, that legislation failed. A ballot measure to substantially alter Proposition 13 was not likely. It was important to educate the public about the costs of Proposition 13.

Council Member Schmid asked if the Legislature had the ability to change the definition of exchange of property without having a ballot measure.

Senator Hill indicated the Legislature could clarify the definition, but he was unsure whether the Legislature could change the actual definition. He would check on that possibility.

Council Member Burt recalled Assembly Member Gordon expressing an interest in convening a subregional dialog regarding commercial and residential growth. A mid to south Peninsula discussion could be valuable in reviewing issues.

Senator Hill felt it was vitally important for cities to consider the effects of the law and opportunities to change the law. He would be happy to work with Assembly Member Gordon.

Council Member Burt believed Caltrain was becoming a crucial backbone for the entire Peninsula. He understood San Mateo County would select the next CEO for Caltrain. This was a great opportunity to review both the

MINUTES

governance and administration of Caltrain. Caltrain had grown too large for one person to manage it and SamTrans and San Mateo County Transit Authority. He proposed a dialog regarding changes to Caltrain administration and governance.

Senator Hill agreed a discussion would be timely with the retirement of Caltrain's CEO. The original contract specified that Caltrain management would be left to the County of San Mateo until the County of San Francisco and Santa Clara Valley Transportation Authority (VTA) paid their portions of the purchase price. The payments had been made; therefore, the point was now moot. He had not heard that either VTA or the County of San Francisco was interested in taking over management and operation of Caltrain. Perhaps a dialog could begin with VTA and then the County of San Francisco.

Council Member Burt suggested an independent agency spanning all three counties could be formed to operate Caltrain.

Senator Hill advised that funding was an issue for Caltrain. Caltrain could better support one-third of a CEO's salary than all of it.

Council Member Scharff believed the existing governance of Caltrain lacked transparency and public input. He suggested the Caltrain Board be structured in a manner similar to the Bay Area Rapid Transit (BART) Board. Funding was another critical issue for Caltrain.

Senator Hill agreed a conversation about changes to Caltrain governance would be good. Most joint power authorities did not have direct accountability. The Caltrain Board was comprised of three members appointed by each county, a professional member, a Metropolitan Transportation Commission (MTC) representative, and an advisory member.

Council Member Holman indicated that much of the dialog regarding housing mandates concerned methodologies and assignments. Lost housing units were not tracked, and there was no incentive to track or conserve lost housing units. The threshold for counting at-risk units was exceedingly high. Density Bonus Law concessions allowed development of additional office space that exacerbated problems. Housing mandates were not concerned with creating housing. She inquired whether there was any interest in addressing the basic premises of housing mandate numbers.

Senator Hill explained that the Legislature had to create a one-size-fits-all program. Housing mandates had not been refined to address specific issues. Legislators needed to hear issues from constituents regularly.

MINUTES

Council Member Holman felt there would be more appreciation of attempts to accommodate housing if some basic premises were more rational.

Council Member Price understood the Capitol Corridor rail line was a regional transportation corridor while the Caltrain Corridor was a commuter corridor. The Capitol Corridor received some State funding because of that designation. She suggested the Capitol Corridor's funding model or a similar one be considered for the Caltrain Corridor.

Senator Hill was not aware of the regional and commuter corridor designations. The distinction could be related to freight trains' use of the corridor. With Cap and Trade Funds allocated to transportation and High Speed Rail (HSR), resources would be focused on regional areas served by HSR and regional rail. If HSR utilized the Caltrain Corridor, then the Caltrain Corridor had to be successful and safe.

Council Member Price advised that land costs were a driving factor in the development of housing. Local governments were being asked to identify possible resources to support affordable housing. Local governments could not increase the number of affordable housing units without partnerships and recognition of the urgency of the issue.

Senator Hill reported the demise of redevelopment resulted in Legislators attempting to craft some type of housing assistance for local governments as well as plans to reinstate a form of redevelopment. Efforts to create funding for housing were stalled by questions regarding a funding source. The new Speaker of the Assembly included affordable housing and homelessness in her priorities.

Council Member Price asked if Senator Hill had an action plan to address the San Francisquito Creek and Golf Course issues.

Senator Hill believed there was a plan to resolve issues after meeting with the State Water Board months ago. However, Water Board actions subsequent to the meeting changed the issues. He would review the Water Board's responses to the Joint Power Authority's additional submissions and consider whether more aggressive actions were needed. The Senate's Environmental Quality Committee recently moved oversight of water quality issues from the Public Health Department to the Water Board. Industry and agricultural entities protested that move because of their experiences with the Water Board. The Committee could reverse its action if the Water Board did not make changes.

Council Member Berman appreciated Senator Hill's engagement with the City regarding the Water Board. Now was an opportune time to create

MINUTES

improvements and reforms to the housing mandate system. The County of San Mateo created a San Mateo County Subregion as an alternative model. He inquired whether Senator Hill had been involved in creating the subregion or if he had any thoughts on the pros and cons of a subregion.

Senator Hill was involved with the creation of the subregion; however, he was not aware of its successes or failures. A subregion model could work in Santa Clara County. He would provide information to the Council regarding the San Mateo County Subregion.

Mayor Shepherd expressed concern that the Density Bonus Law allowed low-income housing to convert to market-rate housing after 30 years. She asked if the law could be changed to require a local jurisdiction's approval of conversion.

Senator Hill indicated all legislation was a matter of compromise. That provision of the Density Bonus Law allowed developers to recoup losses incurred during the 30-year period. It was possible for that to be a local government issue. Local jurisdictions did not want to lose affordable housing stock.

Mayor Shepherd felt local jurisdictions should have more control. She encouraged a change in governance for and dedicated funding to Caltrain.

Senator Hill recalled two years ago he authored legislation that would allow the Joint Powers Authority (JPA) to place a tax measure to fund Caltrain on the ballot. However, the time was not right for that legislation. Caltrain funding and governance needed to be addressed.

2. Planned Community (PC) Zoning Reform.

Mayor Shepherd reviewed the history of Planned Community (PC) Zoning.

Hillary Gitelman, Planning and Community Environment Director, wished to obtain comments from the Council, the public, and the Planning and Transportation Commission (P&TC) prior to drafting an Ordinance.

Consuelo Hernandez, Senior Planner, reported the Council had approved approximately 100 different PC Ordinances. The process allowed the City to be responsive to opportunities and to address proactively community objectives related to land use. The public expressed concerns regarding the ad hoc nature of each PC and the inadequacy of public benefits and monitoring of public benefits. Staff compiled prior analyses; formulated alternatives to the PC process; and provided a table outlining PCs approved or amended in the prior 20 years and a summary of P&TC discussions. The

MINUTES

P&TC identified eight ideas or issues related to PC Zoning. The PC Zoning Ordinance did not include a definition of public benefits, which was needed. The P&TC discussed regulations providing explicit monitoring and enforcement in addition to current Planning Department actions and the types of projects that should be handled via a development agreement or a precise plan. Other communities identified geographic areas where PC Zoning was adequate. Perhaps the City could outline specific areas through the Comprehensive Plan. Regulations could be updated to reflect some type of cap on the variation from the underlying Zoning District, such as a maximum height exemption of 5 feet or a maximum density or a minimum setback. Staff offered two choices for PC reform. The Council could revise the existing Ordinance to address concerns raised by the public and the P&TC or eliminate the use of PC Zoning for new projects and adopt another approach effective for affordable housing. Approximately 1,000 affordable housing units had been developed as a result of PC Zoning. Staff would return with a draft Ordinance for review by the P&TC and the Council.

Aram James was concerned by the secrecy and tradeoffs that occurred in the PC process. He wanted to know what happened during the secret planning negotiations regarding the 27 University Project and the number of Council Members who participated in those secret negotiations. He hoped voters would be fully informed regarding the participation level of Mayor Shepherd and Council Members Scharff and Holman.

