

CLOSED SESSION.....142

1. CONFERENCE WITH ATTORNEY/LEGAL COUNSEL142

SPECIAL ORDERS OF THE DAY142

2. Proclamation for Marion Mandell of Neighbors Abroad.142

AGENDA CHANGES, ADDITIONS, AND DELETIONS143

CITY MANAGER COMMENTS143

ORAL COMMUNICATIONS143

APPROVAL OF MINUTES143

CONSENT CALENDAR143

3. Resolution 9471 entitled "Resolution of the Council of the City of Palo Alto Amending the Conflict of Interest Code for Designated City Officers and Employees as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission and Repealing Resolution No. 9299."145

4. Policy and Services Committee Recommendation to Accept the Auditor's Office Quarterly Report as of September 30, 2014.145

5. ~~Affirm Director of Planning and Community Environment's Individual Review Approval of a New Two-Story Home located at 1066 Metro Circle.....146~~

6. Palo Alto Shuttle and Rideshare Program for the Future (Staff Requests Item be Continued to February 2, 2015).146

7. ~~Approval of and Authorization for the City Manager to Execute Two Professional Services Contracts with Columbia Telecommunications dba CTC Technology & Energy for Consulting Services for (1) a Fiber-to-the-Premise Master Plan in the Amount of \$144,944 and (2) a~~

MINUTES

~~Complementary Wireless Network Plan in the Amount of \$131,650; and Adoption of Budget Amendment Ordinance for FY 2015 to Provide Appropriation in the Amount of \$276,594 from Fiber Optics Fund.....146~~

8. Resolution 9472 entitled "Resolution of the Council of the City of Palo Alto Suspending City Policy Against Requiring Prevailing Wage, Unless and Until SB 7 is Enjoined or Invalidated."146
9. Approval of a Contract with Susan Narduli in the Amount of \$174,477 for the Development, Design, Fabrication and Installation of an Interactive New Media Artwork to be Installed in the Lobby of City Hall.146
10. Ordinance 5286 entitled "Ordinance of the Council of the City of Palo Alto Repealing the Prohibition on Human Habitation of Vehicles (Ordinance No. 5206, codified as Palo Alto Municipal Code Section 9.06.010) (First Reading: November 17, 2014 PASSED: 7-1 Klein no, Holman absent)"146
11. Approval of a Junior Museum and Zoo Environmental Review Services Funding Agreement Between the City of Palo Alto and the Friends of the Palo Alto Junior Museum and Zoo, Inc.; Approval of a Contract with David J. Powers & Associates, Inc. In an Amount not to Exceed \$114,565 for the Rinconada Park Master Plan and Junior Museum & Zoo Environmental Assessment; and Adoption of a Budget Amendment Ordinance 5287 entitled "Budget Amendment Ordinance of the Council of the City of Palo Alto for Fiscal Year 2015 to Provide an Additional Appropriation in the Amount of \$114,565 for the Rinconada Park Master Plan and Design Project (CIP PE-12003) Partially Offset with a Contribution in the Amount of \$57,283 from the Friends of the Palo Alto Junior Museum and Zoo, Inc."146

ACTION ITEMS147

12. Approval of the Proposed Grocery Store Tenant (College Terrace Market) Within PC 5069 (College Terrace Centre) Based on the Finding that the Proposed Grocery Tenant Would Likely be Comparable in Quality of Products and Services as JJ&F as it Existed and Operated on December 7, 2009 at 2180 El Camino Real (Continued from November 17, 2014).....147
13. PUBLIC HEARING: Adoption of an Ordinance Establishing a Citywide Framework for Establishment of Neighborhood-Specific Residential Preferential Parking (RPP) Districts.163
14. PUBLIC HEARING: Adoption of a Resolution Establishing a Residential Preferential Parking (RPP) Program in the Downtown Neighborhoods. ...163

CLOSED SESSION.....165

MINUTES

15. CONFERENCE WITH LABOR NEGOTIATORS.....	165
16. CONFERENCE WITH LABOR NEGOTIATORS.....	165
ADJOURNMENT: The meeting was adjourned at 12:15 A.M. to be continued to Tuesday, December 2, 2014 at 8:30 P.M.....	165

MINUTES

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:04 P.M.

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

Absent:

CLOSED SESSION

1. CONFERENCE WITH ATTORNEY/LEGAL COUNSEL
Potential Litigation Relating to the Mitchell Park Library and Community Center Construction
Significant Exposure to Litigation: 1 Potential Case
Potential Initiation of Litigation: 1 Potential Case
Authority: Government Code Section 54956.9

The City Council reconvened at 7:11 P.M.

Mayor Shepherd announced no reportable action.

SPECIAL ORDERS OF THE DAY

2. Proclamation for Marion Mandell of Neighbors Abroad.

Council Member Price read the Proclamation into the record.

Mayor Shepherd introduced a video from a Neighbors Abroad trip to Oaxaca, Mexico. She traveled to Oaxaca and learned of the rich heritage of the city.

Vice Mayor Kniss stated Ms. Mandell was well known in Oaxaca and inquired about the number of trips Ms. Mandell had made to Oaxaca.

Marion Mandell answered 14.

Vice Mayor Kniss indicated Ms. Mandell planned excellent trips to Oaxaca.

Ms. Mandell thanked the City for supporting the program for 50 years. The Oaxacan people appreciated the partnership with Palo Alto.

Vice Mayor Kniss acknowledged the volunteers of Neighbors Abroad in the audience and thanked them for working with the City.

MINUTES

AGENDA CHANGES, ADDITIONS, AND DELETIONS

Mayor Shepherd noted Agenda Item Number 15 was continued to a meeting in January, 2015. She recapped Agenda Items for the meetings scheduled on December 8 and 15, 2014.

