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The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:06 P.M.

Present: Berman, Burt, Filseth, Holman, Kniss arrived at 7:14 P.M.,
Scharff, Schmid, Wolbach

Absent: DuBois

Study Session

1. Cost of Services Update and Draft User Fee Cost Recovery Level Policy Discussion.

Walter Rossmann, Office of Management and Budget Director, reported Staff began working with the Finance Committee in 2013 on a Cost of Services Study. The Study was comprised of two components: identifying alternative service delivery options for City-provided services and charging fees to recover the costs for providing services. Staff continued to review various services and, where appropriate, provided recommendations for alternative service delivery models. During the past few years, the City had outsourced parks maintenance, golf course maintenance, custodial services, and street sweeping services. Due to fluctuating workloads, the City had employed hybrid models to address the timely provision of services. Staff had not systematically analyzed all services provided to the public; therefore, as part of the Fiscal Year (FY) 2016 Proposed Budget, Staff would request funds for consultant services to assist with the effort. One outcome of the Study was identification of potential public-private partnerships and outsourcing opportunities. Annually, the City Council approved charges for services and fees when it adopted the Municipal Fee Schedule as part of the Budget. Currently, the City was recovering some portion of fee-related services. To ensure a balanced revenue portfolio, Staff sought Council input regarding appropriate cost recovery levels. The Staff Report provided the cost recovery level for fee groups, except most Development Services fees and Planning and Community Environment fees. The Planning Department had engaged a consultant to study department fees and hoped to conclude the study within the fiscal year. For fees studied, the cost recovery level varied quite a bit. The draft policy sought to ensure consistent recovery of costs for similar fees and the level of cost recovery for fee-related activities. Community versus private benefit primarily addressed inspection fees and permits that protected the property owner and the community. Service recipients versus community benefit addressed regulatory permits. Consistency with City goals and policies provided direction to Staff to reduce fees. Elasticity of demand for services allowed Staff to increase or decrease fees based on demand. Availability of services from the private sector

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considered services offered by the nonprofit and private sector to ensure the City did not undercut private and nonprofit services while maximizing the City's revenues. The policy statement was deliberately broad to allow flexibility in subsidizing fees. Some City services were consistently in high demand; therefore, higher fees would not negatively affect enrollment. Classes with low attendance incurred the same fixed costs; therefore, they might require a General Fund subsidy. The City should remain in healthy competition with the nonprofit and private sectors by not charging substantially above or below the competitive rate for similar services. Alignment with this policy statement most likely would result in a higher cost recovery level. Based on the Council's feedback regarding the draft policy, Staff would refine the policy and return it to the Council for adoption. As part of the annual budget process, the adopted policy would guide potential fee increases. Any substantive increase of fees would be phased in over several years. An alignment of fees would ensure the City continued to have a balanced revenue portfolio.

Council Member Burt wanted to understand the balance between cost of service recovery, particularly for youth programs, and providing youth programs for those who could not afford them.

Mr. Rossmann indicated the Council should first consider enrollment. The City offered a discount for low-income youth. Then the Council should balance City classes against classes offered by nonprofit and private sectors.

Council Member Burt asked if Staff knew whether youth of modest incomes were being excluded from programs. He was aware that the City subsidized enrollment for low-income families. He asked if Staff could survey low-income families to determine whether they did not participate in youth programs because they did not qualify for scholarships, were unaware of scholarships, or suffered from stigma.

Rob De Geus, Community Services Director, did not have a good grasp of information to answer that question. The City provided a generous fee reduction program which allowed \$300 per person in a family annually. Many teen programs were provided at low cost or no cost. The fee reduction program was heavily used annually, but he did not know if a need remained in the community.

Council Member Burt felt heavy use of the fee reduction program meant it was attractive, not that it was provided to the full spectrum of youth. Perhaps better sampling could be obtained through nonprofit housing agencies surveying their families or through a Palo Alto Unified School District (PAUSD) list of families qualifying for support. The Council had no

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data to determine whether the City was successfully addressing the issue or whether programs were inclusive or discriminatory.

Mr. De Geus advised that any family who qualified for the PAUSD low-income meal program automatically qualified for the City's low-income fee reduction program.

Council Member Burt inquired whether families were notified of that.

Mr. De Geus answered yes.

Council Member Burt felt a survey to determine whether families were participating to the extent they wished or whether other families were not being captured would be worthwhile. Families who did not qualify for the PAUSD low-income meal program might not be able to afford participation in City programs. He requested colleagues comment on whether they would like to have better data in order to make decisions.

Vice Mayor Schmid questioned whether the draft policy was applicable to other areas, specifically overflow parking. The parking issue definitely favored employers in Downtown, and it brought a cost to the neighborhood. City policies provided maintenance of a barrier between office-centered and residential areas. Offering free parking in the neighborhoods created more demand. He inquired whether a user fee could be utilized to pay for parking programs.

Mr. Rossmann reported the draft policy addressed all kinds of fees. He understood Vice Mayor Schmid was suggesting the City charge for on-street parking. Staff could use the policy as a starting point and return to the Council with a suggestion of charging a fee under certain policy considerations. As part of the FY 2016 Proposed Budget, Staff was including a request for funding to study fees for street parking.

Vice Mayor Schmid believed it could be worthwhile to consider using the same criteria for assessing costs on the parking issue as in other fees. This might be a more effective way of raising funds for mitigation measures.

James Keene, City Manager, explained that the concept of the Residential Parking Permit (RPP) Program in the Downtown area was comprised of two phases. The first was a trial phase for six months with no cost for residents. Once Staff obtained a sense of parking infiltration under some sort of program, then the Council could determine costs for the RPP Program. That discussion would be related to the Council having better information about the impacts of costs after a pilot program.

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Vice Mayor Schmid expressed concern about the upfront costs of a nine-month trial period.

Mr. Keene stated the Council could discuss that when Staff returned.

Council Member Scharff asked if the Council was vetting a fee structure or broad principles.

Mr. Rossmann replied broad principles. Staff was asking the Council to provide input. During the annual budget process, Staff calculated the cost recovery level for most fees based on Staff input. Now, Staff wanted to align those fees to broad policy statements.

Council Member Scharff suggested the Council consider eliminating some fees. Many fees could have a societal value such that the fee should not be priced excessively high. Fees for housing were becoming substantial. He was worried that costs were escalating above inflation. The draft policy contained good, broad policies; however, he was unsure whether they would be easy to apply. He was concerned that fees would be presented to the Council in large groups or categories such that the Council could not discuss individual fees.

Mr. Rossmann indicated the challenge was the number of similar fees that were not similar in cost recovery level. The first goal was to ensure cost recovery was consistent. During the annual budget process, Staff would present the fee, the cost recovery level for each fee, and the resulting fee. Thus, the Finance Committee and the Council could discuss individual fees. If Staff proposed maintaining the cost recovery level for fees, they would present those fees in groups.

Mr. Keene noted the application of cost recovery levels could generate a great deal of discussion. The budget process contained too many details and categories each year for the Council to discuss each fee individually. Perhaps over the course of the year, Staff could prioritize groups of fees for periodic Council review.

Council Member Scharff asked if Staff would present fees to the Finance Committee in manageable groups.

Mr. Rossmann explained that Staff would return with a policy, based on the current discussion, for Council adoption. However, that would occur too late for the FY 2016 Proposed Budget. For FY 2016, Staff would propose a 3.6 percent increase, which was equivalent to the increase in salary and benefits costs. For FY 2017-2019, Staff would attempt to align groups of fees with

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the policy and present them for Council review. Those incremental steps over the next three years would allow the Council to discuss fees.

Council Member Scharff inquired whether Staff would present the policy contained in Attachment F with revisions for Council adoption.

Mr. Rossmann indicated Staff would present the policy to the Council for adoption and implement it thereafter.

Council Member Berman believed Staff presented a good draft policy. Different elements of the policy could conflict. The Council could prioritize fees based on the total amount of fees paid each year or based on the change Staff proposed. He would support a policy allowing the City Manager to waive certain planning fees if the City Manager reported to the Council after the fact regarding time sensitive issues.

Mr. Rossmann wanted to include that provision within the policy if the Council concurred. For FY 2016, Staff would outline fees proposed for deletion, new fees, and any fee which would increase more than 3.6 percent.

Council Member Berman inquired whether Staff had a multiyear plan to align fees with the proper recovery levels.

Mr. Rossmann responded yes. The City should not be charging all the fees, but a discussion of which fees to eliminate would be lengthy.

Council Member Berman asked if some fees would be adjusted more than 3.6 percent in the FY 2016 Proposed Budget.

