



CITY OF PALO ALTO CITY COUNCIL FINAL MINUTES

Special Meeting
May 18, 2020

The City Council of the City of Palo Alto met on this date by virtual teleconference at 5:03 P.M.

Participating Remotely: Cormack, DuBois, Filseth, Fine, Kniss, Kou, Tanaka

Absent:

Closed Session

A. CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representatives: City Manager and his Designees Pursuant to Merit System Rules and Regulations (Ed Shikada, Rumi Portillo, Molly Stump, Monique LeConge Ziesenhenné, Nick Raisch, Kiely Nose, Gina Roccanova)

Employee Organizations: Utilities Management and Professional Association of Palo Alto (UMPAPA); Service Employees International Union, (SEIU) Local 521; Service Employees International Union, (SEIU) Local 521, Hourly Unit; Palo Alto Police Officers Association (PAPOA); Palo Alto Fire Chiefs' Association (FCA) and Employee Organization: International Association of Fire Fighters (IAFF), Local 1319; Palo Alto Police Manager's Association (PAPMA)

Authority: Government Code Section 54957.6(a)

MOTION: Council Member Kniss moved, seconded by Council Member Cormack to go into Closed Session.

MOTION PASSED: 7-0

Jeremy Erman hoped the negotiators would consider the big picture and work together to make the City the best it could be.

Council went into Closed Session at 5:07 P.M.

Council returned from Closed Session at 7:32 P.M.

Mayor Fine announced no reportable Action.

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Study Session

1. Update to the City's Transportation Analysis Methodology to Comply with Senate Bill 743, Including use of Vehicle Miles Traveled (VMT) for California Environmental Quality Act (CEQA) Review and Level of Service (LOS) Standard for Local Transportation Analysis (Continued from May 4, 2020).

Sylvia Star-Lack, Transportation Planning Manager reported Senate Bill (SB) 743 required cities to utilize Vehicle Miles Traveled (VMT) in determining significant transportation impacts under the California Environmental Quality Act (CEQA). Cities were no longer able to utilize Level of Service (LOS) for an environmental document to be considered valid. Cities had to adopt new impact thresholds using VMT by July 1, 2020. Staff proposed adoption of the Governor's Office of Planning and Research's (OPR) guidance and VMT thresholds as the City's initial framework beginning July 1, 2020. Once the Sustainability and Climate Action Plan (S/CAP) was updated, the Council was able to update the initial VMT thresholds to align with the S/CAP's Greenhouse Gas (GHG) reduction goals. Cities were able to utilize LOS to determine whether projects were consistent with local plans. Per Comprehensive Plan Policy 2.3, the City was going to retain LOS to assess local transportation impacts.

Bob Grandy, Fehr & Peers advised that the intent of SB 743 was to ensure the environmental impacts of traffic were addressed and mitigated through CEQA. In December 2018, the California Natural Resources Agency adopted a CEQA Guidelines update package that included a section implementing SB 743. Lead agencies had to develop their own VMT thresholds of significance to determine when projects had significant environmental traffic impacts. The first step in applying the new VMT process was to determine if a project met one of several screening criteria. If a project met one of the criteria, it was to be presumed to have a less than significant VMT impact, and no mitigation was required. If a project did not meet one of the screening criteria, a quantitative VMT analysis was required to assess whether a project exceeded a defined VMT threshold and resulted in an impact. If a significant VMT impact was identified, mitigations were required. Most projects were classified as residential, office or retail uses, and OPR recommended a different threshold for each use. Based on baseline VMTs, housing projects in Palo Alto were much less likely to cause significant VMT impacts than office projects. For residential projects that were not screened, the Project VMT per capita needed to be 15 percent less than either the regional or the Citywide average. To encourage development of new housing in Palo Alto, Staff proposed basing the residential threshold on the regional average. For office projects, the VMT per capita had to be 15

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percent less than the regional average to have a less than significant impact. OPR recommended estimating total change in VMT as the best way to analyze a retail project's transportation impacts. This was done by comparing forecasts of total VMT for an area between no project and a plus project scenario. If the project scenario with the Retail Project caused an increase in area VMT over the no project scenario without a Retail Project, a significant VMT impact was to occur.

Ms. Star-Lack indicated next steps included adoption of screening criteria, VMT thresholds, and a LOS policy in June, 2020, including development of a Transportation Demand Management (TDM) Ordinance update.

