



CITY COUNCIL SUMMARY MINUTES

Special Meeting
June 22, 2021

The City Council of the City of Palo Alto met on this date in virtual teleconference at 5:03 P.M.

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

Absent:

Agenda Changes, Additions and Deletions

None.

Oral Communications

Katie Rueff requested the Council's support for the Energy Innovation and Carbon Dividend Act, which encouraged affordable clean health, promoted public health, and benefited Americans financially.

Consent Calendar

Council Member Tanaka registered no votes on Agenda Item Numbers 2 and 5.

MOTION: Vice Mayor Burt moved, seconded by Council Member Cormack to approve Agenda Item Numbers 1-5.

1. Approval of Construction Contract Number C21178601A With Azulworks, Inc. in the Amount of \$1,954,900; Authorization for the City Manager to Negotiate and Execute Change Orders up to a Not-to-Exceed Amount of \$195,490 for the Rinconada Park Improvement Project, Capital Improvement Program Project PE-08001; and Approval of Budget Amendments in the Stormwater Management Fund and the Capital Improvement Fund.
2. Approval of a Lease Agreement With BioScience Properties for the Regional Water Quality Control Plant Workspace at 1900 Embarcadero Road in the Estimated Total Amount of \$1.73 Million for a Period of Five-years; and Approval of a Fiscal Year 2022 Budget Amendment in the Wastewater Treatment Fund.

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3. Approval of: 1) Construction Contract With O'Grady Paving, Inc. in the Amount of \$6,688,253 and Authorization for the City Manager to Negotiate and Execute Change Orders up to a Not-to-Exceed Amount of \$668,825; 2) Contract Amendment Number 4 to Contract C14150694 With Mark Thomas and Company in the Amount of \$27,136; and 3) Resolution 9977 Entitled, "Resolution of the Council of the City of Palo Alto for Senate Bill 1, the Road Repair and Accountability Act for Fiscal Year 2022, Providing the Project List for the Charleston-Arastradero Corridor Project – Phase 3, Capital Improvement Program Project (CIP) PE-13011."
4. Approval of Contract Number C21181431 With Palo Alto Housing Corporation (PAHC) Housing Services, LLC for a Not-to-Exceed Amount of \$316,236 to Provide Administration and Consulting Services for the City's Below Market Rate Housing Program for a Term of Two-years Through June 2023; and Approve a Fiscal Year 2022 Budget Amendment in the Residential Housing Fund.
5. Approval of: 1) Contract Amendment Number Four to Contract Number C12142825 With NV5, Inc in an Amount Not-to-Exceed \$527,146 to Incorporate the Approved California Department of Transportation (Caltrans) Additional Budget Request for the Newell Road/San Francisquito Creek Bridge Replacement Project, Capital Improvement Program (CIP) Project PE-12011, and to Extend the Contract Through December 31, 2024; 2) a Cooperation Agreement With the City of East Palo Alto; and 3) a Budget Amendment in the Capital Improvement Fund

MOTION PASSED FOR AGENDA ITEMS 2 AND 5: 6-1 Tanaka no

MOTION PASSED FOR AGENDA ITEM 1, 3, 4: 7-0

Council Member Tanaka questioned whether the additional space contemplated in Agenda Item Number 2 was needed or wanted and opposed a lease agreement because it meant a rate increase. The San Francisquito Creek Bridge needed to have protected bike lanes.

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Action Items

6. Consideration of Rescinding the City's Local Emergency Proclamation; Adopt Emergency Ordinance 5527 Entitled, "Ordinance of the Council of the City of Palo Alto to Continue the Uplift Local Encroachment Permit Program, Including Temporary Parklets;" and Discuss and Provide Direction on Street Closures Under the Uplift Local Streets Program.

Kiely Nose, Interim Assistant City Manager, reported the Council approved the Emergency Ordinance in March 2020 at the onset of the pandemic. The City implemented certain programs and policies to ease the City's work during the pandemic.

Steve Guagliardo, Principal Management Analyst, advised that states of emergency continued at all levels of government but were subject to change. California officially reopened on June 15, 2021 with the ending of the color-coded tier system. Generally, businesses resumed indoor operations and activities without capacity restrictions but subject to State guidance and protocols. In Santa Clara County, 71.2 percent of residents were fully vaccinated and 80 percent were partially vaccinated. The State's anti-eviction law preempted local and county Ordinances. While State eviction protections were scheduled to end on June 30, 2021, the Legislature and Governor reached a tentative agreement to extend protections to September 30, 2021. The Council did not need to provide eviction protections. Rescinding the local emergency triggered the 180-day extension period for permits and encroachments and the expiration of the Ordinance that authorized temporary encroachment permits. Staff proposed an Emergency Ordinance to allow temporary encroachment permits to continue uninterrupted until a replacement Ordinance became effective on July 22, 2021 and expired on December 31, 2021. Rescinding the local emergency did not automatically end street closures, and Staff requested Council direction regarding continuing or ending street closures in Downtown and on California Avenue.

Rachael Tanner, Planning and Development Assistant Director, indicated in April 2021 the Council extended the City Manager's authority to close certain streets until October 31, 2021. Options for the Council were to continue street closures until October 31, 2021, reopen Downtown on July 6, 2021 and California Avenue on September 7, 2021 as Staff proposed after obtaining community feedback, and reopen one street but not the other. Staff considered weekend-only street closures, restriping University Avenue, reopening one lane of traffic on University, and encouraging pedestrians to utilize sidewalks and concluded these options were not viable. Patron counts

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for University and California Avenue were higher on weekends than weekdays. Average Daily Trips (ADT) in April 2021 exceeded or were similar to ADT in 2016.

Mr. Guagliardo related that an analysis of Sales Tax revenue did not ascertain the impacts of street closures. From 2019 to 2020, Sales Tax revenues generated by food services in the California Avenue District declined by 47 percent, the University Avenue District by 55 percent, and the remainder of the City by 49 percent. Similarly, Sales Tax revenues generated by retail in the California Avenue District declined by 21 percent, University Avenue District by 44 percent, and the remainder of the City by 25.5 percent from 2019 to 2020.

Ms. Tanner noted that the Council approved funding to pursue opportunities for more flexibility in street closures. To facilitate the closure of public streets, the City needed to comply with established processes, craft a funding plan for capital and operating costs, and engage stakeholders in an urban design process.

Lucia Miracchi, Massage Therapy Center, advised that clients with ambulatory issues walked an additional 150 feet to access her business due to the closure of California Avenue to vehicular traffic.

Goolrukh A. Vakil felt closing University Avenue to vehicular traffic benefited some businesses and not others. She preferred a closure of University Avenue.

Hamilton Hitchings supported extending temporary encroachment permits to December 31, 2021 and keeping streets closed to vehicular traffic. There was no reason to end the local emergency prior to the Governor ending the State emergency.

Angie Evans, Palo Alto Forward, supported continued closure of University and California Avenues to vehicular traffic and urged the Council to extend eviction protections.

Kevin Ma supported the closure of University and California Avenues to vehicular traffic and requested the Council extend eviction protections.

Megan Kawkab believed closure of University Avenue and Ramona Street created major hardships for restaurants and businesses located on side streets and retail businesses located on University Avenue and Ramona Street. She urged the Council to reopen Downtown streets only to vehicular traffic.

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Neil Park-McClintick shared his enjoyment of Downtown with streets closed to vehicular traffic. He questioned whether the pandemic or street closures affected businesses more.