Mr. Rossmann answered yes. Some fees would be new and some would have a higher change.

Council Member Berman encouraged Staff to present in the FY 2016 Proposed Budget any fees that obviously needed changing.

Mayor Holman recalled that Staff assured the Council in 2014 that some fees would be addressed in the FY 2016 Proposed Budget. One was the Alma Plaza Community Room, and the other was the return of low-income community garden fees. She did not find either one of those fees on the list. She hoped they would be addressed in the FY 2016 Proposed Budget.

Mr. Rossmann explained that the issue of the Alma Plaza Community Room was presented to the Policy and Services Committee. The Finance Committee could propose a subsidy for community gardeners.

Mayor Holman requested clarification of the Alma Plaza Community Room.

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Mr. Rossmann advised that Staff wished to receive Council feedback regarding the draft policy before returning to the Policy and Services Committee to discuss free rental rooms.

Mr. Keene reported the Alma Plaza Community Room would return to the Policy and Services Committee for further discussion.

Council Member Scharff recalled the Policy and Services Committee making a decision regarding the Alma Plaza Community Room.

Mr. De Geus recalled a long discussion about the Alma Plaza Community Room at the Policy and Services Committee. Staff recommended a fee for private use of the room. Public use of the room would be free through a co-sponsorship policy. The Policy and Services Committee approved the existing policies unanimously.

Council Member Scharff agreed. Due to no change in policy, there was no need for Council action.

Mayor Holman stated that should be reflected in the fee schedule.

Mr. Rossmann referred to the Policy and Services Committee discussion outlined on Packet Page 16 regarding a need for Staff to return to the Policy and Services Committee.

Mayor Holman expressed concern about impact fees. In a prior meeting, the consultant stated the City's impact fees were low. Delaying changes to impact fees to FY 2017 would be detrimental as the economy and development were growing at the current time.

Mr. Keene noted the report stated no later than FY2017. Staff shared Mayor Holman's concern.

Hillary Gitelman, Planning and Community Environment Director, clarified that the section of the Staff Report referred to user fees. It was not specific to impact fees, which Staff considered quite separate. The study of user fees was concluding, and Staff hoped to present the initial results to the Finance Committee after the budget process. Staff could work through the user fees over the summer and fall and be prepared for the next budget cycle. A nexus study was required for those fees not examined in the process in 2014. A housing nexus study was underway. For FY 2016, Staff proposed funds to complete a nexus study for transportation impact fees.

Mayor Holman asked if a study of park impact fees had been funded.

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Ms. Gitelman did not schedule a review of park impact fees and did not know if that was included in the 2014 study.

Mayor Holman did not believe impact fees adjustments would be included in the FY 2016 Proposed Budget.

Ms. Gitelman concurred. Staff needed a nexus study prior to presenting increases to the Council.

Mayor Holman stated the City's impact fees were low in comparison to other communities. She inquired whether the Council could make incremental adjustments.

Ms. Gitelman responded no. A nexus study was needed for any changes. The current housing fee was comparable to other jurisdictions, but it could increase quite a bit based on conclusions of the nexus study.

Mayor Holman asked if the Council could set a dollar amount for appeals of Planning and Community Environment matters. She was concerned that the amount of the fee would be a barrier to filing appeals.

Mr. Rossmann replied yes.

Vice Mayor Schmid noted the fee schedule showed a range for some fees, particularly Community Services fees. He inquired about the Council making decisions based on wide ranges.

Mr. Rossmann explained that fees for Community Services programs were guided by a separate policy, adopted in 2007. Staff planned to review the Community Services Department Class Cost Recovery Policy after the broader policy was adopted. The Community Services Department reviewed the cost for providing classes and demand for classes and attempted to maintain the same cost recovery level or increased fees based upon the policy

Vice Mayor Schmid felt it was important for the Council to explain increasing fees. A description would be helpful.

Council Member Wolbach agreed the Council should understand if people were aware of programs and discounts and scholarships. With respect to the City Manager waiving fees, maybe such an item could be placed on the Consent Calendar if the matter was not time sensitive.

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Special Orders of the Day

2. Selection of Applicants to Interview on April 15, 2015 for the Human Relations Commission, the Public Art Commission and the Utilities Advisory Commission.

Mayor Holman noted the Council had ballots for each Board and Commission.

MOTION: Vice Mayor Schmid moved, seconded by Council Member Wolbach to interview all candidates for the Human Relations Commission, the Public Art Commission, and the Utilities Advisor Commission.

MOTION PASSED: 6-1 Scharff no, DuBois, Kniss absent

City Manager Comments

James Keene, City Manager, announced the City recognized April 2 as Everyone Matters Day which focused on respect and acceptance of everyone without judgment.

Mayor Holman read the Everyone Matters Proclamation into the record.

Mr. Keene noted author Mike Lydon would appear at Mitchell Park Library on April 7, 2015 to discuss his book, *Tactical Urbanism*. On April 1, 2015, Governor Brown announced a mandatory statewide reduction of water usage by 25 percent. Staff would draft implementation plans to reduce City and community water use for Council approval. On May 3, 2015, the Council would consider a Resolution implementing water use restrictions.

Council Member Wolbach asked if the water reduction amount for the City of Palo Alto would be determined by the City's or Santa Clara County Water District's or San Francisco Public Utilities' conservation efforts.

Mr. Keene suggested the City would not be considered as part of the Santa Clara County Water District. The City had always been proactive in planning for future possibilities, and that had served the community well. Staff would present the Urban Forest Master Plan for Council action in the next few months. In that discussion, the Council could revisit landscaping plans for the City.

Oral Communications

Andy Poggio believed the City should not base water rationing on a percentage reduction compared to historic consumption. That method rewarded people who wasted water and punished people who had conserved

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water. He proposed the City allocate water usage. A single-family house would receive one allocation for people and another for landscape. If consumption met or fell below the allocation, then the household would pay regular rates. If consumption was above the allocation, then the household would pay a higher rate.

Ruth Lowy noticed the new extension of sidewalks into California Avenue reduced the travel area for bicyclists. She requested the City measure the roadway to ensure it was sufficiently wide for bicyclists.

James Keene, City Manager, reported the State Water Control Board would perform an agency-by-agency review based upon water usage numbers provided by agencies. The State Water Control Board would then set the water reduction target for each agency.

Minutes Approval

3. January 20, 2015, February 9, 2015, February 17, 2015

MOTION: Vice Mayor Schmid moved, seconded by Council Member Kniss to approve the Minutes of January 20 and February 8 and 17, 2015.

MOTION PASSED: 8-0-1 DuBois absent, Scharff abstaining

Consent Calendar

Mayor Holman advised that the usual procedure was to receive public comment prior to entertaining a Motion; however, any Motion to remove an item from the Consent Calendar could be informative for the public.

MOTION: Council Member Burt moved, second by Vice Mayor Schmid, third by Council Member Filseth to pull Agenda Item Number 15—Appeal of the Planning and Community Environment Director's Architectural Review Approval of a 31,407 s.f., Four Story, Mixed Use Building With Parking Facilities on Two Subterranean Levels Requested by Ken Hayes Architects, Inc. on Behalf of Kipling Post LP to Replace Two One-story Commercial/Retail Buildings on an 11,000 s.f. Site in the Downtown Commercial (CD-C (GF)(P)) Zone District Located at 429 University Avenue, to be heard on May 4, 2015.

Mayor Holman suggested members of the public wishing to address Agenda Item Number 15 make their comments on May 4, 2015, when the Council would hear the appeal. However, public comment for Agenda Item Number 15 would be heard in the current meeting.

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Council Member Filseth inquired whether the Motion had to include the date to which an item was continued.

Mayor Holman responded no.

Stuart Welte, Architect for the Applicant, spoke regarding Agenda Item Number 11. He and Steve Henry were present if the Council had questions regarding the project.

Susan Hyder spoke regarding Agenda Item Number 15. The community had always had balance and character in architectural styles. Too many modern buildings had offset the balance and character of Downtown.

Gregory Klingsporn, Attorney for the Applicant, spoke regarding Agenda Item Number 15. He requested the Council provide some rationale for allowing the appeal to proceed. Staff, the Architectural Review Board (ARB), and the Planning Director indicated the project complied with Zoning Ordinances and City policies.

Michael Harbor, Appellant, spoke regarding Agenda Item Number 15. The building was not compatible in size, scope, and architectural detail with the surrounding area. He thanked the Council for allowing a public hearing of the matter.