Kathy Jordan inquired whether the VMT calculations differed based on non-emitting vehicles versus emitting vehicles. Prior to the health emergency, ridership on mass transit was declining.

Council Member Filseth asked if the criterion was total VMT or average VMT across the region.

Mr. Grandy related that total VMT was applied to retail projects.

Vice Mayor DuBois asked how the Santa Clara Valley Transportation Authority's (VTA) tool accounted for local traffic conditions on local streets, requested the source of data used in the tool, and inquired whether there was a certain level of street it was able to model.

Mr. Grandy clarified that the VTA tool would assist the City with the screening process for VMT. City Staff or a project applicant was then to enter data specific to the project into VTA's tool to determine whether the project could be screened for VMT purposes. The tool was not going to address local traffic.

Vice Mayor DuBois asked if a determination of impact or no impact could be appealed.

Philip Kamhi, Chief Transportation Official stated Staff could include an appeal process.

Mr. Shikada believed the threshold leading to a more-detailed analysis and the definition of significant impact could be addressed through the policy that Staff would develop.

Vice Mayor DuBois generally agreed with the initial VMT thresholds. He inquired whether any bus routes with 15-minute headways existed in the City.

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Mr. Star-Lack replied yes, along El Camino Real.

Vice Mayor DuBois inquired whether SB 743 prevented an increase in vehicle capacity on a street.

Mr. Grandy explained that SB 743 directed one to evaluate a capacity-increasing project and identify the level of impact and whether the impact could be mitigated.

Vice Mayor DuBois wished to discuss LOS and VMT thresholds and how the two could work together. He inquired whether a regional shopping destination like Stanford Shopping Center would score poorly under VMT and perhaps require a CEQA analysis.

Mr. Grandy suggested the impact depended upon the type of retail being added.

Vice Mayor DuBois requested potential mitigations for a project that added a destination retail use.

Mr. Grandy explained that near-term mitigations could be active transportation improvements that offset the increase in VMT. He said long-term mitigations could be VMT exchanges and mitigation banks. A number of agencies were basing their impact fee programs on VMT generation rather than vehicle trips.

Council Member Tanaka inquired about the effect of GHG-emitting vehicles and non-GHG emitting vehicles on VMT.

Mr. Grandy advised that VMT calculations considered the fleet mix and mode share. The fleet mix would likely have more of an impact on GHG than vehicle trips.

Council Member Tanaka asked if the fleet mix and mode share would change over time.

Mr. Grandy indicated the near-term assessment of VMT would compare land use projects and the baseline. Some projects included the cumulative condition for fleet mix and mode share.

Council Member Tanaka inquired whether telecommuting could be factored into VMT.

Mr. Grandy related that conditions prior to the health emergency and the potential effects of increased telecommuting and reduced transit share would be factors.

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Council Member Kou inquired whether VMT could calculate and measure when a vehicle was idling on the freeway.

Mr. Grandy clarified that VMT could estimate the total amount of traffic and speeds on the network. That information was able to be included in an analysis of GHG emissions based on vehicle fleet mix and other characteristics to produce the GHG output.

Council Member Kou asked if a new baseline for air quality had been established.

Mr. Grandy was not aware of any new studies regarding adjustments to VMT or GHG reduction targets based on COVID.

Council Member Kou asked if a destination retail use would limit the type of businesses on University Avenue.

Mr. Grandy advised that the type of business was a policy decision for the Council.

Council Member Kou asked if a VMT analysis addressed a change in use for a building.

Mr. Kamhi indicated a change in use would be a planning and zoning decision.

Council Member Kou asked if the Planning and Transportation Commission (PTC) would review VMT thresholds and framework.

Mr. Kamhi clarified that Staff would return to the Council on June 15, 2020 to adopt VMT thresholds for screening criteria. The PTC was able to review VMT at a later time.

Council Member Cormack requested the rationale for selecting OPR guidance rather than guidance from the California Air Resources Board (CARB).

Mr. Grandy indicated most jurisdictions were adopting the OPR guidance because of its documentation and substantial evidence.

Mr. Kamhi added that Staff could evolve the model and methods as needed.

Council Member Cormack inquired about the definition of a low VMT area.

Mr. Grandy stated it was 15 percent below the average.

