



POLICY AND SERVICES COMMITTEE FINAL MINUTES

Regular Meeting
February 9, 2016

Chairperson DuBois called the meeting to order at 7:03 P.M. in the Community Meeting Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Berman, DuBois (Chair), Kniss arrived at 7:08 P.M., Scharff

Absent:

Oral Communications

Chair DuBois: So I guess now Oral Communications from the public wants to speak on something not in the Agenda.

Rita Vhrel: I'm Rita Vhrel and I wanted to thank you all for continuing to hear concerns about G-Watering (ground watering) in our community ground watering as California enters its four and half year of drought. I want to thank the previous Policy and Services Committee (Committee) for referring residents' concerns about ground water to the full City Council and the City Council for instructing Staff to move forward with a three tier approach including metering ground water, extracted during residential basement construction. Two of the Policy and Services Committee members, Mr. Scharff and Ms. Kniss, are new and may not have listened to the previous Committee discussions regarding G-Watering and the many questions, answers and ideas that were bantered around on December 1, 2015 and December 15, 2015. This was about very close to three hours of discussion. I listened to both of them the other night and many of the ideas that were discussed were not brought forward by Staff and many of them will come forward in the Second and Third Tier, but if you do have time and you have nothing to do, it's fascinating listening. I handed out two events that you might be interested in. The first in and around our neighborhood. The first is Peter Gleick, who is part of the Pacific Institute, he's the president, and it's going to be down in Sunnyvale on February 17, 2016 it's \$10.00. The second hand out has to do with sponsored by Peninsula Open Space, it's called "When Demand Outstrips Supply," the shrinking water table and what we can do about it. This is going to be at the Mountain View Center of the Performing Arts on April 26, 2016 at 8:00 P.M. I was looking through additional information on the drought and you can go into

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Cailiforniadrought.org, and they have this whole website that is put on by the Pacific Institute and it has fascinating information. Thank you.

Chair DuBois: So we're going to do an Agenda change and do Item 2 before Item 1. I did talk to Staff, we're going to try to allocate half an hour to Item 2, the next one, and talk about an hour to Item 1. I don't have any public speakers for Item Number 2, so Harriet.

Agenda Items

2. Auditor's Office Quarterly Report as of December 31, 2015

Harriet Richardson, City Auditor: Good evening, Harriet Richardson, City Auditor, here to present the Office of the City Auditor's Quarterly Report as of December 31, 2015. Some highlights of activities during the quarter. We published and presented the audit of parking funds, which presented two findings and eight recommendations related to the parking in-lieu and the parking permit fees. The primary issues were that they needed better methodology to track the cost of construction and update parking in lieu fees in a timely manner and that the errors caused the City to overdraw the bonds used to construct the two most recently built garages. They will be defeasing a portion of--ASD (Administrative Services Department) will be diffusing a portion of those funds to correct that. We presented the City's Financial Statements and Reports presented by Macias Gini and O'Connell, the City's external financial Auditor, to the Finance Committee for recommendation to the Council to accept. And we also initiated, so that the financial audit was expiring, it ran for five years, the External Financial Auditor Contract ran for five years and we initiated the request for proposal (RFP) process and evaluated proposals received for the City's external financial Auditor for fiscal years 2016 through 2020. We are currently processing that contract and that will be presented to the Council as a Consent Item on the March 14th Agenda. We are expecting to retain the same firm. Senior Performance Auditor Mimi Nguyen was asked to give a presentation at the Association of Local Government Auditor's annual conference in May, 2016, on the Office of the City Auditor's use of SharePoint as a low cost alternative to traditional commercial audit and management software. We'll also do a presentation to ELT (Executive Leadership Team) in two weeks on the ways that we're using it. By implementing SharePoint in our office, we were able to save \$12,000 a year by discontinuing the use of "TeamMate," which is a commercial audit management software package. I was invited by the Comptroller General of the United States to sit on the Government Auditing Standards Advisory Council. In the world of auditors, that is probably the most prestigious

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appointment you can get, so I'm happy to announce that I'll be serving on that Council.

Chair DuBois: Congratulations.

Ms. Richardson: Thank you. So moving on to the audits that we're doing, the active audits. The franchise fee audit--this has been a very complex audit. It seems like every time we turn around, there's a new issue coming up. We've been working very closely with the City Attorney on this audit. I'm wrapping up some issues on that this week and we should be able to move forward with that shortly. We do have it tentatively schedule to present to the Policy and Services Committee (Committee) in April. I already mentioned that we wrapped up the Parking Funds Audit. We have three audits that are currently in field work phase. They were in the planning phase at the end of the quarter. That's the Disability Rates and Worker's Compensation Audit, the Utilities Customer Service Billing and Rate Accuracy Audit and the Citywide Analytical Group Development and Continuous Monitoring audit of procure-to-pay, which is really focusing on accounts payable, regarding duplicate payments and duplicate master records for vendors. So all of those that auditors have been actively discussing issues that they have been identifying as the audits progress. We're also doing a Fees Schedules Audit that has not progressed passed the planning phase while the auditor working on that is focused on the procure-to-pay Continuous Monitoring Audit. And then we're also doing another Continuous Monitoring Audit on overtime. That one was in planning at the end of the quarter, the Auditor has done some field work on that, but has been primarily been focusing on Worker's Comp. (Compensation) audit. That one scheduled to be presented in August. As of the end of the quarter, we're in the process of finishing up the National Citizen Survey and the Performance Report. Both of those were scheduled to be presented to the Council at the annual retreat on January 30 and that did happen, but they were in progress at the end of the quarter. On an annual basis, we have one Auditor who works with a and also has worked on her own to identify businesses that may have under recorded their Sales and Use Tax. To date this year, we've collected \$16,912 that included \$15,404 for this quarter. We are on the low side for the year. I did go back and look at previous years and we are actually lower than each of the last four fiscal years (FY), so I will be monitoring that. You may want to look at whether that is work that we should continue doing, whether it's cost effective to continue doing that work in our office. We've continued doing our City Auditor Advisory Roles serving on the Utilities Oversight Committee, the Library Bond Oversight Committee and the IT (Information Technology) Governance Review Board and the Information Security Steering Committee. We are expecting the Library Bond Oversight Committee to wrap up pretty soon,

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and so that role will go away when that happens. New in this year, in this quarterly report, we started to put the status of audit recommendations as just a summary here because the departments are now reporting directly to you on the status of those recommendations. So during this quarter, the departments implemented forty five recommendations that allowed us to close out three audits; the Employee Ethics Policies Audit, the System Application and Data Processing (SAP Security Audit and the Solid Waste Program Audit. We still have two audits that are more than five years old. Those are in progress; Fleet Utilization and Replacement. I know that we will be closing that one out in our next quarterly report and the Citywide Cash Handling and Travel Expense Audit. The other audits are newer audits, but they still need some work to get those closed out. The last item on the report is the Fraud, Waste, and Abuse Hotline. So during fiscal year 2016, we received ten complaints, seven of those were variations of the same issue. For all of these complaints, for nine of the complaints, we used an external investigator to investigate them for one we used internal Staff investigated them. We did close out all of those audits as the unsubstantiated, and so moving forward, we currently have no open investigations. That concludes my report and I'll answer any questions.

Council Member Berman: Thank you very much Harriet for the presentation and congratulations on being an advisor to serve on the Government Standards Advisory Council, very cool. A follow up question that I had, mainly about the last page of the report, the Status Audit and recommendations. So the first is just kind of a point. I was confused at first and I just figured out the confusion. The graph at the bottom, it seemed like it should be broken out into three different--what it looked like was that the number of recommendations open was a 110.

Ms. Richardson: Right. So the 65 should have actually have been 66.

Council Member Berman: Oh, no, but is also should be a separate bar because what that is that is recommendation that were opened July to September and the 45 on top is essentially, the 45 same recommendations showing that ...

Ms. Richardson: The 45 of the 66, correct, okay.

Council Member Berman: But it shows--yeah, you kind of see where I'm--

Ms. Richardson: Yes, yes.

Council Member Berman: So that would just make it a little easier to follow. This might be a question for Jim, but on the Inventory Management, the Utility Meter Audit and the Police Department Program and Services Audit--

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Well, I guess, it shows those are in progress, so is it that--Harriet, do you feel that Staff is moving forward on things or things just totally been dropped and aren't being acted upon or--are we in progress or are we--why are we (Crosstalk)

James Keene, City Manager: I'll let Harriet speak to it, but also when we're in annual, you'll see on the March 22, 2016, Policy and Service Committee, we actually have an audit update on Animal Services and Inventory before Policy and Services, so we'll have the Staff here to give that ...

Council Member Berman: More in details. Perfect.