Ken Hays, Hays Group Architects, spoke regarding Agenda Item Number 15. He asked the Council to support the ARB's recommendation and the Planning Director's approval of the project. The ARB held multiple hearings over 15 months. The design of the project changed significantly in response to comments from the public and the ARB. The project complied with the City's height ordinance. The façade rhythm was consistent with adjacent building patterns. The Downtown Urban Design Guidelines and the South of Forest Avenue 2 (SOFA) Guidelines stated architects should not mimic prevalent architectural styles. The approved project provided five more parking spaces than required. While the retail space in the project was less than previously provided, it was not lost.

Jaime Wong, Applicant, spoke regarding Agenda Item Number 15. It was unfair of the Council not to allow a building height of 50 feet, not to allow the use of Transfer of Development Rights (TDR), to allow a disgruntled neighbor to choose the style of the building, and to require the project to solve existing traffic problems. He urged the Council to support the ARB and Planning Director's approval of the project.

Timur Bilir spoke regarding Agenda Item Number 15. This type of building solved many aspects of the lack of office space, parking, and housing. He

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urged the Council to support the project. As a modern building, it would have more efficient construction methods.

Sam Arsan, Arsan Realty, spoke regarding Agenda Item Number 15. The project complied with all requirements. The owner made every effort to accommodate suggestions of the ARB. He urged the Council to approve the project.

Elizabeth Wong, Applicant, spoke regarding Agenda Item Number 15. The Appellant leased his property on Kipling Street as office space rather than retail space. Those commercial tenants were major contributors to the traffic and parking problems about which the Appellant complained. Several architectural styles coexisted with modern buildings on University Avenue.

Cecilia Hiraoka spoke regarding Agenda Item Number 15. The ARB and Planning Director's approval indicated the project met all requirements of the City. The Appellant was wasting valuable City resources by filing the appeal.

Elaine Meyer spoke regarding Agenda Item Number 15. The project offended and inconvenienced neighbors, exacerbated the parking shortage, and was incompatible with the street.

Andrew Wong spoke regarding Agenda Item Number 15. The project balanced the needs of City residents and businesses, improved retail space, addressed the City's need for housing, and offered more parking than required by the Code. The architecture of the building was consistent with the existing commercial space and the existing building.

John Hanna spoke regarding Agenda Item Number 15. Palo Alto architecture was eclectic. Removing the item from the Consent Calendar provided a bad message. The Council should consider the broader implications of the project.

Herb Borock spoke regarding Agenda Item Number 5. The City Manager previously stated that the water grant project would not proceed until questions were resolved. The Director of Community Services stated the item would not proceed until the City had talked with stakeholders. He and Ms. Renzel had not been contacted to comment as stakeholders; yet, the item was on the Agenda. The Staff Report indicated the schedule for utilizing funds had not been developed and grant funding must be utilized by July 2016. The agreement indicated the grantee should complete grant tasks by July 31, 2015.

Mayor Holman asked if Staff wished to comment.

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Molly Stump, City Attorney, reported the City's review process was overseen by the ARB and culminated in a decision by the Planning Director. City law allowed an appeal of the Planning Director's decision. The Council was the appropriate final body on whether design findings could be made. By law, the item was placed on the Consent Calendar, and the Planning Director's approval could be approved by the Council passing it on consent. With three votes, the Council could remove the item from the Consent Calendar and hear the appeal. The Council had discretion to apply its judgment, weigh the evidence before it, and decide on the matter. The Applicant's attorney requested the Council preview some concerns. The City's process allowed the Mayor to set the matter for hearing on the night it was removed from the Consent Calendar or to select another night for a hearing. In anticipation of the Council removing the item from the Consent Calendar, the Mayor consulted Staff and announced the item would be heard on May 4, 2015. At that time, the Council could voice its concerns. All findings to approve the project were available for Council Member comments.

Mayor Holman requested the City Manager respond to Mr. Borock's comments.

James Keene, City Manager, advised that the original concern was use of the grant related to potential environmental impacts. Given that the amount was small and being used for a completely different purpose, Staff was satisfied that they had exercised responsibility in proceeding with the project and in responding to specific concerns raised before the Council.

Mayor Holman noted Mr. Borock's concern regarding conflicting dates.

Rob De Geus, Community Services Director, would research the two dates and provide the Council with information.

Mr. Keene recommended the Council err on the side of expediency as the earlier date was July 31, 2015. Even with Council authority, Staff would not proceed with any project that did not comply with requirements.

Mayor Holman inquired about the Council and public receiving notice that the timeline had been rectified.

Mr. Keene would provide a public email to the Council.

Council Member Wolbach encouraged Staff to contact the two stakeholders if they had not already done so.

Mr. Keene would do so. Staff utilized their judgment to define stakeholders as the people who originally raised the substantive issue.

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MOTION: Vice Mayor Schmid moved, seconded by Council Member Kniss to approve Agenda Item Numbers 4-14, 16.

4. Approve and Authorize the City Manager to Execute a Construction Contract with Cal Electro Inc. in the Amount of \$514,000 for the Electric Underground Rebuild and Re-conductor Project, Phase III Along and Near (A) San Antonio Road Between East Charleston and Middlefield Roads and, (B) Middlefield Road Between East Charleston and East Meadow Drive.
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13. Confirmation of Appointment of Suzanne Mason as Assistant City Manager and Approval of Employment Agreement.
14. Adoption of a Contract Amendment with Val Security and a Budget Amendment Ordinance 5317 entitled "Budget Amendment Ordinance of the Council of the City of Palo Alto in the Amount of \$175,000 to Increase the Project Safety Net Fund and Decrease the Stanford Medical Center Development Agreement Fund."
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MOTION PASSED FOR AGENDA ITEM NUMBERS 4-14, 16: 8-0 DuBois absent

Mr. Keene reported the Council affirmed appointment of Suzanne Mason as Assistant City Manager. The City Charter required Council affirmation of many high-level Staff appointments.

Suzanne Mason was honored to have been selected as Assistant City Manager and looked forward to working with the Council, Staff, and residents. She was committed to working to preserve and improve the high quality of life City residents knew and expected. For more than 30 years, she had worked in varied roles in local government. She looked forward to living and working in Palo Alto for years to come.

Action Items

17. TEFRA HEARING: Regarding Conduit Financing for the Stevenson House Project, Located at 455 East Charleston Road, Palo Alto, and

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Adoption of a Resolution 9502 entitled "Resolution of the Council of the City of Palo Alto Approving the Issuance of Revenue Bonds by the California Municipal Finance Authority for the Purpose of Financing the Acquisition and Rehabilitation of a Multifamily Rental Housing Facility.

James Keene, City Manager, reported the City filled a routine and perfunctory role related to allowing public comment regarding conduit financing. Vice Mayor Schmid's question regarding affordable senior rental housing would be addressed at the April 20, 2015 Council meeting.

Public Hearing opened at 8:06 P.M.

Phyllis Cassel, Rehabilitation Task Force Chair, requested the Council approve issuance of bonds.

Jill Harris did not understand how the acquisition would be handled. Residents of Stevenson House were unsettled by the loss of the Executive Director and staff. Stevenson House was zoned for nonprofit while the management company was a for-profit entity.

Public Hearing closed at 8:09 P.M.

Molly Stump, City Attorney, advised that a complex financial vehicle was used to finance rehabilitation of low-income senior housing. Perhaps Ms. Cassel could provide more tactical information. Staff was satisfied there was no concern regarding noncompliance with zoning.

Joe Saccio, Administrative Services Assistant Director, suggested a representative of the conduit financing agency clarify acquisition.

Ben Barker, California Municipal Finance Authority, explained that the acquisition and rehabilitation was simply restructuring the ownership entity in order to apply for tax credits. The project would continue to be held with the same nonprofit entity.

MOTION: Council Member Scharff moved, seconded by Council Member Kniss to adopt a resolution approving the issuance of the bonds by the California Municipal Finance Authority (CMFA) for the benefit of Palo Alto Senior Housing Project, Inc. Stevenson House LP (Borrower).

Council Member Scharff recalled the Council had previously discussed the Stevenson House Project, and asked colleagues to approve the project again.

Council Member Kniss stated Stevenson House had been a good example of low-income housing for many years. Supporting it was important.

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Vice Mayor Schmid believed Stevenson House was an important element in the City's dedication to low-income senior housing. The item allowed the public to comment on the project. He looked forward to the Council discussion on April 20, 2015.

MOTION PASSED: 8-0 DuBois absent

18. City Council Direction Regarding: (1) Parameters of an Interim Ordinance to Prohibit Conversion of Ground Floor Retail and Services to Other Uses, and (2) Subsequent Steps to Establish Zoning Regulations to Preserve and Promote Active Ground Floor Uses in the City's Commercial Areas.

