



CITY OF PALO ALTO CITY COUNCIL FINAL MINUTES

Special Meeting
May 20, 2019

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:06 P.M.

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

Absent:

Special Orders of the Day

1. Introduction of Gunn High School BEAM Students.

Beth Minor, City Clerk reported a Business, Entrepreneurship and Math (BEAM) student worked in her office to review Board and Commission recruitment, including surveying recruitment procedures in other cities.

Chantal Gaines, Assistant to the City Manager, advised that BEAM students also worked on grade separations and traffic data.

Isobel Taylor, BEAM, disclosed that she helped develop new ways to reach the public and redesign the Board and Commission application.

Cristina Floria, BEAM Coordinator thanked the Council and the City for supporting BEAM students. More information about the program was available at beamprogram.com.

Council Member Cormack inquired regarding one thing the City could improve and one thing the City was doing well.

Ms. Taylor suggested young people needed to be made aware of City Boards and Commissions; she said the recruitment process was well organized.

Council Member Cormack noted a sixth grader had applied for a Board or Commission. She and other Council Members had mentored BEAM students.

Vice Mayor Fine was impressed with the students' activities.

Council Member DuBois hoped the City would continue to support the BEAM program. He thanked Ms. Floria for her work with the program.

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Council Member Tanaka thanked BEAM students for their work and their projects.

Council Member Kniss remarked that the Heidelberg BEAM presentation was excellent and inquired whether other Sister Cities had instituted BEAM programs.

Ms. Floria related that BEAM programs were instituted in Enschede, Netherlands, Linköping, Sweden, Heidelberg, Germany, and Oaxaca, Mexico. As the corporate sponsor of BEAM, SAP hosted virtual and in-person events for BEAM students. Heidelberg and Palo Alto BEAM students participated in a student exchange in 2018. She hoped programs could be instituted in Tsuchiura, Japan, and Yangpu District, China.

2. Appointment of two Candidates to the Human Relations Commission, two Candidates to the Library Advisory Commission and Three Candidates to the Utilities Advisory Commission for Three-year Terms Ending May 31, 2022; one Candidate to the Utilities Advisory Commission for an Unfinished Term Ending May 31, 2021; and Three Candidates to the Storm Water Management Oversight Committee for Four-year Terms Ending May 31, 2023.

Beth Minor, City Clerk requested the Council continue with the agenda while she tallied the votes.

[The Council heard Agenda Item Number 3 and returned to this Agenda Item.]

First Round of voting for two positions on the Human Relations Commission with terms ending May 31, 2022.

Voting For: Daryl Savage Cormack, DuBois, Filseth, Fine, Kniss, Kou, Tanaka

Voting For: Patricia Regehr Cormack, Fine, Kniss, Tanaka

Voting For: Adriana Stone DuBois, Filseth, Kou

Ms. Minor announced Daryl Savage with seven votes and Patricia Regehr with four votes were appointed to the Human Relations Commission.

First Round of voting for two positions on the Library Advisory Commission with terms ending May 31, 2022.

Voting For: Alan Bennett

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Voting For: Kimberly Blanding Fine, Kniss, Tanaka

Voting For: Pancho Chang DuBois, Filseth, Fine, Kniss, Kou

Voting For: Nosheen Gothard

Voting For: Sarina Grewal

Voting For: Robert Moss Cormack, DuBois, Filseth, Kou, Tanaka

Voting For: Vidya Pradhan Cormack

Voting For: Susan Wolfe

Ms. Minor announced Pancho Chang with five votes and Robert Moss with five votes were appointed to the Library Advisory Commission.

First Round of voting for three positions on the Storm Water Management Oversight Committee with terms ending May 31, 2023.

Voting For: David Bower Cormack, DuBois, Filseth, Fine, Kniss, Kou, Tanaka

Voting For: Claire Elliott Tanaka

Voting For: Marilyn Keller Cormack, DuBois, Filseth, Fine, Kniss, Kou

Voting For: Ron Owes DuBois, Fine, Kniss, Kou

Voting For: Richard Whaley Cormack, Filseth, Tanaka

Ms. Minor announced David Bower with seven votes, Marilyn Keller with six votes, and Ron Owes with four votes were appointed to the Storm Water Management Oversight Committee.

First Round of voting for three positions on the Utilities Advisory Commission with terms ending May 31, 2022.

Voting For: Hogene Choi

Voting For: Rebecca Eisenberg

Voting For: Claude Ezran

Voting For: Robert Hinden

Voting For: David Hsieh Filseth

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Voting For: Donald Jackson Kou, Tanaka

Voting For: A.C. Johnston Cormack, DuBois, Filseth, Fine, Kniss, Kou, Tanaka

Voting For: Matthew McCullough Cormack

Voting For: Greg Scharff Cormack, DuBois, Filseth, Fine, Kniss, Tanaka

Voting For: Judith Schwartz Kniss

Voting For: Loren Smith DuBois, Fine, Kou

Ms. Minor announced A. C. Johnston with seven votes and Greg Scharff with six votes were appointed to the Utilities Advisory Commission.

[The Council returned to this Agenda Item following Oral Communications.]