Ms. Richardson: So Animal Services, I know that they're some work being done on that. I know that they went up for an RFP and that there's some work being done on that. Utility Meter Audit, I have not received any update. The Fleet Management, I have reviewed up to the end of this quarter. I have since reviewed the Status Report and know that will be closing that one. Inventory Management Audit, we did receive a draft of the Status Report and I talked to the Auditor today on that one who is reviewing it and there are some issues we're going to have to go back on so I'm not sure how many of those were actually end up being closed or will remain in progress at this point.

Council Member Berman: Okay. Sorry, you said that the Utility Meter auditing, you have not gotten an update on?

Ms. Richardson: Correct.

Council Member Berman: So Jim, is there any plans to ...

Mr. Keene: That one has been on a slower track schedule for the April 12, 2016 Policy and Services Committee meeting, so ...

Council Member Berman: Okay.

Mr. Keene: That will explain it then.

Council Member Berman: Okay. I know there's been changes, etcetera. So a question on the Fraud Waste Abuse Hotline (Hotline), so you mentioned that seven were determined not good fit within the parameters of the Hotline ...

Ms. Richardson: Actually several of them. The seven referred to variations of the same issue.

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Council Member Berman: Okay. So hypothetically speaking, maybe not necessarily with that specific example then, but if something is reported that doesn't fit necessarily within the confines of Fraud Waste and Abuse, what happens then? Is there something that gets investigated or does it just get dropped completely because it doesn't fit this purpose?

Ms. Richardson: Most of the ones we did determine did not fit within the protocols that we set for the Hotline, which was that they would be Fraud Waste and Abuse topics, but they still did get investigated.

Council Member Berman: Okay, and acted upon if warranted?

Ms. Richardson: Yes.

Council Member Berman: Okay, great. And Fraud, Waste, and Abuse, Abuse meaning abuse of City funds that kind of thing, or abuse meaning, my boss yelled at me and I'm mad at them about it?

Ms. Richardson: It does not mean that. It does mean more like the first, abuse of resources, City resources. My boss yelled at me, would be treated more like a personnel type of action.

Council Member Berman: Handed over to Human Resources (HR) then?

Ms. Richardson: Correct. However, it is the type of thing you could look at and say, is it abuse of authority, but we aren't currently looking at it that way.

Mr. Keene: Many things we get ended up involving HR, they can involve the City Attorney and this predates I think your being on the Council when we were discussing this, but it's pretty clear that the definitions of Fraud, Waste, and Abuse get fuzzier the further away you get away from fraud, for example. And the truth is, it's sort of like, beauty is in the eye of the beholder. People can still make complaints based on their perception of saying, you know, I think this is some kind of an issue and it can be that the initial investigation would say, well, that really doesn't meet that test or it does or potentially or it is something else, but sometimes we'll sort of say maybe, who knows, maybe a relationship, just a problem between two people and then we can refer them to that. And often still addressed that and deal with that even though it doesn't (Inaudible.)

Council Member Berman: Right. Thanks.

Chair DuBois: Liz?

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Council Member Kniss: So Harriet, would you go into some more details into the Sales and Use Tax and with the fact that there are 52 potential misallocations and so forth.

Ms. Richardson: So we fill out a form when we identify a business that has potentially underpaid its taxes. We fill out a form that's called short form

Council Member Kniss: Did they purposely do it? Is that the question?

Ms. Richardson: We don't know because we don't actually do the audit. So we fill out a form called the Short Form. We send it to the State Board of Equalization and they do the investigation. Usually it's been where they allocated their tax for example to a different City accidentally. It's not usually intentional that they don't pay. It's usually misallocated to another City. We also contract with MuniServices who does similar work. The 52, we do rely on the State to do the audit work on that and send us back and tell us yes, they identified it as a misallocation and they're transferring the funds back to the City. The auditor in my office who works on that told me that they have a backlog at the State due to some Staff shortages. That's why you see so many that are pending at the State. 52 is a pretty large number of short forms to be waiting to be reviewed.

Council Member Kniss: Not a huge amount of money, right?

Ms. Richardson: We don't know until we actually get it. So I went back and look at previous quarters, and the range that we get in any one quarter, we had two quarters in the past five years where we didn't get anything and then we had one quarter where we only got a \$6,200. Then we had a quarter where we got \$93,000. And so it really kind of depends on the business and how the money was misallocated.

Council Member Kniss: Okay. Thanks on that, that was my question.

Vice Mayor Scharff: On the Parking Funds just so I understood it, we gave money back.

Ms. Richardson: We're going to. It hasn't been done yet.

Vice Mayor Scharff: Who do we give the money back to?

Ms. Richardson: What they're actually--their intent is to defease a portion of the bonds, which means they'll call in some of the bonds.

Vice Mayor Scharff: Oh, so we pay off the bonds?

Ms. Richardson: A portion of them.

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Vice Mayor Scharff: We pay off a portion of the bonds. Okay.

Ms. Richardson: I believe that they are going to do that when they do the--once they get approval on the mid-year Budget adjustments.

Vice Mayor Scharff: So it's been a little while since I thought about this. So we have--these are the open audits on the page, right? And you said that the Fleet Utilization and Replacement Audit is likely to be closed pretty soon?

Ms. Richardson: It will. I already reviewed the Status Reports.

Vice Mayor Scharff: So that's the four recommendations would have been completed?

Ms. Richardson: Yes.

Vice Mayor Scharff: So on each of these, there are very few recommendations left to be completed with the exception of the inventory management one, right? And the Utility Meter Audit one?

Ms. Richardson: Correct. The Utility Meters and the Animal Services were just released last year, so ...

Vice Mayor Scharff: Why does it take too long to get the audit recommendations done?

Mr. Keene: Well, I don't know that it's always years.

Vice Mayor Scharff: Okay. 2008, we have gone finally completed on the employee ethics. 2010, we have four left ...

Mr. Keene: Well ...

Vice Mayor Scharff: I'm just asking. At least I'll know why it takes years.

Mr. Keene: I'd say it takes--let's see, how long is it taking us to assess and make changes on our enterprise system that isn't subject to an audit or an ERP (Enterprise Resource Planning)? Six, seven years we've been working on it. A lot of these things are change efforts. In this case, the auditor identifies deficiency or changes and in truth, they're sometimes about--even working through whether or not--what does it take to actually implement the change, which is sometimes more difficult than identifying the change in whether or not it really has a good payoff for us and there's back and forth, that sort of thing, so.

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Ms. Richardson: Well, I'd also like to add, on the Animal Services audit, that was really the first audit where I was completely involved after I arrived here. And I made bigger effort than I think had been done in the past to work with the City Manager's office and Staff involved in the audit to make sure that the recommendations would be feasible. I know that for that particular one, there was--there's sometimes a progression that you can't do some things until you've done other things, so on that particular one, that's definitely the case, but I think us moving forward, we are trying to make more of an effort to make sure the recommendations make sense, that they're feasible and that it can be implemented although it doesn't necessarily always mean they can be implemented quickly. One of the other things I've asked my Staff to do, because of the ERP project, to start making note of weaknesses that are the result of the current SAP system and rather than focusing on making changes to that when we're going to be changing from SAP to something new, which might still be SAP, but a newer version of it, to make recommendations to hold off on those that we will make a list that we can make sure that we're addressing those types of issues when the new ERP system is implemented.

Vice Mayor Scharff: So the next time we see these reports, the ones that have zeros will no longer be on here. Is that correct?

Ms. Richardson: Correct. And so as we issue new audits, you'll start seeing those added and as audits gets closed they'll fall off the list.

Vice Mayor Scharff: When we complete an audit, right? When there's a bunch of recommendations--I remember you come in and present the audit and the department head is usually here. That was the last time I remembered it. And then there's sometimes discussions about whether or not we think that we should implement the recommendations and we have that discussion. Should, would it be also helpful, and maybe it's not easy to do, but to set expectations at least for Council Members and the public who (Inaudible), well these are the 14 recommendations, we agree they can be done, but you know, we need to do this one first, so we expect it. This will be done over a two-year period or we expect it will--I mean, is there any of that, that sort of--cause it's really hard to oversize a Council Member when--you know, you see this on an infrequent basis, you know, the other recommendations hanging around maybe for a real good reason. I'm not saying they're don't, but it's really hard to do any sort of oversight and figure that out.

Ms. Richardson: When we issue an audit now, when we ask for the audit response from the departments, which basically comes from, through the City Manager, we give them a template that has the audit recommendation,

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what was the audit recommendation, and then we ask them to write their implementation plan and in estimated completion date. And the Status Reports that you will start seeing as the new Committee, those take that template and they update that status. And so you'll see the original estimated completion date and then you'll see how that changes over time if the recommendation did not get implemented by that date.

