



City of Palo Alto

City Council Staff Report

(ID # 5302)

Report Type: Action Items

Meeting Date: 12/15/2014

Summary Title: Restriction of Smoking in Outdoor Areas and Inclusion of E-Cigarettes

Title: Policy and Services Committee Recommendation to Council for Adoption of an Ordinance Amending Chapter 9.14 (Smoking And Tobacco Regulations) of the Palo Alto Municipal Code to Establish New Smoking Restrictions for Outdoor Commercial Areas, Outdoor Eating Areas, Public Events, Work Sites and Service Locations; Include Penalty Escalation for Repeat Offenders; Require Cigarette Butt Receptacles and Signage Immediately Adjacent and Within Areas Covered by the Ban; and Include E-cigarettes

From: City Manager

Lead Department: Public Works

Recommendation

The Policy and Services Committee recommends that Council:

- 1) Adopt an ordinance to amend Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto Municipal Code, by establishing new smoking restrictions for outdoor commercial areas, outdoor dining areas, public events, work sites and service locations; include penalty escalation for repeat offenders; require cigarette butt receptacles and signage immediately adjacent and within areas covered by the ban; and include E-cigarettes (Attachment A); and
- 2) Refer further investigation of tobacco retailer licensing and indoor smoking restrictions to Policy and Services Committee for further consideration and action.

Background

At a presentation to the Policy and Services Committee on June 17, 2014 (Attachment B, Staff Report [#4704](#)), staff provided benchmarking information on

other jurisdictions' outdoor smoking ban ordinances in downtown cores as requested by a Colleague's Memo on November 18, 2013 (Staff Report #4257). According to the Centers for Disease Control and Prevention, cigarette smoking is the single most preventable cause of premature death in the United States. Cigarette waste is also a significant source of litter.

Staff provided information from eight other jurisdictions and recommended consideration of a broader smoking ban beyond the area requested by the Colleague's Memo.

After the staff presentation was made to the Policy and Services Committee, the Committee listened to members of the public who spoke about the impacts of cigarette litter on water quality and aquatic animals. The Committee discussed the recommendation for a survey prior to implementing the expanded outdoor smoking ordinance and directed that no survey was necessary. Staff has since reached out to the Palo Alto Downtown Business & Professional Association and the Stanford Shopping Center and obtained input on the smoking ordinance for outdoor commercial areas. While they were generally supportive of the ban, they requested consideration of a smoking area, designated both for visitors and employees. Such a consideration is included in the proposed ordinance.

The committee moved the following:

MOTION: Council Member Klein moved, seconded by Council Member Scharff, to recommend to the City Council adoption of (see Attachment C; Minutes of the committee Meeting, June 17, 2014):

1. The changes to the outdoor smoking restriction to be included in the ordinance: a) Increase the area covered to include "Regional/Commercial" areas (e.g.: Stanford Shopping Center); b) increase the area covered to include "Neighborhood Commercial" areas (e.g.: Alma Plaza); c) increase coverage to include all outdoor eating areas, public events, work sites and service areas (i.e. locations); d) include penalty escalation for repeat offenders; e) include e-cigarettes; and f) require cigarette butt receptacles and signage immediately adjacent and within areas covered by the ban.
2. That the indoor smoking restrictions and restrictions on sale of tobacco products and e-cigarettes: a) include e-cigarettes in current indoor restrictions; b) ban the sale of tobacco products and e-cigarettes at pharmacies.

3. Have Staff perform outreach and determine the community's views on banning smoking in multi-family residential units.

Discussion

At this time, staff recommends that the Policy & Services Committee recommend that City Council adopt the proposed ordinance (Attachment A), which addresses the expanded outdoor smoking restrictions in items 1 and 2 as listed above.

Due to staff resourcing issues, outreach to pharmacies and multi-family housing landlords and tenants has not yet been possible. The restriction of sale in pharmacies can be addressed with tobacco retailer licensing (Attachment D, County information on Tobacco Retailer Licensing). Therefore, staff recommends that the required outreach be conducted as soon as possible, and both the restriction on sales and the ban of smoking in multi-family residential units return together to Policy and Services for further discussion and direction.

Policy Implications

The adoption of the proposed ordinance would further Comprehensive Plan polices: Policy N-5: Clean, Healthful Air for Palo Alto; and Policy N-6: An Environment Free of the Damaging Effects of Biological and Chemical Hazardous Materials.

Resource Impact

This ordinance will have a minimal impact on ongoing City staff time and financial resources depending on the level of enforcement and/or ongoing public information required by its implementation. It is anticipated that Police Officers or Code Enforcement Officers will respond to violations of the ordinance on a complaint basis. Staff anticipates providing public outreach to educate residents and businesses of the newly adopted policies. Educational materials and signage costs could be eligible for grant funding from the Santa Clara County Public Health Department and other public and private agencies.

Environmental Review

Provisions of this ordinance do not constitute a project under the Environmental Quality Act because it can be seen with certainty that no significant negative environmental impact will occur as a result of the amended ordinance.

Attachments:

- A: Palo Alto Municipal Code Smoking Ordinance Revisions (DOCX)
- B: Staff Report #4704 (PDF)
- C: Minutes for June 17, 2014, Policy and Services Committee (PDF)
- D: Santa Clara County Tobacco Retail Licensing Fact Sheet (PDF)

Attachment A

“NOT YET APPROVED”

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending Chapter 9.14 (Smoking and Tobacco Regulations) of the Palo Alto Municipal Code to Establish New Outdoor Smoking Restrictions in Commercial Areas and Outdoor Dining, and to include Electronic Cigarettes

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

- (a) That the adoption of this Ordinance is necessary to protect the public health, safety and welfare for the reasons set forth in amended section 9.14.005. The purposes of this Ordinance are to ban smoking in commercial areas, all dining areas, and to include electronic cigarettes in the restrictions, in order to reduce the risks of second hand smoke and vapor, reduce litter, and enhance enjoyment of these areas.

SECTION 2. Chapter 9.14 of the Palo Alto Municipal Code is hereby amended to read as follows:

Palo Alto Municipal Code Chapter 9.14: Smoking and Tobacco Regulations

9.14.005 Purpose.

The purpose of this Chapter is to:

- (a) Protect the public health, safety and general welfare by prohibiting smoking and use of electronic smoking devices in public parks, public places, service locations, city pool cars, child day care facilities, and ~~some~~ unenclosed eating establishments.
- (b) Ensure a cleaner and more hygienic environment within the city, reduce litter, and protect the City's natural resources, including creeks and streams.
- (c) Enhance the welfare of residents, workers, and visitors by reducing exposure to second hand smoke, which studies confirm can cause negative health effects in non-smokers.
- (d) Balance the needs of persons who smoke with the needs of nonsmokers, including children and youth, to be free from the discomforts and health threats created by exposure to second-hand smoke and vapor.

(Ord. 5207 § 2, 2013)

9.14.010 Definitions.

The following words and phrases, whenever used in this chapter shall be construed as defined in this section:

(a) "Bar" means an area which is devoted to serving alcoholic beverages and in which serving food is only incidental to the consumption of such beverages. "Bar" shall include bar areas within eating establishments which are devoted to serving alcoholic beverages and in which serving food is only incidental to the consumption of such beverages.

(b) "City pool car" means any truck, van or automobile owned by the city and operated by a city employee. City pool car does not include vehicles operated by the police department.

(c) "Commercial Area" means an area, including all publicly owned sidewalks, alleys, parking areas, public places, outdoor dining areas, service areas, etc. within areas zoned in the City's Comprehensive Plan as regional/community commercial (including Downtown, California Avenue Business District, Town and Country, and Stanford Shopping Center) and Neighborhood Commercial.

(ed) "Eating establishment" means a coffee shop, cafeteria, short-order café, luncheonette, sandwich shop, soda fountain, restaurant, or other establishment serving food to members of the public.

(e) "Electronic smoking device" means an electronic and/or battery-operated device that can deliver an inhalable dose of nicotine to the user. "Electronic smoking device" includes any product meeting this definition, regardless of whether it is manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaporizer or any other product name or descriptor.

(ef) "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

(eg) "Employee eating place" means any place serving as an employee cafeteria, lunchrooms, lounge, or like place.

(fh) "Employer" means any person who employs the services of an individual person or persons.

(gi) "Enclosed" means either closed in by a roof and four walls with appropriate openings for ingress and egress or not open to the sky due to a cover or shelter consisting of a tarpaulin, tent structure or other impermeable or semi-permeable materials or fabric.

(hj) "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.

(k) "Public Event" means events open to the general public, including but not limited to a farmers' market, parade, craft fair, festival, or any other such event.

(il) "Public places" means enclosed areas within publicly and privately owned buildings, structures, facilities, or complexes that are open to, used by, or accessible to the general public. Public places include, but are not limited to, stores, banks, eating establishments, bars, hotels, motels, depots and transit terminals, theaters and auditoriums, enclosed sports arenas, convention centers, museums, galleries, polling places, hospitals and other health care facilities of any kind (including clinics, dental, chiropractic, or physical therapy facilities), automotive service centers, general business offices, nonprofit entity offices and libraries. Public places further include, but

are not limited to, hallways, restrooms, stairways, escalators, elevators, lobbies, reception areas, waiting rooms, indoor service lines, checkout stations, counters and other pay stations, classrooms, meeting or conference rooms, lecture rooms, buses, or other enclosed places that are open to, used by, or accessible to the general public.

(jm) "Service locations" means those enclosed or unenclosed areas open to, used by, or accessible to the general public that are listed below:

- (1) Bus, train and taxi shelters;
- (2) Service waiting areas including, but not limited to, ticket or service lines, public transportation waiting areas, and public telephones;
- (3) Areas within twenty-five feet of the entrance or exit to an enclosed public place, where smoking is prohibited, except when the public place is closed, between ten p.m. and six a.m., or when the entrance or exit is for the exclusive use of employees and not accessible to the general public;
- (4) Areas in dedicated parks or other publicly accessible areas that are within twenty-five feet of bleachers, backstops, or play structures.

(kn) "Smoking" means the combustion of any cigar, cigarette, tobacco or any similar article or the use of an electronic smoking device.

(lo) "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, smoking tobacco, and smokeless tobacco. Tobacco product shall also include nicotine, vapor or any other product contained in or produced by electronic smoking devices.

(mp) "Tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is incidental.

(nq) "Tobacco vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether coin or paper bill, or other thing representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.

(r) "Vapor" means aerosol produced from use of an electronic smoking device.

(es) "Workplace" means any enclosed area of a structure or portion thereof used as a place of employment as well as unenclosed workplaces, such as outdoor construction sites.

(Ord. 52.07 § 3, 2013: Ord. 4294 § 2, 1995: Ord. 4164 § 2 (part), 1993: Ord. 4056 § 4 (part), 1991)

9.14.020 Smoking prohibited - ~~Public places.~~—Enclosed Places

Smoking and the use of electronic smoking devices is prohibited in all public places, unless such place is exempted pursuant to Section 9.14.070. the Enclosed Areas of the following places

within the City of Palo Alto, except in places subject to prohibition on smoking contained in Labor Code section 6404.5, in which case that law applies

(1) Workplaces;

(2) Public places;

Any places exempted by the California smokefree workplace law (Labor Code Section 6404.5(d)) are not exempt under this chapter. Smoking is prohibited by this chapter in all places exempted by that State law, except as provided in 9.14.070.

(Ord. 4056 § 4 (part), 1991)

9.14.025 Smoking prohibited - ~~Service locations.~~ Unenclosed Areas

~~—Smoking is prohibited in all service locations, except while passing through the service area on the way to another destination.~~

- (a) Smoking and the use of electronic smoking devices in all unenclosed areas defined as Service Locations shall be prohibited, including a buffer zone within 25 feet from any doorway, window, opening, crack, or vent into an Enclosed Area in which Smoking is prohibited, except while the Person Smoking is actively passing on the way to another destination and provided Smoke does not enter any Enclosed Area in which Smoking is prohibited.
- (b) Smoking and the use of electronic smoking devices is prohibited in unenclosed eating establishments and bars.

(Ord. 4164 § 3, 1993)

9.14.030 Smoking prohibited - City pool cars.

Smoking and the use of electronic smoking devices is prohibited in all city pool cars.

(Ord. 4056 § 4 (part), 1991)

9.14.035 Smoking Prohibited - Public Parks and Public Events.

Smoking and the use of electronic smoking devices is prohibited in all parks, including at public events.

(Ord. 5207 § 4, 2013)

9.14.040 Smoking prohibited - Child day care facilities.

Smoking is prohibited in a private residence which is licensed as a child day care facility within the meaning of Health and Safety Code Section 1596.750 and Section 1596.795 and amendments, during the hours it is operated as a child day care facility and in those enclosed areas where children may be exposed to smoke.

(Ord. 4056 § 4 (part), 1991)

9.14.050 ~~Smoking prohibited - Fifty percent of Unenclosed eating establishments.~~

~~(a) Smoking is prohibited in a designated contiguous portion of not less than fifty percent of the unenclosed seating area of an eating establishment.~~

~~—(b) Every eating establishment shall at all times designate, and identify by posting signs pursuant to Section 9.14.100 or by placing table top notices, a contiguous portion of the unenclosed seating area as a nonsmoking area.~~

~~(Ord. 4056 § 4 (part), 1991)~~

Smoking prohibited – Commercial Areas and Public Events.

