The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:03 P.M.

Present: Cormack, DuBois, Filseth, Fine, Kniss, Kou, Tanaka

Absent:

Closed Session

1. CONFERENCE WITH LABOR NEGOTIATORS
   City Designated Representatives: City Manager and his Designees Pursuant to Merit System Rules and Regulations (Ed Shikada, Michelle Flaherty, Rumi Portillo, Sandra Blanch, Nicholas Raisch, Molly Stump, Terence Howzell, and Kiely Nose)
   Employee Organization: Service Employees International Union, (SEIU) Local 521
   Authority: Government Code Section 54957.6 (a).

2. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
   Authority: Government Code Section 54956.8
   Property: Vacant Land, 3350 Birch Street, Palo Alto, CA
   Assessor’s Parcel No. 132-33-050
   Agency Negotiators: Ed Shikada, Kiely Nose, and Sunny Tong
   Negotiating Parties: Pacific Bell Telephone Co.
   Under Negotiation: Purchase Price and Terms of Payment.

Margaret Adkins, Service Employees International Union (SEIU), Local 715 Chapter Chair, remarked that the local governments' average vacancy rate was less than five percent, while Palo Alto's vacancy rate was 14 percent. High and extended position vacancies damaged the organization. She urged the City Council to address the high vacancy rate.

Ratu recalled the 2003 and 2007 labor negotiations that resulted in changes to healthcare and retirement plans. The 2009 contract constrained the City's ability to recruit and retain employees. Employees must be paid at market rates.
Alison de Geus, SEIU Chapter Vice Chair, shared the impacts on programming and morale caused by the loss of four librarians. Having an affordable choice of healthcare providers was important to employees.

Chris Brickner related the loss of his coworkers due to the City's cost of living and pay scale. Retaining employees in Electric Operations was a huge problem, and the division was at minimum staffing levels. Few Electric Operations staff could reach the City in less than an hour in the event of an emergency.

Lynn Krug commented on the effects long-term vacant positions were having on City employees. Contractors did not have the experience needed to fill vacant positions. City employees did not receive Social Security retirement benefits because they participated in the California Public Employees' Retirement System (CalPERS).

Stephanie Munoz suggested the Council incorporate a homeless shelter into the new parking garage. A homeless fund could be used to pay for a sixth floor on the parking garage for the shelter.

**MOTION:** Council Member Kniss moved, seconded by Vice Mayor Fine to go into Closed Session.

**MOTION PASSED:** 7-0

Council went into Closed Session at 5:22 P.M.

Council returned from Closed Session at 7:31 P.M.

Mayor Filseth announced no reportable action.

**Special Orders of the Day**

3. **Resolution 9819** Entitled “Resolution of the Council of the City of Palo Alto Expressing Gratitude and Appreciation to Robert de Geus for two Decades of Exceptional Public Service to the Palo Alto Community.”

Mayor Filseth read the Resolution into the record.

Council Member Kou thanked Mr. de Geus for his service and hard work and wished him well in his new position.

Council Member DuBois expressed his appreciation for Mr. de Geus' service. The City of West Lake Village was lucky to have Mr. de Geus as City Manager.
Vice Mayor Fine congratulated Mr. de Geus on his new position and thanked him for his 19 years of service in Palo Alto. Community members had consistently remarked on Mr. de Geus' gentle nature and listening skills.

Council Member Cormack thanked Mr. de Geus for his work for the City, particularly regarding the Mitchell Park Community Center.

Council Member Kniss recognized Mr. de Geus' family and their time away from him while he worked long hours for the City.

Joe Hirsch appreciated Mr. de Geus' efforts on behalf of the Cardiac Therapy Foundation. Cardiac Therapy Foundation was grateful for its affordable lease at Cubberley Community Center and for Mr. de Geus' support.

Pat Burt remarked that Mr. de Geus had been exceptionally committed to the Community Services Department and to serving the Palo Alto community during his tenure with the City. Mr. de Geus was empathetic to each and every individual and had touched the lives of many youth in the community. Mr. de Geus had worked on Project Safety Net as a fulltime job in addition to his fulltime job with Community Services.

Michelle Flaherty, Deputy City Manager, presented a certificate of recognition and letter from Congresswoman Anna Eshoo.

Rob de Geus, Deputy City Manager was honored to receive the Council Resolution. He had tried to make a difference in citizens' quality of life and to understand and own issues in the community. He hoped he had made some lasting changes for the community.

**MOTION:** Council Member Kniss moved, seconded by Council Member Kou to adopt a Resolution Expressing Gratitude and Appreciation to Robert de Geus for two Decades of Exceptional Public Service to the Palo Alto Community.

**MOTION PASSED:** 7-0

**Agenda Changes, Additions and Deletions**

None.