Vice Mayor Scharff: And on the Fraud, Waste, Abuse and Hotline, have we ever had a complaint that turned out to be legitimate?

Ms. Richardson: The only one that turned out to be legitimate was the one that our office investigated by doing an audit and that was the contract oversight trenching and installation of electrical substructure.

Vice Mayor Scharff: And that originally came in ...?

Mr. Keene: Last year or something.

Ms. Richardson: That was 2013.

Vice Mayor Scharff: So that was around the seven in 2013, and that we then launched an audit?

Ms. Richardson: Yes.

Mr. Keene: I can assure you we have other complaints that don't come through the Hotline that are valid. (Inaudible)

Vice Mayor Scharff: No, I understand. Just wondering, you know, I mean, it's nice to have a Fraud, Waste, and Abuse Hotline I suppose, but I'm really curious as to--to some extent how effective it's being and you know, whether or not it takes a lot of Staff time and you know, maybe it doesn't take much Staff time at all and whether or not it's being useful. It may be, I'm just curious as to, you know, we've had one--so we've had one out of, you know, out of 22.

Vice Mayor Scharff: I do want metrics on things. I actually disagree. I actually think that part of our role is to be, not necessarily be political, and that if ...

Council Member Kniss: I can see they have it on there.

Vice Mayor Scharff: That's fine, I can see that too. I understand the need for it. I'd say if we had--I'm not ready on 22, but I would say that, you know, if we go five years and we have one legitimate complaint, you told me

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it takes a 100 Staff hours a year, I think that's a waste of Staff time. And I would at that point suggest we get rid of it.

Ms. Richardson: I would say, right now it's not taking a lot of our Staff time based on the number of hours, but I will say that it is costly to do an investigation, particularly if we're hiring outside investigators.

Mr. Keene: I just want to say one thing really quick. I think as it relates to the schedule, I think it's important to remember that there is specific process for audits and the back and forth and I want to say that it is kind of like lawyers exchanging, you know, briefs and--but there is an aspect of that. There's a timeframe and a gap and so let's just take the Employee Ethics Policies, that is done as far as I'm concerned. Not only have we adopted two years ago the Ethics Policy, we are training every single employee through the Institute of Local Government. The only City in all of California to train every employee in our--half day, in our ethics program and in our Ethics Policy. And yet because of the way we sequence this, and there five years' worth tough languishing before Harriet got here, you know what I mean, to actually close something out. We just haven't gotten to that yet.

Chair DuBois: Well, since this is your work plan for the quarter, I guess what happens after June 16, 2016? You're not starting any audits that are further out?

Ms. Richardson: If someone finishes an audit, they will get started on a new audit that's currently on our work plan, our adopted work plan.

Chair DuBois: Right now, nobody's working on anything else beyond June, etcetera?

Ms. Richardson: Correct.

Chair DuBois: Okay. So come June, you'll typically have other people freeing up?

Ms. Richardson: I'll be coming forward with a new audit plan for next year. In the past, they presented the audit plan usually at the first Policy and Services Committee after the summer break. Last year, I did it early so it would be in effect by the time the fiscal year starts and that's my plan to try to have it presented at the June Policy and Services Committee, so we'll always have it at the beginning of the fiscal year.

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Chair DuBois: Okay, good. And then on the Status Table, is it true that the difference between open and total are the closed ones or is there any other status?

Ms. Richardson: Yes, that is true.

Chair DuBois: Is it worth showing the status column of not just open, but maybe items in contention? Is there such a category? The ones that are going to be implemented and they have a work plan. There may be others that are remained opened within their work plan.

Ms. Richardson: Right. And I would say for the older ones where I wasn't here, I can give you an example on the Travel Expense Audit where there was an old recommendation that didn't necessarily makes sense. I've been trying to work through those with the departments (Crosstalk.)

Chair DuBois: Did you dispose of them yourself ...?

Ms. Richardson: Well, as an example for the Travel Expense one, there was a recommendation that we should be making sure that we have the receipt for every meal when employees travel. And that's sort of a very administratively costly way to manage your travel expenses. Per diem is more common, is accepted by the IRS (Internal Revenue Service), it's the way the Federal Government does it. There's a study that the Federal Government did where they went back and revisited, and so when I met with ASD (Administrative Services Department), we worked through that and said no, I don't think that recommendation is a reasonable recommendation and they've revised the travel policy based on me saying, no you don't have to get receipts. So I'm trying to work through some of those to make them not be contentious moving forward.

Chair DuBois: And the last question, just on the hotline. We had talked at one point about maybe you putting together some materials, or maybe the new HR Director, want me to go ahead and do that or?

Ms. Richardson: Correct. Well, one of the things I want to do is to go back and talk to some other cities that have hotlines and see how they're doing it. I do have policies and procedures from the City of Toronto, which is considered kind of the model for how hotlines are handled. I don't have any from other cities yet, but I plan to get those and just kind of look though and see are we doing it the right way or should we be doing it differently.

Chair DuBois: Can I get a Motion to accept the Auditor's Report?

Council Member Berman: So moved.

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Council Member Kniss: Second.

MOTION: Council Member Berman moved, seconded by Council Member Kniss to recommend the City Council accept the Auditor's Office Quarterly Report as of December 31, 2015.

MOTION PASSED: 4-0

1. Draft Ordinance for Multi-Family Smoking Ban and Update on Tobacco Retailer Licensing

Phil Bobel, Assistant Director of Public Works: Kirsten Struve, (Service) Public Works is going to give us a very brief presentation since many of you been through this before and Nicole from the County is here, County Health, who's supported us before and answered questions. We have Terence from our Attorney's office here and the new guy is really helpful on this one because in San Francisco, he was a big part of the same issue, so it was a (Inaudible). So our team is a good one and we're excited about bringing this back to you. I would just, in a way of introduction say remember there's two parts to this that we're bringing back tonight. One is a multi-family and the second is retailer licensing. So those are two, sort of the same things, but in the interest of your time and everybody's time, we are bringing this back together. And there're, at different points in our lives to--you asked for an Ordinance for multi-families, so we actually have graph Ordinance that we're coming back with. On retailer licensing, a bit more complicated' we'll explain to you where we stand on that one. There's a possibility of the County running the program, there's a possibly the City running the program, so it's not as sort of advanced or as far along as the multi-family issue we're actually have a draft of the Ordinance for you tonight. So that's my little intro and we will ask Kirsten to go into more detail.

Kirsten Struve, Environmental Control Program Manager: Background, that one is Multi-Family, Tobacco Retailer Licensing and recommendations and you all have (Inaudible.) So in terms of background, in November 2015, Policy and Services directed us to include the cigarettes and that was approved. There was already (third and second meeting.) Talked to full Council about Ordinance and then to develop a Draft Ordinance to expand smoking in multi-family properties, which is attached and then directions to develop approaches to implement Tobacco Retailer Licensing. So the Draft Ordinance includes all multi-family, rental and condos, anything above two units, indoor and outdoor common areas. It requires notifications, lease provisions as well as signage. It allows for outdoor smoking areas to be set up based on criteria in new Ordinance and it includes a buffer zone around multi-family. For Tobacco Retailer Licensing, the County of Santa Clara is

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willing to administer on behalf of the City of Palo Alto. What we would need to do--we only had one meeting so far, but what we would have to do is involve the County's to adopt the County's Tobacco Retailer Licensing Ordinance, which is one of the most advanced--actually it has a minimum age for purchase of tobacco and e-cigarettes of 21. A complete ban on selling any flavored tobacco and no new retailers within 1000 feet of a school, 5000 feet of each other and/ or a pharmacy, but it's only for new. And the other main thing is on the retail licensing is not transferrable, so if somebody moves out of their spot, that is currently selling tobacco, then the new person have to say out within 1000 feet of a school, 500 feet of each other or/and a pharmacy will not be able to get another license for that location. So the recommendation is to refer the draft revisions of this new smoking Ordinance banning smoking on multi-family housing to Council for discussion on available resources, prioritization and further Staff direction on the Ordinance revision and then direct Staff to continue discussion with the County of Santa Clara on regulatory mechanism related to retail sale of tobacco and that's indicated in the At Places Memo where its likely needed (Inaudible) to County and then (Inaudible) in in Ordinance by Palo Alto, naming the County as our agent to implement Tobacco Retailer Licensing. So that's another way Santa Clara and other cities have done it (Inaudible.)

Chair DuBois: Thank you. At this moment, we'll go to public, Mary Dimit.

