



CITY OF PALO ALTO CITY COUNCIL FINAL MINUTES

Special Meeting
February 4, 2019

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:08 P.M.

Present: Cormack, DuBois, Filseth, Fine; Kniss arrived at 6:10 P.M., Kou, Tanaka

Participating remotely: DuBois participating from 4-1 Kamikotoen 3-chome Nishinomiya, Hyogo, 662-1813, Japan

Absent:

Study Session

1. Study Session With the City's State Lobbyist Related to the 2019 Legislative Session.

Niccolo De Luca, Senior Director of Townsend Public Affairs, reported on January 10 the Governor released his budget, which showed the outline of his policy topics. The Senate and Assembly subcommittees would begin budget meetings in March. February 22 was the deadline to submit legislation. More than likely, 1,700-2,000 bills would be submitted. Many of them would be spot or intent bills, meaning the bills would be thoroughly revised in the following weeks. The Committee to House the Bay Area (CASA) contained ten elements, and spot bills had been submitted for some of the elements. Generally, he recommended a city take a position of "support if amended" rather than opposition and suggest specific changes. The City would have concerns with some policies in housing bills. He would watch and monitor other policies. Once bills began taking specific shape, he would return to the Council for feedback and direction. He also recommended the City work regionally to influence legislation.

Mayor Filseth inquired about the appropriate time for the City to attempt to influence legislation.

Mr. De Luca preferred to offer policy changes as soon as legislation was available, typically March or April.

FINAL MINUTES

Council Member Kou recalled the City's guiding principles pertaining to legislation. She asked how the City could support legislation when it removed local control.

Mr. De Luca indicated the City should consider each bill individually. The language of each bill would dictate the City's response.

Council Member Kou remarked that bills were difficult to read and comprehend. She requested Staff or Mr. De Luca provide advantages and disadvantages for each bill the Council considered.

Mr. De Luca liked to approach a bill's author, inquire about the author's intent in submitting the bill, present the City's concerns, and ask about the possibility of amendments. He could provide a matrix listing the intent and the terms of legislation. He recommended the City identify and focus on a handful of bills that would impact the City. Important topics for the City were housing and transportation.

Council Member Kou asked how that might work.

Ed Shikada, City Manager, understood Mr. De Luca was recommending the City act strategically. Opposing a bill on the basis of local control alone would leave the City with little ability to influence legislation. Mr. De Luca could provide information and advice for the Council.

Council Member Kou inquired about a strategy for a bill with no favorable provisions.

Mr. De Luca remarked that the author would probably know the bill would not advance.

Mr. Shikada added that the City could monitor rather than oppose the bill. The City would not need to actively oppose a bill that many other people also opposed.

Council Member Kou inquired about the impact of Senate Bill (SB) 1333 on the City.

Mr. De Luca did not believe SB 1333 affected the City because the author incorporated the City's proposed amendments into the bill.

Council Member Kou asked if the City retained some of its land use and zoning laws.

FINAL MINUTES

Mr. De Luca replied yes. Palo Alto and other cities expressed concerns about amendments to SB 1333, and the author removed the language from the bill.

Council Member Kou requested more information about Assembly Constitutional Amendment (ACA) 1.

Mr. De Luca did know details of the bill. Any amendment to the Constitution needed a two-thirds vote in both houses and a vote of the people.

Council Member Kou inquired whether CASA proposed to reduce the two-thirds vote to a simple majority for a ballot measure.

Mr. De Luca advised that that was possible.

Council Member Kou asked if Mr. De Luca would watch the Bill.

Mr. De Luca answered absolutely.

Council Member Kou inquired regarding opportunity zones.

Mr. De Luca had heard one of the opportunity zone proposals would reform the California Environmental Quality Act (CEQA). He had not seen anything regarding opportunity zones in writing. He could add opportunity zone legislation to the City's watch list.

Council Member Kou asked if the State provided investors tax breaks as an incentive and if housing was proposed for opportunity zones.

Mr. De Luca clarified that each state proposed opportunity zones as part of Federal Tax Code reform. Not all of California's proposed opportunity zones were embraced.

Council Member Kou noted San Jose, San Francisco, and Oakland were discussing opportunity zones. Opportunity zones would force housing requirements onto other cities whether or not the cities could produce housing. These were unfunded mandates. She asked why the Senate housing and transportation committees were separate.

Mr. De Luca explained that housing and transportation were popular topics, and having one committee for both topics would result in committee meetings extending for seven or eight hours. In addition, the Assembly housing and transportation committees were separate.

Council Member Kou inquired about the future of SB 50.

FINAL MINUTES

Mr. De Luca thought SB 50 could go far because it had many sponsors and a great deal of support from both the Assembly and Senate.

Council Member Kou hoped the Council would have a Study Session on SB 50.

Mr. Shikada suggested the Council consider the best method to engage regarding upcoming legislation and instructions for the lobbyist.

Council Member Cormack suggested Element 9 of CASA would be legislation to watch. She summarized the City's Priorities in relation to potential legislation. She requested comment regarding grade separations.

Mr. De Luca felt the Mayor, City Manager, and Staff should meet with California Department of Transportation (Caltrans) and the California Transportation Commission (CTC) staff regarding grade separation and SB 1 funding. A regional approach to grade separation funding would be helpful.

Vice Mayor Fine remarked that the revenue set-asides of SB 5 and Assembly Bill (AB) 11 were concerning to any city in California. He asked Mr. De Luca to suggest appropriate amendments. He inquired whether SB 5 and AB 11 addressed redevelopment.

Mr. De Luca did not recall the two bills addressing redevelopment. The Governor did not believe in redevelopment. Instead, the Governor supported Enhanced Infrastructure Districts (EIFD) and proposed lowering that voter threshold. Discussion of redevelopment appeared to have decreased.

Vice Mayor Fine requested information regarding AB 3059, congestion pricing.

Mr. De Luca had not read about that.

Vice Mayor Fine understood it had been proposed for larger cities such as Los Angeles, San Diego, and San Francisco. He requested updates and opportunities to influence CASA legislation.

Mr. De Luca reported he had spoken with Assembly Member Marc Berman regarding CASA.

Mayor Filseth asked where in the process SB 827 stalled.

Mr. De Luca replied it was held in committee after the first hearing.

FINAL MINUTES

Mayor Filseth asked if any of the Governor's housing proposals were on the list.

Mr. De Luca responded no because the Governor's proposals would be budget trailer bills. The Governor viewed housing and transportation as the same and interlinked. The Governor proposed revisions to the Regional Housing Needs Assessment (RHNA) and tying SB 1 funds to RHNA numbers. If a city did not meet its RHNA numbers, the city could be required to place funds in an escrow account. The changes would not be retroactive.

Mayor Filseth inquired whether budget trailer bills followed the same timeline as other legislation.

Mr. De Luca answered no. They were part of the budget process, and the budget had to be approved by June 15.

Mayor Filseth remarked that the Governor's proposals as part of the budget process looked like legislation.

Mr. De Luca advised that the Assembly and Senate budget committees could debate whether the proposals related to policy or the budget.

Mayor Filseth indicated proposals from the Metropolitan Transportation Commission (MTC), Scott Weiner, and the Governor appeared to move in different directions.

Mr. De Luca related that some proposals were interconnected.

Mayor Filseth stated CASA would utilize existing funding sources while the Governor's proposals would utilize new funding sources. The Governor proposed penalties of fiscal constraints, but SB 50 proposed penalties that would abrogate zoning. He asked how that would work.

Mr. De Luca explained that in years past, the Governor, the Senate Majority and Minor Leaders, and the Assembly Majority and Minority Leaders would negotiate terms. With the new Administration and the Democrats controlling both the Senate and Assembly, the process would be different. The Governor had suggested the use of incentives rather than penalties.

Mayor Filseth asked when budget trailer bills would be proposed.

Mr. De Luca thought they may have been released over the weekend.

Council Member DuBois asked if opinion letters from multiple cities was better than a letter from a single city.

FINAL MINUTES

Mr. De Luca responded absolutely. Coalition letters were very helpful.

Council Member DuBois asked if coalition meetings with Legislators were helpful.

Mr. De Luca felt that was a great idea.

Council Member DuBois inquired whether CASA proposals for Accessory Dwelling Units (ADU) exceeded actions Palo Alto had already taken.

Mr. De Luca understood one bill for ADUs was not changing what other bills had done. The hot topic for ADUs was fees and possible fee waivers.

Council Member DuBois inquired about protections for rent increases proposed in CASA bills.

Mr. De Luca had heard different numbers, such as Consumer Price Index (CPI) plus 5 percent, for rent caps. SB 18 proposed rental assistance.

Council Member DuBois felt the language for price gouging would be critical. He inquired whether the homeless program would contain any funding to assist vehicle dwellers.