Hillary Gitelman, Planning and Community Environment Director, reported the issue was first raised on March 2, 2015 in the Council's discussion of metering the pace of office development. The Council raised the concept of an urgency ordinance to cease temporarily the conversion of retail space to office use. Staff sought Council direction regarding parameters of an urgency ordinance and subsequent steps to examine and rectify zoning provisions. Data from the Congestion Management Plan (CMP) demonstrated a net loss of approximately 70,000 square feet of retail from 2008 to 2015. Mr. Bob Moss provided data regarding retail space in the El Camino Real Corridor since 1992. Mr. Moss' data indicated a 6 percent decrease in retail use, a 3 percent decrease in automotive use, and an increase of approximately 1 percent in restaurant use along the El Camino Real Corridor. City Ordinances contained a number of ground-floor retail protections. An urgency or interim ordinance was a short-term measure intended to be effective while longer-term solutions were developed. It required specific findings and a supermajority vote. It did not have to be reviewed by the Planning and Transportation Commission (PTC). It could be effective for a period as short as 45 days, with an option to extend it. Staff identified eight parameters on which they sought Council input. Staff sought Council direction to create an urgency ordinance that would prohibit existing retail uses in all commercial zones in the City from converting to office use or other uses not defined as retail. Staff suggested extending those protections to eating and drinking uses, personal services, hotels, theaters, and travel agencies. Staff sought Council input regarding the prohibition applying to uses operating as of March 2, 2015 and for which no discretionary application involving a change of use had been submitted. Staff believed an urgency ordinance should establish an appeal to the Council in cases of financial hardships or if an applicant showed the facility was unsuited for successful retail use. An ordinance should state existing retail services and other protected uses could be removed and replaced as long as they were reduced only by the minimum of square footage necessary

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to accommodate access to upper floors or below-grade parking. Staff suggested grandfathered uses that were legal and nonconforming not be subject to protection provisions in the ordinance. Staff suggested the use of basic definitions of retail services and other protected uses contained in the Municipal Code. Staff suggested the ordinance be effective for an initial period of 45 days with an option to extend the ordinance after that period. The ordinance would not affect the ability to change from one desired use to another. Staff suggested the ordinance not alter the site-specific characteristics of Planned Community Zoning Districts or adopted conditions of approval. Staff requested Council feedback regarding whether to continue all uses in districts which permitted other ground-floor uses with Conditional Use Permits. Staff suggested the ordinance apply to discretionary applications received after March 2, 2015. Currently three applications would have to be analyzed for applicability of the ordinance as adopted. In addition to adopting an urgency ordinance, Staff suggested adoption of a traditional ordinance which would sunset when permanent controls became effective. Staff requested Council direction to proceed immediately with consideration of permanent zoning changes. Following discussion of interim measures, Staff hoped to prepare and present an urgency ordinance and a traditional ordinance reflecting Council direction. In addition, Staff would present permanent zoning changes affecting ground-floor retail in the California Avenue area and complete an analysis of retail trends in Downtown.

Council Member Scharff noted two issues for Council discussion: the urgency ordinance and next steps.

Ms. Gitelman provided suggested Motions for an urgency ordinance and for next steps.

Council Member Scharff recommended the Council discuss and act on an urgency ordinance prior to discussing next steps.

Mayor Holman indicated Council Members should inquire regarding an urgency ordinance.

Council Member Kniss had general questions, and asked if the Council should address the urgency ordinance.

Council Member Scharff felt the Council should address and act on the urgency ordinance separately from next steps.

Mayor Holman requested Council Member Kniss proceed with her questions.

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Council Member Kniss inquired whether the loss of retail shown in the CMP Report applied to the City as a whole.

Ms. Gitelman responded yes. The net loss for the longer period was less than the net loss since the recession.

Council Member Kniss asked if the loss likely occurred in Downtown or elsewhere.

Ms. Gitelman reported Staff could analyze the CMP data to determine in general in which areas the losses and gains occurred. Staff did not have sufficient time to perform that analysis prior to the meeting.

Council Member Kniss requested a rough estimate of whether losses occurred mostly in Downtown or mostly along California Avenue.

Ms. Gitelman would need to analyze the data prior to responding. Ground-floor retail protections applied to most of the City. The area of Downtown outside the Ground-Floor (GF) Combining District was not subject to ground-floor protections.

Council Member Kniss questioned the loss of retail space while sales tax revenue increased.

Ms. Gitelman could only speculate that the strength of retail districts were responsible for increased sales tax revenue.

Council Member Kniss asked if formula retail would be determined by a certain number within a certain area or the usual formula retail.

Ms. Gitelman advised that the Council would need to consider that when discussing a permanent ordinance.

Council Member Kniss felt restaurants had a limited cycle for success. Few restaurants remained successful for a long period of time.

Council Member Burt noted Mr. Moss' data indicated retail decreased by 6 percent. Retail appeared to have decreased by 40-plus percent. Without the increase in hotel/motel, the reduction in overall retail would have been more than 6 percent. He inquired about potential retail loss in pipeline projects.

Ms. Gitelman had identified three projects in the pipeline. The 429 University Avenue project represented a retail loss of approximately 1,300 square feet. The net change at the Compadre site would be a loss of 2,500

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square feet. The net change at 3045 Park Boulevard would be approximately 18,000 square feet.

Council Member Burt asked if that was the totality of pipeline projects.

Ms. Gitelman indicated that was the totality of pipeline projects for pending entitlements. Other ministerial permits could be pending at the Development Center and not captured on the list of projects.

Council Member Burt referred to the 2001 Council Minutes when a financial hardship exemption was specifically not recommended. He asked why Staff recommended a financial hardship exemption.

Ms. Gitelman did not make a distinction between financial hardship and viability of a retail use. There should be some type of exemption in cases where retail was not viable in order to avoid a takings challenge.

Council Member Burt wanted to determine whether viability was defined by \$5 per square foot or normal rent for retail. He inquired whether one project could claim a 25 percent reduction in retail for demolition and for below-grade parking with upstairs access.

Amy French, Chief Building Official, reported there was no restriction specific to that scenario. If a building was not currently providing below-grade parking and additional uses were proposed and parking was required for those additional uses, then no language prevented ground-floor area from being utilized for a garage ramp or a staircase or an elevator.

Council Member Burt asked if a project could do both.

Ms. French replied yes.

Council Member Burt inquired whether a building utilizing both indoor and outdoor space was required to replace retail space equivalent to the amount of indoor space only. He inquired whether the definition of replacement ground-floor retail excluded egress to downstairs parking as well as the 25 percent office or only the outdoor space.

Ms. French advised that the California Avenue area did not have the same 25 percent restriction as the Downtown area.

Ms. Gitelman clarified that in general gross square footage was utilized. Outdoor space that was not covered was not included in gross square footage.

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Council Member Burt asked if businesses that historically used basement space for retail storage had paid into the Downtown Parking Assessment District based on the basement square footage.

Ms. Gitelman indicated the businesses paid into the Downtown Parking Assessment District based on the use of the basement when the Assessment District was established. If the basement was used for storage, the business was not assessed for it.

Council Member Burt questioned whether a business was assessed for the basement storage space when it converted to office.

Ms. Gitelman explained that records often did not clearly indicate where the assessed square footage was located in the building. If sufficient footage was assessed, Staff assumed a bit of the square footage was located in the basement.

Council Member Burt asked if the Council could require a legally nonconforming office use to revert to retail upon a change in tenancy.

Molly Stump, City Attorney, wanted to review that and determine whether there was a State law component that might limit the Council's ability to do that. If the Council was interested in that, it could direct Staff to do so to the extent allowed by law.

Council Member Filseth asked if legal restrictions governed when an ordinance could be applied to a project.

Ms. Stump answered yes. Land use law stated that rights to develop vested or became an ownership of the applicant only upon final approval, pulling a building permit and breaking ground. The Council's longtime tradition had been to allow pipeline projects to proceed under existing rules even though that was not legally required. In the previous two years, the Council had required pipeline projects conform to new requirements.

Council Member Scharff asked if a demolished building which had both retail and other uses had to be replaced with all retail. If there was a requirement for ground-floor retail, then the amount of ground-floor retail prior to demolition seemed to be irrelevant. He was confused as to how that worked.

Ms. French advised that districts had different requirements. The Service Commercial (CS) Zone on El Camino Real allowed demolition of retail space and replacement with other uses.

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Council Member Scharff asked if an urgency ordinance would require replacement with retail.

Ms. Gitelman explained that the purpose of the urgency ordinance would be to preserve retail use. If retail space was removed, then it had to be replaced.

Council Member Scharff assumed that was all ground-floor retail on the ground floor with the exception of 25 percent for office.