CITY MANAGER COMMENTS

James Keene, City Manager announced the public hearing regarding the Stanford Trail was postponed until December 11, 2014. The City had received more than 500 responses to the Parks and Recreation Master Plan online survey. A third community workshop for the Parks and Recreation Master Plan was scheduled for December 2, 2014. A report on the progress of the Parks and Recreation Master Plan was planned for January, 2015. The Library planned on forgiving fines for overdue books if they were returned by January 2, 2015. The City was named as a Leading Digital City by the Center for Digital Government. The Mitchell Park Teen Center opened on November 17, 2014. The Palo Alto Art Center was going to host a free Holiday Family Day on December 7, 2014. Approximately 300 people attended the Fourth Annual Holiday Tree Lighting event. A grand opening celebration of the new Mitchell Park Library and Community Center was scheduled for December 6, 2014.

ORAL COMMUNICATIONS

Samina Faheem invited the public to the EID Festival to learn how Muslims celebrate the holidays and to build community.

Jim Wang presented information regarding window size at the house on Boyce Avenue.

Stephanie Munoz suggested some City funds could be better spent on housing the homeless. The residents of Buena Vista Mobile Home Park provided \$13 million in housing as well as youth services.

APPROVAL OF MINUTES

MOTION: Council Member Price moved, seconded by Council Member Berman to approve the minutes of October 6, 20, 27 and November 3, 2014.

MOTION PASSED: 9-0

CONSENT CALENDAR

Council Member Klein registered a no vote on Agenda Item Number 10 -
SECOND READING: Adoption of an Ordinance 5286 Regarding Vehicle Habitation (First Reading Nov. 17, 2014).

MINUTES

MOTION: Council Member Klein moved, seconded by Council Member Scharff, third by Council Member Burt to remove Agenda Item Number 7 - Approval of and Authorization for the City Manager to Execute Two Professional Services Contracts with Columbia Telecommunications dba CTC Technology & Energy for Consulting Services for (1) a Fiber-to-the-Premise Master Plan in the Amount of \$144,944 and (2) a Complementary Wireless Network Plan in the Amount of \$131,650; and Adoption of Budget Amendment Ordinance for FY 2015 to Provide Appropriation in the Amount of \$276,594 from Fiber Optics Fund, from the Consent Calendar to be heard at a later date.

Mayor Shepherd inquired when the Item could be heard.

Molly Stump, City Attorney advised that Staff needed time to determine a date.

MOTION: Council Member Holman moved, seconded by Mayor Shepherd, third by Council Member Burt and fourth by Council Member Scharff to continue Agenda Item Number 5 - Affirm Director of Planning and Community Environment's Individual Review Approval of a New Two-Story Home located at 1066 Metro Circle, to February 9, 2015.

Paul Heft spoke regarding Agenda Item Number 5. If a tall home were built adjacent to his home, it would shade the solar photovoltaic panels used to power his home and render them useless. He asked the Council to consider that when discussing this Item.

Annette Isaacson spoke regarding Agenda Item Number 5. She requested the Council consider the effect of large homes, solar panels located at adjacent homes and on the character of the neighborhood.

Roger Kohler, Architect spoke regarding Agenda Item Number 5 and said the home was located in the flood zone; therefore, the finished floor had to be five feet off the ground. The design of the home was impacted by the flood zone.

Jean Wong, owner of the project spoke regarding Agenda Item Number 5. The project received three approvals; she worked with City Staff and neighbors to meet their concerns.

David Hammond spoke regarding Agenda Item Number 5 and felt the problem was different sized lots located in circles and cul-de-sacs. The normal area requirements for new homes located in circles and cul-de-sacs needed to be restricted to the average size of existing homes on the street.

Mayor Shepherd noted the topic for comments was removing the Item from the Consent Calendar.

MINUTES

Mr. Hammond indicated the Planning Department did not consider the character of the neighborhood.

Bob Hinden spoke regarding Agenda Item Number 5. He felt the Planning Department should be more sensitive to the style of houses in the neighborhood.

Frank Ingle spoke regarding Agenda Item Number 5. He thanked the Council for removing the Item from the Consent Calendar.

Maryann Hinden spoke regarding Agenda Item Number 5. Allowing a house which was out of scale and not of the same architectural style would destroy the cohesiveness of the neighborhood.

John Melnychuk spoke regarding Agenda Item Number 5. He concurred with comments opposing the project. New homes in the neighborhood needed to be of the same scale and character.

John Scouffas spoke regarding Agenda Item Number 5. He opposed the design of the house.

Mike Murnane spoke regarding Agenda Item Number 5. Efforts by residents' associations resulted in guidelines to protect the City from "monster homes." This was a City-wide issue.

Lenore Cymes spoke regarding Agenda Item Number 5. The City had a responsibility to ensure new homes were similar to existing homes.

Herb Borock would speak to Agenda Item Number 7 when the Council heard it.

Mayor Shepherd asked the City Manager if Agenda Item Number 7 would be heard later in the Agenda.

James Keene, City Manager responded it would be postponed to another meeting.

MOTION: Vice Mayor Kniss moved, seconded by Council Member Price to approve Agenda Item Numbers 3-4, 6, 8-11.

3. Resolution 9471 entitled "Resolution of the Council of the City of Palo Alto Amending the Conflict of Interest Code for Designated City Officers and Employees as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission and Repealing Resolution No. 9299."
4. Policy and Services Committee Recommendation to Accept the Auditor's Office Quarterly Report as of September 30, 2014.