Second Round of voting for one position on the Utilities Advisory Commission with a partial term ending May 31, 2022.

Voting For: Hogene Choi Kou

Voting For: Rebecca Eisenberg

Voting For: Claude Ezran

Voting For: Robert Hinden

Voting For: David Hsieh

Voting For: Donald Jackson Filseth, Tanaka

Voting For: Matthew McCullough

Voting For: Judith Schwartz

Voting For: Loren Smith Cormack, DuBois, Fine, Kniss

Ms. Minor announced Loren Smith with four votes was appointed to the Utilities Advisory Commission.

Council Member Cormack recalled information at the time of the interviews which indicated the appointment of three members to the Utilities Advisory Commission.

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Mayor Filseth explained that the Council needed to fill an unexpired term that resulted from a Commissioner's resignation.

Council Member Cormack asked if the fourth position was known when the Council interviewed candidates.

Jessica Brettle, Assistant City Clerk advised that the information reflected appointments to three full terms and one partial term.

Council Member Cormack restated "two full terms and one partial term."

Ms. Brettle reported a Staff typo. The Staff Report today correctly noted three full terms and one partial term.

[The Council proceeded with the Agenda and returned to this Item following a break.]

Third Round of voting for one position on the Utilities Advisory Commission with a partial term ending May 31, 2021.

Voting For: Hogene Choi

Voting For: Rebecca Eisenberg

Voting For: Claude Ezran

Voting For: Robert Hinden

Voting For: David Hsieh Filseth

Voting For: Donald Jackson DuBois, Fine, Kou, Tanaka

Voting For: Matthew McCullough Cormack

Voting For: Judith Schwartz Kniss

Ms. Minor announced Donald Jackson with four votes was appointed to the Utilities Advisory Commission.

[The Council proceeded to Agenda Item Number 11.]

Study Session

3. 788-796 San Antonio Road [19PLN-00079]: Prescreening Request to Amend the Zoning Code in Connection With a Proposed Mixed-use Housing Project Being Considered at the Subject Property That Includes 64 Housing Units (10 Below Market Rate Units) in a Four-

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story Building With Approximately 68,000 Square Feet. Requested Zoning Code Amendments Include: Extending the Housing Incentive Program and Other Incentives Related to Unit Density, Lot Coverage, Rooftop Gardens, and Parking Exceptions for CS Zoned Properties Adjacent to San Antonio Avenue Between Middlefield Road and East Charleston Avenue; Amending the Definition of Gross Floor Area; and Adjustments to Retail Preservation Requirements. No Formal City Council Action Will be Taken at This Meeting. Environmental Assessment: Not a Project; any Subsequent Formal Application Would be Subject to the California Environmental Quality Act (CEQA). Zoning District: CS (Service Commercial).

Jonathan Lait, Planning and Community Environment Director reported the Council reviewed the project in October, 2018 when the applicant proposed rezoning the parcel from Service Commercial (CS) to Multifamily Residential (RM-40). After the Council amended the Zoning Code to encourage housing, the applicant submitted an application that included some of those incentives. The prescreening was a conceptual review of the project, and no Council action was required. Two buildings were located on the site, and together the two buildings provided approximately 18,000 square feet of retail or retail-like uses. Approximately 12,000 square feet of the retail space was subject to the Retail Preservation Ordinance. The applicant had proposed a project with 64 housing units based on the Housing Incentive Program (HIP) floor area waiver, an underground garage that provided the required parking through mechanical lifts, and approximately 1,700 square feet of ground-floor retail space. In order to allow this project, the Council needed to extend the Housing Incentive Ordinance to CS-zoned properties south of San Antonio Road between Middlefield Road and East Charleston Road and amend the definition of gross floor area and the retail preservation requirement. Under the City's inclusionary housing requirements, the project afforded construction of ten affordable units which were deed restricted to the moderate level or 120 percent of the area median income (AMI). Currently, the Planning Director had the discretion to determine whether space in a basement counted towards floor area if the space was determined to be usable. Usable space was distinguished from habitable space. The applicant requested a portion of the retail floor area to be exempt from the gross floor area requirements. In an effort to balance increased housing units with retail preservation, the HIP exempted the first 1,500 square feet of retail space in a mixed-use project from the parking requirement. Under the Retail Preservation Ordinance, the proposed project had to maintain the existing 12,000 square feet of retail space, which had potential to result in an infeasible project or to reduce the number of housing units constructed on the site.

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Ted O'Hanlon, Applicant advised that the site was a good opportunity for the construction of housing in the City. The Housing Element identified the site as a potential housing site. Caltrans classified San Antonio Road as a principal arterial, similar to the designation for El Camino Real. The site was close to Highway 101 and the San Antonio Caltrain Station. The site was well served by existing retail uses. The applicant notified the tenants of its desire to redevelop the site and offered to help the tenants relocate. The applicant proposed a 1,700-square-foot retail space for a yoga studio, a coffee shop, or something similar. With a Floor Area Ratio (FAR) of 2.0, 81 housing units were to be built on the site; however, additional parking spaces were required, and the applicant did not want to build a two-level subterranean garage. The applicant was able to explore a design with a FAR of 2.0, but the applicant preferred to proceed with the design as soon as proposed.

