



CITY COUNCIL SUMMARY MINUTES

Special Meeting
June 14, 2021

The City Council of the City of Palo Alto met on this date in virtual teleconference at 5:02 P.M.

Participating Remotely: Burt, Cormack, DuBois, Filseth, Kou, Stone, Tanaka

Absent:

Agenda Changes, Additions and Deletions

None.

Oral Communications

Hamilton Hitchings requested the public join him at the next Council meeting in asking the Council to permanently close California Avenue and University Avenue to traffic on weekends and holidays and retain outdoor dining parklets for all days of the week through the end of 2021

Hilary Glann, League of Women Voters, thanked the Council for directing the City Attorney to draft an Ordinance requiring the safe storage of firearms at home and urged the Council to make the Ordinance a priority.

Jennifer DiBrienza asked the Council to adopt an Ordinance regarding the safe storage of firearms prior to the start of the 2021-2022 school year.

Rebecca Sanders opposed the development project at 2951 El Camino Real.

Minutes Approval

1. Approval of Action Minutes for the June 1, 2021 City Council Meeting.

MOTION: Council Member Kou moved, seconded by Vice Mayor Burt to approve the Action Minutes for the June 1, 2021 City Council Meeting.

MOTION PASSED: 7-0

Consent Calendar

MOTION: Council Member Cormack moved, seconded by Council Member Filseth to approve Agenda Item Numbers 2-6.

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2. Approval of: 1) Construction Contract With Azulworks, Inc., in the Amount of \$2,667,054 for the Palo Alto Fiscal Year 2021 Street Resurfacing Project (Capital Improvement Program Projects PE-86070, PE-09003, PE-21004, PO-12001, PO-89003, PL-04010, PL-05030, and OS-09001); 2) Authorization for the City Manager or his Designee to Negotiate and Execute Related Change Orders to the Contract With Azulworks, Inc. for Additional but Unforeseen Work That may Develop During the Project, Not-to-Exceed \$266,706; and 3) Budget Amendments in the Capital Improvement Fund.
3. Approval of Contract Amendments to Extend Three Public-private Partnership Agreements Between the City of Palo Alto and TheatreWorks, Palo Alto Players, and West Bay Opera for the use of the Lucie Stern Community Theatre for an Additional Year.
4. Resolution 9966 Entitled, "Resolution of the Council of the City of Palo Alto to Enter Into a Cooperative Implementation Agreement With the California Department of Transportation for the Embarcadero Trash Capture Device Project."
5. Approval of Amendment Number 1 to Contract Number C19173445 With Charles Sowers Studios, LLC to Extend the Term of the Contract Through December 31, 2021 for the Fabrication and Installation of Artwork at the Junior Museum and Zoo.
6. Accept the Fiscal Year (FY) 2021 Third Quarter Financial Status Report and Approve the FY 2021 Budget Amendment in the General Fund.

MOTION PASSED: 7-0

City Manager Comments

Ed Shikada, City Manager, reported fully vaccinated individuals were not required to wear a mask beginning June 15, 2021 except where everyone was required to wear a mask. Unvaccinated individuals were required to wear a mask in indoor public settings and businesses with some exceptions. Cal/OSHA was going to revisit its stricter workplace rules, and the Governor was expected to issue an Executive Order immediately thereafter. Many City services were available online and by appointment. The Governor issued an Executive Order indicating suspension of Brown Act provisions was going to continue through September 30, 2021. Community centers were anticipated to reopen for general use in early August 2021. The final truss of the Highway 101 Bike Bridge was installed June 13, 2021, and the bridge was expected to be complete in late August 2021. The Women and Girls Summit was a success. An Uplift Local update was scheduled for June 15, 2021.

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The next Wellness Wednesday was scheduled for Jun 16, 2021 regarding wellness resources for seniors. A community celebration of the July 4th holiday was going to be held at Mitchell Park. Upcoming Council items included Budget adoption, changes to the Local Emergency Proclamation, appeal of a wireless facility approval, grade separation alternatives, parking policies, and potential ballot measures. Visitation at the Foothills Nature Preserve was below capacity, and additional free passes were available beginning June 24, 2021. The Environmental Volunteers sponsored a docent nature discovery table on Saturdays and was establishing a Trail Ambassador Program.

Council Member Kou inquired about the hours of operation for College Terrace Library.

Mr. Shikada advised that a date for reopening College Terrace Library was not set.

Council took a break at 5:24 P.M. and returned at 5:36 P.M.

Action Items

7. Approval of Amendment Number One to Contract Number S20178065 With the OIR Group for Independent Police Auditing Services to Expand the Scope of Services and Increase the Contract Amount by \$32,500 for a Total Not-to-Exceed Amount of \$107,500.

Ed Shikada, City Manager, reported Staff presented the item in response to Council direction regarding expansion of police accountability measures. The scope of work was revised to increase work in discrete areas, to establish a schedule for reporting, and to include internal complaints regarding employee harassment, discrimination, and retaliation in the workplace.

Molly Stump, City Attorney, noted some language was revised the day of the meeting, and OIR Group did not have an opportunity to review it.

Mayor DuBois requested the proposed language.

Mr. Shikada advised that the language reinforced that any incident involving use of force and/or requiring medical care beyond that provided in the field was to be referred to OIR Group

Mayor DuBois requested comment from OIR Group.

Michael Gennaco, OIR Group, indicated the City Manager provided the key changes for the contract.

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Winter Dellenbach, speaking for Gerry Masteller, Andie Reed, Rebecca Sanders, and Mary Sylvester, remarked that the Council never considered supervisory inquiry investigations. "Uniformed officer" needed to be changed to "sworn officer" under Independent Police Auditor (IPA) oversight. IPA review was important for transparency. Use of force reports were required by policy.

Aram James suggested the scope of work include pulling a firearm as a use of force incident.