Mary Dimit: Hi, good evening. My name is Mary Dimit and I've lived in a condominium complex for almost 30 years near downtown Palo Alto. I first I want to thank the Staff and the Policy and Service Committee (Committee) for bringing this up and including multi-family and townhouses with apartments for the smoking ban because I think it's very worthwhile. I want to tell you why. I'm a past Board President and Treasurer for a number of years for our association and at our annual meetings that we hold once a year, for the past five, we've had numerous residents come up and ask that we implement a smoking ban or do something in our CC&R's (Condition's, Covenants and Restrictions) and our property manager keeps telling us that we cannot include in our CC&R's because there's no way to enforce it and in fact, he recommends, recommended that the City do it and then they could take action. I'm not representing all the owners today, I'm representing myself, I just wanted to pass that along and how it affects our family. Most of our units do not have any air conditioning, it's a building that's over 50 years old. We live with our windows open at night during the summer and days like today. Unfortunately, there's just a few people that smoke and most of us, we don't want to infringe on their right to smoke, but it does come and bother us, so as much as possible, if we see someone smoking or smokes starts coming in, we close up all our windows. The problem is that it happens at night, when we've already gone to bed or it happens when we're

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in the front room and it goes in the backroom where our children are and then the smokes in there, once it's in there, even if you close it up, then it can go anywhere. We have a very nice neighbor who does international work and so he's up a lot at two, three, four in the morning and those really hot days when it's 90 inside our unit and we open our windows, we can't do anything about it. So thank you very much, I urge to approve and include the multi-family and condos and pass this on up to Council. Thank you.

Chair DuBois: Thank you. So this is actually the third time we've talked about this issue. We've had other Council experts here, we have a lot of members of the public in previous meetings, so if it's okay, I figure we let Liz and Greg go first if you guys have questions or want some background on things that have happened already.

Vice Mayor Scharff: I know what happened.

Chair DuBois: You have any questions?

Vice Mayor Scharff: I have bunch of stuff, yeah. I guess the first question is--why don't we take them up separately, is that alright?

Chair DuBois: Sure. So should we (Crosstalk.)

Vice Mayor Scharff: So let's do the first thing, which should be the multi-family. Thank you very much for your part, I appreciate it. In terms of the multi-family recommendations, I read the Ordinance, I thought the Draft Ordinance was really good, I think we should pass it tonight. I don't really see much reason to refer it to Council for discussion on prioritization and further Staff direction. I mean, that's the point of Committee work frankly, and our Agenda is really full, we have trouble getting through things, so I think we should be efficient and pass the Ordinance. I think it's a perfectly good Ordinance. I don't see any reason why there should be more discussion on it. Policy and Services have heard it three times, I mean roughly. In terms of enforcement issues, I think the really important stuff to think about enforcement here is what our public speaker said. Is that if you pass this, then it goes into the leases and so the landlord does his self enforcing and in the condominiums, you put it in the CC&Rs if you want and also the condominiums owner or the condominium association can enforce it then through a variety of means because then the person who's doing that violating the law, frankly, and so there's lots of mechanism to do that. So I think there's a lot of self-enforcement that happens out there. And I think in terms of our resources, I think it should basically be a complaint base, I mean I don't think we're going to, you know, sweep condominiums or whatever for smokers, so I think it's really just a complaint based issue and I think we should pass it tonight. I actually think you guys have done a

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great job on Policy and Services. Going through this process and I know--I actually was working with the County on the PICH (Partnerships to Improve Community Health) stuff through the City's Association. And I know there's a lot of interest in the City's Association frankly and we'll probably take this up as a priority next year to try and get all the cities and the County to move in this direction.

Council Member Kniss: I wondered if a little history is helpful. As I recall, the first time the no smoking Ordinance was passed in Palo Alto was in 19-- you might remember Phil, in 1992 I think, at which time every merchant and every (Inaudible) told us they would go broke and the result was, a year later when we through the sales tax, like we did with Harriett tonight, people were coming into Palo Alto to eat because there was no smoking. Was absolutely fascinating. And then, fast forward, I was at the County when we started doing this and initially, it's always, almost always the same complaint. It'll be so difficult to enforce. What happens is just what Greg said, it is self-enforced. If you are not supposed to smoke--Greg lights up, somebody says right next to him, you can't smoke in here you know, you're not allowed to, and you would not believe how fast it stops. I'm so sympathetic to a multi-unit building where when you open the windows, you know, the smoke just kind of pore in no matter what. As I look through this, I thought--and in addition, you saw the policy implications for the Comp. Plan (Comprehensive Plan), which I thought were good as well. The one thing that I did notice though is constantly, it's called out that it's hard to enforced, and that had to do with the education (inaudible) and so forth. As I said, I think it's self-enforced. Somethings will continue. There's almost no way you can stop undercover sales in that kind of thing, I know of that, but for the most part, when you have a community that has really rule this out, I think you, I think you--first of all, it generates a lot of publicity and there'll be a lot of feedback about that. But secondly, the County has had very good luck with it and I don't think that we're, I just don't think that we're plowing in new ground here. So I would suggest the same thing, I would rather than refer this, I would pass it as a Committee and put it on Consent and send it on to the full Council.

Council Member Berman: Thanks. So Mary, hearing your story, is exactly like mine. I live in a multi-unit building downtown, second floor, gets crazy hot and there'd be times where I'd have to literally like bedroom, bathroom, second bedroom, race to close the windows as soon as I smell somebody smoking and you never get there fast enough, so you know, hopefully this will provide some relief to those of us who faces this situation. I just have a couple of questions and I agree that if we pass this unanimously, that it should go on Consent. We've got tons of stuff going on as Council and you know, and I think including Cory and Pat who were on this Committee last

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year, you know, you've got a pretty strong majority of folks too, I am assuming is going to be in supportive of this and have kind of been through the process of developing it. A couple of questions about the Ordinance. Page Five of the Ordinance, its 9.14.020, section four, Units within all multi-unit residences--why do we have this section, units within all multi-unit residences? And then it actually says, smoking in the new unit of a multi-unit residence violates this. Smoking in a not new unit or residences violates this. Isn't it kind of just ...?

Vice Mayor Scharff: I can explain it quickly. It's basically giving it an extra year for the people in the old residences. Actually, you have to draft it that way.

Council Member Berman: Oh, I see. I didn't catch that. Thank you very much. I take that back. On the next page, section 9.14, the one under .050, seems to be missing the smoking is prohibited in. It just kind of start with (Inaudible) common areas. And then I was surprised by a couple of other things, but it's not worth going into, and then--I think those are kind of the big questions I have.

Vice Mayor Scharff: Why do we have the bingo exception?

Ms. Struve: That's an excellent question. It's been there forever.

Vice Mayor Scharff: Can we take the bingo exception out?

Ms. Struve: I think the way it is now, it's at least consistent with the--do you want to answer that? It did come up before and it has to do with employees versus volunteers. What I remember we added the last time was consistent with prohibition on smoking contained in the Labor Code Section 6404.5. That was what we added, to not exempt all bingo games, but these are the ones that are ...

James Keene, City Manager: There's some state that allows it.

Ms. Struve: We took it out at the ...

Vice Mayor Scharff: Okay, so we can remove it?

Ms. Struve: Yes.

Chair DuBois: I just want to be clear. I just have a couple of quick questions. The idea of establishing a smoking area, I guess this could be done by the property owner?

Ms. Struve: Yes.

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Chair DuBois: So what happens in a situation where it's a dup. (duplex), condo duplex and there're two owners and they disagree?

Mr. Keene: No smoking area created.

Chair DuBois: So they have to agree, the majority of owners?

Ms. Struve: They could start walking around the block because when you're in transit, it's still allowed to smoke.

Chair DuBois: I also wasn't clear on second units attached to a one home. Does that fall under this Ordinance?

Ms. Struve: It's actually in the definitions. Under multi-family, it does. So multi-unit resident does not include a hotel or mobile home park, a single family home and a single family home with a detached or attached in-law or second unit.

Chair DuBois: So than on Page Four, under Unit, it includes in-laws and second units.

Ms. Struve: It's interesting. Which one do you want?

Chair DuBois: I think the definition multi-unit is good with the exclusions. It may be okay; I wasn't able to trace it the definition all the way through.

Ms. Struve: We will make them consistent.

Chair DuBois: And Terence, how does this compare with other policy team?

Terence Howzell, Principal Attorney: It's exactly in line with other laws that I've seen in that are trying to be kind of, I guess aggressive might be over stating it, but progressive and assertive in the area. So I think we're really right on track and kind of in the forefront. One thing that I did want to mention, it relates to Page Seven toward the bottom. We did have discussions and I raised this with Staff, regarding how best to phase this in and I think there was a desire perhaps to give landlords six months, perhaps a year notice of this so that they can change lease terms. We can do an education program instead of, you know, immediately imposing them, proposing this on them next month. I think most cities, at a minimum, give six months, many give a year so that, that way it can be included in the lease terms and it's much easier for them to enforce going forward.