Ms. Gitelman proposed an urgency ordinance that would not allow the 25 percent office exception. It would require preservation of ground-floor retail until the City reexamined exemptions such as the 25 percent exception for office.

Council Member Scharff inquired about uses that could replace retail space in a demolished building.

Ms. Gitelman advised that a project would have to replace the retail use with the exception of the minimum amount of space required to access the floors above and below.

Council Member Scharff asked if a demolished building that formerly had 25 percent office could replace the 25 percent office with 25 percent office or all retail.

Ms. Gitelman indicated that depended on whether office was a permitted use on the ground floor in that district. If office was permitted in that district, it could return.

Council Member Scharff inquired about office not being a permitted use.

Ms. Gitelman stated office could not be replaced with office.

Council Member Scharff asked where the 25 percent office was allowed.

Ms. Gitelman explained that the 25 percent office was allowed on the ground floor in the GF Combining District Downtown. Under the proposed urgency ordinance, it would not be allowed.

Council Member Scharff inquired whether University Avenue was located in the GF District.

Ms. Gitelman replied yes.

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Council Member Scharff asked if 25 percent office was allowed on the ground floor along University Avenue.

Ms. Gitelman answered yes.

Ms. French clarified that 25 percent office was allowed in the rear of the building, not the front-facing part of the building.

Council Member Scharff inquired whether that provision was contained in the ordinance as well.

Ms. French reported it was contained in the current ordinance.

Council Member Scharff asked if the 25 percent office applied to side streets as well as California Avenue.

Ms. French noted some side streets were subject to the GF overlay.

Council Member Scharff asked if the Wells Fargo Building Downtown predated the ordinance.

Ms. French responded yes. A Conditional Use Permit was required for ground-floor financial services in the GF Zone.

Council Member Scharff asked if a Conditional Use Permit had to be renewed.

Ms. French explained that some Conditional Use Permits ran with the land. If the use did not change, then the Conditional Use Permit continued.

Council Member Scharff asked if the Council could eliminate existing Conditional Use Permits. He wanted to know if the Council could force the Wells Fargo Building to provide retail space.

Ms. Gitelman did not believe the Council could eliminate a use that had been granted. The Conditional Use Permit would cease only if the building ceased to use it.

Council Member Scharff suggested the Council could amortize it.

Ms. Gitelman did not believe the Council could amortize a Conditional Use Permit. Staff would examine whether the City could eliminate a right that was granted in the form of a use permit.

Council Member Scharff noted Staff suggested the three pipeline projects be grandfathered, but the Council had discretion over that. He inquired about

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reasons for implementing an exception for retail that was not successful or feasible. If it was existing retail, then it clearly had been feasible.

Ms. Gitelman reported that in an economic downturn when space was vacant for years, the property owner should be able to demonstrate that the retail space was no longer viable.

Council Member Scharff believed that retail viability was based on the amount of rent. He probably would not support such an exception.

Ms. Stump clarified that such an exception in the urgency ordinance would allow the urgency ordinance to survive a facial challenge on a takings claim. Having an exception process did not predict that the exception could be used successfully. Staff recommended the Council maintain control over that.

Council Member Scharff inquired whether the Council or Staff would handle an exception. He would not support Staff action on an exception.

Ms. Stump advised that Staff recommended it be presented to the Council.

Council Member Wolbach inquired whether the Council could grant a Conditional Use Permit that would expire in two, five, or ten years in the case of a retail space not being successful in an economic downturn.

Ms. Gitelman could review that in the context of a long-term ordinance. She would not do that in an urgency ordinance. The community had been interested in reexamining ground-floor uses allowed by use permit in some shopping districts. In that context, Staff could consider the duration of entitlements.

Council Member Wolbach questioned whether the Council would want to permit the conversion of hotels to office and remove hotels from the list of possible uses that could be swapped back and forth. He inquired about the consultants mentioned on Page 6 of the Staff Report.

Ms. Gitelman reported that the consultants were Dyett and Bhatia and the land economics firm EPS. They were reviewing retail trends, including basement conversion, and residential capacity in Downtown.

Council Member Wolbach was open to a discussion of formula retail for the long term.

Council Member Berman inquired whether the findings needed for an urgency ordinance were broad.

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Ms. Stump reported in drafting those findings Staff would likely focus on public welfare and issues such as walkability and livability. Staff believed they could draft findings to support an urgency ordinance. In the event someone disagreed with the City, Staff recommended the Council begin the traditional ordinance process simultaneously.

Ms. Gitelman noted Staff included a number of ordinances from the 2001 period, one of which was an urgency ordinance that contained the type of findings the Council would have to make.

Mayor Holman requested an example that fit the language of Number 5 on Packet Page 1489.

Ms. Gitelman offered a hypothetical example of a retail use located on a residential street because the retail use had always been located there. The retail use was considered legal and nonconforming. In the urgency ordinance, the Council would not want to mandate that the use would remain. Because the retail use was nonconforming, it should be allowed to leave if it chose to leave.

Mayor Holman asked how that was different from any number of locations where retail was not an allowed use, but it had been located there forever. She asked why a nonconforming retail use should be allowed to leave.

Ms. Gitelman explained that if the Zoning Ordinance did not allow retail in a given location, it should not protect retail that happened to be there as a vestigial artifact of the past.

Mayor Holman asked if Staff wanted the Council to discuss boundaries in the second ordinance.

Ms. Gitelman did not believe the Council had time to discuss that in the current meeting. Staff could return for Council direction regarding the different districts.

Mayor Holman noted that retaining the use also retained the square footage. She questioned the intent of that and the language for it.

Ms. Gitelman understood the Council's intent was to preserve existing ground-floor retail. If the Council adopted an urgency ordinance on a temporary basis, it would prevent that ground-floor space from converting to 25 percent office. That would give Staff time to reexamine whether that was an appropriate standard in Downtown.

Mayor Holman felt the Council should clarify that at the appropriate time.

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Susan Graf stated the Council did not understand what made a retail business successful. Success was not based on a low cost per square foot. Successful retail needed demographics, a concentrated diverse retail mix, and a strong anchor whether housing or a hotel.

Robert Moss suggested adding El Camino Real as a commercial area that needed protections. His data did not include the area north of Page Mill Road, and was based on the area of the ground-floor buildings. Gross floor area reduction in vacancies was down because 3850 El Camino was larger than the other building. The Council should initially prevent conversion of ground-floor retail to office. The 45-day period for an urgency ordinance could be extended if the Council could not draft a traditional ordinance. Jessica Roth asked the Council to continue efforts to preserve Downtown areas. She wanted to maintain the uniqueness of California Avenue by limiting the number of formula-operated businesses and encouraging alternative retail. Other cities had successfully limited the number of formula retail businesses to 5-12 locations.

Jessica Roth asked the Council to continue efforts to preserve Downtown areas. She wanted to maintain the uniqueness of California Avenue by limiting the number of formula-operated businesses and encouraging alternative retail. Other cities had successfully limited the number of formula retail businesses to 5-12 locations.

Judy Kleinberg suggested the Council use incredible care in extending commercial zones and the ground-floor overlay. The more retail was diluted, the harder it was to create a pedestrian-friendly commercial zone. The one common theme from California Avenue businesses was the need for a parking garage.

Jeff Levinsky reported Palo Alto Neighborhoods (PAN) encouraged the Council to preserve retail throughout the City. The Council should enact all retail rather than solely ground-floor retail. The Council should require retail space equivalent to space for ramps, stairwells, and elevators be added elsewhere in the building. The 25 percent exemption for ground-floor office should end. He encouraged the Council to eliminate fake retail.

Stephanie Munoz stated retail needed protection because offices made more money for the owner. If permission for ground-floor office was granted for a building and the building was demolished, the permission should be rescinded. The Council should reduce or remove the replacement of retail with office.

Mayor Holman requested Council Members speak to the interim ordinance.

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Vice Mayor Schmid noted in 2009 the Council eased limits on retail in the Downtown District. Between 2008 and 2014, the City lost 70,000 square feet of retail space. At the micro level, the Council made three decisions in an attempt to protect retail through Planned Community (PC) Zones. The term retail was defined as the sale of goods in small quantities to the ultimate consumers. The nature of a retail block changed over time. The services element became more important when household income reached \$70,000-\$75,000. He questioned whether retail included private clubs, private banks, classes, conference centers, and specialized professional services. He suggested the Council review the definition of retail as the 1964 Civil Rights Act had a better definition of retail. He encouraged Council Members to consider carefully the definition of retail and attempt to capture the types of businesses they wanted to protect.

Council Member Scharff felt the Council needed to reach consensus on an interim ordinance. He would not grandfather in legal, nonconforming uses or the pipeline projects.