Fred Balin referred to the third bullet regarding PCs being consistent with the Comprehensive Plan. The word consistent was not used in the definition of a PC. As a Charter City, Palo Alto's Comprehensive Plan was not legally required to be consistent with zoning. Including "consistent" would eliminate many development agreements and PCs. Council Members should clearly state their intentions for PC Zoning so that Staff could draft an appropriate Ordinance.

Robert Moss reported no penalty had ever been assessed when the developer or the owner of a project failed to comply with a public benefit. Staff needed to enforce public benefits and fine the property owner or developer if they failed to comply. PCs should be prohibited in all residential zones. No developer had quantified the private benefit of a PC. A PC Ordinance should include specific limits on a PC's deviation from standard zoning.

Herb Borock believed the Council should eliminate PC Zone Districts. The Zoning Code would need to retain language that enabled minor changes to an existing PC's development plan or changes in its development schedule

MINUTES

and provisions for inspections. The record demonstrated that PCs were simply a way for Councils to make deals.

Stephanie Munoz believed in the pure concept of a PC Zone. PC Zones should apply to property that was once considered common but was now considered precious.

Sea Reddy agreed with Ms. Munoz's comments. The PC Zone process was appropriate. The Council should question the intent of developers who proposed PC Zones.

Council Member Schmid recalled that the 101 Lytton Project resulted in considerable interest in major PCs or projects proposing tradeoffs. One of the benefits of a PC was affordable housing; yet, PCs had provided only 1,000 affordable units since 1952. Between 2003 and 2007, PCs provided 238 affordable units, and between 2008 and 2014 83 affordable units. PCs were not providing the City with affordable housing. PCs should be connected to the Comprehensive Plan. A hard, quantitative limit on the amount of future growth would increase the value of PCs. If the Council wished to wisely reform PC Zoning, it needed to know the amount of future growth. With respect to valuing benefits, the value of housing could be based on sales price and the value of commercial space could be based on rental rates. Public benefits should be innovative and help the community. The City, rather than the developer, should initiate the public benefit. The Council as the responsible body should be in charge of PCs. The Code for development agreements required an annual report. PCs should also provide reports annually.

Council Member Holman asked if development agreements usually contained a life of 20 or 30 years.

Ms. Gitelman responded they usually set a term.

Council Member Holman felt it was important for the public to understand that development agreements contained a set term. In her opinion, the most successful PC projects began with the public benefit. Any future PC should begin with the public benefit. She supported retaining PC Zoning because it could be used to great effect. However, PC Zoning should be used rarely and should commence with the public benefit. She concurred with enforcement issues. Language in PC Ordinances should not be self-conflicting. As a public speaker commented, public benefits were not fees typically associated with development and not uses ordinarily allowed by zoning. In determining the economic value of a public benefit, independent contractors should perform the economic and environmental analyses. She referred to Packet Page 34, (c) under "Required determinations." Any

MINUTES

Ordinance change should clearly state that the Comprehensive Plan could not be changed so that the project was consistent with the Comprehensive Plan. The Council should clarify that preliminary review of PC projects was conceptual. Without PCs, the City could not accomplish affordable housing projects. An affordable housing overlay was possible in the future; however, that was a lengthy process. Public benefits should be based on good planning practices rather than a tenant. Future PC Ordinances should state annual inspections would be conducted at the expense of the owner. The Planning Director and City Attorney should determine penalties for nonconformance. It was important to provide examples of public benefits. Perhaps the list could be based on a needs assessment and updated every five years. Council protocols strongly discouraged private discussions. A preliminary review of projects would be more consistent with existing ex parte communications procedures and protocols. She was disturbed to see variances and Design Enhancement Exceptions (DEE) included in techniques to achieve the objectives of PC Zoning. Placing variances and DEEs in the same context as PCs was troubling as variances and DEEs were minor adjustments to zoning. She did not support identifying potential locations for PCs. If the Council wanted affordable housing to be compatible with the surrounding community, then the Council could not limit the locations of those projects. When a project was under review, anything that would impede a public benefit had to be identified and addressed.

Council Member Burt concurred with needing a better definition of public benefits and a clearer process, and with disclosure of ex parte communications. He was interested in having an economic analysis of the proposed benefit and the value of the requested entitlement; however, a complex discussion of the issue was needed. He was not convinced that the cost of a benefit correlated to the value of the benefit. It was important for a preliminary review to be conceptual. With respect to the responsible body, the Council should provide guidance after being informed by the P&TC's preliminary conceptual discussion of a project. He requested additional detail for that. Enhanced monitoring and enforcement were crucial components and had to build in consequences of noncompliance. Development agreements and precise plans had value. More precise plans or specific plans likely would reduce the number of PCs. He was interested in reviewing proposed specific locations for PC Zones. He agreed with Council Member Schmid's comments regarding boundaries of future growth informing areas for PCs. He wished to review and understand proposals for caps in the degree of variation before making a decision. A PC should not initiate a change in the Comprehensive Plan in order to be consistent with the Comprehensive Plan. Given the high percentage of PC projects that provided 100 percent affordable housing, PCs had been crucial to providing affordable housing in the community. He requested Staff provide the

MINUTES

portion of affordable housing projects located in residential areas. He requested Staff determine the impacts of Density Bonus Law concessions on existing 100 percent affordable housing projects had those projects been proposed under the Density Bonus Law. He was not sure it was wise to eliminate PC Zones. Proposed changes were the most substantive in the past 50 years and would likely improve the process drastically. The proposals were moderately complex solutions that made sense.

Vice Mayor Kniss felt the Council wanted to reform PC Zoning rather than eliminate it. The most compelling argument for PC Zoning was affordable housing. The Opportunity Center was a dramatic example of a PC providing housing and services. A better definition of public benefits was needed. As circumstances changed over time, the types of public benefits would also change. An independent economic analysis was needed to determine whether a benefit was provided and whether the City received the stated value. Previous Council Members addressed the need for enhanced monitoring and the use of development agreements or precise plans. The Council should not identify areas for PC Zoning as future needs were unknown. She wished to review proposals for capping the degree of variation before making a decision. The PC process needed some amendments. She inquired whether the Council was providing adequate input for Staff.

Ms. Gitelman heard a growing consensus among Council Members. The Council's input was helpful, and Staff could capture most comments in an Ordinance.

Council Member Berman agreed with virtually all previous Council Member comments. The need for enhanced monitoring and enforcement should proceed ahead of other items, because it applied to existing PCs. A developer would have to offer an extremely valuable public benefit for him to support a project that increased office space. A great deal of office space could be constructed under existing zoning. He was interested in Council Member Burt's request for information regarding the impact of the Density Bonus Law on existing affordable housing projects. Affordable and below-market-rate housing were reasons for not eliminating PC Zoning. Buena Vista Mobile Home Park contained 4.5 acres and 117 housing units and was zoned RM-15. Under the Density Bonus Law, the site could provide 92 units of housing, 25 units less than existing units. Without the PC process, the site could not maintain the existing number of housing units under a different owner.

Council Member Price favored revision of the PC process. The City needed to engage in more successful negotiations and be more assertive regarding the

MINUTES

goals of any PC. She concurred with many Council Member comments. She supported having an economic analysis. A template for necessary information would be helpful for the developer. With respect to enforcement and monitoring, additional funding would be needed to support increased monitoring. A menu of possible public benefits would be helpful, but it should be flexible. She favored precise plans and specific plans. She did not favor designating them in the Comprehensive Plan at the current time. Infrastructure needs, human needs assessments, and community needs assessments could inform a definition of public benefits. She did favor including a monetary payment as a public benefit but only in specific situations. She questioned whether a nexus relating to benefits occurring on the parcel or off the parcel could be defined and detailed in the PC Ordinance.