**City Manager Comments**

Ed Shikada, City Manager, announced a public workshop regarding sea level rise was scheduled for February 27. Recruitment was underway for vacant positions on the Human Relations Commission, Library Advisory Commission,
Stormwater Management Oversight Committee, and Utilities Advisory Commission. Applications were available on the City Clerk's webpage, and the deadline to apply was March 26 at 4:30 P.M. Issuance of Certificates of Participation (COP) for the California Avenue parking garage would begin February 26. Palo Alto residents would have the first opportunity to purchase up to $38 million of tax-exempt and/or taxable COP bonds in two series. Standard and Poor's had rated the bonds at A+. Pets in Need began operating the City's Animal Shelter on February 19, and an opening celebration was planned for March 7. The Human Relations Commission was hosting a series of community conversations on contemporary issues. The first on the topic of gender equity was scheduled for March 7. The Baylands Boardwalk ribbon-cutting ceremony was postponed due to weather and would be rescheduled. The National Weather Service had issued a flash flood watch for Monday afternoon through Thursday morning with heavy rains in the forecast. A 30-foot section of the Los Trancos Trail in Foothills Park had been repaired and was open.

Oral Communications

Kim Shum advised that Staff had worked with him regarding relocating the proposed bus stop adjacent to his driveway. His driveway was located approximately 50 feet from the crosswalk. Two trees and a fire hydrant were located within that distance. Valley Transportation Authority (VTA) required a distance of 55 feet for a bus stop. The proposed location was not safe for passengers, who were mostly seniors and children. He hoped the City would reconsider the proposed location for the bus stop.

Jeb Eddy supported the Council's decision to make climate change a Priority. An international school strike for climate change was scheduled for March 15.

Minutes Approval

4. Approval of Action Minutes for the February 2, 4, and 11, 2019 Council Meetings.

**MOTION:** Council Member Kniss moved, seconded by Vice Mayor Fine to approve the Action Minutes for the February 2, 4 and 11, 2019 Council Meetings.

**MOTION PASSED:** 7-0
Consent Calendar

**MOTION:** Council Member Kniss moved, seconded by Vice Mayor Fine to approve Agenda Item Numbers 5-11A.

Council Member DuBois registered a no vote on Agenda Item Number 10.

Council Member Tanaka requested the Mayor split Agenda Item 11A into two parts, one for architecture and one for the modular building.

Molly Stump, City Attorney, advised that the Mayor could split the two items. If the Mayor chose to retain one item, four votes were needed to split the item.

Mayor Filseth indicated Agenda Item Number 11A- Approval of an Exemption from Competitive Solicitation... would remain as one item.

Council Member Tanaka registered a no vote on Agenda Item Number 11A- Approval of an Exemption from Competitive Solicitation...

Council Member Kou registered no votes on Agenda Item Numbers 8- Issuance of a Request for Proposals (RFP) for an Evaluation of Organizational..., 9- Appointment of Council Member Alison Cormack..., 10- SECOND READING: Ordinance 5459 Entitled...

Mayor Filseth registered a no vote on Agenda Item Number 10- Ordinance 5459 Entitled...

Joe Hirsch, speaking regarding Agenda Item Number 10, urged the Council to reconsider its repeal of the Downtown nonresidential development cap. There was no reason to repeal the cap when it would self-repeal when 19,000 square feet of new nonresidential development were approved.

Suzanne Keene, speaking regarding Agenda Item Number 10, concurred with Mr. Hirsch's comments. Repeal of the Downtown cap opened the door for AJ Capital to build another luxury hotel. As a compromise, the Council could consider Option 3 presented by City Staff.

John Guislin, speaking regarding Agenda Item Number 10, felt the Council's repeal of the cap betrayed the community's trust. Other regulations did not provide the same protections as the cap. If the Council wanted housing, it should legislate to promote housing.
Terry Holzemer, speaking regarding Agenda Item Number 10, urged the Council to reconsider Staff's Alternative 3. The cap should be retained with modifications that allowed businesses to grow.

Neilson Buchanan, speaking regarding Agenda Item Number 10, announced Senator Jerry Hill would convene a meeting of City Managers and Mayors from all cities within his district on March 15. Agenda Item Number 10 should be delayed until the City Manager and Mayor could attend and share information from Senator Hill's meeting.

Greg Welch, speaking regarding Agenda Item Number 10, implored the Council to reconsider its decision to lift the cap. With untrammeled office development and no concomitant investment in infrastructure, transportation, and housing, the City would cease to exist as it had for generations. Lifting the cap would only exacerbate residents' concerns about housing and traffic.

Bob Moss, speaking regarding Agenda Item Number 10, concurred with previous requests for the Council to reject its decision to repeal the cap. Office uses did not generate tax revenue.

Herb Borock, speaking regarding Agenda Item Number 8, advised that the Council had known for two months of its need to hire a City Auditor. The Council Appointed Officers Committee and the Council should hire an interim City Auditor rather than issue a Request for Proposals (RFP). With respect to Agenda Item Number 10, another Council no vote would defeat the Ordinance.