Mr. De Luca had not heard about funding for vehicle dwelling. Bills to allow vehicle dwellings could be proposed. Some cities had utilized Homeless Emergency Aid Program (HEAP) funding for Recreational Vehicle (RV) parking programs.

Council Member DuBois suggested CASA needed to provide a definition of practical transit. CASA talks should include meaningful funding from the business community. He asked if any bills proposed funding for projects that protected utility infrastructure from sea level rise.

Mr. De Luca expected sea level rise to be a prominent issue in upcoming cap-and-trade negotiations. He had heard sea level rise would be a standalone issue in any development project over a certain amount.

Council Member DuBois believed it would be critical for the Council to speak with one voice in taking positions on bills. The Council should consider a multi-city trip to Sacramento regarding CASA and grade separation.

Council Member Tanaka inquired about the number of neighboring cities along the Caltrain Corridor that had received State funding for grade separations.

Mr. De Luca did not know.

FINAL MINUTES

Council Member Tanaka noted one city had received almost all its funding from sources outside the city. He wanted to know the amount of funding cities had received and the process they used to obtain funding.

Mr. De Luca agreed to provide information at a later time. Funding had been provided for grade separations in order to move goods. Funding was transitioning from goods movement to other impacts.

Council Member Tanaka requested Mr. De Luca lobby for Palo Alto to receive funding for grade separation.

Mr. Shikada reiterated the need for regional coalitions around grade separations. Other cities were competing for funding, and their projects were positioned to obtain funding.

Council Member Kou recommended Council Members review Mr. De Luca's suggestions for advocating for funding. She suggested the Council invite MTC to present information regarding the CASA Compact and invite other cities to attend.

Mr. De Luca advised that the earlier MTC presentations about CASA were helpful. Apparently, other cities had expressed concerns about the lack of MTC outreach to cities.

Mr. Shikada reported actions around CASA had moved to legislation, which was more relevant. The Council could discuss the scope of a community conversation that might advance awareness and engagement on the issues.

Mayor Filseth assumed MTC staff was ready to move on from CASA.

Mr. Shikada added that recent conversations with MTC had not been productive. The Council should focus on the actions it could influence.

Mayor Filseth asked if the feeling in the Legislature was to try anything to alleviate the housing crisis.

Mr. De Luca had heard Legislators acknowledge the housing problem and express appreciation to MTC and the CASA organization for proposing a package deal. Legislators had expressed support for the themes of CASA and felt bills for CASA proposals needed to proceed as a package.

Council Member DuBois asked if Legislators supported city-owned fiber utilities.

Mr. De Luca was not aware of the City's interest in fiber. He would add fiber to the list of topics to monitor.

FINAL MINUTES

Agenda Changes, Additions and Deletions

Ed Shikada, City Manager, noted the Council was ahead of the published schedule for the meeting. He suggested the Council delay Oral Communications closer to the published time for Oral Communications.

Mayor Filseth asked if the Council could take up the first Action Item and return to Oral Communications if additional speakers arrived.

Molly Stump, City Attorney, reported the Council had wide discretion to reorder the Agenda. The published Agenda contained language that times were estimates only. The Council could take a second period of Oral Communications later in the meeting.

City Manager Comments

Ed Shikada, City Manager, reported the final stage of the Upgrade Downtown project would begin later in the week or the first of the following week. Information was available at upgradedowntownpa.com and via a City hotline. The Baylands Boardwalk was open again as construction had been completed. The Consent Calendar contained an item for receipt of a \$1 million donation to Palo Alto Animal Services.

At this time Council heard the Consent Calendar.

Consent Calendar

MOTION: Vice Mayor Fine moved, seconded by Mayor Filseth to approve Agenda Item Numbers 3-5.

3. Approval of Amendment Number 2 to Contract Number S16163051 With Grassroots Ecology to Increase the Contract by \$13,440 for a Total Amount Not-to-Exceed \$26,400, to Increase Services and Extend the Term for San Francisquito Creek Pump Station Riparian Mitigation Maintenance and Monitoring.
4. Review of the Fiscal Year (FY) 2019 Mid-year Budget Status and Approval of Budget Amendments in Various Funds.
5. SECOND READING: 3703-3709 El Camino Real [18PLN-00136]: Ordinance 5458 Entitled, "Ordinance of the Council of the City of Palo Alto to Apply the Affordable Housing (AH) Combining District to the Subject Site. Environmental Assessment: Exempt From the Provisions of the California Environmental Quality Act (CEQA) per Guideline Section 15194 (Affordable Housing). Zoning District: CN

FINAL MINUTES

(Neighborhood Commercial)" (FIRST READING: January 14, 2019
PASSED: 6-0 Kniss absent).

MOTION PASSED: 7-0

At this time Council heard Minutes Approval.

Minutes Approval

2. Approval of Action Minutes for the January 22, 2019 Council Meeting.

MOTION: Mayor Filseth moved, seconded by Vice Mayor Fine to approve the Action Minutes for the January 22, 2019 Council Meeting.

MOTION PASSED: 7-0

Oral Communications

Dennis Backlund thanked City Manager Shikada for sending AJ Capital a letter stating one-year leases for remaining Hotel President tenants would be required and enforced. AJ Capital responded that evictions would occur on March 1. The City had created the issue by incorrectly advising AJ Capital regarding a proposed project.

Karen Kao wished the City Manager's letter had been sent in November in order to benefit more Hotel President tenants. She hoped the City would pursue enforcement and apply fines.

Rita Vrhel remarked that the Council Priority of climate change could include the salvage of building materials, enforcement of the prohibition against gas-powered leaf blowers and lawn mowers, development in areas expected to flood due to sea level rise, and anti-vehicle idling. The Council needed to work to regain citizens' trust and respect.

Iqbal Serang thanked the City Manager for his letter to AJ Capital regarding the Hotel President. The letter made a difference for the remaining tenants even though AJ Capital intended to proceed with evictions.

Mary Sylvester appreciated the Council's choice of Priorities for 2019. The Council should implement a business tax. Public trust and engagement was an important topic for the Council and Staff. AJ Capital's disrespect of Hotel President tenants was unacceptable.

Council Member Tanaka left the meeting at 6:30 P.M.

FINAL MINUTES

Action Items

6. Provide Direction to Staff on a Letter to the Santa Clara County Planning Department Regarding Requested Terms for Inclusion in a Possible Development Agreement Between the County and Stanford University Related to the General Use Permit Application.

Jonathan Lait, Planning and Community Environment Interim Director, requested Council direction regarding a letter addressed to the County of Santa Clara (County) Board of Supervisors regarding the Leland Stanford Junior University (Stanford University) General Use Permit (GUP). In 2017, Stanford University filed an application for a GUP amendment. In 2018, Stanford University submitted an application for a Development Agreement. The Board of Supervisors had asked communities that could be impacted by the applications to identify and propose community or public benefits for inclusion in negotiations with Stanford University. Recommended topics for inclusion in the letter were a contribution of \$1 million for preparation of a Downtown Coordinated Area Plan (CAP); fair-share funding for infrastructure and design enhancements resulting from the Downtown CAP; fair-share funding for a grade separation at Charleston; a contribution to the City's Affordable Housing Fund; long-term preservation of the Foothills; and upstream floodwater detention. Other areas of interest included on-campus housing and a fair-share contribution for roadways; use of affordable housing funds for projects within a six-mile radius of the Academic Growth Boundary (AGB) or within a half mile of a fixed rail location; an ongoing annual contribution for maintenance of four parks located in the College Terrace neighborhood; expansion of the Marguerite Shuttle service to replace Palo Alto Shuttle service; and an easement and contribution for Bol Park Path improvements. Negotiations between the County and Stanford University were underway. Staff anticipated transmitting the letter as soon as practical. Staff anticipated hearings before the County Planning Commission would occur in March or April with final review and action occurring in May or June.

Herb Borock suggested the Council consider completion of grade separations for University Avenue and California Avenue prior to development of the Stanford University campus and fair-share funding for the grade separations; funding for those grade separations; fair-share funding for the College Terrace Library; use of floodwater to recharge groundwater; and preservation of 90 percent of the Foothills in exchange for 10 percent development and the City's annexation of the Foothills and dedication as parkland.

FINAL MINUTES

Todd Collins, Palo Alto Unified School District (PAUSD) Board of Education Vice President, reported the PAUSD Board of Education had discussed litigation against Stanford University regarding the final Environmental Impact Report (EIR). He requested the Council support a requirement for Stanford University to mitigate fully all impacts of its development on the community.

Council Member Kniss inquired about the approximate number of school-age children that would result from Stanford University development.

Mr. Collins noted Stanford University had proposed a certain amount of housing, but the EIR explored considerably more housing. PAUSD's estimate of new students ranged from 275 to 1,435.