Guillaumbienaima remarked that closing University Avenue benefited only restaurants located on University Avenue.

Charlie Weidanz commented that businesses needed years to recover from the economic impacts of the pandemic. Retailers preferred open streets and enhanced sidewalks and parklets.

Chris Tucher supported a permanent closure of California Avenue to vehicular traffic.

Kelsey Banes supported the closure of City streets to vehicular traffic and the suggestion for a bike lane in the center of closed streets and encouraged the Council to extend the eviction moratorium.

Jamie O'Connell supported the closure of California Avenue to vehicular traffic. The path to rebuilding economic activity included closure of California Avenue. The needs of University Avenue may be different from those of California Avenue.

Cherry LeBrun, De Novo Fine Contemporary Jewelry, indicated two of four streets leading to her business were closed, and her customers were frustrated by the difficulty of reaching her store. She supported parklets and reopening streets to vehicular traffic.

Vikram Bhambri related that many people were not comfortable with indoor activities despite the high vaccination rate and encouraged the Council to continue street closures to vehicular traffic.

Roxy Rapp supported parklets and reopening University Avenue to vehicular traffic on July 7, 2021.

Nancy Coupal, Coupa Café, indicated her café on Lytton Avenue, which was open to traffic, suffered a greater decline in business than her café on Ramona Street, which was closed to traffic. Keeping streets closed to traffic was a way to keep businesses operating. The City needed to evolve.

Rob Fischer, Palo Alto Creamery and Reposado, related that both businesses were severely impacted by the closure of University Avenue and Ramona Street. He preferred an expansion of sidewalks, retention of parklets, and reopening streets to two-way traffic.

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Council Member Kou requested clarification of the timelines for the Emergency and replacement Ordinances.

Molly Stump, City Attorney, advised that the Council approved a second reading of the regular Ordinance. The regular Ordinance was not going to be in effect if the Council immediately rescinded the local emergency. The Emergency Ordinance was intended to fill the gap between the two.

Mr. Guagliardo indicated the replacement Ordinance became effective on July 22, 2021 and expired on December 31, 2021. The Emergency Ordinance became effective when the local emergency was rescinded and expired on July 22, 2021.

Council Member Kou requested Staff's confidence in the Governor and Legislature continuing eviction protections to September 30, 2021.

Ed Shikada, City Manager, understood a bill regarding eviction protections was proposed as part of the State Budget. If approved, the bill became effective by July 30, 2021.

Council Member Kou asked if the Sales Tax analysis included Stanford Shopping Center.

Mr. Guagliardo clarified that Stanford Shopping Center was included in the remainder of the City category for retail and food services.

Council Member Kou inquired whether emails supporting closure of streets to vehicular traffic were sent by Palo Alto residents.

Ms. Tanner did not know the residency of people sending the emails.

Council Member Kou requested the number of parking spaces lost to street closures.

Philip Kamhi, Chief Transportation Official, responded approximately 79 parking spaces on University Avenue.

Council Member Cormack requested the disadvantages of rescinding the local emergency.

Mr. Shikada reported Staff was prepared for rescission of the local emergency.

Council Member Cormack clarified that Sales Tax revenues from retail and food services declined across the City from 2019 to 2020.

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Mr. Guagliardo concurred.

Council Member Cormack remarked that the Sales Tax analysis indicated sales in brick-and-mortar businesses were declining prior to the pandemic. People were really enjoying the street closures. She inquired regarding street closures in other jurisdictions.

Ms. Tanner indicated many cities were deciding whether to continue street closures.

Council Member Filseth noted anecdotal evidence of the impacts of street closures on retail businesses and asked if cities compared notes on the impacts of street closures.

Mr. Guagliardo answered no. Streets were not yet open; consequently, there was no data for open streets to compare with closed streets.

Council Member Filseth requested Staff monitor the situation and attempt to provide some data.

Council Member Stone noted an overwhelming number of public communications supporting street closures. Isolating the causes of decreased sales was difficult. Many retailers reported their reliance on foot traffic for sales. A potential compromise for University Avenue was allowing bicycle use of the street and pedestrian use of sidewalks.

Ms. Tanner discussed the difficulties of preventing pedestrians from using the street.

Council Member Stone suggested an Ordinance and signage prohibiting pedestrian use of specific streets may be beneficial.

Vice Mayor Burt did not understand the difficulty. Caution tape was one method to prevent pedestrians from walking in the street. He inquired whether extending the local emergency allowed the Council to continue eviction protections.

Ms. Stump replied yes.

Vice Mayor Burt asked if approval of the replacement Ordinance was the only way to extend encroachment permits absent an extension of the Emergency Ordinance.

Ms. Stump reiterated that the Council previously adopted the replacement Ordinance.

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Vice Mayor Burt commented that six of seven Council Members were required to approve an Emergency Ordinance. He suggested the first consideration for the Council was implementation of the Emergency Ordinance because the decision was possibly going to influence the Council's decision regarding the local emergency.

Ms. Stump concurred.

Council Member Tanaka believed the goal was to maximize business activity for restaurant and retail businesses along University and California Avenues. The Council needed sales data to inform its decision. He inquired about data that Staff collected.

Kara Apple, Police Lieutenant, reported data was anecdotal because businesses were not willing to share their data. Sales were dependent on many factors.

Mr. Shikada recalled confidentiality restrictions on information for individual businesses.

Ms. Apple added that businesses were willing to share data comparing sales for their locations in Palo Alto and other cities.

Council Member Tanaka shared data regarding average percentage of growth in sales from traffic for 12 businesses located along closed and open portions of University Avenue in Downtown.

Mayor DuBois stated the emergency was over. The Emergency Ordinance needed to be discussed separately from street closures. He inquired whether Council Members were interested in scheduling a Special Meeting to discuss eviction protections. The Council needed to ensure sidewalks were open for pedestrian access and determine an appropriate rent for public space. He expressed concern regarding the impacts on residential streets and the Council's inability to find that University Avenue was not needed for vehicles. He requested clarification of Vice Mayor Burt's suggestion.

Ms. Stump advised that Vice Mayor Burt suggested the Council consider an extension of encroachment permits first because it may influence the Council's decision regarding a date to end the local emergency.

Council Member Filseth agreed that the local emergency did not need to be tied with the other topics. The question for the Council was when to reopen University Avenue to vehicular traffic.

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Vice Mayor Burt noted that vehicular traffic in Downtown was back to pre-pandemic levels. Assisting all businesses equally was going to be difficult. The closure of a portion of Ramona did not appear to disadvantage businesses as much as other street closures because of the nature of those businesses. Initiatives were needed to assist retailers located along California Avenue. Music venues improved business for adjacent California Avenue restaurants, and the Council needed to consider music venues in Downtown.

Mr. Kamhi clarified that traffic counts for 2016 were not really useful as pre-pandemic data. Between 2013 and 2016, ADT increased approximately 22 percent on University Avenue.

Mayor DuBois felt businesses needed certainty in order to plan for the future. Perhaps the City needed to charge for the use of closed streets. Restaurants wanted additional space, and people enjoyed dining outside. However, allowing only restaurants to use the sidewalk and street was not fair to the entire business community. He supported reopening University Avenue to vehicular traffic on July 6, 2021 and California Avenue on September 7, 2021.