Ms. Gitelman reported the P&TC discussed the issue. Monetizing public benefits raised the issue of nexus. In drafting the Ordinance, Staff could include the concept in the list of potential public benefits or the definition of public benefits.

Council Member Price advised that monitoring reports could replicate mitigation monitoring reports. As a tool, PC Zones were critical for economic development.

Council Member Scharff defined a PC as the City providing specific zoning in exchange for a particular group of public benefits. The question was the definition of public benefits. Existing PCs provided few public benefits that the community wanted, aside from affordable housing. The community liked the soccer fields on Page Mill Road; however, they were provided through a development agreement. The concept of a standalone affordable housing project without PC Zoning seemed to be nonexistent. The new Density Bonus Law seemed to indicate PC Zoning was not needed to provide affordable housing. He questioned the need for a PC process when specific plans worked well and were community based. He did not see the benefits of or the need for the PC process. A specific plan process would be better than a PC process. The PC process gave the impression of selling zoning, which the community did not support. The current PC process should be eliminated, and a new process developed that accomplished goals set with community input.

Mayor Shepherd did not feel the proposals were sufficiently simple. The list of PC projects did not reflect community desires for those projects or the efforts involved in negotiating benefits. The application left in the pipeline when the PC moratorium was adopted offered a right-turn lane onto El

MINUTES

Camino Real at Page Mill Road as a public benefit. She asked if the project could be accomplished without a PC Zone.

Ms. Gitelman advised that the proposal would have to conform with existing zoning. The City could only achieve the benefit if there was a nexus to require it as mitigation or if the applicant volunteered it.

Mayor Shepherd inquired whether the Council could pre-identify public benefits.

Ms. Gitelman could provide an analysis of other means to accomplish the proposal at a later time.

Mayor Shepherd understood, at the time she joined the Council, that the community wanted pre-identified public benefits. She wanted the community to welcome the outcome as it developed. She wanted to see better accountability for and articulation of public benefits. She supported obtaining an economic analysis and a clear role for the Council. Examples of public benefits in Attachment J to the Comprehensive Plan seemed to support the idea of pre-identifying public benefits. She wished to go through the Comprehensive Plan process and identify areas for specific plans. She also wanted to examine the possibility of utilizing Context Sensitive Solutions.

Ms. Gitelman indicated Staff would draft an Ordinance, submit it for P&TC review and public comment as quickly as possible, and then present it to the Council.

SPECIAL ORDERS OF THE DAY

3. Selection of Applicants to Interview on October 15, 2014 for the Architectural Review Board and the Historic Resources Board, and Selection of Applicants to Interview on October 22, 2014 for the Planning and Transportation Commission.

MOTION: Mayor Shepherd moved, seconded by Council Member Price to move Agenda Item Number 3 to the end of the meeting before the Closed Sessions.

MOTION PASSED: 8-0 Klein absent

4. Community Partnership Presentation by Gamble Garden.

Susan Woodman, Gamble Gardens, introduced *Gamble Garden: Landscape of Optimism*. The book told the story of Gamble Gardens and described the spectacular outcomes achieved at Gamble Gardens. Gamble Gardens

MINUTES

operated with a small paid staff, but thrived through the efforts of volunteers. The book was intended to engage and inspire people in Palo Alto and beyond. She hoped the City would utilize it to tell about the City.

Mayor Shepherd inquired whether Gamble Gardens still held the roots and shoots program.

Ms. Woodman answered yes. The book also contained a chapter about the program.

Council Member Schmid asked where copies of the book could be obtained.

Ms. Woodman advised that the book was available at Gamble Garden or online at gamblegarden.org.

Council Member Holman indicated Gamble Garden was a Palo Alto treasure and a fantastic resource.

AGENDA CHANGES, ADDITIONS AND DELETIONS

MOTION: Council Member Price moved, seconded by Council Member Berman to continue Agenda Item Number 18 - Policy Discussion on Whether to Conduct a Closed Session Prior to an Open Session to Discuss the 2014-2015 Management & Professional Compensation Plan; Possible Referral to Policy & Services Regarding Closed/Open Session Practice for Compensation Matters, to a date uncertain.

MOTION PASSED: 8-0 Klein absent

CITY MANAGER COMMENTS

James Keene, City Manager, announced the deadline to file an appeal of the Hearing Officer's decision in the Buena Vista Mobile Home Park closure application was Tuesday, October 14, 2014. While the City had been invited to participate in the Airport Roundtable as a nonvoting member, it would continue to pursue other opportunities to express concerns regarding airplane noise.

Mayor Shepherd explained that membership in the Airport Roundtable was limited to cities in San Mateo and San Francisco Counties. The role of the Roundtable was to articulate changes and mitigations occurring at San Francisco International Airport that affected airplane noise. The Roundtable could not influence changes. The City Manager would place the issue on the Agenda for the Policy and Services Committee to discuss next steps.

MINUTES

ORAL COMMUNICATIONS

Jim Wang advised that on June 25, 2014 the City Manager visited his home regarding the Boyce Avenue Project. The architect submitted incorrect information to the Planning Department for IR review. Several components of the project did not meet the IR plan. The final inspection was approved by City Staff. Staff did not follow the IR review process.

Roger Smith remarked that reducing the number of Council Member seats would save Council and Staff time, effort and money. He hoped seven Council Members would increase the number of people serving two terms and increase accountability.

Stewart Carl provided recent information regarding flights over Palo Alto. A new air traffic control plan would narrow flight paths. Planes should fly at least 5,000 feet above Menlo IAF and should be spread out. In addition, a nighttime curfew should be imposed for flights.

Jennifer Landesmann received an email from staff at San Francisco International Airport regarding her complaints about nighttime airplane noise. Flight paths were lower, more narrow, and busier over Palo Alto. Palo Alto was geographically eligible for higher-flying planes. Other leaders had successfully improved airport practices to protect the health and well-being of people and the environment. The Council should place the issue on its Agenda.

Aram James supported keeping the number of Council Member seats. Decreasing the number of seats was not a way to create more transparency. The City Attorney provided incorrect legal advice to the Council and to Council candidates. The United States Supreme Court ruled that a candidate could express his personal views, but could not commit to a particular decision should he be elected.

Stephanie Munoz stated people in Palo Alto were not allowed to own the lots where their mobile homes were located. The Council should approve a PC for the remainder of the Buena Vista Mobile Home Park property if the owner would agree to allow residents to remain on the property.

John Fredrich reported the price of the Buena Vista Mobile Home Park under RM-15 zoning would be less than predicted. Issues around Buena Vista and the role of government in preserving that housing were important, but most people were ignoring the issues.

MINUTES

MINUTES APPROVAL

Council Member Scharff would vote no on the Minutes. The City Attorney and he felt sense Minutes did not accurately reflect comments made during the meetings. The Council should begin verbatim Minutes as soon as possible.

MOTION: Council Member Price moved, seconded by Council Member Schmid to approve the Minutes of August 18, 2014.

Council Member Burt explained that Council Members could request consideration of a policy change under Council Member Questions and Comments or request Minutes be corrected.

SUBSTITUTE MOTION: Council Member Burt moved, seconded by Council Member Holman to forgo approval of the minutes tonight to allow Council Members to provide corrections, they are to be put back on the agenda on October 20, 2014.

Mayor Shepherd reported the Policy and Services Committee was discussing the use of sense and verbatim Minutes.

James Keene, City Manager, advised that the Policy and Services Committee would provide a recommendation for future Minutes. The Substitute Motion would return Minutes of the August 18, 2014 meeting for review and correction.

Mayor Shepherd advised that approval of the Substitute Motion would result in Minutes of the August 18 meeting being continued to October 20 when corrections could be made.