Rita Vrhel encouraged the Council to include PAUSD's requests. Stanford University continued to buy real property, which became non-taxable under Stanford University's ownership.

Bob Moss recommended Stanford University fund a grade separation at Meadow. If Stanford University did not fund a neighborhood school, parents would drive students to schools in Palo Alto, which would increase traffic congestion. The City could address traffic impacts. The six-mile radius for affordable housing may need to be extended to eight or ten miles. The Marguerite Shuttle system should supplement Palo Alto Shuttles.

MOTION: Mayor Filseth moved, seconded by Council Member Kniss to direct Staff to prepare a letter, signed by the Mayor, to the County Board of Supervisors that reflects Council's direction regarding Stanford University's General Use Permit Application, addressing the following topics:

- A. Downtown Area Plan, including the Transit Center;
- B. Fair-Share Implementation of Area Plan;
- C. Fair-Share Grade Separation at Charleston;
- D. Contribution to the City's Affordable Housing Fund;
- E. Long Term Preservation of the Foothills; and
- F. Upstream Flood Water Detention.

Council Member Kniss felt the letter should reflect the importance of preserving the Foothills, installation of upstream floodwater detention measures, and collection of affordable housing funds.

FINAL MINUTES

Vice Mayor Fine believed the requests should be big as they could be reduced through negotiations. Limiting fireworks displays to two per year may be too strict. The list of intersections impacted by Stanford University traffic should be expanded. Stanford University should contribute to the expansion or maintenance of Residential Preferential Parking (RPP) Permit Programs. Stanford University probably would not agree to extend the prohibition on development in the Foothills beyond 2100. He requested the basis for the \$82 million affordable housing fee.

Mr. Lait explained that it was based on the full build-out of the Stanford University GUP multiplied by the existing Housing Impact Fee.

Vice Mayor Fine asked if Stanford University would pay the County an affordable Housing Impact Fee, donate to the County's affordable housing fund, and pay the City an Impact Fee.

Mr. Lait suggested the Council discuss whether to pursue affordable housing funds as stated in the Staff Report or through some other method.

Vice Mayor Fine wanted to discuss justifications for requesting a higher amount.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "issues of Residential Preferential Parking (RPP) districts, existing grade-separated rail crossings, and potentially expanding the no-net new trips project." (New Part G)

Mayor Filseth asked if the language "existing grade-separated rail crossings" meant Stanford University should pay its share of grade separations.

Vice Mayor Fine clarified the language as Stanford University should contribute to upgrading the existing grade-separated crossings.

Mayor Filseth inquired whether that was essentially the same as mitigating traffic impacts.

Vice Mayor Fine replied yes.

Mayor Filseth asked if Staff had captured that in the list of topics.

Mr. Lait advised that the additional topics talked about impacted areas, but it was not included in the main topics proposed for the letter.

Mayor Filseth inquired whether the issue was adequately captured in point seven.

FINAL MINUTES

Mr. Lait responded no.

Council Member Kniss asked if expanding the no-net new trips project meant tracking the project more substantially. Stanford University counted traffic twice a day, an hour in the morning and an hour in the afternoon. She questioned whether expanding meant the timing or the actual amount of time spent tracking trips.

Vice Mayor Fine responded the hours spent tracking trips and potentially sharing more of that data with the City.

Council Member Kniss commented that Staff needed to understand that as the direction. At times, Stanford University did not seem to align with that.

Council Member Cormack felt the letter should be comprehensive and requested the basis for Stanford University's \$1 million contribution for the Downtown CAP.

Mr. Lait explained that the estimate for the North Ventura CAP with a confined boundary was approximately \$850,000. The Downtown CAP would cover Downtown and extend to Palo Alto Avenue for the grade separation and to University Avenue and the Transit Center. The Downtown CAP would require a substantially greater design effort. Staff had received rough estimates of \$1.2-\$1.3 million. Staff believed the design, studies, and analyses could easily cost more than \$2 million.

Council Member Cormack noted the requested contribution was approximately half the estimated cost. She preferred to include all topics in the letter. The letter could also include a contribution for ongoing maintenance of the College Terrace Library, extending the Marguerite Shuttle had to be in the letter, also funding bike infrastructure and the crossing guard program should also be included in the letter.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "mitigation of housing development impacts within the Academic Growth Boundary (AGB) and roadway impacts." (New Part H)

Mr. Lait clarified that the County's position regarding a requirement for on-campus housing was unknown. If there was a requirement for on-campus housing, the impacts identified in the draft EIR should be addressed.

Council Member Cormack requested the rationale for Staff proposing use of affordable housing funds for projects located within one-half mile of a fixed rail location.

FINAL MINUTES

Mr. Lait stated the 2000 GUP required affordable housing funds to be used for projects located within six miles of the campus. Stanford University wished to change the requirement to within a half-mile of a transit corridor, which would include locations such as El Camino Real throughout the region. If growth did not occur, presumably housing would be distributed throughout the region.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "continue the requirement that Santa Clara County affordable housing funds be used within six miles of the AGB." (New Part I)

Mr. Lait further stated housing locations near a transit corridor and a fixed rail location would encourage people to take rail rather than drive.

Mayor Filseth indicated he could think of cases where using the funds for projects outside the six-mile radius could be logical.

Council Member Kniss felt the Board of Supervisors would support transit corridor because the City did not have sufficient land within the six-mile radius for projects.

Mayor Filseth remarked that projects located in transit corridors south of Palo Alto could be larger because the cost of land was less.

Council Member Kniss added that those people then had to travel to Palo Alto.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "contribute to the ongoing maintenance of the College Terrace Library and four parks located in the College Terrace neighborhood." (New Part J)

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "request the opportunity to replace the City's shuttle service with enhanced Marguerite shuttle service." (New Part K)

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "request an easement to connect Bol Park Path via Hanover Street between California Avenue and Page Mill Road and a \$250,000 contribution towards signal modification and other physical improvements for the pathway." (New Part L)

FINAL MINUTES

Mayor Filseth commented that the easement was the controversial component of Bol Park Path improvements.

Council Member Cormack asked if the crossing guard program was a component of the Bicycle and Pedestrian Transportation Plan.

Mr. Lait advised that the two could be combined in the Motion.

Council Member Cormack asked if the earlier amendment included both stations.

Vice Mayor Fine answered no. He suggested the Motion include both stations and all the grade separations.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion Part G, "and two existing train stations" after "existing grade separated rail crossings."

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "consider funding for the City's Bike and Pedestrian Transportation Plan and crossing guards for areas directly impacted by Stanford University traffic and used frequently by Stanford Affiliates and their families." (New Part M)

Council Member Kou inquired whether the Council would review the letter before it was submitted.

Mr. Lait reported Staff drafted the recommendation to allow the Mayor to review and edit the letter. The Council would receive a copy of the letter once it had been completed and signed. The Council could direct Staff to take a different approach.

Council Member Kou asked if the Council would have an opportunity to submit a subsequent letter.

Mr. Lait indicated the current meeting was the best and last chance for the Council to draft recommendations to the Board of Supervisors and County Staff. When hearings were scheduled before the Board of Supervisors, the City could submit subsequent letters; however, timing Council discussions with hearing dates could be difficult.

Ed Shikada, City Manager, assumed the County would schedule a period of public review for a draft Development Agreement.

Council Member Kou expressed concern that the Council would not have an opportunity to submit subsequent letters. She asked if the

FINAL MINUTES

recommendations in the letter pertained to the GUP rather than the Development Agreement.

Mr. Lait replied the letter addressed both applications.

Council Member Kou inquired regarding a deadline for the Development Agreement.

Mr. Lait reported the City had no standing in negotiating the Development Agreement. He did not expect the County to deviate from the published schedule for the GUP and Development Agreement.

Council Member Kou hoped her colleagues would direct Staff to return with a draft letter for Council review.

Mayor Filseth clarified that the City's influence with respect to the GUP and Development Agreement was limited. He questioned whether Council review of a draft letter would be an effective use of time. The Board of Supervisors would probably consider only the main substance of the letter.

Council Member Kou noted students were cutting across private property to reach schools. Perhaps the County Historic Board could determine whether historic buildings on Stanford University land were actually historic.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion Part M, "including exploring pathway options connecting Stanford Research Park to Bol Park and a pathway behind Creekside Inn along Chimalus Drive" after "Transportation Plan."

Mr. Lait disclosed that the environmental analysis included review of existing buildings and their historic significance.

Council Member Kou asked if Stanford University or the Historic Board conducted the analysis.

Mr. Lait indicated the County hired the consultant who conducted the environmental review. Stanford University may have provided information to the County for the review. The County would rely on the final EIR to determine whether an existing building could be demolished. The review process was embedded in State law, and the County determined whether historic resources could be removed.