Council Member Tanaka wanted to create metrics and measure impacts in order to make informed decisions. More data was needed. He shared maps of positive and negative effects and opinions regarding existing street closures in Downtown and California Avenue. He preferred to gather data before taking action on street closures.

Council Member Stone concurred with the Council's need for more data. He inquired about the number of outdoor seats a restaurant was allowed.

Brad Eggleston, Public Works Director, explained that a restaurant's total number of indoor and outdoor seats was not allowed to exceed the indoor capacity of the restaurant. Staff was not proactively enforcing the restriction.

Council Member Stone asked if Staff was aware of any funding or concepts that were available to assist retailers, particularly those along University Avenue.

Mr. Shikada reported Staff discussed the issue with the Palo Alto Chamber of Commerce (Chamber). The Chamber was able to provide assistance with marketing, promotions, and consensus-building. Funding of \$50,000 to \$100,000 was likely needed for marketing and promotions, and COVID-19 recovery funds were a possible source of funding.

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Council Member Stone preferred to maintain street closures on Ramona Street and California Avenue with bicycles allowed to utilize roadways and pedestrians directed to utilize sidewalks.

Council Member Cormack asked if the Council needed to withdraw the City Manager's authority to open and close streets through October 31, 2021 or to direct the City Manager to open and close streets.

Mr. Shikada indicated either method was within the Council's purview. The Council provided that authority so that Staff was able to respond to dynamic situations, but situations were currently stable.

Council Member Cormack requested clarification of the process and timeline for permanently closing streets.

Mr. Shikada related that stakeholder engagement for closing streets in Downtown alone was likely to be fairly complex. A California Environmental Quality Act (CEQA) analysis also required some time to conduct.

Ms. Tanner advised that the process included outreach, design, CEQA analysis, and Council consideration of policy issues and environmental analysis.

Mr. Eggleston suggested a traffic analysis probably would not require as much time as hiring a consultant, design work, stakeholder engagement, and developing costs and plans.

Council Member Cormack requested the status of work in Downtown.

Mr. Eggleston reported Staff was preparing a scope of work for a consultant and anticipated issuing a Request for Proposals (RFP) in July 2021 and bringing a contract to Council in September or October 2021.

Council Member Cormack remarked that controlling the various factors that potentially contributed to a decline in business on California Avenue was not possible. Ramona Street activated City Hall Plaza. University Avenue was not a pedestrian-only mall. This was an opportunity to make changes.

MOTION: Mayor DuBois moved, seconded by Council Member XX to:

- A. End the City's Local Emergency on July 1, 2021;
- B. Pass the Emergency Ordinance to continue the Permit Encroachment Program;

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- C. Support the City Manager's suggestion to open the downtown area on July 6, 2021, and California Avenue on September 7, 2021; and
- D. Allocate \$50,000 to Chamber of Commerce to engage with all businesses for cross-promotional activities and small events from current year COVID funds.

MOTION FAILED DUE TO THE LACK OF A SECOND

Council Member Kou proposed amending Part C to reopen streets in Downtown and California Avenue on September 30, 2021 and limit closure of Ramona Street to half of the roadway.

Council Member Tanaka suggested another amendment to require collection of sales data to inform the Council's decision.

Mayor DuBois inquired if half a block of Ramona or one travel lane was going to be open to vehicular traffic.

Council Member Kou answered one travel lane.

Council Member Filseth asked if the intention was to open one travel lane in the block of Ramona that was currently closed.

Council Member Kou replied yes.

Council Member Filseth noted few retail businesses were located in that block of Ramona.

MOTION: Council Member Kou moved, seconded by Council Member Tanaka to:

- A. End the City's Local Emergency on July 1, 2021;
- B. Pass the Emergency Ordinance to continue the Permit Encroachment Program;
- C. Support the City Manager's suggestion to maintain the closure of the downtown area and California Avenue until September 30, 2021, and to open Ramona Street for one-way traffic while keeping the encroachments of the cafes;
- D. Allocate \$50,000 to Chamber of Commerce to engage with all businesses for cross-promotional activities and small events from current year COVID funds; and

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E. Direct Staff to collect sales data of willing businesses.

Council Member Kou commented that closing University Avenue was difficult when the Council did not know what the traffic situation was going to be when businesses and schools fully reopened. This was an opportunity to collect traffic and sales data.

Council Member Tanaka hoped more businesses responded to the City's request for data than responded to his request.

Ms. Apple reported opening one lane of travel on Ramona was going to provide the same space as a parklet.

Vice Mayor Burt indicated no one addressed him with a request to reopen one lane of traffic in the closed block of Ramona. He supported maintaining the existing closure of Ramona.

Council Member Kou expressed concern that two retailers in that block invested a lot in their businesses, and there could be issues for them if the block remained closed.

AMENDMENT: Vice Mayor Burt moved, seconded by Council Member Tanaka to continue with the current closure for Ramona Street as a half-closed configuration.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER: to remove the beginning of the Motion Part C, "Support the City Manager's suggestion to maintain"

Vice Mayor Burt asked about the status of street closures come September 30, 2021.

Council Member Kou wanted the Council to revisit the issue and review data after the summer recess. This period was intended to notify businesses of the possibility of reopening streets on September 30, 2021.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER: to add onto the Motion Part C, "... and review the next actions of the closures of California Avenue and University Avenue after Council Summer break."

Council Member Cormack supported the Amendment.

AMENDMENT PASSED: 5-2 DuBois, Kou no

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Vice Mayor Burt reiterated his concern regarding aligning the termination date of the state of emergency with an extension of an eviction moratorium. He requested an update regarding legislative action on an eviction moratorium.

Niccolo De Luca, Townsend expressed confidence that the Legislature intended to vote early the following week to extend the eviction moratorium. Potential terms of the moratorium included extending protections through September 30, 2021; making landlords eligible for 100 percent rent debt from April 1, 2020; allowing landlords who received assistance at 80 percent to apply for the remaining 20 percent; making landlords eligible for 100 percent even if tenants vacated the premises; and providing eligible tenants with some type of relief after September 30, 2021. The Legislature also discussed additional funding for regions of the state with higher needs. Because it was part of the State Budget, the bill needed approval by a two-thirds vote. His impression was that the bill was going to be applied statewide and to preempt local Ordinances.

Vice Mayor Burt suggested the Council consider scheduling a Special Meeting during the summer break if the bill did not pass. He inquired whether an Ordinance to extend the eviction moratorium required a second reading if the local emergency remained in effect.

Ms. Stump advised that the Council had the discretion to adopt a regular Ordinance, which required a second reading and 30 days to become effective, or an Urgency Ordinance, which became effective upon the first reading. An Urgency Ordinance required approval by a super majority of the Council. A super majority of Council Members present was necessary to approve an Urgency Ordinance in a Special Meeting.

Vice Mayor Burt suggested revising the July 1, 2021 date in Part A of the Motion to July 15, 2021 so that the Council had ample time to approve an Ordinance.

Mayor DuBois requested clarification of the logic for a July 15, 2021 date.

Ms. Stump indicated that an Ordinance required a first reading and after 11 days a second reading, and 30 days after the second reading, the Ordinance became effective.

Mayor DuBois noted that if the State took no action, tenants were potentially going to be evicted for 45 days or so.

Vice Mayor Burt requested the date that the State order expired.

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Ms. Stump answered June 30, 2021.

Vice Mayor Burt stated this was the best course of action if the Council wanted to consider an Ordinance.

Mayor DuBois asked if the Council was able to do that without a local emergency.