Council Member Cormack asked if retail included services.

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Mr. Grandy indicated there were two different thresholds for office and retail uses.

Mayor Fine felt the retail threshold needed additional detail and encouraged the Council to adopt the OPR guidance. VMT analysis encouraged transit use and low-impact projects.

Council Member Kou inquired whether a VMT analysis considered cars traveling through Palo Alto to reach their destination.

Mr. Grandy indicated a VMT analysis would be conducted for projects within the City of Palo Alto.

Council Member Kou remarked that LOS addressed local issues, and VMT addressed regional issues.

NO ACTION TAKEN

Agenda Changes, Additions and Deletions

Ed Shikada, City Manager noted Agenda Item Numbers 3 and 4 had been removed from the Agenda.

Oral Communications

Phoebe Berghout urged the Council to consider the impacts of the Children's Theater and the Teen Arts Council on teens and youth in the community when making Budget cuts.

Kathy Jordan noted the number of management employees earning more than \$150,000, \$200,000, and \$300,000 annually and inquired about the cost of consultants.

Maya Mazor-Hoofien shared the many benefits of the Teen Arts Council.

Aanika asked the Council to continue to fund the Teen Arts Council.

Michael Ekwall requested the Council consider allowing restaurants to open outdoor seating with alcohol service so that restaurants could survive the next phase of the Shelter-In-Place Order.

Gil Wiessman advised that creative expression through art was highly conducive to students' wellbeing and mental health and urged the Council to continue to fund and value the Children's Theatre and the Teen Arts Council.

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Max Rosenblum shared his experiences and the value of the Teen Arts Council.

Terry Holzemer hoped the Council preserved and maintained community and public services over capital projects in the upcoming Budget.

Swati Goel related her valuable experiences with Children's Theatre.

Leo Marburg supported continued funding for the Teen Arts Council.

Maddie Lee hoped the Council would continue to support the Teen Arts Council and its many positive impacts on youth.

Suzanne Keehn supported continued funding for community services.

Jeremy Erman related the history of the Children's Theatre and requested the Council continue to fund it and Children's Library.

Jonathan Erman expressed concern that the Council did not plan to renegotiate the lease for Cubberley Community Center and fund children's programming.

Consent Calendar

Keith Bennett, addressing Agenda Item Number 5 requested removal of the Agenda Item from the Consent Calendar and the addition of sufficient conditions to reduce the risk of death or damage to the 300-year-old heritage oak tree. Dewatering at the site needed to be expressly prohibited.

Jack Morton, addressing Agenda Item Number 5 believed the Council had a responsibility to ensure the tree was cared for.

Council Member Cormack disclosed communications with the appellant in Agenda Item Number 5.

Vice Mayor DuBois had nothing to disclose.

Council Member Filseth disclosed a site visit and a conversation with the appellant.

Mayor Fine disclosed a conversation with the appellant.

Council Member Kniss disclosed a conversation with Mr. Morton, a site visit, and the location of the project site approximately two blocks from her home.

Council Member Kou had nothing to disclose.

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Council Member Tanaka disclosed a conversation with Mr. Morton.

MOTION: Vice Mayor DuBois moved, seconded by Council Member Kou, third by Council Member Kniss to remove Agenda Item Number 5 to be heard after Council's summer recess.

Council Member Tanaka registered a no vote on Agenda Item Number 2.

MOTION: Council Member Kniss moved, seconded by Council Member Filseth to approve Agenda Item Number 2.

2. Adoption of an Ordinance Amending Title 12 of the Palo Alto Municipal Code to set a 120-day Statute of Limitations for Challenges to the City's Water Service Rates, Wastewater Collection and Disposal Rates, Refuse Rates, Storm Water Management Fees, and Fiber Licensing Service Rates.
3. ~~Approval and Authorization for the City Manager or Designee to Execute a Professional Services Agreement with Magellan Advisors, LLC in a Not-to-Exceed Amount of \$214,236 for Phase 1 of the Fiber Network Expansion Plan (This Item has been removed).~~
4. ~~Approval and Authorization for the City Manager or Designee to Execute the Following Marketing and Graphics Contracts in a Combined Not-to-Exceed Amount of \$290,000 Annually and a Combined Not-to-Exceed Amount of \$1,450,000 Over a Five-year Term: A) Eric Goldsberry Art Direction, Contract Number C20176172A; B) Marketing for Change, Contract Number C20176172B; and C) Underground Advertising, Contract Number C20176172C; Finding of California Environmental Quality Act (CEQA) Exemption (This Item has been removed).~~
5. ~~QUASI-JUDICIAL. 2353 Webster Street [18PLN-00339]: Appeal of Director's Approval of an Individual Review Application to Demolish an Existing One-story 1,593 Square Foot Home and Construct a Two-story Home (Approximately 3,133 Square Feet) With a Basement and Attached Garage; Approved by the Director of Planning and Development Services on March 17, 2020. Zoning District: Single-family Residential (R-1).~~