Vice Mayor Kniss asked if there was a problem with the Minutes.

Mayor Shepherd clarified that the Council could only approve or not approve Minutes.

Mr. Keene understood Council Member Scharff to indicate he would not vote to approve the Minutes.

Donna Grider, City Clerk, reported the Municipal Code required sense Minutes. Staff was to return to the Policy and Services Committee with costs estimates for verbatim Minutes. She asked if Council Members would provide her with corrections to the Minutes prior to October 20 or if she was to hold the Minutes until the Policy and Services Committee made a recommendation.

MINUTES

Mayor Shepherd stated Council Members would provide corrections prior to October 20.

Ms. Grider indicated Minutes would return on October 20 in their current form if she did not receive any corrections.

Mayor Shepherd concurred.

Council Member Schmid asked if Minutes remained on the website.

Ms. Grider explained that Minutes were available on the website as part of the meeting packet. When the Council approved Minutes, they were placed on the website as Minutes of the meeting.

SUBSTITUTE MOTION PASSED: 8-0 Klein absent

CONSENT CALENDAR

Stephanie Munoz spoke regarding Agenda Item Number 10. There were fairly simple ways to alleviate the legitimate complaint of people impacted by traffic. An overnight ban was suspiciously similar to the ban on sleeping in cars.

Roger Smith spoke regarding Agenda Item Number 15. He believed members of the Business Improvement District were legally obligated to pay dues; however, many members were not paying their dues. He encouraged the Council to review payment of Business Improvement District dues annually. He inquired about the structure of Business Registries in other communities in the Bay Area. He hoped the Council and business community could work closely with the Chamber of Commerce.

MOTION: Vice Mayor Kniss moved, seconded by Council Member Berman to approve Agenda Item Numbers 5-15.

Council Member Schmid registered a no vote on Agenda Item Number 5.

5. Staff and Utilities Advisory Commission Recommendation that the City Council Adopt a Resolution 9454 entitled "Resolution of the Council of the City of Palo Alto Approving Revisions to the City of Palo Alto Energy Risk Management Policy."
6. Approval of a Water Enterprise Fund Professional Services Contract with G&E Engineering Systems, Inc. in a Not to Exceed Amount of \$268,400 for the Performance of a Water System Condition Assessment Master Study and a Seismic Master Study (WS-11003.

MINUTES

7. Approval of Amendment to the Lease with R&T Restaurant Corporation for Palo Alto Municipal Golf Course Restaurant, 1875 Embarcadero Road and Adoption of Related Budget Amendment Ordinance 5273 entitled "Budget Amendment Ordinance of the Council of the City of Palo Alto in the General Fund."
8. Approval of a Contract with the San Francisquito Creek Joint Powers Authority in the Amount of \$500,000 for the Baylands Levee Improvements Feasibility Study, Capital Improvement Program Project PE-15028.
9. Approval of a Purchase Order with Owen Equipment in a Not to Exceed Amount of \$785,469 for the Purchase of Two Vacuum/Flush Trucks (Scheduled Vehicle and Equipment Replacement Capital Improvement Program VR-13000).
10. Resolution 9461 entitled "Resolution of the Council of the City of Palo Alto Extending the Crescent Park No Overnight Parking Boundaries and Program Trial for Additional 12 Months."
11. Response to the Notice of Preparation of an Environmental Impact Report for the City of East Palo Alto General Plan Update.
12. Request for Approval of a Three-Year Blanket Purchase Order with Granite Rock Company in the Total Amount of \$1,060,830 to be the Primary Supplier of Asphalt Concrete Products and Request for Approval of a Three-Year Blanket Purchase Order with Granite Construction Company in the Total Amount of \$270,000 to be the Secondary Supplier of Asphalt Concrete Products, with Both Blanket Purchase Orders Supplying the Public Works and Utilities Departments From September 22, 2014 through September 21, 2017 (Continued From September 22, 2014).
13. Ordinance 5274 entitled "Ordinance of the Council of the City of Palo Alto Amending Section 2.28.090 (Lapse of Appropriation) of Chapter 2.28 (Fiscal Procedures), Repealing Section 2.08.145 (Consultation with City Auditor) and Amending Section 2.08.150 (Department of Administrative Services) of Section 2.08 (Officers and Departments) (First Reading: September 22, 2014 PASSED: 9-0)."
14. Approval of Annual Williamson Act Contracts and Acceptance of Nonrenewal Notice from Midpeninsula Regional Open Space District for 5061, 5065, 22601 Skyline Boulevard.

MINUTES

15. Adoption of an Ordinance Creating a Business Registry in the City of Palo Alto and Adoption of a Budget Amendment Ordinance 5275 entitled "Budget Amendment Ordinance of the Council of the City of Palo Alto for Fiscal Year 2015 for Costs Related to the Implementation of a Business Registration Program for all Businesses Occupying Commercial Space Within the City and Amendment to the Municipal Fee Schedule and Administrative Penalty Schedule."

MOTION PASSED for Agenda Item Number 5: 7-1 Schmid no, Klein absent

MOTION PASSED for Agenda Item Numbers 6-15: 8-0 Klein absent

Council Member Schmid noted the Utilities Advisory Commission (UAC) recommended the Council approve the Energy Risk Management Policy and move to a biannual report. The UAC recommended that the Council not review the report, even though the Council was responsible for oversight of Utilities. The Council should review the UAC's Minutes to understand the recommendation.

ACTION ITEMS

16. Public Hearing: Adoption of an Ordinance Establishing Underground Utility District No. 46 (Arastradero Road/ El Camino Real/ W. Charleston Road) by amending Section 12.16.02 of the Palo Alto Municipal Code.

Mayor Shepherd reported earlier this year the Council adopted a Resolution to establish Underground Utility District Number 46. The Resolution set October 6, 2014 as the date for the Public Hearing and adoption of an Ordinance establishing the Underground District. Staff's recommendation was that the Council adopt the Ordinance, amend Section 12.16.02 of Chapter 12.16 of Title 12 of the Palo Alto Municipal Code and thereby create Underground Utility District Number 46. District Number 46 would result in the removal of three poles and placement underground of overhead electric distribution and communication lines. This would affect service to eight properties at the intersection of El Camino Real and Arastradero Road and West Charleston.

Public Hearing opened at 9:36 P.M.

Stephanie Munoz reminded the Council that the City was obligated to telephone companies for cell phone towers. The City could regret those obligations when it wanted to underground a telephone pole on which a cell phone tower was located.

MINUTES

Public Hearing closed at 9:37 P.M.

MOTION: Council Member Price moved, seconded by Council Member Burt to adopt the Ordinance to create Underground Utility District No. 46 and thereby amending section 12.16.02 of the Palo Alto Municipal Code.

MOTION PASSED: 8-0 Klein absent

17. Council Review and Direction to Staff Regarding the Risk Assessment for Storing and Handling Hazardous Materials at 607-811 Hansen Way (CPI) and Possible Zoning Ordinance Amendments.

Mayor Shepherd advised that CPI manufactured microwave and radio frequency products for defense, communication, and medical scientific applications. In 2005, CPI was the sole plating shop in Palo Alto using and storing hazardous materials at or above the California Accidental Release Prevention Program (CalARP) threshold levels. In 2006, CPI upgraded facilities, storage, processing, and safety equipment, but continued to store hazardous materials above the correct levels. Between 2005 and 2008, three hazardous material releases occurred. In response, the City enacted a Zoning Code amendment related to hazardous materials in 2007. CPI was a nonconforming use until March 2012, when CPI reduced the levels of hazardous materials below threshold levels.

Hillary Gitelman, Planning and Community Environment Director, reported in April 2012 the Council requested Staff retain a consultant to evaluate potential offsite hazards related to CPI and compare current zoning to best zoning practices. The Council also requested Staff prepare definitions and thresholds of hazardous material facilities for possible restrictions related to the distance between uses similar to CPI and residential uses. The Council also requested recommendations on potential amortization options and a review of those in the context of the consultant's report.