MINUTES

5. ~~Affirm Director of Planning and Community Environment's Individual Review Approval of a New Two Story Home located at 1066 Metro Circle.~~
6. Palo Alto Shuttle and Rideshare Program for the Future (Staff Requests Item be Continued to February 2, 2015).
7. ~~Approval of and Authorization for the City Manager to Execute Two Professional Services Contracts with Columbia Telecommunications dba CTC Technology & Energy for Consulting Services for (1) a Fiber to the Premise Master Plan in the Amount of \$144,944 and (2) a Complementary Wireless Network Plan in the Amount of \$131,650; and Adoption of Budget Amendment Ordinance for FY 2015 to Provide Appropriation in the Amount of \$276,594 from Fiber Optics Fund.~~
8. Resolution 9472 entitled "Resolution of the Council of the City of Palo Alto Suspending City Policy Against Requiring Prevailing Wage, Unless and Until SB 7 is Enjoined or Invalidated."
9. Approval of a Contract with Susan Narduli in the Amount of \$174,477 for the Development, Design, Fabrication and Installation of an Interactive New Media Artwork to be Installed in the Lobby of City Hall.
10. Ordinance 5286 entitled "Ordinance of the Council of the City of Palo Alto Repealing the Prohibition on Human Habitation of Vehicles (Ordinance No. 5206, codified as Palo Alto Municipal Code Section 9.06.010) (First Reading: November 17, 2014 PASSED: 7-1 Klein no, Holman absent)".
11. Approval of a Junior Museum and Zoo Environmental Review Services Funding Agreement Between the City of Palo Alto and the Friends of the Palo Alto Junior Museum and Zoo, Inc.; Approval of a Contract with David J. Powers & Associates, Inc. In an Amount not to Exceed \$114,565 for the Rinconada Park Master Plan and Junior Museum & Zoo Environmental Assessment; and Adoption of a Budget Amendment Ordinance 5287 entitled "Budget Amendment Ordinance of the Council of the City of Palo Alto for Fiscal Year 2015 to Provide an Additional Appropriation in the Amount of \$114,565 for the Rinconada Park Master Plan and Design Project (CIP PE-12003) Partially Offset with a Contribution in the Amount of \$57,283 from the Friends of the Palo Alto Junior Museum and Zoo, Inc."

MOTION PASSED for Agenda Item Numbers 3-4, 6, 8-9, 11: 9-0

MOTION PASSED for Agenda Item Number 10: 8-1 Klein no

MINUTES

Council Member Holman noted Agenda Item Number 5 was removed from the Consent Calendar.

Mayor Shepherd indicated Council Members Holman, Scharff, Burt and Vice Mayor Kniss supported the removal of Item Number 5 from the Consent Calendar.

ACTION ITEMS

12. Approval of the Proposed Grocery Store Tenant (College Terrace Market) Within PC 5069 (College Terrace Centre) Based on the Finding that the Proposed Grocery Tenant Would Likely be Comparable in Quality of Products and Services as JJ&F as it Existed and Operated on December 7, 2009 at 2180 El Camino Real (Continued from November 17, 2014).

Mayor Shepherd requested Council comment regarding ending the discussion at 8:30 P.M. with a continuation to the following evening or completing discussion in the current meeting.

Council Member Scharff felt the Item should be heard in full at the current meeting with a check-in at 9:15 P.M.

Council Member Berman concurred with completing the discussion in the current meeting because of the number of people from the public present.

Council Member Scharff inquired about the appropriate time for Council Members' disclosures.

Mayor Shepherd advised that disclosures could be made following Staff's presentation.

Russ Reich, Senior Planner reported the Planned Community (PC) Ordinance specifically stated that City approval should not be withheld unless the City reasonably found that such proposed grocery tenant was not likely to be comparable in quality of products and services as JJ&F as it existed and operated on December 7, 2009. A prior meeting regarding the Item was held on August 11, 2014, at which time the Council requested additional information. The Applicant had provided additional information.

Mayor Shepherd requested Council Members make their disclosures.

Council Member Scharff spoke with Jim Baer earlier in the day regarding increasing the penalty from \$1,000 to \$2,000 per day. Mr. Baer indicated the Applicant would respond at the meeting. He spoke with Miki Werness, who indicated he was willing to be the grocery store operator; however, the Applicant was unwilling to allow him to be the operator.

MINUTES

Council Member Burt met with Doria Summa and Jeff Levinsky two weeks earlier and also with Jim Baer. He did not learn any information that was not in the public record.

Council Member Holman held telephone conversations with Doria Summa and Jeff Levinsky and did not learn any information that was not in the public record.

Council Member Berman held a telephone conversation with Jim Baer a few weeks prior and did not receive any information that was not public record.

Council Member Price spoke with Mr. Baer as well and did not learn any information that was not in the public record.

Council Member Klein exchanged voicemail messages with Jim Baer and gained no information that was not in the public record. Approximately two weeks earlier, he received a call from Mark Khoury and learned that Mr. Khoury had negotiated with Patrick Smailey; however, those negotiations were not successful. Mr. Khoury authorized Council Member Klein to disclose that information.

Council Member Schmid had conversations with Doria Summa and Jeff Levinsky regarding information in the record.

Vice Mayor Kniss had read many emails pertaining to the Item.

Mayor Shepherd had a telephone conversation with Mr. Baer and did not learn any new information.

Jim Baer, Applicant, had provided comprehensive, unredacted documents related to all matters. Uriel Chavez, as grocery operator, was under a 20-year operating agreement. Mr. Chavez had a background of operating 40 markets. With annual gross revenues of more than \$200 million at their peak, these markets caused Mr. Chavez to be an extraordinary candidate for serving as the grocery operator. The operating agreement delegated all responsibilities and authority to the grocery operator. College Terrace Market was highly capitalized for durable success with almost \$1 million. Bank statements demonstrated investments of \$750,000 in the past six weeks by James Smailey. Refrigeration, racks, and cook lines were financed by vendors. The landlord would provide \$101,250 or 4.5 months of free rent after the store opened. The landlord guaranteed the lender that the grocery store rent would be paid. The landlord and Patrick Smailey, who had no ownership interest in the property, had guaranteed the \$40 million real estate loan. Rent for the space was below market value at \$1.88 per square foot or \$22,500 per month. The landlord provided surety for \$2,000 per day related to not having a grocery operator.

MINUTES

The City's consultant endorsed College Terrace Market. The consultant's report indicated the proposed store layout, marketing strategy, and management team and advisors would create a store that would benefit the community. College Terrace Market would be comparable, if not superior, in quality of products and services to JJ&F Market. The only 2014 precondition for the PC Zone was that construction commence after approval of the grocery store lease. The lease was approved in writing in 2013 by the City Attorney's Office. He asked the Council to direct Staff to issue permits that were initially submitted 90 days earlier and thereafter.