MOTION PASSED: 6-1 Tanaka no

Council Member Tanaka noted increases in gas rates over the past few years, high gas rates for commercial customers and the difficult economic times for restaurants. A statute of limitations did not support transparency.

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Ed Shikada, City Manager advised that Staff would work with the applicant and the appellant in Agenda Item Number 5 to set a hearing date. The statute of limitations in Agenda Item Number 2 would not apply to the rate changes currently under consideration.

City Manager Comments

Ed Shikada, City Manager shared modifications of the Shelter-In-Place Order and the reopening of City facilities. Additional information regarding the City's Small Business Grant Program was going to be available in the next few days. Palo Alto businesses were invited to share their needs and requests for assistance with the City. Professional and Management Staff were able to contribute to a 15 percent compensation giveback to the City.

Council Member Kniss reported there was no immediate plan to reopen the Dish.

Council Member Kou asked how the phased reopening affected the Shelter-In-Place Order.

Mr. Shikada advised that the new term was "additional businesses and additional activities," and it represented the reopening of retail businesses for curbside service on Friday. Shelter In Place remained in effect.

Molly Stump, City Attorney noted workers could be returning to work in retail businesses.

Council Member Tanaka asked if the City would close streets so that restaurant customers could follow social distancing practices.

Ms. Stump stated outdoor seating for restaurants was not allowed in Santa Clara County or in any other Bay Area county at the current time.

Council Member Tanaka asked if the City would subscribe to the United States Tennis Association's guidelines for tennis play.

Mr. Shikada indicated the City would follow the County of Santa Clara's public health order, which allowed members of the same household to play tennis together.

Mayor Fine inquired regarding dog parks.

Ms. Stump did not believe there had been any modifications for dog parks.

Council took at break at 9:23 P.M. and returned at 9:33 P.M.

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6. Adoption of Amendments to the City of Palo Alto Tobacco Retail Ordinance (PAMC Chapter 4.64) to Further Restrict Electronic Cigarette Products and Flavored Tobacco Products, Direct Staff to Discuss Amending the Tobacco Retail Permit (TRP) Agreement With the County of Santa Clara, and Updates to Council's Previous Questions on Reducing Youth Tobacco use (Continued From May 18, 2020).

Brad Eggleston, Public Works Director reviewed the Council's direction to Staff on December 9, 2019, and the City's efforts to reduce community exposure to second-hand smoke and to address tobacco sales in Palo Alto.

Julie Weiss, Public Works Project Manager reported Staff had drafted an update to the Tobacco Retail Permit Ordinance. A State law became effective January 1, 2020 and required an adult to sign for online purchases of tobacco products and required the package be labeled as a tobacco product. The Food and Drug Administration (FDA) banned the sale and distribution of flavored pods for e-cigarettes. Senate Bill (SB) 793 banned flavored tobacco products across the State. She said SB 464 could ban the sale of single-use electronic cigarettes. In January 2020, all adult-only stores required proof of age during the Police Department's undercover checks; however, three of the remaining tobacco retailers did not require proof of age. The ThinkFund was to receive funding for youth-led initiatives to reduce tobacco use. The Public Works Department was able to distribute free no-smoking signs to businesses. Public education for electronic cigarette disposal was planned for 2020. Twenty-two licensed tobacco retailers were located in Palo Alto, and Staff had discussed proposed Ordinance changes with them. Three vape/tobacco stores, Hookah Nites, and Mac's Smoke Shop indicated they would likely close if they were not exempt from the proposed changes. The proposed Ordinance prohibited the sale of electronic cigarette devices, exempted the existing adult-only stores, and added restrictions for the five existing adult-only stores. Ms. Weiss summarized public comments and responses to public comments.