Rodney Jeung, AECOM, explained three concepts which contributed to the concept of risk and the understanding of possible public health implications from an accidental release. First, the type and amount of hazardous materials at a facility or source was simply a characterization of quantity, type, and potential health impacts from an accidental release. The second concept was a pathway or mechanism by which hazardous materials might be transported from the source to the surrounding receptor population. The third concept referred to engineering and administrative controls in place at the site to reduce the accidental release. Not considering all three components could lead to inaccurate conclusions or statements that might be taken out of context. He was primarily concerned with Building 2, the cryogenic liquid storage area and the plating shop. The assessment focused

MINUTES

on those facilities because of the use of acutely hazardous materials and their proximity to the Barron Park neighborhood. CalARP was the primary mechanism for evaluating risks at businesses that used, processed, or disposed of acutely hazardous materials that exceeded an amount specified by the State. Businesses that exceeded such amounts were required to prepare a Risk Management Plan, which considered the offsite consequences of an accidental release. Prior to March 2012, CPI exceeded threshold amounts and was required to prepare Risk Management Plans. The Plans were required to identify worst case scenarios or accidental releases and then to predict the toxic endpoint of the scenario whether onsite or offsite. The toxic endpoint was defined as the concentration of airborne hazardous materials beyond which a short-term exposure would not be expected to result in an acute adverse health effect. In other words, exposure within the endpoint would result in adverse health effects.

Council Member Holman requested a definition of an acute health effect.

Mr. Jeung explained it was exposure of a short-term nature, from a half hour to an hour, that could result in a health effect that would be disturbing, adverse, and require attention.

Council Member Holman requested a definition of sensitive receptors.

Mr. Jeung defined sensitive receptors in an environmental context as a residential area, a childcare facility, a school, a park, etc. In the instant case, a sensitive receptor was any member of the population.

Council Member Holman believed examples would be an individual with asthma or an elderly person with a compromised immune system. She inquired whether the analysis accounted for that.

Mr. Jeung responded no. CPI prepared three Risk Management Plans, in 2004, 2007 and 2008. Nitric acid and potassium cyanide were the hazardous materials of concern in each of the Risk Management Plans. Under the column titled release, all of the scenarios/accidents involved spills or ruptures of tanks storing these chemicals. The 2004 results showed that the distance to the toxic endpoint extended offsite into the surrounding neighborhood. In the more recent two results, adverse health effects occurred on the CPI property but did not extend into the neighborhood. Comparing the three Risk Management Plans (RMP) was difficult, because the amounts and toxicities of materials evaluated in each scenario varied. Assumptions of how the accidental release occurred varied among RMPs. Changes in onsite operations altered the release scenarios and the accidental releases. The methodology for determining the toxic endpoint used an air dispersion model. Each RMP utilized a different model. Staff asked AECOM

MINUTES

to review the most recent RMP and utilize the most current guidance from the Environmental Protection Agency (EPA) to decide which air dispersion model was most appropriate based on which chemicals AECOM anticipated being released. Results essentially confirmed information contained within the 2008 Risk Management Plan, that the offsite consequences would not extend beyond CPI property. He found the toxic endpoint distance to be less than the distance reported in the 2008 RMP. Staff assigned a second primary task to consider other extreme events, other plausible release scenarios and take into account amounts located on the site, possible impact to offsite uses, the likelihood an extreme release would occur, and preventative and safety measures and equipment that could reduce the likelihood of a release. Based on these factors, he developed three scenarios, two of which were reported in January 2014 and the third one in September 2014. The first scenario reviewed a release of 45 gallons of nitric acid that occurred due to a possible equipment malfunction or human error. Under these conservative assumptions, the toxic endpoint extended 92 feet from the loading area to the first row of houses in Barron Park. The second scenario reviewed the cryogenic/liquid hydrogen storage area. In this case, an accidental release could result from mechanical failure, a traffic accident, or a seismic event. Trailers carried the liquid hydrogen, and the scenario expected a failure associated with one of those trailers. The liquid hydrogen would mix with the oxygen in the air, resulting in a very intense flame. In this case, the toxic endpoint was equivalent to the distance within which someone would be exposed to a first degree burn. That distance was 111 feet, within the CPI property. The third scenario arose after a meeting with the Barron Park neighbors. Neighbors expressed concern about a substantial earthquake causing storage tanks to rupture and the chemicals to mix. Therefore, the third scenario considered the nitric acid and the potassium cyanide storage tanks rupturing and containment berms being breached. The two chemicals would mix and result in an airborne release of highly toxic hydrogen cyanide. Using meteorological assumptions and air dispersion modeling, the toxic endpoint was 616 feet from the source, which would extend into the Barron Park neighborhood. The affected area would probably include 60 homes to the south/southeast of CPI. His recommendations included correcting deficiencies reported by the Fire Department. The Fire Department required a Hazardous Materials Business Plan, but there was not an annual update and no oversight to receive that report from CPI. A Chemical Management Plan was important. On its own, CPI prepared a draft Chemical Management Plan in 2013; although, it contained some limitations. He would feel more comfortable with CPI's engineering and administrative controls if improvements to the Chemical Management Program were conducted under Fire Department oversight.

MINUTES

Ms. Gitelman noted Attachment I provided a status of the Health Risk Assessment recommendations that fell within the City's purview. The risk assessment laid groundwork for further consideration of zoning revisions and amortization. At Council direction, Staff surveyed other jurisdictions but did not find an Ordinance comparable to these circumstances. However, Staff learned definitions of uses and methods to establish buffer zones between uses and residential areas. Staff reviewed the City's current zoning regulations and summarized different aspects of zoning regulations. The Code specified the uses generally permitted in Office, Research and Manufacturing Districts. Conditional Use requirements for hazardous materials uses above Title 19 thresholds and the 300-foot buffer instituted for any new use above those thresholds was summarized in the Staff Report. Staff reviewed the mapped landscape buffer included on the Zoning Maps as a means to deal with the question of a buffer. The Staff Report also included information about rules governing legal and nonconforming uses and Building and Fire Code provisions. Staff identified three possible approaches to zoning. The three approaches assumed the City would adopt a Zoning Ordinance consistent with the Comprehensive Plan and expand the landscape buffer adjacent to the site. Using Fire or Building Code definitions would not be a practical strategy. The concept of defining plating shops as a permitted use within Manufacturing Zones except within a specified buffer distance of residential districts received the most attention. The Council would need to determine the appropriate buffer distance. A buffer distance of 100 feet would be appropriate in the first scenario. Other jurisdictions used a 500-foot buffer. The City's Ordinance contained a buffer distance of 300+ feet. In the third scenario, 616 feet would be an appropriate buffer distance. The common concept was to create a regime in which the current use would be legal and nonconforming. That raised the question of amortization. The law allowed nonconforming uses to be phased out over time provided there was a reasonable amortization period commensurate with the investment. The amortization period was calculated based on the value of the investment, not on the date of adoption of the Ordinance. In 2011 the City had a consultant study the value of the investment assuming that a portion of CPI's facility would become nonconforming and have to be relocated. The study assumed the plating shop and the storage area would have to be relocated. The following year, CPI conducted a study of amortizing the entire facility, which indicated it would not be practical or feasible to relocate a portion of the facility. Staff wished to retain a consultant to review both studies and to determine if additional plating shops would be affected by the distance selected in the proposed Zoning Ordinance. Supplemental materials provided to the Council included AECOM's review of a seismic memorandum prepared by CPI's consultant, the PowerPoint presentation, and questions raised at a neighborhood meeting

MINUTES

held the prior week. Staff had not completed preparing written responses to questions answered orally at the meeting.