Ms. Stump responded yes. The local emergency and an Urgency Ordinance were not related. An Urgency Ordinance required the Council to conclude that the action was a matter of public health and safety. If the Council felt there was a need to prevent significant residential evictions, the topic qualified for an Urgency Ordinance.

Vice Mayor Burt related that he previously contacted the Santa Clara Valley Chapter of the American Institute of Architects (AIA), and they were receptive to participating in a design charette at no charge. Community members had expertise in urban design. A consultant was not needed when better outcomes were achieved through engaging with community partners. He proposed amending Part D of the Motion to include "pursue streetscape design expertise from the local AIA chapter or others and evaluate potential sites for permanent performance stages in both downtowns."

Council Member Kou did not accept the proposed Amendment.

Ms. Stump noted that competitive solicitation processes had to be followed unless the Council enacted an Ordinance providing an exception.

Ms. Nose added that compensating any of the proposed organizations also required a competitive solicitation process.

Council Member Cormack requested the streets proposed for redesign.

Vice Mayor Burt replied University, California Avenue, and Ramona. The priority was California Avenue. His intent was to establish a direction for utilizing those resources.

Council Member Cormack inquired regarding Staff's interpretation of the proposed Amendment in relation to the work underway.

Vice Mayor Burt wanted to provide general direction so that Staff returned with recommendations to integrate the two.

AMENDMENT: Vice Mayor Burt moved, seconded by Council Member Cormack to add onto the Motion as a proposed Part F:

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F. Direct Staff to include in its workplan for streetscape design to pursue design expertise from the local AIA chapter or others, and to include an evaluation of potential sites for permanent performance stages in downtown.

Council Member Cormack felt the Amendment moved the Council incrementally forward and utilized available experience.

Mr. Eggleston believed the proposed process could provide some interesting design ideas, but the process on its own was not likely to provide technical information necessary to development of cost estimates.

Vice Mayor Burt clarified that the AIA and other resources were intended to provide potential designs, and Staff or consultants were intended to prepare the technical information for designs.

Mr. Shikada reported the two processes may require duplicative efforts. Pro bono design work was likely to be more creative and needed to precede the engagement of design professionals who were liable for errors and omissions. The proposal would likely extend the timeline for this type of work.

Vice Mayor Burt concurred with sequencing the work. However, the process was likely to require less time and achieve more buy-in. Consultants were not the most effective method to attain creativity or community buy-in.

Council Member Cormack proposed limiting the Amendment to California Avenue.

Vice Mayor Burt indicated work could begin with California Avenue with a future decision to apply the process to other streets.

INCORPORATED INTO THE AMENDMENT WITH THE CONSENT OF THE MAKER AND SECONDER: to add to the end the Amendment, "... performance stages on California Avenue and other potential areas such as downtown"

Mr. Eggleston advised that the AIA was responsible for the competitive process to design the Highway 101 Bike Bridge. Complications previously arose when utilizing these types of methods.

Mayor DuBois suggested the Council pause its consideration of this Agenda Item, continue to the next two Agenda Items, and return to this Agenda Item in the interest of time and public speakers.

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Vice Mayor Burt suggested the Council vote on Parts A through E if they were not contentious.

Council Member Cormack noted that not all Council Members addressed the Motion.

MOTION: Mayor DuBois moved, seconded by Vice Mayor Burt to continue this item to the end of the meeting.

MOTION PASSED: 4-3 Cormack, Filseth, Tanaka no

CONTINUED HERE AT THE END OF THE MEETING - 11:50 P.M.

Council Member Filseth believed the demand for outdoor dining was sufficient for the Council to develop a strategy for it. The Council needed to make multiple strategic decisions before designing new streetscapes. Staff needed to recommend a long-term strategy for outdoor dining.

Council Member Cormack suggested creative streetscape ideas were likely to help the Council envision options.

INCORPORATED INTO THE AMENDMENT WITH THE CONSENT OF THE MAKER AND SECONDER: to change the Amendment to read, "... for streetscape design on California Avenue to pursue design expertise"

Council Member Kou stated a carefully considered process was needed to design new streetscapes and to engage the business and residential communities.

Vice Mayor Burt clarified that a design charette was not intended to exclude the business community. The design process needed to include the business community and the community at large and to be led by creative architects.

AMENDMENT AS AMENDED: Vice Mayor Burt moved, seconded by Council Member Cormack to add onto the Motion as a proposed Part F:

F. Direct Staff to include in its workplan for streetscape design on California Avenue to pursue design expertise from the local AIA chapter or others, and to include an evaluation of potential sites for permanent performance stages in other potential areas such as downtown.

AMENDMENT AS AMENDED PASSED: 4-2 DuBois absent, Filseth, Kou no

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INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER: to add to the Motion Part C, "... direct Staff to reroute pedestrians onto the sidewalk of University Avenue"

Council Member Tanaka shared his street closure analysis and hoped Staff's data collection and analysis reflected improved numbers. If the trend continued, closing California Avenue and opening University Avenue were logical choices.

Ms. Apple requested additional details of the Council's direction to collect sales data.

Vice Mayor Burt understood that the direction was for Staff to request retail businesses provide the percentage change in their gross revenue.

Council Member Tanaka added that the data included year-over-year figures.

Council Member Filseth asked if the primary question was whether street closure significantly impacted the recovery of retail and restaurant businesses.

Council Member Tanaka responded yes.

Council Member Cormack was unsure whether that data was going to be helpful. It needed to be reviewed by the industry.

Mr. Shikada reported business information provided to the City was public record and would be provided to any member of the public who sought it. Disclosure of this fact caused businesses not to provide sales data. He proposed Staff return to the Council with recommendations for structuring the streetscape design process.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER: to add into the Motion Part F, "... have Staff return with a process recommendation to pursue a pro-bono design expertise such as AIA, ARB or others"

Ms. Nose recalled that Staff provided Sales Tax data, which was gross revenues subject to Sales and Use Taxes.

Vice Mayor Burt commented that the difference was possibly location. A simplified way to provide the information was to parse it geographically.

Ms. Nose advised that Staff was legally prohibited from providing detailed data. Staff probably was not able to aggregate or disaggregate opened versus closed street data further by retail versus restaurant.

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INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER: to restate the Motion Part E as, "Direct Staff to provide available data attempting to distinguish impacts on closed streets versus non-closed streets of willing businesses;"

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER: to add to the end of the Motion Part E, "... to the extent allowed legally;"

Council Member Tanaka wanted Staff to provide data more current than tax data. Most businesses were willing to share percentage data.

Council Member Filseth suggested the Council direct Staff to estimate the impact of closed streets versus open streets on retail and restaurant businesses and allow Staff to determine the method for calculating that data.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER: to update the beginning of the Motion Part E as, "Direct Staff to provide an analysis—to the extent the available data allows—"

Council Member Tanaka proposed Staff return to Council with a plan for reopening University Avenue with parklets, wider sidewalks, and fewer travel lanes.

Mr. Shikada reported Staff did not prepare a plan for reopening streets prior to the meeting. Based on the Council's direction, Staff was able to craft a plan for an intermediate condition.

Ms. Tanner related that parklets were going to continue based on Part B of the Motion.

Mr. Shikada clarified that wider sidewalks and directing pedestrians to sidewalks were not possible in an interim plan, and Staff was going to consider how best to accomplish those topics.