Phil Bobel, Assistant Director of Public Works advised that the proposed Ordinance would prohibit 15 tobacco retailers from selling flavored tobacco and e-cigarette products; impose additional requirements on adult-only stores; and prevent the opening of additional adult-only stores. The Council was able to consider additional measures to further strengthen the proposed Ordinance and reduce teen vaping in the future. The Council was able to direct Staff to explore additional restrictions for adult-only stores, an alternative exemption structure for retailers, and additional measures to reduce the number of adult-only stores or direct Staff to modify the proposed Ordinance to eliminate the exemption for adult-only stores and

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introduce a future effective compliance date for the existing adult-only stores.

Council Member Tanaka asked if adult-only stores could sell flavored tobacco products.

Mr. Bobel clarified that the proposed Ordinance would prohibit tobacco retailers that allowed youth in the store from selling flavored tobacco and vaping products.

Council Member Tanaka inquired about enforcement for adults who purchased tobacco products for youth.

Mr. Bobel indicated the Police Department investigated reports of youth loitering near tobacco retailers. Enforcement was not possible when an adult and a youth worked together for the adult to purchase tobacco products in person or online for the youth.

Council Member Filseth inquired whether the second option before the Council would allow Hookah Nites to continue operating.

Mr. Bobel related that the second option would eliminate all adult-only stores, including Hookah Nites. The Council was able to direct Staff to modify the proposed Ordinance to allow Hookah Nites, Mac's, or both to remain open. The existing cigar stores were not able to choose not to sell vaping products.

Vice Mayor DuBois asked if Staff considered distinguishing flavored pipe tobacco from flavored vaping pods.

Mr. Bobel stated the definition of flavored products was taken from the County of Santa Clara's (County) model Ordinance.

Amaya Wooding, Proudly Against Tobacco advocated for removing the exemption for adult-only stores.

Carol Baker, American Cancer Society and Tobacco Free Coalition of Santa Clara County supported a complete prohibition of flavored tobacco products.

Lama Rimawi urged the Council to eliminate the exemption for adult-only stores.

Erwin Morton recommended the Council remove the exemption for adult-only stores, phase out the sale or transfer of vape shop licenses, and protect children.

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Bob Gordon, Tobacco Free Coalition of Santa Clara County indicated hookah smoking was as dangerous as cigarette smoking and urged elimination of the exemption for adult-only stores.

Annie Tegen, Tobacco Free Kids hoped the Council would eliminate the exemption for adult-only stores.

Lori Khoury, Mac's Smoke Shop related that the pandemic and elimination of the exemption would force the shop to close. Mac's Smoke Shop supported a more restrictive Ordinance and had implemented measures beyond those required and proposed.

Jen Gran-Lejano, American Cancer Society urged the Council to remove the proposed exemption for adult-only stores, including Hookah Nites.

Arian Lundberg urged the Council to adopt an Ordinance that mirrored the County's Ordinance.

Tricia Barr asked the Council to adopt the County's Ordinance without an exemption and read Congresswoman Eshoo's message opposing an exemption for adult-only stores.

Sally-Ann Rudd advised that her 16-year-old daughter had recently purchased vaping products from Mac's Smoke Shop and requested the Council eliminate the exemption.

Jade Chao, Palo Alto PTA Council President indicated she had distributed photos to the Council of teens purchasing vape products in Palo Alto. She urged the Council to protect children from a highly addictive product.

Rachel Gratz-Lazarus advocated for removal of the exemption for adult-only stores.

Grace Mah remarked that banning all e-cigarettes in all stores would demonstrate Palo Alto's leadership in saving youth from the vaping epidemic and a lifetime of addiction.

Eileen Kim urged the Council to adopt a strong Ordinance that mirrored the County's Ordinance without any exemption.

Blythe Young, American Heart Association supported a comprehensive Ordinance without an exemption for adult-only retailers or hookah lounges.

Raw Smoke Shop commented that 21-year-old adults would purchase products online or in stores in nearby cities, thus reducing potential revenue

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for the City. Vaping products provided 80 percent of his revenue. He concurred with additional restrictions for adult-only stores.

Amar Johal, tobacco retailer remarked that the proposed Ordinance would divert sales from 15 tobacco retailers to five adult-only stores. He supported the prohibition on flavored products as long as the exemption for adult-only stores was removed.