Smoking and the use of electronic smoking devices is prohibited in commercial areas, except places where smoking is already prohibited by state or federal law, in which case those laws apply. This prohibition includes public events held on public streets. A shopping center may establish a designated smoking area that is at least 25 feet away from any openings and includes receptacles to control litter.

9.14.060 Reserved.*

* Editor's Note: Former Section 9.14.060, Regulation of Smoking in the Workplace, previously codified herein and containing portions of Ordinance Nos. 4056 and 4164 was repealed in its entirety by Ordinance No. 4294.

9.14.070 Exemptions.

The following places and workplaces are exempt from Section 9.14.020:

~~(a) Bars to the extent and in the manner provided in California Labor Code Section 6404.5;~~

(a) Smoking at theatrical production sites is not prohibited by this subsection if the theater general manager certifies that smoking is an essential part of the story and the use of a fake prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience. This exception will not apply if minors are performers within the production.

(b) Bingo games, licensed pursuant to the Palo Alto Municipal Code, which do not permit access by minors under eighteen years of age;

~~(c) Any property owned or leased by other governmental agencies;~~

~~(d)~~ A fully enclosed room in a hotel, motel, other transient lodging establishment similar to a hotel, motel, or public convention center which is being used entirely for a private function and which is not open to the general public, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes, sixty-five percent of the guest rooms in a hotel, motel, or similar transient lodging establishment, and rooms within private residences when not operated as a family day care home;

(e) Tobacco stores with private smokers' lounges meeting the requirements of the applicable portions of subdivision (d)(4) of Labor Code Section 6404.5.

(Ord. 4294 § 3, 1995: Ord. 4164 § 2 (part), 1993: Ord. 4056 § 4 (part), 1991)

9.14.080 Location of tobacco vending machines.

(a) No person shall locate, install, keep or maintain a tobacco vending machine except in a place which under state law is not lawfully accessible to minors.

(b) This section shall become effective ninety days after its enactment. Any tobacco vending machine not in conformance with this section upon its effective date shall be removed.

(Ord. 4056 § 4 (part), 1991)

9.14.090 Display of tobacco products for sale.

No person shall display or offer tobacco products for sale except in an area, or from within an enclosure, which physically precludes the removal of the tobacco products without the assistance of the person authorizing such display or offer, or an employee of such person.

(Ord. 4056 § 4 (part), 1991)

9.14.100 Posting of signs required.

With the exception of service locations, wherever this ordinance prohibits smoking, conspicuous signs shall be posted so stating, containing all capital lettering not less than one inch in height, on a contrasting background. Signs of similar size containing the international "no smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it may be used in addition to or in lieu of any signs required hereunder. Such signs shall be placed by the owner, operator, manager, or other persons having control of such room, building, or other place where smoking is prohibited. Signs placed at each entrance of buildings in which smoking is totally prohibited shall be sufficient. Such signs shall make clear that the smoking prohibition includes the use of electronic smoking devices.

(Ord. 4294 § 4, 1995: Ord. 4164 § 2 (part), 1993: Ord. 4056 § 4 (part), 1991)

9.14.110 Enforcement.

Pursuant to Section 6 of Article IV of the Palo Alto City Charter, the city manager is hereby granted authority to enforce the provisions of this chapter and Labor Code Section 6404.5.

(Ord. 4294 § 5, 1995)

9.14.120 Public nuisance.

Any violation of this chapter is a public nuisance and may be abated in accordance with Chapter 9.56 of the Palo Alto Municipal Code and/or Code of Civil Procedure Section 731.

(Ord. 4056 § 4 (part), 1991)

9.14.130 Violation to be misdemeanors.

Violation of any provision of this chapter shall be a misdemeanor punishable as provided in this code. Violations shall be punishable by:

- (1) A fine not exceeding \$250 for the first violation
- (2) A fine not exceeding \$300 for the second violation
- (3) A fine not exceeding \$500 for each additional violation within one year

(Ord. 4056 § 4 (part), 1991)



City of Palo Alto

(ID # 4704)

Policy and Services Committee Staff Report

Report Type: Agenda Items

Meeting Date: 6/17/2014

Summary Title: Smoking Ordinance Revision

Title: Recommendations for Expansion of City Smoking Ban in the Downtown and California Ave Business Districts; Including Benchmarking Data and Policy Discussion to Possibly Include Additional Areas or Restrictions on Sales and Indoor Smoking

From: City Manager

Lead Department: Public Works

Recommendation

Staff recommends that the Policy and Services Committee:

1. Provide direction to staff on conducting outreach for the proposed outdoor smoking ordinance options;
2. Review the proposed options for developing an expanded outdoor smoking ordinance; and
3. Review the proposed options for an expanded indoor smoking ordinance and restrictions on the sale of tobacco products and e-cigarettes as future changes to the ordinance.

Background

In August 2013, the City Council approved a ban on smoking in all public parks and open nature preserves, including the City golf course, and increased the no-smoking buffer zone near public building entrances from 20 to 25 feet. In order to provide clarity on the City's current ban and make it easier to enforce, based on a Colleague's Memo on November 18, 2013 (ID #4257), the City Council directed staff to:

1. Proceed to the Policy and Services Committee for policy discussion and recommendation to the full Council to expand the City's outdoor smoking ban in the Downtown and California Avenue Business districts.

2. Conduct outreach to downtown and California Avenue residents, businesses and property owners for input on expanding the City's current ban on outdoor smoking in certain areas, including California Avenue and University Avenue and possibly other streets in the downtown cores.
3. Benchmark other jurisdictions' outdoor smoking ban ordinances in downtown cores.

Benchmarking with eight cities was completed in February 2014. Based on this benchmarking, staff recommends considering broadening the smoking ban as well as conducting outreach as presented in the Discussion section below.

According to the Centers for Disease Control and Prevention, cigarette smoking is the single most preventable cause of premature death in the United States. In 1993, the United States Environmental Protection Agency (EPA) found secondhand smoke to be a risk to public health and classified secondhand smoke as a Group A carcinogen, the most dangerous class of carcinogens.¹ Studies have shown that exposure to secondhand smoke outdoors can be significant.² The American Lung Association (ALA) grades cities on the state of tobacco control. Palo Alto's grade for 2014 is a D.³ Another tobacco grading process by Santa Clara County Public Health resulted in a C grade for Palo Alto. The County's grading system relates primarily to ensuring tobacco is not sold to minors.

Cigarette waste is also a significant source of litter. Save the Bay estimates that over three billion cigarette butts are littered in the Bay Area each year.⁴ Hundreds of cigarette butts are found at the Adobe and Matadero Creek clean-up sites every year in Palo Alto. Cigarette butts end up in our creeks and bay as well as our urban environments where they may be ingested by children or wildlife, contaminate fragile ecosystems, and cost local governments taxpayer dollars for clean-up. In addition to the potential to be ingested by wildlife, the filters are made of a non-biodegradable plastic and contain chemicals that leach into the water having potentially toxic effects on aquatic wildlife.

Discussion

¹ www.epa.gov/ncea/ets/pdfs/acknowl.pdf

² <http://news.stanford.edu/news/2007/may9/smoking-050907.html>

³ www.lung.org/associations/states/california/assets/pdfs/sotc-2014-county-grades/santa-clara-county.pdf

⁴ <http://www.savesfbay.org/sites/default/files/images/ButtFreeBay%20Infographic%208.5x11.pdf>

Benchmarking was performed with eight cities that have banned smoking in their downtown cores. Staff compared the various ordinance goals and requirements, outreach conducted, specific tools used to reduce litter, enforcement and costs. Attachment B details the findings, which suggest that the City Council may wish to broaden the outreach relating to an expanded smoking ordinance to include the following issues:

Expand the smoking ban area

Based on the benchmarking, there are three considerations for possible expansion of the area covered by the ban:

1. Commercial Areas: Fremont, one of the latest cities to pass a smoking ordinance, banned smoking on commercial area sidewalks, which are defined as any walkway in front of, through, around or adjoining any property designated on the City's general plan land use diagram as city center, town center, general commercial, regional commercial or mixed use. Berkeley's smoking ordinance also restricts smoking on all commercially zoned sidewalks. The City Council could consider using the Comprehensive Plan designations of regional/community commercial and neighborhood commercial to define the area for which the smoking ban applies. Regional/Community commercial, in addition to downtown and California Avenue, would include Stanford Shopping Center and the Town and Country Shopping center. Neighborhood commercial would add all neighborhood shopping centers (Edgewood, Midtown, Charleston, Alma Plaza) and areas along El Camino and San Antonio Road.
2. Outdoor Dining: Most cities surveyed ban smoking in all outdoor dining areas. Palo Alto's current ordinance prohibits smoking in a designated contiguous portion of not less than fifty percent of the unenclosed seating area of an eating establishment. Staff recommends expanding this prohibition to all outdoor dining areas.
3. Additional streets downtown and at California Avenue: The maps included at the November 18, 2013 Council Meeting for downtown and California Avenue business district did not include areas where cigarette butts are most frequently found, including the round-about at the end of California Avenue, as well as areas on Ramona and Lytton. Staff recommends at a minimum to include the areas where cigarette butts are commonly found in the areas covered by the outdoor smoking ban.

All or some of these options could be included in an expanded smoking ordinance.

Addressing Litter

Seven out of the eight cities included in the benchmarking provide cigarette butt receptacles in the areas covered by the ban. Despite banning smoking, it is likely that smoking will still occur. In order to decrease smoking-related litter, cities have asked businesses to sponsor ash towers or installed tobacco receptacles themselves. Fremont and Berkeley require that ashtrays in no-smoking areas include signage stating “smoking prohibited by law-extinguish here.” Staff recommends that receptacles be provided with signage to ensure litter issues are addressed.

In addition, the City of San Francisco instituted a 20 cent clean-up fee on every pack of cigarettes sold within the City in 2009, which was based on the cost of clean-up in the city. The passage of Proposition 26 in 2010 imposed a two-thirds majority requirement to pass fees. This could affect the options for pursuing such a fee at the local level.⁵

American Lung Association (ALA) Score: Indoor Smoking Restrictions and Sale

Several cities, including Walnut Creek, Fremont and San Rafael, state that a major goal of their smoking ordinance is to improve their ALA score. ALA rates three areas:

- Smoke-free outdoor air: This item includes banning smoking in outdoor areas, including dining areas, entryways, public events, parks, service areas, sidewalks and worksites. Several of these items are already addressed in or proposed for Palo Alto’s smoking ordinance.
- Smoke-free housing: The three cities above include indoor smoking restrictions in their ordinances. Such bans address the issue of shared ventilation systems in multi-family housing where smoking in one unit can affect surrounding residents. Such bans have the additional benefit of fire risk reduction and lower costs for residential cleaning.
- Reducing Sales of Tobacco products: This item includes tobacco retailer

⁵ http://greencitiescalifornia.org/best-practices/waste-reduction/SF_cigarette-litter.html

licensing, restricting sales near parks and schools, banning sales in pharmacies. For example, San Francisco banned sale of tobacco in pharmacies, including grocery stores with pharmacies.

Restricting smoking in multi-family housing and restricting sales, including tobacco retailer licensing, would likely be more controversial, would require additional public outreach and could be considered as a next phase to the effort to expand the smoking ban.

Santa Clara County Public Health also grades cities relating to tobacco sales. Palo Alto's most recent draft grade (May 2014) is a C. The main item to improve Palo Alto's grade related the County's grading scheme would be tobacco retailer licensing.

Enforcement

Smoking laws are generally enforced through a complaint-based process; however, most cities have included other tools such as specific penalties in their ordinances. Palo Alto's current ordinance includes a penalty for any violation; however, unlike several other cities in the benchmarking list, the fines are not escalating with repeated offences. Palo Alto smoking ordinance penalties were recently increased to \$250 (Staff Report #4627). Staff recommends considering the inclusion of escalation of enforcement in the ordinance as well as development of an enforcement plan.

Electronic Cigarettes

Several cities, including New York, Los Angeles and Fremont, have already included electronic cigarettes in their smoking restriction ordinances. Others, including San Francisco and Santa Clara County, are considering such bans. Palo Alto's ordinance refers to tobacco products and does not include e-cigarettes in any of the restrictions. Additional benchmarking is recommended, should the Committee direct inclusion of e-cigarettes in the restrictions. A first step could be to include a ban on e-cigarettes in pool cars and at City properties.

Public Outreach

Staff recommends conducting an on-line survey of all Palo Alto residents, business owners, and employees related to options beyond the Downtown and California Avenue business district smoking ban to gauge the support for various additional

outdoor smoking and sale restrictions, including:

- Broadening the area of the ban to regional/community commercial
- Broadening the area of the ban to neighborhood commercial
- Broadening the area to all outdoor dining areas
- Restricting sale of tobacco products near schools and parks
- Prohibiting the sale of tobacco products in pharmacies
- Including e-cigarettes in these restrictions

If directed by the Policy & Services Committee, staff could also include gauging support for indoor smoking restrictions. This survey would be distributed electronically and advertised through news releases, presentation at meetings, and email lists.