MOTION AS AMENDED: Council Member Kou moved, seconded by Council Member Tanaka to:

- A. End the City's Local Emergency on July 1, 2021;
- B. Pass the Emergency Ordinance to continue the Permit Encroachment Program;

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- C. Continue with the closure of the downtown area and California Avenue until September 30, 2021, continue with the current closure for Ramona Street as a half-closed configuration, direct Staff to reroute pedestrians onto the sidewalk of University Avenue, and review the next actions of the closures of California Avenue and University Avenue after Council Summer break;
- D. Allocate \$50,000 to Chamber of Commerce to engage with all businesses for cross-promotional activities and small events from current year COVID funds;
- E. Direct Staff to provide an analysis—to the extent the available data allows—in order to distinguish impacts on closed streets versus non-closed streets of willing businesses to the extent allowed legally; and
- F. Direct Staff to include in its workplan for streetscape design on California Avenue, have Staff return with a process recommendation to pursue a pro-bono design expertise such as AIA, ARB or others, and to include an evaluation of potential sites for permanent performance stages in other potential areas such as downtown.

MOTION AS AMENDED PASSED: 6-0 DuBois absent

- 7. Review of the Policy & Services Committee's Recommendation on State Legislative Advocacy; Discussion and Direction on Potential Alterations to the City's State Legislative Advocacy Program and Related Actions.

Chantal Cotton Gaines, Assistant City Manager, reported the Policy and Services Committee (P&S) considered options in May 2021 and provided recommendations and requested additional information.

Niccolo De Luca, Townsend, advised that Option 1 was to provide comment letters on many proposed bills regardless of author, likelihood of passage, and effect on the City. Option 1 was time intensive, required a greater presence in Sacramento, and provided less impact. Option 2 was to advocate for bills that advanced the City's major goals. Option 3 was to rely on Legislative Guidelines and comment on bills of interest to the City and with a fair chance of moving forward.

Ms. Cotton Gaines indicated that Lafayette and Cupertino utilized a standing legislative committee to review all proposed bills and select bills for further analysis. Staff in Mountain View and other nearby cities reviewed legislation and proposed bills for comment letters. In Southern California, cities analyzed bills with a high likelihood of passage and high impact on the

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community. In 2021, 2,800 bills were introduced. After applying the Legislative Guidelines, approximately 179 bills of interest to the City were before the Appropriations Committee. Action by the Appropriations Committee further reduced the number of bills of interest to the City to approximately 159. Option 3 reduced the number of bills to about 25. Staff planned to continue tracking bills related to Legislative Guidelines and working on other legislative priorities. Staff recommended the Council take a position on Senate Bill (SB) 2 regarding decertification and qualified immunity for peace officers, SB 16 regarding release of records for use of force incidents, Assembly Bill (AB) 26 regarding use of force, and AB 718 regarding investigations of misconduct by peace officers.

Mr. De Luca stated he intended to meet with Legislative staff members the following day regarding the eviction moratorium and would provide any new information to Staff.

Mayor DuBois inquired whether Staff was recommending the Council modify its advocacy process.

Ms. Cotton Gaines indicated Staff was seeking clarification of the Council's preferences.

Council Member Kou commented that the concern was the number of bills that impacted cities on many levels. Some cities obtained in-depth legislative reports from their advocates. Because more bills impacted the City, the Council needed deeper analyses and detailed recommendations.

Mayor DuBois noted that Legislative Guidelines were updated annually. The existing process was working well. Perhaps, the Council needed to spend more time ensuring the Legislative Guidelines were appropriate. He inquired whether the policy manual needed to be revised if the Council wished to alter the review process.

Ms. Cotton Gaines related that Staff was able to update the manual and present it to P&S with the Legislative Guidelines in November or December 2021.

Mayor DuBois suggested the Council did not need to waste time reviewing legislation that did not affect the City or had no chance of passing. He did not believe any changes were necessary at the current time.

Council Member Cormack concurred with Mayor DuBois. She preferred the Council spend more time advocating for legislation. She inquired about a more active role for Council Members.

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Mr. De Luca emphasized that face-to-face interaction among Council Members and Legislators was very helpful, especially during January advocacy days and April or May prior to adoption of the Budget.

Vice Mayor Burt inquired whether Mayor DuBois believed the existing Legislative Guidelines allowed the Council to select one of the options or whether Mayor DuBois did not want to select one of the options.

Mayor DuBois did not wish to delete other items in the Legislative Guidelines.

Vice Mayor Burt supported retention of the current strategy manual as long as it aligned with Option 3 and enabled the Council to increase its engagement on legislation. The Council needed to continue opposing legislation that potentially harmed the City.

Mayor DuBois inquired whether Staff sought approval of recommendations for legislation regarding peace officers.

Ed Shikada, City Manager, reported Staff requested affirmation of the recommendations or alternative direction.

Council Member Stone believed the Council should support the four police reform bills because they aligned with the Council's and City's policy priorities. He inquired whether Mr. De Luca found "papering the Capital" to be an effective advocacy technique.

Mr. De Luca advised that it was a method to make the City known to Legislators, but he did not believe it was effective advocacy. A thoughtful and thorough position was most effective.

Council Member Stone remarked that the City probably did not need to make itself known. Option 3 seemed to be a good balance of the other two options. Council Members visiting the Capital was an interesting idea. He inquired about the potential cost of forming a standing committee for legislation.

Ms. Cotton Gaines advised that Staff did not prepare a cost estimate. Staff time to notice meetings, analyze bills, prepare for meetings, and work with state advocates was going to be significant.

Mr. Shikada acknowledged the burden for the City Clerk's Office to prepare for additional meetings.

Council Member Stone asked about the potential for a significant increase in the City's contract with Townsend for attending at committee meetings.

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Mr. De Luca did not anticipate an increase. Townsend would be happy to prepare more thorough memoranda and attend additional meetings if the Council wished.

Council Member Stone commented that the detailed memorandum regarding pending legislation was likely to be helpful.

Ms. Cotton Gaines added that Staff was able to work with Townsend to narrow the list of bills to include in a detailed memorandum.

MOTION: Mayor DuBois moved, seconded by Council Member Stone to:

- A. Continue with Strategy Option #3 (Strategic Weighing in on Issues of Interest to the City);
- B. Support the 4 police bills (SB 2, SB 16, AB 26, AB 718) as recommended by Staff; and
- C. Ask Staff to evaluate whether we should support Energy Innovation and Carbon Dividend Act under existing legislative guidelines and if so prepare a letter of support.

Council Member Cormack requested any recommended amendments for SB 2.

Molly Stump, City Attorney, advised that SB 2 would change one of the key legal doctrines that governed courts' evaluation of allegations of police misconduct. Staff believed that was going to have significant impacts on cities that employed police officers. SB 2 required more thought and careful evaluation that was not performed at the State level.

Mr. De Luca added that additional amendments were going to be proposed for SB 2. The City needed to review the amendments before taking a position.

Council Member Cormack asked if the City was going to recommend amendments.

Mr. De Luca indicated the City was able to propose amendments.

Ms. Cotton Gaines related that supporting SB 2 with amendments provided more opportunities for Staff to discuss concerns about qualified immunity with the bill's sponsor.

Council Member Cormack inquired whether SB 2 applied to sheriff's deputies as well as police officers.

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Ms. Stump understood SB 2 applied to law enforcement generally.

Council Member Cormack requested future updates on SB 2. The ad hoc committee needed to review and recommend legislation.