Uriel Chavez, Applicant, related his experience working in, and operating grocery stores. Services and product selection would be determined by the community. It would be a full-service grocery store. He was excited about establishing a community market.

Mr. Baer acknowledged supporters of College Terrace Market; although, not all would speak during public comment.

Mary Jane Marcus wanted to ensure that a public benefit survived in perpetuity regardless of the success of the grocery tenant. If the grocery store failed, the lease, at a reduced rate, should revert to the City for community use. The public benefit should accrue to the community.

Mora Oommen supported Ms. Marcus' comments. The Council should ensure the public benefit remained in perpetuity.

Joseph Oeschger, Trustee of the Clara E. Chilcote Trust, read from a letter he sent to the College Terrace Residents' Association newsletter regarding ownership of the property. The Oeschger family believed College Terrace Market would fulfill all requirements, and they would help it succeed. He urged the Council to approve the lease.

Trish Siddens recounted the Oeschger family's support of JJ&F Market and the efforts to identify another market. She wanted the Council to approve College Terrace Market.

Annette Portello Ross stated there was not sufficient time for the Council to thoroughly assess issues regarding the suitability of the proposed management team. Issues warranted further review. Perhaps the property should revert to the original Neighborhood Commercial zoning in order to complete the project.

Tony Carrasco related a history of Carrasco and Associates' efforts to maintain a successful grocery store at the location.

Rosine Ferber believed a market was necessary to the shopping center. James Smailey was the right person to operate the market.

MINUTES

Nicole Byer indicated James Smailey wanted the project to succeed. There was no reason for the Council not to approve the project.

Brian Spiers, College Terrace Centre, did not want the space to remain vacant. A successful grocery store was critical to financing of the entire project. The entire project included eight Below-Market-Rate units as well as the grocery store. The City placed many requirements to ensure the space remained a grocery store.

David Sterlace, College Terrace Centre, was dedicated to providing a quality product for the City. He supported James Smailey as the grocery store operator.

Alice Oeschger advised that the consultant's report indicated College Terrace Market fulfilled all the requirements. The combination of Smailey/Chavez was ideal for operating the market. She requested the Council approve the lease.

Fred Balin read PC Ordinance 5069, Section 4(b). James Smailey, with no grocery experience, did not meet the condition. Only a lease from the owner directly to and exclusively for an experienced grocer would satisfy the condition. The Council needed to direct the Applicant to return with a signed lease from an experienced grocery tenant that the Council could approve.

Malcolm Slaney urged the Council not to approve the proposed grocery store operator. The Applicant had not demonstrated a grocery store was viable.

Irina Cross noted the consultant's report endorsed the grocery store as comparable to JJ&F with Mr. Werness as the operator. The Council should question Mr. Chavez's work in the past five years.

Robert Phillips recalled the changes in proposed grocery store operators. He urged the Council to perform due diligence with respect to Mr. Chavez. He was concerned that the public benefit would not materialize. He thought the Council should reject the application.

Doria Summa asked the Council not to approve the proposed grocery store operator. She reviewed changes in the proposed management of the grocery store since August 2014. Many residents were convinced the proposal would not succeed. The proposed penalty was insufficient relative to the financial benefits the Applicant would receive about the 40,000 square feet of office space.

MINUTES

Jeff Levinsky reported that the Applicant's latest submission showed the proposed grocery store would pay \$100,000 in additional annual rent, would have higher property taxes, would not have economies of scale or combined buying power as an independent grocery store, and would have higher advertising and promotion costs. No proposed plan guaranteed the public would receive a benefit from the project.

William Ross, speaking on behalf of five individuals, advised that a revised environmental document was needed as the existing one was five years old. Source documents for the environmental document needed updating. Thresholds were challenged in litigation pending before the California Supreme Court. A Traffic Demand Management (TDM) Program was needed. Litigation was pending with respect to an incremental determination of a housing commitment.

Bob Moss noted the public benefit was a business. The Applicant could not identify an operating grocer who was willing to lease the space. There was a high probability the store would close after a few years. The Council should not approve a business as a public benefit, as it could not ensure the viability of a business indefinitely.

Margaret Heath expressed concern regarding financial information of Mr. Chavez and litigation between Mr. Chavez and his family members.

Stephanie Munoz suggested office space revert to housing if the Applicant was not able to provide a grocery store in perpetuity.

Cara Silver, Senior Assistant City Attorney reported the starting point of any California Environmental Quality Act (CEQA) analysis was to look at the exact Council decision that was before the body. The discretionary decision was not the review of the entire PC Ordinance, but only whether the substitute tenant was comparable to the original tenant analyzed in the original environmental review. Staff did not believe CEQA analysis was triggered at this juncture of the process. With respect to penalties, the penalty offer had been increased to \$1,000 per day, which Staff believed provided a significant financial incentive to retain a grocery store. Staff reviewed the extensions that applied to the project and confirmed that a one-year automatic extension was applicable under the Extension Ordinance. The additional one-year extension granted by Staff was also appropriate under the Extension Ordinance. The project was eligible for an additional and final one-year extension; however, that extension was subject to Planning and Transportation Commission and Council review and approval.

Mayor Shepherd inquired about the deadline for that last extension.

Ms. Silver advised that the Applicant would have to go through the process by the end of 2014.

MINUTES

Hillary Gitelman, Planning and Community Environment Director noted public comment regarding whether a grocery store was appropriate at the location, size of the proposed project, and whether designating a business as a public benefit was appropriate. Those decisions were made when the PC Ordinance was adopted and were not before the Council. Staff considered an option for the lease to revert to the City to be a renegotiation of the public benefit included in the Ordinance. The parties would have to mutually agree to such an option. She suggested the Applicant respond to concerns regarding an experienced grocery operator and Mr. Chavez address his credentials. Staff felt it was critical to have a significant disincentive for the property owner to leave the space vacant. The Applicant offered a penalty of \$1,000 per day if the space was vacant for more than six months.

Mayor Shepherd inquired whether the Applicant had offered a penalty of \$2,000 per day.