Summary of Recommendations

- 1) Provide any input to Staff on outreach (a survey) to businesses and residents on the recommendations in Number 2).
- 2) Staff recommends these changes to the outdoor smoking restrictions be considered: a) Increase the area covered to include “Regional/Commercial” areas (e.g.: Stanford Shopping Center), b) increase the area covered to include “Neighborhood Commercial” areas (e.g.: Alma Plaza), c) increase coverage to include all outdoor eating areas, d) include penalty escalation for repeat offenders, e) include e-cigarettes, and f) require cigarette butt receptacles and signage immediately adjacent and within areas covered by the ban.
- 3) Staff recommends these changes to the indoor smoking restrictions and restrictions on sale of tobacco products and e-cigarettes be considered: a) include e-cigarettes in current indoor restrictions, b) ban the sale of tobacco products and e-cigarettes at pharmacies and at any establishments adjacent to parks and schools.

Timeline

Staff can produce a survey within one month and solicit responses over the summer months. Staff recommends bringing survey results back to the Policy & Services Committee in Fall 2014 with proposed ordinance language.

Resource Impact

Developing and publicizing the survey and performing outreach to stakeholder groups will require City staff time.

Attachments:

- Attachment A: Minutes of Council Meeting November 18, 2013 (PDF)
- Attachment B: Smoking Ordinance Benchmarking for Downtown Core Smoking Restrictions (DOCX)



CITY OF PALO ALTO CITY COUNCIL MINUTES

Special Meeting
November 18, 2013

The City Council of the City of Palo Alto met on this date in the Council Conference Room at 6:08 P.M.

Present: Berman, Burt, Holman, Klein, Kniss, Price, Scharff, Schmid, Shepherd

Absent:

CLOSED SESSION

1. A previous closed session has been removed.

STUDY SESSION

2. Presentation to Council about Library Programs and Activities.

Monique le Conge Ziesenhenné, Library Director, reported Main Library closed in May 2013 and Mitchell Park Library was located at a temporary site. She presented "Read" posters to Council Members. Posters would be located throughout libraries to promote reading.

Karen Kinzel, Palo Alto Art Center, provided definitions for Makerspaces, an emerging trend in both libraries and museums. Teens needed a fun and safe place to actively express themselves with friends. Through a grant from the California State Library and donations, the Library Department and Art Center developed Make X. It premiered at the Palo Alto Art Center, then moved to the City Hall lobby, and would move to different community centers and libraries throughout the region. Staff scheduled teen mentors to train the public in use of equipment in Make X.

Jenny Jordan, Library Youth Services Manager, reported the Summer Reading Program was the Library's largest program. Staff changed the Summer Reading Program to include children, teens, and adults. The number of participants increased again in 2013. Staff focused on the Springboard to Kindergarten Program to reach preschool children. She provided highlights of Library programs for children, teens, and adults.

MINUTES

Jessica Goodman, Senior Librarian for Information Technology and Collections, indicated the Creating Connections Program brought together teens and seniors for technology learning. Teens taught digital literacy skills to seniors through 20 interactive learning sessions. After the Creating Connections Program ended, teens continued to work one-on-one providing technology tutoring to older adults. The Library's digital collections continued to grow with eBooks, audio books, digital magazines, music, and free museum passes.

Cheryl Lee, Senior Librarian, worked on programs, outreach, and partnerships. Customers determined the programs offered by the Library. The Library partnered with nonprofit agencies, schools, corporations, and businesses within the Palo Alto community. Approximately 500 children and parents attended Story Time weekly at the Library. Story Time was held at different locations in the community once a month. Other programs included baseball, Beer University, parenting skills, back-to-school swaps, and a Halloween costume swap. Staff participated in many outreach events each month.

Ms. Ziesenhenne had plans for the new Mitchell Park Library. Collections would be expanded to include items of local interest and in international languages. The Library Advisory Commission, the Friends of the Palo Alto Library, and the Palo Alto Library Foundation focused closely on the Library.

Council Member Burt was not familiar with many Library services. He asked if the Library was featured periodically on the homepage of the City's website.

Ms. Ziesenhenne indicated Staff regularly issued press releases and utilized Facebook and Pinterest. Staff was working on a market segmentation study and a strategic plan to increase public awareness.

Council Member Burt inquired whether Staff was utilizing communication tools supplied by the Palo Alto Unified School District (PAUSD).

Ms. Ziesenhenne answered yes.

Mayor Scharff noticed that book circulation had decreased slightly. He asked if the use of a temporary library location was responsible for the slight decrease.

Ms. Ziesenhenne was surprised that circulation had not decreased more. Because Main Library closed in May 2013, she expected the circulation figures for the current fiscal year also to decrease. When Main Library and

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Mitchell Park Library reopened, she hoped circulation figures would increase dramatically.

Mayor Scharff inquired about other media.

Ms. Ziesenhenne reported other media included CD ROMs and downloads. Personal computer use also decreased, probably as a result of residents utilizing their own devices.

Mayor Scharff noted DVD circulation was strong, CD circulation decreased slightly, and audio book circulation also increased.

Ms. Ziesenhenne explained that audio books could be downloaded, which increased circulation. Audio books were popular with commuters.

Council Member Kniss inquired about downloading items to a Kindle and the process for downloading items.

Ms. Ziesenhenne indicated Staff or a technology tutor could assist patrons with downloads. Each platform for eBooks had different capabilities and limitations. Instructions could also be found on the Library's website.

Council Member Kniss inquired about limitations for downloading books to an eReader.

Ms. Ziesenhenne reported borrowed items had a due date and would disappear from the eReader on the due date.

Council Member Kniss asked if patrons could download the latest bestsellers.

Ms. Ziesenhenne explained the eBook had to be made available by the publisher and the Library's vendor.

Council Member Kniss reiterated that an eBook could be borrowed for three weeks, and then it would disappear from the eReader.

AGENDA CHANGES, ADDITIONS, AND DELETIONS

None

CITY MANAGER COMMENTS

James Keene, City Manager, announced the holiday tree lighting was scheduled for November 30, 2013. Staff was working closely with Neighbors Abroad to provide relief to Palo, Philippines. **Aurora** was successful lighted on November 16, 2013.

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COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

Council Member Klein attended the National League of Cities annual meeting in Seattle, Washington, the prior week. The League adopted a policy regarding global warming. Bellevue, Washington, had an extensive outreach program funded primarily by the faith community. Palo Alto needed closer collaboration with its faith community. Seattle's utility was developing algorithms for infrastructure improvements with respect to climate change. The League's finances and membership were improving.

Vice Mayor Shepherd also attended the National League of Cities meeting. She attended sessions about the Smart City Program, the greenest building in the world, LED street lights, smart kiosks, and natural disasters. At the Center for Digital Government award dinner, Palo Alto won first place in the medium city category.

Council Member Kniss stated the competition for Digital City awards was astonishing.

James Keene, City Manager, added that the Center for Digital Government provided a national benchmarking model for cities. Palo Alto won after competing for only two years.

Council Member Kniss encouraged Council Members to attend National League of Cities conferences. The 2014 annual meeting would be held in Austin, Texas.

Mayor Scharff welcomed Boy Scouts. He attended the Santa Clara County Cities Association meeting, where Staff discussed fiber and big data. Council Member Schmid presented information regarding the Council of the Aging, now known as Source Wise. He was elected Secretary and Treasurer of the association. The **Aurora** opening the previous Friday was a fantastic event with a large crowd. He attended the opening of the only northern California American Girl store. Ronna Gonsalves of the City Clerk's Office was leaving the City's employ.

ORAL COMMUNICATIONS

Jerry Enderdall believed streets safe for children to bike to school would reduce traffic. He encouraged the Council to consider the bicycle boulevard program independent of the Maybell Project. Bicycle safety was a key issue on Maybell Avenue.

Stephanie Munoz felt the Council would have won the Measure D election if the grant deadline had not come up just after the Council shifted

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Arastradero traffic onto Maybell. Having made an issue of senior housing, the Council should purchase the Maybell property and construct senior housing.

Chuck Jagoda recommended the Council not blame churches for not responding to the pilot car camping program. Churches did not have time to respond.

Wynn Grcich questioned the need for nine Council Members when other cities with larger populations had only five Council Members. She gave the Council evidence that fluoridation was poisonous. The YouTube movie *Thrive* described the government's efforts to reduce the population.

Gary Wesley reported the Santa Clara Valley Transportation Authority (VTA) proposed the use of boarding islands, signal preference, and bus-only lanes for Menlo Park and Mountain View. He believed Palo Alto would have bus-only lanes in the near future.

Timothy Gray advocated for citizen participation regarding the City's budget. Additional City revenues should be used to balance the budget and reduce spending.

Joe Hirsch requested a moratorium on all higher density development in Palo Alto until a comprehensive and competent land use and transportation study was completed. His request was supported by the recent vote on Measure D. The traffic and parking issues were unsustainable and unsupportable.

MINUTES APPROVAL

MOTION: Vice Mayor Shepherd moved, seconded by Council Member Kniss to approve the Minutes of October 17, 2013.

MOTION PASSED: 9-0

CONSENT CALENDAR

Council Member Holman registered a no vote on Agenda Item Number 7.

Herb Borock reported Staff's response to Council Member Holman's question referred to the developer proceeding at his own risk if he began work after the second reading of the Ordinance. He would have preferred Staff's response to state it was against the law for the developer to begin construction until the effective date of the Ordinance.

Council Member Schmid requested the City Attorney respond to Mr. Borock's comments.

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Molly Stump, City Attorney, reported the effective date of an Ordinance was 31 days after the second reading. Construction should not proceed until that period of time passed. Any construction that did occur prior to the effective date was at the developer's own risk.

James Keene, City Manager, felt the City Attorney responded to Council Member Schmid's question. Staff could not further elucidate the miscommunication. At the current time, Staff did not have a resolution as to the allegations.

Council Member Schmid registered a no vote on Agenda Item Number 7.

MOTION: Vice Mayor Shepherd moved, seconded by Council Member Kniss to approve Agenda Item Numbers 3-15.

3. Approval of the Fourth Amendment to Extend the Lease with Thoits Bros., Inc. at 285 Hamilton Avenue, Suite 100 for a Period of 32 Months and Approval of the First Amendment to Extend the Sublease with Survey Monkey at 285 Hamilton Avenue, Suite 280 for a Period Of 22 Months for Use by the City Development Center.
4. Approval of Amendment No. 2 to Contract # C09127499 with AssetWorks, Inc. in the Amount of \$32,100 for a Total Contract Not to Exceed Amount of \$268,210 for Cloud Hosting Solution and Maintenance for a One Year Term with the Option to Renew Four **Additional Years for the City's FleetFocus and FuelFocus Fleet Transaction Management Systems.**
5. Approval of a Contract in the Amount of \$693,073 with Naturescapes for Improvements to Eleanor Pardee Park Project PE-12012.
6. Approval of a Contract Amendment with Envisionware, Inc., for an Amount Not to Exceed \$463,000 for the Automatic Materials Handling System at the Main Library, For a Total Contract Not Exceeding \$1,000,000 for the Main and Mitchell Park Libraries.
7. Ordinance 5224 entitled "**Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 of the Palo Alto Municipal Code to Approve an Amendment to Planned Community (PC-5150) Mixed use Project to Allow Reconstruction of One of Two Historic Eichler Retail Buildings (Building 1), for a 3.58 Acre Site Located at 2080 Channing Avenue (Edgewood Plaza Mixed Use Project)" (First Reading: October 7, 2013; Passed 7-1 Holman no, Scharff absent).**

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8. Adoption of Eight Ordinances: (1) Ordinance 5216 entitled **"Ordinance of the Council of the City of Palo Alto Repealing Chapter 16.04 of the Palo Alto Municipal Code and Amending Title 16 to Adopt a New Chapter 16.04, California Building Code, California Historical Building Code, and California Existing Building Code, 2013 Editions, and Local Amendments and Related Findings;"** (2) Ordinance 5217 entitled **"Ordinance of the Council of the City of Palo Alto Repealing Chapter 16.05 of the Palo Alto Municipal Code and Amending Title 16 to Adopt a New Chapter 16.05, California Mechanical Code, 2013 Edition, and Local Amendments and Related Findings;"** (3) Ordinance 5218 entitled **"Ordinance of the Council of the City of Palo Alto Repealing Chapter 16.06 of the Palo Alto Municipal Code and Amending Title 16 to Adopt a New Chapter 16.06, California Residential Code, 2013 Edition, and Local Amendments and Related Findings;"** (4) Ordinance 5219 entitled **"Ordinance of the Council of the City of Palo Alto Repealing Chapter 16.08 of the Palo Alto Municipal Code and Amending Title 16 to Adopt a New Chapter 16.08, California Plumbing Code, 2013 Edition, and Local Amendments and Related Findings;"** (5) Ordinance 5220 entitled **"Ordinance of the Council of the City of Palo Alto Repealing Chapter 16.14 of the Palo Alto Municipal Code and Amending Title 16 to Adopt a New Chapter 16.14, California Green Building Standard Code, 2013 Edition, and Local Amendments and Related Findings;"** (6) Ordinance 5221 entitled **"Ordinance of the Council of the City of Palo Alto Repealing Chapter 16.16 of the Palo Alto Municipal Code and Amending Title 16 to Adopt a New Chapter 16.16, California Electrical Code, 2013 Edition, and Local Amendments and Related Findings;"** (7) Ordinance 5222 entitled **"Ordinance of the Council of the City of Palo Alto Repealing Chapter 16.17 of the Palo Alto Municipal Code and Amending Title 16 to Adopt a New Chapter 16.17, California Energy Code, 2013 Edition, and Local Amendments and Related Findings;"** and (8) Ordinance 5223 entitled **"Ordinance of the Council of the City of Palo Alto Repealing Chapter 15.04 of the Palo Alto Municipal Code and Amending Title 15 to Adopt a new Chapter 15.04, California Fire Code, 2013 Edition, and Local Amendments and Related Findings"** (First Reading: October 21, 2013 PASSED: 8-0 Klein absent).
9. Approval of Amendment No. 1 to the City's Power Purchase Agreement with Ameresco San Joaquin, LLC to Extend the Landfill Gas Electric Generating Facility's Commercial Operation Date to January 31, 2014.
10. Budget Amendment Ordinance 5225 entitled **"Ordinance of the Council of the City of Palo Alto In The Amount Of \$125,000 For The First Year Funding Of A \$250,000 Two-Year Agreement For Intensive Case**

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Management In Collaboration With The Housing Subsidies From The County Of Santa Clara.”