Council Member Kou wanted to understand the process for Staff or Mr. De Luca to bring legislation to the Council's attention.

Mr. De Luca explained that he flagged bills for watching or discussion and paid close attention to bills about which the Council expressed concerns. He and his colleagues discussed legislation with Ms. Gaines biweekly.

Ms. Cotton Gaines indicated P&S meetings were opportunities for discussion of bills not on the list for discussion and for P&S to direct Staff to monitor additional bills.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER: to add onto the Motion as Part D:

D. Direct Staff and Lobbyist to provide a forensic memorandum of a limited number (less than 25) of bills as legislative updates with the consultation of different City departments.

Council Member Tanaka inquired about bills crafted to impact rising crime rates.

Mr. De Luca suggested cities, counties, District Attorneys, and Sheriffs' Offices in the region collaborate on bills for public safety and diversion.

Council Member Tanaka inquired whether SB 2, SB 16, AB 26, or AB 718 was intended to reduce public safety.

Mr. De Luca answered no.

Council Member Tanaka felt the Council and the community supported virtual meetings and hoped they continued.

Mr. De Luca reported he and his colleagues previously contacted the Governor's Office to encourage a continuation of virtual meetings.

MOTION AS AMENDED: Mayor DuBois moved, seconded by Council Member Stone to:

A. Continue with Strategy Option #3 (Strategic Weighing in on Issues of Interest to the City);

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- B. Support the 4 police bills (SB 2, SB 16, AB 26, AB 718) as recommended by Staff;
- C. Ask Staff to evaluate whether we should support Energy Innovation and Carbon Dividend Act under existing legislative guidelines and if so prepare a letter of support; and
- D. Direct Staff and Lobbyist to provide a forensic memorandum of a limited number (less than 25) of bills as legislative updates with the consultation of different City departments.

MOTION AS AMENDED PASSED: 7-0

- 8. PUBLIC HEARING / QUASI-JUDICIAL. 250 Hamilton Avenue [20PLN-00118]: Appeal of Director's Approval of Three Wireless Communication Facilities (Verizon Cluster 4) by Verizon to be Placed Adjacent to 853 and 1221 Middlefield Road and 850 Webster Street. Environmental Assessment: Exempt From the Provisions of California Environmental Quality Act (CEQA) per Section 15303 (New Construction and Conversion of Small Structures) and 15311 (Accessory Structures).

Jonathan Lait, Planning and Development Services Director, reported the Federal Communication Commission's (FCC) Small Cell Order established the regulatory framework for processing applications for Wireless Communication Facilities (WCF) and was intended to remove barriers at the local and state levels to processing 5G technology and expanding wireless networks. Circuit court decisions reversed the FCC's ruling requiring objective aesthetic standards and allowed reasonable aesthetic criteria. Staff was preparing amendments to the local Ordinance to reintroduce subjective criteria. Objective criteria in place when applications were filed were applied to applications. Aesthetic criteria were not allowed to prohibit or have the effect of prohibiting WCF. Three WCF nodes with two or three antennas on each were before the Council due to Staff's concerns that the nodes did not comply with objective or exception criteria. Node 205 was located within a 600-foot radius of Addison Elementary School. Node 061, located on Middlefield Road, required exceptions to be located in a residential district, for antennas to face private property, and for the proposed poles. Staff reviewed three alternative locations for Node 061 and concluded that the alternative locations required additional exceptions. Node 204, located on Webster near Channing House, required exceptions to be located in a residential district, on a collector street, and within 600 feet of another WCF. After reviewing six alternative locations, Staff determined the proposed location was preferable to the alternative locations. Node 205,

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located on Middlefield Road, required an exception because underground infrastructure prevented the planting of vegetative screening within 35 feet of the node. Five alternative locations were deemed unacceptable due to technical requirements. The proposed location of Node 205 was preferred because of its proximity to an adjacent commercial use. The City's consultant peer reviewed radio frequency (RF) emissions and found that the emissions were consistent with FCC standards. The Appellant alleged that the Applicant failed to properly notice residents and property owners located within 600 feet of each node. Staff reviewed the Applicant's mailing labels and found that a number of addresses were omitted from the labels. As to noticing for Node 204, Staff experienced challenges with noticing residents of Channing House because the County of Santa Clara (County) did not register the property as having more than 200 units. The Appellant's allegations referred to screening, concealment of antennas, and size of antennas. If the Council chose to continue the hearing, an extension of the shot clock was needed.

Public Hearing opened at 9:13 P.M.

Jeanne Fleming, Appellant, referred to 19 reasons for the Council to uphold the appeal and reverse the Director's Determination. Verizon failed to notice all residents and property owners located within 600 feet of project sites, specifically all residents of Channing Housing. Staff justified the omission by stating that the omission was unlikely to result in any substantive change to the project. Verizon's proposed WCF did not comply with design standards requiring a single, integrated shroud. Verizon did not prove that denial of the application deprived it of rights guaranteed by federal law. Verizon misrepresented its rights, and Staff did not question Verizon's assertions.

Jeremy Stroup, Applicant, reviewed the timeline of actions taken regarding the application, proposed locations for nodes, City Staff who reviewed the application, and photo simulations of Nodes 061, 204, and 205.

Paul Albritton, Applicant legal counsel, indicated that the proposed nodes complied with design standards. The application deserved the Council's affirmation of the Director's Determination. None of the Appellant's allegations rose to the level of substantial evidence that was required to deny a WCF application. The mailing vendor failed to notify Channing House residents of the community meeting, but the failure was not prejudicial. However, Verizon was willing to agree to an additional Condition of Approval requiring Verizon to hold an additional community meeting, notify Channing House residents of the meeting, and report results of the meeting to the Director. A provision of the WCF Guidelines allowed unshrouded antennas in the ultrawide band frequency range. The Small Cell Order stated that

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wireless communications providers were not required to comply with the Ninth Circuit's significant gap, least intrusive means standard. Wireless communications providers needed to show that not permitting WCF would materially inhibit the ability to densify networks, enhance services, or provide a new service.

Chris Robell supported the appeal. Residents of Channing House were not given an opportunity to provide input. Residents were concerned about RF emissions from the existing two cell towers and the proposed third tower.

Anne Husty supported the appeal due to the Applicant not following procedural regulations.

Kip Husty supported the appeal and hoped the Council supported the community rather than big business.

Ardan Michael Blum commended Ms. Fleming for standing up to corporate America.

Karen Saxena reiterated the Applicant's failure to notify all residents and the proposed designs not complying with guidelines. The Council needed to uphold the appeal.

Ms. Fleming commented that the application failed to adhere to so many components of the Ordinance that it should not have been submitted or approved. She requested the Council overturn the Director's Determination.

Mr. Albritton noted that the City's guidelines were some of the most stringent in the state. The Applicant reduced the number of exceptions from hundreds to a handful. If the application was denied based on exceptions, no facility could be approved. Denial of the application was likely to violate the requirements of federal law.

Public Hearing closed at 9:53 P.M.

Council Member Filseth inquired whether the shroud design complied with guidelines.

Mr. Lait reported the Council-approved Resolution contained requirements for a WCF antenna and shroud, street poles, and wood utility poles and an adjustment for equipment that could not propagate an adequate signal within shrouding required by the design standard. Staff measured each panel and its associated equipment and determined that they complied with the adjustment. The proposed technology did not avail itself of single-shroud technology, which triggered the adjustment. Staff considered each

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antenna and its shroud individually, and the Appellant believed one shroud was needed for all antennas on a pole.