Tanya Payyappilly, Breathe California urged the Council to remove the exemption and to restrict youth access to vape products.

Vanessa Marvin, Tobacco Free Coalition asked the Council to follow the County's Ordinance.

David Zoumut, Hookah Lounge was not averse to additional restrictions. He did not sell any vape products, cigarettes or cigars.

Council Member Kou did not believe enforcement of the proposed Ordinance would occur soon enough. She inquired whether she could move to direct Staff to prepare an Ordinance that mirrored the County's Ordinance.

Molly Stump, City Attorney replied yes.

Council Member Kou asked when a Draft Ordinance could be presented to the Council for a first reading.

Tim Shimizu, City Attorney Office's indicated a Draft Ordinance could be presented as soon as Brown Act requirements allowed.

Ms. Stump suggested an Ordinance could be presented to the Council as soon as June 1, 2020.

Council Member Kou asked if it would be presented as an Action Item.

Ms. Stump advised that it could be placed on the Council's Consent Calendar for a first reading on June 1, 2020.

MOTION: Council Member Kou moved, seconded by Council Member Filseth to direct Staff to bring to the City Council a proposed tobacco Ordinance that mirrors the Santa Clara County Ordinance.

Council Member Filseth read Ms. Rudd's correspondence to the Council. Mac's Smoke Shop was covered with signage about selling tobacco products to minors. He believed Ms. Rudd's claim that her daughter purchased vape products at Mac's Smoke Shop and Mac's Smoke Shop was attempting to

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prevent the sale of tobacco products to minors. He requested the difference between the second option before the Council and the Motion.

Brad Eggleston, Public Works Director explained that the second option would eliminate the exemption for adult-only stores that sold tobacco products for off-site use. In other words, Hookah Nites was probably able to continue to operate.

Council Member Filseth proposed amending the Motion to exempt stores that did not sell products for off-site use.

Council Member Kou understood the second option would direct Staff to return to the Council at a future date with a proposed Ordinance.

Mr. Bobel added that the second option would allow Hookah Nights to continue to operate and set a compliance date beyond the standard 30 days following a second reading of the Ordinance.

Council Member Kou did not agree to amend the Motion.

Council Member Tanaka noted the proposed Ordinance would not provide the same number of compliance checks as the County Ordinance.

Mr. Bobel clarified that the County did not provide undercover age checks and believed undercover work fell under the Police Department's purview.

Council Member Tanaka asked if the Motion would prohibit the sale of flavored tobacco and vaping products in all tobacco retailers.

Mr. Bobel answered yes.

Council Member Filseth asked if non-flavored vaping products would be prohibited as well.

Mr. Bobel replied yes.

Council Member Tanaka shared the Palo Alto Youth Council's (PAYC) suggestion to ban the advertising of all vaping products in Palo Alto and inquired whether the City could do that.

Ms. Stump indicated advertising restrictions could have First Amendment implications, and additional study was needed.

Council Member Tanaka reported the PAYC had also suggested a contest for teens to develop anti-vaping campaigns. He requested Council Members comment regarding a ban on vaping in all public spaces.

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Council Member Cormack stated Staff had prepared an Ordinance that complied with the Council's direction to Staff. Vaping was a public health issue. She inquired about the age requirement for admittance to Hookah Nites.

Mr. Bobel answered 21 years of age.

Council Member Kniss did not support the Motion because it would negatively impact small businesses.

Mayor Fine did not support the Motion because adults and youth understood the danger of tobacco products. The City was able to take reasonable steps to protect youth while allowing adults to purchase tobacco products. The Motion closed five small businesses.

Vice Mayor DuBois asked if some restaurants had cigar rooms and sold cigars.

Council Member Kniss responded yes.

Mr. Eggleston clarified that two of the seven adult-only stores focused on the sale of cigars.

Vice Mayor DuBois expressed concern that the Motion would prevent adults of legal age from buying tobacco products. Some of the adult-only stores had been in the community for a long time and were responsible tobacco sellers. He opposed the Motion. An outright ban of tobacco products would be government overreach and exceed the measures needed to protect kids.

Council Member Kou asked if the County would not handle enforcement if the City's Ordinance did not mirror the County's Ordinance.

Mr. Eggleston reported the County had stated that. If the Council approved Staff's recommended Ordinance, Staff was then going to address enforcement with the County.