11. Approval of a Contract With WatchGuard Video in the Amount of \$296,470 and Additional Services of \$8,530 for a Total Not to Exceed \$305,000 for the Upgrade of Police Mobile In-Car Video System, Capital Improvement Program Project TE-11002.
12. Approval of a Contract in the Amount of \$327,535 with MIG, Inc. for the Parks, Trails, Open Space and Recreation Master Plan Project PE-13003.
13. Approval of a Contract with Ghirardelli Associates in the Amount of \$638,599.82 for Construction Management Services for the California Avenue Transit Hub Corridor Streetscape Project.
14. Resolution 9383 entitled “Resolution of the Council of the City of Palo Alto Declaring Weeds to be a Public Nuisance and Setting December 9th, 2013 for a Public Hearing for Objections to Proposed Weed Abatement.”
15. Recommendation from the Council Appointed Officers Committee to Approve Amendment No. 2 to a Consulting Contract with Sherry L. Lund Associates to Increase the Scope of Services and Cost by \$10,000 for a Total Year-Two Cost Not To Exceed \$61,850, to be Funded from the Council Contingency Fund.

MOTION PASSED FOR AGENDA ITEM NUMBERS 3-6, 8-15: 9-0

MOTION PASSED FOR AGENDA ITEM NUMBER 7: 7-2 Holman, Schmid
no

ACTION ITEMS

16. Public Hearing: City Council Review of a Proposed Mixed-use Development on a 1.6 Acre Site Located at 3159 El Camino Real (between Acacia and Portage Avenues), Adoption of the Environmental Review Document (Initial Study and Mitigated Negative Declaration) and Approval of the Site and Design Review, CUP for Over 5,000 Square Feet of Office and Design Enhancement Exceptions Application (via Record of Land Use Action). The Proposed Four-story, 55-Foot Tall, 74,122 s.f. Development Would Include Retail Space, Office Space, 48 Small Rental Residential Units, Two Zoning Concessions (Increased Floor Area and Reduced Parking Spaces) Under the State

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Density Bonus Law, and Would Replace the Existing 900 s.f. "We Fix Macs" Commercial Building.

Hillary Gitelman, Planning and Community Environment Director, reported the proposed project was consistent with the Comprehensive Plan and with zoning requirements. The proposal involved mixed-use development on a transit corridor in an area zoned for such development. The proposal would implement the Housing Element with respect to creating small residential units. A traffic study concluded that the proposal could contribute to a significant cumulative impact. A mitigation measure was included in the conditions of approval to address that impact. The proposal was first submitted to the City in January 2013 and had been reviewed by both the Planning and Transportation Commission (P&TC) and the Architectural Review Board (ARB). Staff recommended approval of the project.

Russ Reich, Senior Planner, indicated the project was located on 1.6 acres on El Camino Real, bounded by Portage Avenue and Acacia Avenue. An application to merge four parcels was approved. The site was zoned Commercial Service (CS), and the Comprehensive Plan Land Use designation was also CS. The building would have a floor area total of 74,122 square feet. The proposed height of the building would be 55 feet above grade. The ground-floor level would include retail, restaurant, office, and commercial recreation uses. Forty-eight small residential units would be provided on the upper three levels. The proposal was compliant with El Camino Real Guidelines. The building setback along El Camino Real would allow for a minimum effective sidewalk of at least 12 feet. The project included surface and one level of below-grade parking for 216 vehicles. The new parking garage would connect to the existing below-grade garage on Portage Avenue. Three-level car stackers or puzzle lifts would be installed in the new garage. Vehicular access to the site would be provided exclusively on Portage Avenue via two curb cuts. All other existing curb cuts along El Camino Real and Acacia Avenue would be removed to increase pedestrian safety and to add onsite parking. Fifteen surface-level visitor parking spaces were proposed beneath the residential wing of the building. Because the project would provide 10 percent or 5 Below Market Rate (BMR) units, the applicant was entitled under State law to request one concession to the City's zoning requirements. The applicant requested a concession of 4,619 square feet of floor area. This amount was consistent with the draft Density Bonus Ordinance. When providing BMR units, projects were entitled by right to utilize the State's calculation for required parking for residential units. The State's calculation resulted in 31 fewer parking spaces than the City's Parking Ordinance. Otherwise the project was compliant with the City's parking requirements. The BMR units would provide low-income housing for five units within the project for a period of 30 years. The application

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included two Design Enhancement Exceptions (DEE). The height limit for the CS Zone was 50 feet. The applicant proposed a DEE to exceed the 50-foot height limit by 5 feet, for a total height of 55 feet. The additional 5-feet of height would occur only at loft roofs. The Code allowed mechanical roof screens to exceed the 50-foot height limit by 15 feet. Mechanical roof screens were proposed to be 5 feet tall. The exception was requested to improve the design of the project. Visually the additional height benefited the building design by creating a unified roof element and provided residential units with slightly more room. The DEE was not an exception for floor area. The second DEE was an alleviation to the build-to-line requirement. The CS Zone required that 33 percent of the building be built up to the setback on Acacia and Portage Avenues and 50 percent of the frontage on El Camino Real be at the setback line of 0-10 feet to create a 12-foot effective sidewalk width. The length of the building wall along Portage Avenue would be approximately 149 feet. To meet the 33 percent build-to requirement, at least 49 linear feet of the building wall would need to be built to the 5-foot setback requirement. To accommodate the extension of the residential balconies and the accessible ramp to the elevated plaza, the building would be built with a minimum 7-foot 6-inch setback rather than to the required 5-foot setback. This request would result in a greater setback from the street. The CS Zone limited office uses to no more than 5,000 square feet per parcel, but allowed a parcel to exceed the limit through a Conditional Use Permit (CUP). Because the four parcels would be combined into one parcel, a CUP to exceed the 5,000-square-foot limit for office space was included as part of the application. The total amount of office space proposed was 16,118 square feet, only 21.7 percent of the total floor area within the project. The amount of office square footage was similar to the amount of retail floor area and considerably less than the proposed residential floor area. Staff, P&TC, and ARB reviewed the application and recommended the Council approve the project.

Public Hearing opened at 7:55 P.M.

Heather Young, Fergus Garber Young Architects, stated the four parcels being joined were a garage, a surface parking lot, an existing building, and another surface parking lot. The project was mixed-use with a mixture of restaurant and retail, commercial recreation, commercial office, and residential. The second-story spaces facing El Camino Real would be double height. The corner of El Camino Real and Portage Avenue would remain open as an exterior plaza. The fourth floor facade was set back considerably from El Camino Real. Exterior balconies in the residential areas on all sides provided outdoor public space for residential units. Access to existing surface parking would be maintained. Access to below-grade parking would be located at 400 Portage Avenue. The mass of the building was opened up

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with a pedestrian dining arcade and with a pedestrian portal to an interior courtyard. A second small portal was located along Acacia Avenue. The project incorporated the existing building, Equinox Gym. The 48 residential units would consist of studio and one-bedroom units, with a single two-bedroom unit. The project would connect to a new below-grade garage. She explained the operation of triple-stack car stackers.

Randy Popp, Architectural Review Board Commissioner, reported the ARB reviewed the proposal for 3159 El Camino Real and addressed a wide spectrum of items. The ARB requested the applicant revise nine items at its first discussion. The applicant provided responses for the ARB's second discussion, and the ARB reviewed the responses and recommended approval of the project.

Robert Moss felt the project was oversized and would negatively impact traffic and parking. Staff's estimate of car trips was low. The Council was not required to grant all concessions requested by the applicant. The project would also negatively affect traffic to and from Fry's Electronics. He wanted 1,100 square of office space eliminated from the project and more onsite parking.

Marilyn Mayo generally opposed the density of the project. Increased density would impact traffic and parking.

Rob Lansfield opposed the project because of the height of the proposed building.

Art Liberman stated the Council should have a comprehensive area-wide traffic study prior to discussing new development projects. Traffic from one development extended well beyond the immediate area of development.

Herb Borock urged the Council to reject the Mitigated Negative Declaration (MND), the application for a CUP, and the DEE. Additional traffic from office space and the lack of guest parking created significant impacts which were not mitigated. Therefore, approval of the MND violated the California Environmental Quality Act (CEQA). Applying the bonus floor area to the office space would have a significant impact on traffic.

Tom Dubois asked the Council to return the project to committee to be considered comprehensively with other development projects in the area. The Ventura neighborhood deserved its own Comprehensive Plan. Traffic impacts to the neighborhood would be significant.

Stephanie Munoz concurred with prior public comment. A density bonus was not appropriate, because residents did not want added density.

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Joseph Hirsch felt the estimate of car trips generated by the project was low. The project would negatively impact traffic and parking. Residents did not desire increased development.

Public Hearing closed at 8:29 P.M.

Mayor Scharff requested Council Members disclose contact with the applicant and receipt of information not in the public record.

Council Member Kniss inquired whether visits to the project site should be disclosed.

Molly Stump, City Attorney, suggested Council Members disclose visits to the site in an abundance of caution.

Council Member Kniss visited the project site, but had not talked with anyone involved with the project.

Council Member Holman visited the site the previous day.

Vice Mayor Shepherd visited the area frequently and was familiar with traffic patterns and other issues. She had not received any information or been in contact with the applicant with regard to the project.

Council Member Berman also visited the area of the site frequently and visited the project site that day.

Mayor Scharff also visited the project site that day.

Council Member Klein visited the project site in the early afternoon and had no contact with the applicant.

Ms. Young thanked the Council for its time and would be available to answer specific questions.

Council Member Klein inquired about users' reaction to puzzle parking.

James Keene, City Manager, indicated users in Berkeley adapted quickly. He did not recall receiving complaints from the public about puzzle parking. There would be a period of adaptation.

Council Member Klein asked if people used them.

Mr. Keene stated people did not park elsewhere to avoid puzzle parking.

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Council Member Klein assumed the justification for granting a CUP was the proposed amount of office space would be less than the amount that could be allowed if the four parcels were developed individually.

Ms. Gitelman concurred. The applicant could have developed the parcels individually and received more office space.

Council Member Klein asked if merging the lots was not required.

Mr. Reich explained the parcels would need to be merged because the building crossed property lines.

Mr. Keene inquired whether the building could have been designed without crossing property lines and with greater density.

Mr. Reich indicated a separate project could have been proposed for each parcel.

Council Member Klein stated four separate buildings would have produced 20,000 square feet of office space; whereas, the proposed building contained approximately 4,000 square feet less.

Mr. Keene reported the default existing entitlement could provide more density related to office use and a less appealing design.

Council Member Klein understood under existing rules mechanical facilities could reach a maximum height of 65 feet. The proposed building reached a height of 55 feet with portions of the fourth floor reaching 55 feet to match the height of the mechanical facilities.

Mr. Reich concurred.

Ms. Gitelman explained that if the Council did not grant the exception, the building would still be 55 feet in height. The exception would allow part of the occupied area to extend to 55 feet in height.

Council Member Klein believed extending the loft units to 55 feet did not increase the allowed square footage. If the Council denied the exception, the applicant could utilize the bonus density to make the building wider.

Mr. Reich concurred.

Mr. Keene asked if the applicant could propose more of a sheer wall façade along El Camino Real under existing zoning.

Mr. Reich answered yes.

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Mr. Keene reported the intent of the design was to step the building back.

Council Member Klein asked if extending the height limit to 55 feet changed the square foot budget.

Mr. Reich responded no.

Council Member Klein did not like the loss of local control under State mandates. He asked if the City was required to obey State mandates.

Cara Silver, Senior Assistant City Attorney, reported that the applicant's proposal to deed restrict 10 percent of units for affordable housing legally entitled the applicant to one concession. The applicant requested a concession of floor area ratio (FAR) bonus. Because Palo Alto did not have a local Ordinance prioritizing concessions at the current time, existing State Density Bonus Law applied to the project and required a concession.

