



CITY COUNCIL MINUTES

Special Meeting
January 13, 2014

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:03 P.M.

Present: Berman, Burt, Holman, Klein, Kniss, Price arrived at 7:00 P.M., Scharff, Schmid, Shepherd

Absent: None

CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATORS

City Designated Representatives: City Manager and his designees pursuant to Merit System Rules and (James Keene, Pamela Antil, Lalo Perez, David Ramberg, Joe Saccio, Kathryn Shen, Sandra Blanch, Dania Torres Wong, Melissa Tronquet, Brenna Rowe, Molly Stump, Khashayar Alae)Employee Organization: Service Employees International Union, (SEIU) Local 521Authority: Government Code Section 54957.6(a)

1a. CONFERENCE WITH CITY ATTORNEY/LEGAL COUNSEL

Potential Litigation (as plaintiff/defendant) – One Matter

Subject: Construction of the Mitchell Park Library and Community Center

Authority: Government Code Section 54956.9

Margaret Adkins, Service Employees International Union (SEIU) Palo Alto Chapter Chair, indicated the City was having difficulty attracting and retaining skilled and experienced employees. Competition enticed employees away from the City. In the current negotiations, the City and SEIU faced the same issues as in 2012. The City rejected SEIU's several proposals. SEIU wanted to work with the City; however, the City was not willing to compromise. She respectfully requested the Council direct the City's negotiation team back to the table.

Pete Quiros, Gas System Technician, stated the City was losing talented workers to PG&E. Safety of citizens and workers was an issue. He hoped

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the Council would not neglect the Gas Department and would return to the bargaining table.

Lane Pianta, Production Manager for the Palo Alto Children's Theatre, asked the Council to place the community first. The Children's Theatre's success was accomplished in spite of understaffing. He urged the Council to continue its full support of the Children's Theatre by retaining the full-time position of costume designer and not replacing it with contract labor.

Jesse Cruz, Electric System Operator, indicated he was the only remaining Electric System Operator for the City. Because the City did not pay competitive wages, it was unable to attract new talent.

Nelson Primeaux, Electric Crew Lead, had never worked in as small a workforce as at the City. Half his coworkers left or retired from the City. The City's pay schedule was approximately 20 percent lower than PG&E's pay schedule, 15 percent lower than Santa Clara, and approximately 5 percent lower than the Turlock Utility District. Large industries would not tolerate extended outages.

Aaron Miller, Waste Water Treatment Plant Operator, reported the City was not paying competitive wages for skilled workers. Neighboring agencies paid approximately 21 percent more than the City of Palo Alto.

Council adjourned into the Closed Session at 6:14 P.M.

The City Council returned from the Closed Sessions at 8:07 P.M., and Mayor Shepherd announced no reportable action.

SPECIAL ORDERS OF THE DAY

2. Appointments for Three Positions on the Storm Drain Oversight Committee for Three Year Terms Ending on October 31, 2018 (Terms of Clark, Mickelson, and Whaley).

First Round of voting for Storm Drain Oversight Committee for three three-year terms ending October 31, 2018 (Terms of Clark, Mickelson, and Whaley):

Voting For Nancy Clark:	Berman, Burt, Holman, Klein, Kniss, Price, Scharff, Schmid, Shepherd
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Voting For Mark Harris:	Schmid
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Voting For Hal Mickelson:	Berman, Burt, Holman, Klein, Kniss, Price, Scharff, Shepherd
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Voting For Richard Whaley: Berman, Burt, Holman, Klein, Kniss,
Price, Scharff, Schmid, Shepherd

Donna Grider, City Clerk, announced that Nancy Clark and Richard Whaley with 9 votes and Hal Mickelson with 8 votes were selected to serve for the Storm Drain Oversight Committee in three year terms ending October 31, 2018.

AGENDA CHANGES, ADDITIONS, AND DELETIONS

None

CITY MANAGER COMMENTS

James Keene, City Manager, announced that the San Francisquito Joint Powers Authority and the Santa Clara Valley Water District would jointly host a community meeting regarding the Pope-Chaucer Street Bridge Replacement Project on January 15, 2014, at 6:30 P.M. The Fire Department invited the public to participate in the Racing Hearts Foundation Spot the Box Campaign. A fatal fire occurred January 10, 2014 and burned quickly due to a large amount of combustibles stored in the home. The Palo Alto Junior Museum and Zoo was selected to receive a 2014 State Superintendant's Award for Excellence in Museum Education for the School Science Program.

COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

Mayor Shepherd read a message from City Attorney Molly Stump regarding Council Member Questions, Comments, and Announcements. The purpose of the item was to make brief announcements for the public or short statements to Staff. Major policy items should not be discussed or considered. The entire item should be limited to 15 minutes.

Council Member Price was appointed to the Housing, Economic, and Community Development Committee of the California League of Cities and to the Steering Committee of the Transportation, Infrastructure, and Services Committee of the National League of Cities.

Council Member Schmid noted a County meeting of the Association of Bay Area Governments (ABAG) occurred the prior week. An update of the Plan Bay Area was presented. ABAG wished to accomplish truncated California Environmental Quality Act (CEQA) review for affordable housing. One of the problems with financing affordable housing was a city's commitments to Counties, State, and Federal funding sources as each agency added constraints.