Mr. Baer reported the property owner had approved a penalty of \$2,000 per day.

Mayor Shepherd requested the Applicant and proposed operator respond to public comment.

Mr. Baer advised that the rent would be \$22,500 per month while a penalty would be \$60,000 per month. A \$60,000 penalty was substantial.

Mr. Chavez had no intention of allowing the grocery store to fail. The Chilcote Trust made more than reasonable efforts to ensure the success of a tenant. Over the past four years, he had returned to school and continued to work.

Vice Mayor Kniss interpreted the PC Ordinance as the Council, if it felt the proposed tenant was not comparable to JJ&F, they should not accept the proposed tenant.

Ms. Gitelman concurred.

Vice Mayor Kniss was inclined not to support approval of the proposed tenant. She was concerned that the proposed tenant could not provide the level of service she experienced with JJ&F. Small grocery stores were not popular unless they were specialty stores. The service offered by JJ&F no longer existed. Unless she was certain that a proposed tenant could offer that level of service, she would not support approval of the proposed tenant.

Council Member Scharff understood the Council was to determine if the proposed market would provide services and products comparable to JJ&F. As part of that, the market needed to have a good chance of surviving. Mr. Smailey was going to be the operator rather than Mr. Chavez.

MINUTES

He asked why the contract was not with Mr. Chavez directly. Mr. Werness wanted to be the operator, but Mr. Smailey would not agree.

Mr. Oeschger stated that had not been raised. When the developer approached a lender, Mr. James Smailey volunteered to run a grocery store. The lender accepted that proposal. The PC Ordinance did not allow any other tenants unless a grocery store operated there.

Council Member Scharff did not believe other stores would have to vacate the premises if the grocery store ceased operations.

Ms. Gitelman clarified that the grocery store had to be open and operating prior to other tenants opening.

Mr. Oeschger indicated the grocery store was a prerequisite to leasing space to other tenants. Mr. Smailey was capable of running and desired to run the grocery store. The primary issue was a grocery store had to be in place in order to meet the requirement of the PC Ordinance.

Council Member Scharff was willing to approve a tenant only if there was direct ownership with a grocery tenant. He preferred an experienced person own the grocery business and have a full stake in its success. It appeared that Mr. Chavez would be a consultant to the grocery store. He inquired about Mr. Chavez's role in operating the grocery store.

Mr. Chavez explained that he would be running the grocery store. He did not have sufficient capital to support his owning the grocery store. The contract allowed him to remain in the grocery business with considerably less risk.

Council Member Scharff asked who would make operating decisions.

Mr. Chavez was going to make those decisions.

Council Member Scharff inquired whether Mr. Chavez had a written agreement with that provision.

Mr. Chavez answered yes.

Mayor Shepherd asked if Council Member Scharff meant the lease document.

Council Member Scharff responded yes.

Mayor Shepherd noted the lease document was not in the operator's name.

Council Member Scharff was concerned about the person actually running the grocery store. The community wanted a grocery store run by someone experienced.

MINUTES

He felt Mr. Chavez met that desire; however, Mr. Chavez was merely a consultant. Clearly, the developers could find a grocer and name them as the operator. He did understand why the developers did not do that.

Mayor Shepherd requested the Applicant respond to Council Member Scharff's concern.

Michael Polentz, Manatt, Phelps and Phillips LLP, reported that neither Mr. Werness nor Mr. Khoury provided accurate information regarding discussions that transpired. After long negotiations with Mr. Werness, financial terms were never agreed upon. Negotiations included Mr. Werness as the owner. Mr. Werness made the decision to end negotiations. Mr. Khoury was never part of JJ&F. Mr. Khoury was offered an opportunity to be the operator or the assignee of the lease. From an economic perspective, Mr. Khoury refused to meet the minimum requirements that would make the project viable even with a subsidized rental stream. If the Council preferred the operator role be filled by an entity in which Mr. Chavez owned a vested interest, he was confident the owners would agree.

Council Member Klein felt the community and the Council believed the PC Ordinance was a good deal when it was originally adopted. Public comments indicating the grocery store could not succeed were made by people with no grocery expertise. Mr. Werness and Mr. Khoury, two experienced grocery store operators, believed they could operate a successful grocery store at the location. The developer indicated nobody was interested in running a grocery store. The PC Ordinance did not state the Council had to approve an operator at the rent the Applicant wanted to charge. With respect to comments that the process had gone on long enough, the City did nothing to prevent the Applicant from proceeding with the project. The proposed tenant did not meet the standards of the PC Ordinance. He did not believe the Applicant proposed an operator who was knowledgeable. The lessee had no experience operating a grocery business. Mr. Chavez was not the lessee, but an employee of the lessee. Mr. Smailey was not comparable to the Garcias in managing a grocery store. The Council should reject the Applicant's proposal. If it could do so, the Council should grant the Applicant a three-month extension to submit a different proposal.

Ms. Gitelman advised that Section 2(c) of the amended operating agreement stated that the agreement between Mr. Smailey and Mr. Chavez would expire concurrent with the commercial lease between College Terrace Centre and the tenant, if not sooner terminated.

Council Member Klein stated the amended expiration date did not change his opinion. Mr. Smailey could terminate Mr. Chavez's services prior to the expiration of the agreement. He requested the City Attorney comment on whether the Council could grant the Applicant an extension.

MINUTES

Ms. Silver indicated the permit could be extended by two methods. One method was through the previously adopted Extension Ordinance. Another was through an extension of the PC permit. If the Council chose to extend the PC permit, the City needed to provide notice and list the Item on the Consent Calendar for the Council meeting the following week.

Mayor Shepherd asked if the Item had to be noticed for the Council's Agenda.

Ms. Silver replied yes.

Mayor Shepherd indicated the Item did not have to comply with procedures for noticing a public hearing.

MOTION: Council Member Klein moved, seconded by Vice Mayor Kniss to reject the tenant as not likely to be comparable in quality of products and services and to direct Staff to return on December 8, 2014 on the Consent Calendar with notice of an extension of the PC Ordinance until March 31, 2015.