Liz Gardner remarked that parking lifts were expensive and far from ideal for parking. The lift in her building malfunctioned frequently, and cars were not able to be removed when it malfunctioned. Lifts did not accommodate standards for America's with Disability Act (ADA) parking, unloading groceries or for vehicles of certain sizes.

Randy Popp supported extending the Housing Incentive Ordinance to other areas, increasing the FAR to 2.0, and waiving the Retail Preservation Ordinance for housing projects. If the Council required the retention of all or a percentage of existing retail space, the Council was able to allow a 2.0 maximum FAR if a project retained retail space and a 1.5 maximum FAR if the project did not retain retail space. The Council needed to consider allowing a building height of 50 feet for projects requesting the HIP FAR, as long as the project was not located within 150 feet of single-family residential parcels.

Lavinia Branden, Studio Kicks hoped to find a new space that could accommodate both Studio Kicks and the community center. Small neighborhood businesses were needed to maintain the authenticity of a neighborhood.

Aleeza Ghani related the positive impacts of Studio Kicks on her mental health. Studio Kicks was an important community asset.

Ellery Carlson shared positive lessons he learned while working and attending classes at Studio Kicks.

Ethan Gadekar disclosed the benefits he and Ariel Le received from attending classes and working at Studio Kicks. The community needed the positive influence of Studio Kicks.

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Stephen Levy noted every housing project had to be financially feasible for the developer. He supported Staff's recommendation to extend housing incentives to other parcels on San Antonio Road.

Alex Comsa believed the HIP was a good initiative to create housing, but changes such as a height limit of 50 feet, a FAR of 2.0 and excluding retail FAR were needed.

Mircea Voskerician supported extending incentives to property along San Antonio Road and the HIP with a FAR of 2.0 and a height limit of 50 feet.

Joan Larrabee expressed concerns regarding the anticipated number of school-aged children living in the project; she wondered which schools children would attend, public transportation for residents of the project, lift parking, the depth of groundwater on the parcel and potential hazardous materials on the parcel.

Kelsey Banes supported Staff's recommendations and encouraged the developer to consider a Transportation Demand Management (TDM) program.

Council Member Kniss asked if the cost of construction increased approximately 1 percent per month.

Mr. O'Hanlon concurred and indicated the cost of construction continued to increase.

Council Member Kniss remarked that the site seemed to be a good location for the proposed type of housing. The State was to address housing needs through requirements similar to those in Senate Bill (SB) 50 or through Regional Housing Needs Assessment (RHNA) requirements. She inquired about the end portion of the proposed design.

Mr. O'Hanlon explained that it was a variation in the facade to create interest.

Council Member Kniss liked the design's outdoor gathering space.

Mr. O'Hanlon stated the applicant deliberately designed one and two-bedroom units for professionals, but families were able to purchase units. The project did not include a gym because the Jewish Community Center (JCC) was located nearby.

Council Member Kniss expressed interest in the use of the rooftop garden. She inquired regarding the number of housing units constructed within the City.

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Mr. Lait advised that more housing units were needed to meet the goal stated in the Comprehensive Plan.

Council Member Cormack inquired regarding recent zoning changes along San Antonio Road for hotels.

Mr. Lait reported the Council had not made zoning changes for hotels. The Code allowed for a FAR of 2.0 and a building height of 50 feet for hotel developments.

Council Member Cormack asked if the units would be condominiums.

Mr. Lait replied yes.

Council Member Cormack requested clarification of Below Market Rate (BMR) ownership.

Mr. Lait explained that the Code required 15 percent of any ownership development to meet a BMR standard.

Council Member Cormack asked if the ten BMR units would also be ownership.

Mr. Lait responded yes.

Council Member Cormack asked who would manage the units.

Mr. Lait indicated the City worked with Palo Alto Housing to ensure deed-restricted units met the eligibility income requirements.

Council Member Cormack wanted the City shuttle to travel to Cubberley and along San Antonio to the JCC to help transportation impacts. It was possible for Studio Kicks to be a tenant at Cubberley Community Center. She agreed with extending housing incentives. The rooftop garden needed to be usable. She was not comfortable with the concept of the City mandating profitable businesses in certain spaces.

Vice Mayor Fine supported extending the HIP to San Antonio Road. He encouraged Staff to look at a broader spectrum of San Antonio and inquired whether there were any provisions of the HIP that Staff did not recommend extending to San Antonio Road.

Mr. Lait advised that Staff would apply the provisions of the HIP broadly, to San Antonio Road.

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Vice Mayor Fine inquired whether the multifamily parking designations applied to the project.

Mr. Lait noted that the amended parking designations applied Citywide.

Vice Mayor Fine asked if Staff was confident that parking lifts would fulfill the parking need.

Mr. Lait noted the Code was amended approximately two years previously to allow parking stackers. Some projects with stackers were approved. It was appropriate to examine the use of stackers in more detail in order to learn of their effectiveness. He relayed that the Council may wish to explore other mechanisms that could be employed through conditions of approval or amendments to the Code in the event stackers malfunctioned.