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Mayor Shepherd noted the City received the Turning Red Tape into Red Carpet Award for the Development Center Blueprint Business Retention and Expansion.

ORAL COMMUNICATIONS

Alex von Feldt, Program Director for Acterra Stewardship, explained that the Stewardship Program partnered with the City to engage the community to improve local parks, open spaces, and creeks. She highlighted ongoing projects. She thanked the Council for its support.

Stephanie Munoz recalled that the public supported the recent low-income, senior housing project. If the Council did not construct affordable housing, the public could conclude that the Council only wanted the market-rate housing part of the project. The Council should construct the affordable housing project.

Hal Mickelson, Palo Alto Chamber of Commerce, noted the Infrastructure Committee asked Staff to begin preliminary work on an increase in the City's Transient Occupancy Tax (TOT). The Chamber of Commerce would not support an increase in the TOT. The City Manager stated that he favored raising the money first and subsequently setting priorities for use of the monies. The Chamber of Commerce's position was based on economics. People and large employers would book hotel rooms in other places.

Aram James suggested the Council discuss discontinuing use of Tasers by the Police Department. There was only one Taser discharge in 2012. The Independent Police Auditor recognized that Taser use was a controversial force option. Tasers were not cost effective and remained in violation of the U.N. objective not to engage in torture.

Council Member Burt requested the City Manager respond to Mr. Mickelson's characterization of his position as stated at the Infrastructure Committee.

James Keene, City Manager, reported the Infrastructure Committee was attempting to balance an infrastructure deficit larger than any combination of existing revenue sources. As a means for the Infrastructure Committee to work through the process, he suggested the Infrastructure Committee discuss the most viable revenue sources and then match needs with revenue. He would never recommend the Council consider a tax increase as casual or consider not dedicating a tax to a particular purpose.

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MINUTES APPROVAL

MOTION: Council Member Price moved, seconded by Vice Mayor Kniss to approve the minutes of November 12 and 18, 2013, and December 2 and 9, 2013.

MOTION PASSED: 9-0

CONSENT CALENDAR

MOTION: Council Member Berman moved, seconded by Council Member Price to approve Agenda Item Numbers 3-13.

3. Utilities Advisory Commission Recommendation that the City Council Adopt Resolution 9388 entitled "Resolution of the Council of the City of Palo Alto Approving the City of Palo Alto Utilities Legislative Policy Guidelines for 2014".
4. Review and Acceptance of Annual Status Report on Developers' Fees for Fiscal Year 2013 and Adoption of Resolution 9389 entitled "Resolution of the Council of the City of Palo Alto Making Findings Regarding Continuing Need for Unexpended Stanford Research Park/El Camino Development Fees in the Amount of \$823,618; San Antonio/West Bayshore Development Fees in the Amount of \$664,374; University Avenue Parking In-Lieu Development Fees in the Amount of \$90,696; and the Citywide Transportation Impact Development Fees in the Amount of \$4,453."
5. Approval of the Long-Term Trash Management Plan required by the Municipal Regional Stormwater NPDES Permit.
6. Policy and Services Committee Recommendation to Accept the Auditor's Office Quarterly Report as of September 30, 2013 and the Revised FY 2014 Work Plan.
7. Finance Committee Recommendation to Accept Macias Gini & O'Connell's Audit of the City of Palo Alto's Financial Statements as of June 30, 2013 and Management Letter.
8. Approval to Designate a Residence Located at 411 Lytton Avenue to the City of Palo Alto's Historic Inventory in Category 2, and Adoption of a Record of Land Use Action at the Request of the Owner.
9. Ordinance 5227 entitled "Ordinance of the Council of the City of Palo Alto for Electric Vehicles Supply Equipment Requirement for all New Single Family Residential Constructions" (First Reading : December 9, 2013 PASSED: 9-0).

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10. Ordinance 5228 entitled "Ordinance of the Council of the City of Palo Alto for Penalties on Expired Permit Enforcement for Residential Project" (First Reading: December 9, 2013 PASSED: 9-0).
11. Approval of Amendment Number 1 to Contract No. C10131413 in the Amount of \$84,660 with URS Corporation to Provide Additional Services Associated With the Assessment, Design and Construction Management Services for Coating and Seismic Upgrades of Six Existing Reservoirs and Rehabilitation of Three Receiving Stations Project WS-07000, WS-08001 and WS-09000, for a Total Not to Exceed Amount of \$567,052.
12. Approval of Amendment No. 21 to Contract No. S0114750 With The Peninsula Corridor Joint Powers Board for Rail Shuttle Bus Administration to Extend the Term for Six Months and Add \$26,684 for a Total Not To Exceed Amount of \$2,930,612.
13. Policy and Services Committee Recommendation for \$30,000 Expenditure for Teen Program.

MOTION PASSED: 9-0

ACTION ITEMS

14. Public Hearing: On Objections to Weed Abatement and Adoption of Resolution 9391 entitled "Resolution of the Council of the City of Palo Alto Ordering Weed Nuisance Abated."

James Keene, City Manager, recommended the Council conduct a Public Hearing, consider any objections, and adopt the proposed Resolution.

Public Hearing opened and closed without any speakers at 8:34 P.M.

Donna Grider, City Clerk, reported no public comment on the item. At places was a revised Resolution.