5. Approval of Amendment Number 1 to Contract Number C16166822 With ARC Document Solutions for Copiers/Printers to Increase the Annual Amount by $41,000 to add Utilities Bill Printing and Other Departments for a new Annual Not-to-Exceed Amount of $408,068.

6. Approval of the Second Extension of the Pilot Phase of the Southgate Residential Preferential Parking Program for a Period of Six Months.

7. Resolution 9820 Entitled, “Resolution of the Council of the City of Palo Alto Declaring Intention to Reimburse Expenditures Related to the Four Capital Improvement Projects From the Proceeds of the Bonds to be Issued by the City for Wastewater Treatment Fund for a Not-to-Exceed Amount of $85 million.”

8. Issuance of a Request for Proposals (RFP) for an Evaluation of Organizational and Resource Options for the City Auditor's Office and
Refer to the Council Appointed Officers Committee Evaluation of the RFP Results and Development of Recommendations to the Council.

9. Appointment of Council Member Alison Cormack to the Board of Directors of the Bay Area Water Supply & Conservation Agency and the Bay Area Regional Water System Financing Authority.

10. Ordinance 5459 Entitled “Ordinance of the Council of the City of Palo Alto Amending Chapter 18.18 (Downtown Commercial District) of Title 18 (Zoning) of the Palo Alto Municipal Code (PAMC) to Repeal Section 18.18.040 Relating to a Nonresidential Square Footage Cap in the CD Downtown Commercial Zoning District to Implement and Conform to the Updated Comprehensive Plan 2030 (FIRST READING: February 11, 2019 PASSED: 4-3 DuBois, Filseth, Kou no).”


11A. Approval of an Exemption from Competitive Solicitation, Approval of a Contract With Swatt Miers Architects Inc. in an Amount Not-to-Exceed $397,725 for Design Services for the Animal Shelter, and Authorization for the City Manager to Purchase a Modular Building from vendor Design Space Modular in an Amount Not-to-Exceed $300,000 for the Animal Shelter Renovation, Capital Improvement Program Project, PE-19002.

MOTION PASSED FOR AGENDA ITEM NUMBERS 5-7, 11: 7-0

MOTION PASSED FOR AGENDA ITEM NUMBER 8: 6-1 Kou no

MOTION PASSED FOR AGENDA ITEM NUMBER 9: 6-1 Kou no

MOTION PASSED FOR AGENDA ITEM NUMBER 10: 4-3 DuBois, Filseth, Kou no

MOTION PASSED FOR AGENDA ITEM NUMBER 11A: 6-1 Tanaka no

Council Member Tanaka supported Agenda Item Number 11A in general. However, renting the modular building was more logical because it would be a temporary structure. The Staff Report did not contain the three informal price quotes staff obtained. This building was priced at approximately $120 per square foot when a Google search revealed the cost was closer to $40-$60 per square foot.

Council Member Kou stated the City Auditor was an important office because it provided checks and balances. The Staff Report did not list the consulting
companies that Staff contacted. She requested information regarding the specific person from Management Partners who would be working with the Council. She wanted to know why the scope of the Request for Proposals (RFP) was limited to the City Auditor's Office only. The Council rather than Staff should receive recommendations from the Council Appointed Officers Committee. She opposed Agenda Item Number 9 because the use of the Consent Calendar to take action was not transparent and did not provide Council Members with a choice. With respect to Agenda Item Number 10, Downtown would not be protected by the 50,000-square-foot cap on new office buildings. A moratorium should be imposed so that a study of the impacts of repealing the cap could be conducted.

Council Member DuBois understood the community wanted a year to plan the further development of Downtown. With the Council Priorities of traffic and sustainability, he did not understand the rush to remove the cap.

Mayor Filseth explained that removal of an item from the Consent Calendar on second reading required support from a majority of the Council.

Action Items

12. PUBLIC HEARING/QUASI-JUDICIAL: 285 Hamilton Avenue [18PLN-00006]: Recommendation on Applicant’s Request for a Text Amendment to Title 18 of the Palo Alto Municipal Code to Allow for Minor Increases in Height and Floor Area to Provide Access to Rooftop Decks on Existing Structures in the Commercial Downtown (Community) CD-C Subdistrict, as well as a Conditional Use Permit and Architectural Review for a 2,600 Square Foot Roof-top Deck on the Roof of the Existing Commercial Building at 285 Hamilton Avenue. The Planning and Transportation Commission Reviewed and Recommended Approval (4-2) of the Text Amendment and Conditional Use Permit at a Public Hearing on October 10, 2018. Environmental Assessment: Exempt per Sections 15301 and 15305 of the California Environmental Quality Act (CEQA) Guidelines. Zone District: CD-C(GF)(P) (Continued From November 19, 2018).