Council Member Berman: Can I ask a follow up question?

Mr. Howzell: Sure

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Council Member Berman: One question I did have while I was reading this, how do we provide a note? I mean, do we have a list of all of the--I mean, does Senate have a landowner, that we have multi-unit resident landowner that we have and condo complex?

Ms. Struve: Yes, that's what we would do. We would probably send them an FAQ (Frequently Asked Questions). We would have it online. That's what other cities have done. Basically send it to them with a very--you know, send the Ordinance, but also more simple fact sheet and proposed lease language they could use and signage suggestions.

Council Member Berman: So there'll be no--nothing would fall through the cracks at all. So the signage is one more thing that I was thinking about because this is one of the most contentious things that we deal with in my HOA (Homeowners Association) is when people want to put up sign and other people don't want the color, or it's too big or it's too--I mean, is there precedents that we have for how we kind of let the different HOAs deal with this or do we set pretty specific requirements of what the signage will look like and how big and that kind of stuff.

Ms. Struve: We didn't set specific requirements with the County. We provided sort of a variety of either, sort of small window decals, aluminum signs, and sort of individually (Crosstalk.)

Council Member Berman: So it's left pretty open.

Ms. Struve: Like these are available and then on some cases they wanted to do their own signage, so.

Council Member Berman: Okay. Good.

Chair DuBois: Let's go for a Motion to (Inaudible.)

Mr. Keene: Can we just speak to things just before we actually do ...?

Chair DuBois: Sure.

Mr. Keene: One relates to identifying the phase in period really whether you want to do it in six months or a year. I do want to clarify on the issue about resources and enforcement. I think the reason the Staff felt that some discussion by Council might be necessary would be whether or not we really have the capacity to effectively enforce it or to what degree we will enforce it, even on a complaint basis. I would say--I couldn't tell you right now that we're effectively enforcing our existing smoking Ordinance right now.

Vice Mayor Scharff: I think it's a lot better than it used to be.

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Mr. Keene: No, it is, but I think, I mean, assume that it being straightforward about this, I'd offer--I'm not saying we shouldn't proceed, but I don't want this to turn in to leap (Crosstalk) situation where--that's something that's really aggravating and it's long standing and you know the truth is, the thought is, it's a culture change we start to push. Again, for the most part, it's sort of peer pressure that enforces it and actually--sorry, I'm going to get on my son's speech about this, the idea that the City can enforce every Code that it wants to do other than publicizing it--I mean, I have a Police Chief neighbor, a friend in Colorado once, he said, 80 percent of our calls of service don't need a uniform Police Officer, they need a neighbor, and so the truth is, I think there needs to be some recognition that this is the kind of community standard in the sense that is out there that we can't always send somebody to. Even enforcement gets tricky. We've talked about how dowe design some outreach to start to enforce things on the existing Ordinance. We haven't had the time to do it, so I'm left as one person myself in downtown enforcing the Ordinance routinely, kind of, with a very soft touch, just like, hey man, you really can't smoke in downtown Palo Alto, you could get a ticket one of these days, you just might want to think about it. But you know, a few sketchy guys sometimes when I said that. I'm just saying that's a main issue we want to say. We're not poise and not necessarily ensure that we can go out and really do an effective enforcement, but I do think the bully pulpit, the ability to kind of get the message out certainly would serve itself appropriately, so.

Vice Mayor Scharff: Alright. I'll move that we adopt the Ordinance in Attachment A and that we do a one-year period for outreach on old units and obviously on new units, just like the Ordinance says and that we delete the bingo exception. So you second the ...

Council Member Kniss: I did. So you did the first, so you need comment.

MOTION: Vice Mayor Scharff moved, seconded by Council Member Kniss to recommend the City Council adopt the Multi-Family Smoking Ban Ordinance, with the deletion of the bingo exception indicated in Section 9.14.070 (b) and allowing for a one year period for outreach and education.

Vice Mayor Scharff: I think this is really good. I will comment on what Jim said. I completely understand the Staff's concerns that we're going to say we've heard this, you know, someone's smoking over there, you need to solve this problem and then it could be a difficult problem to solve, but I do think the public benefits far outweigh, especially back as our public speaker say, it allows homeowner associations and landlords basically forces to put it in their lease. Most people are law abiding citizens, you know, and most

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people--so you start to change the culture. I think this is a really good step in the right direction.

Council Member Kniss: I think that this does really, as we say, change the culture. Watching it for long, long period of time, eventually people really get it, that you don't smoke. I think the only--I don't think this is going to be incredibly troublesome because I think that the homeowner associations will really police themselves in many ways. Don't you think? Once you got a club, it's a lot easier to stop this happening. I think probably the most problematic areas are those that are designated for smoking and somehow we do allow and I'm thinking that's always a little tricky. I was so glad when the airlines started putting in the glass in cage like things that you smoke in because truly, that at least really contains the smoke. I think one other problem we have that this doesn't address obviously is the amount of smoking that goes on behind businesses, especially behind restaurants. That's always a little disturbing as you walk in a back way and everyone is out there smoking. Don't we have an Ordinance regarding that as I recall?

Vice Mayor Scharff: We do.

Council Member Kniss: That doesn't really relate to that because we were talking about multi-family and so forth, and I think this really does hit a problem and obviously has been long term. Thank you so much for coming. It's nice to have somebody who says this really is a problem, help us with it. It makes it much easier to pass it and enforce it. So I think this is a good direction. I have a feeling we probably have not seen the very end of non-smoking, but this goes a long way. I mean, when you finally get multi-units--and I remember the County saying could we ever enforce it? And I think actually it's happened. So good job everyone. Thank you Marc and Tom from your last year's good work and that means--I think that we can just put it on Consent and pass it forward.

Chair DuBois: So I don't have any comments either. All those in favor?

MOTION PASSED: 4-0

Mr. Keene: Healthy City, Healthy Community, one of the four priorities.

Council Member Kniss: Yes, it is, right.

Chair DuBois: So the second Item here is the Tobacco Retailer Licensing. We do have a Memo here, you guys haven't read it?

Mr. Bobel: We could sum it up for you guys saying that we knew the thing that occurred after we wrote the Staff Report and before your meeting. We

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had another meeting with the County, a regular meeting with the County where they said, yeah, we'll probably run this thing for you. Run the Retailer Licensing Program. We've been talking a general letter, City Manager wrote a letter to them requesting that they consider this without making any commitments on our part and they thought about it among themselves, the Public Health Department and the Environmental Health Department are two groups that would both coordinate to run this program. Nicole is with Public Health and the Environmental Health focus stepped up as well and said yes, we can most likely do this. So that was the new information we wanted to bring to you. Your last direction to us was to say go back and seriously consider running this ourselves, or the City run it, but it really looks like a better option to have the County do it, they already do it in the unincorporated areas. They realized the economy of scale and doing it at a larger area, we sort of realize the economy is (inaudible) by trying to do something for a relatively smaller number for some of these and there'd be an audit provisions, the bookkeeping concerns, handling of money, all of these things which when you do it for a small number of facility, it ends up being a more time consuming than you'd think, so.

Council Member Kniss: It's really the County's job to do it, to be honest. I think it is the County's job to be doing it.

Mr. Bobel: It seems to be working well in San Mateo County, yeah. Everybody doing it for the cities.

Vice Mayor Scharff: Yeah.

Mr. Bobel: Well, again, Council wants us to try to keep handle on adding Staff. This is an opportunity where we have a clear ability to have somebody else do it.

Mr. Keene: Anybody have any questions?

Vice Mayor Scharff: Yes, so I'm completely convinced. Let's have the County run it, we don't need to have another program we run in the City. I think it's a great program, definitely want to move forward on it. Terence, have you looked at the Draft Ordinance? I mean, could we just adopt this or you need to go back and look at it and come back with it?

Mr. Howzell: We need to have a discussion with the County regarding it.

Nicole Coxe, Santa Clara County Health Department: We have to adopt it to Palo Alto. What happens in (inaudible) saying, Palo Alto adopt this Ordinance, the County's our agent and then probably add some additional

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definitions to that, County Health thing, County Environmental define in here.

Vice Mayor Scharff: So the procedure for moving forward would be to direct Staff to continue the discussions and to draft an Ordinance based on the County?

Mr. Bobel: Yes.

Council Member Berman: And an agreement with the County.

Vice Mayor Scharff: And an agreement with ... so ...

Mr. Bobel: That's the efficient way to do it, is to have these two documents come back. We brought to full Council. The agreement with the County and the Ordinance, our Ordinance.

Mr. Keene: The Committee is going to make a Motion that directs us to do this. Right? So again, we can be in the same situation of being able to puts something on Consent potentially and not have to have this whole discussion again with the Council if everyone is clear.