Vice Mayor Fine concurred with the concern regarding transit on San Antonio Road. The project highlighted the desire to balance retail uses with housing. The Council needed to provide Staff with some policy direction regarding changes or waivers to the Retail Preservation Ordinance. He expressed interest in understanding the impacts of extending the HIP and a 50 foot height limit to Neighborhood Commercial (CN) and CS parcels across the City.

Council Member Kou remarked that the project was not going to house homeless people, and the number of proposed BMR units was not going to impact homelessness. The site was a reasonable location for housing. Most of the buildings along San Antonio Road did not abut homes of lesser height and density and, therefore, did not result in the loss of natural light and privacy. A blanket extension of the HIP was not strategic planning, and it was going to devastate the small businesses in that area. Preserving retail and personal service uses was important. The proposed project caused the loss of business, which provided an immense benefit to the community. The project needed a robust TDM program. The project did not provide enough community benefits or deed-restricted BMR housing or parking. Parking stackers were not a solution to parking requirements. The applicant's request for Code amendments was offensive when the applicant did not offer any community benefits.

Council Member DuBois recalled the Council's concerns from the October, 2018 prescreening. From a policy perspective, the project conflicted with the Comprehensive Plan provision for commercial and light industrial uses in the area. The Council voted many times to move housing from San Antonio to Downtown and California Avenue. The HIP was intended to encourage housing near transit. The Council had enacted the Retail Preservation Ordinance because retail uses were moving to neighboring cities. As a

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policy, the Council needed to protect retail space in order to have a functioning City. He was willing to make an exception for 100 percent BMR housing. It was time for the Council to increase inclusionary housing to 20 or 25 percent. The proposed site was zoned similarly to the adjacent Mountain View parcels. The site was known to have issues with toxic substances. He urged Staff and the Architectural Review Board (ARB) to insist on a more architecturally interesting design. Usable common areas such as laundry, storage, and stairways needed to be included in the FAR.

Mayor Filseth did not find a compelling reason not to extend the HIP to the area Staff proposed. FAR for a basement did not affect massing and scale of a structure and was not to be included in the overall FAR. In addition, FAR for a residential basement was not counted in the overall FAR. The project was likely to be car-centric. Malfunctioning parking lifts were a problem for the landlord and tenants to resolve. However, he thought tenants would park offsite if they believed the lifts would not function. He questioned where the tenants would park offsite if they had to.

Mr. Lait did not believe tenants would park across San Antonio, but offsite parking needed further examination.

Mayor Filseth commented that tenants could park in Mountain View as the site was adjacent to Mountain View.

Mr. Lait noted the adjacent Mountain View parcels were zoned light industrial rather than residential. The City's industrial zoning district was located further to the east. In the area of the project, parcels were zoned CS. Housing did not occur in the CS area because of the standards for CS.

Mayor Filseth felt parking for the project should be a concern. He requested the distance between the project and the Greenhouse.

Mr. Lait thought the distance was more than 150 feet.

Mayor Filseth did not want to lose the retail space, but the ten affordable units were able to compensate for the loss. He encouraged the applicant to consider additional retail space in the project.

Council Member Tanaka felt the roof deck was a good use of space. Two levels of underground parking were possible with mitigations. Using a parking lift was faster than waiting for a valet. He thought the problems with parking lifts could be resolved. To maximize housing, the applicant was able to propose studio units rather than two-bedroom units. He was concerned about the loss of Studio Kicks. The ground floor needed to be

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more retail than residential because San Antonio was a busy street and the abutting parcels were zoned light industrial.

NO ACTION TAKEN

[The Council returned to Agenda Item Number 2.]

Agenda Changes, Additions and Deletions

None.

City Manager Comments

Ed Shikada, City Manager reported the City had executed a contract for the purchase of real property located at 3350 Birch Street and would perform its due diligence. Caltrans was reviewing the right-of-way package for the Highway 101 Bike Bridge. With Caltrans approval of the package, Staff was able to submit an application for an encroachment permit and an authorization to bid the project to Caltrans for approval. Staff anticipated presenting a construction contract to the Council for award in August or September, 2019. The City was reviewing Castilleja School's application to increase its enrollment to 540 students over five years. A Draft Environmental Impact Report (DEIR) for the project was expected to be released on or around June 24, 2019. Staff expected to hold a public hearing regarding the DEIR in late September or early October, 2019 with a public hearing before the Council in early 2020. Manesco, the City's contractor, was conducting the annual walking and mobile gas leak survey.

Oral Communications

Bing Wei, Neighbors Abroad remarked that Palo Alto students visited Yangpu District in April, 2019 and showed a video of the visit. The student ambassadors had forged ties with Yangpu District and China.

Chris Seng [phonetic] reported students had viewed Yangpu's technological, economic, and educational sectors and visited the newly renovated river port, an elementary school and Fudan University.

Mia Porter [phonetic] related the students' visits to a primary school and an international school.

Luke Lu [phonetic] advised that the students spoke Mandarin while in China and made many new friends.

Kelsey Banes explained the relationship of housing supply and homelessness.

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Sven Theisen provided the Council with copies of a book entitled *Falter*. He urged the Council to ban the use of natural gas in new construction, offer a rebate program for conversion to electric appliances, and discontinue the natural gas utility over the next 30 years.