MOTION: Council Member Berman moved, seconded by Council Member Price to adopt the Resolution ordering the abatement of weed nuisances in the City of Palo Alto.

MOTION PASSED: 9-0

15. Public Hearing: Ordinance to Amend Sections 18.04.030 (Definitions), 18.16.060 (CN Zone), 18.18.060 (CD Zone), 18.20.030 (ROLM(E) Zone) and Add Section 18.46 (Reasonable Accommodation) of Title 18 (Zoning) of Palo Alto Municipal Code to Implement 2007-2014 Housing Element Programs.

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16. Public Hearing: Council Review and Adoption of an Ordinance for a New Chapter 18.15 (Residential Density Bonus) to include in Title 18 of the Palo Alto Municipal Code to Implement Government Code Section 65915.

Mayor Shepherd indicated both items were called together because they involved Amendments to the Municipal Code to implement the Housing Element. The Council would discuss Item 15 and then Item 16, because the two proposed Ordinances required separate votes.

Hilary Gitelman, Planning and Community Environment Director, reported both Ordinances amended the Municipal Code, and the Planning and Transportation Commission (P&TC) recommended both be adopted. In addition, the Regional Housing Mandate Committee (RHMC) recommended approval of the Density Bonus Ordinance. The two Ordinances would allow the City to comply with State law; to avoid the consequences of not complying with State law; and to implement a Bonus Density Law that was better than the default requirements of State law. The two Ordinances would also fulfill commitments the City made when it adopted the updated Housing Element; and would allow a successful update to the Housing Element due to occur in 2015. Staff attempted to articulate all State requirements and their derivation in the Staff Report. The State Density Bonus Law was the law of the land, whether or not the Council adopted a local Ordinance. The law required bonuses of up to 35 percent and reduced parking requirements and design exceptions. Adopting a local Ordinance would implement local procedures and hopefully steer Developers towards design exceptions that Staff felt were less problematic. If the City failed to implement the programs in its existing Housing Element, any person or organization could file suit to challenge the City. The California Department of Housing and Community Development (HCD) could implement additional requirements in reviewing the next Housing Element if the City failed to implement the current Housing Element. Significant penalties were enacted for delaying submission of the Housing Element. A court could compel the City to update its Housing Element and retain jurisdiction over related matters. Attached was a memorandum summarizing the implications of not complying with the Housing Element update requirements; a list of Neighborhood Commercial (CN) Zone parcels affected by the Housing Element Ordinance; and a redlined version of the Density Bonus Ordinance with corrections. Section 18.15.050(f) would allow 100 percent affordable projects to request incentives not contained within the list of concessions. The section could be modified or omitted by action of the Council. The Density Bonus Ordinance essentially implemented a requirement contained within State law. Because the City was not taking a discretionary action, Staff did not believe California Environmental Quality Act (CEQA) review was required. In addition, the current Housing Element underwent CEQA review,

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and thus was not a concern. In both cases, individual projects that benefited from concessions and bonuses would be subject to individual review when submitted to the City. The standards contained within the State Density Bonus Law could not be changed; therefore, the City could not require more parking than was required under the State Density Bonus Law. Staff requested the opportunity to respond to public comment at the end of public comment.

Public Hearing opened at 8:45 P.M.

Stephanie Munoz noted State Senator Hill held a constituent meeting where a number of people spoke against greater density. The City had an obligation to furnish housing for workers. The State's actions with regard to density were not well thought out. The City wanted additional density as long as increased density produced revenue. The State needed to change its language to emphasize low-income housing rather than density.

Robert Moss expressed concern about changes to the CN Zone. The intent of the CN Zone was to encourage viable retail along El Camino Real. If the change in allowable density was implemented, the City could lose existing local retail and the walkable environment. He did not understand the reasons for increasing housing density at the current time; therefore, he suggested the Council delay action. If a Developer requested concessions in a CN Zone, then the building height could be 50 feet. He questioned the need to densify the CN Zone. He hoped the Council did not approve the density increase for CN Zones. He did not understand why Staff proposed more than three concessions in order to obtain affordable housing. He suggested the Council consider limiting the concessions. Giving concessions for increased density was a bad idea.

Patricia Saffir urged the Council to approve zoning changes necessary to implement the Housing Element. Providing needed housing would not ruin the community.

Susan Fineberg inquired whether the Housing Element, the Area Plan for California Avenue, and the Downtown Development CAP would be presented to the public prior to submission of the next Housing Element. The Council must not continue to make land use decisions and rezoning policies without being informed by those studies. The Council could adopt an Amendment to sunset the proposed Ordinance for Item Number 15 at the end of December 2014. She asked the Council to direct Staff to return in February with a detailed timeline and list of required resources for the 2015-2023 Housing Element to allow for meaningful public participation. The proposed Ordinance for Item Number 16 stated that individual projects would be subject to CEQA review; therefore, the proposed Ordinance was exempt

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from CEQA review. This Ordinance would cause significant negative impacts. It exceeded the minimum requirements mandated by the State Density Bonus Law and Government Code Section 65915. The impacts of the proposed Ordinance were not reviewed.

Aram James questioned whether InnVision would assist in developing emergency shelter standards, whether a much-needed shelter would actually be constructed, and whether an emergency shelter would be limited to only one area that was located away from services. He requested Council Members ask those questions.