Bob Fickett, CPI President, recalled depictions of CPI as a fly-by-night organization that did not care about public health and safety. Those depictions were not true. CPI had been located at the current site for more than 60 years. The plating shop had been located on the site for more than 50 years. In those 60 years, there had been no harm to any community member. Despite the move of San Carlos operations into the Palo Alto facilities in 2006, CPI currently had the lowest quantity of Title 19 chemicals ever. CPI made numerous improvements over the past several years. Since 2006, CPI added perimeter sensors and alarm systems, backup safety systems, and backup to backup systems at the request of the community. CPI viewed strengthening safety culture as its responsibility and worked to ensure safety protocols remained state of the art. After the accidental release in 2006, CPI hired a company to conduct a complete review of facilities and processes. The consultant found CPI operations to be safe and compliant overall and made some recommendations for additional improvements. CPI implemented those recommendations immediately. At a 2012 Council meeting, a public speaker questioned the approach of the consultant's risk analysis. CPI hired ENVIRON, the same consultant the public speaker mentioned, to perform a second risk analysis. ENVIRON found that CPI's Palo Alto operation was safe and compliant. CPI implemented ENVIRON's recommendations for additional enhancements. The City's consultant, AECOM, also found CPI's operation to be safe and compliant and made some recommendations. After reviewing those recommendations with ENVIRON, CPI addressed recommendations that were appropriate. CPI unequivocally possessed the trainings, operating procedures, and records that AECOM indicated were still needed. He admitted three incidents occurred between 2006 and 2008 when San Carlos operations transitioned to Palo Alto. While none of the incidents harmed employees or community members, CPI implemented measures to ensure similar incidents did not happen again. CPI's employees were proud of their work to save civilian and military lives. Therefore, it was increasingly difficult to tolerate the community's treatment of CPI. CPI had a proven track record of operating a safe, legal, and compliant facility in Palo Alto since 1953. CPI was willing to continue working with the City toward an acceptable solution; however, CPI had limits. It would continue to participate in rational, responsible discussions concerning the safety of CPI operations and the community. CPI would not sit idly by while its reputation was attacked, lies were voiced about its record, employees' characters were impugned, and the vitality of operations was threatened. CPI expected the Council to consider the matters based upon facts and to fairly, appropriately, and legally represent all interests affected by decisions.

MINUTES

Mark Steres, CPI Attorney, had requested another date for discussion of the item, because Doug Daugherty, the lead consultant with ENVIRON, would be out of the country. He would provide ENVIRON's findings in place of Dr. Daugherty. ENVIRON's services included reviewing AECOM's report and supplemental report, and replicating and validating the air dispersion modeling results for the worst case scenarios presented in the 2008 report. ENVIRON thoroughly reviewed and advised CPI regarding its Chemical Management Program. Upon completion of his analysis, Dr. Daugherty concluded "[g]iven the independent safeguards CPI has in place and the unlikely occurrence of extreme events as modeled by AECOM in their two reports, the risk of offsite consequences from an accidental release is very low and it is very unlikely that an incident will occur at CPI that will result in adverse effects to the health or safety of the neighbors." He requested Dr. Daugherty prepare a comprehensive declaration to be submitted to the City and Council. He would provide the declaration to the City Clerk for inclusion in the record. The declaration contained critical information for the City's deliberations. The information directly related to any action that might ultimately be considered by the City as it moved forward. The declaration responded to all comments made by AECOM regarding possible omissions or gaps in CPI's Chemical Management Program. The declaration set forth in detail three conclusions about the AECOM report. First, some of AECOM's comments were based on incorrect interpretation of the regulations. Second, some of AECOM's comments were based on an incomplete review of CPI's records and documents. Third, any remaining AECOM comments had been addressed by CPI. Like AECOM, ENVIRON modeled offsite consequence analysis for nitric acid and potassium cyanide and confirmed no offsite impacts. Based on a comment in the AECOM report, ENVIRON also modeled a liquid oxygen scenario and determined there would be no offsite consequences from it. ENVIRON also assisted in validating a Process Hazard Assessment for the plate shop and for the delivery, storage and waste services that supported the plate shop and for hydrogen storage and distribution. ENVIRON assisted CPI in gathering all existing facility safety programs and organizing them into the Chemical Management Program. Due to earlier work, ENVIRON could review the report and findings prepared by AECOM. All AECOM's comments regarding employee training, equipment maintenance, operating procedures, and inspection records were based on AECOM's incomplete assessment of CPI's records as those matters were addressed by CPI's operations prior to AECOM's review. CPI requested AECOM return to CPI to confirm this and to correct its report. Even with those recommendations, AECOM concluded that equipment was properly maintained and that the EPA's defined worst case scenarios were not expected to travel offsite. At the request of the City, AECOM went beyond the worst case scenarios and evaluated even more remote scenarios. Then, the neighbors requested AECOM model an event

MINUTES

that was so remote that AECOM originally rejected it as too remote to occur. The scenario was an earthquake that collapsed the plate shop building. The scenario was highly unrealistic. AECOM did not include a couple of items in modeling that had a significant difference in its results. The nitric acid release occurred at an outside temperature greater than 90 degrees; however, CPI prohibited delivery on those days. Other controls were not taken into account. The EPA strongly urged communities not to base decisions on worst case modeling. The admonishment applied even more so to extreme events. All experts concluded that CPI's business operations were safe and had a very low risk of harm to the neighboring community. He cautioned the City Council not to make zoning decisions based on highly unrealistic, extreme event modeling such as the 616 feet stated in AECOM's earthquake scenario. The City had not made decisions for other land uses in this manner and should not single out CPI and treat its existing business differently. No daily nuisance conditions were coming from CPI. The neighborhood's concerns were based strictly on fear, not facts or likelihoods. Fear was an insufficient basis to adopt Zoning Regulations that negatively impacted CPI. The Staff Report was correct in that the current meeting was not the time to make a determination or provide direction on an appropriate amortization period for CPI. That determination could be made only after a Zoning Regulation was established and adopted by the City. CPI had a large and long-term investment in the property. Several experts concluded that risk of harm to the community from continued operations at CPI was extremely low. He requested time to respond to public testimony.

Romola Georgia stated problems with the CPI facility were ongoing. Noise from delivery trucks was a nuisance. Neither neighbors nor the City were notified of the toxic release. In the case of chemicals mixing as a result of an earthquake, experts estimated she would have less than a minute to evacuate her home. The independent consultant reported neighbors were at risk in case of an industrial accident.

Robert Moss felt something was wrong at CPI for spills to occur in the last 8-10 years. AECOM did not thoroughly investigate the site. CPI was wrong in stating worst case scenarios should not be considered in evaluations. Without that analysis, people would die. The only proper approach was for the City to put CPI on notice that it would have to vacate the premises.

Samir Tuma advised that the issue was not as complicated as the amount of information indicated. Fundamentally, a risk to human life was located in proximity to residents. Unlikely events did occur. The primary role of government was to protect the health and safety of residents. All of CPI's safety measures could not ensure people would not die.

MINUTES

Stephanie Munoz believed the Council could obtain correct information and commit to act appropriately. The City's use of amortization was inconsistent.

Lydia Kou questioned the ability of CPI to obtain a building permit when it stored hazardous materials onsite. Residents learned about the storage of hazardous materials in 2006 when the first spill occurred. The Risk Assessment Report did not guarantee residents' safety in the case of an earthquake or catastrophic event. She urged the Council to amortize now and for the shortest time period allowed.

Arthur Liberman stated Staff assumed CPI was safe because of Fire Department inspections. Seismic analysis could not be trusted. Removing hazardous chemicals would make residents' lives more healthful. He urged the Council to ban hazardous materials from Research Park.