Council Member Kniss requested a cost comparison of homes using electricity and natural gas.

Mr. Theisen answered that constructing a home with natural gas was \$6,000 - \$8,000 more than an all-electric home.

[The Council returned to Agenda Item Number 2.]

Minutes Approval

4. Approval of Action Minutes for the May 6, 2019 Council Meeting.

MOTION: Council Member Kniss moved, seconded by Mayor Filseth to approve the Action Minutes for the May 6, 2019 Council Meeting.

MOTION PASSED: 7-0

Consent Calendar

MOTION: Council Member Cormack moved, seconded by Vice Mayor Fine to approve Agenda Item Numbers 5-9.

5. Adoption of an Ordinance Amending Title 16 (Building Regulations) of the Palo Alto Municipal Code to Require Management of PCBs During Building Demolition in Compliance With the Municipal Regional Stormwater Permit.

6. Resolution 9832 Entitled "Resolution of the Council of the City of Palo Alto Adopting the 2019 San Francisco Bay Area Integrated Regional Water Management Plan."

7. Approval of Contract Number C19174910 With JJR Construction Inc., in the Amount of \$1,250,993 for the 2019 Sidewalk, Curb and Gutter Repairs Project, Capital Improvement Program Projects PO-89003 and PO-12001; Authorization for the City Manager or his Designee to Negotiate and Execute Related Change Orders Not-to-Exceed \$125,099 in Total Value; and Approval of a Budget Amendment in the Capital Improvement Fund.

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8. Resolution 9833 Entitled "Resolution of the Council of the City of Palo Alto of the City Council Expressing Appreciation to Ron Arp Upon his Retirement."
9. 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 Gas Rates.

MOTION PASSED: 7-0

Action Items

10. Adoption of: (1) a Resolution 9834 Entitled "Resolution of the Council of the City of Palo Alto of Intent," and (2) an Ordinance to Amend the Contract Between the Board of Administration of the California Public Employees' Retirement System (CalPERS) and the City of Palo Alto to Implement the Share of Employer Contribution in Accordance With Section 20516 of the California Government Code, and the Memorandum of Agreement Between the City of Palo Alto and Utilities Management and Professional Association of Palo Alto (UMPAPA).

Ed Shikada, City Manager reported the California Public Employees' Retirement System (CalPERS) required the recommended action.

MOTION: Council Member Kniss moved, seconded by Council Member Cormack to:

- A. Adopt a Resolution of Intent to amend the contract between the California Public Employees' Retirement System (CalPERS) and the City of Palo Alto in order to implement the pension cost share provision in accordance with California Government Code section 20516 and the Memorandum of Agreement between the City of Palo Alto and Utilities Management and Professional Association of Palo Alto (UMPAPA); and
- B. Adopt, on first reading, the attached Ordinance amending the City's contract with CalPERS. This Ordinance will return to the Council on second reading in accordance with state law.

Council Member Tanaka requested Staff provide redline versions of contract amendments in the future.

Mr. Shikada agreed to do so.

Council Member Cormack noted the action was an administrative requirement from CalPERS.

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MOTION PASSED: 7-0

Council took a break at 7:12 P.M. and returned at 7:21 P.M.

[At this point, the Council completed Agenda Item Number 2.]

11. Discussion of Airplane Noise and Community Impacts; Direction to Staff Regarding the Star Pirat 2 Procedure Announced by the Federal Aviation Administration (FAA) on April 25, 2019.

Michelle Flaherty, Deputy City Manager reported the DYAMD route did not affect Palo Alto directly. The SERFR route from the south, Oceanic route from the west, and the BDEGA west route from the north all converged over Palo Alto. The Federal Aviation Administration (FAA) had changed the MENLO waypoint to the SIDBY waypoint, which guided airplanes over Palo Alto.

Mayor Filseth asked if the SIDBY waypoint was located over Duveneck Elementary School.

Ms. Flaherty replied yes, but the Council did not need to be concerned with the precise location of the waypoint because airplanes flew in the vicinity of the waypoint. Planes typically flew from the EDDYY waypoint or the SIDBY waypoint to the Bay and then west to San Francisco International Airport (SFO). The FAA stated this was the best route for planes to travel over water. Moving planes to the east resulted in conflicts with air traffic around the Norman Y. Mineta San Jose International Airport (SJC). The City had retained lobbyists to lobby on a variety of issues including airplane noise in Washington, D.C. In 2018, the lobbyist proposed amendments to the FAA Reauthorization Bill; however, none of the amendments were incorporated into the bill. The City also advocated for reform through the National Association to Insure a Sound Controlled Environment (NOISE), a national lobbyist for airplane noise. Staff refined the internal process for presenting noise issues to the Council and named it the Fast Track process.

Rachelle Tanner, Assistant to the City Manager recalled that the City had submitted letters to the FAA; however, the FAA had not responded to any of the letters. Staff hoped the new Santa Clara/Santa Cruz Community Airport Roundtable (SC/SC Roundtable) would be an avenue for obtaining responses from the FAA. During the fall and winter of 2018, four noise monitors were placed in Palo Alto, and a report of the data from the monitors was provided to the Council.