Cheryl Lilienstein, Palo Altoans for Sensible Zoning President, understood the City needed to identify properties that could be up-zoned to 20 units per acre. She was puzzled as to why most of the up-zoning was proposed along El Camino Real, when Downtown and California Avenue were the designated sites. Most of the Density Bonus Ordinance was a great improvement over none at all. Focusing on the next Housing Element would be more productive. Section 18.15.050(f) allowed the Council broad powers to change the zoning of any parcel. Removing Section 18.15.050(f) would build trust with the community. Retaining the section could destroy the Palo Alto that all residents enjoyed and could cause significant harm and environmental changes. The proposed Ordinance would cause significant negative impacts and exceeded the minimum requirements mandated by State law. She requested the Council remove the CEQA clause statement so that the Council could support the remainder of the Ordinance.

Herb Borock stated emergency shelter standards should be approved by the Council after receiving public input and should be implemented by the effective date of the proposed Ordinance. Reasonable accommodations for accessibility changes should be restored to zoning requirements once the use terminated. The section regarding appeals of accessibility changes should be stated more precisely, because the Council decided appeals. Within Item Number 16, Staff could require market-rate units be built prior to affordable units. Staff should not have that authority. The affordable units should be built no later than the market-rate units. Items I-VI on packet page 522 utilized vague language that was undefined. Section 18.15.050(f) violated Government Code Section 65915. He noted typographical errors.

William D. Ross did not believe the public could comment intelligently on either Item Number 15 or Item Number 16 without knowledge of existing litigation. The issue of Below Market Rate (BMR) housing and exactions versus regulation was before the State Supreme Court. The City should perform a nexus study so that fees could be imposed equally. The primary issue was the need for a better Staff Report regarding litigation. Commercial

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development should be required to pay the same fees as residential development. He hoped the Council would refer the matter to Staff for an analysis of litigation.

Fred Balin stated the Municipal Code required 15 percent or 20 percent of residential units be BMR units without any concessions. Under State law, including 10 percent of BMR units not only triggered a density bonus, a parking exception, and another concession, but also required no additional BMR units. The Council's job was to ensure the correctness of those portions over which the City had control. The Council should question three key areas: the menu of concessions, requirements when going off-menu, and other additions. The section regarding menu changes and additional concessions for 100 percent affordable projects should be removed.

Joe Hirsch was concerned the Architectural Review Board (ARB), the P&TC, or the Planning Director could grant final approval of concessions. The proposed Ordinance lacked clarity by failing to state the degree of control the City had over development falling within the purview of the proposed Ordinance. The proposed Ordinance did not state the consequences if a proposed development was located next to a lower-density residential zone. If he understood correctly, the menu caps were no longer applicable and, upon further review, the menu caps could be exceeded. The increase in Floor Area Ratio (FAR) was excessive. He requested the Council not enact any provisions that supported high-density development. Many provisions of the proposed Ordinance were unclear and required redrafting.

Public Hearing closed at 9:32 P.M.

Council Member Holman recalled that Staff requested the opportunity to respond to public comments.

Ms. Gitelman explained that Staff identified 32 sites for increased density, because Staff felt the sites would redevelop at some point. Mr. Moss suggested those sites could lose their existing retail. That Zoning District required mixed-use development; therefore, the sites would not be solely residential. Staff considered the physical impacts the proposed Ordinance could create that were not already possible because of State law. By adopting the proposed Ordinance, the Council would codify State law in a local Ordinance, not enable higher densities. State law allowed a 35-percent density bonus; the local Ordinance allowed a 35-percent density bonus. State law provided parking reductions; the local Ordinance provided the same parking reductions. Staff concluded that there would not be a significant impact to the environment. In addition, individual projects proposed under the Ordinance would be subject to CEQA review. There was an opportunity to review site-specific impacts about which Staff could not

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speculate. Staff felt quite strongly that the CEQA issue with respect to both Ordinances was addressed. The proposed Ordinances created incentives in response to State requirements; they did not impose exactions. Because exactions and inclusionary requirements were under attack statewide, the State imposed more requirements for incentives. If a Developer proposed a project and met the inclusionary requirements by providing a certain number of low- or very-low-income units, then those units would potentially qualify the project for a density bonus under the Ordinance. There was nothing the City could do about that. The RHMC tailored the list of concessions to state clearly that those concessions were not available to sites that abutted lower-density residential zones.

Molly Stump, City Attorney, recalled that Mr. Ross mentioned the two cases concerning the inclusionary housing requirement in local law. The Agenda Items did bear a topic commonality with that litigation; however, the similarity ended there. There was ongoing litigation in Palo Alto and in San Jose regarding inclusionary housing ordinances adopted by localities. The State Density Bonus Law and proposed local Ordinances were a distinct tool that also addressed the issue of providing affordable housing in communities. Assuming the Council resolved its policy questions, Staff believed the Council could and should move forward with the proposed Ordinances irrespective of ongoing litigation.

Council Member Klein understood the State required the City to enact Ordinances; however, he did not understand the reasons for the State's requirement. Voters expected Council Members to use their best judgment regarding language contained in Ordinances. He asked why the City had to enact the proposed Ordinances, what would happen if the City did not enact the proposed Ordinances, and how he could exercise discretion.