Hamilton Hitchings concurred with Mr. James' comment. Review needed to be moved from the City's Human Resources (HR) Department to the IPA. Police Department leadership was committed to continual improvement.

Jason Miles, Midpeninsula Chapter of the American Civil Liberties Union (ACLU), asked the Council to expand the scope and authority of the IPA to increase transparency and accountability for the Police Department.

Council Member Kou asked if Mr. Gennaco reviewed the scope of work.

Ms. Stump replied yes. He did not review Staff's proposed revision regarding incidents requiring use of force and incidents requiring medical care.

Council Member Kou asked if the proposed language was intended to revise Section 2 of the scope of work.

Ms. Stump answered yes.

Council Member Stone felt Mr. James provided a good suggestion regarding pulling a firearm and requested Mr. Gennaco's thoughts on the suggestion.

Mr. Gennaco related that reporting incidents in which an officer drew or unholstered his firearm was consistent with 8 Can't Wait recommendations and progressive policing practices. However, he did not believe the IPA needed to review every incident. Requiring the IPA to review all such incidents increased the amount of information that the IPA reviewed.

Robert Jonsen, Police Chief, advised that the Police Department's Use of Force Policy required incidents of drawing a firearm to be documented.

Council Member Stone inquired whether the reports were sent to the IPA.

Chief Jonsen responded not necessarily, because pointing a firearm did not rise to the level of a force review package.

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Council Member Stone requested an estimation of the frequency that firearms were drawn.

Chief Jonsen replied approximately a few times a year.

Council Member Stone did not believe review of such incidents was going to overwhelm the IPA. The Council needed to consider adding that language to the scope of work. He requested an explanation of a supervisory inquiry report.

Chief Jonsen explained that a complaint against an employee initiated a review. If a supervisor quickly and easily determined that the basis of the complaint did not rise to the level of a policy violation and discipline, the supervisor prepared a summary in order to complete the investigation. A supervisory inquiry report documented the review and determination. If the supervisor determined that the basis of the complaint was a policy violation and disciplinary action was possible, the complaint became a formal citizen complaint. Under the proposed scope of work, supervisory inquiry reports and citizen complaints were going to be referred to the IPA.

Vice Mayor Burt requested the difference, if any, between a uniformed officer and a sworn officer.

Ms. Stump was not aware of a difference between the two.

Chief Jonsen indicated the two terms were interchangeable.

Mr. Gennaco concurred.

Vice Mayor Burt asked if a drawn firearm was typically pointed at someone.

Chief Jonsen reported policy did not prohibit an officer from drawing his weapon if he felt unsafe, and documentation of drawing a firearm was not required. If an officer drew his weapon and pointed it at someone, he was required to document the incident.

Mr. Gennaco related that IPA review of drawing and/or pointing a firearm was possible, if the Council wished. The decision was the Council's.

Vice Mayor Burt supported including pointing a firearm at someone in the scope of services. Pointing a firearm was the prelude to deadly force.

Council Member Cormack viewed the new contract as the natural evolution of a prior Council's work. Referring incidents requiring medical treatment was a good proposal. Maintaining the confidentiality of employee identity was important. She looked forward to future discussions including the IPA's

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recommendations. The Council was not going to discuss published reviews of specific incidents with the IPA.

Council Member Filseth requested the process through which the Council asked for one-off reviews.

Ms. Stump advised that when the Council requested additional review of a specific topic or recommendation discussed with the IPA, Staff prepared a scope of work, timeline, and budget for the work and submitted it for the Mayor's and City Manager's approval.

Mr. Gennaco added that Ms. Stump described the process used in other jurisdictions.

Council Member Filseth inquired whether this process replaced a Council referral to the Policy & Services Committee (P&S) or a Colleagues' Memo.

Ms. Stump answered yes. Staff believed this was the most straightforward approach.

Mayor DuBois inquired whether meetings with the IPA were going to occur once reports were publicly available.

Ms. Stump replied yes.

Mayor DuBois noted the Council was allowed to discuss findings contained in reports but not personnel matters.

Ms. Stump clarified that the Council was allowed to discuss the findings and recommendations from the report in order to evolve policies and procedures for better policing.

Mayor DuBois preferred agenda items for IPA reports include discussion of a standalone performance audit. The contract needed to state that published reports were going to note and briefly describe items that were removed for additional work.

Chief Jonsen explained that the IPA was notified of an incident as soon as the Police Department became aware of it. If there was a criminal component to an incident, the administrative package for the IPA was postponed until the criminal process was complete. He did not oppose including language regarding published reports in the contract.

Mr. Gennaco agreed to including that language in the contract.

Mayor DuBois asked if there was a definition for use of a baton or canine.

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Ms. Stump reported the key definition was use of force with one of those tools, which correlated to established policies in the Police Department.

Chief Jonsen added that use of force with a canine was deploying the dog by removing its leash, sending it on a search, or giving it a command. Similarly, use of force with a baton was applying the baton.

Council Member Stone requested Mr. Gennaco's thoughts regarding a chilling effect on internal complaints and limitations on reports providing personally identifiable information.

Mr. Gennaco indicated the scope of work language was comparable to that used in contracts with other jurisdictions. Theoretically, it was possible for personally identifiable information to become public, but it had not occurred during his 20 years of serving as an IPA.

Council Member Stone inquired regarding the person responsible for determining the need for medical care beyond minor care.

Chief Jonsen stated paramedics were called for all injuries. The paramedics usually determined whether an individual needed additional care at a hospital.

Council Member Stone requested Staff respond to points in Ms. Dellenbach's communication that were not previously addressed.

Council Member Kou inquired about a process that ensured reports were provided to the IPA so that his report was provided in a timely manner.

Chief Jonsen reported that a supervisor's use of force report was required to be completed by the end of the shift in which the incident occurred. The goal was to complete the investigation within 30 days, and investigations were usually complete in 30 to 90 days so that the IPA had time to complete his review. The timeframe was longer if there was a criminal component or an administrative investigation of the incident.