Graham Owen, Planner, Planning and Community Environment Department, reported the applicant requested a text amendment to allow a floor area and height exception in the Downtown Commercial-Community (CD-C) district, a Conditional Use Permit (CUP), and Architectural Review of a proposed roof deck. The Council held a prescreening of the project on November 27, 2017. On October 10, 2018, the Planning and Transportation Commission (PTC) voted 4-2 to recommend the Council approve the text amendment and CUP. The existing building was a noncomplying facility in that it exceeded the
current floor area ratio (FAR) and height standards. Roof decks were a permitted use in the Downtown zone as long as they complied with development standards. Elevators and stair enclosures were needed for access to the roof deck. The applicant proposed plants, trellises, furniture, and grills for the roof deck. Potential issues of a roof deck were noise and lighting. The safety railing would be 42 inches above the parapet, and a trellis would screen a section of the roof deck. The top of the penthouse enclosure reached a height of 85 feet. Elevator and stair enclosures would not increase the overall height of the building, but the areas associated with circulation would increase the FAR of the building. The proposed Ordinance would apply to buildings that did not comply with height and FAR standards and that were located in the CD-C zone. Alternatively, the proposed Ordinance could be written to apply to buildings that exceeded FAR standards regardless of their total height. This alternative would increase the total number of eligible sites. The PTC discussed the application of the proposed Ordinance to complying and noncomplying buildings. The community expressed concerns regarding the roof deck's impact on adjacent residences. As drafted, the proposed Ordinance provided a 150-foot buffer from any residential zone to any area on a CD-C zoned parcel or where a roof deck could otherwise be constructed. A Conditional Use Permit was required and subject to a public hearing. The applicant suggested the proposed Ordinance apply to buildings that exceeded both FAR and height standards. Based on Staff's analysis, the applicant's proposed Ordinance would apply to only seven parcels. Modifying the proposed Ordinance to apply to buildings that exceeded FAR standards only would increase the number of eligible buildings to 118. Staff found the project exempt from the California Environmental Quality Act (CEQA) under Sections 15301 and 15305 of the CEQA Guidelines.

Public Hearing opened and closed without public comment at 8:35 P.M.

Molly Stump, City Attorney advised that this would be a good time to make disclosures regarding the Project.

Council Member Tanaka disclosed a meeting with Margarita Golan 1-1.5 years previously. He learned no information that was not included in the public record.

Council Member Kou disclosed no ex parte communications.

Vice Mayor Fine asked who owned the property.

Mr. Owen answered Thoits Brothers.
Vice Mayor Fine disclosed a discussion with Thoits Brothers approximately a week previously. He learned no information that was not included in the public record.

Mayor Filseth disclosed no ex parte communications.

Council Member Kniss disclosed a discussion with Judy Kleinberg of the Chamber of Commerce.

Council Member DuBois disclosed no ex parte communications.

Council Member Cormack disclosed a meeting with a member of Thoits Brothers, but they did not discuss the project.

John Shenk, Applicant Representative for Thoits Brothers, appreciated the proposal to modify the proposed Ordinance so that it would apply to more sites. The text amendment would allow ugly and useless commercial roofs to be converted to attractive and usable open spaces, which was in keeping with Comprehensive Plan goals. CD-C zones should facilitate and encourage roof decks. Guests of the Garden Court Hotel had not complained about noise from a roof deck at 500 University Avenue. A roof deck was wholly compatible with Downtown living and enhanced the attractiveness of Downtown. He encouraged the Council to direct Staff to modify the proposed Ordinance to apply to more sites in Downtown and to modify a Condition of Approval so that noise was enforced through the City's Noise Ordinance.

Bob Giannini, Form4 Architecture, advised that the PTC discussed the roof deck adding vitality to Downtown and emphasizing the greenness of Palo Alto. The elevator and stair enclosures would add only a couple hundred square feet of floor area to the building. The roof deck would be heavily planted.

Council Member Kou asked if the roof deck would be open to the public.

Mr. Giannini replied no. An elevator would be added to the building for access from the fifth floor to the roof deck. The roof deck would be a private open space because of noise, safety, and access issues.

Council Member Kou asked if the seven eligible sites were private properties.

Mr. Owen answered yes. The buildings on the seven sites exceeded both height and FAR standards.

Council Member Kou inquired whether the alternative language would allow buildings to add FAR for roof decks.
Mr. Owen clarified that the proposed Ordinance as drafted would allow only the seven sites to add a roof deck. Quite a few buildings in Downtown were under the height limit but exceeded the required FAR. Modifying the proposed Ordinance would increase the number of buildings eligible to build a roof deck.

Council Member Kou asked why the CUP extended the roof deck's open hours to 11:00 p.m. for an office building and whether the Council could modify the hours.

Mr. Owen indicated the Council could modify the hours.

Council Member Kou noted the new housing regulations would allow more roof decks. She inquired whether the Council would review the Noise Ordinance to provide enforcement for roof decks and whether the Council could require Transportation Demand Management (TDM) measures in exchange for allowing applicants to construct a roof deck.