MOTION: Council Member Scharff moved, seconded by Council Member Burt to direct Staff to prepare and return to Council with an urgency ordinance, including at a minimum the following:

1. A Citywide prohibition on converting existing ground floor retail uses to other uses until existing retail protections can be reviewed and revised as needed. Extend the same protections to eating and drinking uses, personal services, hotels, theatres, and travel agencies (permitted ground floor uses in the Downtown GF Combining District);
2. Apply the prohibition to those retail services operating as of March 2, 2015 and for which no discretionary application involving a change of use has been submitted to the City by March 2, 2015;
3. Include within the ordinance an appeal to the City Council in cases of financial hardship or showing that the facility is unsuited for successful retail use;
4. Allow existing retail service facilities to be demolished and rebuilt provided that the retail square footage is only reduced by the minimum amount needed to provide access to any new upper floors and/or lower level parking;
5. Retail services that are grandfathered in as legal nonconforming uses shall not be protected or required to remain;

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6. The Municipal Code's definition of retail services and the other uses cited above shall be continued;
7. The ordinance will be effective for an initial 45 days with an option to extend if the urgency continues. Staff is also directed to prepare a traditional ordinance for consideration by the Planning and Transportation Commission and the City Council as a "backstop" to extend the interim measures until existing retail protections can be reviewed and revised as needed; and
8. Nothing in the ordinance shall alter requirements of site-specific Planned Community Zoning Ordinances or adopted conditions of approval. Also, nothing in the ordinance shall affect the need for a Conditional Use Permit for certain allowed uses where such requirements currently exist; although, use permit requirements and affected uses could be adjusted in the permanent ordinance that follows.

Council Member Scharff believed an urgency ordinance was important, because the City was losing retail. The City's Ordinances incorrectly zoned for retail use. One of the best ways to protect long-term businesses was to provide more retail spaces. He would like the Council to focus soon on retail boundaries for California Avenue and Downtown and then El Camino Real. An urgency ordinance was the first step in protecting retail and vibrancy. The Council should create opportunities for retail business to exist.

Council Member Burt felt a great deal of the loss of retail resulted from the City allowing other uses that commanded higher rents. Much of the Downtown periphery would be office uses without ground-floor retail requirements in that area. He asked if Conditional Use Permits in retail zones would be allowed under the interim ordinance.

Ms. Gitelman noted Number 8 of the Motion was not artfully stated. The Council could clarify whether it would like to allow permitted uses to continue or only ground-floor retail uses.

Council Member Burt asked if Ms. Gitelman meant whether the Council would allow additional conditional uses under the interim ordinance.

Ms. Gitelman answered yes. Perhaps the Council would clarify whether it would allow uses permitted by Conditional Use Permits to continue.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that conditional uses for ground floor retail areas are not permitted in retail districts during the interim ordinance.

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Council Member Burt did not believe the Council had considered the impact of a series of hotels driving out retail locations. He asked if any hotel projects were in the pipeline.

Ms. Gitelman responded no.

Council Member Burt suggested the Council consider mandating preservation of the amount of retail under the prior use for the long-term ordinance. He did not want Number 5 of the Motion to force out uses that were grandfathered in.

Council Member Scharff was unsure whether Council Member Burt's proposal would accomplish his purpose. He asked if deleting Number 5 would indicate that existing nonconforming uses could not change.

Council Member Burt replied no. Under the existing Motion, nonconforming retail uses would not be protected.

Council Member Scharff suggested Council Member Burt's language state that existing nonconforming retail uses would be protected. He asked if the Council would require those existing, nonconforming retail uses to remain.

Council Member Burt noted under the interim ordinance, all existing retail could not be converted. Number 5 exempted those from that.

Mayor Holman interpreted Council Member Scharff's comments to mean that grandfathered, legal, nonconforming retail services would be protected.

Council Member Burt questioned the need to state that when those uses were covered in the Motion, Number 5 carved out those uses.

Council Member Scharff understood that Number 5 would not allow a nonconforming retail use to change to a conforming use.

Council Member Burt concurred. The existing legal, nonconforming retail uses could close under the current market.

Council Member Scharff accepted deleting Number 5 from the Motion.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to delete Number 5 – retail services that are grandfathered in as legal non-conforming shall not be protected or required to remain, in the Motion.

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Ms. Gitelman was concerned that the Council was drafting a set of regulations that was inconsistent with Zoning Ordinances and Districts. The inconsistency could be resolved in the long-term ordinance.

Council Member Burt indicated an interim ordinance's purpose was to hold things as they were. It would prevent significant degradation of retail while the Council crafted a long-term ordinance. He questioned whether a pipeline application that had not been presented to a Board or Commission should be exempt from the interim ordinance.

Council Member Scharff requested Staff provide the status of those three pipeline projects.

Council Member Burt asked if the three pipeline projects had received Board or Commission approval.

Mayor Holman noted one of the pipeline projects was 429 University Avenue.

Council Member Burt noted that project had received approval.

Ms. French reported there had not been a hearing of the Compadre's site at 3877 El Camino Real. Many projects had gone through preliminary reviews, but had not gone through the entitlement process.

Council Member Burt asked if preliminary review was the same as review by a Board or Commission.

Ms. French explained that the Architectural Review Board (ARB) conducted preliminary review of designs.

Mayor Holman inquired whether the ARB had conducted preliminary reviews only of the Compadre's site.

Ms. French answered yes.

Council Member Burt asked if other projects which had undergone preliminary review resulted in a reduction of retail.

Ms. Gitelman clarified that the three projects had pending entitlement applications. That did include ARB preliminary review. An ARB preliminary review did not provide a project with entitlement.

Council Member Burt stated that three projects had received Board and Commission approval which constituted preliminary entitlement.

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Ms. French explained that an ARB preliminary review was similar to the Council's prescreening process. A formal application for ARB action was an actionable application. The Compadre's Project had submitted an actionable, formal application; however, the application had not been presented to the ARB. The ARB had not approved it.

Council Member Burt asked if there were three categories of projects: projects that had received some ARB screening; projects that had not received any ARB screening; and projects that had received a recommendation for preliminary approval.

Ms. Gitelman did not quantify or prepare a list of projects that had received preliminary architectural review, because that did not result in an entitlement.

Council Member Burt wanted to know if there were three categories, and which projects were in those categories. He asked if the three pipeline projects cited by Staff had received ARB approval.

Ms. Gitelman answered no. The three cited projects had pending applications for a planning entitlement. They either had been presented to or were destined for the ARB formal review process.

Council Member Burt asked if there were other projects in the pipeline that had not moved that far in the process.

Ms. Gitelman answered possibly. Staff did not present a list of preliminary ARB applications.

Council Member Burt questioned whether those other projects should be exempt from the ordinance.

Council Member Scharff stated they should not be exempt.

Ms. Gitelman advised that under the Motion those projects would not be exempt.

Council Member Burt agreed.

Council Member Scharff understood the Motion captured only the three pipeline projects.

Council Member Burt wanted to ensure the language reflected the Council's intentions. Number 2 of the Motion stated projects for which no discretionary application had been submitted. He asked if that language covered the three projects or potentially other projects.

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Ms. Gitelman reported the language referred to the three projects.

Council Member Burt clarified that the language did not refer to the larger set of projects.

Ms. Gitelman concurred. Those three projects were not the main point. The Council and Staff needed to move expeditiously, because a property owner could achieve a transition from retail to another use through a ministerial application. Those transitions could not be prevented prior to the date the Council adopted an urgency ordinance.

Mayor Holman asked if Council Member Scharff did not wish to exempt the three projects.

Council Member Scharff did want to exempt those three projects in the Motion. Personally, he opposed exempting them, but he did not believe the Council would support that.

Council Member Burt wanted to ensure that retail was predominantly retail while the Council considered long-term definitions and examples of retail. An interim definition of retail should state that retail was predominantly retail in an attempt to eliminate fake retail.

Council Member Scharff was unsure about the meaning of predominantly retail. He requested Staff comment on such a definition.

Ms. Gitelman reported the Municipal Code contained definitions for retail services, eating and drinking uses, personal services, hotels, theaters, and travel agencies. Those were all defined uses. The question was whether those were the correct defined uses for the current time.

Council Member Burt inquired whether "predominantly retail" would empower Staff to understand the Council's intent regarding fake retail.

Ms. Gitelman suggested language of "retail-like uses." That language would allow uses such as commercial recreation which did not meet the definition of retail and was not predominantly retail.

Council Member Burt was unsure whether "retail-like uses" captured the Council's intent.

Mayor Holman suggested amending the definition of retail services to "retail service means a use predominantly engaged in providing retail sales."