Vice Mayor Scharff: That's what I'm thinking.

Council Member Berman: Agreement with the County, what else do we need?

Vice Mayor Scharff: The agreement with the County and the Draft Ordinance. Right?

Ms. Coxe: And the Ordinance would be exactly the same as the County's except for (crosstalk.)

Vice Mayor Scharff: So could I just say based on the County Ordinance because that leaves you ...?

Mr. Bobel: Yes.

Council Member Berman: I have some questions if you're almost done.

Vice Mayor Scharff: I am sure you do; I just want to understand what we're doing.

Mr. Bobel: While Greg is writing, let me just say that last time, and you were part of this Marc, we got into a discussion about the age limit and part of the deal is the County needs for us to adopt the exact same Ordinance to

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make it efficient for them to run. So we'll be increasing the age of sales from 18 to 21.

Council Member Berman: That is a definite jump side in the end. Since we had that conversation at Policy and Services and I've had that conversations with other folks and gained more information that at that time, they were a little bit okay with it and frankly I've forgotten all of that information and didn't think that I needed to go back to review it because it wasn't in our Staff Report that we've received before this meeting and so what I would ask of--the first question I have is why? Why is it that it needs to be exactly the same? What would the big deal be about still having it be 18 in Palo Alto, you know and having it be 21 in the County? What's the need to have it be exactly the same?

Ms. Coxe: I think it's just easier in terms of ...

Council Member Kniss: It's enforcement ...

Ms. Coxe: Right. In terms of the Environmental Health inspectors having to go in and assess compliance on a variety of sort of provisions. It's our recommendation that it be exact just for the ease of that because there's a number of sort of signage requirements and other things that the stores are required to have that show age limits and other things and it just sort of our stance.

Mr. Bobel: If I could just step in here too. Having talked to Jim (inaudible), who's head of the other group there who we'll be doing the inspections. I think for them it's a precedent issue too. I think for them; this is a nice pilot. We'll be the first City in Santa Clara County to do this with the County, but the precedent they wouldn't want to set is each City could sort of do their own thing. That would be--if it were just Palo Alto, if it was just one thing, you know, that would be different, but I think they're looking for a situation where this may become the model for Santa Clara County and they need the model to be the same.

Council Member Berman: I'm sympathetic to that and I get it. What I'm going to ask our Staff, what I'm going to ask the County staff because we did not get last time is more information as to why we should raise the age to 21 and why that's not, as my colleague who was in Policy and Services last year, I don't know if he explicitly say this in the meeting, but why that's not ageism. I mean, you know, why, you know, a 19-year-old that can go off to war and--make the decision to go off to war and give their life for the Country, isn't mature enough to make the decision to buy cigarette because that's what we're saying is, you know, somebody who's 19 can make that decision, can probably buy a gun, I'm guessing, but isn't mature enough to

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buy a cigarette and maybe there's good information. I'm sure you guys had a lot at the County when you made that decision, I haven't seen that and so I'm okay with this coming back to Consent as long as it comes back with that information and if I'm not comfortable with that information, then I'll see if there's enough colleague to pull it off Consent. I don't think that we need to put it on ...

Vice Mayor Scharff: So Marc, briefly, are you looking for a legal analysis that gives you the ability to do this? Is that ...?

Council Member Berman: No. I think, I mean, I think it's been said (crosstalk.)

Vice Mayor Scharff: Otherwise it's a policy discussion about we don't have enough people--I mean, are you looking for why do people smoke--you're looking for data here that says, teen learns to smoke at a 18, they learn to smoke less at 21? I'm really not sure what you want from them.

Council Member Berman: So it's not legal, it is policy. And it's why is it a better policy, I mean, you know, kind of the point that I made a couple of months ago. Yeah, smoking is bad and smoking is bad for everybody and you're an adult at 18, which is what the law states, then why don't we ban smoking for everybody? Why are we deciding to just ban smoking for people who are 18, 19 and 20? I mean, I guess that's what I'm trying to wrap my head around is why are we treating people who are 18, 19 and 20 differently than people who are 21, 22, and 23 when it comes to smoking.

Vice Mayor Scharff: Well, we do with alcohol.

Council Member Berman: Correct, but I think that, you know, the history of that, and I think I made this point earlier though is State only went along with that because the Federal Government threatening to withhold their transportation funding if they didn't, so it wasn't necessarily--and maybe that's it and maybe I end up going along with this because it's easy to hire the County to enforce it, but if there's data, if there's information, I would love to get that, that would make me, you know, feel a lot more comfortable without treating 18, 19, 20 years old differently for cigarettes when you know, for all intent and purposes, they're adults.

Council Member Kniss: Marc, I'm having a hard time with that one. Again, it is 21 for drinking, you know, no matter what kind of ...

Council Member Berman: And 18 for war.

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Council Member Kniss: Well, although that's the case, and we're probably going to be accused of (mannerism), but I think frankly, the longer you can keep teens from smoking, there is--and we can look this up for you, scientific evidence ...

Council Member Berman: That's all I'm asking for.

Council Member Kniss: There is scientific evidence that the longer anyone goes without becoming addicted--so what you allow, is when the 18-year-old can buy a cigarette or the 16 year can buy a cigarette, and I'll documented for you guys, the addiction--and we discussed this a lot in terms of suicide, the brain, the fully developed adult brain, is about ...

Council Member Berman: 25.

Council Member Kniss: Yes, is about 25. We're not going to keep them from smoking until they're 25, but since there is consistency, since there is consistency and we could come up with good scientific evidence that says, if you're going to promote non-smoking, I think what you're doing is you are attempting to keep someone from becoming addicted. Smoking is incredibly addictive--I can look up all those old medical ...

Council Member Berman: I'm not doubting that.

Council Member Kniss: Articles I used to quote. It is one of the most--it is actually more addictive in some ways than alcohol and once you're addicted to smoking, I don't know if any of you have been smokers and stopped, once you're addicted, it is so hard to stop. So I think what you do with this is you really do public health service if you can, in some way, keep kids, and they're still kids in their teens, from smoking till they're 21. We can't do it beyond that, but the development doesn't happen like bam, at 25 you're done. It gets better, and better, and better. If 21 is what the County is already using, and it is, it's what the County is using, I remember ...

Council Member Berman: As of a couple of years ago though, correct?

Ms. Coxe: It just went into effect January, 2015.

Council Member Berman: This year?

Ms. Coxe: Last year.

Council Member Kniss: But they've discussed it for--they had the same conversation regarding this. Why do we have wait, blah, blah, blah, but I couldn't more strongly support the 21-year-old age and I'll be delighted to

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go back through scientific evidence and bring it. Seriously. And because you won't accept it from me I'm sure, let's get Staff to produce it as well.

Council Member Berman: With your background, of course I'll accept it.

Council Member Kniss: I have pretty good background on this. And I feel pretty strongly about smoking. So my dad smoked two packs a day. He's been addicted from the time he was probably 12 or 13. It's a miserable way to die, by the way, miserable. If you can stop a couple of people from becoming addicted, you've done some good for your community. Not to be overboard about this, but you can tell I feel pretty strongly about this.

Chair DuBois: Not to cut this off, but do you have any other questions on retail necessarily because I have a few. For 18 is about keeping it off high school campuses, which is part of the retailer licensing thing. You see an 18 years still at high school. They can buy it for their friends. To me, that's the difference between 18 and 21. Just I understand this, the County will handle registration, some businesses will pay a tobacco license fee to the County and then there are County Health inspectors that would unannounced drop in?

Ms. Coxe: Yes.

Chair DuBois: But is that not to be enforcement or just looking for signage?

Ms. Coxe: its it's compliance checks, so they'll go in at least once a year to each business and check for everything other than a legal sale to minors. So they'll check to see if they have their age warning sticker, that they're complying with window coverage laws that they're not selling flavored tobacco products, that they don't have self-service access tobacco products. Those kinds of things.

Chair DuBois: Do we have any other service in the City that we sub-merchants to the County for at this point?

Mr. Bobel: Well, they'd have to get--merchants have to get a lot of things from the County that are health related.

Chair DuBois: Okay. So on the City website, will we communicate clearly, I mean this hand off to the County?

Ms. Struve: They're only 30 of these retailers, so once we're getting closer to implementing, we would notify them all and I've already had calls from at least one gas station saying, what is it now in Palo Alto, 18 or 21? So they know and they're following it (crosstalk.)

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Chair DuBois: So while the County is doing it, will the City have information communicated?

Ms. Coxe: Yes. We'll (inaudible) that change of information.

Council Member Kniss: So just one quick question. Are we covering grocery stores as well?