Council Member Kou did not believe City Staff would have resources to enforce the Ordinance.

Mr. Bobel explained that Staff would continue the enforcement discussion with the County no matter what the Council decided. The City was the only County partner that allowed adult-only stores. City Staff visited the stores to check compliance with other City Ordinances and checking compliance with the Tobacco Ordinance was not burdening Staff. The cost of Staff time was offset by permit fees. The County did not and would not conduct undercover checks.

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Council Member Kou understood Council Members' opposition to the Motion; however, children's health was at issue.

SUBSTITUTE MOTION: Mayor Fine moved, seconded by Council Member Kniss to adopt the proposed Ordinance and direct Staff to explore the following and return to Council at a later date:

- A. Investigate further restrictions for adult-only stores (e.g., card readers, purchase log, additional fees to support youth programs, etc.);
- B. Consider alternative exemption structure for retailers, e.g., exempt lounges where no product leaves the store; and
- C. Consider additional measures over time to reduce the number of adult-only stores.

SUBSTITUTE MOTION FAILED: 3-4 Cormack, Filseth, Kou, Tanaka no

SUBSTITUTE MOTION: Mayor Fine moved, seconded by Vice Mayor DuBois to direct Staff to modify the proposed Ordinance and return to Council at a future date, eliminating the current exemption for those adult stores where the subject products leave the store, introduce a future effective compliance date that would allow the other four impacted adult-only stores time to sell/remove their current inventory, and modify their business model to address the exemption elimination.

Mayor Fine preferred to craft a unique Ordinance for the City.

Vice Mayor DuBois asked if Staff would present a Draft Ordinance to the Council in June, 2020.

Mayor Fine understood a first reading could occur in June, 2020.

Vice Mayor DuBois wanted to provide the adult-only stores with time to adapt.

Council Member Cormack did not interpret the Substitute Motion as a first reading occurring in June, 2020.

Mr. Eggleston reported, if the Council approved the Substitute Motion, Staff would engage the adult-only stores, develop a recommendation to phase out products, and present the Council with a proposed Ordinance. The Council was able to direct Staff to return within a specific timeframe.

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Vice Mayor DuBois thought the Substitute Motion was to pass the first option and to direct Staff to return with a proposed Ordinance for the second option.

Council Member Cormack asked if the Substitute Motion would eliminate the exemption for adult-only stores and set a compliance date. She preferred the compliance date occur within six months. She inquired about the Substitute Motion's effect on Hookah Nites.

Mr. Bobel explained that Hookah Nites would not be affected by the Substitute Motion because tobacco products did not leave the store.

Council Member Kniss requested the meaning of a future effective compliance date.

Mr. Bobel advised that Staff engage the adult-only stores in setting a compliance date by which they would have to sell or remove their inventory.

Council Member Kniss did not know whether the businesses would have an opportunity to alter their business models in such a way that they could continue to operate.

Mr. Bobel clarified that the businesses would have time to obtain other products to sell and continue to operate. The County's Ordinance required compliance by July 1, 2020.

Council Member Kou agreed to allowing onsite consumption of tobacco products but not Staff returning at a later date with an Ordinance. The County was to implement, permit and enforce the Ordinance.

Council Member Filseth suggested incorporating a timeframe for businesses to modify their business models into the Substitute Motion. Businesses were probably not able to adapt before the July 1, 2020 deadline set by the County.

Mayor Fine asked if three or six months was a reasonable timeframe.

Vice Mayor DuBois agreed to six months.

Council Member Filseth indicated six months was generous.

Council Member Cormack felt six months could be the outer bound.

Ms. Stump advised that under the Substitute Motion the Council would not adopt an Ordinance at the current time or before the Council break.

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Council Member Cormack asked if Staff could present a Draft Ordinance in August, 2020 such that it would become effective in September, 2020.

Ms. Stump related the timeframe for developing policy, preparing a Staff Report, and adoption of an Ordinance was probably not feasible by August, 2020.

Council Member Filseth asked if the Substitute Motion was proposing to incorporate a grace period and an exemption for onsite tobacco use into the County Ordinance.

Mr. Bobel replied yes.

Mayor Fine asked if three months would be feasible.

Mr. Bobel understood the Council was proposing six months for businesses to comply with the Ordinance and three months for Staff to return with a Draft Ordinance.