Council Member Burt concurred.

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Council Member Scharff asked if Staff accepted that language.

Ms. Gitelman answered yes. She questioned whether the Council wanted to include retail-like uses.

Council Member Scharff did want to include retail-like uses.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that retail service means a use predominantly engaged in providing retail sale and retail-like uses.

Council Member Filseth would support applying the urgency ordinance to projects at various stages in the pipeline. He agreed that an urgency ordinance should be simple. With respect to Number 4 in the Motion, access to upper and lower floors was a design issue. He was unclear why the Council should allow that exemption. He would be comfortable restoring the Downtown blocks that were eliminated from the ground-floor retail area in 2009. Perhaps that should be discussed in relation to a long-term ordinance. He was unclear how a 25 percent exemption for office supported protection of retail uses. It seemed to be an unnecessary complication, and he would support eliminating that exemption.

Council Member Burt asked if Council Member Filseth was referring to the interim or long-term ordinance.

Council Member Filseth felt that did not belong in the interim ordinance.

Council Member Kniss understood the Motion needed eight votes to pass.

Ms. Stump clarified that the urgency ordinance itself, which would be presented to the Council on May 11, 2015, would require eight votes to be adopted. In the current meeting, direction to Staff required only a five-vote majority.

Council Member Kniss estimated that none or only one emergency ordinance affecting the entire City had been enacted. She was somewhat troubled by the Council attempting a new concept; however, the discussion was helpful. She asked if the Motion should contain the findings for an urgency ordinance.

Ms. Stump responded no. The Council would direct Staff to compose those findings and present them to the Council. Just prior to Council Member Kniss joining the Council, the Council utilized the urgency procedure to remove some parking exceptions in Downtown.

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Council Member Kniss was aware of the urgency ordinance for Downtown; however, she stated Citywide. She asked if the urgency ordinance under discussion would affect the entire City.

Ms. Stump replied yes.

Council Member Kniss was comfortable with the direction of the Motion but not necessarily the final outcome. She inquired whether the Council would craft a long-term ordinance during the 45 days the urgency ordinance was effective.

Ms. Stump explained that an urgency ordinance would be effective immediately upon the Council's adoption and extend for 45 days.

Council Member Kniss noted an urgency ordinance could be extended from 45 days to a maximum of 22 months.

Ms. Stump concurred.

Council Member Kniss left the meeting at 10:00 P.M.

Council Member Wolbach questioned whether the urgency ordinance should require space for elevators or ramps to underground parking be offset by space for retail offices and storage located elsewhere in the building. If the Council did not wish to require that in the urgency ordinance, he suggested it be included in the long-term ordinance.

Council Member Scharff wanted to know where the offset retail space would be located in the building.

Council Member Wolbach explained that every retail and retail-like use required space for offices, storage, and restrooms in order to function. That type of space did not need to be located on the first floor or facing the street. A requirement to offset space for an elevator or ramp would allow the total retail space to remain the same. The original direction to Staff was to preserve and expand retail space. The Council should consider new locations for retail uses. Perhaps the existing, legal, nonconforming uses could provide some expansion for retail.

Vice Mayor Schmid noted the Municipal Code definition of retail specifically concerned sale of goods to final consumers. Number 1 of the Motion extended protections to a list of service items.

Ms. Gitelman indicated the definition of retail service should be "predominantly engaged in retail." The concept of retail-like uses should be added to Number 1 of the Motion.

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Mayor Holman concurred as the definition of retail-like uses was not contained in the current Code.

Vice Mayor Schmid asked if the purpose of including retail-like services was to include services as well as goods.

Ms. Gitelman responded yes.

Council Member Berman agreed with including retail-like services. He inquired about the definition of personal services.

Ms. French replied beauty shops; nail salons; day spas; barbers; self-service laundry; cleaning pickup stations; repair of shoes, clothing and accessories; quick printing and copying services; internet and other consumer electronic services; and film, data, and video processing shops. Art, dance, and music studios; fitness, gyms, martial arts, and yoga required a Conditional Use Permit.

Council Member Berman stated the Council had approved and identified funding for a parking garage on California Avenue; however, nothing had been done. That symbolized the Council's need to prioritize its and Staff's work. The Council continued to place work on Staff without concentrating on projects that would make a difference for the community.

Mayor Holman asked if retail-like uses would include plant nurseries and commercial recreation.

Ms. Gitelman would interpret retail-like in that manner; however, the Council could clarify it.

Mayor Holman suggested Staff include those in the urgency ordinance. She requested a clarification that no loss of retail meant no loss of retail square footage.

Ms. Gitelman advised that was the intention; although, retail uses involved some accessory activities that were not public facing. Staff could not guarantee that all square footage was utilized for retail sales.

Mayor Holman would accept those ancillary uses of retail space. She wanted to be clear that the 25 percent office unrelated to retail would not be allowed.

Ms. Gitelman indicated the proposed ordinance would prohibit conversion of ground-floor retail to any amount of office.

Mayor Holman referred to converting existing uses.

MINUTES

Ms. Gitelman reported that converting an existing protected use to another protected use would be allowed, because both uses were protected under the proposed ordinance.

Mayor Holman asked if that was stated.

Ms. Gitelman felt it was inherent in the concept.

Mayor Holman did not want to encourage the conversion of retail to restaurants.

Ms. Gitelman would appreciate the Council's clarification of that, because she interpreted the ordinance to protect the listed uses but to allow one listed use to convert to another.

Mayor Holman did not wish to allow more restaurants, especially in the Downtown area.

Council Member Burt suggested that topic be discussed in relation to the long-term ordinance.

Mayor Holman did not want restaurants to displace other retail.

Council Member Filseth inquired about the final disposition of the three pipeline projects.

Mayor Holman advised that the three projects would be exempt from the urgency ordinance.

Council Member Scharff would support an Amendment not to exempt them, but he did not believe the Council would support that.

Council Member Berman likely would not support not exempting the projects; however, he would want more information about the three projects.

Mayor Holman requested Staff provide additional information about the pipeline projects when the ordinance returned to the Council. The Council was aware of the 429 University Avenue Project.

MOTION AS AMENDED PASSED: 7-0 DuBois, Kniss absent

Mayor Holman requested Council Members discuss a long-term ordinance. She inquired whether Staff would present the urgency ordinance on May 11, 2015.

MINUTES

Ms. Gitelman answered yes. The Council was scheduled to discuss California Avenue retail on May 18. The long-term ordinance would be presented in June 2015. During the summer, Staff would complete an analysis of retail trends in Downtown.

Council Member Burt questioned whether the Council should discuss the long-term ordinance. He did not understand the apprehension regarding the legal standing for the interim ordinance and the need for a long-term ordinance. Perhaps the Council should further consider provisions for a long-term ordinance.

Ms. Stump reported the Council, at the end of 45 days, would need to adopt either a second urgency ordinance or a long-term ordinance. Staff had not fully vetted the timeline for a long-term ordinance.

Council Member Burt recalled that the 2001 Council adopted an interim ordinance and then continued it for a longer period of time. He did not believe the long-term ordinance was adopted until 2003.

Ms. Stump was not familiar with the timeline of actions taken in the early 2000s; however, that timeline was logical in terms of procedure.

Council Member Burt did not feel an urgency to provide Staff with guidance for a long-term ordinance in the current meeting. The Council should deliberate more and hear more from the community.

Ms. Stump explained that the long-term ordinance was a technical vehicle to provide an insurance policy in the event the urgency ordinance was challenged. Staff was not suggesting and would not propose that the Council move toward additional substantive changes.

Council Member Burt asked if the long-term ordinance would reflect the provisions of the urgency ordinance.

Ms. Stump would recommend that. That technique had been used in other cities.

Council Member Burt inquired whether a challenge would suspend the ordinance.

Ms. Stump indicated it would replace actions taken on an urgency basis with the same substantive requirements used through the regular process.

Council Member Burt clarified whether a potential legal challenge triggered the desire to have a long-term ordinance.

MINUTES

Ms. Stump responded yes.

Council Member Burt asked if a challenge would hold the urgency ordinance in abeyance until a ruling could be issued or would the urgency ordinance remain in place such that the Council could determine whether to adopt a long-term ordinance.

Ms. Stump stated that depended on a court ruling. Legal vehicles were available to launch a challenge quickly and to ask a court to intervene quickly.

Council Member Burt felt the Council could move quickly as well if necessary.

Mayor Holman clarified that the Council was utilizing an urgency ordinance because it did not require a second reading.

Ms. Stump added that an urgency ordinance did not require a second reading, review by the PTC, or 30 days to become effective.