Council Member Klein inquired whether the situation would change if the Council adopted a local Ordinance prioritizing concessions.

Ms. Silver explained that the Regional Housing Mandate Committee recently recommended placing a percentage limitation on the use of an FAR bonus. She was unsure how the limitation would impact this project.

Ms. Gitelman understood the Regional Housing Mandate Committee recommended use of the FAR bonus be limited to residential uses only. If the project was proposed after an Ordinance including that limitation was adopted, the applicant could not seek the additional FAR for commercial square footage without submitting to the process for changing the concession.

Council Member Klein did not believe the density bonus was the only concession. He inquired whether the Council could require parking meet local requirements under the State mandate.

Ms. Silver reported the State Density Bonus Law limited the City's ability to require additional parking if the applicant requested reduced parking.

Council Member Klein asked if the applicant requested reduced parking.

Ms. Silver replied yes.

Council Member Klein inquired whether parking met State requirements and whether State requirements applied rather than local requirements.

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Ms. Silver answered yes. The State requirement did not allow the City to impose additional parking requirements such as guest parking.

Council Member Klein asked if that was clearly stated in State law.

Ms. Silver indicated it was clear the City could not impose additional parking requirements.

Council Member Klein inquired about the Council's discretion with respect to the project.

Ms. Gitelman explained that the Council had no control over FAR and parking because of State requirements. The 55-foot design exception was within the Council's discretion. If the Council did not approve the DEE, the building would remain at 55 feet in height; however, the proposed building would lose some of the proposed architectural features. Another item within Council discretion was the design exception for the setback; however, the Council expressed interest in having greater setbacks along streets.

Council Member Klein inquired whether the Council's denial of the setback exception would allow the building to be closer to the street.

Ms. Gitelman replied yes. The exception allowed the applicant to construct the building farther back from the street.

Council Member Klein asked if the Council had any other areas of discretion.

Ms. Gitelman indicated another area for Council discretion was the CUP for square footage. As Council Member Klein stated, the applicant would be allowed more square footage if it retained the four individual parcels. The Council also had discretion with respect to the MND. Staff prepared a CEQA document based on analysis and asked the Council to accept the document as part of the action.

Council Member Klein inquired whether the applicant could redesign the project such that exceptions were not needed and thus not need Council approval.

Mr. Reich reported a project with more than five dwelling units within a mixed-use project was required to submit to site and design review, which required P&TC and Council review.

Council Member Klein asked if the Council would have any reason to deny the project in such a case.

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Mr. Reich indicated the Council had discretion related to the particulars of the project.

Mr. Keene stated the Council could alter design elements.

MOTION: Council Member Klein moved, seconded by Council Member Price to approve the draft Record of Land Use Action approving: (1) A Mitigated Negative Declaration (MND), prepared in accordance with the California Environmental Quality Act (CEQA) and the Mitigation Monitoring Report; (2) The Site and Design Review application for a four story, mixed-use building (67,506 square feet of new floor area added to an existing 6,616 s.f. building) having a floor area ratio (FAR) of 1.06:1 on a 1.6 acre site (74,122 s.f. floor area: 69,503 s.f. site area) to provide 48 apartment units, including five Below Market Rate (BMR) units, and office and retail uses, with structured parking facilities (at surface and underground) providing 216 parking spaces (including 11 puzzle lifts for 196 cars); (3) A Density Bonus concession permitting increased floor area for both residential and commercial components of the project in the total amount of 4,619 square feet; (4) A Conditional Use Permit (CUP) to allow 16,118 sq. ft. of office space on one parcel where the limit is 5,000 s.f., recommended by the Planning and Transportation Commission (Commission) on July 10, 2013; and (5) Design Enhancement Exceptions (DEEs) for five feet of additional building height and alleviation of the build to line by two and a half feet for a greater setback, recommended by the Architectural Review Board (ARB) on August 1, 2013.

Council Member Klein explained the project was not a Planned Community (PC) Zone. The City had limited discretion with respect to the project. The applicant was not requesting a change in zoning. Many public speakers seemed to believe the Council had more power than it actually had. The Council had to follow State law. The applicant sought three small exceptions and followed existing zoning requirements.

Council Member Price noted the impact stated in the traffic analysis and the mitigation stated in the MND. She asked who would be responsible for implementing the mitigation.

Aaron Aknin, Planning and Community Environment Assistant Director, reported the applicant would be responsible; however, the City and Caltrans would determine when the intersection was altered.

Council Member Price inquired about funding and timing of the change with respect to the City's Capital Improvement Program (CIP) projects.

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Jaime Rodriguez, Chief Transportation Official, clarified that the mitigation for El Camino Real and Charleston Road was a signal timing modification. Caltrans would make the final decision whether to modify signal timing.

Council Member Price asked if the Council had the ability to require a time period for the modification to be made.

Jim Daiso, Kimley-Horn and Associates, reported the mitigation was a signal timing change, not a capital improvement. The impact was projected to occur in 2025. The Council could request the applicant submit a bond or escrow funds to perform the study and implement a modification of signal timing. The Council could require those actions when the applicant applied for a building permit.

Council Member Price inquired whether Mr. Daiso made the same or other suggestions to other cities.

Mr. Daiso indicated other cities also created accounts for miscellaneous traffic signal improvements wherein funds were placed for later use.

Council Member Price asked if the City utilized a dedicated fund for traffic signal improvements.

Mr. Rodriguez did not recall other projects that submitted funds for future traffic signal modifications. Staff could request Caltrans consider a signal modification. Staff could request the applicant provide funding for signal modification. The cost to retune the signal would be approximately \$2,500 to \$3,500.

Council Member Price understood the project met the basic direction of the Comprehensive Plan. The project was well designed and addressed issues identified in the Housing Element. Residents of very small residential units and BMR units did not all own vehicles or multiple vehicles. The community needed a variety of housing products to address the broad range of housing needs. The setbacks added value to the design of the building. The project supported the El Camino Real Guidelines and basic concepts of the Grand Boulevard.

Council Member Schmid favored the mixed-use project. The DEE was proposed for aesthetic reasons; however, the flat facade at the top was not a design enhancement. The traffic study indicated the project would generate approximately 850 car trips per day with no more than 100 trips during rush hour periods. He asked how the number of trips during peak hours was calculated.

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Mr. Daiso noted a table within the traffic study demonstrated the calculation of car trips, and inquired about Council Member Schmid's source for the number of car trips.

Council Member Schmid indicated Mr. Daiso presented the information to the P&TC.

Mr. Daiso utilized a standard set of research statistics from the Institute of Transportation Engineers (ITE) as a starting point. He could adjust statistics depending upon local conditions. The project would generate approximately 893 trips per day, 89 trips in morning peak hours and 70 trips in the afternoon peak hours for all uses.

Council Member Schmid recalled a few weeks prior the Council discussed a contract for an updated traffic study. The mandate to the contractor stated that ITE standards were unrealistic for a mixed-use downtown environment. However, the traffic study for this mixed-use project within a downtown environment utilized ITE standards. He asked which approach was correct.

Mr. Rodriguez explained that the use of standards depended upon the type of project under evaluation.

Council Member Schmid clarified that this project was mixed-use in a downtown environment.

Mr. Rodriguez reported Staff began with ITE trip generation and considered resulting trip generation rates. At times, Staff would request the developer perform a comparative analysis with another location if rates were not consistent with ITE rates or if insufficient supporting data was provided. For this project, the various uses within the project had a substantial amount of supporting projects to validate use of ITE rates.

Council Member Schmid referenced the MND regarding information sources for potential impacts. He asked if Staff could supply the detailed tables, both those accepted and not accepted.

Mr. Daiso agreed that oftentimes ITE rates were not appropriate for urban land use. His estimates were 40 percent higher than ITE rates.

Council Member Schmid inquired about the method for counting traffic at intersections and the time period when counts were performed.

Mr. Daiso noted the impact would occur in 2025. He began with traffic counts obtained on typical Tuesdays through Thursdays and compared those counts with historical counts.

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Council Member Schmid requested the specific dates the counts were made.

Mr. Daiso explained a growth factor of 1.1 percent per annum was applied to the counts. He divided the total incremental change in growth over existing conditions by the number of years to reach an average annual rate of growth. The average annual rate of growth was then applied to traffic counts. Traffic counts were conducted November 7, 2012 between 7:00 A.M. and 9:00 A.M. and between 4:00 P.M. and 6:00 P.M.

Council Member Schmid stated a number of nearby development projects were not online in November 2012, when the traffic counts were conducted. Cumulative impacts of the various development projects were significant. He inquired about the method for determining the actual growth of traffic within the City.

Ms. Gitelman reported that the CEQA statutes and guidelines provided two methods to approach the question of cumulative impacts. Cumulative impacts could be analyzed by reviewing a list of projects or through a projections-based approach. The Santa Clara Valley Transportation Authority (VTA) model used the projections-based approach. The question should be whether the projections included in the model were sufficient to capture cumulative impacts. Obviously VTA believed that approach was appropriate for the area.

Council Member Schmid asked if the Council had discretion to determine the approach used in traffic studies.

Ms. Gitelman was aware that the City wanted better information and invested in an updated model that utilized different projections. The current project had been in review since January 2013. Staff utilized the best tool available at the time, the projections-based approach.

Council Member Schmid inquired whether Staff was retaining annual traffic counts at key intersections to build a historical base.

Ms. Gitelman indicated Staff was retaining counts; however, she did not know when they began.

Council Member Schmid stated El Camino Real happened to be a key east-west corridor for traffic and schools. The intersection of El Camino Real and Charleston Road was critical to four schools. He asked which direction of traffic would receive an extended red light if the timing for a right turn was extended.

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Mr. Rodriguez reported the specific recommendation was to increase the cycle length. In this case the green light would be extended on Charleston Road.

Council Member Schmid asked if 4 seconds would allow one car to clear the intersection.

Mr. Rodriguez reported 7-8 seconds were allowed for the first movement and 4 seconds for every vehicle thereafter.

Council Member Schmid noted a traffic guard at the intersection could stop traffic for children to cross the street. The true cost of the mitigation would be the change to traffic. There were too many questions regarding the MND for him to support the Motion.

Council Member Kniss felt the Zoning Compliance Table in Attachment C summed up the kinds of decisions the Council was making. The zoning for the project had been in place since the 1950s. The description of the project as being in a downtown area was not correct in her opinion. The architect for the project met the Council's interest in having setbacks to encourage vitality. The explanation for allowing the project to exceed the height limit was sufficient. The increase in FAR was small.

Council Member Holman asked why there were no impacts noted for the intersection with Page Mill Road.

Mr. Daiso explained that the type of intersection and the number of phases for the intersection were factors. In some instances, a small increase in traffic would generate a large amount of delay at an intersection. In other instances, a large increase in traffic would generate a small amount of delay. There was not a simple answer to Council Member Holman's question because of the several factors that affected the intersection.

Council Member Holman proposed that the small increase in traffic would not have a significant impact, as defined by CEQA, to the already congested intersection.

Mr. Daiso followed standards of significance. Everyone agreed to utilize the Congestion Management Program significant thresholds. For the intersection at Page Mill Road, the impact had to reach an explicit set of criteria.

Council Member Holman liked the mix of uses, the retention and reuse of the Equinox building, the amount of open space, and the upper-story setbacks. She was challenged by the black-and-white elevations provided in the packet. She could not make findings with respect to transition and

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compatibility with existing development and to adverse effects to type and intensity of planned uses in the area. She inquired whether double-height retail and office spaces in commercial zones were counted twice towards FAR.

Mr. Aknin indicated they were counted only once.

Council Member Holman asked if the added mass did not count towards FAR.

Mr. Aknin replied yes. The double counting applied only in single-family neighborhoods.

Mr. Reich reported that the single-family limitation was utilized to control the bulk and mass of the structure. In commercial development, the FAR limitation was utilized to limit the intensity of use.

Council Member Holman inquired whether the square footage of the loft units would be different if they did not pop up.

Ms. Young stated the units would be smaller.

Council Member Holman referenced the DEE definition in the Code.

Ms. Young explained that the floor area did not increase because of the height increase. The area was already allowed as part of the project.

Council Member Holman requested clarification.

Ms. Young indicated the extended height of 5 feet allowed the building to be set back further from El Camino Real and not as wide in other places. The building mass was made smaller by moving the floor area behind the roof screens.

Ms. Gitelman explained that the proposed design pushed the FAR to the level of the roof screening. If the floor area was not placed behind the roof screens, it would be placed elsewhere.

Council Member Holman did not believe it was an appropriate use of a DEE. Some of the street-facing elements were not pedestrian scale. Access to the courtyard was not inviting. She inquired about the status of the California Avenue Concept Plan and of the traffic model.

Mr. Aknin reported the California Avenue Concept Plan would be presented to the P&TC for review on November 20, 2013. If the P&TC made a recommendation, then the California Avenue Concept Plan would be presented to the Council in early 2014.

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Ms. Gitelman indicated Staff was working with the consultants on the model. Staff planned to present an overview of traffic analysis methodology to the P&TC in December 2013.