Vice Mayor Kniss believed the Motion was reasonable. The proposed tenant did not meet the criteria of the PC Ordinance. Any proposed tenant should consider the needs of today's market.

Mayor Shepherd noted the time of 10:00 P.M. and members of the audience present to address Agenda Item Number 13- PUBLIC HEARING: Adoption of an Ordinance Establishing a Citywide Framework for Establishment of Neighborhood-Specific Residential Preferential Parking (RPP) Districts.

She suggested the Council address Agenda Item Number 13 following the current discussion.

Council Member Burt was unsure whether the Council could complete discussion of Agenda Item Number 13 in the current meeting. Making critical public policy decisions at midnight was not a good practice. He recommended the Council consider continuing Agenda Item Number 13 to the following evening at 8:00 P.M.

Vice Mayor Kniss concurred with Council Member Burt.

Mayor Shepherd suggested the Council could continue the current Agenda Item to the following evening and proceed with Agenda Item Number 13.

Council Member Burt indicated a discussion of Agenda Item Number 13 would still continue to midnight.

Council Member Schmid asked if notice of a meeting the following evening would have to be made.

MINUTES

Ms. Silver answered no.

Mayor Shepherd explained that the current meeting would be continued to the following evening; therefore, notice was not necessary. She suggested the Council continue Agenda Item Number 13 to 8:30 P.M. the following evening, but take public comment in the current meeting and the following meeting.

Council Member Price requested the Council meet at 8:00 P.M. the following evening.

Mayor Shepherd advised that Council Members were not available at 8:00 P.M.

Council Member Price suggested the Council meeting begin at 8:00 P.M. with those Council Members who could be present at that time.

Council Member Burt inquired if the Finance Committee meeting scheduled for the following evening would end by 8:00 P.M.

Mayor Shepherd reported the Finance Committee's discussion of the Animal Shelter had been postponed.

James Keene, City Manager noted the Finance Committee would have some discussion of the Animal Shelter the following evening.

Council Member Berman felt the Finance Committee could complete its meeting by 8:30 P.M.

Vice Mayor Kniss urged the Council to meet at 8:00 P.M.

Mayor Shepherd reported the Council would meet at 8:30 P.M. on December 2, 2014 in order to have all Council Members present. Four Council Members would not participate in discussion of Agenda Item Number 14 because of conflicts of interest. Public comment for Agenda Item Number 13 was going to be allowed in the current meeting. She returned to discussion of Agenda Item Number 12.

Council Member Holman was troubled by the lack of a direct agreement with a grocery operator. She was not sure if Mr. Chavez was the right grocer for the business. Collecting no rent for the space was less expensive for the Applicant than paying a \$2,000 per day penalty. The list of products to be sold in the grocery store added to the question of Mr. Chavez's experience. She learned from a member of the public that the Extension Ordinance was supposed to have been reviewed to determine whether it should be extended; that had not occurred. She questioned whether the Extension Ordinance was legally valid to allow the Council to extend the PC Ordinance.

MINUTES

Ms. Silver understood the Motion did not utilize the Extension Ordinance, rather the Motion utilized the Council's inherent ability to amend a PC Ordinance.

Council Member Holman was surprised by demolition of the existing buildings. She did not believe demolition permits were granted prior to building permits. She inquired whether there were any other pending permits that might trouble the Council.

Ms. Gitelman reported an application for grading and excavation was pending. Any Council action would determine whether that permit could be issued.

Council Member Scharff was concerned that the Motion did not provide good directions to the Applicant. The Council had a limited legal obligation to review a particular phrase of the PC Ordinance. He strongly felt the Applicant needed a direct operator.

SUBSTITUTE: Council Member Scharff moved, seconded by Council Member Burt that the City Council approves the grocery tenant with the following conditions of approval, which shall be included in a voluntary agreement to be executed by the City Manager and the property owner before issuance of any grading, excavation or building permit, including:

1. The Owner/Applicant shall modify its contractual arrangements so as to lease the grocery tenant space directly with an experienced grocery store owner/operator team;
2. The operator shall be subject to approval by the City Council prior to issuance of an occupancy permit;
3. Daily penalties of \$2,000 in the event the approved market goes out of business and is not replaced with another experienced grocery operator within six months; and
4. Direct Staff to return on December 8, 2014 on the Consent Calendar with notice of an extension to the PC Ordinance until March 31, 2015.

Council Member Klein concurred with much of Council Member Scharff's proposal; however, the Council should not be too involved in the Applicant's business. It was the Applicant's responsibility to propose a grocer.

Council Member Scharff felt that Council comments were varied and lacked specific direction. The Council needed a clear record of its intentions.

MINUTES

Council Member Burt believed the Council did not fully understand the necessity for Mr. Smailey to participate in the agreement. Mr. Smailey was involved because he was providing the capital. He questioned whether an arrangement for the financial entity and the operator to share equity in the business meant each would be required to have extensive grocery experience. He was unsure whether that was necessary. He inquired whether the Council had discretion to reject a proposal because it did not believe the operator would offer comparable products and services on an ongoing basis.

Molly Stump, City Attorney advised that the touchstone for the Council was comparability of quality of products and services. The daily penalty spoke to the Applicant's willingness to commit to an ongoing operation. That could be the topic for the Council's focus if it had additional comments or guidance to provide.

Council Member Burt asked if Ms. Stump meant the Council did not have the discretion to reject a proposal if it was skeptical of the long-term viability of a proposed operator.

Ms. Stump replied no. The PC Ordinance contained two separate provisions related to inception and ongoing viability.

Ms. Silver added that the Ordinance contained some ongoing safeguards. She read Condition B-7 regarding continuous operation and Condition B-2 regarding the type of grocery store.

Council Member Burt stated that an offer to pay a penalty did not guarantee a grocery store would continue to operate. He reiterated his question of whether the Council had discretion to include whether it believed the proposed operator could reasonably meet the requirement of "shall continue to operate."