Ms. Struve: We're covering everything.

Ms. Coxe: Anybody that sells tobacco or electronic cigarettes.

Council Member Kniss: It sounds like then there's more than 30 outlets if we're including grocery stores.

Council Member Berman: Not in Palo Alto.

Chair DuBois: Not all of them. Some of them do.

Ms. Coxe: Only the Safeway in Middlefield.

Chair DuBois: So in terms of police enforcement, that would be Palo Alto Police?

Mr. Bobel: For the age, as opposed to the other things that Nicole mentioned, the age thing would be Palo Alto's responsibility. So we've had extensive discussions with the police and in the your At Places Memo, you'll see that paragraph at the bottom of the first page, spilling over to the second page, that let you know that the police are way understaffed at the moment. They can't commit to doing this immediately, this decoy operation immediately. We talked to Chief Burns just a couple of days ago about this and this was the language that he felt you needed to see in here about that.

Chair DuBois: But if some merchant popped up close to a school and started selling cigarettes, the police would enforce that as well?

Mr. Bobel: Well, our police could enforce it or the County could enforce it.

Chair DuBois: I just want to be clear.

Mr. Bobel: It's just the age thing that is really would be us along having to need the investigators.

Council Member Berman: That age thing again.

Chair DuBois. Good. Okay.

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Vice Mayor Scharff: Can I ask two quick follow ups. The first is, and I was reminded of this as I was finishing up dinner before the meeting, I was driving down on University and was finishing up and couldn't help but notice the smell of the cigar smoke whiffing by, but as I was eating dinner right down the street from the cigar shop on University, between Cowper and something else, do we have--is there anything--do we force establishments that sell cigarettes or cigars in our downtown business district to have some sort of sign that says you can't smoke within the business district and could we add something like that? Because we're pretty much (inaudible) right? You pretty much can't smoke within a pretty large block area.

Mr. Bobel: Couple of district.

Ms. Struve: If they can smoke inside, they'll be (crosstalk.)

Mr. Bobel: You're asking whether we can insist the business owner put up the sign?

Vice Mayor Scharff: Yes, because I mean, if somebody goes into the cigar shop, buys a cigar, walks right out and says I just brought a cigar, I'm going to start smoking it. They should know you can't do that within a ...

Ms. Struve: There's a sign right outside that particular shop, but it's kind of small.

Mr. Bobel: We have a pilot sign program and we're going to roll out more signs sponsored by the cities, but I guess we don't have anything in our Ordinance that requires businesses to ...

Ms. Coxe: Well we do. We ask them to put out signage wherever smoking is not permitted, but in a public space, that would be our responsibility.

Council Member Berman: Yes, I don't mean in a public space. I mean (crosstalk.)

Ms. Coxe: You mean like a window or inside?

Council Member Berman: Yeah, like a little sign by the cash register that says, by the way, you can't smoke downtown.

Ms. Coxe: We don't.

Ms. Struve: Because the smoking regulation or the tobacco use regulation is in a separate Ordinance, so we haven't sort of looked at that cross over. It's not a bad idea.

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Mr. Bobel: We could look at that and when we package this thing, we got to take a look at the Ordinance again.

Council Member Berman: It is something to consider.

Ms. Coxe: Probably our smoking Ordinance would have to refer to another, to this tobacco--we can't combine them, it's too much, and so we would then address it back.

Mr. Bobel: But procedurally, we could--it'd be in a different part of the Ordinance, but we could--it'd be efficient to bring it back up to full Council at the same time. So let us look into that.

Council Member Berman: Great. Something to check out. And then so, I want to be clear to everybody in the public. I'm not pro-smoking and I agree with everything that Liz said, except for one thing I have a question about. Liz, you mentioned we can't do this--you said we should do everything that we can to prevent smoking and stop people from getting addicted up to 21 because we can't do it after that and I'm not--I don't believe that's the case. Is there any law that says that you can only prevent smoking up to a certain age?

Council Member Kniss: I think it's just that we're looking to the County to enforce it and they have said 21.

Council Member Berman: I understand that. I just want us to be clear that we're choosing 21. It's not that the law says that there's a ceiling. We could say 25 if want to (Crosstalk) with the County, but I don't know if there is a law that ...

Mr. Howzell: The short answer is that we could have--as it relates to what we're doing here with respect to licensing, we could have a higher age if we so desired, but it raises and I should flag this issue for you all as it relates to this issue generally. California State law, criminalizes the sale of tobacco to minors and it has to 18. There is an issue concerning whether localities can have a different age. A number of Counties have looked at this and, you know, the legal term branch, local governments pre-empted from having a different age and a number of Counties have looked at this, obviously Santa Clara County and I think there is a number of counties that have concluded that because we are not criminalizing the sale, we are fine as long as we are, it's fine civil penalty, we are fine, but you all should know Santa Clara County is an out liar when it comes to this. I've spoken to County Counsel from Santa Clara County and have discussed their legal analysis and also San Francisco County, which is also looking at this and reviewed their legal analysis and I think they're correct on the pre-empted issue. Also the

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legislature is looking--there is a Bill in the assembly to raise the age to 21 as well. Two cities, Hillsburg, in 2014 did raise it to 21, but then pull back and decided not to go forward with that and then had some discussions about seeking opinion from the Attorney General's office, but also have decided not to necessarily pursue that. Berkeley just recently adopted an Ordinance, but that is not effective until January of 2017, but again Santa Clara County has done its research. I've reviewed their research, just went into effect in January of this year and believe there is an organization, National Association of Tobacco Outlets that monitors efforts by counties and cities and they were aware of Santa Clara's efforts and elected not to take any legal action to prevent that from moving forward.

Council Member Berman: Great. Thank you. That's all.

Chair DuBois: So can I get a Motion on this Item?

Vice Mayor Scharff: I'll move that we direct Staff to develop an agreement with the County to develop a Tobacco Retailer Licensing program and for the County to do the enforcement and that our Staff draft an Ordinance substantially similar to the County ordinance and that we move forward once we have the agreement in place and the Ordinance and that it goes then either to Council on the Consent Calendar to get four votes. If we don't four votes, it just goes to Council.

Chair DuBois: I'll second that. So you have any more comments?

MOTION: Vice Mayor Scharff moved, seconded by Chair DuBois to direct Staff to continue discussions with the County of Santa Clara on regulatory mechanisms related to retail sale of tobacco, and return to Council with a related Ordinance that is substantially similar to the County Ordinance.

Vice Mayor Scharff: I don't unless you want me to make comments.

Chair DuBois: No, I think it's a good program. I thank you Nicole coming to the meeting tonight.

Council Member Kniss: So I let me to do one final shout out, just so it's on the record. The person at the County who drove this is Ken Yacker, I studied with Ken for a long time and I think in many ways, he should be credited for pushing this and pushing it really hard.

MOTION PASSED: 4-0

Future Meetings and Agendas

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Chair DuBois: We have one more Item, which is discussing future Agendas. Thank you guys. I spoke a little bit, I just wanted to say my intent. Just to try to run a tight meeting for Policy and Services (Committee) and I wanted to see I can get a support from you guys to do that. So I would like to start to have the Agenda start to show the suggested times and I will start, if you guys are okay with it, I will start maybe timing our comments, maybe we'll do a five-minute round or whatever.

Vice Mayor Scharff: You know, I'm not okay with that.

Chair DuBois: You don't want to do five minutes?

Vice Mayor Scharff: I don't want to be timing comments, I don't want to do five minute rounds, nope. I don't want to do that.

Chair DuBois: Okay.

Vice Mayor Scharff: Because I think it chills the conversation and I think it's a small group, it messes up the entire notion of committee. I think that we're a small group, I don't think we're a group that's inefficient. We can discuss that if it's not working, but I'm not ...

Council Member Berman: You're okay with the time on the Agenda. Correct?

Vice Mayor Scharff: Yeah. I don't care if you put times on the Agenda. I'm going to put time on Council attendance.

Chair DuBois: I mean, I'd like to get everybody a chance to speak and then if you have more to say, we can do another around.

Vice Mayor Scharff: I think it's inefficient and stupid because rounds comes ...

Council Member Kniss: Let me tell you what I'd really like to do while we're speaking casually. It would be nice because there are four of us and I think we often did this in Finance last year, to actually have a conversation because otherwise what we do is five minute speeches is we give five minute speeches. And there's no feedback whatsoever and I think the purpose of a committee is to have that interchange of information, ideas, and you know, at some point Tom, you will be absolutely justified in saying, you know, quick interrupting or whatever because your job is to keep us on track, but the occasional interaction I think really is advantageous.

Chair DuBois: Okay. So let's give it a shot. I, again, I just want you guys just to kind of buy into the idea.