Mayor Holman advised that Staff was suggesting provisions that would return as a long-term ordinance that required a majority vote and a second reading.

Ms. Gitelman reported that Staff would return as soon as possible with an interim ordinance based on the Council's direction. Once the interim ordinance was enacted, Staff would develop a long-term ordinance and request direction regarding permanent zoning controls. Based on prior Council direction, Staff would prioritize California Avenue.

Council Member Scharff believed the Council should adopt the urgency ordinance as the long-term ordinance and continue to work on that. Later the Council could adopt a second long-term ordinance to revise the first one.

MOTION: Council Member Scharff moved, seconded by Mayor Holman once the interim ordinance is in place, Staff is to bring forward the interim ordinance as a regular ordinance for Council adoption. Subsequently prioritize consideration of permanent retail protections starting with retail uses allowed on California Avenue and boundaries of the Retail (R) Combining District. Also prioritize an analysis of retail trends and desired adjustments to the Ground Floor (GF) Combining District in Downtown, followed by consideration of other commercial zones within the City.

Council Member Scharff wanted to extend the Retail Combining District to other areas of California Avenue.

MINUTES

Ms. Gitelman added that the Council would review the boundaries and the uses.

Council Member Scharff asked if the Council would review the boundaries for Downtown.

Ms. Gitelman answered yes, boundaries and uses.

Council Member Scharff inquired whether the pipeline project for Cambridge Avenue had been presented to the ARB.

Ms. Gitelman would not consider the project as having a pending entitlement application.

Council Member Scharff wanted to stop that project from building office space on the ground floor.

Ms. French indicated the building had contained personal service uses. It was mostly office.

Council Member Scharff requested language that would prevent that project from building office space on the ground floor. He wanted to place the GF and Retail (R) overlay on Cambridge Avenue.

Mayor Holman noted the Council had directed Staff to return with California Avenue on May 18, 2015. She wished to ensure the Motion did not delay that date. She asked if the Council could discuss boundary expansion during the California Avenue Agenda Item scheduled for May 18.

Ms. Gitelman expected to discuss the Council's desires for boundaries and uses in that district. Staff would not be prepared to enact a prohibition that prevented people from developing their property in conformance with existing zoning. It would require time to enact permanent controls.

Council Member Scharff inquired whether Staff could prepare an ordinance to extend the Retail ® Combining District to Cambridge Avenue for the May 18 meeting.

Ms. Gitelman had prior direction from the Council to focus on California Avenue and to return to the Council for further direction before preparing an ordinance. Staff could attempt to draft an ordinance prior to May 18, 2015, but it might not be thoughtful or consistent with prior Council direction. Staff intended to present a summary of community input, to discuss the concepts, and to seek Council direction prior to crafting an ordinance.

MINUTES

Council Member Burt asked if including a pipeline definition similar to the one in the interim ordinance would resolve the issue.

Council Member Scharff answered yes, as long as the Council then extended the boundaries.

Mayor Holman requested Council Member Burt suggest language.

Ms. Stump advised that the Council could not pass that, because it was not noticed; however, the Council could provide direction to Staff. Council Members appeared to want to signal their intention for zoning changes to apply to pipeline projects. The Council wanted property owners to be aware of their intention.

Council Member Burt asked how Staff described the three projects.

Ms. French reported applications for the three projects were on file.

Council Member Burt inquired whether Staff described them as having filed applications.

Ms. French indicated the projects had filed applications as opposed to preliminary applications.

Council Member Burt suggested adding a sentence to the Motion that pipeline projects that did not have applications on file would be subject to the terms of the permanent ordinance.

Council Member Scharff inquired about the amount of time needed to prepare a new ordinance. If it required a year, the applicant would have its application on file.

Council Member Burt asked if he should have included applications not on file as of March 2, 2015.

Ms. Gitelman would communicate the Council's desire for retail at that location to the applicant. The discussion of California Avenue on May 18 would be the appropriate time to signal that pipeline projects would be subject to the permanent ordinance as of May 18. March 2 was the date the Council discussed preservation of existing retail uses. The discussion had moved to requiring retail where it did not exist.

Council Member Burt stated the Council's intent was for a permanent ordinance to apply to projects that had not filed applications.

MINUTES

Ms. Stump reported the language would be sufficient if the Council enacted a permanent ordinance before the legal entitlement was granted.

Mayor Holman inquired whether the correct language was pipeline projects that did not have applications for planning entitlements on file.

Ms. French responded yes.

Council Member Wolbach believed the Council was discussing three separate things: an urgency ordinance, an interim ordinance, and permanent changes. He inquired whether there was a distinction between urgency and interim.

Ms. Stump explained that the Council intended to utilize the urgency procedure to enact a short-term change for 45 days and then, if necessary, 22 months.

Council Member Wolbach understood an urgency ordinance was different from an interim ordinance.

Ms. Stump advised it was. The first part of the Motion was to follow it up with an identical ordinance using regular ordinance procedures, which Council Member Wolbach referred to as an interim ordinance. The Motion accomplished the interim ordinance and zoning changes in one ordinance, which was acceptable for the purposes of Council direction.

Council Member Wolbach suggested bifurcating the Motion or separating the text of the Motion into two paragraphs.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the word "interim" be changed to "urgency" in the first sentence.

Council Member Wolbach suggested language regarding pipeline projects be moved to the first paragraph.

Council Member Scharff disagreed, because that language would be utilized in the second ordinance.

Council Member Wolbach explained that an interim or urgency ordinance was expected to be effective for one or two years while the Council developed more complex and nuanced plans for expansion and protection of retail throughout Palo Alto. Pipeline projects were related to more urgent issues. He suggested moving language regarding pipeline projects to the first portion of the Motion.

MINUTES

Council Member Scharff understood the Planning Director to state that the Cambridge Avenue Project had not submitted an application. Entitlements were not issued until a building permit was pulled. The Council was signaling that the applicant should design the project with ground-floor retail. During the discussion of California Avenue on May 18, he would attempt to direct Staff to return regarding extension of the boundaries. Moving the language did not cover his concerns.

Council Member Wolbach noted Council Members had alluded to ideas regarding long-term planning for retail protection and expansion. He asked if those should be mentioned at the current time.

Ms. Gitelman expected the long-term ordinances to require considerable public outreach and analysis. There would be opportunities for Staff to return for Council direction for all areas of the City. The May 18 discussion pertained to California Avenue.

Council Member Wolbach inquired whether Council Members wanted to provide their ideas quickly or hold them for a future discussion.

Mayor Holman advised that the Council would have an opportunity to provide its ideas in the future. In the interest of time, the Council should proceed.

Vice Mayor Schmid referred to the table on Page 5 which noted seven applications, three of which contained ground-floor retail. He asked if a discussion of expanding boundaries and zoning would affect all seven projects.

Ms. Gitelman explained that some of those applications added retail. Only three projects resulted in the net loss of retail.

Vice Mayor Schmid was not aware of what pipeline projects were adding or subtracting. He asked if the seven projects would be subject to the new rules.

Ms. Gitelman would review the situation as the discussion progressed. Staff would continuously monitor the pipeline as it was subject to change.

Council Member Filseth inquired whether restoration of the 2009 boundaries of the GF Zone in Downtown was part of the ordinance.

Ms. Gitelman indicated that would be part of the permanent ordinance that resulted from the analysis of Downtown trends.

Council Member Filseth asked if that action would require an ordinance.

MINUTES

Ms. Gitelman replied yes, as it was a map change.

MOTION AS AMENDED PASSED: 7-0 DuBois, Kniss absent

Council Member Questions, Comments and Announcements

Council Member Scharff inquired whether Council Members should retain the information provided for Agenda Item Number 15.

Ms. Gitelman requested Council Members retain the information.

Closed Session

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

MOTION PASSED: 6-0 Scharff not participating, DuBois, Kniss absent

Council went into Closed Session at 10:49 P.M.

19. CONFERENCE WITH CITY LABOR NEGOTIATORS

City Designated Representatives: City Manager and his designees pursuant to Merit System Rules and Regulations (James Keene, Kathy Shen, Melissa Tronquet, Dania Torres Wong, Sandra Blanch, David Ramberg, Joe Saccio, Molly Stump, Walter Rossmann)

Employee Organizations: Palo Alto Police Officers Association (PAPOA); International Association of Fire Fighters (IAFF), Local 1319
Authority: Government Code Section 54957.6(a)

The Council reconvened from the Closed Session at 12:23 A.M., Mayor Holman advised no reportable action.

Adjournment: The meeting was adjourned at 12:23 A.M.

ATTEST:

APPROVED:

City Clerk

Mayor

MINUTES

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.