Council Member Holman noted the roofline at the top of the fourth floor and at the screen was one continuous line along El Camino Real. That would make the building appear as one big mass. She requested future clarification with respect to allowing maximum concessions for proposed projects. The MND seemed to indicate that only the applicant would conduct an evaluation and implementation of the signal timing change. She inquired whether the language was standard.

Ms. Gitelman reported City Staff would review the applicant's analysis, and language to that effect could be added to the Mitigation Monitoring and Reporting Program. However, Staff understood the meaning of the language.

Council Member Holman inquired about Mr. Daiso's suggestion for obtaining funds from the applicant for the mitigation.

Ms. Gitelman felt Mr. Daiso's suggestion was an option. The Mitigation Monitoring and Reporting Plan included an item which stated the property owner/developer would submit an evaluation for review by the City and Caltrans.

Council Member Holman inquired about including a means to ensure funding was supplied.

Ms. Gitelman had not seen signal timing changes incorporated as a mitigation, because that was an action taken as needed. Staff could determine a method to collect the nominal fee for future adjustments and apply it to signal optimization if the Council wished.

Council Member Holman requested language to incorporate that change into the Motion.

Ms. Gitelman would provide suggested language.

Council Member Holman would not support the Motion.

Council Member Berman inquired whether parking requirements in the State Density Bonus Law included guest parking and disability parking.

Ms. Silver believed that was correct.

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Council Member Berman wanted to know how the Council could require the project to provide the 16 parking spaces for guest parking.

Ms. Silver reported the Council could not require those parking spaces.

Council Member Berman felt the lack of guest parking was a negative impact. He was frustrated by State law superseding City parking Ordinances. He requested future projects provide different perspectives of buildings in order to illustrate the height of the building. Denial of the extension to the building height would be politically expedient; however, the building would be wider or closer to the street if the Council denied the extension. He inquired about the height of the We Fix Macs building.

Ms. Young believed the height was approximately 35 feet.

Council Member Berman stated the proposed building was an improvement over the existing buildings. He asked about proposed treatment of the existing sidewalk trees.

Ms. Young reported the City Arborist requested the applicant increase the trees' exposure to the sky. The landscape architect proposed planting a hardy groundcover around the trees.

Council Member Berman agreed with planting a groundcover that pedestrians could walk on.

Vice Mayor Shepherd recalled that the building height would remain at 55 feet, and the building would be constructed to the sidewalk if the Council denied the request for extending the height. She inquired whether the Council had discretion to disallow the applicant from adding 15 feet to the building height for roof screens.

Ms. Gitelman understood the project was entitled to 15 feet for roof screens.

Vice Mayor Shepherd asked if the 15 feet was in addition to the building height of 50 feet.

Ms. Gitelman responded yes. The applicant proposed 5 feet rather than 15 feet and requested building square footage be allowed in that additional 5 feet.

Vice Mayor Shepherd believed the project was designed in response to community concerns. The BMR units would revert to market units at the end of 30 years. She inquired whether the Council could secure the BMR units in perpetuity through a PC Zone or other means.

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Ms. Gitelman reported the 30-year period was required by the Density Bonus Law. Some type of development agreement or a PC Zone could be used to extend the term of the BMR units. In addition, the City could fund a portion of the units in exchange for some type of requirement. The applicant did not propose any of those options; therefore, the 30-year period would be effective.

Vice Mayor Shepherd inquired whether the Council had discretion to utilize a different traffic model. Menlo Park and San Mateo County utilized different models from the City.

Ms. Gitelman indicated the City's obligation was to utilize the best available tool. The City was preparing its own model which would have to be compatible with the VTA model.

Vice Mayor Shepherd agreed with Council Member Berman's comments regarding parking; however, she could not deny the project as it complied with State parking requirements. The few requested exceptions did not appear to be egregious. Returning the project for revisions would not result in a better project.

Council Member Burt felt the increased height enhanced the design and did not increase the FAR. Given the requirements of a CS Zone, this project was one of the best designed projects. Smaller residential units provided the least impact to the community and complied with State housing mandates. He expressed concern regarding cumulative traffic impacts. CS Zoning should be modified with respect to the size of projects along El Camino Real.

Mayor Scharff believed the Council needed to amend the Municipal Code to eliminate the mandate for projects to be built to the line.

MOTION PASSED: 7-2 Holman, Schmid no

17. Public Hearing: **Request For Council's Direction On Whether to Apply**
The Edgewood Plaza PC \$94,200 Public Benefit Payment to the
Construction of a Sidewalk, Historic Preservation of a Public Building,
or Another Council Directed Purpose.

Council Member Holman recused herself from Agenda Item Number 17 because she previously worked for and still volunteered with the Palo Alto History Museum.

Elena Lee, Senior Planner, requested Council direction regarding application of the Edgewood public benefit penalty to one of three projects: future rehabilitation of a historic public building, construction of a sidewalk along

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West Bayshore Road, or another Council-directed priority. The penalty was one of five public benefits given to the City in exchange for a Planned Community (PC) Ordinance Amendment. Under the first option, potential projects could include the University Avenue Transit Depot, the Lucie Stern Community Center, or the Roth Building. If the City purchased the Post Office, then it could be a potential project. Under the second option, the sidewalk would extend along West Bayshore Road from Channing Avenue to the border with East Palo Alto. The Bike and Pedestrian Transportation Plan indicated the need for this sidewalk. The cost of a sidewalk would be approximately \$62,000 for design and approximately \$411,000 for construction. Staff mailed surveys to Edgewood Drive residents where the sidewalk would be constructed. Of the six responses received, three approved if impacts were mitigated and three disapproved. A petition from Palo Alto and East Palo Alto residents requested construction of a sidewalk and bike lane. Other correspondence requested improvements for bike riders along with construction of a sidewalk, requested funds be allocated to rehabilitation of a historic resource, and supported construction of a sidewalk.

Public Hearing opened at 10:24 P.M.

Trish Mulvay supported construction of a sidewalk along with bicycle, pedestrian, and parking options. The petition was provided by East Palo Alto residents and not the City of East Palo Alto. An asphalt surface could be constructed to allow pedestrian and bicycle usage during the day and overnight parking. If the Council chose to allocate the money to rehabilitation of a historic resource, she hoped funds would be utilized for the Lucie Stern Community Center.

Horst Haussecker reported the noise from speeding traffic along West Bayshore Road exceeded noise from the freeway. Trees in the construction area were utilized as a sound barrier for neighbors. Overnight parking created additional noise and trash and blocked access to gates. A lower speed limit and parking restrictions along West Bayshore Road were needed rather than a sidewalk.

Public Hearing closed at 10:31 P.M.

MOTION: Council Member Schmid moved, seconded by Council Member Kniss to approve Staff's recommendation to apply the penalty paid for the Edgewood Plaza PC Amendment for the historic preservation of a public building.

Mayor Scharff clarified that the Motion did not name a specific building.

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Council Member Schmid believed construction of a sidewalk should be included in infrastructure improvements. For the amount of money available, rehabilitation of a building near Edgewood Plaza was logical.

Council Member Kniss felt funds should be allocated to rehabilitation of a historic building, because the penalty was assessed for demolition of a historic building.

Council Member Burt noted the amount of funds would not fully fund construction of a sidewalk, and inquired about Staff's vision for funding construction of a sidewalk.

James Keene, City Manager, reported additional funding could be provided through Capital Improvement Program (CIP) funding. Staff could follow up with the City of East Palo Alto regarding design and a potential contribution toward funding. If the Council allocated the funds to construction of a sidewalk, it would signal the Council's interest in the project.

Council Member Burt recalled Council discussion regarding the Edgewood Plaza project. Construction of a sidewalk would be an additional step for Edgewood Plaza becoming a better community amenity.

SUBSTITUTE MOTION: Council Member Burt moved, seconded by Vice Mayor Shepherd to apply penalty paid for the Edgewood Plaza PC Amendment toward the design of the sidewalk project along West Bayshore Road.

Council Member Burt felt the funds should be directed toward the project that provided the funds.

Vice Mayor Shepherd understood the connection between the penalty and rehabilitation of a historic resource. Yet, the amount of funding would not provide a substantial amount of rehabilitation. The amount of funds would provide design of a sidewalk and allow community engagement. Until the City had a developed preservation fund, she preferred the penalty amount be utilized in the community.

Council Member Price concurred with the logic of constructing a sidewalk adjacent to Edgewood Plaza. She anticipated discussion of a historic rehabilitation or restoration fund.

Council Member Klein expressed concern that the Motion would lead to another discussion of which building the funds should be applied to. He would support applying funds to the Lucie Stern Community Center. Applying funds to study the potential of a sidewalk was not logical. More

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work was needed to engage the community and to determine the problems of constructing a sidewalk.

SUBSTITUTE MOTION FAILED: 3-5-1 Burt, Price, Shepherd yes, Holman recused

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to change the verbiage in the Motion from "the historic preservation of a public building" to "historic preservation at Lucie Stern as set for in paragraph two on page 797 in the Staff Report: "The Lucie Stern Community Center located at 1305 Middlefield Road. The community center was designed noted Palo Alto architect Birge Clark and is designated as a Category 1 resource on the City's historic inventory. There are two potential projects that could benefit from this funding. The two projects consist of restoration and rehabilitation of the existing brick pavers located onsite and/or upgrading of the existing single-pane glass with custom fabricated double-insulated panes. The paver project would consist of repairing of about 1,000 lineal feet of the original pathways. The bricks would be moved temporary to allow leveling of the sub-base with gravel and removal of protruding tree roots and rocks. Broken or unsafe bricks would be replaced with new matching bricks. The window project would allow better sound control and insulation for the facility while allowing the appearance of the historic building to be retained."

Council Member Berman concurred with Council Member Klein's comments.

MOTION PASSED: 7-1-1 Burt no, Holman recused

Council Member Burt suggested Agenda Item Number 18 be continued to a future meeting because of the late hour.

Mayor Scharff announced the Council would discuss Agenda Item Number 18 at this time.

18. Colleague's Memo from Mayor Scharff, Vice Mayor Shepherd, Council Member Holman and Council Member Price, Regarding Expanding Smoking Ban in Downtown and California Avenue Business Districts.

Mayor Scharff reported the Colleague's Memo recommended a comprehensive approach to the smoking ban, outreach to businesses and citizens, and review by the Policy and Services Committee.

Trish Mulvay supported the Colleague's Memo. Cigarette butts were a significant trash problem. Consideration should be given to providing areas for smokers and providing containers for cigarette butts.

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MOTION: Mayor Scharff moved, seconded by Council Member Holman to direct Staff to: 1) proceed to the Policy & Services Committee for policy discussion and **recommendation to the full Council to expand the City's** outdoor smoking ban in the Downtown and California Avenue Business Districts; 2) conduct outreach to downtown and California Avenue residents, **businesses and property owners for input on expanding the City's** current ban on outdoor smoking in certain areas, including California Ave and University Ave and possibly other streets in the downtown cores; and 3) **benchmark other jurisdictions' outdoor smoking ban ordinances in** downtown cores.

Council Member Holman noted the health concerns of smoking and second-hand smoke.

Council Member Price concurred with previous comments.

Council Member Schmid agreed that smoking was unhealthy; however, he knew of no medical study that indicated walking down a street with someone smoking led to lung cancer or respiratory disease. He suggested the Policy and Services Committee review literature to determine whether smoking on a sidewalk impacted health. Otherwise the role of local government was toleration and acceptance of things the community did not necessarily like.

Council Member Burt wanted to be cautious regarding legislating against things that annoyed him. A health risk was different from a personal preference.

MOTION PASSED: 8-1 Schmid no

ADJOURNMENT: The meeting was adjourned at 10:52 P.M.