Ms. Flaherty disclosed Council Member Kou's attendance at the SFO Roundtable on behalf of the City.

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Ms. Tanner related that Staff was communicating with neighboring jurisdictions by phone and through the SC/SC Roundtable. In addition, community residents were knowledgeable about airplane noise and assisted Staff.

Ms. Flaherty indicated new information about airplane noise was posted to the City's website, and community members who subscribed to the noise issues received a notice of the posted information. The City's consultants and community members were able to provide their input by means of a formal City response, should one be necessary. In some cases, Staff presented the new information to the Council.

Ms. Tanner reported the City collaborated with SFO and SFO's contractor, BridgeNet International, to place four monitors in Palo Alto between October 30, 2018 and January 4, 2019. The noise monitors recorded an average of 56-80 flights per day that generated noise above 60 decibels (dB). However, few of those flights generated noise that exceeded the FAA's residential threshold of 65 dB.

Ms. Flaherty remarked that SFO Staff worked collaboratively with City Staff through the noise monitoring and a community workshop in October 2018 and were participating in the SC/SC Roundtable. FAA Staff were also attending the SC/SC Roundtable meetings. Members of the SC/SC Roundtable were able to submit questions to the FAA through the SC/SC Roundtable Chair. The PIRAT TWO STAR was a new arrival route on the Oceanic route. Most of the PIRAT route was located over water and ended at the ARGGG waypoint. Based on existing routes, airplanes traveling the PIRAT route through the ARGGG waypoint passed over Palo Alto through either the SIDBY or EDDYY waypoints en route to SFO. The PIRAT route implemented the Select Committee's recommendation to keep aircraft at 8,000 feet over the Woodside VOR. All airlines were able to utilize the PIRAT route; whereas, one or one-and-a-half airlines previously utilized the Oceanic route. In addition, flights to Oakland International Airport (OAK) and possibly SJC were able to utilize the PIRAT route. Consequently, the airplane noise over Palo Alto increased with implementation of the PIRAT route, which was expressed to the FAA through a letter from the City.

Thomas Rindfleisch related information regarding a Stanford University project, Metroplex Overflight Noise Analysis (MONA) that collected and made available objective, real-time data and analyses of overflights.

Marie-Jo Fremont remarked that the PIRAT route was not a recommendation from the Select Committee. The FAA proposed the PIRAT route to the SFO

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Noise Abatement Office in 2012, and SFO denied the route. She encouraged the Council to oppose the PIRAT route.

Darlene Yaplee requested the Council direct Staff to consult with the City Attorney to assess the legal standing of the proposed PIRAT route. If the City did not initiate legal action within 60 days of April 25, 2019 it forewent its right to address PIRAT TWO forever.

Kerry Yarkin remarked that airplane noise was intolerable. The Council needed to appeal the PIRAT route based on environmental impacts and to write a letter to the San Jose Roundtable endorsing the Select Committee's findings.

Jennifer Landesmann suggested the Council utilize legal proceedings to buy time to explore alternative routes. In most countries, 55 dB was a red zone for airplane noise.

John Kunz wondered if there was a way to impose fines on airlines for their noise annoying people. He said if so, the airlines would do something about noise in response. Perhaps the noise threshold had the opportunity to be reduced.

Bill Bares hoped lessons learned from lawsuits against the FAA in other states could benefit the Bay Area.

Margaret Spak shared a history of airplane noise and corresponding actions. Airplane noise was a public health issue.

Karen Porter suggested the Fast Track include an explicit statement that the City would consider litigation and a statement regarding outreach to Congresswoman Eshoo's office.

Osborne Hardison commented that the Council needed to do something other than write letters to the FAA as the FAA did not respond to letters.

Andy Robin suggested the Council utilize the negative health impacts of densification of particulate pollutants as a basis to oppose FAA proposals.

Tom Shannon requested the Council help restore Palo Alto to the livable community it once was. Residents' quality of life was diminishing rapidly.

Robert Holbrook remarked that the FAA had negotiated when involved in litigation and offered a basis for the City to initiate a lawsuit against the FAA.

Carrie S. encouraged the Council to take legal action against the FAA and to pressure Congresswoman Eshoo to take action.

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Robert Moss suggested the community gather data regarding flights to determine whether airlines violated FAA regulations. The City was able to use the data to sue individual airlines for violating FAA regulations.

Council Member Kou reported the FAA should provide some answers at the next SC/SC Roundtable meeting. Flights could be passing over Palo Alto every two minutes.

MOTION: Council Member Kou moved, seconded by Vice Mayor Fine to direct Staff:

- A. To schedule a Closed Session on or by June 10th, that Staff comes prepared with all relevant information to discuss legal options;
- B. Request a tolling agreement from the FAA to stop the shot clock until we get answers on the impacts of PIRAT2 over Palo Alto, Menlo Park, East Palo Alto, Los Altos, Mountain View, and Stanford; and
- C. Advocate for the agreement to the Select Committee's recommendation and restated by Council in the May 17, 2018 meeting Motion to, whenever able, increase the altitude of aircraft over the Peninsula as long as the change is applied across the whole flight path (including vectored path) and does not result in additional concentration, higher speeds, more speed brakes, or higher aircraft volume over Palo Alto.