Ed Shikada, City Manager, was not aware of an item to review the Noise Ordinance; therefore, enforcement would continue as-is.

Mr. Owen related that two Conditions of Approval related to noise and music. The first required the applicant to adhere to the Noise Ordinance at all times. The second required amplified sound to be inaudible at the property line.

Council Member Kou inquired about ways to keep noise within the boundary lines.

Mr. Owen explained that the noise level would have to be low.

Council Member Kou remarked that some of the sites would receive multiple benefits by being allowed to exceed the height limit, not provide onsite parking, and now increase floor area. This would be unfair to applicants who built conforming structures. She could not support Staff's recommendations because the recommendation seemed like spot zoning.

Council Member Kniss requested Staff comment regarding spot zoning.

Molly Stump, City Attorney, reported the proposed Ordinance was not legally spot zoning. Council Member Kou was expressing a policy concern.

Council Member Kniss requested the number of Downtown buildings that had a roof deck.

Mr. Owen did not know.
Council Member Kniss asked if several Downtown buildings had roof decks.

Mr. Owen responded yes.

Council Member Kniss noted roof decks added to a building's amenities. Roof decks were not unreasonable.

**MOTION:** Council Member Kniss moved, seconded by Vice Mayor Fine to:

A. Find the proposed text amendment and architectural review and conditional use permit applications exempt from the California Environmental Quality Act (CEQA) per Guidelines Sections 15301 and 15305; and

B. Introduce for first reading and adopt an Ordinance and approve the proposed Record of Land Use Action approving architectural review and conditional use permit applications.

Council Member Kniss remarked that a roof deck was a lovely amenity for employees. She hoped Staff would carefully track noise complaints.

Vice Mayor Fine agreed with Council Member Kou's comment regarding nonconforming buildings receiving multiple benefits. However, these buildings were unlikely to change. A nonconforming building with a roof deck was preferable to a nonconforming building with air conditioning units and concrete on the roof. This would improve the condition for future uses in Downtown. Not allowing roof decks for nonconforming buildings below the height limit was silly.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to amend the Ordinance to state “buildings located in the CD-C subdistrict that are noncomplying for height or gross floor area...”; and

Vice Mayor Fine asked if Staff would respond to noise complaints or actively monitor sound at the property line.

Mr. Owen advised that complaints would lead to Staff investigation of noise.

Vice Mayor Fine asked if complaints had been lodged about noise from roof decks in any part of the City.

Mr. Owen was not aware of any complaints.
Vice Mayor Fine asked if the CUP could require a hearing of some sort if the community complained about noise from a roof deck.

Mr. Owen reported Staff had included a Condition of Approval in other projects that provided the Director with discretion to call a review of the CUP if there were ongoing issues related to the performance of the applicant.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to amend the Ordinance to provide the Planning Director discretion to initiate a Director’s review of any CUP that is the subject of multiple complaints regarding noise.

Council Member Cormack questioned the technical difference between a roof deck and a roof garden and preferred a roof garden rather than a roof deck. She inquired about the number of buildings that could be affected if the proposed Ordinance applied to the California Avenue area.

Mr. Owen indicated Staff had not analyzed the California Avenue area. Fewer buildings in the California Avenue area exceeded the FAR and height limits because buildings in the California Avenue area were newer than those in Downtown.

Council Member Cormack asked if some buildings in the California Avenue area could be affected if the proposed Ordinance was extended to the California Avenue area.

Mr. Owen answered yes.

Council Member Cormack would probably not support an Ordinance for the Downtown area only. She asked if the proposed Ordinance would not apply to a complying facility because it could construct a roof deck/garden and continue to comply with the height limit.

Mr. Owen replied yes.

Council Member Cormack supported the use of roofs but wanted the proposed Ordinance to apply Citywide. The Staff Report stated the roof deck would provide artificial plants with some vegetation along the edges. However, the applicant's renderings showed trees and vegetation. She asked which plan was applicable.

Mr. Owen related that Staff added a Condition of Approval that required the roof deck trees to be live, regionally indigenous, and drought tolerant.
Council Member Cormack stated the roof deck felt more like a work area than a rest area. She inquired whether people lived in the penthouse.

Mr. Owen advised that the penthouse referred to a mechanical penthouse.

Council Member Cormack remarked that the project would be unlikely to disturb or disrupt others, but she was not comfortable granting exceptions in the Downtown area only. With the addition of greenery, she was more comfortable with the specific project.

Council Member DuBois asked if the Architectural Review Board (ARB) reviewed the project.

Mr. Owen responded no. Staff considered the project a minor addition so that it was not presented to the ARB.

Council Member DuBois asked if the Council would make the findings for Architectural Review.

Mr. Owen replied yes.

Council Member DuBois inquired whether the modified Motion would affect a large part of the Downtown core.