Attachment B: Smoking Ordinance Benchmarking for Downtown Core Smoking Restrictions

February 2014

City and Ordinance Adoption Year	Ordinance Requirements (with focus on downtown core)	Litter Reduction Efforts	Enforcement	Outreach and Costs
Mountain View February 2012	Goal: public health Used model ordinance provided by Public Health Law and Policy under contract to the City. No explicit downtown ban, however 25 feet buffer zone from openings and ban in outdoor dining areas covers downtown	Installation of 10 new combination tobacco waste and trash receptacles downtown	Police Department responsible for education and enforcement. PD volunteers visit all affected businesses and provide educational materials and window decals. Enforcement complaint driven. Fines included in ordinance.	Public meetings, direct mail to restaurant and bar owners, newspaper ad, website, on-line survey, meetings with stakeholders (Chamber, Downtown Assoc., etc.) Cost of staff time and decals/outreach materials. Funding through grant from Santa Clara County Public Health Dept.
San Rafael October 2012	Goal: ALA Score improvement Prohibits smoking on all sidewalks and pedestrian areas and public places in downtown with the exception of smokers passing by en route to another destination. Downtown ban eliminate confusion over buffer zones. Downtown is defined by street names. This ordinance also includes outdoor dining areas, public events, recreation areas, outdoor service areas, public places, worksites, 80% of hotel rooms, and multi-unit housing.	Extensive clean-up programs, rebate program (butts for bounty), public education, and receptacles downtown “adopted” by businesses. Separate section of Municipal Code prohibits littering City-wide.	Complaint-based, no police involved due to lack of resources. Complaints filed with Marin County Tobacco Disease control Program. Citation/fines included in ordinance.	\$20,000 for signage. San Rafael did extensive outreach to stakeholders (chamber, social service providers, Marin Builder’s Assoc., transit agencies, multi-unit buildings. Held town hall meeting. Inclusive process to develop ordinance

<p>Santa Cruz 2009, expanded 2013</p>	<p>Goal: Public health and environmental impacts of discarded cigarette butts. Original ordinance just for Pacific Ave, which pushed smokers to side streets, alley ways, and parking lots. Expanded ordinance prohibits smoking on the beach right-of-way between Municipal Wharf and Third Street and any portion of Pacific Ave right of way, side streets, alleys, and surface parking lots one block in either direction from Pacific Ave between Laurel and Water Streets</p>	<p>Businesses helped purchase cigarette butt receptacles.</p>	<p>City health officer, City manager or designee authorized to enforce. Citizens register complaints or bring legal action to enforce. Violations and penalties included.</p>	<p>Outreach to downtown business community.</p>
<p>Walnut Creek October 2013</p>	<p>Goal: Public health, fire prevention, litter, ALA score Prohibits smoking on public sidewalks in the Pedestrian Retail Zoning District (downtown retail core). The ordinance also includes outdoor dining areas, outdoor service areas, 20' of entryways and ground floor operable windows, public events, and multi-family housing.</p>	<p>Ash towers installed at participating establishments.</p>	<p>Complaint based, signage will be installed, stickers provided to merchants. Escalating fines included. Any violation can also be brought as civil action pursued by City Attorney. City Manager's office will be primary department responsible for handling complaints and enforcing ordinance due to staff resource issues in Police and Code Enforcement.</p>	<p>Community meetings tailored to stakeholder interests. Brochures at farmers market. Meeting with key stakeholder groups (chamber, downtown, CA restaurant assoc). Open townhall (on-line forum). Staff working with Contra Costa County Tobacco Prevention Coalition program on an enforcement and implementation plan.</p>
<p>Monterey – Fisherman Wharf December 2013</p>	<p>Primary reason: litter/environmental protection Ban at Fisherman Wharf was requested by Wharf Business Association. Monterey also prohibits smoking on recreation trail, beaches</p>	<p>Businesses installed receptacles.</p>	<p>Misdemeanor and admin citation process</p>	<p>Organized a sign contest to celebrate new smoking ban.</p>

<p>Santa Monica October 2006</p>	<p>Council acted based on California Air Resource Board report in February 2006, declaring tobacco smoke a toxic air contaminant. Ordinance bans smoking on Third Street Promenade, within 20' of openings, outdoor waiting areas, farmers markets, and outdoor dining areas.</p>	<p>None mentioned</p>	<p>Education, awareness, and voluntary compliance as the goal. Police officers can give citations with a max penalty of \$250. No legal liability for business owners.</p>	<p>Funds for signage. Meetings with stakeholders including Convention & Visitors bureau.</p>
<p>Berkeley Updated March 2008</p>	<p>Public health and welfare Ordinance banned smoking on all commercially zoned sidewalks. In addition, ordinance bans smoking in outdoor eating areas, recreational areas, sports arenas and outdoor theaters, bus stops. Effective May 2014, smoking is prohibited in multi-family buildings.</p>	<p>Ashtrays located in no smoking areas must have signage "smoking prohibited by law – extinguish here"</p>	<p>Health and Human Services Department and Public Safety departments enforce. Violations are infractions per muni code or can be handled as admin citation.</p>	<p>Smoking cessation assistance included as part of outreach.</p>
<p>Fremont January 2013</p>	<p>Goal: public health and welfare, ALA score card Ordinance prohibits smoking on all commercial area sidewalks (defined), service areas, and outdoor dining areas. Ordinance also addresses recreational areas and multi-unit residences. E-cigarettes added to ban in 2014</p>	<p>Ashtrays located in no smoking areas must have signage "smoking prohibited by law – extinguish here"</p>	<p>Community Preservation Division, Police and Fire Departments and Park Rangers enforce. Citizens can register complaints and bring legal enforcement actions. Requires owners/operators of establishments to notify smokers when they are violating. Escalating fines included.</p>	<p>Public hearing was conducted</p>



POLICY AND SERVICES COMMITTEE MINUTES

Special Meeting
June 17, 2014

Chairperson Price called the meeting to order at 6:05 P.M. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Klein, Price (Chair), Scharff

Absent: Schmid

AGENDA ITEMS

1. Recommendations for Expansion of City Smoking Ban in the Downtown and California Ave Business Districts; Including Benchmarking Data and Policy Discussion to Possibly Include Additional Areas or Restrictions on Sales and Indoor Smoking.

Kirsten Struve, Manager of the Environmental Control Program, provided background on the benchmarking and jurisdiction ban of non-smoking. Staff recommended expanding the area of non-smoking designation beyond the Colleagues Memo. The Memo requested California Avenue and the Downtown areas but Staff wanted to include the Comprehensive Plan's Regional and Neighborhood Commercial areas. The surrounding cities' smoking ban prohibited outdoor dining areas which were recommended by Staff. Staff dealt with the Downtown Streets Team and it was determined there was smoking associated litter outside of the designated smoking areas. Palo Alto currently had a \$250 fine for smoking in a non-designated area while other jurisdictions had escalating fines for repeat offenders; a Staff recommendation to be considered. Future planning would include the restrictions of indoor multi-family housing, tobacco sales, and upgrading the City's Santa Clara County Public Health rating.

Trish Mulvey spoke of the damage cigarette butts cause to aquatic animals as they swallow them once the litter travels to the water sources. She recommended the survey be as broad as reasonable to allow Staff to return with the adequate information.

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Allison Chan supported the smoke-free ban in commercial and Downtown areas. In reviewing the litter maps the majority of litter was cigarette butts. The filter in the cigarette butt was toxic to the wild life and aquatic animals.

Council Member Klein asked why Staff was suggesting a public opinion outreach. Over the years with the many smoking bans implemented there was not survey work performed.

Ms. Struve confirmed the Colleagues Memo requested outreach and Staff felt survey work was a good way to reach a large percentage of the population.

Council Member Klein asked who wrote the Colleagues Memo.

Council Member Scharff stated he was the initiating author.

Council Member Klein asked if there was survey work requested in the Memo.

Council Member Scharff stated no and did not feel it was necessary.

James Keene, City Manager, believed the Colleagues Memo was more restrictive about expanding the outreach to the commercial areas. He understood the original intent to be a courtesy outreach to the business community.

Council Member Scharff felt intrigued by the possibility of expanding the ban to multi-family residential where there were shared walls and ventilation systems.

Council Member Klein asked how the number of 3 billion cigarette butts was derived. Palo Alto was 1 percent of the population which equated to 30 million.

Mr. Keene believed the source information was provided by Save the Bay.

Council Member Scharff agreed with Staff Recommendation 2; a) Increase the area covered to include "Regional/Commercial" areas (e.g.: Stanford Shopping Center), b) increase the area covered to include "Neighborhood Commercial" areas (e.g.: Alma Plaza), c) increase coverage to include all outdoor eating areas, d) include penalty escalation for repeat offenders, e) include e-cigarettes, and f) require cigarette butt receptacles and signage immediately adjacent and within areas covered by the ban. And Staff Recommendation 3; changes to the indoor smoking restrictions and restrictions on sale of tobacco products and e-cigarettes be considered: a)

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include e-cigarettes in current indoor restrictions, b) ban the sale of tobacco products and e-cigarettes at pharmacies and at any establishments adjacent to parks and schools. He asked how quickly Staff could return with a proposed Ordinance and could it return directly to Council.

Molly Stump, City Attorney, stated Staff Recommendation 3 was relatively straight forward but she would speak with Staff to determine the specific scope.

Ms. Struve said the vision was to move forward with Recommendation 2 at the present time. She believed e-cigarettes in pool vehicles and City facilities would be straight forward but restrictions on sales of tobacco may take time.

Mr. Keene noted Recommendation 3 did not include the more detailed restrictions on indoor smoking.

Council Member Scharff felt Staff Recommendations 2 and 3 could be moved forward now.

Khashayar Alaei, Senior Management Analyst, stated Recommendation 2 could return to Council in September or October with the Ordinance.

Mr. Keene wanted to be clear; the Staff recommendation on the front of the Staff Report was less detailed than the one on page 6 being referenced by the Committee.

Ms. Struve agreed but mentioned banning sales of tobacco products may be a more controversial manner. She noted CVS had already committed to stopping the sale of tobacco products in Palo Alto.

Council Member Scharff asked what outreach would be requested for Pharmacy's if Recommendations 2 and 3 were moved forward immediately. He asked what level of outreach Staff felt was appropriate.

Mr. Alaei said Staff would request to meet with each location to inform them of the proposed Ordinance.

Council Member Scharff did not feel limited outreach would take an extended amount of time.

Mr. Keene stated within Santa Clara County the only restricted sales was in the unincorporated areas.

Council Member Scharff asked how retailer licensing worked.

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Nicole Cox, Santa Clara County Public Health Department, clarified the County required each facility; who desired to sell tobacco products, obtain a local permit. The County had the Cities of San Jose, Campbell and Morgan Hill with retailer licenses which provided local control to the enforcement agency to enforce the sales to minor laws and other issues that were not enforced at the State level.

Council Member Scharff asked if the Council adopted Recommendations 2 and 3 would the City accomplish the smoke-free outdoor air and thus accomplish a higher American Lung Association score.

Ms. Struve stated Recommendations 2 and 3 would cover all outdoor dining but outdoor events would need to be added. Most outdoor events occurred in the Downtown area or parks which would be covered by another section of the Ordinance.

Council Member Scharff asked why the restrictions near parks and schools would not be included with the pharmacies. Without the pharmacy option cigarettes could be purchased at grocery stores, liquor stores and gas stations.

Ms. Struve explained if there was a pharmacy within the grocery store the store would be included in the ban.

Council Member Scharff was in favor of moving forward with the ban at facilities but was not ready to move forward with the residential ban without further input from the community.

Mr. Alae said a survey of the multi-family units should take 45-days to complete.

Council Member Scharff asked if the City accomplished the list of Recommendations 2 and 3 would the grade increase from a D to an A.

Ms. Cox said without having the American Lung Association criteria at hand she could not say for certain although she believed it was highly probable.

Ms. Struve explained there were two grading systems; the County and the American Lung Association. After reviewing the criterion she believed Palo Alto would accomplish an A grade.

Chair Price asked for clarification on the term multi-family units; were condominiums and townhouses included or was it primarily rental property.

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Ms. Struve clarified all variations of multi-family residents were considered.

Chair Price stated apartment associations and homeowner associations should be included in the outreach. She asked what effect the license permit would have on Mac's Smoke Shop and other outlets of tobacco distribution.

Ms. Struve clarified if Palo Alto acquired a Tobacco Retail License all shops able to sell tobacco products would be required to obtain a permit and follow the City's requirements.

Mr. Alae said the ban would not initially include outlets outside of pharmacies or grocery stores with pharmacies. The thought process was to nest the tobacco licensing requirements with the Business Registry.

Chair Price read in the Staff Report escalation of enforcement and the development of an enforcement plan. She did not recall seeing language on enforcement, escalation or an enforcement plan in Staff's recommendations. She asked whether that language needed to be included in the motion.

Ms. Struve stated the enforcement plan had not been developed as of yet. She said as an option the Police could randomly select days to seek out smoking offenders to show the community enforcement was being taken seriously.

Chair Price clarified Staff was seeking guidance from Council.

Ms. Struve stated yes and agreed to provide draft language on the fees, enforcement plan, and escalation when they return.

MOTION: Council Member Klein moved, seconded by Council Member Scharff to recommend to the City Council adoption of:

1. The changes to the outdoor smoking restriction to be considered: a) Increase the area covered to include "Regional/Commercial" areas (e.g.: Stanford Shopping Center), b) increase the area covered to include "Neighborhood Commercial" areas (e.g.: Alma Plaza), c) increase coverage to include all outdoor eating areas, d) include penalty escalation for repeat offenders, e) include e-cigarettes, and f) require cigarette butt receptacles and signage immediately adjacent and within areas covered by the ban; and
2. To the indoor smoking restrictions and restrictions on sale of tobacco products and e-cigarettes be considered: a) include e-cigarettes in

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current indoor restrictions, b) ban the sale of tobacco products and e-cigarettes at pharmacies and at any establishments adjacent to parks and schools.

Council Member Klein believed the American Lung Association ratings were exaggerated. Palo Alto had a small number of continued smokers and the community was susceptible to the change in a ban direction. He had concern with indoor residential smoking and did not feel the residents were as onboard. He believed there should be specific clarification on the distance between smoking and the adjacent area of parks and schools.

Mr. Keene clarified the distant would be 1,000 feet. The City considered Lytton Plaza a park and there were tobacco enthusiasts within the 1,000 feet of the area.

Council Member Klein accepted Lytton Plaza was a park area and agreed there was smoking. He cautioned the appearance of Palo Alto banning the sale of any tobacco products throughout the City limits. He was not certain that could be accomplished.

Ms. Stump stated she had not researched that specific question although believed that would run into a preemption issue.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to have the words "public events and worksite service areas" included in Item Number 2 of the Motion.