Ms. Gitelman shared Council Member Klein's frustration. She did not understand why the State Legislature enacted a law requiring local jurisdictions to codify State law.

Council Member Klein inquired whether language could be included in the proposed Ordinance stating that the State required the City to enact the proposed Ordinance.

Ms. Gitelman explained that the City would lose an opportunity if it did not adopt a local Ordinance.

Council Member Klein was comfortable adopting provisions that allowed Council discretion. In his opinion, if the City did nothing, then State law would control.

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Ms. Stump stated that one advantage of stating the requirements was having all rules in one place. The proposed Ordinances could refer to State requirements rather than repeat them; however, the comprehensive element would be sacrificed. The State requirements would remain in effect, and the City could add the local pieces.

Council Member Klein inquired whether the current time was appropriate for a Motion.

Mayor Shepherd indicated Council Members could offer Motions regarding Item Number 15.

Vice Mayor Kniss felt the Council did not want to enact the proposed Ordinances. However, State law would remain in effect whether or not the Council agreed with the law. While the community wished to provide affordable housing, density was an issue.

Cara Silver, Senior Assistant City Attorney, reported the City was legally obligated to follow the State Density Bonus Law.

Vice Mayor Kniss added that the City was required to codify the State Density Bonus Law. The City had to accept and codify the State Density Bonus Law.

Ms. Silver concurred. There were different ways to codify the Density Bonus Law, but it had to be codified.

Council Member Schmid recalled public comment regarding up-zoning of CN Zones and the higher number of units in the south El Camino Real area. The Council repeatedly stated that the two areas for intense development should be Downtown and California Avenue. When the Housing Element was presented to the Council in 2013, the Council did not have the California Avenue Area Plan or the Downtown Development CAP. The easy fix was increasing zoning in the south El Camino Real area and in CN Zones. Now Staff requested the Council reaffirm increased zoning for those 32 CN sites. If the City implemented the increased zoning, then it could utilize a streamlined process for updating the Housing Element. He inquired whether the Council should adopt the zoning change for a period of 12 months or as long as the existing Housing Element was in effect rather than making a permanent change.

Ms. Gitelman believed Council Member Schmid was suggesting a sunset clause for up-zoning the CN Zone sites. That was essentially the effect of language stating that the increased density was only available to sites zoned CN that were contained in the Housing Inventory. If the Council removed

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some or all of these sites from the inventory in the next Housing Element, then the sites would no longer be eligible for the increase in zoning.

Council Member Schmid asked if the Council would have a full and open discussion of the California Avenue Concept Plan and the Downtown Development CAP prior to voting on the new Housing Element.

Ms. Gitelman stated the Council would have an opportunity to discuss the status of both of those.

Council Member Schmid requested Staff commit to discussing the contextual information which would make it easy for the public to have a transparent discussion.

Ms. Gitelman was unsure whether the Council could have a good conversation about adding sites to the inventory without a thorough discussion of the context.

Council Member Schmid accepted that as a commitment that the Council would have the discussion.

Mr. Keene clarified that the intention was to make as much progress as possible with every planning effort. The Area Plans would become part of the Comprehensive Plan when completed and adopted. The Housing Element was part of the Comprehensive Plan. The Council's discussion of the Housing Element could be informed by plans in progress or other contextual components. In preparing the next Housing Element, the Council would assign or reassign the location for housing.

Council Member Schmid noted the Housing Element component usually occurred at the end of the Comprehensive Plan discussion.

Council Member Holman felt the reasonable accommodation component lacked adequate examples or definition. There should be other ways to accommodate any number of means. The utilization of accommodations in circumstances involving Covenants, Conditions, and Restrictions (CCRs) also was not addressed. She inquired whether Staff would find alternative means to solve practical access issues.

Ms. Gitelman reported the Ordinance contained review criteria for reasonable accommodations that gave the decision maker some discretion. Staff would have to find that the proposed request met the criteria in order to approve it. In addition Staff would have the latitude to work with a requester to ensure a project did not have significant negative consequences. The City had a Reasonable Accommodation Ordinance associated with below-moderate units for some time, and rarely received a request for

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accommodation. A local jurisdiction would not typically receive a large number of requests.

Council Member Holman stated (d) and (e) of requested accommodation on Packet Page 491 was vague. CCRs were typically considered civil issues rather than city issues. The City seemed to have a conflict regarding allowing a project that did or did not have an impact to the neighborhood. She did not find a requirement for a reversal with change of ownership.

Ms. Gitelman indicated Staff did not include in the Ordinance a requirement to remove a feature with change of ownership. The P&TC discussed that. It could be included in the Ordinance but currently was not. With regard to the CCR issue, she believed the City had that issue without the Reasonable Accommodation Ordinance. She was unsure whether that changed with respect to CCRs.

Council Member Holman noted the P&TC did not wholeheartedly support the limitations or lack of limitations. She recalled that the P&TC recommended a mixed-use project receive a 1-to-1 FAR if the additional 0.1 FAR was placed in the retail component. That piece was not included in the proposed Ordinance. She looked forward to increasing sidewalk widths. She expressed concern about tracking reasonable accommodations with respect to change of ownership.