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Mr. Keene: Could I just speak into that just for a second real quick. I think it does extend into account. I really think it's a good idea and I'm doing this based on 35 years of experience watching other governing bodies also. This idea of the rounds, the questions, the comments and then the Motions, I do think it just reinforces and kind of puts in subliminal pressure on Council members to feel okay, well I have to speak now and each time, there's this thing in the setting or very often, it's not necessary for that. Some people will be more engaged and oftentimes, say I agree with that comment, but it will stifle conversation, but it is to use the time efficiently. The second thing I just would say is that even though there isn't a timing, I would say that our culture here is that the Chair is expected to be really kind of a weak Chair as far as managing time or being able to say, hey come on, we're really taking longer than we think and I would ask that you guys would even consider that you know, the Chair being able to do that. Not saying I'm going to time people, but the fact if we really--if we've set an item up and such and we try to manage to the time and not let it slip away and say well, we blown it for the whole night and therefore it doesn't matter, we'll just go as long as we need to go.

Council Member Kniss: I think Tom kind of holds us in check.

Chair DuBois: So I will try to do that. I'll do the time check or whatever as we go through the time.

Vice Mayor Scharff: I think the time checks are important Tom. Because if we don't, we can get caught up and stuff and not realize it.

Chair DuBois: Right. So we have kind of an Agenda list here. Did you want to go over this?

Mr. Keene: If we can. First of all, the only thing, the first two meetings are the only thing with anything program and schedule. What we would do is, we get a little bit closer, sit down with the Chair and work on assigning times as we do like the Mayor, Vice Mayor for the Council Meeting, you know, because that would be able to give you a good sense of the audits and how long those would take right now. The meeting is on March 22nd, it was going to be on March 8th, 2016, but we've got half of the Committee is going to be at NLC (National League of Cities), so we rescheduled this to the 22nd. I think it's pretty self-evident the issues. We have a bunch of outstanding issues related to the neighborhood engagement initiative and you know, you guys actually have some separate things we just combined it into one thing, so the idea of like co-sponsorship agreement. You know, that's kind of the outgrowth of the Alma Plaza, you know, room use and some of those things. We'll be prepared to discuss these, but it's pretty much where you want to

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go as a Committee is what you do on these things and then I think all of these are self-explanatory. The prior tentative items identified, I mean either--let me go back. There are two ways that items get on the Council Committee Agenda. One is that the Council, under your procedures, one is that the Council refers an Item specifically to the Committee, the other is the City Manager, on behalf of the Staff is able to put something on the Committee. So seven through 10 are all Items that have been specifically referred to the Committee. Item Number 6, I would recommend that we think about just letting us take this directly to the Council, it's the update to the Green Building and Energy Reach Codes. The only reason we listed it, it's the first time we did it, it went to Policy and Service, but this is an update, so the ...

Chair DuBois: This isn't the one that just came to Council and got referred to Policy and Services?

Mr. Keene: I don't think so.

Chair DuBois: Remember you had that one and ...leave all these in ,....

Mr. Keene: I'll look at it and see. And then the EV (Electric Vehicle) Charging Station one, here's our discussion. It seems to me that, not saying that in every case you would think it might be able to get to some sort of unanimous vote and then have an Item be on Consent when it goes to Committee, but that would be nice if the idea of sending things to Committee was to really delegate some things in the way that you can really work through it and it has the potential to come back. And I know as a Staff, I can't imagine that how we're going to charge for each charging station and all that would be something that the Council would want to come back and nine members of the Council would be talking about, and so trying to start practicing some discipline a little bit that says, okay look, if we're going to have a big conversation about it again at the Council, what's the reason to have a pre-discussion at the Policy Committee. Sometimes it's while you can really flush out some stuff or you could hear, you know, but I'm just telling you it's not very efficient on the Staff side of stuff. I'm going to start saying this more. I mean, the Staff I have on this live in Millbrae and stuff. They're going to stay here at night to do something that they'll have to come back on in another night and do the same thing with the Council.

Chair DuBois: That one doesn't feel like it's going to be controversial to me. You don't think we could work out most of the details here?

Mr. Keene: Well, if you guys could guarantee that the Council is not going to get into it ...

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Vice Mayor Scharff: I'll try to work out all the details and send it out to Consent. If we can, we can, if we can't, we can't.

Chair DuBois: So I have a couple of other ones. I think we finished up the protocol update, but I haven't seen that go to Council. I'm not sure where that is.

Mr. Keene: Okay. Well, I'll look at that. That's in the Attorney's Office. But I would disagree with you. I think that we finished up the protocols the way that the Council talked about them, but I think that what we started to talk about at the retreat about how we really get the work done and some of these things, there's some serious ...

Chair DuBois: We had simple meetings where we had redlines that we had to draft. I think it was with her. I don't know if the Town Hall schedule, if that's something--we don't need to do anything with that anymore?

Mr. Keene: I don't think that's you guys. That sort of in this Neighborhood Engagement initiative. There's nothing that preclude you from having some discussions about how you think, you know, we sort of test drove it. I think it would be worthwhile to get some feedback on the schedule, not really if you sort of say, how many should we realistically try to have. That would be important, not the detailed schedule, you know.

Chair DuBois: And then I guess G-Watering (Ground Watering) Phase Two. Would that come up at some point during the year?

Mr. Keene: I'd have to look at that. I'm trying to remember what we talked about Phase Two. I thought some of that stuff was more automatic and Phase Three was the really big open ended stuff that we talked about coming ...

Vice Mayor Scharff: Phase Two, you're doing anyway. It was Phase Three (Crosstalk.)

Mr. Keene: Phase Three is the big list of the stuff that we were talking about. I thought we were talking about still coming back to Council on that, you know, by the middle of the year and I think that would be the best way to do it.

Vice Mayor Scharff: Actually, it will come back to Policy and Services.

Mr. Keene: Is it really? I'll check.

Vice Mayor Scharff: Why don't you just check? The Motion was clear.

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Chair DuBois: The last one I had on my list was any follow up on the airplane noise Item later in the year.

Council Member Kniss: Did Policy take that up?

Chair DuBois: We started it last year.

Council Member Kniss: You made a pass at it?

Chair DuBois: We put it on Consent, but need to approve the small study.

Mr. Keene: That raises an interesting question about--there's been a tendency if an Item once goes to Policy and Services and then it takes some action, Molly and I were talking about this. We sort of gravitated that, that's somehow remaining within the orbit of the Committee, that issue, without really, if there's a new phase of it, does it need to be redirected back from the Council to the Committee. I would argue that it's worthwhile to think about the Council still directing it because ...

Vice Mayor Scharff: So why don't you bring those issues back to Policy and Services of the protocol. Just bring it back to us and we can have a discussion.

Chair DuBois: That was really just a discussion, you know, what's the next phase about a project and is there anything that would be sort of Policy and Services or just out to Council.

Mr. Keene: Okay.

Vice Mayor Scharff: I have one quick thing.

Mr. Keene: Let me know about it because Cash is supposed to have a little bit of a follow up conversation with you tomorrow on the airport noise.

Vice Mayor Scharff: I thought we're a fairly efficient team frankly in the meeting. I don't know what you guys thought, fairly efficient. Thought it was good. It's almost nine o'clock. I'd really like to start our meetings at six, I don't really want to get home at nine o'clock every night on our best night. I move that we start these meetings at six.

Council Member Kniss: We've done that. Did you not do that last year?

Vice Mayor Scharff: No, we started at seven.

Council Member Berman: I'm fine with it. It just we haven't done it before.

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Vice Mayor Scharff: Finance did it last years.

Council Member Kniss: I'll tell you why I like it. I like it because of Staff in particular. I'm not as concerned of us as I am of Staff because by six o'clock, I know ...

Mr. Keene: I would say that Staff generally would prefer--you're working anyway, you know, you keep working till six, rather go by eat and then you go and then, you know, if it's an hour and half, you're out at 7:30 P.M. That's a whole different thing then you're out at nine o'clock.

Council Member Kniss: I admire your 90 minutes, but if it's two hours, you're still done at eight.

Chair DuBois: I can do at six for now, but I would just ask, my work schedule will be changing soon, we can revisit it.

Vice Mayor Scharff: We'll revisit if it's a problem. And if it's a particular day that's a problem, you're the Chair (crosstalk.)

Council Member Kniss: So for now, I don't know if the plan officially changed to six or not. I think we did last year. We made a Motion to say let's start at six from now on.

Vice Mayor Scharff: We did.

Council Member Kniss: So we're saying we will do this until you need to look at it again Tom, is that right?

Chair DuBois: Yes, until (inaudible.)

Vice Mayor Scharff: So moved.

ADJOURNMENT: The meeting was adjourned at 8:42 P.M.