Council Member Kniss assumed the County would protect historic structures, given its close monitoring of Stanford University's project to renovate the stadium.

FINAL MINUTES

Council Member Kou wanted to ensure nobody tried to rewrite the National Standards for historic buildings and ensure historic structures were preserved.

Mayor Filseth remarked that construction on the campus and preservation of historic structures on the campus did not strictly impact Palo Alto.

AMENDMENT: Council Member Kou moved, seconded by Council Member XX to add to the Motion, "request the Santa Clara County Historic Board review historic buildings on the campus to see if they have historic value."

AMENDMENT FAILED DUE TO THE LACK OF A SECOND

Council Member Kou felt the letter should include the Tri-Party Agreement so that each party to the Agreement paid its fair share.

Mr. Lait advised that Staff would include in the letter a request for the County to include a condition of approval to update the Tri-Party Agreement protocols.

Molly Stump, City Attorney, explained that the protocol was an implementation document. The Agreement was not required to be renegotiated.

Council Member Kou clarified that the Tri-Party Agreement should be followed rather than renegotiated. She wanted to remind the parties of the existence of the Tri-Party Agreement.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "ensure the Tri-Party protocol (City of Palo Alto, Santa Clara County, and Leland Stanford Junior University) is updated." (New Part N)

Mayor Filseth assumed the County would decide where to discuss the Tri-Party Agreement.

Mr. Lait understood the intent was for the letter to communicate the City's interest in updating the protocol that implemented the Agreement.

Mayor Filseth questioned whether the interest was updating or following the Agreement.

Mr. Lait advised that the parties were following the protocol. He was not aware of any violation of the Agreement. Staff felt the protocol needed to be updated.

FINAL MINUTES

Council Member Kou had observed Stanford University residents and employees utilizing Peers Park and the dog park.

Mayor Filseth noted Peers Park was a bit of a hike from campus.

Meg Monroe, Management Specialist, related that Peers Park was located three to four blocks east of the campus, slightly further away from campus than the College Terrace parks.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "contribute to the ongoing maintenance of Peers Park." (New Part O)

Council Member DuBois suggested the Council consider ways to increase its engagement in the process. After submitting the letter, the Council should consider forming a Council ad hoc subcommittee and possibly a multicity consortium. He concurred with prior comments to ensure use of the Tri-Party Agreement. The Council needed to think about City services provided to Stanford University. The Council appeared to want to incorporate all impacts in the letter; therefore, the strategy of the letter needed to be fundamentally different. The full list of impacts should be clearly stated in the letter. He had heard the Board of Supervisors preferred the submissions be right rather than rushed and was waiting to resolve the conditions of approval before actively negotiating the Development Agreement. He asked if the letter would recommend Stanford University pay housing impact fees to the County and City.

Vice Mayor Fine answered yes. Stanford University was challenging the County's Housing Impact Fees in court. Staff proposed Stanford University pay \$82 million based on the City's Impact Fee.

Council Member DuBois preferred the City's Impact Fee not appear to conflict with the County's Impact Fee. The language should be worded carefully and suggest the City could change its impact fees to a level closer to the County's Impact Fee. He did not want to provide Stanford University with leverage to negotiate a reduction in the County Impact Fee. He concurred with Council Member Cormack's comments regarding the six-mile radius. There was some risk the funds would be utilized in an area well outside the City. A fallback position of one-half mile from fixed rail was good. Limiting the language of the letter to a few grade crossings would not benefit the City. He concurred with changing the parameters for the no-net trips and expanding the hours of measurement. The letter should call out Foothill Expressway, the Marguerite Shuttle that passes through but does not stop in East Palo Alto, and Stanford University purchasing but not using homes in College Terrace. An influx of children from the proposed housing

FINAL MINUTES

could affect Community Services' programs for children. He inquired whether Stanford University utilized the City's electric and gas utilities.

Mr. Lait answered no.

Council Member DuBois added that the letter should address housing for construction workers and recommend Stanford University provide an on-campus lot for construction workers to park their Recreational Vehicles (RV). The letter should incorporate all impacts, which the Council could prioritize at a later time.

AMENDMENT: Council Member DuBois moved, seconded by Council Member Kou to add to the Motion, "return to Council with an Action Item to review a draft letter including mitigations for all impacts."

Council Member DuBois encouraged the Mayor to consider forming an ad hoc subcommittee regarding the GUP and to reach out to Menlo Park, Redwood City, and East Palo Alto to form a Stanford cities consortium regarding the GUP.

Mayor Filseth advised he would consider formation of an ad hoc subcommittee.

Council Member DuBois suggested the letter and consortium return to Council.

Mayor Filseth concurred with forming an ad hoc subcommittee and reaching out to other cities.

Ms. Stump recommended the Council address the Motion and subsequently the Amendment as a new Motion. Council Member DuBois should withdraw the Amendment, the Council should vote on the Motion, and then Council Member DuBois could move Council review of the draft letter.

Mayor Filseth clarified that the Motion concerned the contents of the letter while the Amendment concerned next steps for the letter.

AMENDMENT WITHDRAWN BY THE MAKER

Council Member Kniss inquired whether Staff explored other cities' interactions with universities around development prior to drafting the letter.

Mr. Lait responded no.

FINAL MINUTES

Council Member Kniss recommended Staff search for precedents in the future. The letter appeared to incorporate every topic that could be incorporated.

Mayor Filseth asked if the letter included Stanford University funding for grade separations.

Mr. Lait replied yes, for all grade separation areas.

Mayor Filseth inquired whether the letter could support PAUSD's requests.

Mr. Lait answered yes.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "support Palo Alto Unified School District's (PAUSD) concerns regarding full mitigations for all generated impacts." (New Part P)

Mayor Filseth suggested Stanford University would create and invest its own school district if Palo Alto did not exist. Therefore, Stanford University should invest in the existing PAUSD. He requested the letter include the words "full mitigation."

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Motion, "expanding the list of impacted intersections." (New Part Q)

Mr. Lait requested clarification of impacted intersections.

Vice Mayor Fine stated the impacted intersections were the priority intersections from the EIR.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to replace in the Motion Part C, "Separation at Charleston" with "Separations."

MOTION AS AMENDED RESTATED: Mayor Filseth moved, seconded by Council Member Kniss to direct Staff to prepare a letter, signed by the Mayor, to the County Board of Supervisors that reflects Council's direction regarding Stanford University's General Use Permit Application, addressing the following topics:

- A. Downtown Area Plan, including the Transit Center;
- B. Fair-Share Implementation of Area Plan;

FINAL MINUTES

- C. Fair-Share Grade Separations;
- D. Contribution to the City's Affordable Housing Fund;
- E. Long Term Preservation of the Foothills;
- F. Upstream Flood Water Detention;
- G. Issues of Residential Preferential Parking (RPP) districts, existing grade separated rail crossings and two existing train stations, and potentially expanding the no-net new trips project;
- H. Mitigation of housing development impacts within the Academic Growth Boundary (AGB) and roadway impacts;
- I. Continue the requirement that Santa Clara County affordable housing funds be used within six miles of the AGB;
- J. Contribute to the on-going maintenance of the College Terrace Library and four parks located in the College Terrace neighborhood;
- K. Request the opportunity to replace the City's shuttle service with enhanced Marguerite shuttle service;
- L. Request an easement to connect Bol Park Path via Hanover Street between California Avenue and Page Mill Road and a \$250,000 contribution towards signal modification and other physical improvements for the pathway;
- M. Consider funding for the City's Bike and Pedestrian Transportation Plan including exploring pathway options connecting Stanford Research Park to Bol Park and a pathway behind Creekside Inn along Chimalus Drive and crossing guards for areas directly impacted by Stanford University traffic and used frequently by Stanford Affiliates and their families;
- N. Ensure the Tri-Party protocol (City of Palo Alto, Santa Clara County, and Leland Stanford Junior University) is updated;
- O. Contribute to the on-going maintenance of Peers Park;
- P. Support Palo Alto Unified School District's (PAUSD) concerns regarding full mitigations for all generated impacts; and
- Q. Expanding the list of impacted intersections.

FINAL MINUTES

MOTION AS AMENDED PASSED: 6-0 Tanaka absent

MOTION: Council Member DuBois moved, seconded by Council Member Kou to direct Staff to return to Council with an Action Item to review a draft of letter that includes a list of all impacts of the General Use Permit on Palo Alto and City Services, incorporating feedback from Council with the goal of fully mitigating all impacts.”

Council Member DuBois believed there was sufficient time for the Council to review the letter prior to submitting it. The Action Item could be fairly short. Because of the letter's importance and the number of changes made to it, it should return for Council review.

Council Member Kou reiterated the importance of the letter.

Council Member Cormack requested a potential timeframe for the letter to return to the Council.