Council Member Kou asked if the IPA was notified of an incident so that he was aware of it and followed up soon after 30 days

Chief Jonsen indicated the Department notified the IPA of an incident within a day or two of the Department becoming aware of it. Personnel logged the incident, and the status of all incidents was reviewed weekly. Once an investigation was complete, an incident package was sent to the IPA.

Mr. Gennaco appreciated the scope of service providing details for ensuring reports were provided in a timely manner to the Council.

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MOTION: Mayor DuBois moved, seconded by Council Member Kou to approve and authorize the Clerk to execute Amendment Number One to the contract with the Office of Independent Review (OIR Group) for independent police auditing (IPA) services to expand the Scope of Services and increase the contract amount by \$32,500 for a total not-to-exceed amount of \$107,500; including the following changes to the Scope of Services:

- A. Add to Section 2 - Taser Deployment and Other Reviews: "The Department will promptly notify the CONSULTANT of all administrative use of force reports where a baton, chemical agent, TASER, less-lethal projectile, canine, or firearm is used. In addition, The Department will promptly notify the CONSULTANT of all other cases where a subject's injuries require treatment beyond minor medical care in the field;"
- B. Add "point a gun," in addition to using a gun, to an action that is reported to the Auditor; and
- C. Add to Section 3 that published reports will note items that are pulled from the report for further work and provide a short description of the item(s).

Council Member Cormack inquired whether the proposed additions affected the amount of the contract.

Ms. Stump believed the additions were minor, and the amount likely covered them.

Mr. Gennaco related that a subconsultant may be necessary to complete the work, but the amount did not need to change.

Council Member Cormack asked if "point a gun" meant taking aim at an individual.

Council Member Kou believed an officer pointing a gun at anything needed to be reported.

Chief Jonsen explained that if an officer felt uncomfortable with a situation, he was likely to unholster his gun and hold it by his side or slightly behind his back without pointing it at anyone such that he was tactically ready to respond to a threat. Officers were trained not to point a firearm at anyone unless they potentially intended to use it. Often, an officer drawing his weapon in response to a threat of violence against himself or someone else de-escalated the situation. Part B of the Motion was going to result in additional administrative work to prepare a use of force package for the IPA's review. Pointing a firearm was the same as taking aim.

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MOTION PASSED: 7-0

8. Request for City Council Interpretation Pursuant to Palo Alto Municipal Code Section 18.01.025 Related to Nonconforming Uses at the 340 Portage/3200 Park Site. Environmental Analysis: City Council Direction Regarding Interpretation of the Existing Code is not a Project, as Defined in Public Resources Code 21065.

Jonathan Lait, Director of Planning and Community Environment, reported the site formerly housed the Fry's electronics retail store and contained approximately 12 acres. The base zoning for the property was Multifamily Residential (RM-30), but the building housed research and development (R&D), warehouse, and retail uses. The amortization schedule for nonconforming uses began in 1995. In 2006, the Council removed the site from the amortization timeline and allowed the mix of uses to continue in perpetuity provided that the existing ratio of uses was maintained. In 2016, the property owner requested an adjustment to the mix of uses, and it was approved administratively. In 2019, the Fry's retail use ceased operations. The Municipal Code required a conforming use that was terminated for a year or longer to be replaced with a conforming use. The Zoning Code provided an exception for 3200 Park/340 Portage, but the language of "approximately the same ratio of uses" needed clarification. Staff provided two interpretations of the language, and the second interpretation was the more practical of the two.

Tim Steele, The Sobrato Organization, indicated that The Sobrato Organization worked with Staff regarding this question for quite a while and provided two letters in response to the Staff Report.

Vice Mayor Burt inquired about the right to retain the other uses if there was no retail use.

Albert Yang, Assistant City Attorney, advised that if the Council interpreted the language to require some proportion of retail at all times and the site no longer complied with the requirement, Staff was likely to issue a notice of violation and work through the Code enforcement process. Enforcement was determined on a case-by-case basis. Allowing the site to achieve conformance by establishing a retail use was one means of enforcement. If that was not possible, the remainder of the site needed to come to a conforming use.

Vice Mayor Burt asked how that was going to be enacted in light of the existing tenants with contractual leases.

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Mr. Yang indicated that was a consideration for Staff as part of the enforcement process. Staff was not able to provide a specific answer at the current time.

Council Member Filseth asked if Staff was seeking an interpretation specifically for the subject property or a general interpretation for any property with a mixture of nonconforming uses.

Mr. Lait stated the Code provision was specific to the subject site.

Council Member Filseth asked how three nonconforming uses came to be located on the site.

Mr. Lait noted the Fry's building began as a commercial use, and over time residential zoning was probably overlaid with the idea that the site was going to convert to housing. Zoning was probably applied secondarily to the establishment of the uses.

Claire Raybould, Senior Planner, added that the allowed uses changed after the uses were established.

Council Member Filseth stated that was consistent with an amortization schedule being enacted and then removed.

Council Member Stone asked if the Council was addressing a policy question or interpreting the Code language.

Mr. Lait replied interpreting the Code language. This was not a quasi-judicial matter. The property owner wanted to know how it was allowed to use the property.

Molly Stump, City Attorney, clarified that the Council needed to utilize its discretion to interpret the language within the words on the page. In Staff's opinion, the item was predominantly a legislative matter.

Council Member Stone requested the date that Section 18.70.040 was enacted.

Mr. Lait related that Staff needed to research the dates and provide the information shortly.

Council Member Stone asked if the order in which the Code provisions were enacted affected the City Attorney's analysis of the previous Council's intent.

Mr. Yang reported Section 18.70.040 was last amended in the 1990s. Presumably the 2006 Council was aware of those provisions.