Mr. Owen reported the modified Ordinance would affect 118 buildings in Downtown.

Council Member DuBois requested the rationale for this being exempt from an Environmental Impact Report (EIR) when it seemed extensive.

Mr. Owen advised that Staff considered a number of things in reviewing the CEQA exemption. The floor area entitled by the text amendment would be a fairly minor amount; therefore, it would not need additional study through an Initial Study or an EIR.

Council Member DuBois requested the floor area of the deck.

Mr. Owen indicated the total floor area of the deck was 2,600 square feet. Of that amount, 157 square feet would be considered gross floor area and would be subject to the exception.

Council Member DuBois asked if all 110 buildings had roofs of 2,600 square feet.
Mr. Owen answered no. The area the applicant proposed to enclose for the roof deck at 285 Hamilton Avenue comprised 2,600 square feet.

Council Member DuBois asked if the proposed Ordinance should be subject to an EIR.

Mr. Owen stated any future application requesting use of the proposed exception would be subject to discretionary review and require a CUP. Staff would evaluate each application for impacts specific to the use.

Council Member DuBois asked if the proposed Ordinance required the applicant to utilize railings that were not visible.

Mr. Owen replied no, but the Council could discuss that as part of the Architectural Review findings.

Council Member DuBois commented that the project was not initiated by the City. In 2017, the Council discussed that it would not have been a priority for Staff time and that the Noise Ordinance was difficult to enforce. Changing the Ordinance was a creative means to request an exception for one project. He had received complaints from residents in the Downtown and California Avenue areas about noise from businesses. As the Council changed zoning to encourage housing in Downtown areas, the Council needed to take noise complaints seriously. The 150-foot buffer did not apply to residents Downtown. Sending mailers to residents who live near a project was not sufficient. He proposed the CUP require railings not be visible from across the street. The railings could be made of glass or set back from the edge so that they were not visible.

Council Member Kniss inquired regarding the aspect of railings that was unattractive.

Council Member DuBois indicated the railings should not appear to increase the already nonconforming building height. Railings set back from the edge could help mitigate noise.

Council Member Kniss asked if Council Member DuBois was referring to the specific project.

Council Member DuBois responded no. The Amendment would apply to the proposed Ordinance so that it would affect all applications requesting the exception.

Mayor Filseth seconded Council Member DuBois' proposal regarding railings.
Jodie Gerhardt, Planning Manager, offered language from the Housing Ordinance for Council Member DuBois' proposed Amendment.

Mr. Owen explained that the applicant would need to move the railing 6 inches toward the center of the roof in order to comply with the 45-degree angle requirement.

Mayor Filseth liked the fact that the roof deck would not increase the height of the building. From the drawings, the guardrails were not visible from the street. The issue before the Council was allowing a roof deck to exceed building height and FAR standards. He was not concerned about the FAR issue because FAR was intended to limit massing and sizes of buildings.

Council Member Kniss and Vice Mayor Fine accepted the proposed language.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to amend the Ordinance to state “For the height limit exceptions, all fixtures and structures shall not intersect a plane measured at a 45-degree angle from the edge of the building starting at the roofto deck surface sloping upward and inward toward the center of the property.”

Council Member DuBois expressed concerns regarding the intensification of use and noise. The use authorization should limit use of the roof deck to building occupants and employees only.

Council Member Kniss asked Staff if the use authorization allowed anyone other than a resident or employee in the building to use the roof.

Mr. Owen advised that the intent of the use authorization was to allow employees in the building and their guests to occupy the roof deck. Employees would be allowed to invite others to the roof deck.

**AMENDMENT:** Council Member DuBois moved, seconded by Council Member Kou to amend the Record of Land Use Action Section 5. 3. to state “...This use shall be limited to use only by the building occupants and their employees and shall be subject to conditions herein.”

Council Member Kou felt limiting use of the roof deck to employees would reduce the impacts to nearby neighbors.

Vice Mayor Fine encouraged colleagues to oppose the Amendment. Allowing guests of office occupants and employees to utilize a roof deck was reasonable.
Council Member Cormack asked if a caterer would be an occupant or an employee. She suggested adding contractors to the Amendment.

Council Member DuBois clarified that the intent of the Amendment was to prevent loud parties at night on the roof deck.

Council Member Cormack inquired whether the number of people allowed to gather on the roof deck at any one time was limited in any way.

Mr. Owen reported the Building Code limited the number of people allowed on the roof deck at one time to one occupant per 15 square feet.

**AMENDMENT FAILED 3-4** DuBois, Filseth, Kou yes

Council Member DuBois proposed modifying the hours of use of the roof deck to 8:00 A.M. to 5:00 P.M. Monday through Friday. The impacts of allowing roof decks to operate until 11:00 P.M. every day of the week and expanding roof decks to more than 100 buildings were not known.