Molly Stump, City Attorney understood Council Member Kou was interpreting the May, 2018 Motion as a continuing principle, but the Motion was direction to Staff. Part C of the current Motion appeared to be a position rather than direction to Staff to take action; although, it was able to inform Staff's continuing work regarding lobbying.

Ms. Flaherty advised that Part C provided Staff with policy direction for preparing letters to the FAA.

Ms. Stump suggested Part C state "direct Staff to advocate for adherence to the agreement."

Council Member Kou believed the Council needed to discuss the possibility of legal actions regarding the PIRAT route. The 60 day period expired soon. Part C provided specific language regarding the City's desired responses from the FAA.

Vice Mayor Fine questioned whether the City was using the best language to request the best changes to address noise issues. Part C of the Motion was

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moving in the direction of the best language for the best change. He inquired whether Staff could schedule a Closed Session on or before June 10, 2019.

Ms. Stump answered yes.

Vice Mayor Fine inquired whether the language in Part B should be delaying rather than tolling the shot clock.

Ms. Stump advised that the language of Part B was fine in that Staff understood the intent of Part B. A tolling agreement was a contract into which two or more parties voluntarily entered. In a tolling agreement, the party that normally benefited from a statute of limitations agreed not to rely on the statute of limitations for some period of time. Entering into a tolling agreement was entirely within the FAA's discretion. City Staff needed to be prepared for the FAA not to respond to a request or not to enter into a tolling agreement.

Vice Mayor Fine asked if Part B's inclusion of data from Menlo Park, East Palo Alto, Los Altos, Mountain View, and Stanford University was too broad.

Ms. Stump interpreted Part B as direction for Staff to work with outside counsel to craft a request for a tolling agreement based on law. Part B was appropriate as written. Including those jurisdictions in the Motion did not mean they were going to participate with the City in a tolling agreement or litigation.

Council Member Kou hoped residents from other communities would encourage their Councils to work with the City.

Council Member Kniss believed the noise issue would continue to be difficult to resolve.

Council Member Cormack requested clarification of the agreement referenced in Part C.

Ms. Stump explained that the agreement referred to a practice that Congresswoman Eshoo's office had negotiated.

Council Member Cormack acknowledged that airplane noise did not affect everyone in the same way, and some residents did not appreciate the impact of airplane noise on other residents. The data showed some significant noise peaks. She requested to know the route airplanes were currently using to reach SFO.

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Ms. Flaherty clarified that flights may be utilizing another route. SFO's plans for growth could bring more flights to SFO through the PIRAT route.

Council Member Cormack noted airplane noise was more significant when it disturbed residents' sleep. She shared residents' frustrations with all aspects of the noise issue.

Council Member DuBois requested the source of noise that was being added to the PIRAT TWO route. The report showed peak noise at 75-89 dB, which seemed significant, and nearly 300 daily events reaching more than 60 dB. He inquired about Staff's plans to utilize the noise report and whether it had been presented to the Roundtable.

Ms. Flaherty explained that Staff received the report two days prior to the meeting and had not had an opportunity to review its implications. Staff planned on working with technical consultants to analyze the significance of the report.

Council Member DuBois felt nighttime events were critical. With the addition of more airlines and traffic to OAK, the PIRAT TWO route needed to have a high priority for the Roundtable. The Council needed to respond quickly and strongly because of the potential significant impacts of PIRAT TWO. The Council had to focus on a few issues that it wanted to negotiate.

Council Member Tanaka requested more information regarding Van Scoyoc's activities.

Ms. Flaherty reported Van Scoyoc was in regular contact with Palo Alto's Congressional representatives. Van Scoyoc had arranged a meeting between Council Members and the FAA in 2018 and developed a coalition of supporters for amendments to the FAA Reauthorization Bill. However, competing interests in Congress far exceeded the interests of communities impacted by airplane noise.

Council Member Tanaka inquired regarding Van Scoyoc's focus.

Ms. Flaherty indicated Van Scoyoc had a wide range of expertise. Van Scoyoc had assisted the City with federal funding for the San Francisquito Flood Control Project and many other issues.

Council Member Tanaka did not believe Van Scoyoc had a specific expertise in FAA matters. He questioned whether the City needed to employ a lobbyist with special expertise in airplane noise issues.

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Ms. Flaherty related that a member of the Van Scoyoc firm was a former Department of Transportation employee and had personal relationships with FAA staff. Van Scoyoc's good rapport with the legislative branch was useful because the FAA had stated repeatedly that it was bound by Congress' guidance on the FAA's handling of community impacts. NOISE was the national expert regarding the community impact of airplane noise.

Mr. Tanaka asked how long Van Scoyoc had been representing the City with respect to airplane noise.

Ms. Flaherty responded at least two years but probably longer.

Council Member Tanaka proposed the City hire a lobbyist firm specializing in airplane noise.

Council Member Kou asked if this was a topic for the Council to discuss in Closed Session.