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Council Member Stone interpreted the language as aligning more closely with Alternative 1. The language in the Code addressed the nonconforming uses that existed in 2006, specifically retail, R&D, warehouse, and storage. The 2006 Council had the opportunity to ideate other uses; however, it addressed the then-existing uses and chose not to incorporate the other piece of the Code. As Staff noted, Alternative 1 more closely aligned with the language. The Code section specifically addressed the use of 3200 Park and 340 Portage.

Mayor DuBois inquired whether there was a third alternative that enabled the continuation of residential and retail uses on the subject property.

Mr. Lait suggested the Council needed to provide direction for an alternative that did not align with either Alternative 1 or 2. Alternative 1 required the retention of retail in the 2006 ratio, but it dedicated approximately 84,000 square feet to a conforming use, which was residential or one of the other conditionally permitted uses in the district.

Mayor DuBois noted the retail space was reduced by approximately 14,000 square feet, and the warehouse space was reduced by half. Both were added onto the office/R&D space. He inquired whether the City approved those changes.

Mr. Lait indicated the approvals were administrative. There was some latitude exercised in 2016 for that change.

Mayor DuBois inquired whether 200 Portage was an existing address or a potential parcel subdivision.

Mr. Lait advised that City records reflected a span of addresses for uses that arose over time. The range of addresses was applied historically to the building. He did not know if the 200 Portage address existed at the current time.

Mayor DuBois wanted to understand the exact property to which the item and the scope of the Motion referred. He asked if the parking lots were required for the uses of the building.

Mr. Lait related that Staff viewed the property as the 240,000-square-foot building and did not look at the other buildings located on the property. Staff also did not look at the parking lots separately because they supported the other activities.

Mayor DuBois wanted to understand whether the Council needed to apply the percentage of uses to a potential future subdivision now or at the time of

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an application for subdivision. Actions were likely taken to assist the building owner and tenant because of the desire to retain Fry's even though there was an amortization schedule to achieve the underlying residential zoning. Council's intent was to allow retail and residential. An alternative that replaced all retail uses with a residential use was neither an intent nor a desire. Alternative 1 accomplished the Council's intentions to reduce office, increase residential, and protect retail. Given the City's Regional Housing Needs Allocation (RHNA), the Council needed to consider resuming the amortization schedule.

Council Member Cormack requested Director Lait's interpretation of the language and the reasons for his interpretation.

Mr. Lait preferred Alternative 2 because it was a more practical solution for addressing the existing uses. Staff needed to figure out the enforcement component of Alternative 1.

Council Member Cormack noted that Alternative 2 was more consistent with the City's treatment of other changes of this type. The record was not as clear as Council Members indicated. She requested clarification of potential actions regarding the amortization schedule.

Mr. Lait reported a new amortization was possible.

Council Member Cormack asked if the site was ever used for residential.

Mr. Lait related that it was possible one or two homes were located on the site to support the owner or manager of the former cannery business.

Ms. Raybould clarified that a house supporting the cannery was located on the 3201 Ash Street property

Vice Mayor Burt seemed to recall that in the 1980s the Council wanted to move the subject site toward a long-term residential use. A mixture of uses was located in other commercial areas. In the future, the Council needed to explore distinctions between software and hardware R&D. Eliminating the original amortization schedule was a mistake. The other commercial uses were allowed to continue in exchange for the continued operation of Fry's, which the City valued. Many elements of Alternative 1 were positive, but implementing Alternative 1 abruptly was going to cause issues for existing tenants and making North Ventura Coordinated Area Plan (NVCAP) decisions for the subject site. He proposed the Council proceed with Alternative 1 but not implement its requirements for a specific length of time so that the Council had time to make NVCAP decisions for the site and incorporate them into any legislative action.

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Mr. Lait noted that adding a time extension to the Code was not before the Council, but the City was able to enforce its regulations as it deemed appropriate.

Mr. Yang agreed that the Council was able to provide direction regarding interpretation and enforcement.

Council Member Filseth believed Vice Mayor Burt raised an important point. Good arguments supported a delay. It was possible to interpret the language either way. Alternative 2 seemed to be more consistent with the historical intent of the language. The original intent was probably to replace commercial uses with a multifamily residential use. Amortization was probably eliminated to retain Fry's. Both alternatives supported a conversion to multifamily residential, but Alternative 2 was slightly more consistent with conversion. With Fry's no longer in business, amortization needed to be reinstated.

Council Member Kou related that the Council received minutes for the October 16, 2006 Council meeting earlier in the day. The minutes referred to statements regarding preparation of a recommendation with strategies for retaining Fry's, removal of the amortization date causing the City to lose control of the site, and the uses were to remain similar to what they were. In talking with community members, they revealed that, based on the Council's 2006 vote, community-serving retail operations totaling the same as Fry's needed to exist on the site to justify the office and warehouse uses. Alternative 1 was more consistent with her and history's interpretation of the language. She inquired whether the square footage of the building at 3200 Park was incorporated into the calculations.

Ms. Raybould understood that the site may have extended to Olive Avenue at some point in the past. 3200 Park and 340 Portage referenced the Fry's building.

Council Member Tanaka preferred not to consider the site abandoned due to Sobrato's efforts to obtain a tenant and to partner with the City. It was difficult to be prescriptive prior to the conclusion of the NVCAP process.

Council Member Cormack requested the practical implications of utilizing Alternative 1 and delaying enforcement for one or two years.

Mr. Lait reported it presented some challenges for permitting uses allowed in the RM-30 zone.

Council Member Cormack suggested continuing the item and directing Staff to provide the implications of concepts the Council was considering.

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Mr. Lait related that continuing the item was problematic for Sobrato's attempts to lease the site. Staff proposed the two alternatives after much consideration and discussion.

Vice Mayor Burt wanted to provide Sobrato with time to remedy the retail situation or the Council with time to make NVCAP decisions regarding the site. One of those two scenarios was likely to occur in a year.

Mr. Lait inquired whether retail uses were permitted in the RM-30 zone and whether there were any discretionary requirements for retail uses.