Council Member Burt believed the vast majority of the changes were favorable to the community. With respect to Item Number 15, the one piece the Council could change was the FAR in current CN Zones. He concurred with Council Member Holman's comments regarding the additional 0.1 FAR being placed in the retail component. He favored the Council reconsidering the FAR for both the commercial and the residential components of the CN Zone and the Service Commercial (CS) Zone. The impact of removing 0.1 FAR from commercial and 0.1 FAR from residential would be smaller units. Palo Alto's greatest need was for smaller units for the aging population and young professionals. It would not reduce the parking requirements for a given bedroom size. It could reduce the amount of parking and number of car trips generated. He suggested a Motion contain that provision or refer the provision to the P&TC for review. He was inclined to refer it to the P&TC to allow public comment.

Ms. Gitelman indicated changing the FAR would be a substantive amendment and should be vetted by the P&TC. The Council would have to adopt the Ordinance without the provision or refer the entire Ordinance to the P&TC.

Council Member Burt concurred.

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MOTION: Council Member Klein moved, seconded by Council Member Burt to: 1) continue the item to allow Staff time to come up with language indicating that we are including State mandate provisions and not approving them; 2) direct Staff to refer to the Planning and Transportation Commission the idea to change the FAR in the CN and CS Zone; 3) Staff to report back to Council no later than the second meeting in February; and 4) the public hearing was closed unless there is new information.

Mayor Shepherd called Point of Order.

Ms. Gitelman clarified the Motion referred to Item Number 2 on Packet Page 471 as referring to State requirements. Item Number 2 was a commitment made by the City in its Housing Element. State law included the default density of 20 units per acre. There was no provision in State law to which the section could refer; therefore, it was important that section remain intact to accomplish objectives.

Council Member Klein believed there was a provision in the Ordinance that a default provision in the State law would make it the same thing if the Council did not enact the proposed Ordinance.

Ms. Gitelman explained the default provisions in State Code were contained in Item Number 16. Provisions for Item Number 15 were not taken verbatim from State Code.

Council Member Klein based his statements on information provided by Staff.

Ms. Gitelman commented that the proposed Ordinances were State requirements in the sense that laws required the City to enact them. Staff created language to incorporate the provision into the Municipal Code. In the instance of Item 2, the requirement was contained in the Housing Element and in the way the State interpreted the default density requirement in the State Housing statutes.

Council Member Klein wanted to delete language in the Municipal Code that stated the City favored increasing the density in the CN Zone from 15 to 20 units per acre. If that required a change in the language, then he accepted it. He asked if the provisions for Item Number 15 were a restatement of State Code.

Ms. Gitelman answered yes. They all responded to State requirements, but were not simply a restatement as in Item Number 16.

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Council Member Klein wanted to consider Item Number 15 and Item Number 16 together. He suggested the Council delete the amendment of Section 18.16.060 and consider public comments.

Ms. Gitelman indicated that was a policy matter within the Council's discretion. The amendment to Section 18.16.060 was a commitment the City made in its Housing Element. If the Council rejected the idea of allowing 20 units per acre on 32 parcels, the City would have a problem with the State because it would not be implementing its Housing Element.

Council Member Klein stated the City had a surplus of units.

Tim Wong, Senior Planner, reported the City had a small surplus of approximately 13 units. If the Council rejected rezoning the 32 parcels, then Staff would have to subtract 64 units considered as part of Housing Inventory sites.

Council Member Burt understood the City committed to rezoning to 20 units per acre in the Housing Element. That was not a requirement of State law. He proposed not altering that commitment, but instead to reduce the Floor Area Ratio (FAR) and to refer the reduced FAR to the P&TC.

Council Member Klein requested Staff return with advice on the matter. He was sure the Staff report indicated the State's default position was to zone for 20 units per acre.

Ms. Gitelman clarified the Staff Report indicated the State had a default density that applied to the City of Palo Alto. If the City could achieve zoning of 20 units per acre, the State would consider those sites available for low- and very-low-income housing. However, the City still had to zone for 20 units per acre.

Council Member Burt felt the Motion was broad enough that it did not stipulate those changes occur. If the Motion had an incorrect assumption, it was broad enough that it did not direct Staff to do something that was incorrect. The Motion should also include Community Commercial (CC) Zoning.

INCORPORATED INTO THE MOTION BY THE MAKER AND SECONDER
to include the Community Commercial (CC) zone.

Council Member Klein did not believe the State Legislature could require a City Council to vote for a particular item.

Mr. Keene was unsure whether the Motion presumed the P&TC could complete their work by the second meeting in February. The second

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meeting in February was scheduled for February 10, 2014. That meeting agenda contained voluminous, complicated items. Staff would prefer the Motion direct Staff to return as soon as possible.

Ms. Silver inquired whether the Motion intended for the P&TC to review the FAR in the CN, CC, and CS Zones Citywide or only on the Housing Inventory sites. The Ordinance only applied to Housing Inventory sites.

Council Member Burt recommended the P&TC examine and recommend FARs for the Housing Inventory sites, then examine FARs for the zones elsewhere in the City. That would allow an expeditious return of the item.

Council Member Klein concurred. He inquired about a date at which Staff could return with proposed language.

Mr. Keene preferred to review the calendar the following day and then provide a date to the Council.

Council Member Klein wished to move quickly, especially with work beginning on the next Housing Element.

Mr. Keene felt the Council would not want to postpone items currently agendaized for meetings.