Council Member DuBois indicated Staff should return as soon as possible.

Council Member Cormack requested Staff comment.

Mr. Shikada suggested the Council consider a sequence for submitting the letter, meeting with County Supervisors, and working with other cities.

Council Member Kniss requested clarification of the length and purpose of the Council's review of a draft letter.

Council Member DuBois believed 45 minutes would be sufficient time for Council Members to ensure the letter captured comments appropriately.

Mr. Lait reported the soonest Staff could return to the Council was probably February 25. The tentative Agenda for February 25 was already full. Staff understood the County Planning Commission meetings were scheduled for March. He requested the Council allow a late packet for the draft letter to accommodate the schedule.

Mr. Shikada did not recommend a shortening of the public review period for the draft letter.

Council Member Cormack would not support the Motion as Council Members had provided a great level of detail. The Mayor and Staff could draft the letter, and the ad hoc subcommittee could begin engagement after the letter was submitted.

FINAL MINUTES

Council Member Kniss would support Council review if she could be sure the discussion would last for no more than an hour. An open-ended item would repeat the current discussion. She inquired whether the intent was to air the letter prior to submitting it to the Board of Supervisors.

Council Member DuBois answered yes.

Vice Mayor Fine understood the desire to review the letter, but Staff and the Council were pressed for time. The County Planning Commission's Study Session was scheduled for February 28. If necessary, the Council could send a second letter at a later time.

Council Member Kou remarked that the plan covered 15 years and created huge impacts.

MOTION FAILED: 3-3 DuBois, Kniss, Kou yes, Tanaka absent

Council took a break from 8:12 P.M. to 8:22 P.M.

Council Member Tanaka returned to the meeting at 8:22 P.M.

7. PUBLIC HEARING / QUASI-JUDICIAL: Consideration of Appeals of the Planning and Community Environment Director's Decisions on Seven Crown Castle Tier 3 Wireless Communication Facilities (WCF) Small Cell Nodes (Cluster 2, University South, File 17PLN-00433) to Conditionally Approve Five Nodes and Deny two Nodes; Appealed by Crown Castle and United Neighbors. The Seven Appealed Tier 3 WCF Permits are in the Public Right of Way Utilizing six Replacement Streetlights and one new Pole Adjacent to the Public Facilities Zone: City Hall Police Station, 275 Forest; Commercial Downtown CD-C (P) Zone: 345 Forest; Residential Transition (SOFA) RT-35 Zone: 248 Homer, 190 Channing; and the DHS (SOFA) Zone: 385 Homer, 905 Waverley (Formerly 400 Channing), 845 Ramona. Environmental Assessment: Exempt Under California Environmental Quality Act (CEQA) Guidelines Section 15303 and Public Resources Code 21080.

Jonathan Lait, Planning and Community Environment Interim Director, reported Crown Castle applied for seven permits for wireless communication facilities (WCF). The Director conditionally approved five permits and recommended denial for two permits. Local discretion regarding regulation of WCF was constrained by the Federal Telecommunications Act of 1996 and State Public Utilities Code 7901 and 7901.1. A Federal Communications Commission (FCC) Order established a shot clock for small cell applications. Staff had 60 days to review applications unless the City and the applicant mutually agreed to an extension. The Director recommended denial of the

FINAL MINUTES

applications for Nodes 26 and 28. The applicant proposed locating the antenna array at the top of streetlight poles and hiding radio equipment inside a faux mailbox at street level. Previously installed faux mailboxes had been damaged but not repaired and were oversized in anticipation of additional antennas. The current application did not warrant a cabinet the size of existing faux mailboxes. The faux mailboxes increased the clutter in the public right-of-way in an underground utility district. The applicant submitted alternative design schemes for side-mounted equipment and pedestal-mounted equipment during and following the December 6, 2018 Architectural Review Board (ARB) hearing. On January 4, 2019, the Director conditionally approved five small cell nodes with a top-mounted design such that no radio equipment would be placed on the sidewalk or attached to the pole. The Director recommended denial of one node because the location did not need a streetlight and the City did not want the responsibility of maintaining the streetlight. The second node was located adjacent to an historic resource, and Staff felt the node would interfere with the use of the historic resource. Other feasible and nearby locations could accommodate the proposed nodes. The City had the ability to regulate for safety and aesthetics. In this instance, safety did not pertain to Radio Frequency (RF) emissions that frequently raised health concerns. The review process included review of the project for consistency with the Comprehensive Plan and the Municipal Code. The Applicant, Crown Castle, appealed the Director's decision for all nodes. United Neighbors appealed the five conditionally approved nodes. On December 6, 2018, the ARB did not express concern regarding antennas located in a shroud atop the streetlight pole. The concern had consistently been the radio equipment and how it was placed on the pole. The ARB had consistently expressed interest in placing radio equipment underground. The subject nodes were located in Downtown, where all City utilities were located underground. Therefore, Staff felt accommodating the radio equipment underground would be more difficult than usual. The City was responsible for demonstrating the ability to place radio equipment underground. The City had received a tremendous amount of comment regarding the Project, and the vast majority of comments opposed the project on the grounds of aesthetics, noise, and consistency with undergrounding requirements. The comments supporting the project cited improved wireless coverage. Staff retained a consultant to review the Project and assess the dimensional requirements for vaulting. The Applicant proposed a design with a slightly bulkier presentation for radio equipment, which could be placed on the pole or the sidewalk. The Applicant's proposed design would achieve the coverage objectives with fewer nodes. The project design as conditioned for approval would place more equipment in a smaller location atop the streetlight or utility pole and require more nodes to achieve coverage objectives. The policy choice was a smaller footprint with more nodes or a larger footprint with fewer nodes.

FINAL MINUTES

Staff was updating the City's Wireless Ordinance in response to the FCC Order and intended to create a menu of design options that would streamline the review process. Council action would likely influence future decisions regarding the processing of WCF. A number of applications for WCF were pending. Technology continued to change, and the Applicant had identified smaller side-mounted cabinets that could achieve coverage objectives with the smaller number of nodes.

Molly Stump, City Attorney, emphasized that the Appeal was unlike the typical land use item in that both the Federal Government and the State Legislature had reduced the City's traditional discretionary authority over a standard development application.

Public Hearing opened at 8:40 P.M.

Michael Shonafelt, Applicant/Appellant Crown Castle, advised that Crown Castle was vested with a right to go into public rights-of-way to deploy telephone networks. The Applicant ran and operated telephone networks as an independent public utility. In this case, Verizon had joined onto the infrastructure that the Applicant owned, maintained, and deployed. The Applicant sought a solution that addressed the City's aesthetic standards and met coverage objectives. The Director's decision would require the Applicant to abandon its 40-watt radios and adopt 5-watt radios, which would degrade the network by approximately 50 percent. In addition, the Director's decision regulated technology, which Federal courts had stated fell under the FCC's purview. The Project would implement critical technology for 21st century communications. Seventy percent of all 9-1-1 calls were made via cell phone, and cell phones were the sole mode of communication for 50 percent of homes. The Director's conditionally approved design would not achieve coverage objectives; therefore, the determination was a prohibition of service, which Section 332 of the Telecommunications Act of 1996 prohibited. According to State law, if WCF applications were not reviewed in the prescribed time period, the applications were deemed approved by operation of law. The City's consultant did not consider the effects of installing a 5-watt radio. The Applicant preferred ground-mounted equipment. Everyone agreed that vaulting was not technically feasible. Bulk would always be an issue with ground-mounted equipment, but the equipment could be sited to decrease the inconvenience to the public right-of-way. A smaller radio could be pole-mounted with a more streamlined shroud. Pedestal-mounted equipment could be hidden with all manner of decorative treatments. The Applicant identified alternative locations for the two nodes the Director denied, but the Director could not accommodate any of the alternative locations. The new standard for WCF applications was any regulation which would materially limit or inhibit the ability of any competitor

FINAL MINUTES

or potential competitor to compete in a fair and balance legal and regulatory environment would result in a prohibition of service.

Jeanne Fleming, Appellant, United Neighbors, appealed the Director's decision because the Interim Planning Director had appointed himself the sole arbiter of aesthetic standards in the City. Mr. Lait had disregarded the judgment of the ARB and residents' rights mandated by the Municipal Code and was dictating the appearance of neighborhoods. She asked the Council to support the ARB and to defend the rights of Palo Alto residents by reversing the Director's decision. The Director's decision supported inexpensive installation of cell tower equipment, which meant the locating of unsightly equipment above ground on City property for a dirt-cheap rental fee. On December 6, 2018, the ARB decided the ancillary equipment should be located underground. At that time, the Director could have affirmed the ARB's decision, scheduled an ARB review of the design the Applicant submitted following the December 6, 2018 hearing, or reached agreement with the Applicant to stop the shot clock until a second ARB hearing could be held. The Director approved an alternative design that was not disclosed to residents and about which residents were not given an opportunity to comment. The Director approved a design that was the antithesis of the ARB's recommendation. In defiance of Palo Alto's Municipal Code, the Director removed the ARB and residents from the review process. The February 8, 2019 shot clock deadline cited by the Director was utter nonsense because 427 days had elapsed since the application was filed. By mutual agreement, the shot clock was stopped on March 12 and April 30. The Director had offered thin excuses for his actions. She requested the Council stipulate the ancillary equipment must be located underground or refer the conditionally approved design to the ARB for review in a public hearing.