Ms. Raybould reported retail was not outlined as a permitted land use under RM-30. Because of the site specific language of Municipal Code Section 18.71.070, retail was allowed.

Mr. Lait reiterated that a retail use was nonconforming and had abandoned the site.

Vice Mayor Burt clarified that he proposed an abeyance of the abandonment.

Mr. Lait requested a legal opinion as to Staff's ability to issue a use and occupancy permit to establish a retail use in the 84,000-square-foot building.

Mr. Yang advised that issuing a permit for a retail use in compliance with the figure in Table 1 was permissible regardless of an abeyance.

MOTION: Vice Mayor Burt moved, seconded by Council Member Kou to extend by 1 year from now the period of non-occupancy of retail without a violation of the terms of the balance of the commercial use agreement for the greater Fry's site area.

Council Member Kou felt the Council needed to provide Sobrato with an opportunity to lease the site to a retail use. She proposed adding a condition that the use provide substantial Sales Tax revenue.

Vice Mayor Burt did not believe that was necessary as a retail use was likely to provide Sales Tax revenue.

Council Member Kou asked if the Motion needed to refer to adoption of Alternative 1.

Vice Mayor Burt replied no.

Mr. Yang requested Council direction regarding a retail limit. The Code referred to the same ratio as in 2006, which was approximately 90,000

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square feet, and to a cap of no more than 60,000 square feet. The Council needed to resolve the conflict between the two.

Ms. Stump reported Staff did not anticipate the direction of the discussion and requested time to review Brown Act requirements and implications of the current topic.

Mayor DuBois proposed determining Council Members' support for the Motion. Regarding the allocation ratio, the question was the implications for square footage in excess of 84,000 square feet. Adding the excess to another use did not maintain the ratio.

Council Member Stone inquired whether the Motion provided the action that Staff sought.

Mr. Lait indicated the Motion did not provide direction for interpretation of the Code language. Staff needed time to understand the implications of the Motion for permitting.

Council Member Stone reiterated that the conflict between the allocation ratio for retail and the 60,000-square-foot limit imposed by the Code was the issue.

Mr. Lait stated that was one issue. The conflict was partially resolved by treating retail as an abandoned use and limiting future retail to 60,000 square feet. In 2006, the physical reality conflicted with the language of the Motion.

Council Member Stone believed the 2006 Council did not intend to exceed the 60,000-square-foot limit on retail but did so.

Mr. Yang remarked that the language was added to the 2006 Motion without deliberation, and there was not a good way to resolve the conflict.

Mr. Lait added that limiting future retail to 60,000 square feet was a potential resolution.

Council Member Filseth reiterated that the intent of the 2006 deal was to trade amortization for retail preservation. If retail was not there any longer, amortization needed to be reinstated. He requested the process for amortizing the property over some time period.

Mr. Yang reported the process included studies, preparation of a reasonable schedule, and legislative action to amend the Code.

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Council Member Filseth inquired whether it was possible to leverage the studies prepared for the previous amortization schedule.

Mr. Yang indicated the previous studies were a starting point.

Council Member Tanaka requested Sobrato comment regarding the Motion.

Mr. Steele stated he needed to discuss the issues with the property owners. Additional investments in the property were made after the amortization schedule was instituted. Of all the options discussed, a one-year delay was the most favorable for the property owners.

Mayor DuBois preferred the Motion state an outcome that was going to occur in one year unless a different arrangement was reached in the meantime. He did not want to repeat the current conversation in a year. There were ways to maintain the ratio.

Council took a break at 7:58 P.M. and returned at 8:19 P.M.

Mr. Lait reported Staff needed additional time to study the Motion and its policy implications. He proposed continuation of the item to August 2021 and requested Sobrato comment regarding a continuation to August 2021.

Mr. Steele agreed to the proposed continuance as it was an opportunity for additional conversation with Staff.

MOTION WITHDRAWN BY THE MAKER

MOTION: Vice Mayor Burt moved, seconded by Council Member Cormack to end this Public Hearing, take no action, and direct Staff to bring back a new item in August.

MOTION PASSED: 6-1 Kou no

9. PUBLIC HEARING: Recommendation on the Preferred Plan Alternative for the North Ventura Coordinated Area Plan (NVCAP). The Planning and Transportation Commission and Staff Recommend the City Council Review the NVCAP Alternatives and Select Alternative Number 3B as the Preferred Alternative.

Jonathan Lait, Director of Planning and Development Services, proposed the Council consider the current Agenda Item as Part 1 of the discussion with Part 2 occurring in August 2021.

Clare Campbell, Long Range Planning Manager, reported the North Ventura Coordinated Area Plan (NVCAP) was identified in Program L-4.10.1 of the

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2030 Comprehensive Plan. The NVCAP was a long-range planning document for an area of approximately 60 acres. The area was also located within a designated Priority Development Area (PDA). On March 5, 2018, the Council adopted goals and objectives to guide development of the NVCAP. Draft alternatives complied with the majority of goals but to varying degrees. Alternative 3B appeared to meet most or all goals while the other alternatives did not meet at least one goal. Public engagement included public meetings, community workshops, a project website, stakeholder interviews, community surveys, and property owner meetings. Alternatives were crafted primarily from the Working Group's feedback and incorporated as many key points as feasible to develop three similar but distinct alternatives. The Working Group supported Alternative 2 with five votes, Alternative 1 with three votes, and Alternative 3 with one vote. Four Working Group members expressed no preference. The community survey revealed a preference for Alternative 3. The Planning and Transportation Commission (PTC) supported Alternative 3 with modifications, which became known as Alternative 3B. With Council direction for a preferred alternative, Staff was going to refine the NVCAP and complete additional studies. Staff anticipated Council adoption in the fall of 2022.