Council Member Burt suggested changing the Motion for Staff to return by the end of February.

AMENDED BY THE MAKER AND SECONDER to change the return date to the end of February.

Council Member Klein agreed to the change of date. Page 472 contained the language regarding the State's default density of 20 units per acre.

Ms. Stump understood the Council's intention to expedite the item. She suggested the Motion contain language stating "the public hearing will remain closed unless decided to reopen or as otherwise required by law." If the Council made substantive changes, it would need to take additional public comment on those items.

MOTION RESTATED: Council Member Klein moved, seconded by Council Member Burt to: 1) continue the item to allow Staff time to come up with language indicating that we are including State mandate provisions and not approving them; 2) direct Staff to refer to the Planning and Transportation Commission the idea to change the FAR in the CN, CC and CS Zones; 3) Staff to report back to Council no later than the last meeting in February; and 4) the public hearing will remain closed unless decided to reopen or as otherwise required by law.

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Council Member Price understood the consequences of not adopting the proposed Ordinance would be detrimental to the City. She expressed concern that Council actions would not fulfill the commitment contained in the Housing Element. She inquired whether Staff would have sufficient time to follow Council directions such that the City would remain eligible for a streamlined review of the upcoming Housing Element.

Ms. Gitelman reported there was no hard deadline for the Council to adopt the two Ordinances; however, there was a sense of urgency. Preparing the next Housing Element would be more difficult without adoption of the two Ordinances. If the City did not qualify for streamlined review, then it would be challenged to meet the deadline. If the City did not meet the deadline, then it would have to update the Housing Element every four years. An extended referral to the P&TC and return to the Council could compromise the ability to meet the Housing Element deadline.

Council Member Price felt Staff was clear regarding the implications. She was concerned about Staff's ability to comply with Council direction.

Mr. Keene noted the Council would discuss the entire Comprehensive Plan in relation to transportation, land use, and community services. The point of the Comprehensive Plan was not to deconstruct it into individual components. It would be difficult to connect all components in the given timeframe without a means to move through the individual elements. Not acting on items delayed the whole process. He hoped the public would understand that delay was part of the thorough public process and not designed to prevent action.

Council Member Scharff felt the City would have great difficulties if was not eligible for streamlined review of the Housing Element. It would be irresponsible to lose that opportunity. If the Council did not recognize that, it was abdicating its responsibilities. He inquired whether the Motion would prevent the City from obtaining the streamlined review.

Ms. Gitelman reported the Council needed to take the actions to qualify for the streamlined review. There was no hard deadline, but the Council needed to act soon in order to begin the next Housing Element update. If the Council referred the matter to the P&TC, the City would miss the opportunity for streamlined review.

Council Member Scharff remarked that continuing the item for Staff to draft language including State mandated provisions but not approving them was not logical. The City agreed in its Housing Element to enact the Ordinance. He did not believe there was a default provision if the City did not enact the proposed Ordinance. He did not believe Staff could draft language referring to State mandated provisions without incorporating the provisions.

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Ms. Gitelman indicated Staff may have been misleading when referring to "default densities." The State referred to default densities and required the City to zone for those densities to demonstrate that sites were available for low- and very-low-income households.

Council Member Scharff stated the Council should approve the Ordinance, and then refer the FAR component for Housing Inventory sites to the P&TC. Referring the item to the P&TC without allowing public comment was neither transparent nor appropriate. The Council needed to allow public comment.

Ms. Stump clarified that the Council would allow public comment at the P&TC and Council.

SUBSTITUTE MOTION: Council Member Scharff moved, seconded by Council Member Burt to approve the Staff recommendation that the Council adopt an Ordinance to implement five programs in the City's Housing Element by amending Title 18 (Zoning) of the Palo Alto Municipal Code (PAMC) to make the following changes:

1. Amend Section 18.04.030 (Definitions) to add definitions for Emergency Shelter, Supportive Housing and Transitional Housing to comply with the definitions found in State law and to conform to the requirements of Government Section Code 65583.
2. Amend Section 18.16.060 (Development Standards for CN, CC, and CS Districts) to increase the density for residential projects in the CN zone district from 15 units per acre to 20 units per acre for CN parcels in Housing Inventory Sites list of the Housing Element.
3. Amend Section 18.20.030 (Land Uses for MOR, ROLM, ROLM(E), RP and GM Districts) to add Emergency Shelters for the Homeless as a permitted use in the portion of the ROLM (E) District located east of Highway 101, and to establish performance and design standards for emergency shelters as outlined in the Palo Alto Quality Assurance Standards for Emergency Shelters (Attachment B).
4. Add Chapter 18.46 (Requests for Reasonable Accommodation for Accessibility) to establish a process for persons with disabilities to seek a modification to the zoning regulations to eliminate regulatory barriers to providing housing for persons with a disability as required by State law. Typical improvements that would be considered for reasonable accommodation provisions include ramps, walls, handrails, elevators or lifts, or similar physical improvements necessary to accommodate a person's disability.
5. Revise Section 18.16.060(c) (CN zoning) and 18.18.060(c) (CD

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zoning) to be consistent with the current Housing Element which does not allow exclusive residential uses for identified parcels in the Housing Element.

Furthermore refer to the Planning and Transportation Commission the reduction of the FAR in the CN Zone for sites identified in Housing Inventory and consideration of the retail proportion of the FAR including ground floor retail requirements.