Reine Flexer discovered her home on Matadero would be impacted by a spill at CPI.

Mr. Steres advised that Barron Park and CPI had been located in the same place since the 1950s and not one person had been harmed. The Loma Prieta earthquake did not cause any problems at CPI even though seismic upgrades were not in place at that time.

Council Member Burt noted the Staff Report mentioned regulations that would cover other facilities containing similar materials and volumes. However, the Motion did not address that. He did not wish to create an Ordinance in reaction to one specific circumstance. The Ordinance should identify facilities that posed risks that the Council felt an obligation to mitigate. Zoning referenced distance to residents. Zoning should also consider schools and any other incompatible uses. There was not a distinction with respect to volumes of hazardous materials. The risk was very similar whether volumes were 10 gallons over or under the threshold. There was no attempt to distinguish between a facility with 20 gallons of hazardous materials and a facility with the volumes CPI used and stored. The Ordinance should set boundaries that reflected risk. Mr. Jeung reported a 33-foot distance to the toxic endpoint in one scenario while the distance was 92 feet in the second scenario. He requested an explanation of those two scenarios.

Mr. Jeung asked if Council Member Burt was referring to the scenario he created as one of the extreme events with a 92-foot toxic endpoint.

Council Member Burt inquired whether that scenario involved the earthquake.

MINUTES

Mr. Jeung answered no.

Council Member Burt asked if the 92 feet began at the CPI site or the edge of either the plating facility or the cryogenic storage.

Mr. Jeung advised that the 92 feet was measured from the location of the accident. In the referenced scenario, the accident occurred outside Building 2 where loading occurred.

Council Member Burt inquired about the distance from the occurrence site to the nearest back fence of a residence.

Mr. Jeung clarified that loading occurred in the alleyway.

Council Member Burt inquired about the conditions for the 33-foot toxic endpoint.

Mr. Jeung reported two scenarios were considered previously in the Risk Management Plans of 2007 and 2008. Both cases assumed the storage tanks ruptured.

County Member Burt recalled that the most extreme scenario of an earthquake did not model an existing level of seismic protection. He asked why did it not include that.

Mr. Jeung indicated Staff's first direction was to analyze a seismic event sufficient to cause mixing of the chemicals from the two storage tanks. The basic assumption was that two storage tanks would fail and the containment barriers around each tank would fail. Otherwise, chemicals would not mix in a fashion that allowed the release scenario to be evaluated.

Council Member Burt suggested AECOM analyzed a seismic event that was not of a specific earthquake scale and not against a specific building. Instead, AECOM analyzed some seismic event that would cause the catastrophic failure; however, AECOM did not define the scale of the event needed to collapse the building or where the seismic event might be centered.

Mr. Jeung concurred. The starting point was a seismic event that resulted in failure of the tanks and their containment barriers. There was no attempt to identify the magnitude of that earthquake.

Council Member Burt inquired whether a different expert would be needed to appraise the building and determine the level of an event necessary to cause the building to collapse.

MINUTES

Mr. Jeung indicated Council Member Burt was leading him into the seismic evaluation prepared by CPI. In response to the scenario, CPI attempted to evaluate the seismic load required to cause the building's collapse. The study evaluated the probability of such an earthquake occurring.

Council Member Burt assumed the evaluation included the scale of an earthquake at some distance from the facility. He asked if AECOM reviewed the study and could provide comments on it.

Mr. Jeung did review the document. The basic conclusion was that the approach was logical. The methodology used in the CPI report made sense. The conclusions were rational. However, there were no drawings, calculations, or information that would allow him to verify the calculations. He identified some areas where additional information and context would be beneficial.

Council Member Price recalled Ms. Gitelman's comment that an expert would be needed for peer review of the two amortization analyses.

Ms. Gitelman advised the City hired an expert to prepare an amortization study. Subsequently, CPI hired an expert to prepare an amortization study and it reached a different conclusion. An expert would be needed to reconcile the conclusions of those studies. The expert could also review any other facilities that could be affected by zoning changes.

Council Member Price expressed concern about deficiencies identified in the many studies and reports.

MOTION: Council Member Price moved, seconded by Vice Mayor Kniss to direct Staff to prepare a draft Ordinance for review by the Planning and Transportation Commission (P&TC) and consideration by the City Council in early 2015. The Ordinance should amend the list of uses in the Zoning Code to explicitly identify plating shops, prohibit plating shop uses within a specific distance of residential uses and residential zoning districts, and incorporate an amortization schedule based on updated information on the value of affected investments.

Council Member Price believed people would continue to disagree regarding the findings, outcomes, and implications of the reports. The most reasonable and compassionate approach was to follow Staff's recommendation. The Ordinance should protect the community and neighbors. The Council needed a thorough analysis to provide an appropriate amortization period. This type of use immediately adjacent to community members was unsafe. Palo Alto was at risk for an earthquake.

MINUTES

Vice Mayor Kniss asked if Staff would comment on the value of affected investments if the Motion passed.

Ms. Gitelman indicated past studies commented on the value of investments. She did not expect that part of the prior analysis would change, unless there had been changes to the facilities.

Vice Mayor Kniss appreciated Council Member Burt's scientific analysis. Council Member Price effectively summarized effects on the neighborhood. While she was sympathetic to CPI, the neighborhood needed protection that the Council could provide.

Council Member Schmid noted the extreme scenario of seismic activity did not state clearly the activity. Intensive seismic activity would likely result in gas lines exploding as well. He questioned whether exploding gas lines would compare to an accidental release. The Motion called for a response to plating plants explicitly and for an amortization over a reasonable period of time. CPI's consolidation of facilities into Palo Alto adjacent to a neighborhood should be considered as well.

Mayor Shepherd believed the deciding factor was the location of hazardous materials close to a neighborhood. It was important to shift the facility to another neighborhood.

Council Member Berman inquired about operational changes made prior and subsequent to consolidating the San Carlos facility.

Mr. Fickett reported the size of the plate shop did not change. Some of the tanks and piping were seismically upgraded and the size increased. The amount of chemicals increased when the two plants were first consolidated in 2004. In 2008, the amount of chemicals decreased to current levels.

Council Member Berman asked if the location of operations changed.

Mr. Fickett replied no. CPI added quite a few structural berms to ensure chemicals did not mix.

Council Member Berman recalled Mr. Fickett's comment that the three incidences occurred because of the consolidation of operations.

Mr. Fickett advised that the nitric acid odor incident resulted from the transition. Because of construction work, the back doors were open. That was not a normal operating condition.

Council Member Berman inquired whether the Fire Department was familiar with the incident of a plume of smoke over CPI.

MINUTES

Eric Nickel, Fire Chief, answered yes. In January or February 2014, a hydrogen transfer resulted in a water vapor. Neighbors called 911. The dispatch center contacted CPI to confirm the incident but did not dispatch a unit. That was not an appropriate response and actions had been taken to correct it. The Fire Department responded to the area the previous Friday evening to check on reports of smoke. The Fire Department had responded immediately to other reports of odors from the neighborhood.

Council Member Berman believed it was important for the public to understand the entire situation. While CPI had made changes to improve its safety procedures, the community had changed as well. That type of facility would no longer be allowed adjacent to a neighborhood. He expressed concerns about the comprehensiveness of the Motion.

Council Member Holman recognized that CPI had been located in Research Park for a long time; however, circumstances had changed. One of the Council's responsibilities was public safety. Neighbors had rational fears. She would support the Motion.

Council Member Scharff would not want to live in fear of smelling unusual odors or of having only minutes to evacuate. He supported the Motion.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to: 1) identify uses from similar operations with similar hazards; 2) identify additional incompatible adjacent uses (schools, retail, restaurant); 3) identify appropriate volume of hazardous materials thresholds and possibly establishing tiers in the Ordinance for facilities covered; and 4) have AECOM review the ENVIRON analysis of the most extreme risk scenario.