Ms. Stump replied no. The Council was able to provide general direction for Staff to provide information regarding lobbyist firms with special expertise in noise matters.

Ms. Flaherty added that Staff worked with one of the best outside legal counsel on the issue of airplane noise.

Vice Mayor Fine recalled that other cities attempted to join the City's meeting with the FAA as they had not been able to arrange meetings with the FAA. The City's outside legal counsel was one of the best in the nation.

Council Member Tanaka suggested a special lobbyist could be more effective than Van Scoyoc.

AMENDMENT: Council Member Tanaka moved, seconded by Council Member XX to explore engaging a new lobbyist who specializes in this topic.

AMENDMENT FAILED DUE TO THE LACK OF A SECOND

MOTION PASSED: 7-0

MOTION: Council Member Tanaka moved, seconded by Council Member Kou to direct Staff to work with our existing lobbyist to add expertise in the aviation industry.

Council Member Kou did not see any harm in exploring the possibility of hiring a special lobbyist. She inquired about Van Scoyoc's actions to propose amendments to bills.

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Ms. Flaherty explained that the lobbyist followed bills from inception to vote, monitored proposed amendments and their likelihood to pass or fail, and worked with the City's Congressional representatives to obtain support for amendments that would benefit the City. Van Scoyoc frequently worked behind the scenes in support of the City's legislative agenda.

Council Member DuBois requested the rationale for the Council not being able to discuss hiring a lobbyist in Closed Session.

Ms. Stump clarified that the purpose of a Closed Session under the Brown Act was to confer about potential litigation. Discussion of some ancillary matters was possible, but the discussion needed to be brief. The City Council could not enter into any contracts while in a Closed Session. To the extent that lobbying and negotiating was an aspect of a litigation strategy, it was possible for it to be mentioned in Closed Session.

Council Member DuBois felt hiring a focused lobbyist was an interesting concept; however, he did not have an opinion as to whether the City needed one.

Council Member Kniss advised that she was not ready to engage a special lobbyist at the current time. Based on prior meetings with the FAA, she knew the FAA was an extremely difficult group to work with.

Council Member Cormack asked if lobbyist firms could hire people with specific expertise.

Ms. Flaherty answered yes.

Council Member Cormack suggested the City encourage Van Scoyoc to hire additional experts in the area of airplane noise.

Council Member Tanaka could agree to Van Scoyoc hiring a lobbyist with specific expertise.

Council Member Cormack proposed an Amendment to direct Staff to work with the existing lobbyist to add expertise in the aviation industry.

Council Member Tanaka accepted the City or Van Scoyoc hiring a special lobbyist.

Council Member Kniss requested clarification of the proposed Amendment.

Council Member Cormack explained that the Amendment directed Staff to encourage Van Scoyoc to add people to the firm who had more expertise in the area of airplane noise in order to benefit the City.

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Council Member Kniss believed that would add to the City's cost.

Council Member Cormack did not make any assumptions about cost.

Ed Shikada, City Manager noted the Amendment as proposed suggested Van Scoyoc's current expertise was inadequate. He suggested the Amendment state "add appropriate expertise."

INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER AND SECONDER to change "add expertise" to "ensure appropriate expertise."

MOTION RESTATED: Council Member Tanaka moved, seconded by Council Member Kou to direct Staff to work with our existing lobbyist to ensure appropriate expertise in the aviation industry.

Council Member Kniss was uncomfortable supporting the Motion until the Council held the Closed Session.

Mayor Filseth suggested there would be no harm in Staff asking Van Scoyoc's opinion as to whether additional expertise could benefit the City. However, he was not aware of any city with a special lobbyist making any more progress than the City of Palo Alto. He concurred with Council Member Kniss.

Council Member DuBois agreed with Council Member Kniss.

MOTION FAILED: 3-4 Cormack, Kou, Tanaka yes

State/Federal Legislation Update/Action

None.

Council Member Questions, Comments and Announcements

Council Member Kou reported on May 18, 2019 the Office of Emergency Services held a drill. She requested Staff provide Council Members with their roles and standard operating procedures during an emergency.

Mayor Filseth advised that a League of California Cities Peninsula Division meeting during the week presented a panel discussion of 5G wireless service.

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Closed Session

12. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Properties: (1) 321 California Avenue (APN 124-33-001); (2) 361 California Avenue (APN 124-33-029); (3) 341 California Avenue (APN 124-33-030); and (4) 2453 Ash Street (APN 124-33-027)
Agency Negotiators: Ed Shikada, Brad Eggleston
Negotiating Parties: City of Palo Alto; and (1) D.H. and M.A. Edwards Company for 321 California Ave, (2) 361 California Ave, LP for 361 California Ave, (3) 341 Cal Partners LLC for 341 California Ave, and (4) Ash Street Partners LP for 2453 Ash Street Under Negotiation: Price and Terms of Payment for Subsurface Easements Related to Construction of the California Avenue Garage Authority: Government Code Section 54956.8.

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

MOTION PASSED: 7-0

Council went into Closed Session at 9:19 P.M.

Council returned from Closed Session at 9:27 P.M.

Mayor Filseth announced no reportable action.

Adjournment: The meeting was adjourned at 9:27 P.M.