Council Member Tanaka disclosed receipt of email and voicemail messages and a conversation with Jeanne Fleming. He learned no information that was not contained in the public record.

Council Member Kou disclosed receipt of email messages from Jeanne Fleming and residents.

Vice Mayor Fine disclosed no ex parte communications.

Mayor Filseth disclosed no ex parte communications.

Council Member Kniss disclosed no ex parte communications.

Council Member Cormack disclosed no ex parte communications.

FINAL MINUTES

Council Member DuBois indicated he had not learned any information that was not contained in the public record.

Jennifer Beyers, legal representative for the property owners of 362 Channing Avenue, supported the Applicant's Appeal. She had submitted a request for a field investigation to relocate a light pole at 370 Channing to the crosswalk at the Scott Street mini park. The pole at 370 Channing had no tree coverage and no screening and was directly visible from her clients' upstairs windows. She and the Applicant agreed to an alternative location, which the ARB supported. Moving the light pole to the crosswalk would improve public safety.

Tom O'Connor commented that vaulting equipment could be accomplished in a flood zone. A company produced and guaranteed waterproof vaults.

Susan Downs, MD, referred to studies that found exposure to Wi-Fi and cell phones caused serious health issues. She advocated for safer placement of cell towers.

Jyotsna Nimkar requested the Council support the ARB's recommendation to underground equipment. Undergrounding equipment was technically feasible and would preserve the aesthetics of the neighborhood.

Francesca Kautz supported United Neighbors Appeal and requested the Council refer the project to the ARB for a public hearing. Cell towers should be placed 1,500 feet or more from residential areas and schools. Telecommunication companies should be required to provide liability insurance for cell towers.

Bill Ross suggested language for an additional condition of approval should the Council approve any of the applications before it. An approval based on California Environmental Quality Act (CEQA) Guideline Section 15303 had to be supported by substantial evidence, but there was insufficient analysis under CEQA to approve the applications.

Herc Kwan asked the Council to overturn the Director's decision. The City should consider Fiber to the Premise (FTTP) for telecommunications.

Ann Protter expressed concern about noise from WCF and WCF falling on residents during earthquakes. She hoped the Council would overturn the Director's decision.

Kathleen Martin supported United Neighbors Appeal.

FINAL MINUTES

Tina Chow advised that undergrounding equipment was possible and feasible for all of Palo Alto. Undergrounding equipment reduced fire risk and noise and increased the aesthetics of neighborhoods. In addition, undergrounding equipment reduced the impact to people sensitive to electromagnetic fields. She asked the Council to reverse the Director's decision and to support the ARB's recommendations.

Mary Elisabeth Plowden concurred with comments regarding aesthetic and health concerns. Documents about the Project contained inaccurate information.

Neilson Buchanan indicated he and his neighbors appreciated the judgment and opinion of the ARB. Perhaps, the ARB could review WCF technology every few years.

Leo Povolotsky supported the United Neighbors Appeal and the comments of Ms. Downs and Ms. Chow. While residents wanted 21st century communications, they needed beautiful and healthy streets.

Mr. Shonafelt remarked that the shot clock had to be stopped by mutual agreement. The Applicant agreed to stop the shot clock in order to reach a compromise with Staff and the ARB. WCF were exempt from CEQA throughout the state. The City's consultant agreed that undergrounding equipment was infeasible and more invasive than aboveground locations. The Applicant was looking for an aboveground solution that was aesthetically pleasing and that achieved coverage objectives.

Leonard Schwartz, Appellant, United Neighbors, reiterated the Director's actions. The ARB should decide the design that was in the residents' and the neighborhoods' best interests. He asked the Council to support the residents, to insist Staff stop accommodating companies, and to insist projects comply with aesthetic Ordinances and guidelines. He asked the Council to approve the five WCF with the condition that ancillary equipment be vaulted.

Public Hearing closed at 9:27 P.M.

Vice Mayor Fine requested the reasons Staff believed many of the nodes could not be undergrounded.

Mr. Lait explained the burden for having a wireless provider place equipment underground fell on the City. In processing similar applications in residential areas where space was available to underground equipment, Staff faced challenges caused by distance and aesthetic concerns. In Downtown, underground space was filled with infrastructure for City utilities; therefore,

FINAL MINUTES

Staff concluded that undergrounding equipment in Downtown would be difficult. In addition, Staff had an alternative design that was an improvement over the proposed design.

Vice Mayor Fine inquired regarding a future policy for handling WCF.

Mr. Lait asked if Vice Mayor Fine was referring to the policy direction to move forward with the Project or the proposed Ordinance that would be presented to the Council for review.

Vice Mayor Fine responded the Ordinance.

Mr. Lait indicated the proposed Ordinance would change the regulations to comply with the FCC Order. The proposed Ordinance would provide the minimum footprint applicable to WCF and to embed within the Ordinance Staff's ability to modify regulations as new technology became available.

MOTION: Council Member Kniss moved, seconded by Mayor Filseth to uphold the January 4, 2019 decisions made by the Director of Planning and Community Environment, by approving a Record of Land Use Action for:

- A. Conditional approval of five Wireless Communication Facilities (WCF) nodes on these replacement streetlights:
 - i. Node 25, CPAU Streetlight # 23 (near 275 Forest Avenue);
 - ii. Node 27, CPAU Streetlight # 82 (near 248 Homer Avenue);
 - iii. Node 29, CPAU Streetlight # 76 (near 385 Homer Avenue);
 - iv. Node 30, CPAU Streetlight # 86 (near 845 Ramona Street);
 - v. Node 31, CPAU Streetlight # 16 (near 190 Channing Avenue);
- B. Denial of two WCF nodes on:
 - i. One replacement streetlight, Node 26, CPAU Streetlight # 32 (near 345 Forest Avenue); and
 - ii. One new pole structure, Node 28 (near 905 Waverley Street (also known as 400 Channing Avenue)).

Council Member Kniss recalled complaints about poor cell reception. At some point, each person would need cell phone communications, but they would be unavailable.

FINAL MINUTES

Council Member Kou requested the definition of "indefinite encroachment permit."

Mr. Lait reported the condition was relatively standard for WCF. Because WCF were located in the public right-of-way, they required an encroachment permit. The permit was termed indefinite because it would extend until the equipment was removed.

Council Member Kou asked if a conditional use permit was required for a WCF.

Mr. Lait answered no. The Tier 3 permit would grant the wireless provider the ability to locate its antennas and radio on street lights. An encroachment permit was standard for any type of activity occurring in a right-of-way.

Council Member Kou asked if there was a one-time fee for the encroachment permit.

Mr. Lait replied yes, but he did not know the amount.

Council Member Kou requested the City's mechanisms to force permit holders to repair equipment cabinets and penalties for not repairing equipment cabinets.

Mr. Lait advised that the repair of equipment was not before the Council. Staff would determine whether the equipment had been repaired.

Council Member Kou asked if it was included in the pending land use action.

Mr. Lait responded no because it was a separate entitlement.

Council Member Kou asked if language was included to handle a violation by the current Applicant.

Mr. Lait reported Staff included standard conditions of approval requiring the Applicant to maintain the facility and operation. The relevant condition of approval was Number 18.

Council Member Kou asked if the permit had a lifespan.

Mr. Lait related that the permit extended for the term in which the WCF was located on the pole.

Albert Wang, Deputy City Attorney, added that the Master License Agreement contained the terms and conditions for the wireless provider's

FINAL MINUTES

use of City utility poles or street lights. The permit would extend until the Master License Agreement expired and was not renewed or until the facility was removed. He could not recall the specific term of the Master License Agreement, but it was in the range of decades.

Council Member Kou inquired regarding the length of time granted the Applicant to install the equipment once the permit was issued.

Mr. Lait indicated the entitlement was valid for a year.

Council Member Kou asked if the Applicant had to reapply after a year.

Mr. Lait explained that the entitlement would become effective the day of the meeting if the Council approved the Application. The Applicant would have up to one year to file permits or seek an extension for at most another year. A building permit was valid for up to six months before certain thresholds had to be met.

Council Member Kou wanted to know the length of time in which the Applicant had to construct the project before being required to resubmit an Application.