Ms. Gitelman reported Staff spent a considerable amount of time reviewing regulatory standards for hazardous materials. CalARP standards no longer applied to CPI. Certified Unified Program Agency (CUPA) standards were too low. Staff could not identify thresholds that logically separated acceptable risks from unacceptable risks. Staff could not identify quantities or thresholds that made sense in a zoning context; therefore, Staff returned to regulating by use.

Council Member Burt noted the Staff Report did not identify CUPA thresholds. Use was not an adequately meaningful description. When Staff returned, the Ordinance would be considered based on those issues.

Ms. Gitelman clarified that the Staff Report discussed CUPA thresholds. Staff identified 419 facilities with hazardous materials in Palo Alto, 268 of which required Hazardous Materials Business Plans consistent with CUPA

MINUTES

standards. Staff quantified the number of acutely hazardous and hazardous materials facilities regulated under the Fire Code. Staff investigated other standards and the number and types of facilities that complied with standards. Staff did not find it a useful course of investigation to set zoning. Perhaps Council Member Burt could suggest additional approaches for Staff to investigate.

Council Member Burt advised that the lack of an easily available standard did not make the proposal a good one. The Council wanted Ordinances to be legally sound which would require some level of technical basis. By simply stating plating facilities, the same risk could occur in a different type of facility. The Ordinance should include other types of facilities. The use of cryogenics had virtually no association with plating, but could be found in many other facilities.

James Keene, City Manager, understood Council Member Burt's intent to include many facilities. The conversation could need to be iterative concerning thresholds and tiers and could involve consultant assistance.

Council Member Burt suggested Staff consult with CUPA experts at the County of Santa Clara or utilize AECOM.

Ms. Gitelman reported the current Ordinance contained two tiers; CUPA and CalARP thresholds. CUPA thresholds required notification after a building permit was issued for facilities that met the CUPA standard. CalARP thresholds required a 300-foot buffer for any new facility and any existing facility that expanded or improve its facilities. Staff attempted to identify additional tiers that might be appropriate. After months of discussions and consultations with experts, Staff concluded the issue was land use compatibility, whether one land use was compatible next to another. Land use had inherent risks associated with hazardous materials. Staff could attempt to identify a threshold between CUPA and CalARP thresholds if the Council wished.

Council Member Burt wanted Staff to make another attempt.

Council Member Scharff asked if additional analysis would delay providing relief for the neighborhood. He was concerned that Staff would not return for another two years.

Ms. Gitelman indicated Staff would perform some additional analysis prior to crafting an Ordinance with or without the Amendment. Until she could speak with experts and debrief from the meeting, she could not provide a timeline for Staff to return.

MINUTES

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to direct Staff to return to Council with an informational report before the end of 2014 on the status.

Mr. Keene would place an item on the Agenda once Staff determined a timeframe for providing a draft Ordinance.

MOTION AS AMENDED PASSED: 8-0 Klein absent

~~18. Policy Discussion on Whether to Conduct a Closed Session Prior to an Open Session to Discuss the 2014-2015 Management & Professional Compensation Plan; Possible Referral to Policy & Services Regarding Closed/Open Session Practice for Compensation Matters.~~

3. Selection of Applicants to Interview on October 15, 2014 for the Architectural Review Board and the Historic Resources Board, and Selection of Applicants to Interview on October 22, 2014 for the Planning and Transportation Commission.

Council Member Schmid recommended a 15-minute time limit for Planning and Transportation Commission (P&TC) interviews. With 11 candidates, all interviews would require approximately three hours. Because attention could wane over three hours, a time limit of 10-12 minutes might be more reasonable. He understood a number of candidates would interview for different Boards and Commissions. He suggested having candidates choose one Board or Commission for which to interview or reducing the time spent interviewing those candidates.

Mayor Shepherd suggested interviewing incumbent candidates for 10 minutes and new candidates for 15 minutes.

MOTION: Council Member Scharff moved, seconded by Vice Mayor Kniss to: 1) interview all candidates; and 2) have the candidates who applied for multiple Boards or Commissions to pick one Board or Commission they want to be interviewed for.

Vice Mayor Kniss believed each candidate should choose one Board or Commission. Interviews of candidates for Boards and Commissions other than the P&TC could have a time limit of 10 minutes.

Council Member Price inquired whether policies and procedures could limit candidates to applying for only one Board or Commission.

Donna Grider, City Clerk, recommended the Policy and Services Committee discuss the matter.

MINUTES

Vice Mayor Kniss inquired whether the new recruitment process had been successful.

Ms. Grider had received more applications. She encouraged the Council to consider a policy for candidates to apply for only one position. Her Staff contacted candidates and requested they choose only one; however, candidates refused to do so.

Council Member Holman advised that one candidate for the Architectural Review Board (ARB) indicated he couldn't access the online capability in order to identify a project he felt was good. She requested the Clerk provide some method to facilitate that.

Ms. Grider did not believe projects were required for the ARB.

Council Member Holman interpreted the application to mean the candidate wished to access the online capability but could not.

Ms. Grider indicated the applicant had computer problems, so she had the applicant submit a written application.

Council Member Holman requested the candidate provide projects prior to the interviews.

MOTION PASSED: 8-0 Klein absent

19. Cubberley Community Center Lease Status and Update.

James Keene, City Manager, recommended the Council direct Staff to move to Closed Session.

Mayor Shepherd inquired if any information could be provided in the Open Session.

Mr. Keene had negotiated over several sessions with the former Palo Alto Unified School District Superintendent. In June, he met with the Council in Closed Session and received more specific direction. He met with the new Superintendent three times and had potential terms to discuss with the Council. He did not have permission from the Superintendent to discuss terms in public.

MOTION: Council Member Scharff moved, seconded by Council Member Berman to have Council move into the Closed Session.

MOTION PASSED: 8-0 Klein absent

MINUTES

James Keene, City Manager, continued City Manager Comments. October 5-11, 2014 was Fire Prevention Week. October was Pink T-Shirts for Breast Cancer Awareness Month. The Fire Department would be raising funds for Bay Area Cancer Connections during October. A temporary Public Art installation comprised of pop-up signs could be found in Downtown.

COUNCIL MEMBER QUESTIONS, COMMENTS AND ANNOUNCEMENTS

James Keene, City Manager, provided each Council Member with ten copies of the new Budget in Brief to distribute.

The City Council went into the Closed Session at 11:43 P.M.

CLOSED SESSION

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

Properties:

Cubberley Community Center, 4000 Middlefield Road, Palo Alto 94306 (including 8 acres owned by the City of Palo Alto and remaining acres owned by the Palo Alto Unified School District); and Ventura School site, 3990 Ventura Court, Palo Alto 94306

Agency Negotiators:

James Keene, Lalo Perez, Joe Saccio, Hamid Ghaemmaghmi, Greg Betts, Rob De Geus, Thomas Fehrenbach, Molly Stump

Negotiating Parties:

City of Palo Alto and Palo Alto Unified School District

Under Negotiation:

Lease and/or Purchase/Sale*

*Purchase/sale is listed to comply with Brown Act legal requirements, and includes other transactions such as easements, options, rights of first refusal and land exchanges. The City is not considering selling any of its interests in Cubberley or Ventura.

21. CONFERENCE WITH CITY ATTORNEY - EXISTING LITIGATION Subject: Sterling Park, L.P. v. City of Palo Alto, et al. Santa Clara County Superior Court, Case No.109-CV-154134 Subject Authority: Government Code section 54956.9

MINUTES

The City Council reconvened from the Closed Session at 12:25 A.M.

Mayor Shepherd announced there was no reportable action.

ADJOURNMENT: The meeting was adjourned at 12:25 A.M.