Ms. Gitelman reported Staff's view was that was within the City's purview. That was the reason Staff focused on a surety for maintaining the business with comparable services and products. A significant penalty would operate as a disincentive for the space remaining vacant.

Council Member Burt reiterated his question of whether the Council had discretion in its approval process to judge whether the operator could achieve comparable products and services on an ongoing basis.

Ms. Silver answered yes. That was surely the intent of the entire process.

Council Member Klein would not support the Substitute Motion as he preferred the Applicant and Staff resolve any issues.

MINUTES

Council Member Scharff felt it was important for the Council to provide clear directions to the Applicant, so the Applicant could return with a proposed operator that met the Council's requirements. He requested the City Attorney comment on language of the Substitute Motion.

Ms. Stump suggested the Substitute Motion incorporate the idea of extending the PC Ordinance, set to expire at the end of the year, to allow the operator sufficient time to return to the Council.

Mayor Shepherd inquired whether Council Member Scharff had a proposed time limit for returning to the Council.

Council Member Scharff responded March 31, 2015 was acceptable.

Council Member Burt expressed concern that the Council was not providing adequate direction to the developer absent the Substitute Motion. The Substitute Motion seemed to capture the Council's and the community's direction. Comments reflected a desire for a grocery store identical to JJ&F and a grocery store reflecting the times. Those two comments provided contradictory guidance.

Council Member Price originally supported Staff's recommendation; however, she now supported the Substitute Motion. Comparability was difficult to define. The additional elements provided guidance and addressed concerns. The key point was a successful grocery store.

Council Member Schmid supported the Motion. Public comment indicated serious issues with the Applicant's proposal. The Council should not tell the Applicant what to do. The discussion provided a monetary value of the public benefit, \$2,000 per day.

Council Member Berman understood the residents of the neighborhood wanted a grocery store located in the neighborhood. He wanted to achieve that goal. The Applicant's offer to pay a penalty was a commitment to provide a long-term grocery store. He urged the Applicant to scrutinize future proposals for issues the community could take issue with. The Substitute Motion provided concrete direction to the Applicant. The Council and the community needed assurance that a qualified grocer would own and operate the business.

Council Member Holman inquired whether the Substitute Motion needed to state that the Council did not find the proposal would provide comparable quality of products and services as JJ&F.

Ms. Silver responded yes and offered language for inclusion in the Substitute Motion.

MINUTES

INCORPORATED INTO THE SUBSTITUTE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the Council finds that the current proposal does not meet the findings required by the PC Ordinance because it does not provide long-term grocery business viability.

Council Member Holman requested clarity of the language of the Substitute Motion.

Ms. Stump advised that the Substitute Motion would provide some initial approval with a substantial condition that the Council needed to approve the new owner/operator team. All of that needed to be codified in an agreement that was enforceable before any additional permits could be issued.

Council Member Holman felt language after "the following conditions of approval" should be deleted in order to clarify the Substitute Motion.

Ms. Stump indicated the intention was to have an agreement enforceable against the current owner and any successor owners.

Mr. Keene added that the phrasing "the following conditions of approval which shall be included in a voluntary agreement to be executed by the City Manager" presumed that the conditions of approval must be met in advance of being included in the agreement.

Council Member Holman inquired whether the City Attorney found the language acceptable.

Ms. Silver replied yes.

Council Member Burt noted the Council would approve the conditions rather than the tenant under the Substitute Motion.

Mayor Shepherd asked if Council Member Burt was satisfied with the language of the Substitute Motion.

Council Member Burt replied yes.

Mayor Shepherd inquired whether the Council could consider a new proposal as early as December 8, 2014 if the Applicant could arrange a new proposal under the terms of the Substitute Motion. Notice of a new proposal would have to be given.

Council Member Scharff believed that was a decision for the Mayor and City Manager.

Mayor Shepherd was concerned that December 8, 2014 would be too soon for the Council to consider another proposal.

MINUTES

Ms. Gitelman recalled the attorney for the Applicant mentioned a joint venture between the current operator and tenant. She asked if that would meet the intent of the Substitute Motion.

Council Member Burt stated a nominal equity position would not meet the intent of the Substitute Motion. If the Applicant could arrange a proposal that met the City Manager's preliminary approval, then it could be agendized at any time.

Council Member Scharff concurred with Council Member Burt's comments.

Mayor Shepherd believed construction loan deadlines could impact the owners. She wished to ensure the Council was willing to discuss a new proposal on either December 8 or 15, 2014. The Substitute Motion made no reference to an equity partnership that the Council could find acceptable. Without that, the Council could repeat the process at a future meeting.

Mr. Polentz reported the ownership of the current lessee, JJ&F Family Markets, would agree to a 51/49 percent equity partnership with Mr. Chavez having 49 percent of equity ownership. He asked if that was satisfactory to the Council. Documents could be prepared and submitted to the City Manager the following day if that arrangement was responsive to the Substitute Motion.

Council Member Burt suggested that would be substantive, but the Council deferred to the City Manager after providing him with guidance.

Council Member Scharff agreed with Council Member Burt.

Vice Mayor Kniss felt the Substitute Motion was prescriptive. The one aspect she could support was the penalty of \$2,000 per day. Much of the language was contained within the PC Ordinance.

Council Member Klein did not believe the Council had gained anything by proposing the Substitute Motion. Many of the requirements of the Substitute Motion were contained in the PC Ordinance. The Council's first act was to disapprove the proposal of the Applicant. The Applicant had the burden of making a proposal to the Council. As Council Member Schmid suggested, the Motion should contain a statement that any proposal include the \$2,000 per day penalty. The Substitute Motion needed to be treated as an Amendment because the Council supported the general idea of rejecting the current proposal.

Mayor Shepherd inquired if the Substitute Motion should be an Amendment to the Motion.

MINUTES

Council Member Klein explained that the Substitute Motion simply added language to the Motion.

Mayor Shepherd agreed with treating the Substitute Motion as an Amendment to the Motion.