Mr. Lait explained that if the Applicant pulled a building permit, the building permit expired, and the Applicant could not renew the building permit through the usual process, then the Applicant would need to seek new approvals. That was an unlikely series of events.

Council Member Kou asked if reviews occurred once the equipment was installed.

Mr. Lait reported Staff conducted an inspection.

Council Member Kou inquired about annual inspections and testing of the equipment to ensure it was operating safely and in compliance with Federal guidelines.

Mr. Lait reported prior to issuing a permit to install the facility, the City required the Applicant to demonstrate compliance with FCC standards for electromagnetic radiation. At or shortly after issuance of the certificate of occupancy, Staff received a report that demonstrated the equipment was operating consistent with thresholds. Through the Conditions of Approval, Staff could enforce consistency with thresholds.

Council Member Kou requested the rationale for the Director not following the ARB's recommendations.

FINAL MINUTES

Mr. Lait advised that Federal and State requirements guided decision-making for the determination. Based on information available at the time, Staff did not believe the ARB's interest in undergrounding could have been reasonably accommodated.

Council Member Kou noted the faux mailbox occupied sidewalk space and impeded pedestrian use of sidewalks when the Comprehensive Plan referred to sidewalks being usable for pedestrians. If companies wanted to utilize public space, they should ensure the project was in the best interest of the City.

Mr. Lait clarified that the faux mailboxes were not a part of the decision that was before the Council. The Director's decision removed the Applicant's ability to place faux mailboxes on the sidewalk and required equipment to be placed within the antenna shroud.

Council Member Kou remarked that a shroud with the equipment would be bulkier.

Mr. Lait stated the antenna shroud would extend about 2 feet higher, but the sidewalk would be free of equipment cabinets. Alternative locations for the equipment were on the pole or on the sidewalk. Staff had no information that suggested the equipment could be placed underground.

Council Member Kou asked if the litigation had been resolved.

Mr. Yang reported the court denied the municipalities' request to stay the FCC Order while litigation proceeded. The FCC Order was in effect, and the litigation was not likely to be resolved for the next year or so.

Council Member Kou noted Congresswoman Eshoo and Congresswoman Speier supported legislation regarding WCF. She inquired regarding the Federal legislative process.

Ms. Stump advised that Staff monitored Federal legislation regarding telecommunications and would be watching the bill closely. The bill may not progress through Congress to become a law.

Council Member Kou remarked that Congresswoman Eshoo supported the Telecommunications Act of 1996. Her support for the current legislation appeared to be an indication that the path to this technology had moved too rapidly.

Ms. Stump disclosed that Staff reviewed the possibility of intervening in the lawsuit. It was national litigation and would impact everyone. The City was

FINAL MINUTES

participating through the League of California Cities but was not a named plaintiff. Procedurally, the City could not join the litigation. The Tenth Circuit Court of Appeals had ruled that the FCC Order was not stayed. Consequently, all cities had to comply with the FCC Order. One aspect of the Order did not become effective until April, and Staff would present a proposed Ordinance for that piece.

SUBSTITUTE MOTION: Council Member Kou moved, seconded by Council Member XX to:

- A. Deny the Record of Land Use Action;
- B. Enact a moratorium on approval of installation of Wireless Communication Facilities (WCF) until lawsuits and legislation (H.R. 530 Eshoo) are finalized; and
- C. Join the cities of Burlingame, San Bruno, San Francisco, and San Jose in their lawsuit against the recent Federal Communications Commission (FCC) Order.

SUBSTITUTE MOTION FAILED DUE TO THE LACK OF A SECOND

Council Member Kou proposed a Condition of Approval that, should the litigation succeed or the legislation become law, all aboveground equipment would be relocated underground.

Council Member Kniss suggested Council Member Kou offer her proposal as a Motion following a vote on the pending Motion.

AMENDMENT: Council Member Kou moved, seconded by Council Member DuBois to add to the Motion, "add a Condition of Approval, 'if litigation against the FCC Order succeeds or Congresswoman Anna Eshoo's legislation passes, all aboveground approved Nodes would be located below ground.'"

Council Member DuBois supported adding the Condition of Approval based on the success of the litigation or Federal legislation.

Mayor Filseth requested the City Attorney's opinion regarding the Amendment.

Ms. Stump explained that the FCC Order constrained local control incrementally. Staff had advised her that the Application was subject to the prior regime. If the litigation successfully stayed or limited the FCC Order, it would not restore full discretionary review to the telecommunications arena. Staff would immediately apply any changes in the legal environment that

FINAL MINUTES

would provide more discretion to cities to all applications going forward. The Condition of Approval was not appropriate for the subject application.

Mayor Filseth requested the consequences of the proposed Condition of Approval should the cities' litigation be successful.

Ms. Stump related that the Condition of Approval would apply to future installations rather than the present installation. Once the City approved a facility to be built, the right to build the facility vested.

Mayor Filseth requested the consequences of the cities' litigation being successful prior to the Applicant installing the facility.

Ms. Stump clarified that new development standards could be applied to the project if the Applicant had pulled a building permit but not taken action on the permit. That was standard law around vesting.

Mayor Filseth asked if the Amendment caused any harm to the City.

Ms. Stump related that revising the Amendment so that it would apply only until a building permit was issued for the facilities would be acceptable.

Council Member DuBois noted the facility was not a building. The City had a fairly long lease term with renewal options. Most of the equipment would likely be replaced during the term of the lease. He proposed modifying the Motion such that once the equipment needed upgrading, it would be moved underground.

Ms. Stump reported the City would need to comply with the terms of the Master License Agreement. She would review the Agreement for the City's commitments.

Council Member DuBois commented that technology changed rapidly and the amount of space needed also changed. The lifespan of the equipment was fairly short-lived; therefore, the equipment could be upgraded often. He preferred the equipment not continue to be located above ground.

Council Member Kou asked if the voiding of a law invalidated any action taken in compliance with the law.

Ms. Stump replied no. Once the right had vested and the facility was constructed, the City's approval could not be changed. She recommended the language include "to the extent allowed by the City's contracts and agreements and to the extent feasible." The concept of feasibility predated the FCC Order.

FINAL MINUTES

INCORPORATED INTO THE AMENDMENT WITH THE CONSENT OF THE MAKER AND SECONDER to add to the Amendment, “but not permitted” after “ground approved” and “in alignment with the City’s existing agreements, to the extent feasible.”

Mayor Filseth conducted a time check and announced the meeting would continue to 11:00 P.M., when a Motion to continue the meeting would be necessary for the meeting to proceed.

Council Member Cormack would support the Motion because of the need to provide a safe environment with clear sightlines for people walking, biking, and driving. The City would receive additional applications for WCF in order to achieve the desired level of coverage. She preferred a smaller footprint with more nodes.

Council Member Tanaka asked if there were existing undergrounded utilities in the area of the project.

Mr. Yang answered yes, but Staff did not know what equipment had been placed underground.

Council Member Tanaka inquired about the possibility of utilizing existing underground vaults and installing a pole near the vault.

Ed Shikada, City Manager, indicated it was generally not possible because the existing vaults were sized to maintain safety requirements for the existing equipment. The size would not accommodate additional equipment.

Mayor Filseth remarked that undergrounding the equipment was the least unpalatable option. He asked how the ARB could approve an option that Staff felt was not feasible.

Peter Baltay, Architectural Review Board Vice Chair, clarified that the ARB stated the extra equipment should not be visible. The ARB determined that no solution allowed the equipment to be mounted on poles or above ground. The ARB was not responsible for providing applicants with solutions. The ARB heard testimony that undergrounding was possible and that better concealment of aboveground facilities was possible. The Applicant made little effort to find a solution that would work, which left the ARB with no choice but to say no.

Mayor Filseth asked if locating WCF on public buildings was possible.

Mr. Lait replied yes.

FINAL MINUTES

Mayor Filseth commented that other jurisdictions appeared to vault WCF. He requested the reasons for WCF to be vaulted in some locations but not in others.

Mr. Lait explained that underground utilities filled much of the available underground space in Downtown such that the remaining space was not sufficient to underground WCF. The ambient noise level of Palo Alto's residential neighborhoods could be quite a bit lower than residential neighborhoods in other communities. Different communities had different tolerances and acceptance levels for noise. In the prior WCF application, the project appeared to trip the City's noise threshold.

Mayor Filseth felt the Staff recommendation was the second least bad option. The faux mailboxes were potential hazards. The Applicant indicated the cylinders atop the poles were technically infeasible, but the Applicant's competitor could utilize them.

Mr. Yang clarified the Applicant's statement as the cylinders atop the poles did not provide the desired coverage. However, the Applicant also stated that they could utilize that design if the number of locations doubled.