Council Member Kniss agreed with modifying the opening time to 8:00 A.M. However, the roof deck would be a nice place during summer evenings. A closing time of 8:00 or 9:00 P.M. would be acceptable.

Council Member DuBois suggested open hours of 8:00 A.M. to 8:00 P.M.

Council Member Kniss felt the Council should review the hours if use of the deck beyond 8:00 P.M. proved to be valuable.

Mayor Filseth clarified that the current modification of the hours of use was 8:00 A.M. to 8:00 P.M. Monday through Sunday.

Vice Mayor Fine agreed with an opening time of 8:00 A.M. and would accept a closing time of 10:00 P.M.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to amend the Record of Land Use Action Section 5. 4. to state “...8:00 A.M. to 9:00 P.M. daily.”

Council Member DuBois noted the proposed Ordinance did not address amplified sounds.

Mr. Owen reported the standard Noise Ordinance would apply, but the text amendment required a CUP, which included Conditions of Approval for amplified music and noise.
AMENDMENT: Council Member DuBois moved, seconded by Council Member Cormack to amend the Record of Land Use Action Section 5. 5., Amplified Music, to state “the use of sound amplifying equipment shall be prohibited.”

Council Member DuBois stated the Council had expanded the proposed Ordinance. Because of the proximity of neighbors, amplified sound should not be allowed. The proposed Ordinance should be consistent with the recent Housing Ordinance.

Council Member Cormack agreed with the proposed Ordinance and the Housing Ordinance being consistent. The space was small, and amplification should not be needed.

Vice Mayor Fine felt the standard contained in the proposed Ordinance was sufficient. Noise complaints would trigger a review of the CUP.

Mayor Filseth felt amplified music was a legitimate noise concern for a roof deck. A speaker with a microphone was a lesser concern.

AMENDMENT PASSED: 4-3 Kniss, Fine, Tanaka no

Council Member DuBois generally did not support the proposed Ordinance, but he could support the exception applying to noncomplying buildings that exceeded both the height and FAR standards.

Council Member Kou asked if impact fees or building fees were associated with the project.

Mr. Owen indicated impact fees could increase a small amount. In addition, the applicant paid fees at the time it sought a building permit.

Council Member Kou inquired whether the fees would be allocated to parks.

Mr. Owen related that a small portion of the impact fee would be allocated to parks.

Mayor Filseth asked if the term "structures" in Part E of the Motion applied to trellises and elevator shafts.

Mr. Owen suggested the language could be "fixtures and structures" for clarity.
Mayor Filseth commented that residents were not enthusiastic about increasing the height of buildings that already exceeded the height limit. The fact that the roof deck was not visible and did not appear to increase the height of the building was quite important.

Council Member Cormack requested the Mayor split the Motion into the proposed Ordinance and the specific project.

Ms. Stump advised that should the Mayor choose to split the Motion, the proposed Ordinance could be approved even though the Council could not make the findings for the CUP. However, the project could not be approved without the proposed Ordinance.

Council Member Cormack withdrew her request to split the Motion. She proposed a Substitute Motion to continue the item until Staff could return with a proposed Ordinance extending the exception Citywide.

Vice Mayor Fine suggested Council Member Cormack propose an Amendment containing that language as a direction to Staff.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to direct Staff to return to Council in 2019 and outline options for the Ordinance to be extended to other areas in the City.

**MOTION AS AMENDED RESTATATED:** Council Member Kniss moved, seconded by Vice Mayor Fine to:

A. Find the proposed text amendment and architectural review and conditional use permit applications exempt from the California Environmental Quality Act (CEQA) per Guidelines Sections 15301 and 15305;

B. Introduce for first reading and adopt an Ordinance and approve the proposed Record of Land Use Action approving architectural review and conditional use permit applications;

C. Amend the Ordinance to state “buildings located in the CD-C subdistrict that are noncomplying for height or gross floor area...”
D. Amend the Ordinance to provide the Director discretion to initiate a Director's review of any CUP that is the subject of multiple complaints regarding noise;

E. Amend the Ordinance to state “For the height limit exceptions, all fixtures and structures shall not intersect a plane measured at a forty-five-degree angle from the edge of the building starting at the rooftop deck surface sloping upward and inward toward the center of the property;”

F. Amend the Record of Land Use Action Section 5. 4. to state “…8:00 A.M. to 9:00 P.M. daily;”

G. Amend the Record of Land Use Action Section 5. 5., Amplified Music, to state “the use of sound amplifying equipment shall be prohibited;” and

H. Direct Staff to return to Council in 2019 and outline options for the Ordinance to be extended to other areas in the City.

**MOTION AS AMENDED PASSED:** 5-2 DuBois, Kou no

Council took a break from 9:47 P.M. to 9:53 P.M.

13. Authorize the City Manager to Explore, Negotiate and Potentially Submit an Offer to Purchase Property at 3350 Birch Street (Assessor’s Parcel No. 132-33-050).