Jean Eisberg, NVCAP Consultant, advised that heights and densities, height transitions, Below Market Rate (BMR) housing, mobility, historic resource, parks and open space, and commercial retail were constants across the alternatives. Alternative 1 generally allowed office uses to continue but, once they were demolished, they were not allowed to return. Alternative 2 allowed existing office floor area to be rebuilt but did not allow new office floor area beyond small-format professional office. Alternative 3B allowed existing office floor area to be rebuilt and new office floor area. All alternatives proposed open space at some level, but Alternative 3B was the only one likely to achieve all open space concepts. Development potential did not include the proposed project for 340 Portage. Across the alternatives, housing potential and office development increased, which resulted in a net loss for commercial development in Alternatives 1 and 2 and a small net increase in Alternative 3B. Across the alternatives, BMR units, population, jobs, and parks and open space increased. Alternative 3 had the greatest and Alternative 1 had the least potential to increase traffic, noise, construction, retail stores, affordable housing, bicycle/pedestrian improvements, parks and open space, and creek improvements.

Sujata Srivastava, NVCAP Consultant, indicated Alternative 3 was the only financially feasible alternative as a whole due to reduced parking requirements, incentives for ground-floor retail uses, and inclusionary housing requirements. Feasibility studies revealed that for-sale projects generated more BMR units than rental projects, development costs were

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reduced by locating half of parking in an above-ground podium and exempting a portion of commercial parking requirements, and ground-floor retail uses and deeper levels of affordable housing needed more incentives.

Ms. Eisberg noted that the former cannery at 340 Portage Avenue and the associated office building at 3201-3205 Ash Street were eligible historic resources. All alternatives proposed retaining the office building. Alternatives 2 and 3 proposed demolition of the cannery. Five designs for naturalization of Matadero Creek were developed, but only three were feasible. Concept 3 proposed maximum re-naturalization and expansion into Boulware Park, which the Working Group preferred. Concept 1A proposed enhancement of the existing easement corridor and integration of Boulware Park, which Staff preferred. Concept 1A was included in Alternative 3B in exchange for additional office floor area.

Public Hearing opened at 8:56 P.M.

Cedric de La Beaujardiere, speaking for William Robinson, Annette Puskarich, Lynne Sopchak, Karen Harwell, and Susan Stansbury, proposed the development of multifamily residential and mixed-use buildings as terraced garden apartments that respected adjacent single-family residences. As proposed, the apartments provided 1,500 bedrooms, 1 million square feet of residential space, 1 million square feet of open space, and 360,000 square feet of commercial space. His proposal preserved the cannery building's monitor roof and the house on Ash and Portage and allowed maximum restoration of Matadero Creek.

Angela Dellaporta stated that the Working Group was not asked to develop a plan that satisfied the financial goals of property owners or increased the amount of office space. Alternative 3B not only increased office space but also conflicted with the recommendation of a majority of the Working Group. With a few changes, Alternative 2 was feasible.

Rebecca Sanders remarked that developers were using Planned Home Zoning (PHZ) to propose housing developments without office space. The old cannery made a fine community center. She opposed Alternative 3B.

Katie Weller supported Alternative 3B as it increased the number of residential units located near public transportation and made Palo Alto more accessible for young professionals and families.

Mary Sylvester opposed an increase in office space and the reduction of parking requirements and wanted good data regarding projected office occupancy, housing for low- and very-low-income households, and preservation of the cannery.

SUMMARY MINUTES

Jonathan Brown opposed Alternative 3B and statements that open space was going to be addressed in the future and Alternative 3B was the only one to generate adequate revenue. Placing all of Palo Alto's housing goals on one small area of the City was unfair.

Corey Smith encouraged the Council to consider the maximum amount of housing. Given the City's Regional Housing Needs Allocation (RHNA) and Ventura's proximity to Caltrain, approximately 5,000 new homes were more appropriate. An economically feasible project was extremely important, and it needed to maximize housing.

David Meyer, Silicon Valley Home, supported Alternative 3B because it created the most new, deed-restricted, affordable housing opportunities and the largest amount of new open space.

Jeff Levinsky noted development projects across the City proposed new housing without office space. The Staff Report did not provide a sense of the traffic impacts caused by Alternative 3B's proposed office growth. The Council needed to adopt guidelines such as no net new offices, housing densities and parking requirements consistent with currently proposed local projects, peak hour traffic reduction by phasing out office, and a focus on livability and community.

Scott O'Neil strongly urged the Council to adopt Alternative 3B.

Kathleen Wortham, Silicon Valley Leadership Group, supported Alternative 3B because it allowed the most housing, leveraged existing infrastructure, and supported local businesses.

Terry Holzemer stated the history of the cannery and its owner was just as important as the history of El Palo Alto and the Hewlett-Packard garage. The Staff Report did not accurately reflect the Working Group's work.

Justin Wang, Greenbelt Alliance, indicated that Alternative 3B proposed housing in locations that assisted the City in meeting emissions and housing goals. The Council's support for Alternative 3B was key to the City's resiliency.

Gail Price, Palo Alto Forward, supported Alternative 3B because it was financially and economically feasible and created the greatest potential for housing, mobility, and climate change demands.

Liz Kniss, League of Women Voters, supported Alternative 3B because it moved the City closer to attaining Comprehensive Plan goals. Office space was not the only way to build affordable housing.

SUMMARY MINUTES

Carol Scott asked the Council to reject Alternative 3B because Ventura deserved more than Alternative 3B provided. Ventura needed BMR housing and public parks.

Rohin Ghosh supported Alternative 3B because it encouraged transit-oriented development (TOD), housing, and opportunities for young people to live in Palo Alto.

Keith Reckdahl, speaking as an individual, commented that the Staff Report did not reflect many opinions expressed by the Working Group. Parkland was important and an equity issue. Paying for parks and housing with office space was a terrible idea.

Ken Joye suggested the Council question Staff carefully regarding the economic analysis of the project. Projects such as Wilton Court needed to be part of the NVCAP, but it was not stressed in Alternative 3B.