Council Member Scharff remarked seeing construction workers smoking just outside of the work area which he found to be bothersome. He had witnessed workers tossing their butts over into the neighbor's yard.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to replace "Considered" with "included in the Ordinance" in Item Number 2 of the Motion.

Chair Price asked if the Secunder was suggesting there not be additional outreach to the Chamber of Commerce.

Council Member Scharff did not have an issue with outreach. He asked whether there had been any outreach performed to date.

Mr. Alae stated yes, Mr. Fehrenbach had spoken to the business areas in town and had informal conversations. The entire outcome had been positive.

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If the Committee desired more commercial or business outreach that could be completed.

Council Member Scharff wanted to move forward with a banning smoking plan in multi-family housing.

Council Member Klein stated there was a distinction between rental property and condominiums or townhouses ownership.

Chair Price disagreed with the distinction of rental versus ownership; both types shared common walls and ventilation.

Council Member Scharff asked the Maker if they would agree, for the purposes of outreach, to include owned and rented property.

Council Member Klein agreed but noted a Homeowners Association could ban smoking on their own.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to have Staff perform outreach and determine where the community was on the banning smoking in multi-family rental housing.

Council Member Scharff wanted to include the tobacco retail license in the Motion.

Council Member Klein stated he did not feel the amount of retailers selling tobacco was great enough to induce another bureaucracy.

Council Member Scharff asked Staff for a brief explanation on the advantages of the license.

Mr. Keene clarified the main reason of the licensing would be to monitor and enforce the sale of tobacco to minors.

Council Member Scharff asked what the current process was if a retailer was caught selling tobacco to minors.

Ms. Cox stated there was a minimal fine charged to the establishment if there was no licensing in effect.

Council Member Scharff confirmed the licensing allowed the City to enforce stopping the sale of tobacco products.

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Ms. Cox stated that was correct.

Chair Price mentioned the issue of enforcement and the development of an enforcement plan had not been addressed.

Council Member Scharff stated in the Staff Report under Summary of Recommendation the enforcement issue was spelled out in Recommendation 2.

Chair Price asked if there would be information or a link on the website regarding smoking cessation programs.

Mr. Keene agreed the Staff could set-up a clearing house connection on the website.

MOTION RECAPPED: Council Member Klein moved, seconded by Council Member Scharff to recommend the City Council approve:

1. The changes to the outdoor smoking restriction to be considered: a) Increase the area covered to include "Regional/Commercial" areas (e.g.: Stanford Shopping Center), b) increase the area covered to include "Neighborhood Commercial" areas (e.g.: Alma Plaza), c) increase coverage to include all outdoor eating areas, d) include penalty escalation for repeat offenders, e) include e-cigarettes, and f) require cigarette butt receptacles and signage immediately adjacent and within areas covered by the ban; and
2. To the indoor smoking restrictions and restrictions on sale of tobacco products and e-cigarettes be included: a) include e-cigarettes in current indoor restrictions, b) ban the sale of tobacco products and e-cigarettes at pharmacies, public events, work sites and services areas; and
3. Direct Staff to conduct appropriate outreach with regard to potential bans on smoking in multi-family residential units.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to include licensing and delete all wording after "pharmacies" in Item Number 2 of the Motion.

Chair Price asked why the removal of restricting sales adjacent to parks and schools.

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Council Member Klein stated there were a number of restrictions and leaving in the “adjacent to parks and schools” would ban tobacco products from Mac’s Smoke Shop because of its proximity to Lytton Plaza.

MOTION AS AMENDED PASSED: 3-0 Schmid absent

Chair Price asked what the smoking restrictions were at Stanford University.

Ms. Struve stated they had a smoking restriction in place; 30-feet from any opening and there was no tobacco sold on campus.

Chair Price asked the Department of Public Health representative if there was information she could add.

Ms. Cox agreed with Ms. Struve and added the Stanford Medical Campus was completely smoke-free.

MOTION: Chair Price moved, seconded by Council Member Scharff to recommend to the City Council to not make the distinction on banning smoking, and to include multi-family, condominiums, townhouses, and multi-family rental housing; anything with attached housing where people were sharing ventilation systems and could potentially pollute one another.

MOTION PASSED: 2-1 Klein no, Schmid absent

MOTION: Council Member Scharff moved, seconded by XX to ask Stanford University to become a smoke-free campus and have the Palo Alto City Council pass a Resolution asking them to do so.

Council Member Klein said he would not participate in this Motion due to his wife being a member of the Stanford University faculty.

MOTION FAILED DUE TO LACK OF A QUORUM

Mr. Keene clarified the Committee provided explicit direction with respect to outreach on 1) apartments and condominiums with shared ventilation and 2) appropriate and courteous outreach to effected businesses and Stanford Shopping Center. He believed initiating the outreach prior to Council review would benefit the Council’s decision. He asked Staff the probable return date to Council.

Mr. Alae stated October.

Mr. Keene asked why it needed to be so far out.

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Mr. Alaei stated after review of the Council Calendar it appeared the best option.

Mr. Keene stated that was too long, all that was needed was the outreach portion.

Council Member Scharff stated the City Manager and the Mayor should determine the date. The question was when Staff could have the information ready.

Council Member Klein believed the outreach was a courtesy and he noted the industry did not have veto power over the decision.

2. Discussion and Recommendation to Council Regarding Potential Ordinance Making Changes to Council Compensation.

Molly Stump, City Attorney, stated the current Council was compensated consistent with the General Law at \$600 per month. The General Law allowed room for compensation levels to be increased by way of an Ordinance approved by the majority of Council or the Council could place the matter before the voters. She noted any change to Council compensation would go into effect with the beginning of new Council terms; for Palo Alto that would be January 2015.

Council Member Scharff asked if the 2014 voting Council Members who were not up for re-election could vote and have the increase if applicable applied to their compensation in January of 2015.

Ms. Stump replied yes.

Council Member Scharff believed any vote could not apply to oneself.

Ms. Stump stated at least one member of the body had to have stood for election in order for the new compensation level to apply to the entire body.

Meggan Casas, Senior Human Resources Administrator, reviewed the benchmark data on surrounding cities in Santa Clara and San Mateo Counties for a total of 26 cities. The highest monthly Council salary was the City of San Jose at \$6,750. The average monthly salary throughout the remaining cities was \$759.40. The City of Santa Clara received an annual Consumer Price Index (CPI) increase of 5 percent. The City of Mountain View has a proposed measure for November 2014 to increase compensation from \$600 to \$1,000 monthly.

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Council Member Scharff asked for the average salary.

Ms. Casas stated \$759.40.

Council Member Scharff asked if the average was based on all of the cities even though some were paid \$0 and San Jose was \$80,000 annually.

Ms. Casas said yes. San Jose Council Members were full time employees but they were Council Members so their salary was included.

Council Member Scharff did not feel the average was helpful because the monthly amounts were all over the chart.

James Keene, City Manager, wished to speak to the average but in contrast the City was in the median at \$600.

Chair Price acknowledged different cities paid different amounts but she felt the issue should be based on the amount of work performed not the numbers. She asked what the parameters were per the Ordinance that could be used to make annual salary adjustments.

Ms. Stump stated the General Law allowed the Council to add 5 percent each year since the last date of increase which was 2001. She noted the 5 percent could not be compounding.

Chair Price said the Staff Report calculated the amount to just under \$1,000.

Mr. Keene agreed and stated there could be a perspective 5 percent increase moving forward.

Ms. Stump clarified if the Committee was interested in the maximum amount of increase Staff would need to review the calendar and count days from the last increase in 2001 to January 1, 2105.

Herb Borock read portions of the General Law where the 5 percent was indeterminate based on the benefits received. Some cities did not provide medical benefits to their Council. He felt the only benefit the City Council should receive was salary and not medical benefits because the position was not employment but volunteer.

Council Member Scharff recalled in 2010 there was a Motion to reduce Council salary which failed by a 5 to 4 vote. Historically when financial times were low cities did not provide salary increases but when the economy rose

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salaries increased and long-term projects were taken on. He believed Council needed to take a leadership role and just because the economy was good Council should not be the first in line to benefit. Palo Alto Council salaries were in the median and he was satisfied with that.

MOTION: Council Member Klein moved, seconded by Chair Price to recommend to the City Council that salaries be increased to \$1,000 per month effective January 1, 2017.

Council Member Klein felt the reason for an increased salary was it had been 13 years since the last increase. There was a decline in Council candidates in their middle years and although you were not on the Council to become wealthy there was an increase in workload and time away from family. He chose the effective date as not to benefit seated Council Members.

Chair Price mentioned the current seated Council came from a variety of economic status. There were Council Members who used personal choice to not accept any monthly pay and some chose not to accept health benefits. Those options were a personal choice and providing an increase in salary was not meant to discourage or encourage candidates.

MOTION PASSED: 2-1 Scharff no, Schmid absent

Chair Price asked when Staff would bring the item forward to the full Council.

Ms. Stump stated Staff would work toward an August return.

ADJOURNMENT: Meeting adjourned at 7:38 P.M.

Tobacco Retail Licensing Fact Sheet

Santa Clara County is one of the largest counties in California, featuring a diverse population of nearly 1.8 million residents, including 15 cities. Although Santa Clara County has one of the lowest smoking rates in the state, 1 in 10 residents (youth and adults) report using tobacco. Furthermore, the rate of decline in cigarette use among high school students (all racial/ethnic groups) in the United States has slowed or leveled off since 2003. Youth access to tobacco products is a serious public health problem for Santa Clara County; unfortunately the current State Tobacco Retail Licensing Law has done little to reduce the sales of tobacco to minors. In order to reduce illegal sales to minors, the adoption of local tobacco retail licensing (TRL) ordinances are required. These should contain strong enforcement provisions and financial deterrents for violators.

“Youth access to tobacco products is a serious public health problem”

Why Santa Clara County Needs Tobacco Retail Licensing (TRL)

- In Santa Clara County, residents with very low income smoke at twice the rate of people with above-median, income. Due to higher concentrations of tobacco retail outlets, low-income communities are more exposed to pro-tobacco influences, including higher rates of tobacco advertising and tobacco access points. Currently, there are 1,514 tobacco retail outlets in Santa Clara County, with 828 of them located in San Jose.
- According to county enforcement jurisdictions, illegal sales of tobacco products to minors range from 6.3% to as high as 62.5%, with a majority of the cities having rates above 20%.
- Nearly a quarter of Santa Clara County middle school students and two-thirds of Santa Clara County high school students who smoke cigarettes report that it is easy to get cigarettes.
- One of the most common sources for acquiring cigarettes reported by Santa Clara County adolescents is making a purchase on their own. Most of the students who bought cigarettes in a store during the past month were not asked to show proof of age.
- Adolescent experimentation with tobacco can lead to lifelong tobacco addiction and serious smoking-related health problems such as heart disease, stroke, chronic lung disease, and cancers of the lungs, mouth, pharynx, esophagus, and bladder.
- More than 76 communities in California have adopted strong local tobacco retail licensing ordinances and have seen the rates of youth access to tobacco reduced dramatically. Notable Northern California communities that have experienced successes upon passing TRL include Berkeley, San Francisco, Sacramento and Contra Costa County.

City/County	Sales Rate Before TRL	Annual Fee	Sales Rate After TRL
Contra Costa County	37%	\$160	19%
City of Berkeley	38%	\$427	4.2%
City of San Francisco	22.3%	\$175	11.3%
Sacramento County	21%	\$324	8.4%

Support for Tobacco Retail Licensing

- 93% of Santa Clara County residents support a tobacco retailer license
- 100% of Santa Clara County key opinion leaders support fines for businesses that illegally sell tobacco to minors
- 90% of Santa Clara County key opinion leaders support the licensing of businesses that sell tobacco products and the restriction of tobacco specialty stores
- 89% of San Jose residents think youth using tobacco is an issue/problem in their neighborhood/city
- 89% of San Jose residents think that stores/tobacco retailers can help prevent or stop youth from becoming, hooked on tobacco
- 85% of San Jose tobacco retailers have had youth try to buy tobacco from their stores
- 90% of San Jose tobacco retailers believe that asking for proper identification can help prevent youth from getting tobacco

What Local Decision Makers Can Do

- Develop a strong tobacco retail licensing ordinance within their local jurisdiction which should include the following four components
 - Require that all retailers that sell tobacco products obtain a license and renew it annually
 - Set a fee high enough to sufficiently fund an effective program, including program administration, and enforcement efforts. An enforcement plan that includes compliance checks should be clearly stated
 - Coordinate tobacco regulations so that a violation of any existing local, state or federal tobacco regulation violates the license
 - Create a financial deterrent through fines and penalties including the suspension and revocation of the license. Fines and penalties should be outlined in the ordinance
- Support the prosecution of local retailers/businesses who illegally sell tobacco products to minors
- Limit the location and density of retail outlets that sell tobacco products

How we can help

To receive a copy of a model tobacco retail licensing ordinance, the most recent data on the rates of illegal tobacco, sales by city or to obtain additional resources, training and technical assistance, contact the Tobacco Prevention Program:

Phone: (408) 793-2700
www.sccphd.org/tobacco-prevention