Council Member Filseth inquired whether one shroud met the volume requirement.

Mr. Lait replied no. The Applicant's information indicated that one shroud prevented the signal from propagating. The Appellant also asserted that the mast arm and bracket attaching the antenna to the mast arm needed to be included in the volumetric calculation. To add the mast arm and bracket to the antenna and shroud calculation was not feasible based on today's technology.

Council Member Tanaka disclosed a conversation with the Appellant and indicated the Appellant disclosed no new information. He asked the Appellant to clarify her comment that Verizon's notice to residents was misleading.

Ms. Fleming read Verizon's statement. "Small wireless facility" was a legal term of art, and no one could describe the wireless facility as small. The notice did not include the node addresses or the fact that the nodes were located within 600 feet of recipients.

Council Member Tanaka inquired whether the Applicant indemnified the City against lawsuits claiming damages for illness from RF emissions.

Mr. Albritton answered yes, if it was associated with the granting of a permit.

Council Member Stone asked if the Applicant provided supporting evidence that the equipment was not able to propagate an adequate signal within the shrouding requirement.

Garrett Sauls, Associate Planner, reported the Applicant provided a number of studies that addressed signal attenuation. The City's consultant also provided evidence that confirmed signal attenuation.

Council Member Stone requested the reasons for three separate shrouds not impeding the signal, but one shroud impeding the signal.

Mr. Sauls explained that individual shrouds contained holes for signals to propagate while a single shroud did not.

Council Member Stone inquired whether the Applicant tested a single shroud's ability to propagate a signal.

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Mr. Lait understood a single shroud did not allow the signal to propagate.

Mr. Albritton advised that the 5G frequency did not penetrate traditional shrouding. It did penetrate a very thin film, which covered the holes of individual shrouds. The guideline did not require a shroud if the signal was not able to penetrate the shroud. The Applicant proposed a small shroud to hide cabling on each antenna.

Council Member Stone questioned whether it was possible to utilize the same type of hole and covering from an individual shroud for a single shroud.

Mr. Albritton explained that the maximum allowed volume precluded the use of a single shroud.

Council Member Stone reiterated that the burden of proof was on the Applicant to demonstrate that a single shroud did not allow the signal to propagate.

Council Member Kou noted that the notice provided a contact person only and inquired whether that was a typical notice.

Mr. Sauls indicated onsite notice boards were required to provide the project description and an elevation image of the project. Unfortunately, the paper notice adhered to the boards seemed to have been removed or fallen off.

Council Member Kou expressed concerns regarding no onsite notices and committees not vetting design changes. She inquired whether the City's consultant's report indicated RF emissions were higher than FCC limits.

Lee Afflerbach, City consultant, reported RF emissions were in full compliance with FCC requirements. The proposed radios operated on a frequency that was ten times the maximum frequency of 4G units. Consequently, there was significantly more signal loss with any type of insulator material. In his experience, 5G antennas with integrated radios were not shrouded. He assumed a shroud was omitted to minimize signal loss.

Council Member Kou requested Ms. Fleming clarify her comment about screening trees in relation to antennas.

Ms. Fleming advised that the consultant's report clearly stated RF emissions exceeded FCC limits at 28 feet above ground. The Ordinance required the Applicant to screen WCF. The Applicant chose Chinese pistache trees to

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screen WCF, but Chinese pistache trees were deciduous. Deciduous trees did not screen WCF for several months of each year.

Council Member Kou asked why 5G was not a personal wireless service.

Ariel Strauss, Appellant legal counsel, provided the Telecommunications Act of 1996's definition of personal wireless service. The statute and the Supreme Court indicated the preemptive authority of the FCC was limited to personal wireless service. In 2018, the FCC redefined mobile broadband as a data service rather than a personal wireless service.

Mr. Albritton advised that personal wireless service was not regulated by frequency. 5G service provided voice and data service. Mr. Strauss' analysis was erroneous.

Council Member Cormack inquired whether there were any rules or ideas for providing notice to residents.

Mr. Lait responded no. Staff was considering an amendment to require the City to provide notice.

Council Member Cormack asked if Council Members needed to disclose ex parte communications.

Molly Stump, City Attorney, answered yes.

Vice Mayor Burt asked if the Applicant was required to review all feasible alternatives and the potential coverage of the alternatives.

Mr. Lait indicated the Ordinance required the Applicant to submit alternatives but did not specify a number or require the Applicant to list all feasible alternatives.

Vice Mayor Burt commented that the provision allowed an Applicant to offer any alternative, including irrelevant alternatives. He asked if the Applicant offered all relevant and feasible alternatives.

Mr. Albritton explained that the 5G signal traveled only about 500 feet. The Applicant designed a small cell network that minimized the number of poles and utilized existing infrastructure. Therefore, alternatives were generally located within a 500-foot radius of a proposed site. The radius determined the number of poles considered. Coverage maps were not relevant because only poles with coverage similar to that provided by proposed poles were considered.

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Vice Mayor Burt questioned whether screening had to be minimal or consistent throughout the year.

Mr. Lait read two standards for screening of WCF. Neither standard indicated a particular type of tree for screening. If the Council found that the Applicant did not meet objective standards for screening, an exception was needed or the Council was able to utilize that fact to deny the application.

Mr. Strauss stated that Verizon's map or drawings reflected the coverage that resulted from the proposed location. There was no comparison of alternatives and no way to determine which alternatives may be appropriate to meet the objective.

Council Member Stone disclosed meetings with Ms. Fleming and Verizon representatives, where he received no information or materials that were not already in the public record. He inquired whether the Telecommunications Act qualified the level of service that wireless carriers were allowed to claim as service gaps.

Aylin Bilir, Deputy City Attorney, did not believe the statute provided a specific definition of service.

Mr. Albritton indicated that the standards changed with the 2018 Small Cell Order. For small cells, wireless carriers needed to show that they were densifying the network, enhancing the network, or providing a new service such that denial of the facilities materially inhibited the provision of personal wireless service. Wireless carriers did not have to meet the significant gap, least intrusive means standard applied to macro cells. Case law stated that a gap could be in a certain type of service. The Applicant was enhancing network services by providing a new service.

Mr. Strauss reported no court case addressed the standard that the FCC purported to establish in the 2018 Small Cell Order for a violation of the Telecommunication Act of 1996. The statutory language did not change in any way. Over the past 20 years, the Ninth Circuit established the same significant gap standard, and there was no basis in the statute to change that. The cases to which Mr. Albritton referred dealt with changes from 2G to 3G and recognized functional differences in services. There was not a functional difference between 4G and 5G.

Council Member Kou inquired whether the two existing WCF and the proposed WCF at Channing House were going to create overlapping RF emissions that affected people in and around the facilities.

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Mr. Lait referred to Slide 12 of the presentation. Pedestrians were going to receive very little RF exposure, and exposure was going to fall within FCC guidelines. A Condition of Approval required signage to notify people working in trees of RF emissions. Cumulative RF exposure was studied and found not to exceed FCC standards.

Council Member Kou requested comment regarding a Fire Inspector's concerns about RF emissions.

Mr. Lait indicated the Staff member was likely not familiar with technical requirements for RF emissions.