AMENDMENT AS AMENDED RESTATED: Council Member Kou moved, seconded by Council Member DuBois to add to the Motion, "add a Condition of Approval, that nodes would be located below ground, if litigation against the FCC Order succeeds, or Congresswoman Anna Eshoo's legislation passes, and nodes are not yet permitted; or upon replacement or reconstruction to the extent allowed by the City's existing agreements and to the extent feasible."

AMENDMENT AS AMENDED PASSED: 4-3 Cormack, Fine, Kniss no

Council Member DuBois wanted to understand the volume needed to support the antennas. The volume seemed to vary with the radio size. He questioned whether a pole could be constructed to support an antenna. He asked if the Council had to support another company's antenna on the same light pole.

Mr. Yang responded no. Telecommunications company had a right to make minor modifications to existing facilities, but they could not do so in a way that would defeat the stealth, camouflage, or aesthetic quality of the installation. In most cases, small cell deployments were designed so that adding more antennas would defeat the stealth or camouflage of the installation.

FINAL MINUTES

Council Member DuBois stated it was a case of first-come-first-serve for small cell locations.

Mayor Filseth asked if a subsequent Applicant could place a faux mailbox on the sidewalk next to a pole that supported a facility.

Ms. Stump believed Staff would recommend denial of that scenario. A competitor could submit an application to place a facility on another pole near the first pole, in which case Staff would need to consider the project.

Council Member DuBois requested the consequences for the two denied sites if the Council adopted the Staff recommendation.

Ms. Stump anticipated the Applicant would apply for alternative sites, and Staff would need to consider those.

Council Member DuBois inquired regarding Staff's consideration of a newer proposal for a smaller, side-mounted facility.

Mr. Lait reported the smaller design was not part of the Application before the Council. The smaller design was a radio equipment box attached to the streetlight. The recommended design placed the radio equipment in the antenna shroud atop the streetlight.

Council Member DuBois noted several nodes appeared to be located close to City Hall. He inquired whether Staff had evaluated placing antennas atop City Hall.

Mr. Lait disclosed Staff's request to the Applicant to identify additional alternatives, but the Applicant did not provide that kind of response. Staff had to process and review the Application as filed.

Council Member DuBois asked the Applicant to address the question of locating antennas atop City Hall.

Mr. Shonafelt explained that the Applicant held certificates that entitled the Applicant to deploy in public rights-of-way. Locations on private property and on public sites were outside the permitting authority of the City because of Public Utilities Code Section 7901. The Applicant did not consider locations outside rights-of-way. In some cases, the Applicant had considered locating elements of facilities on city property if the city agreed to treat the location as a right-of-way. In response to the ARB representative's comments, the Applicant was not allowed to return to the ARB. The Applicant was more than willing to search for mutually agreeable solutions.

FINAL MINUTES

The Applicant presented alternatives, and they were ignored. The record was clear that undergrounding was infeasible.

Council Member DuBois strongly encouraged the Council to consider locating facilities on City Hall. The Staff Report contained little information about noise. A comparison of noise levels for different designs would be useful. He was unsure whether the Noise Ordinance covered facilities that would emit noise constantly.

Mr. Lait did not believe the radio equipment would utilize a significant amount of noise-generating equipment. The antenna shroud could house fans, but Staff did not anticipate they would trip the noise threshold. A Condition of Approval ensured the facility complied with noise requirements. The Council reviewed an application in 2018 where the fans, located in vaults, would have generated more noise than Staff anticipated from the current Application.

Council Member DuBois encouraged Staff to consider noise when drafting the proposed Ordinance. In its review, the ARB made thoughtful comments and considered each site. The community had real concerns about the impacts of these facilities on the community. Noise and aesthetics were important for the community. He expressed concern about the proliferation of antennas and preferred fewer sites. He hoped the City would encourage the use of rooftops. Pre-approved designs could become dated rather quickly and could be cheaper and larger than the technology needed. He would support finding ways to underground facilities as much as possible. He would support locating Node 25 atop City Hall, Node 27 atop City Hall or underground, and Nodes 29, 30, and 31 underground.

Council Member Kou requested the noise level of the facilities.

Rebecca Atkinson, Planner, responded 40-45 decibels.

Council Member Kou asked if the equipment on the ground generated noise.

Ms. Atkinson advised that the equipment was silent. The noise level depended on the proposed equipment. The equipment located in the faux mailbox did not generate noise.

Mr. Lait clarified that the Project as conditioned by the Director may need fans. The Project was required to comply with the Noise Ordinance.

Mr. Lait reported Staff would have returned the Project to the ARB, but the constraints of the shot clock and the inability to reach an agreement to extend the shot clock prevented a second hearing before the ARB.

FINAL MINUTES

Council Member DuBois inquired about the ability of treating the City Hall rooftop as a public right-of-way.

Mr. Lait related that the Application did not propose use of the rooftop, and the issue was not before the Council on appeal.

Ms. Stump added that Staff had no information and had not researched the issue. The Council could not leave the meeting without a decision or the Applicant's agreement to extend the shot clock.

SUBSTITUTE MOTION: Council Member DuBois moved, seconded by Council Member Kou to request to extend tolling on the Shot Clock to explore locating Nodes 25, 27, and 29 on City Hall, with approval of Nodes 30 and 31, and denials of Nodes 26 and 28.

Mr. Shonafelt clarified that he offered to extend the shot clock 30 days from the hearing date, but Staff declined the offer. The Applicant was not inclined to explore City properties at the current time. The proposed facilities were designed to be placed on streetlight nodes, were locationally dependent, and had a very small radius of coverage. The Applicant did not believe the technology would work from rooftops. Macro sites could be placed on rooftops. The Applicant had already determined that undergrounding was not feasible; therefore, there was no point in discussing undergrounding.

SUBSTITUTE MOTION WITHDRAWN BY THE MAKER

MOTION AS AMENDED RESTATED: Council Member Kniss moved, seconded by Mayor Filseth to uphold the January 4, 2019 decisions made by the Director of Planning and Community Environment, by approving a Record of Land Use Action for:

- A. Conditional approval of five Wireless Communication Facilities (WCF) nodes on these replacement streetlights:
 - i. Node 25, CPAU Streetlight # 23 (near 275 Forest Avenue);
 - ii. Node 27, CPAU Streetlight # 82 (near 248 Homer Avenue);
 - iii. Node 29, CPAU Streetlight # 76 (near 385 Homer Avenue);
 - iv. Node 30, CPAU Streetlight # 86 (near 845 Ramona Street);
 - v. Node 31, CPAU Streetlight # 16 (near 190 Channing Avenue);
- B. Denial of two WCF nodes on:

FINAL MINUTES

- i. One replacement streetlight, Node 26, CPAU Streetlight # 32 (near 345 Forest Avenue);
 - ii. One new pole structure, Node 28 (near 905 Waverley Street (also known as 400 Channing Avenue)); and
- C. Add a Condition, that nodes would be located below ground, if litigation against the FCC Order succeeds, or Congresswoman Anna Eshoo's legislation passes, and nodes are not yet permitted; or upon replacement or reconstruction to the extent allowed by the City's existing agreements and to the extent feasible.

MOTION PASSED: 4-3, DuBois, Kou, Tanaka no

Mr. Yang reported ten days prior to the current hearing, counsel for the Applicant offered to extend the shot clock in order to delay the date of the Council hearing. There would not have been time to schedule and hold a hearing before the ARB.

Council Member DuBois left the meeting at 10:45 P.M.

8. Resolution 9817 Entitled, "Resolution of the Council of the City of Palo Alto Scheduling the City Council Summer Break and Winter Closure for 2019."

MOTION: Council Member Kniss moved, seconded by Council Member Cormack to adopt a Resolution scheduling the City Council 2019 Summer Break from Tuesday, June 25, 2019 to Sunday, August 4, 2019, and Winter Closure from Tuesday, December 17, 2019 to Sunday, January 5, 2020.

MOTION PASSED: 6-0 DuBois absent

State/Federal Legislation Update/Action

None.

Council Member Questions, Comments and Announcements

Council Member Kou requested an update regarding the Colleagues' Memo for Palo Alto Day.

Council Member Kniss reported the Chamber of Commerce was considering three dates. She would contact Ms. Kleinberg to learn the chosen date.

Council Member Cormack believed a save water race would be held in conjunction with Palo Alto Day in March.

FINAL MINUTES

Ed Shikada, City Manager, noted the event was the Great Race to Save Water. Palo Alto Day would be celebrated with several events.

Council Member Kou requested details of the upcoming Valley Transportation Authority (VTA) meeting.

Mr. Shikada advised that VTA was considering some route changes.

Vice Mayor Fine added that VTA was considering moving into the next phase of service which would involve cuts in overnight bus service in Palo Alto.

Adjournment: The meeting was adjourned at 10:48 P.M.