Kristen O'Kane, Community Services Assistant Director, reported the owner of 3350 Birch Street was Pacific Bell Telephone Company. The parcel had recently been subdivided. The portion that was for sale contained 0.64 acre and was zoned Public Facility (PF) with a Comprehensive Plan designation of Major Institution/Special Facilities (MISP). The property was listed without a sale price. Staff anticipated the seller would receive offers by the end of February 2019. The Parks, Trails, Natural Open Space, and Recreation Master Plan (Master Plan) identified acquiring parkland in high need areas as a high priority. Both the Master Plan and the 2030 Comprehensive Plan contained policies related to acquiring parkland using the National Recreation and Park Association (NRPA) standards as a guide. The NRPA standards were four acres of parkland per 1,000 residents; a minimum size of two acres per neighborhood park; and a maximum service area of 0.5 mile. Located across the street from the property, Boulware Park contained 1.5 acres, was located in the Ventura neighborhood, and offered two playgrounds, a basketball court, picnic areas, barbecues, and benches. Boulware Park did not comply with the
NRPA standard of a minimum size of two acres. The fund for Parkland Development Impact Fees would have a balance of $2.7 million after reductions for identified park improvements. The fund for Parkland Dedication Fees would have a balance of $1.2 million after reductions for planned park improvements. Further research regarding use of Parkland Dedication Fees was needed to determine whether they could be used in the Ventura neighborhood. Other potential funding sources were the General Fund and other City assets. Additional funds would be needed to improve the property.

Mayor Filseth asked if Staff could prepare an offer within the few days remaining in the month of February.

Ms. O’Kane understood the seller would accept offers on February 28.

Jonathan Brown urged the City to purchase the property in order to expand Boulware Park. This was a unique opportunity to expand parkland inventory.

Scott Van Duyne encouraged the City to take the steps necessary to purchase and upgrade the property. The number of children in the Ventura neighborhood was increasing and would increase even more with plans for additional housing.

Becky Sanders wanted the City to purchase the property and retain the PF zoning. The Ventura neighborhood would help the City with funding.

Waldemar Kaczmarski remarked that the community used Boulware Park heavily, but the park was too small for the number and variety of users. The number of children and employees in the area was also increasing. The park could play a role for the larger neighborhood.

Neera Narang was excited by the prospect of the City purchasing the property and retaining the PF zoning. Purchasing the property would enhance the area.

**MOTION:** Mayor Filseth moved, seconded by Council Member Kou to authorize the City Manager or designee to explore, negotiate and potentially submit an offer to purchase property located at 3350 Birch Street (Assessor’s Parcel No. 132-33-050).

Mayor Filseth felt the property would be a great addition to Boulware Park. If it could be acquired at a fair price, the City should bid on it.

Council Member Kou concurred.
Vice Mayor Fine supported the Motion. He inquired whether the site could be utilized for commercial, industrial, and retail uses as advertised.

Sonny Tong, Real Estate Manager, advised that a buyer could request a rezoning of the property for those uses.

Vice Mayor Fine inquired whether removal of the road and restoration would be restoration of the area or the land itself.

Ms. O'Kane related that it could be both. The roadway could be closed and restored to provide continuity between Boulware Park and the property.

Vice Mayor Fine noted the property could contain 10,000-12,000 square feet.

Council Member Kniss remarked that other people were likely interested in the property, and the property was desirable.

Council Member DuBois requested the approximate cost of implementing the Master Plan.

Ms. O'Kane reported the Master Plan was not adopted with the intent of accomplishing all projects listed in the Master Plan. The Master Plan contained some big-ticket items such as the Cubberley Master Plan and the 10.5-acre site near the golf course.

Council Member DuBois asked about other projects the Dedication Fees and Development Impact Fees could fund.

Ms. O'Kane replied the 10.5-acre site. The Capital Improvement Program (CIP) contained funding for public engagement to develop a plan for the 10.5-acre site. However, funding was not available to implement a plan for the site. Other projects were dog parks, park restrooms, and the 7.7 acres at Foothill Park.

Council Member DuBois inquired whether redevelopment of Cubberley as parkland or open space would qualify for use of those funds.

Ms. O'Kane responded yes. A Community Center Development Impact Fee could also be used for the Cubberley site.

Council Member Tanaka was excited about the project and hoped the City could purchase the property.

**MOTION PASSED: 7-0**
State/Federal Legislation Update/Action
None.

Council Member Questions, Comments and Announcements
Council Member DuBois attended an event where community members launched a Fiber to the Home installation in Los Altos Hills. The community members installed 300 feet of fiber optic cable and connected five homes to the network. The Avenidas Gala was successful and well attended. The building looked great.

Council Member Cormack added that during the Gala, Avenidas representatives thanked the City profusely for its contributions to the renovation of the building.

Council Member Kniss would attend the National League of Cities conference in Washington D.C.

Adjournment: The meeting was adjourned at 10:19 P.M.