Public Hearing closed at 9:45 P.M.

Council Member Cormack questioned whether the Council developed the best possible goals for the Working Group. She requested Staff comment regarding the structure of the Working Group and use of the structure in the future.

Rachel Tanner, Assistant Director of Planning and Development Services, related that the goals provided a sense of the desired outcomes. Interpretation of those goals by the members of the Working Group and the Council probably changed. Staff recruited community members for the Working Group, and seats on the Working Group were designated to represent specific stakeholders. The mix of stakeholders provided a variety of perspectives.

Council Member Cormack inquired regarding the timeframe to implement the NVCAP.

Ms. Tanner indicated Staff anticipated a 20-year time horizon for the NVCAP.

Council Member Cormack wanted to understand best practices or rules of thumb for the number of people needed to generate a customer base, impact fees, and new development that supported new amenities.

Ms. Tanner explained that members of the Working Group suggested places that they admired and wanted to emulate in order to understand the density of people and jobs.

SUMMARY MINUTES

Ms. Eisberg advised that the buildout analysis was based on prototypes for strategic economic development such as retail development of 25 square feet per person. The amount of retail increased as the population density increased.

Council Member Filseth commented that the economics of housing in Palo Alto were weak in comparison to the economics of office construction. He inquired whether high-density condominiums were more expensive to build than lower-density townhomes.

Ms. Srivastava reported the building typology and the cost of underground parking elevated the cost of condominiums relative to townhomes. Condominiums were more expensive to build than rentals.

Council Member Filseth noted the construction of affordable housing required a subsidy of \$350,000 to \$400,000 per unit. Market-rate condominiums required a subsidy of \$100,000 per unit.

Ms. Srivastava clarified that the gap included 15 percent BMR housing.

Council Member Filseth requested the base assumptions for reducing the parking demand for those units.

Ms. Tanner indicated the assumptions included the development of effective Transportation Demand Management (TDM) policies. Street parking standards were a component of TDM that discouraged vehicle ownership or reduced ownership to one vehicle per unit.

Council Member Filseth believed many Palo Alto households owned vehicles. He inquired whether limiting vehicle ownership to one per household was legal.

Ms. Tanner explained that limiting ownership to one vehicle per household was not likely, policies may encourage people to own one car and utilize their existing parking space. The public's concern regarding overflow parking needed to be addressed.

Council Member Filseth asked about the number of owners of many of the homes on Olive Avenue.

Ms. Tanner related that two entities owned many of the properties on Olive. Approximately three of the properties were owned by individuals.

Council Member Filseth shared National Recreation and Park Association (NRPA) standards of 2 acres of neighborhood park space per 1,000 residents and an additional 2 acres of district park space per 1,000 residents. Plan

SUMMARY MINUTES

Bay Area 2050 and the Bay Area's sixth cycle RHNA were not financially feasible.

Vice Mayor Burt requested the rationale for the statement that TOD did not need parks.

Ms. Tanner clarified that parks were needed, but achieving 4 acres per 1,000 residents in a TOD location may be difficult and not feasible.

Vice Mayor Burt requested the assumption for number of square feet of office space per job created in the proposed new office space.

Ms. Eisberg replied 3.4 jobs per 1,000 square feet of office space and 1.75 jobs per 1,000 square feet of retail space.

Vice Mayor Burt stated 300 square feet per office job was not realistic for Palo Alto. Analyses needed to utilize an accurate number. He questioned Alternative 2 having fewer checkmarks than Alternative 3 regarding transit and pedestrian/bicycle connections, the connected street grid, and community facilities and infrastructure in the chart relating alternatives to goals.

Ms. Tanner explained that the chart represented the relationship between development of sites and the community benefits associated with development. The chart did not represent the ability of an alternative to achieve goals.

Vice Mayor Burt commented that the plans for Alternatives 2 and 3 were comparable with respect to transit and pedestrian/bicycle connections, the connected street grid, and community facilities and infrastructure. However, Alternative 3's score was higher than Alternative 2's score.

Ms. Eisberg related that the three alternatives contained the same transportation improvements and open space concepts. As development occurred, it increased community amenities.

Mayor DuBois requested the name of the owner of Matadero Creek.

Ms. Tanner advised that the creek was privately owned by the various parcels, but Valley Water was granted an easement for maintenance of the creek.

Mayor DuBois requested the differences between improving and restoring Matadero Creek.

SUMMARY MINUTES

Virginia Mahacek, NVCAP Consultant, noted restoration included robust engineering, replacing vertical walls with plantable and stable walls, replacing the bottom with an earthen, naturalized bed, and constructing multilevel access in the wider portions of the creek.

Ms. Tanner explained that Valley Water's easement may be utilized for a walking path.

Mayor DuBois asked if connecting the roadways was discussed.

Ms. Tanner advised that Staff discussed bike/pedestrian paths across properties with property owners.

Council Member Stone inquired regarding the weight Staff placed on the Working Group's preferences. Only one Working Group member supported Alternative 3B.

Ms. Tanner reported Working Group members provided and discussed a range of preferences for the NVCAP. Staff utilized the preferences in developing the three alternatives. More members supported Alternative 2.

Council Member Stone inquired regarding the veracity of Working Group members' statements that they were allowed a minute to provide feedback regarding the alternatives.

Ms. Tanner explained that each group presented its alternative, and each member had a minute to provide feedback. The alternatives were available prior to the meeting so that members were able to prepare their comments.

Council Member Stone noted that many Working Group members felt their comments were disregarded, which was going to reduce community participation in future planning efforts. He inquired regarding the impact of Senate Bill (SB) 330 and the townhome project at 200 Portage Avenue on the alternatives.

Ms. Tanner related that the project already reflected some aspects of the alternatives but was going to change the numbers for office space and residential units.