Mr. Afflerbach explained that he calculated RF exposure for the new facility. RF exposure was less than 2 percent of the FCC maximum for pedestrians walking by the facility. To exceed the 2 percent exposure, a person had to be within 4 feet of the antenna. Facilities had to be turned off when workers were maintaining trees. Cumulative exposure from one or three antennas did not exceed FCC limits.

MOTION: Council Member Kou moved, seconded by Council Member Stone to uphold the appeal denying one or more WCF Nodes based on:

- A. Procedural noticing requirements due to misleading notices to residents and the omission of notices to certain residents; and
- B. Compliance Grounds due to not meeting the City's objective and design standards, specifically the single shroud and an inadequate screening.

Council Member Kou remarked that residents had high expectations for their quality of life and for notification of impacts to their quality of life. The new design needed to be vetted.

Council Member Stone felt the Applicant was requesting too many exceptions from objective standards. The Telecommunications Act, FCC rulings, and case law did not preclude the City's objective standards.

Ms. Stump advised the Council to make findings for upholding the appeal and overturning the Director's Determination. Staff prepared some findings for this possibility but requested an opportunity to prepare specific and detailed findings if the Council chose to move in this direction.

SUBSTITUTE MOTION: Council Member Cormack moved, seconded by Council Member Filseth to deny the appeal and uphold the initial Director's Determination and that the screening is provided by trees that have foliage

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throughout the year, and that the applicant conducts additional outreach to residents of Channing House including participation.

Council Member Cormack noted the Council needed to revise a few areas of the WCF Ordinance. Staff's diligent application of objective standards over time and responses to the Appellant were persuasive.

Council Member Filseth believed the Applicant needed to remedy the failure to notify Channing House residents. Compliance with objective standards was not sufficiently conclusive to overturn the Director's Determination.

Council Member Tanaka agreed that noticing was insufficient, and the Substitute Motion provided a remedy. He inquired whether a single shroud was technically infeasible.

Mr. Lait reiterated that the Applicant and consultant indicated that a single shroud for all three antennas degraded the signal from the node. Objective standards provided an adjustment for this condition.

Vice Mayor Burt requested clarification of adjustment.

Mr. Lait explained that the adjustment stated an antenna that was not able to provide an appropriate signal with shrouding was subject to a volumetric standard for each antenna. If the Council wished to pursue a single shroud, the Council needed to consider an exception because the design did not comply with the volumetric criteria.

Vice Mayor Burt inquired whether the Substitute Motion necessitated a break for Staff to prepare detailed and additional findings.

Ms. Stump advised that Staff may require time to consider findings for the screening condition.

Mr. Lait reported screening one node on Middlefield Road with a tree was problematic. Staff needed to understand whether the Council intended to screen each node with an evergreen tree.

Mr. Sauls advised that Node 061's proposed location was screened by two existing littleleaf linden trees. Staff included a Condition of Approval for replacement of one of the trees with a similar tree. The proposed node location adjacent to Channing House was screened by two ash trees, and the two were going to remain. The proposed location for Node 205 was screened by deciduous trees located on private property. It was possible to plant an amenity tree on one side of the proposed node, but not on the opposite side due to underground infrastructure and a driveway. An existing

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street tree was located approximately 75 feet away from the proposed node location.

Council Member Cormack asked if the Applicant recommended the planting of Chinese pistache trees.

Mr. Sauls answered no.

INCORPORATED INTO THE SUBSTITUTE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER: to remove, "... and that the screening is provided by trees that have foliage throughout the year"

Ms. Stump reported Staff did not need time to draft findings in support of the Substitute Motion.

Mr. Lait requested a timeframe for the community meeting given the 15 days remaining on the shot clock.

Council Member Cormack proposed 10 days.

Council Member Filseth felt that was too soon and suggested the Council approach the Applicant about extending the shot clock.

Vice Mayor Burt inquired whether the shot clock was binding since the Applicant failed to provide sufficient notice.

Mr. Lait indicated noticing requirements were not a component of the federal statute specifying time limits.

Ms. Bilir clarified that the Substitute Motion upheld the Director's Determination, and that was subject to the shot clock. If the Council denied the entire application, the shot clock was no longer applicable. Noticing requirements were not related to the shot clock.

Mr. Lait proposed a tolling agreement of 45 days for the Applicant to hold a community meeting and submit applications for relevant permits.

Mr. Albritton agreed to a 45-day extension of the shot clock for Node 204.

INCORPORATED INTO THE SUBSTITUTE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER: to add "... on Nodes 061 and 205, extend shot clock through a tolling agreement for 45 days on Node 204, and require"

Vice Mayor Burt felt Council Members were frustrated by the inability to judge applications based on subjective standards. A range of arguments

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were provided to the Council. He supported the Substitute Motion based on comments from City Staff and consultants.

Council Member Tanaka did not understand why a single shroud was not possible. If the Substitute Motion contained that provision, he would support it.

Mr. Afflerbach reported that a single shroud covering all the antennas was going to exceed the size limitation. A single shroud reduced the signal coverage significantly and required many more WCF. As proposed, there were no shrouds over the antennas.

Council Member Tanaka asked if there was a way to make the WCF more pleasing.

Mr. Afflerbach was not able to provide an alternative.

Mr. Lait noted that the Council had the option to deny the node on the basis of it not complying with the objective standard. However, if it was not technically feasible to design the antenna to fit within volumetric requirements, the City was effectively prohibiting service, and that was prohibited.

Council Member Tanaka inquired about the ability to fill the gaps between antennas so that they appeared as one unit.

Mr. Stroup reported a shroud was limited to a diameter of 15 inches, and three antennas did not fit within a shroud of that size.

Mr. Lait clarified that additional screening between the antennas increased the volumetric size such that it did not comply with the objective standard.

Mr. Stroup added that covering all three antennas with a single shroud resulted in gaps between material, and design standards did not allow gaps between material. Without gaps, the signal was not able to adequately propagate. The adjustment was provided for equipment that was not able to propagate an adequate signal within shrouding required by the standard design and imposed a volumetric limit.

SUBSTITUTE MOTION AS AMENDED: Council Member Cormack moved, seconded by Council Member Filseth to:

- A. Deny the appeal and uphold the initial Director's Determination on Nodes 061 and 205;

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- B. Extend the shot clock through a tolling agreement for 45 days on Node 204; and
- C. Require that the applicant conducts additional outreach to residents of Channing House including participation.

SUBSTITUTE MOTION PASSED: 4-2 DuBois absent, Kou, Stone no

Council took a break at 11:41 P.M. and returned at 11:50 P.M.

CONTINUED ITEM 6 at 11:50 P.M.

Council Member Questions, Comments and Announcements

Council Member Stone inquired about the process for calling a Special Meeting to discuss an eviction moratorium.

Vice Mayor Burt recalled that action by the Legislature was anticipated in the next week, and that action would determine the need for a Special Meeting.

Molly Stump, City Attorney, reported either the Mayor or a majority of the Council was allowed to call a Special Meeting. Presumably, the Mayor intended to call a Special Meeting if the Legislature did not act. Four Council Members constituted a quorum for a Special Meeting, and four-fifths of Council Members present were needed to adopt an Urgency Ordinance for an eviction moratorium.

Vice Mayor Burt added that a Special Meeting was unlikely given the Legislature's interest in eviction protections.

Adjournment: The meeting was adjourned at 12:23 A.M. in honor of Talanoa Tuifua, or "Ms. Noa" as most knew her by, who passed last week, an Administrative Services Department employee for over 20 years.