Council Member Burt seconded the Motion because of the substantive change on zoning. He expressed concern closing the public hearing.

Council Member Berman concurred with Council Member Scharff's comments. Council Members might have misinterpreted the statute in that the default language only applied to whether or not the Council wanted the parcels to qualify for affordable housing. The Council did not have to take any action; however, that would be detrimental to the City. He supported an analysis of a reduction in FAR.

Council Member Holman inquired whether the Motion clearly indicated that it referred only to Item Number 15.

Mayor Shepherd responded yes.

Council Member Holman believed the intention was to reduce the FAR.

Council Member Scharff agreed the intention was to reduce the FAR.

Council Member Holman suggested removing consideration of FAR in CC and CS Zones to allow for an expeditious response.

Council Member Scharff concurred with removing CC and CS Zones.

Council Member Holman expressed concern about not reviewing CN Zones comprehensively.

Council Member Burt indicated CN Zones would be reviewed across the City but not at the current time.

Council Member Holman felt it was better to review all CN Zones concurrently. Staff could respond as to whether a concurrent review would require more time. She suggested the Motion have the P&TC consider the retail proportion of FAR including ground-floor retail requirements.

Vice Mayor Kniss inquired whether that would be part of the referral to the P&TC.

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Council Member Holman replied yes.

Council Member Scharff would not accept P&TC review of all CN Zones.

Council Member Holman reiterated having concerns about reasonable accommodation.

Council Member Schmid would support the Motion. He suggested Staff provide a final report reflecting the questions asked and Staff's responses.

Council Member Klein stated the Motion did not include a referral to the P&TC and reopening the public hearing because of time constraints. The Council could reopen the public hearing if it chose. If the Council adopted the proposed Ordinance in Item Number 16, then it would endorse the concession system the State created. He hoped the Council would find a way not to support the State's system of concessions.

Vice Mayor Kniss noted the Council had at least ten items to act on in the next two months. Not enacting the proposed Ordinance would be detrimental to the City. She would like to support the Motion, but would support the Substitute Motion.

Mayor Shepherd objected to the State mandates, but appreciated the consequences of not enacting the proposed Ordinance. Because the Council was preparing an update of the Housing Element, it did not have a year to make changes to Housing Inventory sites. Referring the FAR component to the P&TC was appropriate. The City had contacted State Legislators with respect to relief from State mandates.

SUBSTITUTE MOTION PASSED: 7-2 Klein, Schmid no

Mayor Shepherd opened the discussion for Item Number 16.

Council Member Holman stated that not adopting the proposed Ordinance would allow applicants open-ended access to zoning concessions. The Ordinance quantified and modified State mandates.

MOTION: Council Member Holman moved, seconded by Vice Mayor Kniss to approve Staff recommendation that the Council adopt an Ordinance for a new Chapter 18.15 (Residential Density Bonus) to include in Title 18 of the Palo Alto Municipal Code, implementing Government Code Section 65915 in accordance with State Law. Furthermore, to delete Section 18.15.050(f).

Council Member Holman recalled that the P&TC discussed identifying a particular zoning that would accommodate affordable housing projects. Section 18.15.050(f) was not the way to do that. There was a way to have a controlled, measured process and development standards for affordable

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housing projects. The RHMC developed measured, detailed, and quantified recommendations.

Vice Mayor Kniss appreciated comments from members of the RHMC.

Council Member Price hoped the Council would be mindful of the need for low- and very-low-income housing and would consider other alternatives. The need for affordable housing would only increase.

Council Member Burt recalled Mr. Moss's statement that the Council never required low-income projects to have concessions. In fact, every low-income Planned Community (PC) did have significant concessions.

Council Member Scharff supported deleting Section 18.15.050(f). The RHMC changed concessions from 50 percent to 25 percent with the exception of the increase in the FAR. Decreasing the FAR concession to 25 percent still provided a strong incentive.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to decrease FAR incentive to 25 percent not 50 percent on subsection (iv) on packet page 522.

Council Member Holman believed the RHMC did not reduce the concession because it would be insignificant in a mixed-use project.

Ms. Gitelman did not remember why the RHMC did not reduce the FAR concession to 25 percent. It was a meaningful concession at 50 percent and would still be meaningful at 25 percent.

Council Member Berman suggested the RHMC may have discussed 35 percent, because that was the allowed density bonus and it could have correlated with the FAR increase from those units. In a mixed-use project, 25 percent was probably sufficient to cover the increase of housing units. Building affordable housing in Palo Alto was difficult. Most affordable housing units were constructed under PCs. The Council needed to identify a different method to construct affordable housing.

Council Member Klein felt the Council was implicitly endorsing the concession system of the State. The RHMC improved the system, but concessions were still a bad idea. He supported deletion of Section 18.15.050(f). He regretted that time constraints prevented the Council from continuing the item to review public comments.

Mayor Shepherd appreciated the community's concerns regarding Section 18.15.050(f). Enacting the Ordinance was the wise course of action. She expressed concern that BMR units had a lifespan of only 30 years. As the

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Council prepared the next Housing Element, it would consider strategically placing housing where needed.

MOTION PASSED: 8-1 Klein no

Adjournment: The meeting was adjourned at 11:09 P.M.