Ms. Stump related that Staff could return with a Draft Ordinance after the Council break, and the Council could set a compliance date at that time.

Council Member Filseth asked if the compliance date could be September 1, 2020.

Ms. Stump responded no.

Mr. Eggleston indicated the earliest compliance date would be early October, 2020.

Mayor Fine suggested a compliance date of as soon as possible.

Council Member Filseth did not understand why Staff could not return with a Draft Ordinance prior to the Council break.

Ms. Stump reported Staff could return prior to the Council break if the direction to Staff was to incorporate an exception for products that did not leave the store and a compliance date into the County Ordinance. Any other direction to Staff delayed Staff's return to the Council.

Council Member Tanaka asked if the second option allowed the right to run with the store.

Mr. Eggleston answered that is correct.

Council Member Tanaka proposed the right end with the current owner.

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Mayor Fine believed that would be the first option.

Council Member Tanaka inquired whether the Substitute Motion would exempt only Hookah Nites.

Mr. Bobel replied yes. The Council was able to direct Staff to draft an Ordinance that did not allow the sale or transfer of Hookah Nites' permit.

Mayor Fine did not agree with preventing the sale or transfer of Hookah Nites' permit.

Council Member Tanaka asked if Hookah Nites could continue to sell flavored tobacco and vape products for onsite use only.

Mr. Bobel responded yes.

Council Member Tanaka questioned whether Hookah Nites needed to sell flavored products.

Mr. Bobel advised that the owner of Hookah Nites explained that his customers wanted flavored products.

Council Member Tanaka questioned whether children with a fake identification could enter Hookah Nites.

Mr. Bobel indicated a card reader was able to determine whether an identification was fake.

Mayor Fine reiterated the three choices before the Council.

Council Member Tanaka supported requiring a card reader, not allowing Hookah Nites to transfer their license and setting the compliance date for three months.

Ms. Stump asked if the Draft Ordinance should be presented as an Action Item so that the Council could determine the compliance date.

Mayor Fine proposed a compliance date of September 1, 2020.

Ms. Stump related that the date was feasible.

INCORPORATED INTO THE SUBSTITUTE MOTION WITH CONSENT OF THE MAKER AND SECONDER to add a compliance date of September 1, 2020.

FINAL MINUTES

Council Member Kou asked if, under the Motion, the Council was going to approve a Draft Ordinance that would become effective prior to the Council break.

Ms. Stump indicated a first reading of the proposed Ordinance under the Motion was able to occur on June 1, 2020, but the effective date was not July 1, 2020, the County's compliance date.

Council Member Kou noted an Ordinance was not going to be implemented quickly and enforcement was going to be an issue under the Substitute Motion.

Council Member Kniss asked if four stores would be forced to close.

Mr. Bobel answered yes.

Council Member Cormack asked if the four businesses would cease operations under the Substitute Motion.

Mr. Bobel anticipated that would occur.

Council Member Cormack believed the Substitute Motion would prolong the pain for the businesses.

Mr. Eggleston added that the Substitute Motion would allow Hookah Nites to continue in business.

INCORPORATED INTO THE SUBSTITUTE MOTION WITH CONSENT OF THE MAKER AND SECONDER to return to Council prior to the summer recess.

SUBSTITUTE MOTION RESTATED: Mayor Fine moved, seconded by Vice Mayor DuBois to direct Staff to modify the proposed Ordinance and return to Council prior to the summer recess, eliminating the current exemption for those adult stores where the subject products leave the store, introduce a future effective compliance date of September 1, 2020 that would allow the other four impacted adult-only stores time to sell/remove their current inventory, and modify their business model to address the exemption elimination.

SUBSTITUTE MOTION FAILED: 3-4 Cormack, Kniss, Kou, Tanaka no

MOTION PASSED: 4-3 DuBois, Fine, Kniss no

FINAL MINUTES

Council Member Questions, Comments and Announcements

Council Member Filseth reported the receipt of six proposals to provide auditor services. The proposals were to be evaluated the following week.

Council Member Kou asked the Mayor to look into the proposal to eliminate community-based adult services effective January 1, 2021 and to prepare a letter if appropriate.

Mayor Fine requested Staff provide an update.

Adjournment: The meeting was adjourned at 11:58 P.M.