Council Member Cormack requested the reasons for Matadero Creek Option 1A making more sense than Option 3.

Ms. Tanner indicated that Option 1A utilized the existing easement. Option 3 utilized more area and reduced the amount of land available for housing development.

SUMMARY MINUTES

Council Member Cormack asked if flow constriction near Park Avenue was a concern.

Ms. Mahacek answered no. Lengthening the bridge at Lambert provided some benefits.

Council Member Cormack noted podium parking was proposed but not reflected in renderings.

Ms. Tanner explained that podium parking was not visible to passersby to maintain an active street front.

Vice Mayor Burt asked if modeling was based on land acquisition.

Ms. Tanner responded yes.

Vice Mayor Burt did not understand the use of only land acquisition when developers already owned the majority of properties. The value of existing uses was the more relevant factor.

Ms. Srivastava explained that feasibility was presented as a continuum.

Vice Mayor Burt stated Alternative 2 generated a negative value because the analysis used land acquisition only. He inquired whether restoration of Matadero Creek qualified for funding from Valley Water.

Ms. Mahacek reported multiple funding sources were needed.

Council Member Filseth requested clarification of the development potential chart.

Ms. Tanner clarified that the existing development column reflected development currently in place. The 8,600 number under Alternative 1 reflected the amount of new office space resulting from redevelopment of parcels. The -129,000 number reflected the loss of commercial space.

Council Member Stone believed that Alternative 3B's proposal to demolish the cannery did not meet the relevant objective. Staff needed to look at other communities' reuse of historical sites and find innovative ways to preserve the cannery.

Ms. Tanner noted some members of the Working Group supported preservation of the cannery while others felt open space was a better way to increase awareness of the historical site.

SUMMARY MINUTES

Council Member Stone felt the Staff Report did not provide sufficient detail regarding generating affordable housing strategies.

Ms. Tanner reported Staff spent a significant amount of time exploring those ideas. Many of the strategies concerned ownership and new funding sources. The feasibility analysis addressed building typology, community benefits, and the likelihood of redevelopment.

Council Member Kou concurred with Council Member Stone's comments regarding preservation of the cannery. She inquired whether demolition of a portion of the cannery under the project for 200 Portage triggered an Environmental Impact Report (EIR).

Ms. Tanner replied yes.

Council Member Kou asked if construction materials were a factor in the cost of building condominiums.

Ms. Tanner replied yes.

Mayor DuBois requested clarification of Alternative 3B's 580 jobs/housing ratio in the metrics chart.

Ms. Tanner advised that 580 housing units were needed to support the jobs created.

Mayor DuBois wanted to understand the impacts of the 200 Portage project on the alternatives and requested the timeframe for Council review of the project.

Ms. Tanner answered 2022.

Mayor DuBois suggested the Council was likely to benefit from details of the feasibility model and sensitivity analyses and discussion of the light manufacturing (GM) zones and the Jay Paul site.

Council Member Cormack commented that the change in parking requirements seemed to affect the feasibility of the alternatives. She wanted to know how much of the difference between Alternatives 2 and 3 was the result of changes in parking requirements and the addition of office space.

Ms. Tanner understood the change in parking requirements was a significant component.

SUMMARY MINUTES

Ms. Srivastava advised that parking requirements did not factor in how much office did or did not help a residential project. There was no assumption that office helped subsidize residential. The parking requirement for residential units, exemption of retail square footage from the parking requirement, and underground versus podium parking were critical to the feasibility of an alternative.

Council Member Cormack inquired whether the Council needed to provide \$343,000 to fund the remainder of the NVCAP project or \$420,000 to reimburse grant funding for the NVCAP.

Ms. Tanner reported Staff identified funding to complete work through 2022. If the Council directed additional work, Staff needed to request additional funding.

Council Member Cormack stated understanding what was preferred and what was possible was valuable. The PTC recommended approval of the Staff recommendation of Alternative 3B.

Vice Mayor Burt noted that the Council did not discuss the mixture of housing types, the size of households, the criticality of the Bike Bridge, schools, and the Jay Paul property. The feasibility scenarios were useful but misunderstood and misused as binary choices. They needed to be treated as reference points. Incentives and subsidies were necessary to provide housing for a range of household incomes. The community was probably more receptive to higher housing density in Stanford Research Park than in the NVCAP area.

Council Member Kou asked if Staff was planning a feasibility study of the cannery.

Ms. Tanner related that the scope of work and funding did not include a study of adaptive reuse of the cannery building.

Council Member Kou commented that expecting people to walk or ride bikes was unrealistic.

Mayor DuBois proposed the Council take no action, end the Agenda Item, and direct Staff to return in the fall with a new Agenda Item.

Mr. Lait reported the next Agenda Item was going to include the economic feasibility analysis and adjustments to it, large sites in the NVCAP area, and parking.

SUMMARY MINUTES

Ms. Tanner added that additional topics were conversations with Palo Alto Unified School District (PAUSD) and GM zoning.

Mayor DuBois noted the Council was allowed to mix and match components of the alternatives.

MOTION: Mayor DuBois moved, seconded by Vice Mayor Burt to end this Agenda Item, take no action, and direct Staff to bring back a new item in early Fall based on the input and discussion with Council this evening.

Council Member Cormack proposed the creation of an Ad Hoc Committee to work with Staff, property owners, and other interested parties.

Mayor DuBois agreed to consider forming an Ad Hoc Committee.

MOTION PASSED: 7-0

Council Member Questions, Comments and Announcements

Council Member Cormack reported a speaker at the Women and Girls Summit asked the City to consider renaming a street for a woman.

Council Member Kou advised that the Santa Clara County Unhoused Task Force encouraged cities to endorse the Community Plan to End Homelessness, implement guides to address homelessness, identify resources for interim housing solutions and shelters, and identify emergency solutions for the unhoused.

Adjournment: The meeting was adjourned at 11:27 P.M. in honor of Penny Nelson.