SUBSTITUTE MOTION RESTATED AS AMENDMENT: Council Member Scharff moved, seconded by Council Member Burt that the City Council approves the grocery tenant with the following conditions of approval, which shall be included in a voluntary agreement to be executed by the City Manager and the property owner before issuance of any grading, excavation or building permit, including:

5. The Owner/Applicant shall modify its contractual arrangements so as to lease the grocery tenant space directly with an experienced grocery store owner/operator team;
6. The operator shall be subject to approval by the City Council prior to issuance of an occupancy permit;
7. Daily penalties of \$2,000 in the event the approved market goes out of business and is not replaced with another experienced grocery operator within six months; and
8. Direct Staff to return on December 8, 2014 on the Consent Calendar with notice of an extension to the PC ordinance until March 31, 2015.
9. That the Council finds that the current proposal does not meet the findings required by the PC Ordinance because it does not provide long-term grocery business viability.

SUBSTITUTE MOTION AS AMENDED PASSED: 7-2 Klein, Schmid no

Mayor Shepherd announced Agenda Item Numbers 13 and 14 were continued to December 2, 2014; however, the Council would hear public comment.

Mr. Keene inquired about the number of speakers for both Items.

Mayor Shepherd responded 15 speakers for Agenda Item Number 13. She did not plan on taking public comment regarding Agenda Item Number 14 as some Council Members needed to recuse themselves.

Mr. Keene asked if the Council wished to move to the Closed Session following public comment.

Mayor Shepherd answered yes. Public speakers could not address Agenda Item Number 13 in both the current and following Council meetings.

MINUTES

13. PUBLIC HEARING: Adoption of an Ordinance Establishing a Citywide Framework for Establishment of Neighborhood-Specific Residential Preferential Parking (RPP) Districts.

Public Hearing opened at 10:59 P.M.

Samina Faheem indicated parking in the area was not sufficient for residents and businesses. She supported residential parking permits.

Russ Cohen, Palo Alto Downtown Business and Professional Association Executive Director wanted a successful Residential Parking Permit (RPP) Program. The success of the RPP Program depended upon: (a) charging fees to both Downtown worker users and residential users or not charging fees to either group; (b) allocating permits for Downtown workers in Phase 2 rather than Phase 1; and (c) implementing and measuring results from other traffic programs prior to implementing an RPP Program.

Mayor Shepherd noted Mr. Cohen spoke to Agenda Item Number 14.

Harris Barton indicated the City needed to ensure businesses were charged for utilizing parking places in neighborhoods.

Elaine Uang stated the RPP framework would create good traffic programs. Without an RPP Program, other traffic measures would be useless.

Iqbal Serang hoped the Council would consider apartment owners equally

Public Hearing closed at 11:05 P.M.

14. PUBLIC HEARING: Adoption of a Resolution Establishing a Residential Preferential Parking (RPP) Program in the Downtown Neighborhoods.

Mayor Shepherd recused herself from the Item as her husband had a lease in the Downtown District.

Council Member Berman recused himself from the Item as he owned a residence in the Downtown area.

Council Member Holman recused herself from the Item as she owned property that could be impacted by Council action.

Council Member Scharff recused himself from the Item as he owned commercial property located on University Avenue. He did not believe he had a conflict of interest; however, he had insufficient information to make a clear determination. In the future, he could choose not to recuse himself.

James Keene, City Manager recused himself from the Item as he owned a residence in the Downtown Parking District.

MINUTES

Public Hearing opened at 11:18 P.M.

Gab Layton felt the City had created a perverse system of incentives that encouraged traffic and parking issues. The fee charged workers was small, but it would change the parking situation for residents and business customers.

Peter Stone did not believe any stakeholder group opposed Phase 1 of the Residential Parking Permit (RPP) Program. The current parking situation was difficult for both workers and residents. An RPP Program would be a step towards active management of the situation.

Brandon Corey preferred residents pay for all permits. A limit of four permits seemed arbitrary. The proposal did not address people potentially obtaining four permits and then selling some or all to others. The proposal should address containment of costs so that permits did not cost \$500.

Judy Kleinberg, Chamber of Commerce President and CEO stated the business community supported Phase 1 of the RPP Program. Employees' needs should be balanced with residents' needs. Transfer of permits should be allowed. Phase 1 should be a pilot program, and it should inform Phase 2. An RPP Program was only one component of a comprehensive solution to the parking problem.

Ruth Lowy believed the City should act as the parking problem was spreading. The Council needed to ensure that new development was properly parked.

Public Hearing closed at 11:28 P.M.

Vice Mayor Kniss announced Agenda Item Numbers 13 and 14 were continued to the following evening. Public speakers who had not spoken in the current meeting could speak to the items the following day.

Molly Stump, City Attorney advised that the Council would need to vote formally to adjourn the meeting to the following day after the Closed Session.

The City convened into Closed Session at 11:30 P.M.

MINUTES

CLOSED SESSION

15. CONFERENCE WITH LABOR NEGOTIATORS

City Representatives: City Manager and his designees pursuant to Merit System Rules and Regulations (James Keene, Lalo Perez, Joe Saccio, Kathryn Shen, Sandra Blanch, Walter Rossmann, Khashayar "Cash" Alae)

Unrepresented Employee Group: Management, Professional and Confidential Employees

Authority: Government Code Section 54957.6

16. CONFERENCE WITH LABOR NEGOTIATORS

City Representatives: Sherry Lund, CAO Committee (Chair Person, Council Members)

Unrepresented Employees: James Keene, City Manager, Molly Stump, City Attorney, Harriet Richardson, City Auditor

Authority: Government Code Section 54957.6

The Council returned from the Closed Session at 12:15 A.M.

MOTION: Mayor Shepherd moved, seconded by Vice Mayor Kniss to continue the meeting to December 2, 2014 at 8:30 P.M.

MOTION PASSED: 9-0

ADJOURNMENT: The meeting was adjourned at 12:15 A.M. to be continued to Tuesday, December 2, 2014 at 8:30 P.M.

ATTEST:

APPROVED:

City Clerk

Mayor

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